

Gendered justice and symbolic power: A qualitative analysis of the criminal law assessment practice of human trafficking in German criminal proceedings

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Abstract

This article explores how gender ideologies shape legal assessments in German human trafficking cases, with a particular focus on women as co-offenders, accomplices, or perpetrators. Drawing on a qualitative analysis of 93 criminal case files concluded between 2009 and 2013, the study interrogates prosecutorial decisions and judicial sentencing in cases involving sexual exploitation. While legal criteria appeared formally gender-neutral, subjective evaluations – such as perceived credibility, lifestyle, caregiving roles, or emotional behavior – revealed deep-seated gender biases. Female victims were frequently assigned partial responsibility for their victimization, especially when previously involved in prostitution or emotionally connected to the accused. The findings are interpreted through the lens of symbolic power (Bourdieu), rape myth acceptance, and gender-role ideology. Legal actors, through discretionary decision-making, play an active role in reproducing normative gender narratives and legitimizing symbolic violence. This article contributes to feminist criminology by highlighting how institutional practices reinforce structural inequalities and by calling for both legal reforms and critical reflection on the cultural assumptions embedded in the criminal justice system.

Keywords: gendered justice, human trafficking, female offender, gender norms, symbolic power.

Introduction

In both alarming individual cases and in the context of major societal events, the issue of human trafficking in Germany - particularly trafficking for the purpose of sexual exploitation (§ 232 German Criminal Code (StGB)¹ - periodically attracts media attention and, consequently, public and political discourse. However, given the low prosecutorial pressure from the public and the limited societal awareness of victimization, demands for preventive measures or improved victim protection are voiced primarily at the European level or by specialized counseling centers, aid organizations, and NGOs. Across most European countries, scholarship in the field of anti-trafficking and modern slavery has made significant contributions to the understanding of sex work, particularly at the intersection of critical migration and labor studies (Garofalo Geymonat et al., 2024), though such studies tend to focus predominantly on victims.

Studies report a disproportionately high level of female involvement in the criminal enterprise of human trafficking. The proportion of women convicted under human trafficking laws, up to 40 %, differs significantly from female participation in overall criminal activity (Europol, 2016; UNODC, 2024; UNODC, 2022; UNICRI, 2010). In 2023, this figure stood at approximately 18 % in Germany and around 16 % in Austria (adults aged 21 and older) (Statistik Austria, 2024; Statistisches Bundesamt, 2025). These numbers raise fundamental questions about how female involvement in human trafficking is perceived, categorized, and legally assessed.

When investigating the causes behind this unusually high rate of female² participation, one explanation lies in the nature of the offense itself and the opportunities it affords for female involvement (Siegel & de Blank, 2010; Giménez-Salinas, 2024). However, it may also reflect the criminal justice system's differential treatment of men and women (Sapelza, 2017). Perceptions and sanctions of criminal offenses may be shaped by deeply rooted gender stereotypes, social role expectations, and ideological frameworks.

A sociological-criminological study conducted in 2017 (Sapelza, 2017) takes this as its point of departure and analyzes female involvement in crime within the context of gender-specific social positioning, understood as an expression of structurally conditioned agency (Lenz 2010). Using a stratified, criteria-driven sample of closed criminal case files (§§ 232, 233, 233a StGB, former version³, period 2009-2013), both explicit sentencing justifications and implicit discursive attributions in judicial evaluations were reconstructed. The central research question concerned

¹ <https://dejure.org/gesetze/StGB/232.html>.

² In this paper, a pragmatic approach to complexity reduction is based on the assumption of bisexuality (woman and man). This is expressly not done with the intention of discriminating against members of the LGBTQ+ community.

³ <https://lexetius.com/StGB/232,2>; <https://lexetius.com/StGB/233,2>; <https://lexetius.com/StGB/233a>.

how gendered narratives of male and female perpetrators and victims are structured, (re)produced, and legitimized within institutional assessment processes.

The analysis of criminal case files provides insights not only into institutionalized practices of criminal processing but also into the reproduction of social inequalities along the axis of social stratification. In addition, informal expert interviews were conducted during a preliminary phase of the study, involving professionals from law enforcement, judiciary, criminal defense, and victim support services.

The article is structured into six sections. Following the introduction in Section One, Section Two provides a brief overview of the topic of human trafficking. Section Three outlines the theoretical framework, which was developed inductively during the data collection and analysis process and is connected to empirical findings from international research. Section Four discusses methodology, data collection, and analysis, including an overview of the criminal proceedings and case files examined. Section Five presents the key findings. The article concludes with a final section reflecting on the broader implications.

Human trafficking

Clarifying the terminology is particularly relevant insofar as the offense of human trafficking, as distinct from human smuggling⁴, is multifaceted and has required adaptation due to changing global conditions and shifting perceptions. New manifestations and forms in this area of crime have compelled legislators, especially at the international level, to undertake legislative reforms. These reforms aim to empower rule-of-law actors to make consensual judicial decisions regarding repressive and preventive measures in a crime field whose structures are presumed to extend in a network-like manner across the globe.

The long absence of a consensual definition at the European level led to highly ideological and politicized debates on human trafficking. The debate focused on the following aspects: Which forms of exploitation should be mentioned? Should cross-border mobility be considered? What roles do perpetrators or beneficiaries have? A harmonized definition was eventually established with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, known as the 'Palermo Protocol' (15 November 2000). The internationally recognized definition is based on three constitutive elements: the act (e.g., recruitment, transportation, harboring, or receipt of persons), the means (e.g., coercion, deception, threat), and the purpose (e.g., sexual

⁴ <https://www.ice.gov/sites/default/files/documents/Report/2017/CSReport-13-1.pdf>.

or labor exploitation, and organ trafficking). Each of these elements can independently be of criminal relevance (ILO et al., 2022).

Labor exploitation often affects domestic workers, agricultural laborers, workers in the entertainment and food industries, manufacturing, clothing, services, construction, or hospitality sectors, who are typically employed in low-wage positions (Schloenhardt, 2012). Labor exploitation thus usually occurs for economic reasons and does not necessarily involve crossing state borders. However, in the field of sexual exploitation, estimates suggest that cross-border movement often takes place. The initiators or beneficiaries of labor exploitation may be private individuals or state actors (UNODC, 2024).

Influence of gender stereotypes on sentencing - theoretical framework

Two key theoretical approaches - the 'Chivalry Thesis' (Pollak, 1950) and the 'Evil Woman Hypothesis' (Crew, 1991, p. 60; Chesney-Lind, 1989) - describe opposing mechanisms for dealing with the so-called 'gender gap' (Rennison, 2009; Sapelza, 2015; Steffensmeier & Allan, 1996).

While the former posits that women receive more lenient treatment due to traditional protective attitudes (Messing & Heeren, 2009; Rodriguez et al., 2006, p. 334; Weinsheimer et al., 2017, p. 453), thus helping to explain the lower female crime rate, the latter suggests that women who deviate from gender norms are punished more harshly.

Both mechanisms can be situated within 'social role theory' (Eagly, 1987; Eagly et al., 2000) and the 'stereotype content model' (Fiske, 1998; Fiske et al., 2002). Women who conform to stereotypical traits such as warmth and passivity are more likely to be subject to benevolent sexism, which may manifest as lenient sentencing. In contrast, women who transgress these roles - for example, through violent or economically motivated offenses - are perceived as violating moral expectations, leading to harsher sanctions, as described by the 'evil woman hypothesis'.

Empirical studies corroborate this pattern, documenting stricter treatment of female offenders particularly in cases of stereotype-incongruent crimes (Bernstein et al., 1977, p. 379; Bowker, 1978; Rasche, 1975, p. 15). Hemmens and colleagues (1998, p. 40) observe that "bias against women is most common; however, it is not a product of the court system but a reflection of prevailing attitudes in society". This also concerns how gender as a social category is produced and reproduced through social practices, encapsulated in the concepts of 'doing gender' (West & Zimmerman, 1987; West & Zimmermann, 1991) and possible forms of 'undoing gender' (Butler, 2004).

Judicial decisions are not neutral but are influenced by individual ideologies and social cognitions. Studies by Harris and Sen (2019) as well as Miller (2019) show that ideological attitudes - regardless of gender or legal expertise - shape judicial decision-making more strongly than formal legal norms. Overall, the latter study concludes that legal expertise does not mitigate gendered biases in judicial decisions (Miller, 2019). The 'ingroup bias' (Bielen & Grajzl, 2020) further indicates that defendants tend to receive harsher sentences from judges of the same gender, suggesting subtle forms of system stabilization. In contrast, Trist and colleagues (2025) found no significant effects of gender or gender ideologies on sentencing in a British study, which they attribute to the higher degree of gender equality in the UK. However, sentencing was influenced by the type of offense, such as theft, assault, or drug possession.

Turner (2023) analyzed the impact of the US Supreme Court decision in *United States v. Booker* (2005), which granted judges greater discretion in sentencing white-collar crime. She found that, since then, gender disparities in sentencing may have increased, as judges rely more on personal assessments. According to Rodriguez and colleagues (2006), gender-specific effects mainly depend on the discretionary powers judges have within the framework allowed by the legal code.

Another central topic in the context of gender-specific criminal justice is the role of 'rape myths' - culturally ingrained beliefs that deny, minimize, or justify sexual violence. Burt (1980) defined Rape Myth Acceptance (RMA) as part of a broader ideological framework based on gender stereotypes, conservative sexual norms, and the acceptance of interpersonal violence. Studies show that individuals with patriarchal or traditional views tend to have higher RMA, and these beliefs influence judgments by both laypeople and professional decision-makers (Borgida & White, 1978). Persson and Dhingra (2022, p. 105) also emphasize that the persistence of rape myths must be understood in connection with other social prejudices, such as sexism, racism, and classism, as relevant constructs (although this list is, of course, not exhaustive).

Glick and Fiske (2001) expanded this perspective with their theory of ambivalent sexism, which comprises both hostile and benevolent elements. While hostile sexism is openly demeaning, benevolent sexism idealizes women who conform to gendered expectations, thereby justifying paternalistic control. Both forms contribute to the maintenance of patriarchal structures and are directly linked to RMA.

A cognitive-psychological explanation is offered by Lerner (1965; 1980) through the 'Just-World Hypothesis': people want to believe in a just world and therefore tend to assign blame to victims to maintain a moral order. This account is extended by 'System Justification Theory' (Jost & Banaji, 1994), which posits that people - including disadvantaged groups - legitimize existing societal power relations to avoid cognitive dissonance. From a sociological perspective, the persistence of rape myths can be explained through Bourdieu and Wacquant's (2008) concept of symbolic violence: rape myths transform cultural differences into social hierarchies and reinforce gender-based

dominance. Symbolic violence functions as a mechanism for maintaining hegemonic gender relations through the internalization of dominant narratives such as rape myths.

Empirical studies demonstrate the far-reaching consequences of these ideological patterns: Hayes et al. (2013) and Eyssel and Bohner (2010) showed a clear correlation between traditional gender roles and RMA, which is also reflected in jury decisions. Research further reveals that victims are evaluated differently depending on their displayed emotions: angry victims were perceived as less credible than sad ones, especially by individuals with high RMA (Bohner and Schapansky, 2018; Bosma et al., 2018). Gul and Schuster (2018), in their cross-cultural study, emphasized that honor norms play a stronger role in judicial assessments in Turkey than in Germany or the UK, where rape myths tend to be more decisive. The study highlights the role of cultural values, particularly honor, in shaping legal and moral judgments, underscoring the importance of culturally sensitive approaches to combat victim-blaming.

Methodology

The study is based on a non-reactive research design (Denzin, 2024; Webb et al., 2000), utilizing process-produced data, specifically criminal case files, as ‘accidental documents’ not originally generated for research purposes. These documents, social artifacts (Flick, 2018, p. 6), were analyzed through a qualitative case file analysis (Paik & Harris, 2015; Webb et al., 2000). Adopting qualitative-inductive research logic, the sampling aimed not at representativeness but at capturing heterogeneous and contrasting case constellations to gain deeper insights into underexplored phenomena, with the goal of developing new categories and theoretical concepts (Flick, 2018).

The data analysis followed Mayring’s (2015, 2022) qualitative content analysis, particularly its content-oriented and typifying structuring methods. Using an inductive-deductive interplay, theory-driven categories were applied and contrasted along gender lines to account for the material’s complexity (Mayring, 2022). The analysis was conducted both across and within individual cases. Sensitizing concepts (Flick, 2022b) were employed to integrate theoretical knowledge reflectively. A content-based structuring helped extract and summarize key thematic areas, while typifying structuring aimed to identify recurring and theoretically relevant patterns (Mayring, 2015). Quantitative elements were also incorporated in a methodologically justified manner (Mayring, 2015). The risk of overgeneralization inherent in typification was addressed through differentiated descriptions. Transitions between descriptive presentation, case typification, and comparison were fluid. The study follows an interpretive-constructivist paradigm, focusing on reflection (Flick, 2022a, pp. 28-29).

Finally, public prosecutors' decisions were examined for gender-specific patterns in justifications for case dismissals, as well as judicial sentencing arguments, including aggravating and mitigating factors mentioned in verdicts.

The criminal proceedings and the criminal proceedings files

Criminal case files are central sources of institutional knowledge production about crime. Although they are formally standardized documents created by police, prosecutors, and courts during legal proceedings (Engländer, 2011), they do not reflect objective reality. Instead, they are shaped by selective perceptions and interpretations influenced by institutional logic, legal requirements, and societal discourses (Prior, 2003; Bowen, 2009). As Scott (1990, pp. 6-7) notes, their standardized and routinized production makes them a valuable yet underutilized source for analyzing institutional practices.

The creation and interpretation of these files are closely linked to professional patterns of understanding, which are, in turn, shaped by dominant societal norms, such as those relating to gender, class, and ethnicity (Conley et al., 1998; Bourdieu & Wacquant, 2008). Hirschauer and Bergmann (2002) refer to this phenomenon as a “self-enclosure of observation” (p. 336), where existing perception patterns are reinforced. Therefore, in interpretive social science research, it is crucial to critically reflect on the epistemological assumptions underpinning both the production and analysis of these documents.

The content of the files varies according to the phase of the criminal process - investigative or enforcement (Engländer, 2011). However, their quality as data sources is limited. Rodriguez et al. (2023) found that demographic information on suspects was frequently altered during proceedings, especially after trial conclusions. Furthermore, the files often lacked sufficient information about the defendants' motives or social backgrounds, limiting biographical insights. Consequently, the analysis was conducted through an interpretive approach focusing on patterns of offense and gendered differences in judicial evaluation.

Data collection

Twelve of the nineteen requested public prosecutor's offices provided criminal case files related to human trafficking (§§ 232, 233, 233a StGB old version) concluded in Germany between 2009 and 2013. Data from these 177 case files were collected and differentiated according to gender-specific involvement in the proceedings. Of the 177 cases, 39 involved exclusively female suspects, 59 involved both female and male suspects, and 79 involved solely male suspects. Data collection took place from January to June 2015 and was guided by Grounded Theory (Glaser & Strauss, 2006).

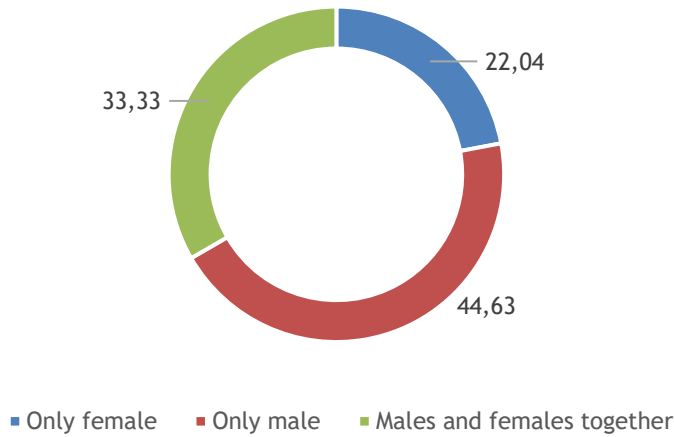


Diagram 1: Share of court cases by sex composition of the member of the groups (own creation).

Of the 39 cases directed exclusively against women, five involved Nigerian women and two involved unknown suspects. The charge in one case was changed, early on during the investigation, to withholding wages and facilitating illegal entry of foreigners, which reflects the tendency of overestimation in crime statistics amid the otherwise persistent underreporting of offenses due to their remaining in the dark field (Bruinsma and Johnson, 2018; Buil-Gil et al., 2022; Brunton-Smith et al., 2024). Since the study does not address the phenomenon of Nigerian ‘madams’, who play a significant role in Nigerian human trafficking operations and have already attracted substantial media, political, and academic attention (Abiodun et al., 2021; Akor, 2011; Baarda, 2016; Mancuso, 2014; Tom & Akpala, 2011; UNODC, 2024, pp. 91-94), the corresponding cases as well as those involving unknown suspects were excluded from the analysis. The data from the remaining 31 files were included in the evaluation.

Following the principle of variance maximization (Patton, 2002) and case contrast (Flick, 2022b; Corbin & Strauss, 2008), 31 files from the two remaining strata were quasi-randomly but criteria-guided selected: 31 cases with both female and male suspects and 31 cases with exclusively male suspects. Initially, only those cases with a judicial verdict were considered, amounting to 16 cases involving 21 suspects.

The remaining 93 cases involved 176 suspects, including 78 women (44.3 %) and 98 men (55.7 %). Given that this distribution reflects the chosen population and stratified sampling, any evaluation of gender distribution is deemed unnecessary.

All convicted women were found within mixed-gender offender groups. Therefore, no conclusions can be drawn regarding differences in criminal involvement or access mechanisms between women operating in same-gender groups versus mixed-gender groups.

Findings

In examining the intersection of class, gender, and social strata (Collins, 1990; Creek & Dunn, 2014; Crenshaw, 1991; Holland & Prohaska, 2021), it became evident that individuals from lower economic classes were predominantly involved in the offenses. The respective origin or ethnicity of the convicted persons can also be understood because of the statutory offense definition. Paragraph 1 of §§ 232, 233 StGB old version links the victim's status to a situation of coercion or helplessness, which can arise from residing in a foreign country. The largest proportion of all female suspects held Bulgarian citizenship⁵ (27 %), followed by German (24.4 %) and Romanian (15.4 %) citizenship. Male suspects were predominantly German nationals (40 %), followed by Turkish (19 %) and Bulgarian (15.3 %) nationals. The origin of male suspects may be related to their assumption of predominantly leadership roles in the criminal activities, in accordance with the dominant culture.

During the evaluation of judicial verdicts, eleven cases with a final first-instance judgment were subjected to further analysis.

Symbolic power and the influence of gender roles in prosecutorial decision-making

In prosecutorial decisions, the nature of the decisions was analyzed. Subsequently, the justifications for case dismissals were examined for gender-specific differences among the suspects.

The most frequent case resolution was dismissal due to insufficient suspicion of a criminal offense, pursuant to § 170 II Code of Criminal Procedure (StPO)⁶. This type of dismissal applied to 76.9 % of all female and 74.4 % of all male suspects. No differences were found in the prosecutorial treatment of female versus male defendants, nor regarding the decision to dismiss the case or bring charges. However, the role and behavior of the predominantly female victims, and the related moral, gender-role stereotypical situational assessments by the prosecutor, proved significant. Discrepancies in prosecutorial decisions were evident when sexual exploitation had not involved

⁵ This also includes Turkish Bulgarians and individuals belonging to the Roma ethnic group.

⁶ https://www.gesetze-im-internet.de/stpo/_170.html.

overtly violent coercion or when the victimized women had come to Germany voluntarily. This assessment remained irrespective of whether the women had been informed about the nature of the work, or the adverse conditions involved.

Moreover, there appears to be discretionary latitude among prosecutors in assessing whether brothel or club operators who rented rooms to women thereby enabled prostitution, which would constitute a criminal offense under § 232 StGB old version. This is especially the case when the women involved were minors engaging in prostitution more or less voluntarily. The age of the victims, often under 21 years and thus of criminal law relevance, was not consistently considered in prosecutorial situational evaluations and was subject to a degree of arbitrary discretion.

Here, the concept appears to apply that primarily victims of physical violence are officially recognized as victims. Drawing on Bourdieu's concept of symbolic power, one may argue that legal institutions do not merely apply the law but actively shape the social reality of victimhood and violence. Their decisions determine whose suffering is officially acknowledged, a form of symbolic domination that largely remains invisible but has profound consequences (Bourdieu, 2005; Bourdieu, 2014).

Judicial sentencing between legal norms and gender ideology

The topic here is the judicial handling of convicted offenders as well as the victims. This concerns the symbolically mediated interaction (Blumer, 1971; Blumer, 1980) and the role – and gender – stereotypical reactions, which are often linked to everyday-theoretical experiential knowledge, prevailing societal moral and value concepts, gender ideologies, sex-role stereotyping, and the associated evaluations (Fiske et al., 2002; Glick & Fiske, 2001). For this purpose, particular attention was given to the mitigating and aggravating factors mentioned in judicial verdicts.

Regarding judicial assessment, the following findings emerged: When the sentencing considered criteria grounded in normative law – such as the type and number of prior convictions, lawful interventions like pre-trial detention, willingness to confess, and the criminal intent behind the offense – a relatively equal sanctioning practice was observable between female and male defendants. However, when personal life circumstances and individual characteristics were considered – factors outside of normative law, falling within judicial discretion and dependent on subjective judicial evaluation – gender-specific disparities became apparent, as also found in the studies by Rodriguez and colleagues (2006) and Turner (2023). For example, the presence of children and the associated family responsibilities as breadwinners were recognized as mitigating factors only for men. Women were likely presumed to have already grossly violated the caregiving duties linked to the maternal role. This reflects the 'evil woman thesis' (Chesney-Lind & Pasko,

2013), according to which women are harshly punished when they violate societal gender norms and operate in certain criminal fields.

Whether the gender of the judges had an influence on the gender role-specific evaluation (see Crow & Goulette, 2024; Boyd & Nelson, 2017, with further evidence), or whether there was a connection between attitudes toward gender roles and punitiveness (Tuncer et al., 2018), or how firmly or immutably judges assessed gender roles, could not be inferred from the files. Scientific findings indicate that men tend more frequently and strongly to be swayed by gender dichotomies and identify more with male traits, which is why they support laws that affect individuals differently based on gender identity (Bosson & Michniewicz, 2013; Stanziani et al., 2024).

Of particular significance in connection with the male defendants - just as in the prosecutorial assessment - was primarily the role and evaluation of the female victims. Here, a role – and gender – specific as well as clichéd, sexualized, moral judicial evaluation predominated. Female victims were frequently, consistent with the ‘Just-World Hypothesis’ (Lerner, 1965; 1980), assigned partial blame for the crime and the situation they found themselves in. Notably, personal involvement with the trade or a connection to the perpetrators prior to the offense led to this assessment. It was particularly advantageous for the male perpetrators if the victims had initially had an emotional relationship with them, or for the female perpetrators if they had previously developed a friendly relationship with the victim. This tactic is widely used by men and women in the milieu and serves not only to reduce the risk of testimony from the victimized women but also - to the extent that criminal proceedings occur - to discredit them in court. Their willingness to testify against men is then interpreted as an act of revenge; the reasons for their testimony are seen as trivial; their truthfulness is doubted; and the impact of the crime on the female victims is considered not severe, as various studies on rape myths, Rape Myth Acceptance (RMA), and hostile sexism demonstrate.

To what extent the emotional behavior of the victims influenced their credibility and distress - and accordingly the judicial verdict - can only be assumed (Bosma et al., 2018).

What was significant for the respective decision was the interpretation of the relevant criminal law paragraphs, especially the element of ‘bringing about’ and the aspect of ‘voluntariness or coercion’.

It was also considered mitigating if the victims were initially not opposed to engaging in prostitution or had already worked as prostitutes, sometimes even if they had voluntarily traveled to Germany. When exploitation then occurred, the effects on the victim, contrary to stereotypes (Doherty & Anderson, 2004), were classified as not serious, even if coercive or violent measures had been taken by the perpetrators. Here, only the “initiation” mentioned in § 232 IV StGB (“...who forces another person by violence, threat of serious harm, or deception to begin or continue prostitution...”) was considered relevant, but not the “continuation”. Coercion was often only

regarded as coercion if it was carried out through acts of violence. The question of when a person commits the crime through deception seems to leave a wide scope for interpretation. This also influences whether the behavior of the perpetrators is classified as deceitful or the behavior of the victims as naïve. This point was important both in prosecutorial and judicial assessments and again points to institutional power of definition and recognition (Bourdieu, 1991; 2005; Bourdieu & Wacquant, 2008).

In informal preliminary discussions with representatives of the prosecution and law enforcement agencies, the methods of perpetrators in the red-light milieu were described as less violent, since women, who were generally almost exclusively granted the 'victim status', would no longer be forced into prostitution by brutal violence or other illegal methods in this day and age. Rather, women mostly work in Germany due to their personal situation, origin, and the legal situation valid in Germany, which allows them, unlike in their countries of origin, to pursue a relatively lucrative occupation requiring no special prior training or education. As there are hardly any male perpetrators left in this area, there would certainly be no female perpetrators, according to the experts.

In this context, a societal image was painted in which human trafficking hardly holds any criminal relevance anymore. Instead, people could, following the neoliberal approach and against the backdrop of prevailing economic and social conditions - unquestioningly accepted here - responsibly decide for themselves whether to practice a profession. The consequences or risks must be borne individually (Lobato, 2024), according to Luhmann (1993).

A central finding was that female perpetration was often perceived either as marginalized, instrumentalized, or completely denied, often depending on the individual or institutional stance toward sex work and the resulting victim definitions.

Perpetrators seem aware of this prevailing mindset, knowing that using violence increases the risk of exposure as well as conviction. Recruitment methods must therefore be unmasked as what they are - deceptive behavior - as also demanded by the Council of Europe (2023, p. 60).

There were also inconsistencies in judicial interpretation regarding when facilitation of human trafficking occurs - i.e., whether club or brothel operators can be held accountable for providing victims with accommodation. The age of the victims was not always considered, even though, when victims are under 21, this is criminally relevant regardless of coercive measures. The assessment that women just below the age of legal protection are less worthy of protection, or the judgment about what duration of exploitation counts as minor, also varied between prosecutorial and judicial evaluations.

The gender of the suspects or defendants seems to have no relevance here. Female victims, however, still appear subject to a sexualized view (Chesney-Lind, 2017), connected with the image of the seductress who bears partial responsibility for the situation she finds herself in.

Concluding reflections and implications

The criminal justice system is not free from gender-specific and moral attributions. Female defendants and especially female victims are often subjected to stereotypical, sexualized, and moral evaluations by prosecutors and judges.

An above-average female involvement in the criminal enterprise of human trafficking accordingly raises fundamental questions about the perception, categorization, and criminal assessment of female participation in this area of offense. This raises the question of the extent to which gender stereotypes, social role expectations, and ideologies shape the perception and sanctioning of perpetrators and victims of human trafficking offenses, and what consequences arise for the criminal justice system.

The present study is based on a non-reactive research design and analyzes criminal procedure files as process-produced documents (Denzin, 2024; Webb et al., 2000). The qualitative-inductive case selection followed the principles of Grounded Theory (Glaser and Strauss, 2006) as well as variance maximization (Patton, 2002) and included 93 completed criminal procedure files related to human trafficking from Germany (§§ 232, 233, 233a StGB old version, period 2009-2013) with 176 suspects. The data analysis was conducted following Mayring's qualitative content analysis (2015, 2022) using theory-driven categories contrasted along gender lines by identifying and categorizing central argumentative patterns. Quantitative elements (Mayring, 2015) were also applied. The focus was on patterns in prosecutorial dismissal decisions and judicial sentencing. Methodologically, the study is anchored in the interpretive-constructivist paradigm (Flick, 2022a).

The analysis shows that the criminal justice system is rooted in societal ideas about gender. Gender roles, stereotypes, sexualized or moral judgments, cultural narratives, and ideological structures - which can play a part in judgments especially through the broad judicial discretion - affect both the perception of perpetrators and the evaluation of victims. Victims are frequently held partly responsible for their victimization.

While the requirement of extramarital status in sexual offenses within partnerships in Germany was only abolished in 1997, the Federal Court of Justice repeatedly emphasized in the past that prior sexual contact between the defendant and the victim or the existence of an intimate relationship were significant mitigating circumstances (Schneider, 2022, p. 25). Even in cases of rape in separation situations, the punitive character was insufficiently considered. In 2016, a further amendment of the criminal law paragraph was made, making sexual acts punishable when performed against the recognizable will of the victim. In this study as well (Sapelza, 2017), personal or intimate entanglements between perpetrators and victims were mostly found to be regarded as mitigating factors.

The acceptance of rape myths combined with a ‘Just-World theory’ (Lerner, 1965), which is based on the belief that one’s individual actions will cause them to “get what they deserve and deserve what they get” (Fetchenhauer et al., 2005, p. 26), is influenced by gender ideology, psychological needs, cultural context, and symbolic structures of power (Bourdieu, 2005), and at the same time contributes to the existence and persistence of gender-specific prejudices. Understanding these foundations is critical for addressing bias in criminal justice and advancing gender-sensitive reforms.

Women who violate traditional gender roles, whether as perpetrators or victims, receive fewer mitigating judicial assessments or are attributed less credibility. Gender-related biases are a product of institutional practice as well as an expression of a complex interplay between individual cognition, social ideology, and systemic power maintenance. Legal institutions do not merely apply the law but actively shape the social reality of victimhood and violence through ‘symbolic power’ (Bourdieu, 2005). Sustainable change therefore requires not only legal reforms but a fundamental engagement with culturally embedded gender norms, as asserted by Miller:

Cultural ideas about gender bias may shape judges' decision-making as much as the rest of us," Miller said. "The significant expertise that judges possess doesn't inoculate them against decision-making biases, and we can't expect much change until we see policy reforms that address decision-making procedures in the courtroom (ProQuest, 2018, p. 3).

With the entry into force of the reformed law on October 15, 2016, the human trafficking statutes in Germany⁷ were comprehensively revised; however, they still contain those open formulations which - as this study shows - allow considerable scope for subjective assessments. Since moral, stereotypical, or clichéd preconceptions on the part of the decision-makers (prosecutors, courts) can significantly influence the course of proceedings and sanctions, a critical reflection on these normative assumptions and professional attitudes is essential. If further normative changes must be made due to European requirements, these findings should be considered, even though crime cannot be prevented through criminal law measures.

⁷ https://www.gesetze-im-internet.de/stgb/_232.html; https://www.gesetze-im-internet.de/stgb/_232a.html; https://www.gesetze-im-internet.de/stgb/_232b.html; https://www.gesetze-im-internet.de/stgb/_233.html.

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