

How criminal law handles with request of HIV prevention in Switzerland: Status quo, reflection, consequences

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Background / Objectives

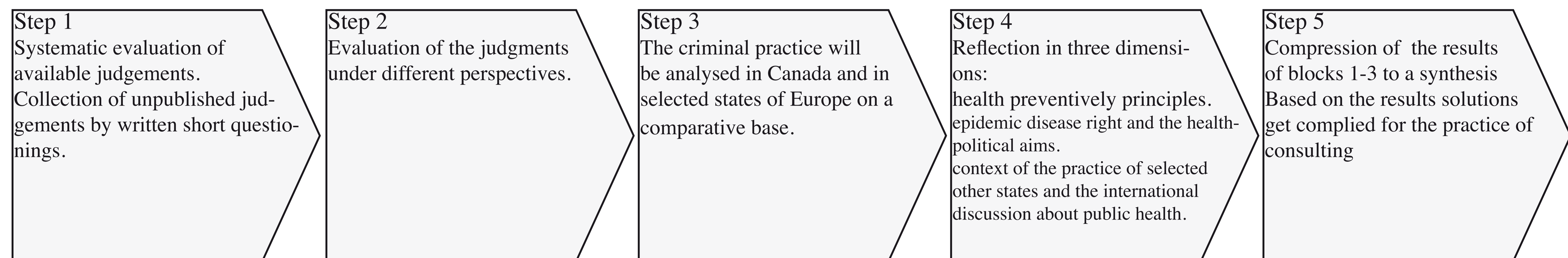
During the early 1990s there was a controversy about the question of whether and how infection with HIV and AIDS should be pursued by criminal law. HIV-Transmission is treated as personal injury and a crime against Public Health. The corresponding article 231 of Swiss Penal Code has been used

against cases of HIV transmission. Even if there is no evidence, that transmission was intentional, the Swiss penal code can be applied in any case where HIV is transmitted (successful or not) even in cases where both partners are fully aware of the situation and they are in a stable relationship

Methods

Criminological und dogmatic analysis of the judgements, particularly

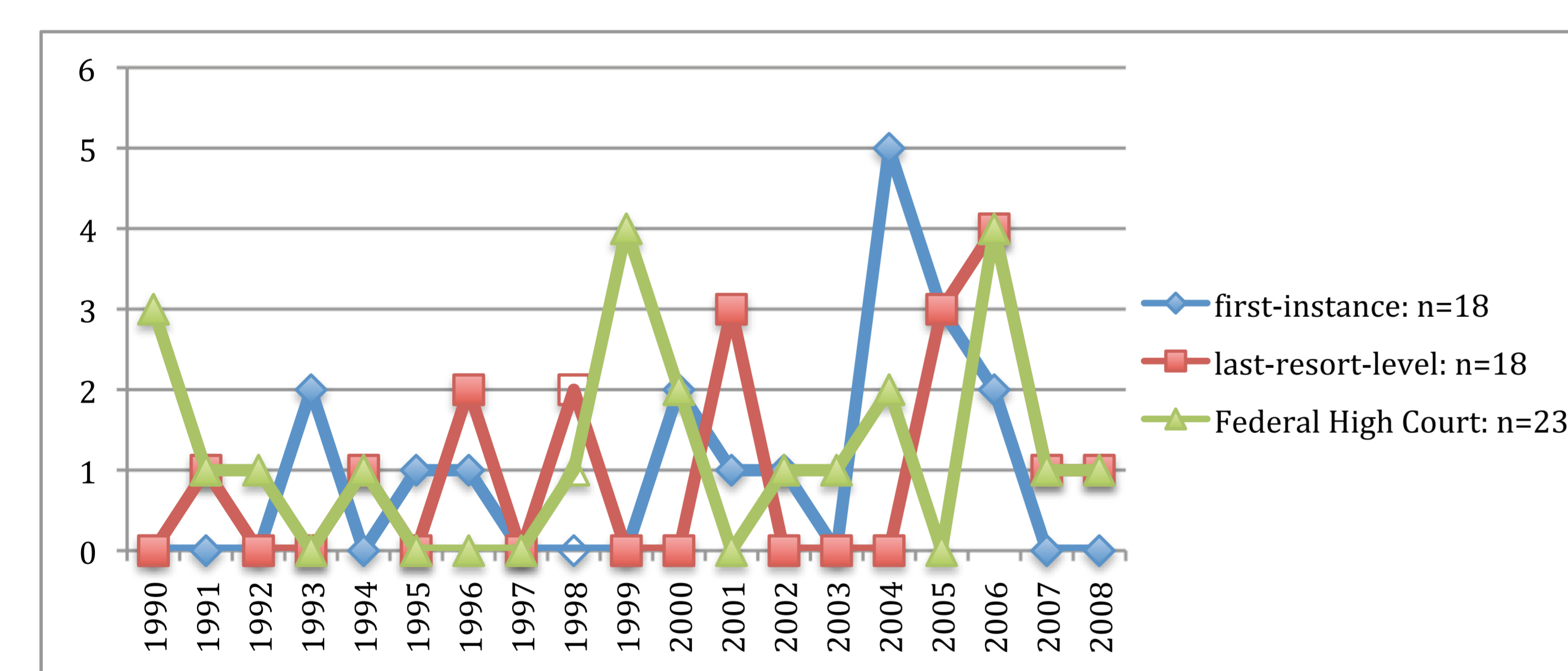
- about typologies of the judgements
- about the dogmatic subsumtion of HIV
- about consideration of medical knowledge in the judgements
- about intentions and arguments on HIV



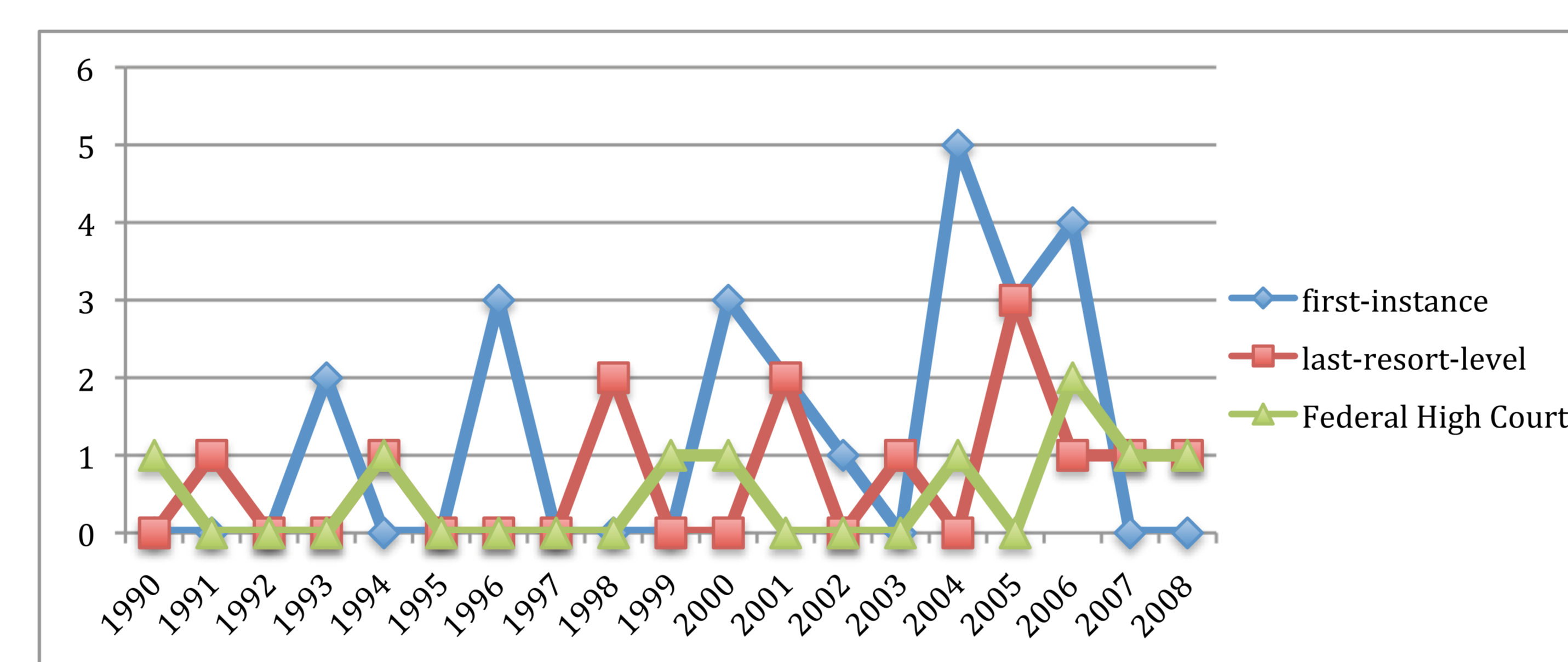
First results

We asked the Federal High Court, 26 cantonal last-resort-level courts and 90 first-instance courts about cases involving crimes of HIV-transmissions. The return was about 60 percent. Overall we identified 59 judgements, most of them were already known by the Swiss Aids-Foundation.

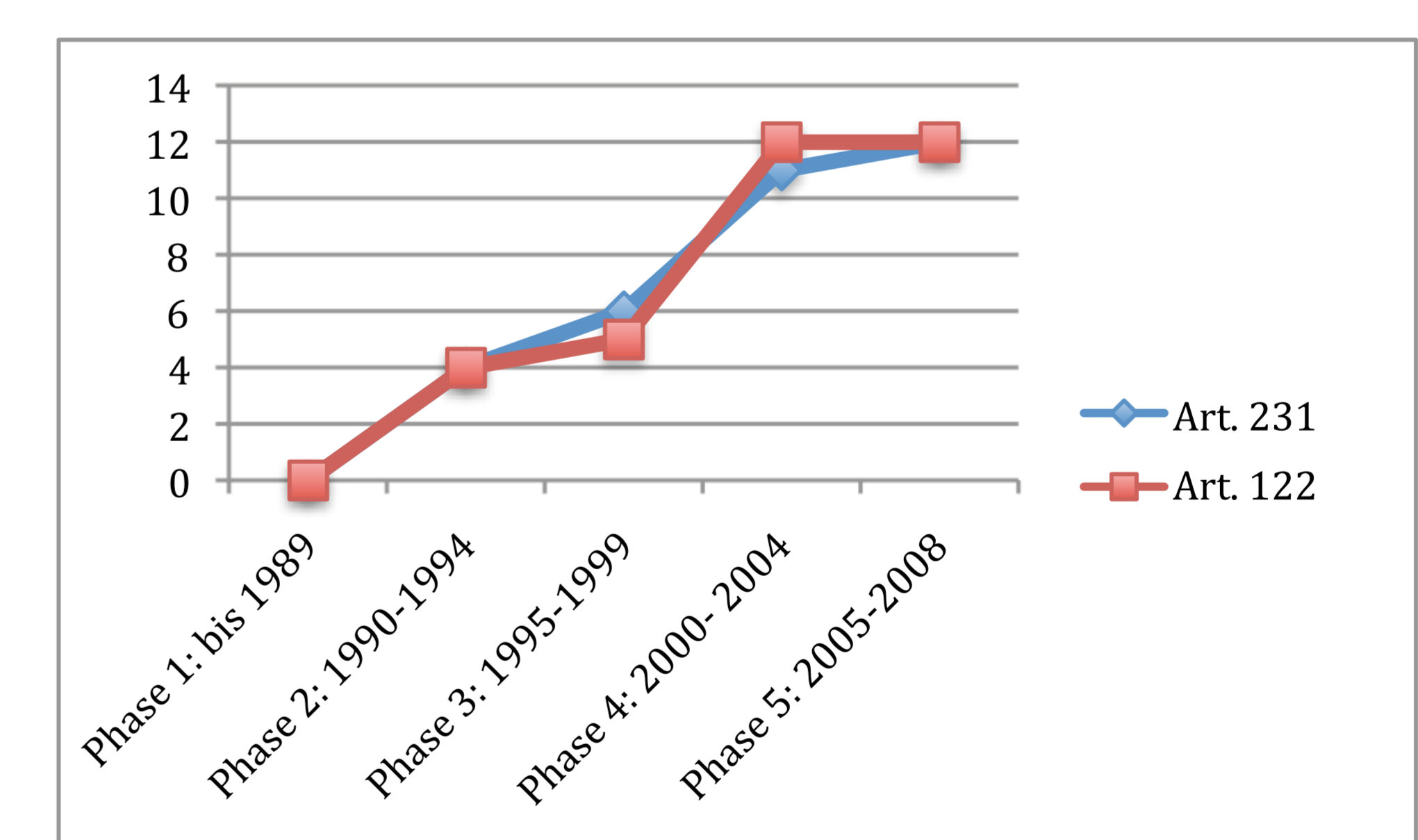
Raised judgements n=59: (all cases, data not clean)



Cases n=39 (number of cases, only criminal law related)



Application of art. 231/122 Penal Code



Initial Conclusions

HIV-infection is recognised as a grievous bodily harm (Art. 122 StGB) and as dangerous disease (Art. 231 StGB). The critique and the dogmatical arguments of the doctrine about the criminal law aspects of HIV are only selectively considered in the judgements. The very low risk of infection by a single act of sexual intercourse between a person, who is

HIV+ and one who is HIV- is seen and accepted, but not recognised in favour of the accused HIV+-person. The victim responsibility for risky behaviour is mostly not valorised in favour of the accused HIV+ -person, but in more recent judgements informed consent is admitted as a reason for justification of grievous bodily harm.