



The Subjective Element in the Crime of Human Trafficking: Intention and the Apparent Consent of the Victim

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Abstract

The offence of human trafficking is structured around both objective and subjective elements, the latter playing a decisive role in the legal classification of conduct and in judicial reasoning. This article examines the subjective element of the crime of human trafficking, with a particular focus on the perpetrator's intent (*mens rea*) and the legal significance of the victim's apparent consent. While international and European legal instruments—most notably the Palermo Protocol and Directive 2011/36/EU (European Parliament and Council of the European Union, 2011)—explicitly provide that the victim's consent is legally irrelevant where coercive, deceptive, or abusive means are employed, national judicial practice continues to reveal interpretative tensions, especially in cases involving psychological coercion, abuse of vulnerability, or economic dependency. The central question guiding this analysis concerns the proper interpretation of intent and apparent consent within the framework of human trafficking offences, namely how these concepts should be construed in order to preserve the protective function of criminal law and ensure conformity with European human rights standards. The article argues that human trafficking is an offence of direct intent, encompassing both the acts of recruitment, transportation, or exploitation and the specific purpose of exploitation. Apparent consent, in this context, cannot negate criminal liability, as it frequently reflects a situation of constrained autonomy rather than a genuine expression of free will. Through a doctrinal analysis grounded in criminal law theory and supported by relevant European Court of Human Rights (2010) jurisprudence, the study demonstrates that a formalistic reliance on the notion of consent risks distorting the assessment of *mens rea* and undermining victim protection. The article concludes that a restrictive and context-sensitive interpretation of the subjective element—integrating intent, vulnerability, and power imbalance—is essential for legal certainty, consistent adjudication, and effective enforcement of anti-trafficking norms within national criminal law systems.

Keywords: human trafficking; subjective element; criminal intent (*mens rea*); apparent consent; victim vulnerability

1. Introduction

Human trafficking constitutes one of the most sophisticated forms of transnational organized crime, combining elements of coercion, exploitation, economic profit, and structural vulnerability. Beyond its criminal dimension, trafficking directly affects human dignity, personal autonomy, and the effective enjoyment of fundamental rights. The United Nations Office on Drugs and Crime consistently characterizes trafficking in persons as a crime that simultaneously implicates criminal justice, human rights protection, and migration governance frameworks (UNODC, 2022).

At the normative level, trafficking is defined in Article 3(a) of the Protocol to Prevent (United Nations, 2000b), Suppress and Punish Trafficking in Persons as comprising three cumulative elements: (1) an act (e.g., recruitment, transportation, harbouring, receipt of persons), (2) means (e.g., threat, use of force, coercion, fraud, abuse of a position of vulnerability), and (3) purpose, namely exploitation. While this tripartite structure appears conceptually coherent, its practical application has generated persistent doctrinal and jurisprudential debate, particularly regarding the subjective element of the offence and the legal relevance of victim consent (Gallagher, 2010; Piotrowicz, 2012).

A central controversy concerns the nature and scope of the required mens rea. The prevailing interpretation in international criminal law doctrine is that trafficking requires not merely general intent (*dolus generalis*) with respect to the material acts, but a specific intent (*dolus specialis*) directed toward exploitation (Bantekas & Nash, 2020). In other words, the perpetrator must act with the purpose of subjecting the victim to exploitation; exploitation is not merely a consequence but the constitutive objective of the criminal conduct. This specific intent differentiates trafficking from adjacent offences such as smuggling of migrants, unlawful detention, or labour law violations.

The interpretative complexity deepens when considering Article 3(b) of the Palermo Protocol, which explicitly states that the consent of a victim to the intended exploitation shall be irrelevant where any of the improper means set forth in Article 3(a) have been used. This provision introduces a normative presumption: once coercion, deception, or abuse of vulnerability is established, apparent consent loses legal relevance. The rationale reflects a protective paradigm grounded in the recognition of structural inequalities and constrained autonomy (Gallagher, 2010).

However, this irrelevance of consent has sparked debate. Some scholars argue that it reinforces a human rights-oriented model of criminalization, centered on the protection of autonomy under conditions of vulnerability (Piotrowicz, 2012). Others question whether an expansive interpretation risks diluting the boundaries of criminal liability, particularly in cases involving economic migration, sex work, or precarious labour conditions where exploitation may be contested (Bantekas & Nash, 2020).

The European human rights jurisprudence further contextualizes this debate. In *Rantsev v. Cyprus and Russia* (2010), the European Court of Human Rights recognized trafficking as falling within the scope of Article 4 of the European Convention on Human Rights (prohibition of slavery and forced labour), thereby framing trafficking as a structural violation of human dignity rather than merely a transactional offence. This human rights framing strengthens the argument that consent obtained through abuse of vulnerability cannot be treated as legally autonomous.

Against this background, this article addresses three guiding questions:

1. *How is intention structured within the offence of trafficking in human beings?*
2. *What is the legal significance of the victim's apparent consent?*
3. *Does the irrelevance of consent reflect a protective paradigm or an expansion of criminal liability?*

The working hypothesis advanced in this study is that the specific intent to exploit (*dolus specialis*) constitutes the decisive criterion of the offence. Once improper means are established, apparent consent cannot neutralize criminal liability because the law presumes that autonomy has been structurally compromised. Accordingly, the irrelevance of consent does not represent an over-expansion of criminalization, but rather a doctrinal mechanism designed to safeguard substantive freedom in contexts of vulnerability.

By analysing the interaction between subjective intent and the consent clause within the normative framework of the Palermo Protocol and related jurisprudence, this article seeks to clarify whether the current legal construction strikes an appropriate balance between autonomy, protection, and limits of criminal liability.

2. Normative Framework of the Offence

2.1 International Legal Basis

The contemporary legal construction of trafficking in human beings is anchored in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the United Nations Convention against Transnational Organized Crime. Adopted in 2000, the Protocol represents the first universally agreed definition of trafficking and provides the conceptual matrix that informs domestic criminalization across jurisdictions.

Article 3(a) establishes a tripartite structure composed of:

1. The act (recruitment, transportation, transfer, harbouring, or receipt of persons);
2. The means (threat, use of force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or giving payments or benefits to obtain control over another person);
3. The purpose, namely exploitation, which includes at a minimum sexual exploitation, forced labour, slavery or practices similar to slavery, servitude, or organ removal.

This structure reflects a deliberate normative choice. Trafficking is not defined solely by movement or coercion; rather, its defining feature lies in the purpose of exploitation, which functions as the teleological core of the offence. As Gallagher (2010) emphasizes, exploitation is not a mere consequence but the constitutive objective that distinguishes trafficking from related phenomena such as migrant smuggling.

From a subjective perspective, the offence requires intentional conduct directed toward exploitation. The perpetrator must not only knowingly perform the material acts but must do so with the aim of exploiting the victim. This confirms the presence of a specific intent (*dolus specialis*), which structurally elevates trafficking beyond offences of negligence or recklessness (Bantekas & Nash, 2020).

Crucially, Article 3(b) of the Palermo Protocol provides that:

“The consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth in subparagraph (a) have been used” (UN, 2000).

This provision performs a decisive normative function. It establishes that once improper means—such as coercion, deception, or abuse of vulnerability—are proven, apparent consent cannot negate criminal responsibility. The legal logic is grounded in the recognition that consent obtained under structural inequality or manipulative conditions lacks genuine autonomy.

The international framework thus confirms two central features of the offence:

- Its teleological orientation, centered on exploitation;
- The conditional irrelevance of consent, activated upon proof of improper means.

In the case of child trafficking, the requirement of “means” is dispensed with altogether under Article 3(c), further reinforcing the protective paradigm by presuming incapacity for legally meaningful consent.

2.2 European Legal Framework

At the regional level, the normative framework is further developed and refined through binding European instruments.

The Council of Europe Convention on Action against Trafficking in Human Beings adopts the Palermo definition and reinforces a human rights-centered approach. It emphasizes victim protection, assistance, and prevention alongside criminalization. The Convention conceptualizes trafficking not merely as organized crime but as a violation of human dignity and integrity.

Within European Union law, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims provides a harmonized framework for Member States. The Directive 2011/36/EU reiterates the tripartite structure of the offence and explicitly requires intentional conduct aimed at exploitation (Article 2). It confirms that victim consent is irrelevant where any improper means have been used, thereby transposing Article 3(b) of the Palermo Protocol into EU law.

The Directive also expands the list of exploitative purposes to include forced begging and exploitation of criminal activities, reflecting evolving forms of trafficking within the European context. This expansion illustrates the dynamic interpretation of exploitation, reinforcing the teleological nature of the offence.

Beyond legislative instruments, the jurisprudence of the European Court of Human Rights has significantly shaped the normative understanding of trafficking. In *Rantsev v. Cyprus and Russia* (2010), the Court held that trafficking falls within the scope of Article 4 of the European Convention on Human Rights (prohibition of slavery and forced labour). By doing so, the Court elevated trafficking to the level of a fundamental rights violation.

The judgment developed the doctrine of **positive obligations**, requiring States to:

- Criminalize trafficking effectively;
- Conduct effective investigations;
- Protect victims from exploitation;
- Cooperate internationally where trafficking has cross-border dimensions.

The human rights framing adopted in *Rantsev* strengthens the rationale behind the irrelevance of consent. If trafficking constitutes a structural violation of Article 4 ECHR, consent obtained

through abuse of vulnerability cannot be considered an expression of free and informed autonomy.

3. The Subjective Element in Criminal Law Theory

3.1 Mens Rea and Criminal Liability

In classical criminal law doctrine, criminal liability is traditionally structured around the concurrence of two essential components: *actus reus* (the material element) and *mens rea* (the subjective element). As Ashworth (2013) notes, the subjective element reflects the perpetrator's cognitive and volitional relationship to the prohibited conduct and its consequences. Criminal responsibility is therefore not grounded solely in the objective commission of a prohibited act, but in the mental state accompanying it.

Within continental criminal law systems, this subjective dimension is commonly conceptualized under the broader notion of *dolus*, encompassing knowledge and intention. In common law systems, mens rea is typically analyzed through categories such as intention, recklessness, or knowledge. Despite terminological differences, both traditions converge on the fundamental premise that culpability depends on the actor's mental orientation toward the conduct and its harmful outcome.

The mental element serves several core functions:

- It expresses the principle of culpability (*nulla poena sine culpa*);
- It differentiates intentional wrongdoing from negligent or accidental conduct;
- It delineates the normative boundaries of criminal liability.

In the context of trafficking in human beings, the subjective element assumes heightened importance due to the complex and multi-layered structure of the offence. Unlike simple conduct crimes, trafficking involves a chain of acts embedded within a broader exploitative project. The perpetrator's mental state must therefore be assessed not only in relation to discrete actions (recruitment, transportation, harbouring), but also in relation to the overarching exploitative objective.

3.2 Intention and *Dolus Specialis*

Trafficking in human beings is widely recognized as a crime requiring **specific intent (*dolus specialis*)**, rather than mere general intent (Piotrowicz, 2012). This distinction is doctrinally significant.

General intent (*dolus generalis*) requires that the perpetrator knowingly and voluntarily perform the prohibited act. Specific intent (*dolus specialis*), by contrast, demands that the conduct be carried out for a particular ulterior purpose. In trafficking, this ulterior purpose is exploitation.

Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons explicitly defines trafficking as acts carried out "for the purpose of exploitation." The wording confirms that exploitation is not simply an eventual outcome but the constitutive objective of the offence. Consequently, the prosecution must establish that the accused acted with the aim of subjecting the victim to exploitation.

From a doctrinal perspective, the subjective structure of trafficking entails three cumulative mental components:

1. Knowledge of the material circumstances

The perpetrator must be aware of the factual elements of recruitment, transportation, transfer, harbouring, or receipt of persons. This includes awareness of the factual situation of the victim.

2. Awareness of the improper means employed

Where coercion, deception, or abuse of vulnerability is used, the perpetrator must possess knowledge of these circumstances. The mental element encompasses understanding that the victim's autonomy is being constrained or manipulated.

3. Purpose of exploitation

Most critically, the perpetrator must pursue exploitation as the ultimate goal. Exploitation functions as the teleological anchor of the offence, distinguishing trafficking from preparatory or ancillary conduct.

The requirement of exploitative intent serves a boundary-setting function. Without proof that the accused acted with the purpose of exploitation, the conduct may fall outside the scope of trafficking. For example, facilitation of irregular migration for financial gain—absent exploitative purpose—may constitute migrant smuggling under international law but not trafficking (UNODC, 2014). The differentiation between trafficking and smuggling thus rests fundamentally on the subjective element.

Importantly, exploitative intent does not require that exploitation be successfully completed. The crime is consummated once the acts and means are combined with the purpose of exploitation. The subjective element therefore precedes and structurally anticipates the harmful outcome.

From a theoretical standpoint, the presence of *dolus specialis* reinforces the gravity of trafficking as a crime directed against personal autonomy and dignity. It reflects a normative judgment that what renders the conduct particularly reprehensible is not merely movement or deception, but the deliberate project of instrumentalizing a person for exploitative gain.

At the same time, the evidentiary burden associated with proving specific intent can present practical challenges. Intent must often be inferred from objective circumstances, patterns of conduct, financial arrangements, or organizational structures. Courts therefore rely on contextual indicators to establish the existence of an exploitative purpose.

Doctrinal implications

The classification of trafficking as a specific-intent crime has several doctrinal implications:

- It narrows the scope of criminal liability by excluding negligent or incidental conduct;
- It differentiates trafficking from related offences lacking exploitative purpose;
- It strengthens the argument that trafficking is a teleologically structured offence centered on exploitation.

Most significantly, the requirement of *dolus specialis* interacts directly with the rule on the irrelevance of consent. If the perpetrator acts with exploitative intent and employs improper means, the victim's apparent consent cannot negate liability because the law presumes that autonomy has been compromised within an exploitative project.

Accordingly, the subjective element does not merely complement the material structure of trafficking; it constitutes the normative core of the offence. The specific intent to exploit operates as the decisive criterion distinguishing trafficking from adjacent criminal phenomena and as the doctrinal foundation for understanding the limited legal relevance of consent.

4. The Intention to Exploit

4.1 Teleological Structure of the Offence

Trafficking in human beings is structurally distinct from many traditional criminal offences because it is inherently purpose-oriented. The defining characteristic of the offence lies not merely in the execution of certain acts (recruitment, transportation, harbouring), nor solely in the use of improper means (coercion, deception, abuse of vulnerability), but in the ultimate objective of exploitation.

Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons expressly frames trafficking as conduct carried out “for the purpose of exploitation.” This formulation confirms that exploitation operates as the teleological core of the offence. As Gallagher (2010) emphasizes, trafficking is defined not by movement or coercion alone, but by the deliberate instrumentalization of a person for exploitative gain. Exploitation is therefore not an accidental by-product of unlawful conduct; it is the normative endpoint toward which the conduct is directed.

The teleological structure serves several doctrinal functions:

1. It differentiates trafficking from migrant smuggling.

Smuggling is characterized primarily by facilitation of irregular entry for financial gain, typically with the consent of the migrant and without a subsequent exploitative project. Trafficking, by contrast, presupposes a continuing relationship of exploitation (UNODC, 2014).

2. It integrates the material and subjective elements.

The acts and means acquire criminal significance only when connected to an exploitative purpose. Without this specific intent, the same material conduct may fall under different criminal classifications.

3. It reinforces the gravity of the offence.

By centering exploitation, the law recognizes trafficking as an offence against personal autonomy and human dignity, rather than merely a violation of migration or labour regulations.

The teleological orientation thus confirms that the offence requires *dolus specialis*: the perpetrator must act with the conscious objective of subjecting the victim to exploitation. The crime is consummated once this intent is established in conjunction with the material elements; actual completion of exploitation is not a prerequisite for liability.

4.2 Evidentiary Assessment of Intention

While the teleological structure is conceptually clear, the practical determination of exploitative intent presents significant evidentiary challenges. Intention, as a mental state, cannot be directly observed. Courts must therefore rely on objective indicators and circumstantial evidence to infer the presence of *dolus specialis*.

Judicial practice, including cases documented in the United Nations Office on Drugs and Crime Case Law Database (2015), demonstrates that courts assess exploitative intent through patterns of conduct and contextual factors rather than explicit declarations by the accused.

Common evidentiary indicators include:

- Confiscation of identity documents, suggesting control and restriction of autonomy;
- Restriction of movement, such as physical confinement, surveillance, or isolation;

- Debt bondage arrangements, where inflated or artificial debts bind the victim to continued labour;
- Exploitative working conditions, including excessive working hours, non-payment of wages, or hazardous environments;
- Control over earnings, particularly in cases of sexual exploitation;
- Threats or psychological pressure, even in the absence of physical violence.

These objective circumstances, when assessed cumulatively, may support an inference that the perpetrator acted with the purpose of exploitation. Courts typically apply a contextual and holistic evaluation, examining the totality of circumstances rather than isolated facts.

Importantly, exploitative intent may exist even where initial recruitment appeared voluntary. The presence of deception regarding working conditions, wages, or the nature of the activity can demonstrate that the perpetrator's underlying objective was exploitative from the outset. In such cases, apparent consent does not negate the inference of intent.

The evidentiary assessment often involves distinguishing between:

- Harsh but lawful labour conditions, and
- Conditions amounting to exploitation within the meaning of trafficking law.

This distinction requires normative judgment. Not every labour law violation constitutes trafficking; rather, the prosecution must establish that the conditions reflect a systematic project of exploitation linked to the acts and means enumerated in the Palermo Protocol.

From a doctrinal standpoint, reliance on circumstantial evidence does not dilute the requirement of *dolus specialis*. Instead, it reflects the general principle in criminal adjudication that intent is inferred from external manifestations of conduct. The key issue is whether the objective indicators demonstrate that exploitation was the planned and deliberate outcome of the accused's actions.

Doctrinal and practical implications

The requirement to prove intention to exploit ensures that trafficking remains a purpose-driven offence, thereby preventing over-expansion of criminal liability. At the same time, evidentiary flexibility—through contextual inference—allows courts to address the covert and organized nature of trafficking operations.

The balance between doctrinal rigor and evidentiary pragmatism is crucial. If courts require excessively direct proof of subjective intent, trafficking prosecutions may fail due to the clandestine character of the crime. Conversely, if intent is inferred too readily from general vulnerability or poor working conditions, the boundaries between trafficking and other socio-economic offences risk becoming blurred.

Accordingly, the judicial reconstruction of exploitative intent must remain anchored in demonstrable indicators that reveal a structured project of instrumentalization, consistent with the teleological design of the offence under international law.

5. The Apparent Consent of the Victim

5.1 Conceptual Clarifications

In classical criminal law theory, valid consent may operate as a ground excluding unlawfulness, particularly in offences protecting individual autonomy or property. Consent presupposes voluntariness, informed decision-making, and legal capacity. Where these conditions are

satisfied, criminal liability may be precluded because the protected legal interest has not been violated against the will of its holder.

However, trafficking in human beings departs from this classical paradigm. Under Article 3(b) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons:

“The consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth in subparagraph (a) have been used” (UN, 2000).

This provision establishes a normative limitation on the legal relevance of consent. Once improper means—such as coercion, deception, fraud, abuse of power, or abuse of a position of vulnerability—are proven, consent cannot function as a defense. The structure reflects a legislative determination that autonomy is compromised under such conditions.

The neutralization of consent does not imply that consent is conceptually meaningless. Rather, it signals that the law presumes consent to be vitiated where it results from structural coercion or manipulation. The legal focus shifts from formal agreement to the authenticity of autonomy. As Gallagher (2010) observes, the Palermo framework rejects a purely contractual understanding of exploitation and instead adopts a human dignity-oriented approach.

Importantly, this limitation is conditional. Consent is irrelevant only where improper means are established. In the absence of coercion, deception, or abuse of vulnerability, the legal characterization of the conduct may differ, potentially falling outside the scope of trafficking.

In cases involving children, Article 3(c) of the Palermo Protocol dispenses with the “means” requirement entirely, rendering consent legally irrelevant regardless of circumstances. This reflects a heightened protective standard grounded in the presumption of diminished capacity.

5.2 Abuse of Vulnerability

Among the improper means enumerated in Article 3(a), the concept of “abuse of a position of vulnerability” is particularly significant. It broadens the understanding of coercion beyond physical force or explicit threats. The Council of Europe Convention on Action against Trafficking in Human Beings, in its Explanatory Report (2005), clarifies that vulnerability may arise where a person has “no real and acceptable alternative but to submit to the abuse involved.”

This formulation shifts the analytical focus from overt coercion to situational constraint. Vulnerability may include:

- Severe economic hardship;
- Irregular migration status and fear of deportation;
- Language barriers and social isolation;
- Psychological dependency;
- Lack of access to legal protection.

Under this expanded conception, exploitation may occur even in the absence of physical violence. The abuse lies in taking advantage of a structurally constrained situation in which the victim’s apparent choice is shaped by necessity rather than genuine autonomy.

Allain (2012) argues that this approach reflects an evolution in the understanding of coercion, aligning trafficking law with broader human rights principles. By recognizing structural inequality as a form of constraint, the law acknowledges that consent given under conditions of severe vulnerability cannot be equated with free and informed agreement.

The concept of abuse of vulnerability thus performs a bridging function between the subjective and objective elements of trafficking. It connects the perpetrator's exploitative intent with the victim's constrained autonomy. The perpetrator's awareness of the victim's vulnerability and deliberate exploitation of it strengthens the inference of *dolus specialis*.

However, this broader understanding also raises doctrinal concerns. If vulnerability is interpreted too expansively—encompassing general socio-economic disadvantage without demonstrable exploitation—there is a risk of blurring the boundary between trafficking and legitimate, though unequal, labour relations. The evidentiary assessment must therefore demonstrate:

1. The existence of a concrete position of vulnerability;
2. The perpetrator's awareness of that vulnerability;
3. The intentional abuse of that vulnerability for exploitative purposes.

Only where these elements converge does consent lose legal relevance in a manner consistent with the structure of Article 3.

Doctrinal implications

The apparent consent of the victim does not negate trafficking where improper means are employed because the offence is structured around the protection of substantive autonomy rather than formal assent. The law presumes that autonomy is vitiated when the perpetrator deliberately exploits structural inequality.

This approach reflects a protective paradigm grounded in human dignity. At the same time, it requires careful judicial calibration to avoid transforming socio-economic vulnerability into automatic criminal liability. The decisive criterion remains the intentional exploitation of constrained autonomy, not vulnerability per se.

Accordingly, the irrelevance of consent in trafficking law should be understood not as a rejection of autonomy, but as a doctrinal mechanism safeguarding genuine autonomy against its instrumentalization within exploitative systems.

6. Jurisprudential Developments

The evolution of trafficking law has been significantly shaped not only by legislative instruments but also by judicial interpretation. Courts at both international and domestic levels have progressively clarified the conceptual contours of exploitation, intention, and consent, thereby refining the doctrinal structure of the offence.

6.1 The Human Rights Turn: *Rantsev v. Cyprus and Russia*

A decisive milestone in the jurisprudential development of trafficking law is the judgment of the European Court of Human Rights in *Rantsev v. Cyprus and Russia* (2010). In this case, the Court held that trafficking in human beings falls within the scope of Article 4 of the European Convention on Human Rights (prohibition of slavery, servitude, and forced labour).

The Court relied explicitly on the definition contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, thereby integrating the Palermo framework into the interpretation of the Convention. By doing so, it elevated trafficking from a transnational crime concern to a matter of fundamental rights protection.

The significance of *Rantsev* lies in three principal developments:

1. Recognition of trafficking as a human rights violation
The Court characterized trafficking as incompatible with the values underlying Article 4, emphasizing the inherent denial of human dignity and autonomy.
2. Establishment of positive obligations

States are required not only to criminalize trafficking but also to:

- Implement preventive measures;
 - Conduct effective investigations;
 - Protect actual and potential victims;
 - Cooperate in cross-border cases.
3. Emphasis on effective investigation

The Court clarified that investigative authorities must actively examine indicators of exploitation and coercion rather than relying solely on formal consent or initial voluntariness.

The human rights framing adopted in *Rantsev* reinforces the teleological nature of trafficking. By situating the offence within Article 4 ECHR, the Court underscored that exploitation—not movement or migration status—is the central harm targeted by the law.

6.2 Emerging Trends in National Jurisprudence

At the domestic level, courts increasingly align their reasoning with the teleological and protective logic articulated in international instruments and regional jurisprudence.

Judicial practice demonstrates a growing focus on three core elements:

(a) The Exploitative Purpose

National courts frequently examine whether the accused acted with the intention to exploit, rather than limiting their analysis to the presence of recruitment or transportation. The existence of exploitative purpose is often inferred from business models, organizational structures, or systematic extraction of profit from victims' labour or sexual services.

This reflects the doctrinal centrality of *dolus specialis*. Courts assess whether exploitation was the planned objective of the conduct, distinguishing trafficking from related offences such as facilitation of irregular migration (UNODC, 2014).

(b) Patterns of Control

Judicial reasoning increasingly emphasizes patterns of control over victims, including:

- Confiscation of identity documents;
- Surveillance and restriction of movement;
- Control of communication;
- Threats of denunciation to immigration authorities;
- Financial dependency mechanisms.

These indicators are treated cumulatively rather than in isolation. The existence of a structured pattern of domination supports the inference that exploitation was intentional and systematic.

Courts have also recognized that control may be psychological rather than physical. The abuse of vulnerability—particularly in cases involving irregular migrants or economically distressed individuals—has been interpreted as a subtle but powerful mechanism of coercion, consistent with the explanatory guidance of the Council of Europe (2005) Convention on Action against Trafficking in Human Beings.

(c) Disproportionality Between Promised and Actual Conditions

Another recurring judicial indicator concerns the discrepancy between the conditions promised at recruitment and those actually imposed.

Courts frequently analyze:

- False promises regarding wages or working hours;
- Misrepresentation of the nature of the activity;
- Substitution of lawful employment with exploitative arrangements;
- Imposition of inflated debts not previously disclosed.

The existence of significant disproportionality between representation and reality supports findings of deception and exploitative intent. This reasoning aligns with the Palermo definition, which includes fraud and deception among the improper means.

6.3 Consolidation of a Protective Paradigm

The cumulative effect of international and domestic jurisprudence has been the consolidation of a protective interpretative paradigm. Courts increasingly:

- Prioritize substantive autonomy over formal consent;
- Focus on structural exploitation rather than isolated acts;
- Recognize vulnerability as a legally relevant dimension of coercion;
- Emphasize the obligation of states to ensure effective enforcement.

At the same time, judicial practice reflects awareness of the need to maintain doctrinal precision. Not every harsh labour condition or contractual breach qualifies as trafficking. The decisive elements remain the intentional project of exploitation and the use of improper means.

6.4 Doctrinal Significance

Jurisprudential developments confirm that trafficking is interpreted as:

- A purpose-driven offence anchored in exploitation;
- A violation of fundamental rights engaging positive state obligations;
- A crime in which consent cannot neutralize liability where autonomy has been structurally compromised.

The case law thus reinforces the central thesis of this article: the subjective element, specifically the intention to exploit, constitutes the normative core of trafficking, while the irrelevance of consent operates as a doctrinal safeguard ensuring that exploitative intent cannot be legitimized through formalistic notions of agreement.

7. Discussion

The preceding analysis confirms that the subjective element functions as a doctrinal filter delimiting the scope of trafficking in human beings from adjacent criminal or socio-economic phenomena. The requirement of specific intent (*dolus specialis*) ensures that trafficking is not defined merely by movement, recruitment, or poor working conditions, but by the deliberate pursuit of exploitation as an ultimate objective.

7.1 Delimitation from Migrant Smuggling

The distinction between trafficking and migrant smuggling illustrates the centrality of intention. Smuggling of migrants, as defined in the Protocol against (United Nations., 2000c) the Smuggling of Migrants by Land, Sea and Air, primarily concerns the facilitation of irregular entry for financial or material benefit. It does not require exploitation as a constitutive purpose.

By contrast, trafficking under the Protocol to Prevent, Suppress and Punish Trafficking in Persons is structured around exploitation. Even where initial movement resembles smuggling, the presence of exploitative intent transforms the legal qualification. As noted by the United Nations (2000a) Office on Drugs and Crime (2014), the key differentiator lies not in the act of transportation, but in the perpetrator's objective of maintaining control for exploitative gain.

The subjective element therefore operates as the decisive boundary between facilitation of migration and instrumentalization of a person.

7.2 Distinction from Irregular Labour Exploitation

Similarly, not all labour law violations or exploitative working conditions amount to trafficking. The existence of low wages, excessive hours, or unsafe conditions, though unlawful, does not automatically satisfy the trafficking threshold.

The doctrinal filter requires proof that:

1. Improper means were employed (e.g., coercion, deception, abuse of vulnerability); and
2. The perpetrator acted with the purpose of exploitation.

Absent *dolus specialis*, the conduct may constitute labour exploitation, administrative violations, or other criminal offences, but not trafficking. This distinction prevents over-expansion of trafficking law into the broader field of precarious labour relations.

7.3 Voluntary Sex Work and the Role of Consent

The differentiation between trafficking and voluntary sex work arrangements further demonstrates the conditional nature of the irrelevance of consent (United Nations Office on Drugs and Crime, 2014). The Palermo framework does not criminalize sex work per se; rather, it criminalizes the recruitment or control of persons for sexual exploitation through improper means.

Consent is legally neutralized only when obtained through coercion, deception, or abuse of vulnerability (UN, 2000). Where adults freely and autonomously engage in sex work without improper means and without exploitative control, the trafficking definition is not satisfied.

Thus, the irrelevance of consent is not absolute. It is contingent upon the presence of improper means and exploitative purpose. This conditional structure preserves doctrinal coherence and avoids collapsing the distinction between trafficking and consensual adult activity.

7.4 Centrality of Intention

Across doctrinal distinctions concerning trafficking, intention, in particular *dolus specialis*, emerges as the decisive analytical axis for determining criminal liability. Unlike general intent offences, trafficking requires proof that the accused acted with the specific purpose of exploitation, thereby elevating the subjective element to a constitutive component of the crime.

In this framework, intention performs a gatekeeping function. It ensures that criminal liability for trafficking is not triggered by mere participation in acts such as recruitment, transportation, or harbouring, but only where these acts are embedded within a deliberate project of exploitation. This threshold is essential to prevent doctrinal overreach and to distinguish trafficking from adjacent offences, such as migrant smuggling or labour law violations, which may involve similar conduct but lack the same exploitative purpose.

From a normative perspective, *dolus specialis* fulfills a dual safeguarding role:

- It preserves the conceptual integrity of trafficking law as a distinct and autonomous category of crime, preventing its dilution through over-inclusive interpretations;
- It reinforces the principle of culpability, a cornerstone of criminal law, by requiring proof of a heightened mental state that justifies the severity of the sanction.

Importantly, the irrelevance of victim consent in trafficking cases does not undermine the centrality of intention; rather, it operates in doctrinal synergy with it. The legal exclusion of consent reflects the recognition that where exploitative intent is established, particularly in conjunction with coercive, deceptive, or abusive means, the apparent consent of the victim is normatively invalidated. In other words, the law presumes that such consent is vitiated by structural constraints and power imbalances, thereby lacking genuine autonomy.

Consequently, intention remains the organizing principle that anchors both the objective and subjective elements of trafficking. It ensures doctrinal coherence, protects against unjustified criminalization, and aligns the legal framework with fundamental principles of responsibility and human dignity.

8. Conclusions

This study has examined the subjective element and the role of consent within the normative framework of trafficking in human beings. The analysis leads to several consolidated conclusions.

First, the subjective element, namely the intention to exploit (*dolus specialis*), constitutes the normative core of the offence. Trafficking is not defined merely by a sequence of acts (recruitment, transportation, harbouring), but by their teleological orientation toward exploitation. In this sense, exploitation is not an accidental or contingent outcome; it is the defining purpose that gives legal meaning to the conduct.

Accordingly, the absence of demonstrable exploitative intent precludes the qualification of conduct as trafficking. Such conduct may still attract criminal liability under adjacent legal regimes (e.g., migrant smuggling, labour exploitation, coercion), but it fails to satisfy the definitional threshold required for trafficking. This reinforces the doctrinal necessity of maintaining a purpose-based interpretation of the offence.

Second, the apparent consent of the victim does not exclude criminal liability where two cumulative conditions are met:

- the use of improper means (such as coercion, deception, or abuse of vulnerability); and
- the pursuit of exploitation as the ultimate purpose of the conduct.

In this framework, the irrelevance of consent is not absolute, but conditional and structurally determined. It is intrinsically linked to situations in which autonomy is constrained, manipulated, or structurally undermined. The law does not deny the conceptual validity of consent *in abstracto*; rather, it operates on the presumption that consent obtained through illegitimate means lacks authenticity and normative value.

Thus, consent is not eliminated as a legal category, but requalified: it is rendered legally ineffective where it is incompatible with the protection of substantive autonomy.

Third, trafficking law reflects a protective normative paradigm grounded in human dignity. By privileging substantive freedom over formal expressions of agreement, the legal framework acknowledges that exploitative relationships are frequently embedded in structural inequalities, including economic dependency, social marginalization, and power asymmetries.

This approach aligns trafficking law with broader human rights principles, emphasizing that formal consent cannot legitimize conditions that fundamentally undermine human dignity. The law thus moves beyond a purely voluntarist conception of autonomy toward a context-sensitive understanding of agency.

Ultimately, the doctrinal architecture of trafficking law reflects a delicate equilibrium between two fundamental imperatives:

- Avoiding over-criminalization, by insisting on strict proof of specific intent (*dolus specialis*), thereby preventing the undue expansion of trafficking liability;
- Preventing the legitimization of exploitation, by rejecting formalistic invocations of consent in contexts where autonomy is compromised.

This balance ensures both legal precision and normative robustness, safeguarding the coherence of the offence while maintaining its protective function.

The centrality of intention confirms that trafficking is a purpose-driven offence, directed against the instrumentalization of human beings for exploitative ends. In this respect, contemporary trafficking law affirms a clear normative hierarchy: human dignity and substantive autonomy prevail over contractual formalism whenever exploitation is deliberately pursued.

Through this synthesis, the legal framework not only delineates the boundaries of criminal liability but also articulates a broader ethical stance—one that rejects the commodification of persons and reaffirms the indivisibility of dignity and freedom in conditions of vulnerability.

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