



Criminal Participation in Human Trafficking Offenses: Co-Perpetration, Instigation and Complicity

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Abstract

This paper explores the complex phenomenon of criminal participation in human trafficking offenses, focusing on the legal and criminological distinctions among co-perpetration, instigation, and complicity. The purpose of the study is to analyze how these forms of participation are conceptualized and applied within national and European criminal law frameworks, with particular attention to Romanian legislation and its harmonization with EU directives and international instruments such as the Palermo Protocol. The research aims to clarify the boundaries between collective criminal intent, hierarchical coordination, and secondary involvement in trafficking networks. Using a comparative doctrinal method, the study examines court rulings, doctrinal commentaries, and case law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). It highlights the challenges in differentiating co-perpetration from aiding or abetting, especially in organized crime contexts where the division of roles is fluid and overlapping. The findings indicate that inconsistencies in judicial interpretation may undermine proportional liability and the effective punishment of all participants. Therefore, the paper proposes a conceptual framework that integrates intent, contribution, and degree of autonomy as key analytical criteria. The study contributes to the development of a coherent European approach to criminal participation in human trafficking, reinforcing both legal certainty and victims' protection through a harmonized understanding of shared culpability.

Keywords: human trafficking; criminal participation; co-perpetration; instigation; complicity; criminal liability; European criminal law; Romanian Criminal Code; harmonization; organized crime

1. Introduction

Human trafficking is inherently a collective criminal activity, one rarely executed by a single individual. The structural complexity of trafficking networks—ranging from recruiters and transport facilitators to exploiters and profit managers—renders the analysis of criminal participation central to the legal understanding of the offense (United Nations Office on Drugs and Crime [UNODC], 2022, 2024). Criminal law distinguishes several modes of participation,

typically co-perpetration, instigation, and complicity, each carrying different degrees of culpability based on the actor's contribution, intent, and role within the criminal operation ((Aronowitz, 2017; Shelley, 2012)).

Despite substantial international regulation, particularly through the Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000) and Directive 2011/36/EU, conceptual ambiguities persist in national criminal systems regarding the boundaries between co-perpetration and assistance, or between instigation and coercive recruitment. This article examines these categories through a doctrinal and comparative approach, connecting criminal law theory with empirical patterns observed in trafficking networks (European Parliament & Council of the European Union, 2011; United Nations, 2000).

2. Normative Framework

2.1. International and European Legal Standards

The definition of trafficking provided by the Palermo Protocol establishes a structurally complex offence, built upon three cumulative elements: acts, means, and purpose. This tripartite construction is not merely descriptive, but analytically significant for understanding the legal nature of trafficking as an inherently composite and collective criminal activity.

First, the acts component—encompassing recruitment, transportation, transfer, harboring, or receipt of persons—already presupposes a sequence of operations that, in practice, are rarely executed by a single individual. Instead, these actions are typically distributed across multiple actors operating at different stages of the trafficking process (e.g., recruiters, transporters, facilitators, exploiters). This fragmentation reflects the operational reality of trafficking networks, which function through division of labor and role specialization. (Europol, 2022; UNODC, 2022)

Second, the means element—such as coercion, deception, abuse of power, or exploitation of vulnerability—introduces a psychological and situational dimension that often involves distinct perpetrators. For instance, one actor may be responsible for deception during recruitment, while another may exercise coercion at the destination. The legal framework thus implicitly acknowledges that control over the victim can be sequentially or jointly exercised by different individuals, reinforcing the idea of shared criminal responsibility.

Third, the purpose of exploitation (including sexual exploitation, forced labor, slavery, or organ removal) represents the final objective of the trafficking process. This element further confirms the collective nature of the offence, as the individuals who ultimately exploit the victim are not necessarily the same as those involved in earlier stages. Consequently, trafficking is best conceptualized as a chain offence, where liability extends across a continuum of interrelated acts.

Building on this foundation, Directive 2011/36/EU adopts a functional and expansive approach to criminal participation. It requires Member States to ensure that not only direct perpetrators, but also those who intentionally aid, abet, incite, organize, or direct trafficking activities are subject to criminal liability. This reflects a shift away from a narrow, individualistic conception of authorship toward a network-based model of criminal responsibility. (Directive 2011/36/EU, 2011)

Importantly, the Directive aligns with modern theories of participation in criminal law, particularly the notion of co-perpetration and indirect perpetration, where liability is grounded in the contribution to a common criminal plan. By emphasizing intentional participation, the Directive ensures that all actors who play a causally relevant and knowingly integrated role in

the trafficking process can be held accountable, regardless of whether they directly interact with the victim.

Moreover, this framework enhances prosecutorial effectiveness by allowing authorities to capture the full architecture of trafficking networks, rather than focusing solely on isolated acts. It also strengthens victim protection, as it acknowledges that harm results from a system of coordinated actions, not from a single perpetrator.

In sum, both the Palermo Protocol and Directive 2011/36/EU converge toward a holistic legal construction of trafficking, in which criminal liability is distributed across a network of actors linked by a shared exploitative purpose. This approach reflects the empirical reality of trafficking as an organized, transnational phenomenon and provides the normative basis for addressing it through collective accountability mechanisms.

2.2. National Criminal Law Approaches (Comparative Brief Overview)

Most European criminal codes adopt a tripartite model of criminal participation—co-perpetration, instigation, and complicity—reflecting a long-standing doctrinal distinction between those who jointly execute an offence, those who cause or direct its commission, and those who assist or facilitate it. Although the conceptual boundaries vary across jurisdictions, the underlying structure is broadly consistent throughout continental Europe.

In Germany, the rules of participation are deeply rooted in the doctrine of functional control over the act (*Tatherrschaft*). According to Roxin (2016), a co-perpetrator is not merely someone who takes part in the execution of an offence but an individual who exercises decisive influence over the course of the criminal act, such that the offence's success depends on his or her functional role within the criminal plan. This approach moves beyond a strictly physical notion of joint action and embraces a normative-functional understanding: intellectual authors, coordinators, or operational leaders may qualify as co-perpetrators even if they do not carry out the material elements of the crime. Instigation (*Anstiftung*) is conceptualized as intentionally inducing another person to commit an offence, while complicity (*Beihilfe*) requires intentional assistance that facilitates or strengthens the principal's decision or ability to offend. German doctrine thus maintains sharp distinctions based on the degree of control, causal contribution, and alignment of intent.

By contrast, legal systems such as Romania, Spain, Italy and France adopt what doctrinal scholarship describes as a contribution-based model, where participation forms are differentiated primarily through the nature and intensity of each actor's contribution to the criminal offence. In Romanian criminal law, co-perpetration requires that multiple individuals "commit the same act" together, typically through a shared execution of elements of the offence or through a conscious and coordinated division of tasks. Instigation arises where one person intentionally determines another to commit an offence, while complicity involves any form of intentional assistance—material, informational, or logistical—provided before or during the crime. Unlike the German control theory, Romanian doctrine does not explicitly require organizational dominance or functional leadership for co-perpetration, relying instead on shared execution and common intent.

In Spain, the *Código Penal* distinguishes between *autoría* (principal authorship), *inducción* (instigation), and *cooperación necesaria* or *complicidad* (necessary cooperation or ordinary complicity). Spanish scholarship, following Norberto J. de la Mata Barranco et al. (2024), emphasises that co-perpetration requires a form of joint authorship arising from a conscious agreement and essential contribution. Instigation is restricted to direct inducement, while complicity encompasses non-essential assistance that nonetheless facilitates the crime. The

Spanish model, like the Romanian one, is less reliant on control theory and more focused on whether the contribution was essential, necessary, or merely supportive. (Robinson, 1997).

The Italian *Codice Penale* adopts a similar framework grounded in the principles of *concorso di persone nel reato* (participation in crime). Italian jurisprudence differentiates between co-authors, who contribute significantly and share the execution or planning of the offence, and instigators, who provoke or incite others. Complicity includes any facilitative conduct that aids the principal offender, even if the accomplice is not present at the scene. Italian courts apply a causal-normative analysis, assessing whether the contribution increased the risk of the offence and aligned with the shared intent of the criminal group.

In France, the *Code pénal* distinguishes between auteurs (principal offenders) and complices, the latter defined broadly as anyone who knowingly facilitates preparation or commission of the offence. French law recognises instigation (*provocation*) as a form of complicity unless the law expressly criminalises it as a separate offence. As with Romania, Spain, and Italy, French doctrine tends to emphasise intentional contribution over hierarchical control, and co-perpetration requires a shared intent and material participation, not necessarily dominance over the criminal enterprise.

Taken together, European systems converge around a tripartite structure but diverge in their theoretical foundations. Germany stands out for its Tatherrschaft approach, which places decisive functional control at the centre of co-perpetration, while Romania, Spain, Italy, and France rely more heavily on the character of the contribution, the shared intent, and the role played in the joint execution. These differences have practical consequences for complex offences such as human trafficking, where individuals occupy diverse roles and exercise differing degrees of control over recruitment, transportation, exploitation, or financial management. The functional control theory may capture hierarchical organizers more effectively, while contribution-based systems risk classifying certain high-level coordinators as accomplices rather than co-perpetrators unless courts adopt a broad interpretation of joint execution.

3. Comparative Analysis: Criminal Participation in Trafficking in Persons in Romanian Law and the EU Framework

From a comparative perspective, the Romanian criminal regulation of trafficking in persons and of criminal participation largely reflects the minimum standards laid down at EU level, but it also presents several particularities in the way co-perpetration, instigation and complicity are constructed and sanctioned. Directive 2011/36/EU obliges Member States not only to criminalise trafficking in human beings as such, but also to ensure that “inciting, aiding and abetting or attempting to commit any of the offences” are punishable (Art. 3(2)), with effective, proportionate and dissuasive sanctions and with the possibility of corporate liability (Arts. 4–6). Within this supranational framework, national systems remain free to organise their general part doctrines of participation, provided that all forms of contribution to trafficking can be captured by criminal law.

In Romanian law, trafficking in persons and trafficking in minors are criminalised in Articles 210 and 211 of the Criminal Code, which define the offence through the classical triad of recruitment, transport, transfer, harbouring or receipt of a person for the purpose of exploitation, using means such as coercion, abduction, deception, abuse of authority or exploitation of vulnerability. Following amendments adopted in 2020–2021, the penalties for trafficking have been increased, so that trafficking in adults is punishable by imprisonment from 5 to 12 years, and trafficking in minors by 3 to 10 years with higher limits in aggravated circumstances, in line with the Directive’s requirement that the maximum penalty be at least

ten years in serious cases. This already suggests a substantial alignment between Romanian substantive law and the EU standard concerning the gravity of sanctions.

Forms of criminal participation are regulated in the general part of the Romanian Criminal Code, in Articles 46–49 (author, co-author, instigator and accomplice), complemented by the rules on improper participation in Article 52. According to the English version of the Code, the perpetrator is “the person who directly commits an act provided by the criminal law,” while co-perpetrators are “persons who personally commit the same act provided by the criminal law”. The instigator is defined as the person who, with intention, causes another to commit an offence, and the accomplice as the person who, with intention, “facilitates or helps in any way to commit an act provided by the criminal law”. Article 49 then provides that the co-author, instigator and accomplice to an intentional offence are punished with the penalty provided by law for the author, with the court adjusting the sentence according to the individual contribution. This doctrinal architecture allows trafficking cases to be treated within the general system of participation, rather than through special accessory offences, and formally covers the forms of participation required by EU law.

Compared to the EU model, the Romanian system is characterised by a relatively broad notion of participation and by the institution of “improper participation” (*participație improprie*). Article 52 of the Criminal Code provides that intentionally determining, facilitating or helping another person to commit, with negligence or even without guilt, an act provided by criminal law is punished with the penalty prescribed for the intentional commission of that act. In the context of trafficking, this construction is particularly significant for situations in which a person in a position of control induces another to perform acts that amount to trafficking without full awareness of their criminal nature—for example, when a subordinate is instructed to organise transport or accommodation for “workers” who are in fact victims. Whereas Directive 2011/36/EU explicitly requires the criminalisation of inciting, aiding and abetting, it does not specify whether the principal must act intentionally; Romanian law therefore goes somewhat beyond the Directive by allowing the instigator or accomplice to be punished even if the direct perpetrator acted with negligence or without guilt, provided the participant acted with direct intent. This reinforces liability for those who manipulate others as “tools” and is in line with doctrinal trends emphasising functional control and responsibility of those higher in the criminal hierarchy.

At EU level, many Member States follow a similar general-part structure, distinguishing co-perpetration, incitement and aiding or abetting, but with varying thresholds for what counts as a “principal” versus an “accessory”. Studies on the implementation of Directive 2011/36/EU indicate that all Member States have formally criminalised participation in trafficking, though some still rely on general provisions on complicity rather than trafficking-specific norms, and differ in how they conceptualise joint commission and secondary liability. In countries such as Germany or the Netherlands, co-perpetration is strongly tied to the idea of functional control over the act, whereas in others, including Romania, the doctrinal focus is more on intentional contribution and shared execution, without an explicit control test being embedded in statutory language. These differences may affect how far up the trafficking chain prosecutors can reach in practice, particularly when dealing with loosely structured networks.

From the viewpoint of harmonisation, Romania appears to satisfy the Directive’s requirements on criminalisation of participation and on sanctions, at least at the level of legal texts. The EU Anti-Trafficking Directive also requires Member States to ensure corporate liability (Art. 5), and Romanian law provides for criminal liability of legal entities in Article 135 of the Criminal Code, which is applicable to trafficking offences as well. However, the European Commission and other monitoring bodies have repeatedly noted that across the EU, including Romania,

conviction rates remain low in relation to the estimated scale of trafficking, and that the complexity of participation structures poses considerable evidentiary challenges. The Romanian case thus illustrates a broader European pattern in which formal compliance with Directive 2011/36/EU coexists with practical difficulties in attributing responsibility to instigators, facilitators and those who profit from exploitation while keeping their distance from direct contact with victims.

In normative terms, the Romanian model offers a relatively robust toolbox for addressing criminal participation in trafficking, especially through the equal-punishment rule for all forms of intentional participation and the concept of improper participation. Yet, as EU-wide analyses emphasise, effective use of these tools depends on prosecutorial strategies, specialised training for judges and investigators, and adequate victim-centred procedures that make it possible to reconstruct complex chains of participation without retraumatising witnesses. Seen in comparative perspective, Romania is broadly aligned with the EU *acquis* on trafficking participation, but the persistent gap between legal potential and practical outcomes suggests the need for continued efforts in interpretation, evidence gathering and cross-border cooperation to fully reflect the Directive's objectives in everyday criminal justice practice.

4. Methodology of the Study: Research Question, Aim, and Design

4.1. Research Question

The central research question guiding this study is:

How do European criminal law systems conceptualize and differentiate forms of criminal participation—specifically co-perpetration, instigation, and complicity—in the context of human trafficking offenses, and what implications does this have for attribution of criminal responsibility?

This question seeks to clarify the doctrinal foundations, definitional boundaries, and functional relevance of participation forms, with a particular focus on the capacity of national legal systems to capture the complex multi-actor structures characteristic of trafficking networks.

4.2. Aim of the Study

The aim of the study is to conduct a systematic, comparative, and doctrinal analysis of criminal participation in human trafficking, examining how different European jurisdictions define, classify, and sanction co-perpetrators, instigators, and accomplices. The study further aims to evaluate whether existing legal frameworks—both at EU and national levels—are sufficiently aligned with the operational realities of trafficking networks, and to identify potential discrepancies, strengths, and gaps in the regulation of participation.

Specifically, the study aims to:

1. **Synthesize** theoretical and doctrinal approaches to participation in criminal law across European systems.
2. **Compare** the legal definitions and thresholds for co-perpetration, instigation, and complicity in selected jurisdictions (e.g., Germany, Romania, Spain, Italy, France).
3. **Evaluate** the alignment of national standards with international and EU anti-trafficking instruments, including Directive 2011/36/EU.
4. **Assess** the practical implications for prosecuting hierarchical, decentralized, or network-based trafficking structures.

5. **Propose** a refined conceptual model of participation tailored to the structural realities of human trafficking offenses.

4.3. Research Design

The study employs a qualitative, doctrinal, and comparative research design, appropriate for analysing criminal law norms, doctrinal interpretations, case law, and supranational legal instruments. This type of design is widely recognised in legal scholarship as suitable for exploring conceptual distinctions, normative structures, and interpretative variations across jurisdictions.

4.3.1. Doctrinal Analysis

The doctrinal component systematically examines:

- statutory provisions on participation in selected European criminal codes;
- relevant jurisprudence interpreting co-perpetration, instigation, and complicity;
- academic commentary and theoretical contributions (e.g., German *Tatherrschaft* doctrine).

This method allows identification of key principles, thresholds of liability, and areas of divergence or convergence.

4.3.2. Comparative Legal Method

A comparative approach is applied to analyse differences between:

- control-based models (e.g., Germany), and
- contribution-based models (e.g., Romania, Spain, France, Italy).

The comparison focuses on structures of participation, intent requirements, thresholds of contribution, and impact on trafficking prosecutions. Comparative analysis is conducted according to functional criteria, assessing how each legal system addresses similar challenges posed by multi-actor trafficking crimes.

4.3.3. Normative and Functional Alignment Assessment

The study also incorporates a functional assessment, comparing legal frameworks to the operational structure of trafficking networks as described in criminological and victimological literature. This ensures that doctrinal comparisons are grounded in empirical reality.

4.3.4. Sources of data

The analysis draws on:

- national criminal codes (Germany, Romania, Spain, Italy, France);
- EU instruments (especially Directive 2011/36/EU);
- UN instruments (Palermo Protocol);
- peer-reviewed academic literature;

legal commentaries and doctrinal monographs;

- reports from Europol, UNODC, FRA, and the European Commission.

No human subjects are involved, making the study exempt from ethics review.

5. Discussion

The findings of this study reveal that while most European jurisdictions recognize a tripartite structure of criminal participation—co-perpetration, instigation, and complicity—the underlying doctrinal foundations and thresholds of liability vary significantly. These differences influence how effectively legal systems can address the complex and multi-layered realities of human trafficking networks.

A central theme emerging from the comparative analysis is the tension between control-based and contribution-based models of participation. The German doctrine of *Tatherrschaft* offers a normative-functional approach to co-perpetration that aligns well with the organizational structures of trafficking operations, which often involve hierarchical or semi-hierarchical roles. Under this theory, those who exercise strategic or functional control over recruitment, movement, or exploitation processes qualify as co-perpetrators even if they do not directly interact with victims. This interpretation extends liability to coordinators, financiers, and planners—actors who frequently remain insulated from direct criminal execution but who play decisive roles in sustaining trafficking enterprises.

In contrast, legal systems such as Romania, Spain, Italy and France adopt a contribution-based interpretation, where co-perpetration is tied to joint execution or shared involvement in constitutive elements of the offence. Instigation and complicity are differentiated primarily by the actor's causal contribution and intent. While these frameworks formally satisfy the requirements of Directive 2011/36/EU, they may be less effective in capturing those who orchestrate trafficking networks without direct involvement in material acts. In practice, this may lead to organizers being classified as instigators or accomplices rather than co-perpetrators, with potential implications for sentencing severity and symbolic condemnation.

Across all jurisdictions, instigation remains relatively narrowly defined as inducement to commit an offence. However, trafficking cases often involve coerced recruitment by victims, a phenomenon not easily accommodated by traditional instigation frameworks. Distinguishing between victim-recruiters acting under duress and genuine instigators requires nuanced evidentiary analysis and sensitivity to power imbalances. Similarly, complicity provisions—while broadly drafted—often struggle to capture diffuse assistance provided through financial facilitation, document fraud networks, or corrupt public officials, all of whom may significantly increase the feasibility and profitability of trafficking operations.

Another important finding concerns alignment with international and EU standards. While all examined systems formally implement Directive 2011/36/EU, discrepancies arise in how participation forms are interpreted and applied in practice. EU reports and monitoring assessments consistently highlight low conviction rates across Member States relative to estimated trafficking prevalence. These gaps are partly attributable to evidentiary challenges inherent in multi-actor crimes, but they also reflect structural limitations of national participation doctrines, which may inadequately address decentralized, fluid, or transnational trafficking networks.

The study also identifies a broader theoretical challenge: traditional participation categories were developed for conventional offences involving a limited number of actors acting in a clearly defined sequence. Human trafficking, however, is characterized by fragmented tasks, distributed roles, and flexible criminal arrangements, necessitating a more dynamic understanding of authorship and contribution. Functional approaches, such as Germany's, appear better suited to this criminal ecology, yet contribution-based systems remain dominant in many Member States.

Taken together, these findings highlight the importance of adopting both doctrinal clarity and functional accuracy when analysing participation in trafficking. The criminal justice response must ensure that those who orchestrate or profit from exploitation—often operating across borders or through intermediaries—cannot evade liability through structural distance.

6. Conclusions

This study demonstrates that the legal construction of criminal participation plays a critical role in shaping the capacity of European criminal justice systems to combat human trafficking effectively. While the tripartite model of co-perpetration, instigation, and complicity is broadly consistent across jurisdictions, the conceptual foundations of these categories differ markedly, affecting the attribution of liability in complex trafficking networks.

Functional control models, exemplified by German doctrine, offer expanded interpretative tools to identify co-perpetrators beyond those directly executing the physical acts of exploitation. Contribution-based systems, as seen in Romania, Spain, Italy, and France, provide coherent doctrinal structures but may under-capture those who exert strategic influence while delegating execution to others. These divergences reveal a potential fragmentation in the application of EU standards and underscore the need for greater harmonization or interpretative convergence.

The analysis suggests that strengthening anti-trafficking responses requires:

1. Refining national participation doctrines to reflect the networked, multi-actor nature of trafficking.
2. Enhancing prosecutorial strategies to identify organizers, facilitators, and profit-holders.
3. Clarifying the distinction between coerced victim participation and genuine criminal instigation.
4. Improving cross-border cooperation for evidence gathering and attribution of transnational roles.
5. Aligning practical enforcement with the functional requirements of Directive 2011/36/EU.

Ultimately, effective criminalization of participation in human trafficking must encompass all actors whose contributions—whether direct, indirect, material, or organizational—sustain the exploitation cycle. Doctrinal precision, combined with functional sensitivity, is essential for ensuring that legal frameworks respond proportionately and comprehensively to the evolving dynamics of trafficking networks.

7. Implications for Judicial Practice

The doctrinal distinctions between co-perpetration, instigation, and complicity have significant operational consequences for judges, who must determine individual responsibility within trafficking networks characterized by fluid roles, fragmented activities, and varying degrees of control. Several implications arise for judicial practice across European systems.

First, judges must adopt a functional and context-sensitive approach when assessing co-perpetration. Traditional interpretations based solely on shared physical execution may be insufficient for trafficking cases, where high-level coordinators, transport organizers, recruiters, and exploiters often act through separate but complementary tasks. Judicial reasoning should therefore focus on whether the accused exercised functional influence,

contributed to essential phases of the trafficking scheme, or participated in a coordinated criminal plan, even if physically distant from the exploitation. This approach prevents organizers and financial controllers from avoiding liability by delegating operational tasks to interchangeable subordinates.

Second, courts must develop refined criteria for distinguishing instigation from complicity, especially in cases where the accused influences another offender without clear evidence of direct inducement. Instigation should be recognized not only in explicit orders or commands but also in strategic involvement, planning, or psychological domination that triggers the criminal conduct of others. Conversely, complicity should be applied where the contribution is facilitative but not decisive. Judicial clarity in differentiating these categories is essential for proportional sentencing and accurate attribution of blameworthiness.

Third, judicial practice must remain attuned to the phenomenon of coerced victim-recruiters, a recurring feature in trafficking operations. Victims may be compelled—through threats, dependency, or exploitation of vulnerability—to recruit or transport other victims. Courts should carefully assess signs of coercion, subjugation, and exploitation before classifying such individuals as perpetrators or instigators. A trauma-informed and victim-sensitive approach is essential to avoid wrongful attribution of criminal intent to persons who themselves remain under coercive control.

Fourth, courts need to improve the evaluation of indirect or remote contributions, which are common in trafficking networks. Assistance provided through document fraud, transportation, financial facilitation, or corrupt administrative practices often plays a decisive role in sustaining exploitation. Judicial recognition of these contributions as forms of complicity—or, where appropriate, co-perpetration—enhances the effectiveness of anti-trafficking prosecutions. This requires not only doctrinal clarity but also an evidentiary strategy capable of demonstrating the foreseeability of exploitation and the intentional alignment with the trafficking scheme.

Fifth, trafficking cases demand enhanced judicial expertise in assessing evidence drawn from multi-jurisdictional and multi-actor contexts. Judicial training should include awareness of trafficking indicators, psychological coercion patterns, trauma-related memory fragmentation, and cross-border investigative mechanisms. Courts must be prepared to evaluate evidence from different legal systems, international cooperation instruments, digital communication patterns, and financial flows associated with organized trafficking groups.

Sixth, judicial practice should integrate interpretative guidance from EU and international instruments, particularly Directive 2011/36/EU, the Palermo Protocol, and relevant judgments of the Court of Justice of the European Union (2021) and the European Court of Human Rights (ECtHR). These instruments encourage a broad conception of participation, ensuring that all individuals who knowingly contribute to exploitation can be held liable. Judicial reasoning aligned with these standards promotes harmonization across Member States and strengthens the European response to trafficking.

Finally, courts must balance doctrinal precision with victim-centered justice. Trafficking cases often rely heavily on victim testimony, which may be fragmented, inconsistent, or delayed due to trauma. Judicial practice should apply evidence evaluation standards that account for trauma-induced memory effects, avoid secondary victimization, and incorporate corroborating indicators rather than imposing unrealistic expectations of chronological consistency.

Taken together, these implications underscore the need for judicial adaptability, doctrinal nuance, and trauma-informed adjudication. A judicial approach that is both functionally aligned with trafficking's operational realities and sensitive to the vulnerabilities of victims is essential for ensuring accurate attribution of criminal responsibility, enhancing conviction

rates, and fulfilling the protective mandate of international and European anti-trafficking norms.

8. Limitations

Although the present study provides an in-depth doctrinal and comparative analysis of criminal participation in human trafficking offenses, several limitations must be acknowledged. First, the research adopts a qualitative, doctrinal-comparative methodology, which, while appropriate for examining legal frameworks and theoretical distinctions, does not allow for empirical measurement of how participation doctrines are applied in practice. As a result, the study cannot quantify prosecutorial trends, conviction rates, or the frequency with which co-perpetration, instigation, or complicity are invoked in real cases across jurisdictions.

Second, the comparative scope of the study—focusing primarily on Germany, Romania, Spain, Italy, and France—necessarily excludes other European jurisdictions with potentially relevant doctrinal nuances or innovative approaches. Although these five jurisdictions were selected due to their doctrinal influence, geographical spread, and legal relevance, the findings cannot be assumed to represent all EU Member States or all Council of Europe countries. Further comparative expansion would provide a more comprehensive understanding of European heterogeneity.

Third, the analysis relies heavily on statutory provisions, scholarly commentary, and international or EU-level instruments. While these sources provide authoritative insights, trafficking cases are often shaped by case-law interpretations, which evolve dynamically and may diverge from doctrinal formulations. Access to consistent, comparable case-law data across jurisdictions is limited, particularly for lower courts and unpublished decisions. This constrains the ability to assess how participation doctrines are operationalized in concrete trafficking prosecutions.

Fourth, the complex and often clandestine nature of trafficking networks creates evidentiary uncertainties that are not fully captured in a doctrinal analysis. Practical investigative limitations—such as fragmented victim testimony, transnational evidence, or the use of digital communication—affect how participation is ultimately proven or inferred, but these dynamics fall outside the methodological scope of the present study.

Fifth, the study does not systematically address corporate criminal liability, although Directive 2011/36/EU requires Member States to impose liability on legal persons involved in trafficking. Corporate participation—through recruitment agencies, transport companies, or subcontracting chains—raises distinct doctrinal and evidentiary challenges that warrant separate analysis.

Sixth, the research focuses on intentional forms of participation and therefore does not explore in depth the borderline cases where victim-offenders are coerced into acting as recruiters or facilitators. The legal distinction between coerced involvement and genuine complicity is critical in trafficking adjudication, yet assessing coercion requires empirical, psychosocial, and evidentiary analysis beyond the scope of a doctrinal study.

Finally, the study's reliance on publicly accessible legal and policy sources means that certain jurisdiction-specific nuances—such as prosecutorial guidelines, internal judicial training materials, or confidential investigative practices—could not be incorporated. These elements may substantially influence how participation doctrines are interpreted in practice.

Despite these limitations, the study provides a solid doctrinal and comparative foundation for understanding the complexity of criminal participation in human trafficking and highlights several avenues for further empirical and interdisciplinary research.

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