



# 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—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 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