

**The criminal protection of vulnerable migrants and trafficking in human beings.
Consent as an element of discrimen between trafficking in human beings
and smuggling of migrants**

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Abstract

Criminal law uses the ethical notion of “vulnerability” to protect the heterogeneous conditions of subalternity and risk observed in the human trafficking. Nevertheless, the penal system does not seem to have conformed the legislation in the field of illegal immigration to this order of protection of human dignity, on the contrary aggravating the existing situations of vulnerability or creating new ones, showing itself as an active, more than a passive, factor of vulnerability.

Firstly, criminalising the smuggling of migrants, the legislator has provided, above all, a protection to the State borders and the State sovereignty, considering the «full» consent of the migrant, not vitiated by the coercion typical of trafficking. However, this dichotomy of coercion-consent offers a purely theoretical criterion, which leaves a wide margin of discretion to the Courts.

Secondly, migrants who do not have a permit to stay, risk to be called to account for their irregular stay on the territory of the State and even to lose their fundamental rights and needs.

Therefore, the present work aims to investigate the vulnerabilities that characterize the migrants involved in trafficking and smuggling offences and the difficult distinction between these two crimes, also examining how this affects the effective criminal protection of migrants' vulnerabilities.