

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The text is centered in the white space between these shapes.

Modern Slavery.
A Comparative Study of the
Definition of Trafficking in Persons

WHY this approach?

- THB not only persists but seems to be growing
- Most states have criminalized THB, yet worldwide there are only a few thousand convictions of traffickers every year
- International advice often comes in the form of encouragement to
 - adjust national laws to the international definition of THB (Art. 3 of the Palermo Protocol)
 - increase the penalties for this crime
- However, laws that have implemented the international definition of THB do not work as intended

A comparative approach

- International legal definition of THB
- This definition's implementation in Poland, Russia and Sweden

Question:

Why despite the scope and severity of the crime as well as the awareness and increased international efforts in this area are there so few trafficking convictions worldwide?

- Insufficient political will and inadequate national laws are usually blamed for this development
- The international definition of THB is not adequate

Methodology

Why do countries with different preconditions fail to successfully implement the international definition of THB? This question was answered by means of employing the following steps.

1. The approach of legal transplants was used to create a framework through which both the international definition of THB and the national laws were examined. This framework includes the factors of
 - a) *transmissibility*
 - b) *accessibility*
 - c) *perception*
 - d) *reception*
2. The international definition of THB was studied according to the factor of transmissibility. Then, the definition was analyzed from a legal perspective. The analyses highlighted certain questions that could potentially influence national implementation processes.
3. National laws that have implemented the international definition of THB were examined. The question was if any problems exist with regard to the transplants, and if so, if a connection to the original source could be established. To this end, three mutually very different countries (Poland, Russia and Sweden) were chosen as case studies.

Findings

There are both country-specific and common problems. When the common problems are compared to the findings made concerning the international definition of THB, it becomes apparent that there is a connection between the two. These common issues concern the prerequisites of

- a) the intent of the perpetrator and
- b) improper means

Intent of the perpetrator

The manner in which intent of the perpetrator has been defined in Article 3 of the Palermo Protocol has had practical implications for national legislation. The wording *for the purpose of* implies that direct intent with regard to the exploitation is necessary.

In Sweden this has led to a situation where the majority of the links of the trafficking chain are seen as accomplices and not as principal perpetrators.

In Russia, potential cases of trafficking are often qualified as procuring. This is partially the result of the intent of the perpetrator being stated as a concrete purpose to exploit.

Polish experts note that after the recent amendment of the trafficking provision, the only form of intent possible in trafficking cases is direct intent. This has diminished the area of application of the provision, as its predecessor allowed for both forms of intent existent in Polish law.

Suggested reform

Replace the prerequisite *for the purpose of* with the words *with (some form of) intent to*. This is quite an uncomplicated change that might make the trafficking definition more effective.

Improper means

The words *by means of* imply that the perpetrator must assume a very active role. It is not enough that he or she simply takes advantage of a vulnerable situation of the victim. If the act is to be qualified as trafficking he or she must make the victim agree to a certain trade measure by employing improper means. Victims must be passive - are not allowed to even contemplate prostitution.

This concerns the concepts of agency and free choice. Even if a woman contemplates prostitution in order to escape her vulnerable situation she might still lack viable options and therefore be unable to freely consent. She does, however, possess the agency to act (hence the action of contemplating prostitution or initiating recruitment).

In all three countries this has led to a situation where potential cases of THB are qualified as procuring.

Suggested reform

Replacing the words *by means of* with a wording that indicates that the perpetrator need not initiate the trade measures, i.e., assume an active role with regard to the victim, and that the victim is allowed to display agency. The reform should also illustrate that agency and consent are not the same thing.

Thank you for your attention!