

*Blatníková, Šárka*

**Sexuální vykořisťování jako forma závažné organizované kriminality**  
**Sexual exploitation as a serious form of organised crime**

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*Summary*

Organised crime undoubtedly belongs amongst the most serious problems of our times. It effects many spheres of society in many ways and in varying levels, and thus threatens not only the rights of individuals, but is also a risk for the state and the democratic system. It is especially successful and develops effectively in areas where legislation and public power are not functioning effectively. The Czech republic, through its legislations and cooperation with a range of international organisations (the UN Security Council, the European Union), is gradually becoming a worthy opponent to organised crime, even though, in contrast to the state, organised crime groups have the advantage of employing illegal activities and resources, whilst though the state does have a range of resources available, these must always be in accordance to democratic legal principles respecting fundamental human rights and freedoms.

This study brings out the issue of one form of organised crime activity. The subject is an organised (criminal) group that undertakes criminal activities in the field of sexual violence (specifically upon persons of under 18 years of age). The aim has been to map, describe, and analyse cases of commercial sexual exploitation as a form of organised crime committed by organised groups of offenders, or criminal conspiracy.

In accordance with criminological definition, organised crime here refers to repeated (ongoing) enactment of deliberate, coordinated serious criminal activity (and activities which support this), the subject of which are criminal groups or organisations (typically with a many-tiered, vertical organisational structure) whose main aim is attaining the maximum illegal profit with minimal risk. Commercial sexual exploitation of children is defined as: “each usage of a child for sexual purposes in exchange for money or remuneration in kind between the child, customer, intermediary, or agent, and others who profit from the trade of children for these purposes”. This includes the trafficking of children, child prostitution, and child pornography. These actions are linked to serious violation of fundamental human rights

and personal dignity, and involve such practices as exploitation and deception of persons using violence, threats, pressure and slavery connected to debt. Abuse includes at the least the abuse of prostitution by others, other forms of sexual abuse, forced labour or providing of services, slavery, or practices similar to slavery, servitude or the harvesting of organs. The difference between sexual abuse and commercial sexual abuse/exploitation lies in the element of commerce, not in any difference in sexual behaviour. However it is possible to discern some characteristics which differentiate the two.

The combining of organised crime with commercial sexual exploitation represents only another type of activity carried out by organised criminal groups. The trafficking of people is one of the most profitable forms of organised crime, which brings profits comparable to illegal trade in drugs and weapons to the criminals. Compared to the other aforementioned types of criminal activity, however, this is a less risky activity for the offenders.

The image presented by the media of the “typical offender” depicts a middle aged man, who is unknown to his victim, who deceives the victim and then sells them into prostitution. In reality however, the offender in this kind of criminal behaviour is distinctly different. The risk of such an image can be that potential victims are less prudent in their contact with people/offenders, who do not fit the stereotype of a “human trafficker”, which they know from television for example. Information not only about victims but also about offenders, are extremely important in cases of organised crime and organised criminal groups.

There is no doubt about the fact that specific and reliable information about crimes, offenders (and victims) connected with human trafficking (of children), child prostitution or child pornography are the basis for, for example, effective programs, accepted measures or legislation. Without such information it is not possible to gauge the extent or the actual nature of the problem of human trafficking, or to understand it in its entire complexity.

Documentation of the roles individuals play in the chain of human trafficking can help when investigating the structure of criminal hierarchies. We can also determine whether investigation and screening affects little, moderately, or highly important offenders within the hierarchy of the group connected with human trafficking. Accumulation this information helps in determining whether an entire criminal network has been discovered and prosecuted, or if the investigation is focused on the “periphery” or criminal “business”. This information also helps in the analysis of methods related to the profile of offenders in human trafficking. Linking this indicator with the country of residence can, for example, reveal the methods of trafficking in relation to the place of residence of the “boss” of the organisation dealing with

the trafficking of people. It can also provide profiles and roles of individuals in the context of the human trafficking chain. Observing the hierarchy in the group may not give an immediate answer to the question of the kind of activities the group is undertaking, but it can to a certain extent give a manual and fairly useful guide to how these activities can be discovered and revealed.

Most studies into human trafficking focus particularly on the victims, and perhaps on the process of recruiting trafficked persons. The source of data with information about offenders, and about the characteristics of the whole group, is not currently accessible. There are already developed methods for recording data on offenders, but the question remains as to when, under what conditions (if at all) they will be made use of and not abused. During study and analysis it is possible to work from not only criminal or investigation files, but also from information from other persons who can provide information about the case.

Statistics of criminality pertaining to the crime of human trafficking show that in 2009, 11 crimes were clarified and the number of persons prosecuted and investigated rose to 32. Out of 10 confirmed crimes of human trafficking, 2 were committed in connection to an organised crime group acting across several countries. There was an increase in the number of accused persons (in total 26 accused persons), and one person was legally sentenced for one crime of human trafficking. When compared to the number of yearly investigated and prosecuted persons, and also compared with the expenditure of human and financial resources in the battle with organised crime and human trafficking, this figure is dissatisfactory. Screening this type of criminal activity is connected with a vast amount of operational tasks, since in dealing with organised criminal activity the character of the problem often requires close international cooperation. Tasks in criminal proceedings seeking to establish the facts of these crimes do not always have to end in the commencement of the criminal prosecution and in particular cases may result in so called “need of proof”, often already at the beginning stages of the preliminary proceedings.

With regard to the difficulties connected with proving the fulfilment of the nature of the criminal act of human trafficking, it is not possible to conclusively prove in all cases, and it is often reclassified as another type of crime – commonly the crime of pimping. In 2009, 82 persons were sentenced for this crime, and it was committed upon 66 individuals – 53 women and 13 children. In cases of child prostitution and child pornography, including operating in these through the means of the internet, they were known but not assessed as having been committed by an organised group, or potentially a criminal organisation. For the crime of child trafficking (according to par. 216a penal code), there has only been one crime to qualify

in our court practice (three offenders) in 2006, and their activities were not classed as the acts of an organised group or criminal organisation. According to official statistics, in the longterm this kind of criminal activity occurs only very rarely in the Czech Republic. Of course it is debatable and up for hypothesis what the reality of this highly latent criminal activity is. In assessing the success of accepted measures and setting new priorities and procedures, it is not therefore possible to rely solely on quantitative data, but it is necessary to take into account also qualitative research, and take on board information collected in the field.

Statistical data pertaining to the crime of taking part in a criminal organisation (according to par. 163a penal code) shows that among the number of the prosecuted and accused, and the number of sentenced persons, there is an obvious imbalance. There is an approximate downward trend in prosecuted and accused persons, as well as in the annual comparison of ascertained and clarified facts.

In the context of analysis of criminal files, we have identified 187 offenders out of the selected nineteen organised criminal groups. Two thirds (67%) were made up of men, one third women. A higher share of women in this type of criminal behaviour corresponds with the general tendency referred to in specialised publications. Three fifths of the offenders file were Czech nationals. Out of the rest almost a third consisted of offenders of Vietnamese nationality. Half of the offenders (53%, or 99 individuals) in our research sample has not yet been dealt with in court (meaning with no record in the copy of criminal records), and they had begun on their criminal path (on average) in “older” age – 33 years. Nearly one third (31%, 58 individuals) of offenders had already had experience of the criminal justice system (meaning they had a record in the copy of criminal records), in 16% we were unable to acquire this information. One prior conviction (recorded in the copy of criminal records) was an average of the whole file. The average size of the group of offenders in our sample was 10 members. The average age of offenders at the time of starting to commit criminal activities within an organised group, which had to do with sexual exploitation, was 33 years (32.8 years), ranging from 17 to 61 years of age. The average time over which the criminal group was active, and proved to be so, covered a period of around 3 years. The shortest documented timeframe of criminal activity or a group was 7 months, and the longest a group was criminal active for exceeded 8 years (106 months). With regard to the goal of the research and criteria for selection, the criminal activities dealt with in terms of the group of offenders, were the crimes of pimping and human trafficking. Among other condemned acts there were also crimes associated with possession, the holding of and distribution of addictive substances (in

two thirds of 6 groups), falsifying documents, unauthorised armament or blackmail. This pallet of acts corresponded with the character of the criminal activities of organised groups.

In almost two thirds of organised groups (discussed in this criminal case) in our file, there was in the text the sentence given to offenders the punishment of unconditional imprisonment. In four groups the court accepted conditionally differed imprisonment as the “maximum” sanction to offenders in the group. In two instances the case had not yet gained legal power, it has not been decided on. The maximum length of an unconditional prison sentence reached 120 months (10 years); this offender was judged not only for the crime of human trafficking but also for murder. In the cases where members of the group were given conditional sentences of imprisonment (this was true of 4 groups), their length was at most 36 months. Not one of our selected groups was primarily “focused” at persons younger than 18 years of age; underage victims were together with adults. None of the crimes related to child pornography.

It is possible to assume that organised crime and its activities will continue to be an active component of criminality worldwide and within our borders. We argue that mapping and analysis of individual cases continues to be a rewarding source of data, and can fill in and illustrate criminal statistics, which are here made up of one, sometimes two, digit figures.

*Translated by: Marvel s.r.o.*