

### ***Summary***

From the performed research, it is not possible to derive conclusions on the complex form of all organized crime in the Czech Republic. The author's effort was foremost to perform an analysis on the existing experiential material, i.e. data on cases that have been tried as organized crime. Thus the study was significantly limited in scope and character of application of special legal institution created for prosecuting organizing crime, i.e. provision on participation in criminal conspiracy (according to the Penal Code effective as of 01.01.2010 participation in an organized criminal group). Due to the character of such tried cases, the performed analysis rather speaks of how the given institution is applied in practice, and against what type of organized criminal activity. Even as such, one may say that the results of the analysis may be useful for both employees of bodies responsible for criminal proceedings and possibly also for legislation, if possible amendments to this provision are considered.

Due to the relatively low frequency of application of the provision on participation in criminal conspiracy, and thereby to the limited scope of experiential material, questionnaire examination was also performed amongst employees of bodies responsible for criminal proceedings, specifically police and public prosecutors, with the stipulation that this mainly concerned employees whose professional work brings them in contact with organized crime matters. The objective of this examination was to find out in part the opinions of those employees on enforcing the provision on criminal conspiracy and possible problems related thereto, and in part to ascertain their experiences on the appearance and character of organized crime in the Czech Republic with special focus on Czech offenders.

To augment the findings on offenders convicted of participating in criminal conspiracy, an analysis was also performed on anonymized data from the Penal Register providing information on the criminal careers of offenders to date. Data was analyzed on perpetrators convicted by application of the provision of participation in criminal conspiracy in comparison with data on a sample of offenders convicted for serious criminal activity committed in an organized group.

To gain a more complex image of the personality of the organized crime offender, a psychological examination was performed of selected incarcerated members of organized groups, and a control sample was created of the prison population not convicted of organized criminal activity.

For the purposes of the analysis, a total of nineteen files were requested on the basis of judicial statistics regarding cases of charged criminal conspiracy in 2000-2008. A total of seventeen were sent with the fact that after assessment, a total of thirteen files were found to be relevant. A finding ascertained from previous research was confirmed, where an analysis was performed on indictments filed by public prosecutors on cases of criminal conspiracy in the years 1999-2004. From the analyzed thirty-four indictments, a total of 76 % of indictments, or twenty-six cases<sup>1</sup>, were filed at the time as the crime of organizing and facilitating illegal crossing of state borders pursuant to Sec § 171(a) Penal Code. In this research from analyzed adjudicated cases of criminal conspiracy, eight cases, or i.e. 61 %, were filed at the time as organized crimes and facilitating illegal crossing of state borders pursuant to Sec § 171(a) Penal Code.

It is clear that the provision on criminal conspiracy is thus in a strong majority of cases applied to cases of organizing and facilitating unauthorized crossing of state borders. It is generally the case both on the basis of the number of filed indictments ascertained in the previous research, and the number of adjudicated cases, that the provision on participation in criminal conspiracy is used only seldom and is mostly enforced against one specific type of organized criminal activity, i.e. organized illegal migration. The rest of the cases were formed by various types of criminal activity (illegal business, fraud and evasion, illegal production and possession of narcotic and psychotropic substances and poisons, pandering and extortion); no other crime aside from organized illegal migration was found on a more frequent basis in the adjudicated cases. So it is seen that application of the institution of criminality by participation in criminal conspiracy, which was introduced for the purposes of effective sanction of organized crime, is relatively infrequent, and is mostly applied on a single specific type of organized crime.

The opinions of questioned experts as to the causes of infrequent use of this institution, both police officers and public prosecutors, basically concur. Both groups can be considered as competent in the given problem, since they are mostly employees who deal with organized crime or serious economic crimes in their practice.

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<sup>1</sup> Scheinost, M., Diblíková, S.: Criminal conspiracy – legal framework, definitions, sanction, offenders. 2, Prague: ICSP 2009, pages 81-99.

The police and prosecutors mostly agree that the provision on punishability of criminal conspiracy is only partially applied in practice or insufficiently. This corresponds with the statement of respondents from both these groups that in their practice, they have met with cases, which would possibly be qualified as criminal conspiracy, but nevertheless were not charged as such. Police officers state this more frequently than public prosecutors, and this corresponds to the findings of researched performed so far on organized crime, where police officers assess the situation in relation to organized crime as more serious than public prosecutors do (and they find it more serious than judges do).<sup>2</sup>

Causes of this low application of the applicable provision are found, based on respondents, in part in the difficulty in solving and proving this form of criminal activity, mainly in proving legally established elements of criminal conspiracy and the low probability that the court will accept such qualification. But a problem is also seen – which is a relatively frequent answer – in reserves inside the work of police, and only then in legislation and in outer influences. In this regard, the most complaints come from police officers regarding the unwilling stance of public prosecutors and judges.

So it may be generally possible to say that the fundamental problem is rooted in the hidden and sophisticated character of organized criminal behavior or organized crime as a phenomenon, and in the difficulty in obtaining convincing proof on the existence of legal elements of criminal conspiracy. Based on this and previous research, one may express the opinion that regarding just these groups dealing in organization of illegal migration, they lack any truly high level of sophistication, and there is a greater possibility of proving these elements. Of course it would be difficult and marginally unreliable to estimate how many cases bearing elements of criminal conspiracy that would be prosecuted “only” as an organized group for the stated reasons.

It is interesting that despite the prevailing opinion on the difficulty in proving elements of criminal conspiracy, the majority of respondents from both groups agree that the legal definition of criminal conspiracy more or less fits. In accordance with this, ideas for its amendment are rather rare, and mainly lead towards a more flexible determination of what so far have been strictly formulated elements of an internal organizational structure and sharing of activity with the stipulation that these elements should be formulated rather as alternative, and not cumulative. Proposals of public prosecutors also lead towards simplification of the elements of criminal conspiracy, mainly in the wording of omission or replacement of the element of a systematic manner used during commitment a crime.

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<sup>2</sup> See for example Scheinost, M. et al.: Research on economic crime. Prague: ICSP 2004.

One may also consider as noteworthy the opinion expressed by several public prosecutors, where the difference in definition between criminal conspiracy and an organized group is insufficient. Let us remember that the Penal Code contains no definition of an organized group whatsoever (even the new Penal Code neglected to amend anything regarding this). On one hand this can of course be considered a formal comment from the aspect that what is important is that it is possible to prosecute organized forms of crime anyway, but on the other hand the core of the comment should be understood that this problem may diminish the effectiveness of the provision, for which the objective of legislators was to create a more effective weapon in the fight against organized crime.

In terms of criminal prosecution, it is not possible in analyzed cases to consider its length as unreasonable. The period from the start of an investigation until the filing of an indictment ranged in most cases between six months and one year, court proceedings from filing of the indictment until a verdict had been reached was longer (between six months and six and a half years), which however was mainly influenced by filed appeals, in some cases repeatedly. It is possible to consider the length of proceedings as reasonable in light of the complexity and scope of the cases.

The link is indeed imposed in most cases, but only towards a relatively small part of offenders. The key types of evidence are testimony by witnesses, information from eavesdropping (wiretapping) and expert judgments. There was almost zero usage of expeditious investigative means in monitored cases, which of course is given to the character of the crime committed, where use of such exceptional means was not necessary. On the other hand, it is true that without information gained through eavesdropping, proving elements of criminal conspiracy would be more than difficult.

The fact that just a small part of those charged actually confess and normally only partial confessions are forthcoming, just as only a small part is willing to testify, corresponds to the character and internal standards of behavior of organized criminal groups, although of course in analyzed cases, this method of behavior does not achieve the level of so-called "Omertà" ("Code of Silence").

In relation to these crimes, it is found that on the basis of convictions pursuant to Sec 163(a) in relation to the overall number of accused, there are more foreigners than Czech citizens, and they are more often sentenced to unconditional punishments (almost in 90% of convictions). But this cannot be considered as an uneven approach of courts towards foreign nationals; the higher conviction rate and stricter punishments arise from their role in the

hierarchy of the group, where they are often found in positions of organizers, or brokers for foreign connections.

For Czech offenders, suspended sentences are slightly more common, which again may be explained by the fundamentally wider representation of persons standing at the performance level and external coworkers. Suspended sentences clearly prevail amongst convicted women.

Prevailing amongst the non-conditional punishments are sentences of one to three years imprisonment. Unconditional punishments over five years of imprisonment are handed down only in exceptional cases and are given to offenders with multiple convictions, or more serious previous criminal activity. The number of conditional releases is at the same time relatively high. The representation of punishments by fine is not insignificant; this punishment was given out in twenty-nine cases, of which five cases involved foreigners. But this punishment is ordinarily ordered in an amount not exceeding CZK 200,000, which in regards to profits from crime definitely does not seem excessive. Often the punishment of forfeiture of property is applied, and amongst foreigners also expulsion.

So it is not possible to consider the tendency in handing down punishments in cases of criminal conspiracy as excessively harsh. This approach of course corresponds to the prevailing character of crime, which is mainly found in organizing illegal migration.

Organizing illegal migration could appear in the light of previous findings as a less serious form of organized crime. But this is not the case in terms of protecting national interests. It is also not possible to say that the activities of groups engaged in organizing illegal migration do not fulfill the elements of organized crime, not just from the aspect of the definition of criminal conspiracy, but also from a criminological standpoint. This is also the case for groups that have developed a different type of organized crime.

Findings from the performed analysis of cases give testimony amongst all groups – thus not just groups dealing with organization of illegal migration – to the existence of elements of organized crime, such as ongoing crime, central control of the group in which sharing exists of activities and tasks, and which is sometimes very large, and large profit, which is achieved even in a relatively short period of criminal activity. This criminal activity is constantly ongoing, and is never a one-off matter.

Analysis also proves unified leadership and international affiliations amongst most groups, whereas it is nearly a rule that foreign collaborators remain undiscovered. The overlap of activities into other nations was found in eleven of thirteen cases.

In terms of the composition of groups, there are mostly mixed groups, i.e. those where representation of a foreign element exists alongside a more numerous Czech contingent. There were only three cases in thirteen where groups were comprised exclusively of Czech citizens. There was just one group comprised entirely of foreigners.

It is characteristic to see specialization of groups in a specific type of crime.

Groups definitely have a hierarchal structure. This hierarchy is usually formed of one main “boss” (nine cases), around whom there is often formed a small group of his closest workers (which are sometimes his siblings, relatives and partners). In most groups, working under the boss and these possible closest workers are organizers of individual partial activities, or specialists (producers of documents, etc.), and “performance” members are on the lowest level (drivers, smugglers, transporters, bouncers, etc.), or external coworkers hired for individual events. From this aspect, for most groups it is possible to find multiple-level management (leaders – medium-rung member/organizers of partial activity – performance and external coworkers).

Even the relatively narrow sample of analyzed cases thus proves that organized crime in the CR shows a sharing of activities and functions, use of external coworkers and even use of fronting legal companies, and more rare but nonetheless existing cooperation with members of the Police of the Czech Republic and municipal police officers. Another characteristic for organized crime is the finding that in the circle of convicted groups, persons were involved who took part in criminal activity or enabled its perpetration and were not prosecuted, or charged, in the given cases. There were also persons found from the entrepreneurial-trade circle, who provided services for remuneration (accommodations, board, transportation, etc.).

These are generally considered to be elements of developed - or at least developing – organized crime.

The analyzed cases, prosecuted and tried on the basis of Sec 163(a), prove the existence of groups whose character and activity correspond to the definition of criminal conspiracy. But despite the relative abundance of certain groups, it is not possible to speak of vast organizations developing long-term activity.

On the other hand, there are findings proving a smaller level of development that indicate a relatively short duration of criminal activity until its discovery, that indicate that in groups these same people may perform, based on need, multiple functions, or activities, that there is importance of family contacts upon forming the core of the group (on the other hand it is of course necessary to state that where possible to ascertain the character of ties amongst members of a group, the vast majority were expediency ties, i.e. ties bound to the purpose of

joint commitment of crimes). It was also not proven that the attained profit, whatever its size, was intentionally invested into expanding criminal activity, to development of criminal business dealings. But for a few exceptions, profit is generally divided amongst members of the group and determined for personal consumption.

So it is possible to state that findings from this research, although it was limited to a relatively low number of cases of cases charged and convicted as criminal conspiracy, prove the existence of forms of criminality, which may be labeled in legal and criminological terms as organized crime. The analyzed cases however correspond rather to the classification of a lower level of development of organized crime. Of course it is true that amongst them, no case of a crime appeared requiring higher qualification and more sophisticated procedures. So on the basis of this analysis – with regard also to the opinions of questioned employees of bodies responsible for criminal proceedings – it is not possible to exclude the possible existence of such more developed and sophisticated forms of organized crime.<sup>3</sup>

Regarding offenders, it is possible to collectively state that they mostly lie within the ages of twenty-six and thirty-five. This is also the case for women; amongst foreigners this age category is even more prevalent. The proportion of women to the total number of convicted offenders is 10.5 %. Nobody under eighteen years of age was convicted. It has been determined that crime committed in criminal conspiracy is a matter mainly of medium-aged groups of offenders.

Members of groups prosecuted on the basis of the provision of participation in criminal conspiracy are almost never recruited from amongst so-called white-collar individuals or person with higher education level or social status. The files did not contain data on attained level of education, but from other characteristics it was found that university education is absolutely an exception and not even secondary education prevails. The most frequently listed profession was indeed a private entrepreneur, but this is not possible in this case to be understood as an indicator of such a higher status. But as already stated in other matters, it does correspond to the character of crime and the degree of development of an organized nature for such prosecuted cases.

Data on previous crimes are not conclusive amongst foreigners, because punishments are only known if adjudicated in the CR, but even so, the proportion of those already punished individuals amongst foreigners was one third. Amongst Czech citizens, most were convicted at some point in the past. There were thirty-seven repeat offenders of a total of forty-seven, i.e. 79 % (in the wording of criminological recidivism) who were convicted pursuant to Sec

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<sup>3</sup> At the time of resolving this project, two cases popular in the media (case of Berdych and the case of Berka) charged and tried as criminal conspiracy had not yet been adjudicated.

163(a). Only ten persons were thus first-time offenders at the time of being convicted pursuant to Sec 163(a).

Around a third of all convicted offenders had been convicted already three times and more in the past. The offender – a Czech convicted for a crime committed in criminal conspiracy is in greater measure a repeat offender, whose criminal career began at a relatively young age, and in whose criminal career to date there have been mostly property and less serious crimes committed. Violent crime (aside from bodily harm, which with a certain amount of probability could be attributed to fights) appears only seldom in the crimes to date. It is generally the case that the most serious crimes appear rarely: burglary and illegal possession of arms were found only once in the previous criminal career of members involved of criminal conspiracies; there were three cases of drug-related crimes, and murder did not appear. Thus persons convicted for participating in criminal conspiracy may not be labeled as the violent offender type.

It would seem that participation in criminal conspiracy amongst these offenders is a kind of further developmental step in their criminal career (amongst the majority of repeat offenders, in total amongst thirty-three were convicted on the basis of Sec 163 (a) at their last recorded conviction to date), but with regard to the exceeding character of crime committed in criminal conspiracy, it has been found rather that this does not concern some major qualitative shift in crimes, and definitely not towards higher level of qualification of crime or greater engagement in violence. It was not found that some of the offenders were convicted repeatedly for participation in a criminal conspiracy.

In the comparative sample of offenders convicted or charged with serious crime committed in an organized group, the representation of violent crime is higher than for offenders convicted on the basis of Sec163 (a). In terms of methodology, this comparative group however may not be considered a control group, and comparison only provides a basis for orientation.

Despite this, in the criminal career to date amongst members of the comparative sample, there is a significant representation of the crime of burglary, which may be considered to be characteristic for this group; but there is much higher representation of theft, fraud, illegal possession of arms and partially also illegal production and possession of narcotics and psychotropic substances and poisons, and extortion. So this group of offenders definitely appears to be more dangerous. Their relatively faster criminal career, marked in the past by serious crime, culminates in the most serious crimes. In any event, it is seen that for groups

against who the provision on criminal conspiracy has been applied, expressions of violence are more rare than dominant.

Personality psychological examination of incarcerated persons convicted of a crime committed in an organized manner (thus not just in criminal conspiracy) in comparison with persons incarcerated for a comparable crime, but not committed in an organized manner, has not found any major differences. Both compared groups are most probably derived from the same basic group - a group of persons with criminal orientation, or with a criminal life style.

The personality of a person convicted of some organized crime may be briefly described by egocentricity and demoralization. This means disregard towards others and standards, increased interest in oneself, of one's own interests and problems, and negative emotional disposition, a kind of "central" dissatisfaction. They only differ clearly from those not convicted of some organized crime but similar crime in an unorganized manner in that they more easily come to terms with the situation of long-term imprisonment, they do not experience depression and are more sociable. Increased sociability is apparently what facilitates their conspiracy within criminally organized groups.

Opinions of employees of bodies responsible for criminal prosecution agree on the fact that organizing illegal migration is not considered to be the dominant form of organized crime. The various forms of fraud or economic crime are considered to be dominant, but are only seldom prosecuted as criminal conspiracy. Thus it has been repeatedly confirmed that as opposed to other forms of organized criminal activity, for cases of organizing illegal migration, the elements of criminal conspiracy are relatively easier to prove. Respondents also pointed out the fact that current criminal organizations are known for a looser character of organization, which further confounds the proving of elements of criminal conspiracy.

A large number of forms have been found of crimes perpetrated by Czech offenders of organized crime, which would indicate that Czech organized crime has already developed to a significant size. It is a surprise to a certain extent that in this context, police officers have ranked drug-related crime even behind economic, property or violent crime. Public prosecutors consider serious economic and financial crime along with drug-related crime as the most frequent forms of organized crime amongst Czech offenders.

In an additional research probe, police officers stated that the reason for more frequent prosecution of organizing illegal migration as criminal conspiracy, and on the contrary the small number of such prosecuted cases of drug-related crime they see are mainly found in the character of those forms of criminal activity. Organized drug-related crime represents a more complex, more conspiratorial form of organization that is harder to uncover and against which

it is much more complicated to prove lawfully determined elements of criminal conspiracy. A small part of those questioned attempted to find reasons in legislation and in the practice of bodies responsible for criminal proceedings.

According to respondents, Czech offenders differ from offenders who are foreigners mainly in their lower level of applied violence and aggression, but also in their looser organizational structure, less strict hierarchy and larger probability of gaining their testimony. It is necessary to note the opinion of respondents that Czech offenders try harder to influence official structures of state administration and public authority.

In the proposals for actions leading to increasing effectiveness of the possibilities of using the provision of criminal conspiracy, rather than amendment of its definition, amendments are drafted that concern the possibility of clarifying and proving cases of criminal conspiracy. Mainly proposed is the relaxation of the possibility of implementing expeditious investigative means, mainly eavesdropping, at a time prior to commencement of actions of criminal proceedings. Several times the subject has been brought up of introducing the institution of a target witness, of facilitating the activities of an agent-provocateur and of greater tolerance of potential commitment of a crime by an agent while uncovering the activity of criminal conspiracy.

One thought to consider should be the majority opinion that a clear definition of an organized group as opposed to criminal conspiracy or as opposed to an organized criminal group, would be beneficial. Certain inspiration towards considerations in this direction could be found in the definition of an organized group used by the UN Convention Against Transnational Organized Crime.<sup>4</sup>

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

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<sup>4</sup> UN Convention and further documents on organized crime. Prague: ICSP 2001.