

ROLE OF THE POLICE AND THE JUDICIARY IN INCREASING EXPENSES OF CRIME

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Abstract: The economic approach to crime is based on the assumption of rational choice. The decision of an individual to engage in crime is determined by the ratio of the costs and benefits of engaging in crime, but also the number of benefits they derive from engaging in legal activities. Individuals decide to commit a crime if the benefits they derive from it are greater than the costs of the criminal act, while the aforementioned benefits can be of a financial, psychological, or other nature. The achieved benefit is in the function of the probability of punishment, that is, the bearing of the consequences of a criminal act. Effective crime prevention can be achieved through the reduction of the benefits for the perpetrator of the crime, or by increasing the costs of engaging in crime. The subject of analysis in this paper is the role of the police and the judiciary in increasing the probability of punishment. The analysis also reveals the influence of the threatened punishment on the expected benefit from engaging in crime.

Keywords: *crime, economic analysis, benefit, probability of punishment, police, judiciary.*

INTRODUCTION

Observed as a deviation which manifests itself, as a rule, as a criminal violation of written laws and the legal order, a criminal act is a social phenomenon which is characteristic for all states in the modern age. Various forms of criminal activity and behavior of both individuals and criminal groups endanger individuals who are affected by a specific crime, but also the functioning of numerous institutions and society as a whole. Although crime is distinctive in human society in all development epochs, modern living and working conditions, respectively during its development, have created conditions for the phenomenon of new forms of criminal activities and new areas in which crime develops. At the same time, crime is seen as a challenge to the theory and the legislator who, through intensive activity, is required to regulate and limit the number and scope of criminal acts.



The presence of crime in everyday life, the fact that there is a possibility of avoiding punishment and bearing the consequences of criminal activity, as indicated by a significant number of unsolved cases, as well as the possibility of gaining significant benefits, influenced the comprehension of crime as one of the most profitable occupations. While one part of society sees crime as a big problem, another, smaller part, which consists of individuals and groups that are engaged in crime, is developing a successful career in that area.

It is clear that crime cannot be completely prevented, with regard that the costs of crime prevention would be greater than the damage caused by criminal activities. Consequently, confrontation with all criminal perpetrators, in order to reduce or prevent crime, does not seem logical or economically justified (Thomsen, 2016: 10). Investments directed towards preventing crime are necessary, but what is even more necessary is the coordination of work between the judiciary and the police.

But, by creating an environment in which it is not worthwhile to engage in crime, respectively by increasing the costs of engaging in crime and decreasing the benefits of engaging in crime, the level of crime and the amount of resources that this area absorbs can be affected.

The analysis of this paperwork points out the factors that determine the choice of individuals to engage in crime, respectively to earn income in engaging in legal activities, as well as the possibilities to reduce crime from repression into prevention by an adequate allocation of resources to a socially acceptable and economically justified level.

The subject of analysis of the first part of this paper are factors that are of influence on the determination of an individual to commit a crime as well as the cost-benefit ratio that crime conditions. The topic of the second part of this paper is the influence of the police and the judiciary on the increase in costs of crime and the importance of coordination in their work. The third part of this paper analyzes the influence of the threatened punishment on crime level and profitability of engaging in crime in comparison to legal activities.

DETERMINING FACTORS OF INFLUENCE FOR COMMITTING A CRIMINAL OFFENSE

The level of crime that one society is confronting with is not given by itself. The occurrence of crime and the level of its manifestation are influenced by a large number of factors that are determined by the moral limitations of individuals, as well as the conditions and factors determined by the state or society. The fact that a significant number of individuals do not engage in criminal activities, even though they have the opportunity to do so, indicates the morality they possess, meaning of the moral limitations that they are not ready to violate, even though there is a stimulus for that. On the other hand, for a number of individuals, numerous restrictions in terms of laws, penalties, etc. are not a sufficient obstacle in deciding to engage in criminal activities. In addition, the inclination of the individual towards crime, the occurrence, and scope of crime are determined by the role of the state and its readiness to reduce crime to an economically justified level. The role of the state is reflected in the creation of an economic environment in which individuals are encouraged to engage in legal activities, that is, in creating conditions in which individuals can be accomplished professionally, which implies the existence of decently paid jobs in legal flows. Next to the creation of an economic environment, what is of significance is the readiness of the state to adequately sanction individuals or groups who have decided to commit a crime for any reason. In underdeveloped countries facing crises, individuals decide to engage in crime as a way to provide the necessary means of their existence. However, crime

is also present in developed countries where individuals do not face existential problems. The question which arises from that fact is what is the cause and reason for criminal activity, respectively what are the factors which influence the decision of individuals to engage in crime. The economy as a science in its effort to answer this question has established assumptions and defined models with which it requires to determine the reasons for individuals to commit a crime, as well as the impact that the probability and severity of punishment have on the level of crime.

The starting assumption of economic models, as well as economic analysis in general, is the rationality of individuals. Rationality is measured by the ratio of resources and the aim achieved through the usage of those resources. Until the 20th century, there were relatively few theories about decision-making with regard to the rational choice. Due to the consequences that the choice between alternatives causes, numerous models of rational behavior were developed during the 20th century. Rationality is limited by subjectivity, so there is potentially as much rationality as there are people on the planet (Shveri, 2010: 35-51). Rational behavior is a characteristic of individuals, regardless of whether there are market or non-market areas of their activity. Cooter and Ulen, however, make a difference between a rational individual in economics, and an individual in law who behaves in accordance with the standard of a reasonable man. According to their opinion, a rational individual in economics has stable and hierarchical preferences, and strives to maximize it, while a reasonable individual in law behaves in accordance with legal norms. Standards that are accepted and which serve as a basis for determining the rationality of individual behavior refer to the standard of rationality based on the relationship of means and goals (Cooter, Ulen, 2000: 299).

Rationality as the starting assumption of Becker's model of criminal behavior (Becker, 1968) has been very often the target of criticism. The basic question that arises is what is rational in the behavior of perpetrators of criminal acts. This question particularly comes to the fore in the case of serious crimes in which there is no direct financial benefit. In the case of criminal acts where the benefit can be measured quantitatively in terms of the amount of money or other values, it is clear that rational behavior is any behavior that provides greater value than invested resources. However, when it comes to criminal acts of murder (which basically have no material benefit), rape, and other serious crimes, the behavior of perpetrators from the point of view of society as a whole cannot be considered rational, and the society condemns and punishes perpetrators. Seeing from the perspective of the perpetrators of serious crimes, those crimes are rational because they allow them to increase the gain, which is reflected in the psychological satisfaction which psychopaths can feel. Such a form of interest is a typical example of an interpersonal interest function, in which the increase in the interest of the perpetrator is associated with a decrease in the interest of the victim (Begović, 2015: 68). Murders due to psychological pleasure should be distinguished from murders that occur in the case of committing other crimes (robberies or other forms of forced transfers), where murders are only means of executing the basic goal, meaning acquiring material benefits. The behavior of the perpetrator of a criminal act can be considered rational if the chosen way of behavior maximizes self-benefit (Petrović, Damjanović, 2019: 233). The assumption of rationality should be accepted with limitations. Insufficient or inadequate information, but also limited information processing, limit human rationality (Jovanović, 2008:46). The fact that people have insufficient and inadequate information, that is, gathering sufficient and adequate information causes costs, what influences their behavior and decisions which they make.

The decision to engage in criminal activities, in addition to aspiration in achieving maximum benefits in comparison to the invested resources, is also influenced by the tendency of individuals to take risks. Under risk, we imply the variability of the outcome of an uncertain event. People's attitudes to risk are different, and they may be neutral, be prone to risk, or to have an aversion towards the risk. The attitude they have towards risk significantly influences the decisions which they make (Begović,



Labus, Jovanović, 2008: 359). Individuals prone to risk, along with other unchanged circumstances, more easily decide to commit a crime than in the case with individuals who have an aversion towards the risk, respectively they are not prone to risky behavior.

The decision to commit a crime is determined by the cost-benefit ratio of engaging in criminal activities. The size and type of utility that is given from engaging in crime are determined by the form of criminal activity and the specific criminal offense. The costs caused by crime are conditioned by material costs in terms of equipment which is necessary for committing a crime, mental anxiety, fear, etc., and also by the expected costs of penalty and opportunity costs (Eide, 2000: 351). A penalty can be seen as formal (includes all forms of imprisonment, fines, and other penalties), but also as informal, which refers to inconveniences that arise as a reaction of family, friends, employers, etc. The costs of engaging in crime represent the difference between the gross benefits of engaging in crime and the costs which it causes (Eide, 2000: 352).

The decision of committing a crime is also influenced by the amount of income earned by engaging in legal activities. If the income which is earned can afford a decent life, the choice of individuals will not be a crime, especially if there is an aversion to risk. The low level of income from legal activities represents the low opportunity costs of engaging in crime. Low incomes often influence the decision of younger people who are paid very low to engage in crime. In addition, the fact that the income from criminal activities is achieved by the very act of committing a crime and that the penalty or consequences come later, with the possibility of not being punished for the crime, is a sufficient stimulus to commit a crime (Eide, 2000: 352).

The expected utility of crime is in a function of the probability of punishment, which is determined by the state's readiness to punish the perpetrators. Punishment is a sanction for the perpetrator of criminal acts through which he bears the consequences of his behavior. Punishments can be imposed differently, such as imprisonment, probation, fines, etc.

The aim of the judicial system is that the perpetrators of criminal acts, respectively all those who in any way endanger or violate the rights of others, bear the consequences of their behavior and are adequately sentenced. In order to achieve the above-mentioned aim, it is necessary to coordinate between all forms of authority. The legislative power strives to anticipate and regulate criminal acts and to sanction them. The efficiency in punishing the perpetrators of criminal acts is determined by the activity of the police and the judiciary.

INFLUENCE OF THE POLICE AND THE JUDICIARY ON THE PROBABILITY OF PUNISHMENT

Analysis of a significant number of authors that for research subjects have a causal relationship between the efficiency of the police work and the crime rate indicates that such a relationship exists (Begović, 2015: 124). Given that the efficiency of the police work is reflected in the probability of discovering and punishing perpetrators of crimes, the logical conclusion would be that the increase in police officers and resources related to police protection leads to the crime rate decrease. The fact that a number of police officers and their presence in society affect individuals and their decision to engage in crime indicates the significance of the preventive police protection and the influence that prevention has on the crime rate (Begović: 2015: 123). Next to the influence of the police work on the crime rate, the fact of the reverse causal relationship has risen, that is, the crime rate influence the need for increased police protection. Increased police protection implies an increase in the amount of resour-



es in this area, and the optimal protection level implies a cost-effective ratio of costs and benefits that this kind of engagement poses.

The role and the significance of the police have been changed in accordance with changes and requests that have been put in front of it. Change in the classical police work concept, as well as the application of the police concept in the community, contributed to the development of the crime prevention strategy. With increased equipment and increased efficiency in the police work, which is reflected in the number of cases where the perpetrators of crimes are discovered and brought to justice, a clear message is sent to other perpetrators and all others that can potentially decide to commit a crime, that they will be sanctioned, thus affecting their choices to act in accordance with the law in a stimulative manner, as well as the general sense of security in society.

Next to police protection, the judiciary has a significant influence on the crime rate and its task is that the perpetrator of a crime gets punishment in accordance with the crime that they have committed. The role of a judge in a justice system is of great significance. Judicial judgment and decision-making represent an important process, especially if judges are not limited to mere enforcement of the law and its application, but they can affect the development of the law, that is, its creation. Judges must be aware of their role in both, the cases they are directly involved in, and the influence that their work and decisions have on potential participants in judicial proceedings, but also of the effects that they could have on the creation of the case-law.

It is a fact that judges like other people are not perfect, nor is the system they are a part of. As a consequence of the complex rules and procedures, and the possibility that lawyers and their clients can abuse eventual gaps in the law or law interpretation, problems in the essential enforcement of the law emerge, so court activity is of extreme importance. Enforcement of the law is additionally aggravated because courts and judges do not have perfect information on their disposal² as well as the fact that excessive activity in the sense of complete precision in law enforcement conditions expenses. That indicates the necessity of determining the level of precision in interpretation and enforcement of the law that is socially acceptable and aligned with economic reasons.

Determining guilt and responsibility of a crime perpetrator in the judicial proceedings conditions resource engagement in this area and causes expenses that can be considered as administrative costs and costs of judges' errors. Characteristic of administrative costs that include costs of undertaking action in criminal proceedings is that they are measurable and that they can be expressed in money. Unlike them, the costs of judges' errors can hardly be measurable and reliably determined. Error size and their frequency are influenced by the level of information that judges have on their disposal, and the very fact that they do not have them, indicates the possibility of errors in determining punishment by which the perpetrator of a crime is punished (Cooter, Ulen, 2016: 397). In the cases of determining responsibility and guilt of perpetrators of a crime, judges' errors are possible and they can be manifested as type I judicial errors that are false-positive findings that have the punishment of an innocent person as a consequence, and type II judicial errors that are false-negative findings that have the release of the perpetrator of a crime as a consequence (Begović, 2015: 134). Making a fair decision and determining punishment level represents the hardest part of the judges' job and it represents the result of complex interactions and judges' efforts that the punishment is in accordance with the crime committed, the facts of the specific case, and the rules that regulate that specific felony.

2 Perfect informing implies making rational decisions with complete knowledge about significant facts related to those decisions which implies complete certainty in terms of consequences that occur when those decisions are put into power (Begović, Labus, Jovanović, 2008: 353 and beyond).



It is important to point out that judges, as well as law-makers, do not bear the consequences of their actions and mistakes (Jovanović, 2008: 65). Along the same lines, it is of significance to mention that although they do not bear the consequences of their mistakes, those mistakes cause further expenses. In the case where an innocent person is punished, expenses include punishment costs and the cost of the fact that the perpetrator of a crime is not punished, which leads to a decrease in general prevention.

The decision that the accused is guilty is made by judges when:

$$(1 - p) v(c1) \geq p \quad (1.1)$$

Where p is a judge's subjective probability that the accused is guilty, and $v(c1)$ and $v(c2)$ are functions of utility loss of court decision-makers (judges and jurors). The above indicates that along with the costs $c1$, $c2$, and the critical probability p^* the accused will be found guilty if the subjective probability is above the level of critical probability p^* (Andreoni, 1991: 385-395), where the critical probability is gained from an equation:

$$p^* = v(c1) / v(c1) + v(c2) \quad (1.2)$$

The analysis of the utility of a perpetrator of a crime where utility function $u(b)$ fulfills the condition that $u(b1) > 0 > u(b2)$, determines utility level in the case when a perpetrator of a crime avoids punishment for the committed crime $b1$ and utility level that a perpetrator of a crime is punished for the committed crime $b2$. The probability that they will be punished and bear the consequences of their behavior is determined by the expression $q = a(1-p^*)$. Listed assumptions enable determining of what is necessary, that is, a necessary condition for a potential perpetrator to commit the crime. Expression:

$$EU = (1 - q) u(b1) + q u(b2) > 0 \quad (1.3)$$

shows that the condition for a crime to be committed represents crime's utility that should be bigger than zero.

EXPECTED UTILITY FROM ENGAGING IN CRIME

The use of the term "expected utility" indicates that because of the uncertainty that accompanies crime engagement, it cannot be claimed with certainty that a crime perpetrator will gain that utility or the outcome will condition losses. Engaging in crime often does not have utility gain as a consequence, but it can cause losses that can be bigger than resources engaged in the preparation of a criminal act. Those losses can often be more significant than material gain because freedom and even life could be lost. The expected utility of a choice, that is an event, represents a sum of utility levels of many different outcomes multiplied by the possibility of their occurring (Begović, Labus, Jovanović, 2008: 38 and 359).

The utility that is realized by committing a crime is in the function of the gain that is attained through a criminal act and the probability of bearing the consequences of a crime. The probability that a crime perpetrator will bear the consequences of their actions is determined by the probability that a perpetrator will be caught and the amount of the threatened penalty. The probability that a perpetrator will be caught is in the function of resources engaged in police work, that is, the number of police officers and the achieved productivity in police work and adequate resource allocation within this area as well. When we are talking about the amount of the threatened penalty, thoughts and opinions of the authors who have the influence of the threatened penalty on crime as their subject of analysis

are divided. There are opinions that increased and more strict punishments can influence the crime level, that is, with more rigorous punishments it can be acted preventively on perpetrators of crimes and all others who can potentially find themselves in that position to stop committing criminal acts, that is, not to engage in criminal activities (Bar-Gill, Harel, 2001: 485-591). On the other hand, there are opinions according to which stricter punishments can lead to an increase in the crime level. The fact that they are going to be punished for a severe crime may tempt perpetrators to decide to commit several crimes (if a perpetrator of a crime knows that they will receive a life sentence because of the rape or murder, they will be ready to commit several severe crimes because the punishment is not increased thereby). Sharper penal policy leading to higher expected sentences may result both in the decrease and increase of crime (Nussim, Tabach, 2009: 314-323).

The question of whether and to what extent the amount of the threatened punishment has a preventive effect on perpetrators and potential perpetrators of criminal acts with regard to the level of crime is one of the key dilemmas within the economic analysis of crime and crime analysis in general. The essence of the question is to determine whether the punishment deters the crime, i.e. whether the potential perpetrators of criminal acts are intimidated by the punishment, but also whether the amount of crime is elastic and depends on the punishment.

The influence of the effect of punishment and intimidation by punishment is the subject of many pieces of research. Charles Murray and Louis Cox, Jr. monitored the effect of a prison sentence on the conduct of offenders in their research which included 317 males. The research deals with a criminal group whose members are minors and whose average age is 16 years. After serving the prison sentence for 14 murders, 23 rapes, more than 300 attacks, 300 car thefts and other serious crimes, their behavior was monitored for a period of 18 months. The conclusions reached on that occasion indicated that the prison sentence served as a means of intimidation because the number of arrests of group members dropped by two thirds (Murray, Cox, 1979).

The amount of the threatened penalty may affect the strengthening of general prevention. Determining the amount of punishment that can stimulate the decision of individuals not to commit a crime is not easy. There is a threshold of the amount of the threatened penalty after which the character of the change in the expected utility of the penalty changes depending on the change of that amount (Begović, 2015:142).

The analysis of the factors influencing the decision of an individual to commit a crime and pointing out the utility that can be achieved by dealing with crime seeks an answer to the question of whether it is profitable to deal with crime, or which are the areas of crime where a higher level of utility than possible accomplish by performing legal affairs. In the study conducted in the United States at the end of the 20th century, James Wilson and Alan Abrahamse compared the annual profits made in the field of crime and legal work. The analysis included prisoners in three countries which were divided into two groups for the purposes of the analysis: mid-rate offenders and serious offenders. The research came to a conclusion that both criminal groups generated income from committing criminal acts, as well as from engaging in legal businesses in accordance with their possibilities. The obtained analysis results are presented in the table (Wilson, Abrahamse: 1992: 359-367).



TABLE 1.1 *Criminal and Legitimate Earnings per Year (Dollars)*

Crime type	High-Rate		Mid-Rate	
	crime	work	crime	work
Burglary/theft	5.711	5.540	2.368	7.931
Robbery	6.541	3.766	2.814	5.816
Swindling	14.801	6.245	6.816	8.113
Auto theft	26.043	2.308	15.008	5.457
Mixed	6.915	5.086	5.626	6.956

Source: Wilson & Abrahamse, *Does Crime Pay?*, 9 JUSTICE Q. 359, 377 (1992).

The results of the mentioned research indicated that for the perpetrators of less serious crimes dealing with crime is not profitable in all areas, except in the case of car theft.

The conclusion they came to when it comes to a group of serious criminals is that crime is profitable for them for all types of crime except burglary. These results were obtained by an analysis that did not include the costs related to the time the perpetrators had spent in prison. By including these costs in the analysis, it was concluded that crime was unprofitable for both groups of criminals. This conclusion shows that dealing with crime is unprofitable, while according to the researchers, the reasons for the decision of individuals to engage in crime lie in other problems that individuals face. Some of these reasons are related to alcohol and drugs, which prevented them from engaging in legal work, but also to the temperament and tendency of individuals toward risk. Economic analysis indicates that the reasons are that the perpetrators of the crime do not value the punishment and losses that it causes.

The analysis referring to the benefits of committing crimes shows that the income generated by crime depends on the economic situation of the country in which it has been committed. Thus, unlike in developed countries, the income generated by drug trafficking in less developed and poor countries is greater than income generated by legal businesses (Rodgers, 2017). Beside higher income generated by legal businesses in developed countries, lesser income generated by crime is the result of increased possibility of punishment, i.e. higher expenses of engaging in criminal activities.

Determining the amount of the threatened punishment that will lead to the strengthening of general prevention, determining the number of police officers, and the amount of resources engaged in this area and other important issues are aimed at achieving the protection that would maximize the level of social prosperity and minimize crime. The goal of criminal law is to minimize the social costs of crimes, which includes the damage that occurs and the costs of crime prevention (Cooter, Ulen, 2016: 474). It should be added that the level of social prosperity can be significantly influenced by increasing efficiency in the implementation of court proceedings, i.e. in the procedures of proving and determining the guilt of the perpetrator of a criminal offense.

The criterion in defining and determining the optimal size, i.e. efficiency in the work of the police and the judiciary is the level of social prosperity that is achieved. The fact that the engagement of scarce resources in the field of police and judiciary requires their efficient application in order to achieve maximum results. Proponents of the Kaldor-Hicks criterion (Stringham, 2011: 41-50) believe that it is useful to have quantitative measures by which the efficiency could be measured in assessing the effectiveness of resource usage in different areas of society, that is, to determine the criteria by which conditions can be compared when defining those conditions. From the aspect of society, the criterion



of efficiency is the maximization of social prosperity. From the aspect of crime, the criterion of efficiency is the number of criminal offenses, i.e. crime rates. The choice and adoption of maximization of wealth, i.e. well-being, mitigates the initial allocation of rights and leads to its more efficient definition. Wealth is a value that can be expressed in money or cash equivalents, and its measurement does not create difficulties, which is not the case with the measurement of utility. The level of utility that an individual enjoys in spending everything that gives him a sense of satisfaction or from the activities he undertakes is different and determined by subjective personality factors. The criterion of maximizing social prosperity is accepted as an important concept of efficiency but is still criticized, which refers to the fact that as a normative theory does not offer a satisfactory explanation of the initial distribution of rights, and that the rule of maximizing wealth may conflict with ethical norms, etc.

CONCLUSION

The level of crime is determined by a large number of factors relating to the characteristics of individuals, their moral limitations, risk appetite, etc., but also factors relating to economic conditions, i.e. economic development of a country and the state's willingness to sanction perpetrators. Sanctioning criminals implies the engagement of resources in the field of police and justice and requires coordination in their work. The increase in the probability that criminals will bear the consequences of their behavior reduces the expected utility of engaging in crime, which reduces the incentive for individuals to engage in criminal activities. The analysis pointed out the necessity of increasing the costs of dealing with crime and creating conditions for generating income in legal flows. The increase in the costs of dealing with crime is realized by the increased probability of punishment, adequate penal policy, and allocation of resources within prevention.

This paper emphasizes the significant role of the police and the judiciary and increasing efficiency in their work. By increased preventing investment within these areas, crime level can be affected which would lead to a decrease in costs of individuals who are the victims of criminal acts, and overall social costs caused by crime as well. With the decrease of crime level, there would be a decrease in the amount of resources that this area absorbs, and resources engaged in court proceedings initiated with the goal of punishing crime perpetrators. Next to material costs, a decreased number of committed criminal acts would cause a decrease in the number of injuries that have physical and mental pain that victims of criminal acts suffer as a consequence, and less of irrecoverable loss as well.

The effect that crime has on society as a whole, as well as the costs that it causes, makes the intensive activity of legislators to adequately regulate this justifiable and necessary.

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