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INEVITABILITY OF PUNISHMENT – THE CASE OF LITHUANIA

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Abstract. *When discussing issues related to the allocation of resources for the criminal justice system and crime prevention, it is important to consider the share of criminal offences (or their perpetrators in particular) sanctioned by actual penalties within the criminal justice system and the share of committed criminal offences whose perpetrators have escaped punishment. This article examines the data of criminal victimisation surveys (population polls), which formed the basis for calculating crime rate and reported crime rate, examines the recorded crime rate and the share of investigated criminal offences, the number of criminal offences decided at first instance courts and the share of offences actually sentenced. There are 12 types of criminal offences provided for in this article. It was found that, depending on the type of criminal offence, perpetrators actually punished by real penalties were those who committed 0.01–13% of criminal offences in Lithuania in 2011. Actually, the criminal justice system affects only a very small share of offenders to its fullest extent. This calls for a greater role of crime prevention in solving the problem of crime, as compared to punishment. This must be taken into consideration while allocating resources for the criminal justice system and crime prevention.*

Keywords: *crime, criminal offences, punishment, unpunished, escaping a penalty, victimisation survey.*

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Introduction

Relevance. The possibility to escape punishment for crimes may influence people's behavioural choices as to whether to commit a crime or not. Therefore, it is important to study the share of committed crimes for which perpetrators do not escape punishment.

Extensive public resources are allocated to the criminal justice system (such as the police, courts, prosecution and penitentiary institutions). Some criminal policy makers (members of parliament, government representatives and others) believe that the threat of punishment and the punishment itself are effective measures of crime prevention and control. They seek to increase penalties and strengthen the criminal justice institutions. Other criminal policy makers believe that crime prevention is a more rational and effective way of responding to crime. Both responses to crime are important and mutually complementary. However, the limited public resources for crime prevention and control requires a specific decision on what share of resources should be allocated to the institutions of the criminal justice system and what share to crime prevention. To decide this, several aspects should be taken into consideration: (1) whether it is punishment or crime prevention that brings higher efficiency and better cost to benefit ratio; (2) the share of all criminals that can be reached by punishment and the share that can be deterred by crime prevention. This article focuses on the latter aspect. The level of allocated resources depends on the share of criminals that can be reached by punishment, compared to crime prevention. In addition, it is important to assess the share of criminals affected by real penalties according to separate types of criminal offences.

The more the damage inflicted by specific types of criminal offences, the more important it is to prevent persons from committing such offences, by identifying them and restricting their ability to further commit the same crime. It is relevant to disclose the most important influencing factors for criminals to escape real punishment, in order to reduce them.

The level of investigation of the topic. Various studies assess the inevitability of punishment and the deterring effect of inevitability of punishment on human behaviour. It was found in England and Wales in 1994 that for every 100 crimes committed, 47 are reported to the police, 27 are recorded by them and five are cleared up. Only three out of 100 result in a caution or a conviction[1].

Bright (1997) presented the data showing that in England and Wales criminals are convicted only for 2% of all committed criminal offences[2].

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1 Home Office Research and Statistics Department. Information on the criminal justice system in England and Wales. London: HMSO, 1995.

2 Bright, Jon. Turning the Tide: Crime, Community and Prevention [interactive]. London: Demos, 1997, p. 118 [accessed on 06-12-2016]. <https://www.demos.co.uk/files/Turningthetide.pdf>.

Alencar and Gico (2011) explored the Brazilian judicial system in the fight against corruption and found that "*the Brazilian judicial system is highly ineffective against corruption, with a lower than five percent probability of conviction*"[3].

Iglesias *et al.* (2012) explored economic crimes and the relationship between "*the social losses from crimes (which depend on their number and on the produced harm), the cost of apprehension and conviction, and the probability of punishment per crime*"[4]. They created a model that determines "*how many crimes should be permitted and how many offenders should go unpunished, through minimization of the social loss function*"[5].

Kleck and Barnes (2013) explored the deterrent influence of punishment risk perception and concluded that "*regardless of whether one focuses on perceptions of individual persons or the average of perceptions among large populations, there is generally no significant association between perceptions of punishment levels and the actual levels of punishment that the criminal justice system achieves. This in turn implies that increases in punishment levels do not routinely reduce crime through general deterrence mechanisms, because the fundamental link between actual punishment levels and perceptions of punishment levels appears to be weak to nonexistent*"[6].

Barnes (2014) offered an analysis of the criminal justice system's effectiveness in identifying, apprehending, convicting, and punishing high-level/persistent offenders. He concluded that persistent offenders (as identified by self-reported crime) were much more likely to be arrested (63% vs. 26%), accounted for more arrests, were more likely to be convicted (39% vs. 11%), were more likely to be placed on probation (38% vs. 12%), and were more likely to be sent to jail (43% vs. 13%), compared to non-persistent offenders[7].

Loughran *et al.* (2012) tested the extent to which the risk of being punished deters individuals from committing criminal offences. They found that "*perceived risk deters only when it reaches a certain threshold <...> and a substantially accelerated deterrent effect for individuals at the high end of the risk continuum*"[8]. In Lithuania, Kiškis *et al.* (2014) studied the share of criminal offences (which res-

3 Alencar, Carlos Higino Ribeiro; Gico, Ivo. When Crime Pays: Measuring Judicial Performance against Corruption in Brazil. Law and Business Review of the Americas. 2011, 17(3), p. 415–434.

4 Iglesias, J. R., *et al.* Crime and Punishment: Does It Pay to Punish? Physica A: Statistical Mechanics and Its Applications. 2012, 391(15), p. 3942–3950.

5 *Ibid.*

6 Kleck, Gary; Barnes, J. C. Deterrence and Macro-Level Perceptions of Punishment Risks: Is There a 'Collective Wisdom'? Crime & Delinquency. 1 October 2013, 59(7), p. 1006–1035.

7 Barnes, J. C. Catching the Really Bad Guys: An Assessment of the Efficacy of the U.S. Criminal Justice System. Journal of Criminal Justice. 2014, 42(4), p. 338–346.

8 Loughran, Thomas, *et al.* Re-Examining the Functional Form of the Certainty Effect in Deterrence Theory. Justice Quarterly. 2012, 29(5), p. 712–741.

pondents report during criminal victimisation surveys) recorded by law enforcement authorities[9].

Novelty. The share of criminal offences (reported by residents during criminal victimisation surveys) committed in Lithuania by perpetrators that avoided real punishment according to separate types of criminal activities is unclear. This aspect lacks investigation in Lithuania.

Purpose – to investigate the share of criminal offences (reported by residents during criminal victimisation surveys) in Lithuania for which perpetrators did not avoid real punishment in 2011 by separate types of criminal offences and to disclose the main factors affecting punishment avoidance. 2011 was chosen because 2012 saw the launch of one of the latest and most accurate criminal victimisation surveys in Lithuania (a total of 2006 residents were questioned), covering the maximum scope in terms of the type of criminal offences, when respondents were asked if they suffered from specific types of criminal offences namely in Lithuania in 2011.

The objects under investigation: the rate of committed criminal offences in Lithuania in 2011, the rate of criminal offences reported to the police and other law enforcement authorities, the rate of recorded criminal offences, the share of investigated criminal offences, the number of criminal offences investigated at first instance and the share of these offences punished by real penalties. Criminal sentences imposed by the courts of first instance were chosen because the National Courts Administration was only able to provide this type of data in reply to the author's request.

Methods. Statistical analysis, document analysis, comparison, generalization and other methods were used.

1. Methodology

In order to assess the actual rate of committed criminal offences, the data of the criminal victimization survey conducted in Lithuania in 2012 by the researchers of Mykolas Romeris University[10] were used. The following criminal offences were included in the victimological survey (according to the Criminal Code of the Republic of Lithuania (CC)[11]): 1. Robbery (Art. 180 CC); 2. Theft (Art. 178 CC); 3. Extortion

9 Kiškis, Alfredas, et al. Nusikalstamumas Lietuvoje ir jo prevencijos perspektyvos: monografija (redaktorius Alfredas Kiškis). Vilnius: Mykolo Romerio universitetas, 2014, p. 270-271. <http://ebooks.mruni.eu/product/nusikalstamumas-lietuvoje-ir-jo-prevencijos-perspektyvos>.

10 The nationally representative victimisation survey was conducted by the researchers of Mykolas Romeris University. The survey encompassed the entire territory of the Republic of Lithuania; with interviews of 2006 residents aged between 15 and 74. The respondents of this survey were selected on the basis of multilevel stratified random selection. The interviews were conducted by the Lithuanian and British public poll and market research company "BALTIC SURVEYS Ltd". The respondents were asked the following questions: whether in 2011 they were affected by different criminal offences (individual victimisation); the number of times that they have experienced such type of victimisation in 2011 in Lithuania; the number of criminal offences reported by them to the law enforcement authorities (the police).

11 The Criminal Code of the Republic of Lithuania. Valstybės Žinios, 2000, No VIII-1968. <https://www.unodc.org/res/cld/document/ltu/criminal_code_of_lithuania_html/Lithuania_Criminal_Code_2000_as_amd_2010.pdf>.

of property (Art. 181 CC); 4. Swindling (Art. 182 and 186 CC); 5. Destruction of or damage to property (Art. 187 and 188 CC); 6. Sexual assault (Art. 149, 150 and 151 CC); 7. Sexual harassment (Art. 152 CC); 8. Causing physical pain or health impairment (Art. 135-140 CC); 9. Threatening to murder or terrorising (Art. 145 CC); 10. Violation of public order (Art. 284(1) CC); 11. Offering, giving or selling drugs (Art. 260 CC); 12. Illegal data and system interference (Art. 196 and 197 CC); 13. Claiming a bribe (Art. 225 CC); 14. Other criminal offences (respondents could name other types of crimes from which they have suffered)[12]. However, this article only deals with 12 types of criminal offences, as sexual assault was excluded from the research due to the fact that during the population survey only one woman stated to have suffered from sexual assault. A single case is not statistically representative of sexual assault in Lithuania. The respondents did not suffer from other types of criminal offences.

In order to calculate the rate of criminal offences committed and the rate of criminal offences reported to law enforcement authorities, calculated per 100 thousand inhabitants, the number of Lithuanian population aged from 15 to 74, which at the beginning of 2011 accounted to 2 516 420[13], was used. In order to calculate the rate of recorded criminal offences per 100 thousand inhabitants, the number of Lithuanian population at the beginning of 2011, amounting to 3 244 601[14], was used.

The number of recorded criminal offences in Lithuania in 2011 and of investigated criminal offences obtained from statistical reports[15] was compiled by the Information Technology and Communications Department under the Ministry of the Interior or provided at specific request[16].

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12 Justickis, V.; Uscila, R.; Kiškis, A. Two-rays approach in the integration of victimological and recorded data on criminality [interactive]. Jurisprudence. 2012, 19(2), p. 807 [accessed on 06-12-2016]. <https://www3.mruni.eu/ojs/jurisprudence/article/view/61/56 >.

13 Statistics Lithuania. Population as of 1 January by place of residence, sex, age (5 year groups) and year [interactive]. [accessed on 17-05-2012]. <http://db1.stat.gov.lt/statbank/selectvarval/saveselections.asp?MainTable=M3010206&PLanguage=1&TableStyle=&Buttons=&PXSId=3212&IQY=&TC=&ST=ST&rvar0=&rvar1=&rvar2=&rvar3=&rvar4=&rvar5=&rvar6=&rvar7=&rvar8=&rvar9=&rvar10=&rvar11=&rvar12=&rvar13=&rvar14=>.

14 *Ibid*.

15 Information Technology and Communications Department. Data on criminal offences committed in the Republic of Lithuania in 2011 (form 1-G, 1-Ž and EK-SAV) [interactive]. [accessed on 11-11-2016]. <http://www.ird.lt/statistines-ataskaitos/?metai=2011&menuo=12&idAta=1&rt=1&oldYear=2011&id=136&idStat=10&regionas=0&id3=1##Atas>.

16 The number of investigated criminal offences not included in the statistical reports of the Information Technology and Communications Department, provided upon request of 13 November 2016 by chief specialist Gelena Nedoltovskaja of the Information Technology and Communications Department, the Information Processing and Statistics Section. These numbers (the numbers of investigated criminal offences in Lithuania in 2011) are the following: destruction of or damage to property through negligence (Art. 188 CC) - 3; sexual harassment (Art. 152 CC) - 9; criminal offences against human health (Art. 135-140 CC) - 2422; threatening to murder or cause a severe health impairment to a person or terrorisation of a person (Art. 145 CC) - 437; unlawful possession of narcotic or psychotropic substances for the purpose of distribution (Art. 260 CC) - 660; illegal data and system interference (Art. 196 and 197 CC) - 2.

The number of criminal offences examined at first instance courts in Lithuania in 2011 and the number of criminal offences sentenced with real punishment at first instance courts in Lithuania in 2011 was obtained at specific request from the National Courts Administration[17].

"Imposed a real punishment" includes the following types of punishment: deprivation of public rights, deprivation of the right to work in a certain position or to engage in certain activities, community service, a fine, restriction of freedom, arrest, fixed-term imprisonment, imprisonment for life. The offences for which no actual punishment is imposed include court judgments on deferred punishment or exemption from criminal liability.

How was the share of criminal offences (of all committed criminal offences reported by residents during criminal victimization surveys) committed by persons who failed to avoid real punishment calculated? The rate of all committed criminal offences per 100 thousand inhabitants was obtained on the basis of the criminal victimization survey conducted in Lithuania in 2012. The rate of reported criminal offences per 100 thousand inhabitants relied on the same survey data. Then the share of criminal offences which the respondents reported to law enforcement authorities was calculated[18]. Similarly, the share of recorded criminal offences, as compared to the number of reported criminal offences, was determined[19]. The share of investigated criminal offences was calculated by dividing the number of investigated criminal offences by the number of recorded criminal offences. The share of criminal offences for which courts imposed real punishment with regard to the total number of criminal offences examined at first instance courts in Lithuania in 2011 was obtained on the same basis. The share of criminal offences for which real punishment was imposed with regard to the rate of criminal offences calculated on the basis of the results of the criminal victimization survey (population survey), was calculated by multiplying all the shares – reported, recorded, investigated criminal offences and offences for which real punishment was imposed.

In Figure 1, the rates of analysed types of criminal offences calculated per 100 thousand inhabitants were based on the data of the criminal victimization survey[20]. The share of criminal offences for which the perpetrators did not escape real punishment is calculated against these rates of criminal offences, i.e. for the purposes of the study, these rates equate to 100%.

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17 This data was presented on 26 October 2016 by chief specialist of the National Courts Administration Legal Division Stasys Putvinskis.

18 This is the ratio of the rate of criminal offences reported to law enforcement authorities and of committed criminal offences.

19 The rates of criminal offences per 100 thousand inhabitants are compared.

20 Kiškis, A., *et al. supra* note 9, p. 270-271.

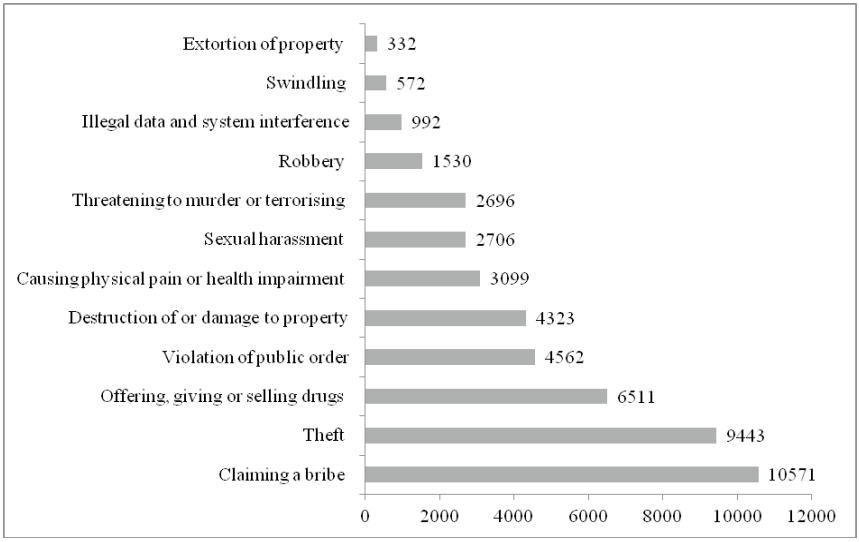


Figure 1. The rate of committed criminal offences per 100 thousand inhabitants in Lithuania in 2011, calculated on the basis of the criminal victimization survey

Table 1 shows the rates of committed criminal offences per 100 thousand inhabitants, distributed according to the rate of committed criminal offences (Vict), calculated on the basis of the victimization survey data. Here (Rep) represents the rate[21] of reported criminal offences, calculated on the basis of the victimization survey data. (Rec) shows the rate of recorded criminal offences. After comparing the total rate of recorded criminal offences (1838) with the rate of criminal offences calculated on the basis of the victimization survey results (47337), it is clear that only 3.9% of committed criminal offences were recorded in Lithuania in 2011.

Type of criminal offence	**Vict**	**Rep**	**Rec**
Claiming a bribe (Art. 225)	10571	281	2
Theft (Art. 178)	9443	5437	1139
Offering, giving or selling drugs (Art. 260)	6511	460	28
Violation of public order (Art. 284(1))	4562	1087	107

21 Kiškis, A., *et al. supra* note 9, p. 270-271.

Destruction of or damage to property (Art. 187 and 188)	4323	2196	156
Causing physical pain or health impairment (Art. 135-140)	3099	1458	127
Sexual harassment (Art. 152)	2706	361	0.3
Threatening to murder or terrorising (Art. 145)	2696	693	28
Robbery (Art. 180)	1530	1033	77
Illegal data and system interference (Art. 196 and 197)	992	186	0.2
Swindling (Art. 182 and 186)	572	304	169
Extortion of property (Art. 181)	332	89	5
Total	**47337**	**13585**	**1838**

Table 1. The rates of criminal offences per 100 thousand inhabitants in Lithuania in 2011

At the request of the author of this article, the National Courts Administration provided the number of criminal offences examined at first instance and the number of criminal offences for which courts of first instance passed a real sentence (Table 2). It can be seen from Table 2 that 60% of the perpetrators of all analysed criminal offences for which final judgments were adopted in criminal cases at first instance did not escape real punishment.

No.	**Articles of the Criminal Code**	**Number of offences**	**Imposed real penalty**	**Share**
1.	Art. 135. Severe Health Impairment	293	241	82%
2.	Art. 136. Severe Health Impairment Caused in a State of Passion	7	0	0%
3.	Art 137. Severe Health Impairment Caused Through Negligence	41	5	12%
4.	Art 138. Non-Severe Health Impairment	1400	450	32%
5.	Art 139. Non-Severe Health Impairment through Negligence	42	14	33%

6.	Art 140. Causing Physical Pain or Negligible Health Impairment	883	400	45%
7.	Art 145. Threatening to Murder or Cause a Severe Health Impairment to a Person or Terrorisation of a Person	313	151	48%
8.	Art 152. Sexual Harassment	4	2	50%
9.	Art 178. Theft	8523	5506	65%
10.	Art 180. Robbery	1785	910	51%
11.	Art 181. Extortion of Property	90	48	53%
12.	Art 182. Swindling	1525	1120	73%
13.	Art 186. Causing Property Damage by Deceit	38	27	71%
14.	Art 187. Destruction of or Damage to Property	1337	787	59%
15.	Art 188. Destruction of or Damage to Property through Negligence	8	3	38%
16.	Art 196. Illegal data interference	2	2	100%
17.	Art 197. Illegal system interference	0	0	
18.	Art 225. Claiming a bribe	27	14	52%
19.	Art 260. Unlawful Possession of Narcotic or Psychotropic Substances...	507	425	84%
20.	Art 284 (1) (crimes only). Violation of Public Order	2256	1263	56%
	Total:	**19081**	**11368**	**60%**

Table 2. The number of criminal offences investigated by first instance courts in Lithuania in 2011

2. Results

Table 3 shows the results by different types of criminal offences, by giving partial comparisons. In the column (Vict1), the rate of committed criminal offences per 100 thousand inhabitants in Lithuania in 2011, calculated on the basis of the criminal victimization survey (population survey), was equated to 1 (which is 100%). The column (Rep/Vict1) shows the reported share of all suffered criminal offences (the

rate of reported criminal offences per 100 thousand inhabitants divided by the rate of criminal offences suffered by the respondents, per 100 thousand inhabitants). The column (Rec/Rep) shows the recorded share of all reported criminal offences (the rate of recorded criminal offences per 100 thousand inhabitants divided by the rate of reported criminal offences per 100 thousand inhabitants). The column (Investig/Rec) shows the share of criminal offences investigated by law enforcement authorities (the police) of all recorded criminal offences (the number of investigated criminal offences divided by the number of recorded ones). The column (Real punishment/Investig) presents the share of criminal offences for which first instance courts imposed real punishment, as compared to criminal offences examined by first instance courts (the number criminal offences for which first instance courts imposed real punishment divided by the number of criminal offences examined by first instance courts). The column (Real punishment/Vict1) shows the share of criminal offences for which first instance courts imposed real punishment, compared to the rate of committed criminal offences per 100 thousand inhabitants in Lithuania in 2011, calculated on the basis of the criminal victimization survey data, equated to 1 (which is 100%). The column (Real punishment/Vict1) was compiled by multiplying the shares of the following values: (Vict1), (Rep/Vict1), (Rec/Rep), (Investig/Rec) and (Real punishment/Investig)[22]. The column (For one of offences) shows on average one of the number of criminal offences for which perpetrators did not escape punishment. The value (For one of offences) is inverse to the value (Real punishment/Vict1)[23].

Type of criminal offence	**Vict1**	**Rep/ Vict1**	**Rec/ Rep**	**Investig / Rec**	**Real punishment/ Investig**	**Real punishment / Vict1**	**For one of offences**
Claiming a bribe (Art. 225)	1	0.027	0.007	0.676	0.5185	0.00007	14380
Theft (Art. 178)	1	0.576	0.21	0.256	0.6460	0.0199	50
Offering, giving or selling drugs (Art. 260)	1	0.071	0.061	0.728	0.8383	0.0026	382

22 For example, in the case of 'Claiming a bribe' the result is calculated as follows: (Real punishment/Vict1) = (Vict1) · (Rep/Vict1) · (Rec/Rep) · (Investig/Rec) · (Real punishment/ Investig) = 1 · 0.027 · 0.007 · 0.676 · 0.5185 = 0.00007.

23 The value (for one of the offences) is calculated as follows: 1 divided by (Real punishment/ Vict1). For example, in the case of 'Theft' it is calculated as follows: (for 1 of the offences) = 1 / (Real punishment/ Vict1) = 1 / 0.0199 = 50.29. This means that on average only 1 out of 50 theft perpetrators did not escape real punishment.

Violation of public order (Art. 284(1))	1	0.238	0.096	0.661	0.5598	0.0085	118
Destruction of or damage to property (Art. 187 and 188)	1	0.508	0.071	0.258	0.5874	0.0055	183
Causing physical pain or health impairment (Art. 135-140)	1	0.471	0.088	0.579	0.4164	0.01	100
Sexual harassment (Art. 152)	1	0.133	0.001	0.818	0.5	0.00005	19512
Threatening to murder or terrorising (Art. 145)	1	0.257	0.041	0.479	0.4824	0.0024	415
Robbery (Art. 180)	1	0.676	0.075	0.463	0.5098	0.0119	84
Illegal data and system interference (Art. 196 and 197)	1	0.188	0.001	0.286	1	0.00006	16087
Swindling (Art. 182 and 186)	1	0.531	0.566	0.6	0.7339	0.1324	8
Extortion of property (Art. 181)	1	0.267	0.06	0.785	0.5333	0.0067	150
Total	**1**	**0.287**	**0.136**	**0.355**	**0.5958**	**0.0082**	**121**

Table 3. Shares of criminal offences in Lithuania in 2011

Table 4 presents the main results of the research by different types of criminal offences, calculated as percentage shares. Table 4 contains rounded numbers in order to show the substance[24].

24 Also that the entire table fits the page size.

Type of crimi-nal offence	**Vict-100**	**Rep/ Vict-100**	**Rec/ Rep**	**Inves-tig / Rec**	**Real punish-ment/ Investig**	**Real punish-ment/ Vict100**	**For one of offen-ces**
Claiming a bribe (Art. 225)	100%	3%	1%	68%	52%	0.01%	14380
Theft (Art. 178)	100%	58%	21%	26%	65%	2%	50
Offering, giving or selling drugs (Art. 260)	100%	7%	6%	73%	84%	0.3%	382
Violation of public order (Art. 284(1))	100%	24%	10%	66%	56%	0.9%	118
Destruction of or damage to property (Art. 187 and 188)	100%	51%	7%	26%	59%	0.6%	183
Causing physical pain or health impairment (Art. 135-140)	100%	47%	9%	58%	42%	1%	100
Sexual harassment (Art. 152)	100%	13%	0.1%	82%	50%	0.01%	19512
Threatening to murder or terror-ising (Art. 145)	100%	26%	4%	48%	48%	0.2%	415
Robbery (Art. 180)	100%	68%	7%	46%	51%	1%	84
Illegal data and system interfer-ence (Art. 196 and 197)	100%	19%	0.1%	29%	100%	0.01%	16087
Swindling (Art. 182 and 186)	100%	53%	57%	60%	73%	13%	8
Extortion of prop-erty (Art. 181)	100%	27%	6%	78%	53%	0.7%	150
Total	**100%**	**29%**	**14%**	**36%**	**60%**	**0.8%**	**121**

Table 4. Shares of criminal offences in Lithuania in 2011, %.

For all the types of investigated criminal offences in total (the aggregate sum of all offences), only persons who committed 0.8% of criminal offences, the rate of which was calculated on the basis of the victimization survey data (Table 4), were the ones who did not escape real punishment. In other words, on average, the perpetrators of only 1 out of 121 committed criminal offences suffered real punishment.

Real punishment (Table 4) was mostly the case for persons found guilty of swindling (13%), theft (2%) and robbery (1%); in other words, on average, in 2011 perpetrators did not escape real punishment for 1 out of 8 deceits, 1 out of 50 thefts and 1 out of 84 robberies. It is good to know that most persons who failed to escape punishment were those sentenced for swindling, as of all types of criminal offences, this type of criminal offences causes the most serious property damage[25]. A somewhat unexpected but positive result can be noted, that the relatively high number of persons (compared to other types of criminal offences) failed to escape punishment for theft, as thefts are the most widespread criminal offences in Lithuania and other countries.

Those with the lowest number of not escaping real punishment (Table 4) were persons sentenced for sexual harassment (0.01%), illegal data and system interference (0.01%) and claiming a bribe (0.01%); in other words, on average, in 1 out of 19512 sexual harassments, 1 out of 16087 illegal data and system interference and 1 out of 14380 claiming a bribe cases perpetrators not escaped real punishment. These three types of offences are characterised by the lowest share of reported and/or recorded criminal offences.

What are the main reasons leading to such a large share of criminal perpetrators left unpunished? It can be seen from the bottom row in Table 4 that overall, of all the investigated criminal offences, the largest decrease is from the rate of reported offences to the rate of recorded offences. Only 14% of reported criminal offences were recorded. The lowest decrease is noted in first instance courts imposing real punishment for 60% of examined criminal offences. Other decreases in the number of criminal offences (29% reported and 36% investigated) are quite insignificant. They are known for several years now and correspond to the respective decreases in advanced countries, naturally, with some differences pertaining to Lithuania. The share of reported crimes in advanced countries is slightly higher (about 40-50%) than in Lithuania, mainly due to the lower trust of Lithuanian residents in the police and their lower sense of civic duty. The share of investigated criminal offences in advanced countries, as compared to the share of recorded ones, is lower than in Lithuania due to a relatively higher share of recorded offences in those countries, compared to the reported number (the more offences are recorded, the lower the investigated share).

What are the largest decreases of crime rates in Lithuania in 2011 according to separate types of criminal offences? The largest decreases (as in the general case) can be seen from column (Rec/Rep) – the recorded share of all reported criminal offences (Table 4). These criminal offences are: sexual harassment (0.1%), illegal data and sys-

25 Kiškis, A., et al. supra note 9, p. 225; Rollings, K. Counting the costs of crime in Australia: a 2005 update [interactive]. 2008, Research and Public Policy Series No 91 [accessed on 09-11-2010]. <http://www.aic.gov.au/publications/currentproc. 20series/rpp/81-99/rpp91.aspx>.

tem interference (0.1%) and claiming a bribe (1%). The other columns in Table 4 show a significant decrease in the number of offences in the case of claiming a bribe, where only 3% of such offences have been reported. This figure is well in line with the results of the international crime victim survey in Lithuania conducted in 1997, according to which, in 1996 only 3% of respondents in Lithuania who suffered from claiming a bribe reported it to the police[26].

3. Discussion, conclusions and recommendations

The results obtained in this study – the number of offences and their ratios – are approximate. Calculated values are also approximate. The rate of criminal offences calculated based on the data of criminal victimization surveys (population surveys) is used as the reference rate, or as the estimate of the actual crime rate. However, crime victim survey data are not actual crime data. Crime victim survey data reflect the individual perception of crime. The respondents are not lawyers, they cannot legally assess all the relevant circumstances, and those circumstances are not investigated. After investigation, some events would not qualify as crimes. Respondents tend to attribute previous incidents to the reference period (a phenomenon known as "telescoping"). Respondents do not remember all incidents and all the details, etc. Nevertheless, some criminologists refer to the data obtained on the basis of victimisation polls as "actual level of victimization by crime"[27]. Despite all the advantages and disadvantages, criminologists agree that crime victim survey data are a more reliable source of crime data, compared to recorded crime (the police) statistics. Crime victims do not report a large share of offences suffered by them to the police and the latter do not record many of the reported offences.

Other indicators used in this study, such as the rate of reported criminal offences, the rate of recorded offences, the share of investigated criminal offences and the offences for which the courts of first instance imposed real punishments, are similarly problematic in terms of accuracy. For example, this concerns the number of reported criminal offences obtained from the respondents' answers, as to whether they reported these criminal offences to the police. Respondents do not always and accurately report crimes to the police[28]. In spite of the accuracy problems of crime and judicial

26 Babachinaitė, Genovaitė, *et al*. International Crime Victim Survey in Lithuania 1997, final report. Vilnius: Law Institute, 1997.

27 Van Dijk, J. The case for survey-based comparative measures of crime. European Journal of Criminology, 2015, 12(4), p. 437–456.

28 In some cases, the victim reports to the police about the incident by phone. The police invite the victim to come in order to record the precise circumstances of the event in the appropriate legal documents. But sometimes the victim does not appear at the police, the police fail to record the criminal offence in the absence of a written complaint of the victim, etc. It must be considered that in such cases the victim has failed to properly inform about the event.

statistical indicators used in this study, these indicators are used in many other studies, so they are and can be relied on to calculate the values of the study – the share of committed criminal offences for which perpetrators do not escape real punishment.

On average, about 1% of the perpetrators of criminal offences (of all the analysed types of criminal offences) did not escape real punishment. In other words, on average, offenders did not escape real punishment only for 1 out of 121 offences. For some types of criminal offences, an even lesser share of perpetrators did not escape punishment – on average, it was only 1 out of 19512 for sexual harassment, 1 out of 16087 for illegal data and system interference and 1 out of 14380 for claiming a bribe. The fact that the criminal justice system actually deals with only a small share of criminal offences, leads to the **conclusion** that the role of crime prevention in solving the problem of crime is more important, compared to punishment. Criminal justice policy needs to make a decisive shift towards prevention. It is **recommended** that the legislator and the Government take this into account when allocating resources to the criminal justice system and to crime prevention, by choosing the corresponding financing proportions.

It can be **concluded** that the fact that on average about 1% of perpetrators of criminal offences did not escape real punishment (of all the analysed types of criminal offences) is not exclusive to Lithuania. In England and Wales, perpetrators were convicted for only about 2% of all the committed crimes[29]. Considering that in England and Wales, as in many other advanced countries, real punishment was imposed on nearly half of the convicts, the following result is obtained (2% / 2 = 1%), i. e. that on average about 1% of the perpetrators did not escape punishment. This corresponds to the results of the research obtained in Lithuania.

Overall, considering all of the analysed types of criminal offences, the largest decrease is noted from the rate of reported offences to the rate of recorded offences. Only 14% of reported criminal offences were recorded. The **conclusion** is that the reasons for such sharp decrease in the rate of criminal offences are unclear. It is **advisable** to explore the reasons of these largest decreases in future studies.

29 Bright, Jon. Turning the Tide: Crime, Community and Prevention [interactive]. London: Demos, 1997, p. 118 [accessed on 06-12-2016]. <https://www.demos.co.uk/files/Turningthetide.pdf>.

BAUSMIŲ NEIŠVENGIAMUMAS – LIETUVOS ATVEJIS

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Santrauka. *Tikslas. Kai mes svarstome išteklių skyrimo baudžiamojo teisingumo sistemai ir nusikalstamumo prevencijai klausimus, mums aktualu yra įvertinti, kokią dalį nusikalstamų veikų (tiksliau, jas padariusių asmenų) baudžiamojo teisingumo sistema veikia realiomis bausmėmis ir kokią dalį nusikalstamų veikų padarę asmenys lieka nenubausti.*

Metodai. Šiame straipsnyje nagrinėjami kriminalinės viktimizacijos tyrimų (gyventojų apklausų) duomenys, vertinamas jais apskaičiuotas nusikalstamumo lygis ir praneštų veikų policijai lygis, nagrinėjamas registruoto nusikalstamumo lygis ir ištirtų nusikalstamų veikų dalis, pirmosios instancijos teismuose išnagrinėtų nusikalstamų veikų skaičius bei dalis nusikalstamų veikų, už kurias teismai paskyrė realias bausmes. Tiriamos dvylikos rūšių nusikalstamos veikos.

Rezultatai. Nustatyta, kad priklausomai nuo nusikalstamos veikos rūšies neišvengė bausmės asmenys, kurie padarė nuo 0,01 iki 13 procentų nusikalstamų veikų 2011 metais Lietuvoje.

Išvados. Baudžiamojo teisingumo sistema visu savo pajėgumu realiai pasiekia labai mažą dalį nusikalstamas veikas padariusių asmenų. Tai pagrindžia didesnį nusikalstamumo prevencijos vaidmenį sprendžiant nusikalstamumo problemą, lyginant su bausmėmis. Į tai turi būti atsižvelgiama skirstant išteklius baudžiamojo teisingumo sistemai ir nusikalstamumo prevencijai.

Reikšminiai žodžiai: *nusikalstamumas, nusikalstamos veikos, bausmės, nenubaustas, bausmių išvengimas, viktimizacijos tyrimas.*

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