

Sentencing Decisions Around Quantity Thresholds: Theory and Experiment*

Jakub Drápal[†] and Michal Šoltés[‡]

November, 2021

Abstract

We study the implications of the structure of criminal codes on sentencing decisions. To limit sentencing disparities, criminal codes typically divide offenses into subsections with specific sentencing ranges. The classification into corresponding subsections often depends on exceeding a given quantity threshold, such as drug amount. We study the consequences of these quantity thresholds on sentencing decisions and argue that the threshold effect can be decomposed into two opposing mechanisms: the severity mechanism and the reference one. An experiment with Czech prosecutors shows that thresholds drive substantial increases in sentences, leading to sentencing disparities. We further introduce empirical measures of (in)justice and quantify the consequences of quantity thresholds on the probability of imposing a just sentence.

*We thank to Michal Bauer, Libor Dušek, Francesco Drago, Christoph Engel, Brian Johnson, Ondřej Kubů, Filip Matějka, Josef Montag, Vladimír Novák, Jiří Pavlík, Ondřej Štátný, Jan Zápál, conference participants at the GLEA 2021, EALE 2021, ERoS 2020, seminar participants at Erasmus University, Rotterdam and the Prosecutor General's Office and to prosecutors for their participation. This study was supported by Czech Grant Agency, project GA19-15077S "Sentencing disparities in the post-communist continental legal systems", Charles University, GAUK project No. 218218 and also received funding from the European Research Council under the European Union's Horizon 2020 research and innovation programme (grant agreement No 678081). Preregistration: AEARCTR-0006023

[†]Institute of State and Law, Czech Academy of Sciences, Národní 18, 110 00 Prague, Czech Republic and Department of Economics, Faculty of Law Charles University, nám. Curieových 901/7, 116 40 Prague, Czech Republic. (Email: jakub.drapal@ilaw.cas.cz)

[‡] CERGE-EI, a joint workplace of Center for Economic Research and Graduate Education, Charles University and the Economics Institute of the Czech Academy of Sciences, Politických vězňů 7, P.O. Box 882, 111 21 Prague 1, Czech Republic