



WHITE-COLLAR CRIME AND FRAUD: THE DEFINITIONAL ISSUE

Lilia GÎRLA,

doctor în drept, conferențiar universitar (USM)

Jacob RUB,

*or. Haifa, Israel,
doctorand (USM)*

În cadrul acestui articol științific, am decis să elaborăm o definiție comprehensivă pentru crima gulerelor albe, precum și să efectuăm o analiză comparativă a infracțiunii gulerelor albe și a fraudei.

Așadar, am formulat câteva definiții care să evidențieze cele mai semnificative trăsături ale crimelor gulerelor albe. Au fost utilizate nu doar surse științifice, dar și reglementări internaționale de ultimă oră în materia prevenirii criminalității gulerelor albe.

Cuvinte-cheie: crima gulerelor albe; crima gulerelor albastre; încălcarea legii penale; fapta infracțională; economie tenebră; devianță la locul de muncă; înșelaciune; abuz de încredere.

In the realm of this scientific article we have decided to elaborate a comprehensive definition of the white-collar crime, as well as to perform a comparative research of the white-collar crime and fraud.

As a result, we have formulated several definitions which traced the significant features of white-collar crimes. There have been used not only scientific issues but also modern international regulations in the matter of prevention of white-collar criminality.

Keywords: white-collar crime; blue-collar crime; fraud; violation of the Criminal law; the criminal misdeed; shadow economy; workplace deviance; acts of dishonesty; abuse of trust.

Before the profound analysis of the white-collar crime concept, we have to clarify an issue of the significant issue. Thus, the decisive question in this analysis is *the criterion of violation of the criminal law*. We consider that conviction in the criminal court, which is sometimes suggested as the criterion, is not adequate because a large portion of those who commit crimes are not convicted in criminal courts.

In fact, *we accept the large approach in criminology* concerning definition of white-collar crimes and white-collar offenders. We sustain the current criminological postulation that the criminological research cannot be limited only to the misdeeds which are criminally prosecuted and punished by Criminal law [1]. So, what is important in distinguishing who is criminal is not how he or she has been treated by the criminal justice system but what he or she has actually done. In this respect, *convictability rather than actual conviction should be the criterion of criminality*. The criminologists would not hesitate to accept as data a verified case history of a person who was a criminal but had never been convicted.

Being defined the concept of criminality; it is relevant to clarify the term of white-collar criminality. Indeed, practically *there is no occupation which is immune from white-collar crime*. White-collar crime is „*he continuation of business with other means*”. It is a well-known and widespread phenomenon that impacts brand value and reputation, goodwill, and profitability of many organizations. Even occupations that are designed to restrain and exercise social control, such as the police and mental health professionals, have experienced white-collar crime by practitioners who violate the ethics and laws of their

professions. For example, physicians and dentists have charged private and public insurance programs for services not rendered or have used their positions to obtain drugs. Therapists have sexually abused patients, violating the very nature of their trusted positions. White-collar crime is common crime [2]. In general, *these are malpractices for financial gain* [3].

We believe that white-collar crime is not a legal category incorporating specific offenses, rather, it is a social construct. The placement of its conceptual boundaries often reflects the social boundaries of its users. Even among social scientists, it is most likely that criminologists, organizational theorists, social psychologists, stratification theorists, political scientists, or economists would differ in the criteria they consider central.

Undoubtedly, white-collar crime is an integral part of the shadow economy. In its order, *shadow economy* constitutes a social-economic institution which executes certain functions in the social life. Such functions can be both destructive (vicious), as well as constructive (creative) [4]. Without a doubt, the destructive component of the shadow economy prevails, which step by step becomes the basic threat for the national economic security.

Taking into account the new scientific results obtained by the sociologist Yu.V. Latov (Ю.В. Латов), we consider that it is absolutely relevant and reasonable to treat the phenomenon of shadow economy from the three-level approach:

– *White-collar shadow economy*. This form of shadow economy does not produce some new economic goods, and is considered to be inseparable from legal



economy. White-collar economy creates obstacles for competitiveness development in business;

– *Grey shadow economy*. This form of shadow economy produces the same economic goods, as a legal economy but outside the state control. It became a good training how to avoid any regulation of economic life;

– *Black shadow economy*. This form of shadow economy is imposed to be the most autonomous and has no connections with the legal economy because it produces commodities and products which fabricating is officially forbidden. It generates spreading and extending of non-economic compulsion which counteracts with the basic principles of market economy [5].

The consistent pattern of the legal economy is expressed in the inverse effect over the shadow economy. As a consequence, the shadow economy inherits a lot of characteristic features from the legal economy, especially, there is multiplied the branch diversification inside; there appear new connections between different segments which are growing up and developed from a local level even to an international one.

The criminal sector of shadow economy covers the totality of criminal acts which contribute to illegal permanent or single profits of the criminal offenders, in case of white-collar crimes – persons who take part in economic activity. Thus, comprehension of the nature of white-collar criminality is based on two fundamental criteria: *the offender's profit interest* and *his professionalism* [6]. This category of criminality includes also *the abuse of normal practices of organizations for personal or organizational enrichment* [7]. Organizations that tolerate unethical actions tend to socialize members to accept climates of unethical behavior conducive to criminality [8].

In modern forensic science there are emphasized the following *consistent patterns* of white-collar criminality: 1) it appears due to legal economic activity; 2) it is determined by permanent gaps in normative acts; 3) criminal actions of white-collar crime are camouflaged as apparently (at first sight) legal enterprise operations; 4) presence of goods and services turnover which assumes dealings with the criminal product; 5) multiple recurrence of transactions which brings the criminal profit; 6) criminal activity is multi-leveled and multi-phased; 7) non-criminal acts are associated with criminal economic activity in such a manner that, from an external point of view, the whole activity is comprehended as apparently legal one; 8) a profit-directed activity; 9) intentional misrepresentation of information in the documents, surroundings and comprehension of the people which are not taking part in the criminal economic activity; 10) high level of latency [9].

In the realm of this research we decided to analyze two most famous and, in our opinion, analogous notions, but not the same, such as **white-collar crime** and **fraud**.

The concept of fraud is both ubiquitous and indefinable. In some international regulations we can also meet the term of „*irregularity*”. Therefore, according to the paragraph 2) of Article 1 Regulation EC (EURATOM)

No 2988/95 of 18 December 1995, on the protection of the European Communities financial interests [10], definition of „*irregularity*” is a large concept which covers intentional violations as well as imprudent one committed by the economic actors. Thus, the this term is defined in the following manner: *any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure*.

The law has traditionally required that, to be fraudulent, a misleading statement or lie must be material, in that it concerns the price, quantity, effectiveness, or quality of the goods or services in question. The fraud must go to the nature of the bargain itself, rather than to the circumstances surrounding the bargain [11].

Traditionally, fraud has been thought to require *the use of deceit*. But while deception, historically and conceptually, seems to be at its core, the means by which fraud must be carried out are, under modern statutes, frequently defined more broadly. The category of fraud is perhaps the clearest. It involves the use of deception, the misrepresentation of status, experiences, commodities, or future events for the purpose of diverting economic assets from the receivers of misrepresented information to its sources.

Fraud is a human endeavor, involving deception, purposeful intent, intensity of desire, risk of apprehension, violation of trust, rationalization, etc. This embraces many and varied forms of conduct, ranging from false claims against an insurance policy to some corporate frauds that are meticulously planned and intricate in their execution [12]. The variety and complexity of fraud necessitates that, for purposes of explanation, the concept of fraud are “broken down” into manageable categories. Fraud involves intentional acts and is perpetrated by human beings using deception, trickery, and cunning that can be broadly classified as comprising two types of misrepresentation:

- *suggestio falsi* (suggestion of falsehood) or
- *suppressio veri* (suppression of truth) [13].

According to its core, historically-based definition, fraud involves the use of (1) „*false or fraudulent pretenses, representations, or promises*” for the purpose of (2) „*obtaining money or property*”. Under such a definition, fraud seems to refer to two basic, and fairly discrete, forms of moral wrongfulness: *stealing* and *deception*.

If the object of a given fraud is some „*unjust advantage*” or „*injury to the rights or interests of others*” other than the obtaining of money or property, then such fraud would not violate the norm against stealing. And if such fraud is carried out by some „*dishonest*” but non-deceptive means of the sort mentioned above, then it would involve cheating, exploitation, disloyalty, or promise-breaking, rather than deceit [14].

A fraud will have place in the case when there is communicated a false information to a person who is



capable to comprehend it, able understand the harmful character of the act and to control it. A person with the vicarious mental capacity will not be in state to understand it and to act irrational. Therefore, if a person does not comprehend the character of the acts which are committed against him or against the estate which belongs to him we will have a situation of theft and not fraud, even if the perpetrator has fulfilled some actions directed towards the inducement to victim's mistaken belief [15].

In continuation of our detailed analysis we have to bring to our mind that in accordance with Annex to Convention drawn up on the basis of Article K.3 of the Treaty on European Union, *on the protection of the European Communities' financial interests* [16], **fraud affecting the European Communities' financial interests** shall consist of:

a) *in respect of expenditure*, any intentional act omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities;

- non-disclosure of information in violation of a specific obligation, with the same effect;

- the misapplication of such funds for purposes other than those for which they were originally granted;

b) *in respect of revenue*, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities;

- non-disclosure of information in violation of a specific obligation, with the same effect;

- misapplication of a legally obtained benefit, with the same effect.

Actions which constitute fraud include but are not limited to: abuse of trust; fraud concerning the investments' capital; embezzlement and theft; theft by extortion; forgery and other manipulative actions with documents; despoliation; manipulations with rate or price inside the market; insolvency crimes; corruption and bribery (personal gain, offering of an advantage; accepting of bribe; offering of a bribe); threats and intimidation; manipulation with the accountant and financial declarations; illegal activity of „*inside trading*” and market manipulation; statistics falsification; cyber crimes; piracy and counterfeiting of products and trademarks; abuse of private and commercial secrets; anti-competitive conspiracy; money laundering; violation of purchasing politics; violation of brokerage contracts and any illegal act with signatures [17].

The economic and financial fraud is characterized by two principal dimensions such as:

- *National dimension*;

- *International dimension*.

National dimension assumes a totality of misdeeds recognized as criminal in accordance with national criminal legislation of the each state, which are committed in the realm of internal economical and financial system and which doesn't induce to the international procedures.

International dimension means a totality of criminal misdeeds which are perpetrated with an international level (people, corporations, banks etc.).

Those two dimensions do not have a static character because there is a tendency of internationalization of criminal frauds [18].

In order to be clear, we have to point out that the **benefit** is considered to be *an income, a profit or an advantage* obtained by someone from an activity or *financial gain* obtained from a corporation, and represents the difference between the profits realized and occasional losses.

The term that is often used to describe non-deceptive fraudulent means is „*dishonesty*”. *Dishonesty* includes notions as diverse as breach of trust, conflicts of interest, non-disclosure of material facts, exploitation, taking unfair advantage, non-performance of contractual obligations, and misuse of corporate assets. In the realm of this research we have to take into consideration that honesty defined as the extent to which individuals and groups in organizations abide by a consistent and rational ethical set of principles related to obligations which respect the truth.

Misrepresentations may pertain to the past, present or future. They may reflect transactions based on entitlement to benefits because of status or past experience, based on expectations of future events in an investment context, or based on more contemporary exchanges of goods and services. They may be implemented through oral or written means, or through the use of physical equipment, props, actors, or costumes. Central to these offenses is the fact that without the deception, the illicit transaction presumably would not be consummated [19].

Both offenders and victim can be individuals or organizations, businesses, governmental units, or consumers. Fraud may be enacted by organizational insiders, as in expense account padding; by those desirous of becoming insiders, as in fraudulent resumes and applications for employment or educational admission; or by those outside of organizational contexts, as in consumer fraud.

The basic standpoint of this issue is the following fact: *while deceit is no longer the defining characteristic of fraudulent conduct, it is still one of the most common means by which the offense is committed*.

With regards to all above mentioned, we believe that **fraud** signifies *any intentional or deliberate act, any false representation or concealment of any important fact by the employees or third persons for the purpose of any personal gain or in order to inflict harm or financial lost*. In such a manner, fraud can include *any violation of the regulations concerning the capital market, violation of the internal legislation or instructions*



by the corporations, employees or third parties, where such violation can cause pecuniary consequences to the victim.

White-collar offenses are commonly recognized as the most financially serious violations of law, especially compared to conventional offenses but also concerning to major financial offenses taken separately. The modern penal and criminological doctrine recognizes that this category of criminality is a *privileged one*, even in comparison to other types of fraud or other deceptive profit-oriented crimes [20].

Today, criminologists and social scientists offer various ways to define *white-collar crime*. These variations tend to overlap with one another and include the following definitions of white-collar crimes: as moral or ethical violations; as social harm; as violations of criminal law; as violations of civil law; as violations of regulatory laws; as workplace deviance; as definitions socially constructed by businesses; as research definitions; as official government definitions; as violations of trust; as occupational crimes; as violations occurring in occupational systems.

To this extent, and for the purpose of continuing of our research, **the term white-collar crime is originating from the social essence of job and its forms**. In such a manner, a group of positions that are identical with respect to their major tasks and responsibilities form a job. **Job is thus, a group of homogeneous tasks characterized by similarity of functions and consistent patterns of some psychological and behavioral outcomes** [21].

Five characteristics are common to each job including: 1) skill variety; 2) task identity; 3) task significance; 4) autonomy; 5) feedback. Exceptional combination of these characteristics constitutes *the distinct nature of each job*, which includes everything that forms part of employees' involvement with the work itself, such as the relationship with co-workers and supervisors, organizational culture and room for personal development.

Jobs are classified and arranged into different classes, groups or families according to a systematic schema which explains the roles and organization of employees for accomplishment of specific tasks. This classification scheme is based on organizational lines of authority, technology, human behavior and the job content this classification scheme is categorized as:

- *White-collar jobs* (the managerial and professional people) and,
- *Blue-collar jobs* (the physical and factory laborers).

White-collar jobs include performing the non-manual work; that is dealing with information, not the things. These jobs demand specialized experience and rigorous education. Those, who perform these jobs are called white-collar workers and bear job titles like: accountants, bankers, attorneys, real estate agents, professional consultants, supervisors, clerks, professionals and managers.

Blue-collar jobs, on the other hand, involve performing the manual work which requires physical involvement and efforts. These jobs require technically

skilled personnel who are formally trained and certified like: engineers, mechanics, plumbers, electricians and structural workers. Blue-collar jobs can also be performed by low-skilled people who are designated to perform simple tasks such as cleaning, maintenance and assembly line work. The main titles given to the blue-collar workers vary according to the places where these employees are hired; their responsibilities also vary as their titles vary. Their primary responsibility is to ensure the proper use of organizational resources, so that organization can increase their productivity.

Employees in a given time period or context are very limited in terms of the type of deviant behavior in which they can engage. Thus, they may be motivated to engage in a dysfunctional behavior, but it will take different manifestations depending on the constraints of the situation.

It is to be mentioned that *dysfunctional behavior* occurs when employees commit acts that have negative consequences for an individual within an organization, a group of individuals, and/or the organization itself. There are two general types: *violent* and *deviant* (e.g., aggression, physical and verbal assault, terrorism) and *nonviolent dysfunctional* (e.g., alcohol and drug use, revenge, absence, theft). Organizational misbehavior is a deliberate act by organizational members that violates basic organizational and/or societal norms. Such misbehavior can intend to benefit an individual or the organization and generally includes an objective to inflict damage [22].

Deviant behavior (*violent or non-violent*) consists of voluntary acts that break major organizational norms and threaten the welfare of the organization and/or its members [23]. The Russian criminologists Ya.Guilinsky (Я. Гилинский) has formulated the following definition of **deviant behavior**: „It is a misdeed of a single (or a group of persons) which does not correspond to the norms and expectancies officially established or actually accustomed social rules of behavior” [24].

We have to mention that deviant behavior by itself forms the subject matter of the independent course of deviantology. Deviantology can be defined as *sociology of deviantness and social control, deals in detail with main forms of deviantness – crime, corruption, terrorism, narcotism, drunkenness, alcoholism, suicide, prostitution, sexual deviation, social creative work, and so on, as well as theory and main directions of social control over deviantness* [25].

There are identified the following types of deviant behavior: *production* (damaging quantity and quality of work); *property* (abusing or stealing company property); *political* (badmouthing others or spreading rumors); and *personal aggression* (being hostile or violent toward others) [26].

Such deviant behaviors can be defined as the intent to harm the organization or its members and can include: counterproductive behaviors, antisocial behaviors, retaliator behaviors, workplace aggression, property deviance including theft and property damage, disciplinary problems such as poor attendance and not fol-



lowing directions, organizational rule breaking, and alcohol and substance abuse.

The most important for our research is considered to be especially counterproductive behavior of the employee. So, in the special criminological literature, **counterproductive behaviors** are defined as *any intentional behavior by an organizational member viewed by the organization, as contrary to its legitimate interests* [27], and can be expressed in a set of negative behaviors that are destructive to the organization by disturbing its operational activities or assets, or by hurting workers in such a way that will overcome their efficiency. This category of behaviors can be productively viewed as a form of protest behavior in which individuals and groups attempt to redress, draw attention to, or express dissatisfaction with organizational events [28].

Nevertheless, the counterproductive behavior is seen as an element of job performance and includes phenomena such as theft, property destruction, misuse of information, unsafe behavior, poor attendance, and poor quality work [29]. *Job performance* is a multi-dimensional construct which indicates how well employees perform their tasks, the initiative they take and the resourcefulness they show in solving problems [30]. As we can see, the counterproductive work behavior embraces a variety of acts including: absenteeism, spreading of nasty rumors, sabotage, verbal abuse, theft, physical assault, stealing from coworkers, or coming late to workplace, lying, refusing to cooperate, physical assault, withdrawal, and withholding of efforts.

Today, most scholars regard *employee theft* and *staff dishonesty* as a form of occupational crime. These definitions have virtually all specified that such crimes: *take place during the course of a legitimate occupation; involve a violation of trust; and are committed primarily for the benefit of the individual either financially or in terms of social status* [31]. At the same time, **workplace crime** is best restricted to conventional forms of crime, e.g. homicide; assault; rape; molestation; robbery; theft; etc., that occur at the workplace. Such conceptual distinctions should be useful in theorizing about crime, in engaging in empirical study of it, and in formulating policies in response to it [32].

Taking into account all above-mentioned we can conclude that nowadays, **white-collar crime has become an umbrella concept** often used to describe a host of criminal behaviors, including but not limited to, illegal financial acts, deceitful or dishonest business practices, or abuses of state power.

Furthermore, without hesitation, there is a common feature of all the definitions mentioned above: white-collar crime involves *deceit or breach of trust*. In business and the professions white-collar crime consist principally of **violation of delegated or implied trust** [33]. The modern criminology considers that *white-collar crimes violate trust and therefore create distrust, which lowers social morals and produces social disorganization on a large scale* [34]. Other crimes produce relatively little defect on social institutions or social organization.

From economic point of view, **trust** is defined as *the expectation that arises within a community of regular, honest and co-operative behaviour, based on commonly shared norms, on the part of other members of that community* [35]. Trust involves placing faith in a person or institution where something serious is at stake if such reliance turns out to be misplaced. Trust necessarily contains an element of risk and uncertainty, since in conditions of absolute certainty there is no need for trust at all. Notion of choice becomes important, as there may be situations in which investors do not have a choice over the risks that they are exposed to, and they may be “coerced” into trusting that the financial regulators will protect them from harm. The issue of whether “coerced trust” constitutes trust at all is then pertinent [36].

Deception and guile are indeed the *sine qua non* of white-collar crime. This appears in the ability to hide the illegality in apparently legitimate transactions or statements. *Non-violence* is part of this ability, as is the premeditation inherent in this type of crime. In a nutshell, we agree with the definition provided by the criminologist J.S. Applegate who has summarized that *white-collar crime is a pattern of apparently routine economic transactions, which has the effect of bringing to the perpetrator economic gain to which he or she is not legally entitled* [37].

In the special criminological literature there have been identified *several characteristic features of white-collar criminality* [38]. Taking into account those opinions, we have concluded that these crimes are committed:

(1) *In a specific sphere*: in the financial, enterprise and economic sphere, irrespective if it is in public (state authorities etc.) or private sector (enterprises, corporations etc.);

(2) *By a specific way*: always and exclusively by non-violent methods, such as, deception, fraud, forgery, corruption, exploitation of the commercial secret, misuse of confidential personal data

(3) *By a special subject*: by the persons who possess a sufficient and necessary level in the economical, commercial or financial domain;

(4) *With a specific scope*: for the purpose of profit accumulation, economic dominance, safeguarding of some legal entities which are in a difficult economical situation.

Most agreed the following characteristic features of WCC:

(1) the lack of direct violence against the victim – the critical element;

(2) the criminal activity should have been the result of an opportunity to commit the crime afforded by the offender’s status in an organization or their position of respect within the community;

(3) deception to the extent necessary to commit the criminal offense (such as misrepresentation of the perpetrator’s abilities, financial resources, accomplishments, some false promise or claim intended to deceive the victim, or possibly a deliberate effort to conceal information from the victim) [39].



In accordance with our point of view **white-collar crime** is an intentional, profit-driven, non-violent, illegal act (action or omission), prohibited by Criminal law, expressed in illegal financial acts, deceitful or dishonest business, deceitful practices or abuses of state power; committed by a corporate entity or an individual who is using his occupational status, special knowledge or technical competences for illegal financial gain, which has provoked harm (damages, losses, feeling of distrust etc.) or has created a real risk of harm occurrence in public or private sector.

In order to make clear such definition we have to clarify the following standpoints which can be emphasized from our definition of the white-collar crime:

(1) It is expressed in an illegal act (action or omission) prohibited by Criminal law;

(2) It is an intentional crime;

(3) It is non-violent crime based on deceit, dishonesty and breach of trust. It is usually committed for the organization, against it, or the organization may be the vehicle for achieving personal goals and exercising power;

(4) It is a crime of a camouflaged violation which includes a) illegal financial acts, b) deceitful or dishonest business, c) deceitful practices or abuses of state power;

(5) It is committed in public or in private sector;

(6) It is committed by a corporate entity or an individual;

(7) Individual is using his occupational status, special knowledge or technical competences;

(8) It is a crime of a camouflaged purpose – it is committed for financial gain in order to gain access to and to control over money, goods or other property that belongs to someone else. Financial gain means achieving competitive or personal advantage which includes obtaining money and property; avoiding payment or loss of money or property. Financial gain must be illegal, thus, damages and losses caused as a result of lawful and fair competition is not considered to be wrongful;

(9) It is a misdeed which has provoked harm or has created a real risk of harm occurrence;

(10) It is covering not only occupational deviance by persons of high status, but also criminal misdeeds committed by persons of modest social origin against financial institutions and other similar acts (banks, credit cards organizations etc.).

In function of the level of harmfulness white-collar crime is characterized by several distinctive patterns:

– it differs from conventional crime in the kind and quality of harm caused and in the way in which it affects victims;

– it tends to involve harms that are more difficult to identify than in the case of conventional street crimes [40];

– it is committed through non-violent means;

– it causes harm that is incorporeal (indirect, diffuse), such as financial loss or injury to an institution;

– it occurs at a nonspecific physical location over what can be a difficult-to-define period of time [41];

– it can be criminally prosecuted only if it is morally wrongful.

There are many harmful white-collar type acts that become criminal only if they are also wrongful. For example, the kinds of harms caused by unlawful price fixing, insider trading, and fraud, on the one hand, and lawful (if ruinous) competition, on the other, are virtually indistinguishable from each other: all involve loss of money, a business, a job, or market share. But, assuming that the relevant players „played by the rules”, and violated no one’s rights, we would not consider the kinds of harms that result from lawful „fair” competition wrongful. And because such acts are not wrongful, they should not be subject to criminal sanctions [42].

The legal regulations from Criminal law of both of countries (Republic of Moldova and Israel) concerning white-collar crime are constructed in such a manner which permits prosecution not only in the case of accomplished crime but also in case when the creation of a risk of harm already exists.

So, taking into consideration the analysis above, pursuant to our standpoint, white-collar crime and fraud are similar but not the same. In order to be clearer we have to mention that **any form of white-collar crime possesses elements of fraud (dishonesty, deception, concealment) but not every fraud is white-collar.**

In this way, we can conclude that the offence-based definition of white-collar crime, which is originated on the means of crime commission, is seemed to be partially invalid because if it will be accepted in a whole, than the white-collar crime will be identical to the concept of fraud. But in reality, it isn’t. We insist that in fact, the inherent feature of any white-collar crime besides the fraudulent method of the criminal’s misbehavior, are considered to be the following three necessary elements: the special occupational status of the offender; abuse of that special occupational status; the causal relationship between that special occupational status and the fraudulent misbehavior expressed in its abuse.

According to our point of view, lack of those elements will transform the white-collar crime into the ordinary fraud when anyone can commit it.

Taking into consideration all above-mentioned we have formulated the following conclusions:

– White-collar crime is not a legal category incorporating specific offenses. Such offences are commonly recognized as the most financially serious violations of law; firstly, it had been as a *sociological phenomenon*.

– We consider that conviction in the criminal court, which is sometimes suggested as the criterion, is not adequate because a large portion of those who commit crimes are not convicted in criminal courts. In fact, we accept the large approach in criminology. Thus, what is important in distinguishing who is criminal is not how he or she has been treated by the criminal justice system but what he or she has actually done. Therefore, convictability rather than actual conviction should be the criterion of criminality.

– Pursuant to our standpoint, white-collar crime and fraud are similar but not the same. Fraud involves the use of deception, the misrepresentation of status,



experiences, commodities, or future events for the purpose of diverting economic assets from the receivers of misrepresented information to its sources. In order to be clearer we have to mention that any form of white-collar crime possesses elements of fraud (dishonesty, deception, concealment) but not every fraud is white-collar.

– we believe that **fraud** signifies *any intentional or deliberate act, any false representation or concealment of any important fact by the employees or third persons for the purpose of any personal gain or in order to inflict harm or financial loss*. In such a manner, fraud can include any violation of the regulations concerning the capital market, violation of the internal legislation or instructions by the corporations, employees or third parties, where such violation can cause pecuniary consequences to the victim.

– The term white-collar crime is originating from the social essence of job and its forms. This term reflects a traditional classification of occupations into *white-collar* (those utilizing technical knowledge and skills in the manipulation of numbers and concepts), and *blue-collar* (those utilizing skill in the manipulation of objects).

– Taking into account all above-mentioned we can conclude that nowadays, *white-collar crime has become an umbrella concept* often used to describe a host of criminal behaviors, including but not limited to, illegal financial acts, deceitful or dishonest business practices, or abuses of state power. The essential characteristic of the acts that are commonly called white-collar crimes is that *they involve the violation or abuse of trust*.

– According to our point of view there must be adopted the following definition of white-collar crime: **white-collar crime** is an intentional, profit-driven, non-violent, illegal act (action or omission), prohibited by Criminal law, expressed in illegal financial acts, deceitful or dishonest business, deceitful practices or abuses of state power, committed by a corporate entity or an individual who is using his occupational status, special knowledge or technical competences for illegal financial gain, which has provoked harm (damages, losses, feeling of distrust etc.) or has created a real risk of harm occurrence in public or private sector.

– White-collar crime is a crime of a *camouflaged violation* which includes a) illegal financial acts, b) deceitful or dishonest business, c) deceitful practices or abuses of state power; *associated with a camouflaged purpose* – it is committed for financial gain in order to gain access to and to control over money, goods or other property that belongs to someone else. Financial gain means achieving competitive or personal advantage which includes obtaining money and property; avoiding payment or loss of money or property. Financial gain must be illegal, thus, damages and losses caused as a result of lawful and fair competition is not considered to be wrongful.

– White-collar crimes are different: some of them are committed in a public sector, some of them – in a private one. Varied types of white-collar crimes in business and the professions consist principally of *violation*

of delegated or implied trust, and many of them can be reduced to two categories: misrepresentation of asset values; duplicity in the manipulation of power. This category includes the following main types: *corporate crime; occupational crime; governmental crime; enterprise, entrepreneurial, techno-, avocational crime*.

– We insist that in fact, the inherent feature of any white-collar crime *besides the fraudulent method of the criminal's misbehavior*, are considered to be the following three necessary elements: *the special occupational status of the offender; abuse of that special occupational status; the causal relationship between that special occupational status and the fraudulent misbehavior expressed in its abuse*. According to our point of view, lack of those elements will transform the white-collar crime into the ordinary fraud when anyone can commit it.

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