

BULLETIN

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White Collar Crime

"White collar crimes", which have recently occupied a lot of space in the public opinion, entered the legal literature in the last century and broke the usual perception of guilty people.

With the development of commercial activities and economic relations, many rules and limitations have been introduced in the field of trade.

The subject addressed in our study is these violations and their scope with the logic of "if there is a rule, there is a violation".

WHY IT IS IMPORTANT AS A TYPE OF CRIME

Edwin Sutherland¹ defined the concept of white-collar crime as crimes committed by people who are respected in the society and have high status within the framework of their professions and in violation of the trust placed in these people.

Sutherland, the creator of the concept of "white collar crime", broke the prejudice that the poor are more prone to crime than those with high social status, and showed that people with high social status in the eyes of society can also commit crimes.

Indeed, in Sutherland's time, both in crime definitions, law enforcement and crime statistics, crimes committed by white-collar workers were not subject to prosecution, and even if they were subject to prosecution, they did not face criminal sanctions and these crimes were not reflected in crime statistics. However, an analysis of current crime statistics clearly shows that crimes committed by white-collar workers cause much greater material damage than ordinary crimes.

IN WHICH BUSINESS WHITE COLLAR CRIMES ARE MOST COMMON.

In terms of the sectors and departments, it is found that financial corruption is most prevalent in the energy, telecommunications, transportation and warehousing sectors, and the departments in which financial corruption is most prevalent are procurement, senior management and operations departments.

HOW THEY DO IT?

White collar crimes are crimes of secrecy and deception. Traces are often destroyed, facts are distorted, motives are fabricated and psychological pressure is placed on victims to deter prosecution. White collar crime can be detected by auditing books and records to identify breaches of control, trust and confidence, and by recognizing deviations from traditional accounting methods or expectations.

¹The concept of "White Collar Crime" was first used by Edwin Hardin Sutherland, one of the most famous criminologists of the 20th century, in his paper titled "White Collar Criminality" presented at the American Sociological Society and the American Economic Association.

WHITE COLLAR CRIME IN TURKISH LAW

Although there is no specific financial-economic based legislation on white-collar crimes in Turkish law, the provisions of the Turkish Criminal Code (TCK) and related legislation are applied. The subject and scope of white collar crimes include the following: Bribery, fraud, money laundering, smuggling, corruption, forgery, capital market crimes, irregularities in public tenders are among the crimes that constitute the subject matter of this field. At the same time, employees' use of company information for commercial purposes are crimes that white-collar employees may be involved in, such as tax irregularities. The main tax offenses are irregularity, tax loss and evasion penalties. While the sanction for tax loss offenses is a financial penalty, tax evasion and irregularities are punishable by imprisonment.

ACFE - ASSOCIATION OF CERTIFIED FRAUD EXAMINERS

ACFE (Association of Chartered Fraud Examiners) is a professional organization founded in 1988 to reduce fraud and white-collar crime and to assist its members in the detection and prevention of fraud.

According to ACFE's 2008, 2010 and 2012 reports, it is seen that companies around the world lose an average of 5% of their annual revenues due to fraud. According to the same report, the financial losses incurred by companies due to each type of fraud are summarized in Table 1².

Table 1: ACFE REPORT - Frequencies and Financial Losses of Types of Fraud

Types of fraud	Frequency of occurrences (frequency)			Average financial losses		
	2008	2010	2012	2008	2010	2012
Misallocation of assets	%88,7	%86,3	%86,7	150.000 \$	135.000 \$	120.000 \$
Abuse	%26,9	%32,8	%33,4	375.000 \$	250.000 \$	250.000 \$
Financial statement fraud	%10,3	%4,8	%7,6	2.000.000 \$	4.100.000 \$	1.000.000 \$

As explained above, "white collar crimes" are crimes that are thought about by professionals in their fields and are usually organized. There have been many incidents in the world, especially in the USA, that fall under the definition of the relevant crime, and some of these incidents are very famous. The most famous of these is the Enron case.

ENRON CASE

In just 15 years, Enron went from a very small company to the 7th largest corporation in the United States, employing 21,000 people in more than 40 countries, to an elite fraud. Using loopholes in the accounting system, special purpose subsidiaries and inadequate financial reporting methods, top executives managed to hide billions of dollars of debt from failed deals and projects. Here are some of the company's most publicized crimes;

- i. Manipulating the Texas energy market,
- ii. Bribing foreign governments officials to win tenders abroad and,
- iii. Disrupting the California energy market

²Terzi and Kıymetli Şen, 2012, 27.

HOW WERE THEY CAUGHT?

In 2001, Bethany McLean's article "Is Enron's Value Overstated?" questioned how Enron, with a trading volume 55 times its earnings, was able to maintain high share prices. The article emphasized that analysts and investors did not know exactly where Enron derived its revenue from. It came to McLean's attention after an analyst recommended a review of Enron's reports. In his investigation, McLean found bizarre business transactions, volatile cash flows and massive debt. In July 2001, Enron reported revenue of \$50.1 billion, beating analysts' estimates by 3 cents a share. But the company continued to attract attention. In October, Enron reported a third-quarter loss of \$638 million, reporting a \$1.2 billion decline in shareholder value and prompting the United States Securities and Exchange Commission (SEC) to check the company's accounts. At the end of that month, it was announced that the SEC's investigation had been turned into a more formal probe, and in November the company was forced to revise its financial statements, which included loss reports for the previous five years, to disclose a loss of \$586 million. This was followed by a federal subpoena to Enron's accounting and auditing firm Arthur Andersen, which was found guilty of falsifying Enron's accounts. As the full details of the affair began to emerge, investors and lenders backed down and the company was forced to declare bankruptcy.

Although white-collar crime was not recognized and perceived as a crime by the public until the end of the 1980s, today it has gained an important place in both criminology and economic life. The problem of white collar crime in the world is rooted in the social conflicts of the industrial society (Beşe, 2006, 469).

In Turkey, there is no separate legislation on white-collar crimes, but these crimes, which are considered as qualified forms of crimes and committed by the class called "white-collar", are crimes that are prepared and implemented very professionally, as explained, but the most important point that can be distinguished from other crimes is the high-level measures taken by the perpetrators to avoid being caught and to hide their acts. For this reason, it is extremely important that the system vulnerability is audited and violations are punished, and that companies establish their own internal auditing mechanisms to avoid this.