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List of abbreviations

“FBI” – Federal Bureau of Investigation

“CEO” – Chief Executive Officer

“CPSU” – Community and Public Sector Union

“GDP” – Gross Domestic Product

“NBU” – National Bank of Ukraine

“NACB” – The National Anti-Corruption Bureau

“ECSC” – The European Coal and Steel Community

“EEC” – The European Economic Community

“EURATOM” – The European Atomic Energy Community

“TEU” – The Treaty on European Union

“TFEU” – The Treaty on the Functioning of the European Union

“OECD” – Organization For Economic Co-operation and Development

“UNIDO” – United Nations Industrial Development Organization

“UNODC” – The United Nations Office on Drugs and Crime

“FIFA” – Fédération Internationale de Football Association

Introduction

The term White-Collar crime is not new and was at first defined by sociologist Edwin Sutherland in 1939 as a crime committed by a person of respectability and high social status in the course of his occupation¹. In contrast, FBI determined such term in such way – ‘those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence’². Many researches have turned to this question from different points of view, but they have agreed that the main White-Collar crimes are bribery, money laundering, fraud, cyber computer crimes and Ponzi schemes. As practice shows all of them are the costliest kinds of crimes for economy and budget. True extent and cost are unknown, but the FBI and the Association of Certified Fraud Examiners estimate the annual cost to the United States to fall between \$300 and \$660 billion.³ All honest politicians think over how to stop corruption in their countries, all CEOs disturb with problem of possibility of corporate crimes in their companies and also every customer who pays for services worries about security of their accounts. So White-Collar crime can get in touch with any sphere of our lives. But the most significant influence it has on business and international authority of the nation, since it is impossible to run business fully in country with high corruption level and its authorities have no respect not only on international arena but in their motherland too.

The specific features of White-Collar crime are closely tied to legal systems but general features are the same:

1. Subject – a person who commits that crime is governmental, represents or have close connection to business.
2. Object – the most popular object of such crimes is financial interest.
3. Method of commitment of crime nonviolent crime (committed without weapon).

Despite a huge significance of White-Collar crime for business and well-being of economic and our World in general, not enough attention was drawn to this topic. In

¹ Lawrence M. Salinger, *Encyclopedia of White-Collar and Corporate Crime* (Sage Publications 2005) 956

² Official FBI website, ‘White-Collar crime’ <<https://www.fbi.gov/investigate/white-collar-crime>> accessed 30 March 2017

³ Bonnie S. Fisher, Steven P. Lab, *Encyclopedia of Victimology and Crime Prevention* (2010) 1055

additional in law science there are a lack of information that can be used in practice of struggle and prevention.

The aim of this paper is to analyze White-Collar crime in general, apply existing knowledge to new conditions, provide possible solutions and recommendations for legal ways which are created to struggle and prevent White-Collar crime. At the end of this work, we will answer the question: what can we do as lawyers to solve this problem. The structure of the work is reflecting the ordinary way on councilors thinking when they are dealing with search of solutions for this problem.

First of all, we will concentrate on the history of this notion. The next step will be search for answer in different legislations. Thirdly, we will subdivide problem on smaller pieces and then we will find solution to this problem.

Main part

History of White-Collar crime and nowadays condition of this notion History of White-Collar crime and nowadays condition in Europe

Nowadays EU include 28 member states but unfortunately we cannot have a close look at White-Collar crime history of every Member State. In this master thesis, we will present the most interesting and important facts concerning this problem.

In spite of the fact that term White-Collar crime was first outlined by Edwin Sutherland in 1939 to describe the criminal activities of the upper class or corporations⁴, some kinds of it took place far more earlier.

The most popular kind of White-Collar crime in ancient world was corruption. The historical roots of corruption are likely to go back to the custom to make gifts for approval. An expensive gift from person to person contributed to the fact that his request would be fulfilled and that is why in societies with basic development bribe for sacrificer or leader was norm.

The development of law in ancient Greece and Rome (territory of present EU member states Greece and Italy) was carried out in the framework of individual policies, and the level of development of democratic institutions in some city-states were reflected in the law. Unwritten customs were replaced by law - expressed in writing and codified form. In such a way in the ancient world law was shown as an authoritative and binding regulator, devoid of any mystical or religious forces. Of course, codified source of law helped to avoid unfair justice of aristocrats. First codified code was written by Draco - the ancient legislator in 621 B.C. It was very cruel source of law which had only three kinds of punishment. The most popular castigation was capital punishment, person could have it for many kinds of crime, including theft. For example, if slayer had stolen fruit from his plantation (his work place) he could have been killed by his holder, without any legal implications. White-Collar crimes such as bribery were not defined by this code. Cyber crime was not possible because of technical development and money laundering was unnecessary because slayers did not have any money while aristocrats (slayer holders) did not have any tax obligations. In the same time law of ancient Rome – Law

⁴ Lawrence M. Salinger, *Encyclopedia of White-Collar and Corporate Crime* (Sage Publications 2005) Introduction xxvii

of the Twelve Tables was enriched with new term 'corumpere'⁵, which meant 'offer bribe to judge'.

Next step in the development of law was Middle-Ages when within states formed gradually the basis of future national legal systems and were determined the contours of the world's major legal systems: Continental and Anglo-Saxon. The massive spread of corruption in Europe begins with the Middle Ages, when political machinery began to develop rapidly, people in the Middle Ages 'successfully resolved' the problem of corruption by burning at the fire of the inquisition or by the amputation of limbs, and the inhabitants of the medieval Prague's simply thrown out of the windows most hated officials.⁶ System for commercial or public bribery was widely used by churchmen. Take, for example, the Order of the Templars, Templars credited kings and the Pope, they provided banking services to nobility, transported and protected in dangerous areas merchandise for great value, entrusted to them by merchants.⁷

Corruption in France encouraged 'state blindness', typical for absolute royal power of kings, first census of population was conducted by Napoleon at the beginning of the XIX century. Before that French kings did not know how many subjects they had and certainly did not know how much property they had, so the taxes were distributed inaccurately, that contributed to the corruption. Royal officials, from whom depended the amount of tax, could drastically reduce it. Similar system existed in those days in many European countries.⁸

Another historical example of White-Collar crime is connected with Napoleon figure, Battle of Waterloo, to be precise. All of Europe was frightened by Napoleon's revenge. Members of stock exchanges were waiting for the outcome of battle of Waterloo. The battle sides watched Nathan Rothschild and Jacob Rothschild on both sides. In addition to their lifestyle, the Rothschilds could afford only one hobby – post pigeons. After the battle, the pigeons were immediately issued to agents with cryptic instructions attached to the legs. Barely making sure that Napoleon losing the battle, Nathan quickly went to London, in the morning, Nathan was on the London Stock Exchange - grieving over

⁵ Tribunes and triumphs 'Law of the Twelve Tables' (Roman life)

<<http://www.tribunesandtriumphs.org/roman-life/twelve-tables.htm>> accessed 30 March 2017

⁶ Каздым А.А., 'История коррупции' *Следователь* 2014 № 10 (Россия, 2014), 37

⁷ Жорж Бордонов, *Повседневная жизнь тамплиеров в XIII веке* (ООО «СиДиКом» 2007) 34

⁸ Louis Bergeron, *France Under Napoleon* (New Jersey, Princeton University Press 1981) 110

Napoleon's success, he began to hurry sell his shares. Panic was risen by a direct witness of the decisive battle and forced others to sell British, Austrian and Prussian securities – they became cheaper at once and were bought by Rothschild's agents. The news that Napoleon lost the battle was spread on the stock exchange the next day. Many of the security holders committed suicide and Nathan earned about 40 million pounds for one day. The same trick was done in Paris and Jacob.⁹

In the same time, it was an age of primitive accumulation of capital in Europe, it is the time of growth of trade, as well as the invention and development of the institutions serving it (banks, insurance, joint-stock companies). And of course, all those facts had a significantly big influence on White-Collar crime. However, White-Collar crime did not accumulate much attention till Industrial Revolution, when companies significantly rose in power and became able to implement monopolistic policies without fear of anything. The public became enraged when they had to pay higher prices. But, under the law, manufacturers were not doing anything wrong - it was really a legal operation.

New stage in the evolution of corruption in Europe was the turn of XIX and XX centuries. From the one hand governmental regulation began to strengthen but from the other - large private business were born. As a result, businessmen began to 'buying state' - no individual small episodic bribery of public officials, they directly bought subordination of politicians and high-ranking officials to protect the interests of capital, it made a base for 'party corruption' (lobbying firms and large multinational corporations pay in party funds, not to politician directly).

The outline of White-Collar crime in 19-20th centuries was described by George Robb in the following way- 'the cyclical development and repeal of White-Collar crime laws in response to specific acts of fraud and immorality in business that brought fortunes to some and ruin to many. Many of these laws were developed to deal with 'stock touting', a practice that has existed as long as there have been stock markets and that continues to occur to this day. Stock touting involves creating companies and issuing stock in those companies based on false and/or misleading assets, information, or promises. For example, Robb wrote about persons who created companies to build railroads, claiming that they possessed government guarantees that when the railroad was built, stockholders would be instantly wealthy. The stock would sell quickly to speculators interested in

⁹ Frederic Morton, *The Rothschilds: A Family Portrait* (New York, Atheneum 1962) 40-56

making money, and the touts would quickly disappear, money in hand, with no railroad ever to be built. Such frauds aimed at unsuspecting speculators can be found in modern times as well. For example, the high-tech 'bubble' of the 1990s resulted in the sale of stock in companies with much promise but little if any underlying market value. When the bubble burst, stockholders were left holding shares in companies that lacked any tangible assets. Compounding the problem, many stockholders had borrowed money using their stockholdings as collateral, bankrupting those were unable to repay their debts and causing their lenders to take losses as well.'¹⁰ The best description of nowadays conditions of White-Collar crime can be presented by statistic reports. According to the Global Economic Crime Survey 2016 by PwC where took part more than 6,000 respondents, the most popular kinds of White-Collar crime in EU are corruption and cybercrimes. Cybercrime climbs are on the 2nd place of all most reported economic crimes affecting 32% of organizations. More than one in three (36%) organizations experienced White-Collar crime, while one out of five respondents has never carried out a fraud risk assessment. Around half of the organizations (44%) questioned believe that local law enforcement is not adequately resourced to investigate economic crime, leaving the responsibility for fighting White-Collar crime on organizations.¹¹

¹⁰ Lawrence M. Salinger, *Encyclopedia of White-Collar and Corporate Crime* (Sage Publications 2005) 30

¹¹ PwC, 'Global Economic Crime Survey 2016'

<http://www.pwc.by/be/publications/pdf/Global_Economic_Crime_Survey_%202016_Global_Report.pdf> accessed 31 March 2017

History of White-Collar crime and nowadays condition in Ukraine

The most popular kind of White-Collar crime in ancient Ukraine was bribery and usurpation but they were not determined by legal sources as crime and sources of law did not determine feudal as subject for any wrongdoing. The first known White-Collar crime in Ukrainian history was committed in 945 by Ihor 1 Prince of Kiev, he wanted to take double taxation from controlled territory, but was killed by drevlyans (ancient slavs) without any court hearing. The first legislator who changed untouchable position of feudals was Jaroslav The Wise. In the 11 century he codified first Ukrainian written source of law – Russkaya Pravda.

Russkaya Pravda had rules from different areas of law, especially civil, criminal and procedural. Civil and criminal spheres were treated as one and were determined as damaging. According to this first written law code situation with feudals changed significantly. Feudals became not only an object of any wrongdoing but a subject too. Jaroslav determined a limited list of crimes for them: tax evasion, betrayal and bribery when they were dispensing justice. Whereas in ancient Ukraine feudals were responsible for all kinds of justice. So we can see that Russkaya Pravda made a fundamental contribution in the development of Ukrainian law in general and struggled against ancient White-Collar crime. That law code was acting for centuries and influenced on Russian, Belorussian and Latvian ancient law formation.¹²

In the 14 century Kiev lands because of domestic troubles turned to be of a great interest for Gediminids, monarchs in the Grand Duchy of Lithuania, and then came under the authority of the Lithuanian dynasty. It formed a very strange country, where Ukrainian and Belarusian population and land made 80%. So the government of Lithuania was not repressive and dominating.

Sources of law in Eastern Europe came from the German states. The basis for building civil and criminal law and the judicial system of justice in medieval Germany and then in Poland and Lithuania were several collections of law - Saxon Mirror, Veyhbild, Landrecht.

Most of the attention in the codes of Magdeburg law was given to the regulation of criminal relations. Crimes were understood as acts characterized by factors such as illegality, public danger, guilt and pity. All crimes were separated by Saxon Mirror into

¹² Терлюк І.Я., *Огляд історії кримінального права України* (Львів, Ліга-Прес 2007) 5-9

two types. The first category was known as public crime, which predicted a sentence of death punishment. The second was a private crime and as a result a person could be punished by paying a certain amount of money to a victim and court. Among public crimes were delicts against religion committed by witchcraft. Such crimes envisaged the death penalty by burning. Saxon Mirror regulated family and trade relationships. Fraud connected with trade was determined as theft but in that law code was not any note about kinds of White-Collar crime such as bribery or use of insider information. Many of White-Collar crimes were codified in Cossack (Kozak) era. First who did it was Bohdan Khmelnytsky.

Cossack Law provided a wide range of crimes which, depending on the object of the crime were divided into several types: governmental (embezzlement, abuse of power and corruption); against public order and the court (Disobedience to administration, counterfeiting, counterfeit seals and documents and perjury in court); military (desertion, evasion of military duty).

Penalties had exceptionally public nature. The sentences were handed down and carried out on the public. This was done for two reasons: firstly, it was thought that public punishment was a warning to other Cossacks, secondly, a large role in sentencing and execution belonged to Cossacks. Death penalty was usual for any kind of crime and for White-Collar crime too. For crimes connected with corruption there was a well-known punishment as the death penalty by pouring molten lead into the throat and confiscation of all property which belonged to offender. It was a typical punishment for coinage offense too.¹³

In the period of Cossack Hetmanate in the 17-18 centuries in Ukraine the territory was not independent and was distributed within Russia and Austria (Austria-Hungary Empire). Obviously, Ukraine suffered from all possible prohibitions, particularly in the field of legal regulation.

In Russian part of Ukraine, civil law permitted account of local circumstances, while the criminal law did not have such possibility. So Ukrainian law in crime sphere totally fell under Russian Empire legal sources. Many of Ukrainian historians such as Mykola Kostomarov, Vladimir Antonovich and Mykhailo Hrushevsky thought that it was a dramatically bad period for Ukraine in all spheres, but we might disagree with it because

¹³ Грозовський І.М., *Козацьке право* (Київ, Право України 1997) 39

struggle against White-Collar crime got better legal basis at those times. In Russian Empire existed legitimate collection of Russian law - The Digest of Laws of the Russian Empire, which was made up by Nikolai 1 and included 16 codes.

White-Collar crime was noticed in 15th code and all articles from 329 to 505 were about White-Collar crime. They include crimes: deliberate dereliction by official his duty, wasting assets, relatives adoption in the government service (exception was made for monarchs), many kinds of corruption and embezzlement. List of possible punishments were changed too, confiscation of property, death penalty were reached by sending for harmful work to Siberia, deprivation of honorary titles and awards, ban for governmental and business work.¹⁴

In 1903 Nikolai 2 changed main source of criminal law, he canceled 15th book of The Digest of Laws of the Russian and power on his own criminal code. It was reached by many new definitions of White-Collar crimes such as infringements on fair trade, offenses connected with tenders and securities, unfair competition, bankruptcy fraud, usury and crimes against copyright.¹⁵

Complicated government formation process that took place in years of the NationalDemocratic Revolution of 1917-1921 on Ukrainian ethnic territory - led to the emergence of two forms of statehood - national and Soviet, struggle between them because of revolutionary events and defined political situation. Soviet idea in Ukraine based on class views on the organization of society and the formation of law. While, Ukrainian national state formations – Ukrainian People's Republic (UPR), Ukrainian Central Council 'Ukrainian State' Hetman Pavlo Skoropadsky, Ukrainian National Republic (UNR), Directorate period (Second UPR) – was interested in the protection of national Ukrainian interests and tried to save national characteristics of government and a national legal system. Despite power shift in Ukraine, law was not changed by new politicians - they used Code 1903 outlined by Nikolai 2 but made foreign diplomats from friendly countries such as Romania, Germany, Turkey, Austro-Hungary and Bulgaria untouchable and introduced probably a new procedure of investigation of all crimes, White-Collar crime inclusive. In investigation procedure roles of investigator and prosecutor were totally taken by court but to show high level of democracy and human

¹⁴ Николай 1, *Свод законов Российской империи* (том 15, 1857) 173

¹⁵ Наумов А.В. 'Уголовное уложение 1903 года' (2013) Вестник Российской правовой академии № 2 59

rights death penalty for White-Collar crimes which did not connect with violence was canceled.¹⁶

After that the Ukrainian State (also called the Hetmanate) was formed on the place of the Ukrainian National Republic as a result of a coup. It was led by Hetman Pavlo Skoropadsky. Because of cruel nature of Hetman Pavlo Skoropadsky many of laws were changed. Hetman tried to make government less powerful because he was a new person on political area and was not supported by many politicians, that fact forced him to struggle against a majority of national politicians. This is why he determined corruption as main national problem, struggled against corruption transformed into a great instrument on the political way to usurpation by Hetman, any unsuitable politician could be arrested without any evidence for 3 months because of accuse in corruption. Thereafter, when Hetman Pavlo Skoropadsky was changed by Ukrainian National Republic and Directorate came to power again, the majority of his novelties in government and law sector were cancelled. Because of unstable position of national authority and a bad economic situation, death penalty for White-Collar crimes was turned back.¹⁷

Next significant change of White-Collar crime history was in 1922, when Ukraine was turned into communist state - Ukrainian Soviet Socialist Republic (Ukrainian SSR) - because of military aggression of Russian Bolsheviks with the help of locals Bolsheviks. Legislation and determination of White-Collar crime was changed according to views of Bolsheviks. When new codes were legitimated any crime and White-Collar crime could be defined by local authorities with use of Analogy of law. Analogy of law is a method of determination wrongdoing by searching for similar rule of law. subsequently this resulted in repressions and unlimited power of police and intelligence.

Many of Ukrainian sources of law were directly copied from Russian with saving of content and numeration. In 1924 with enactment of USSR constitution and USSR law codes situation was changed, Ukraine became a totally dependent part of The Soviet Union and did not have right for own legislation. USSR's legislators created new punishments for White-Collar crime, such as: public reprimand, deportation (in the most majority of cases to Sibirea), all adults members of offender were subjects for punishment

¹⁶ Терлюк І.Я., *Історія держави і права України* (Київ, Атіка 2011) 38-42

¹⁷ Подковенко Т.О. *Становлення системи законодавства України в 1917-1920 роках (Українська Центральна Рада, гетьманат П.Скоропадського, Директорія УНР)* (Київ, 2004) 17-20

too and the most interesting practice was a compulsory treatment. Compulsory treatment was used, as person who committed White-Collar crime or crime against USSR, was admitted by doctors as mentally ill person.¹⁸ Then, during the reign of Stalin and the World War legislators worked on military and government crimes prevention, but list of punishments for White-Collar crime was reached with deprivation of the pension right. Stalin determined any kind of business as speculation and antisocial phenomenon, surpassing the legal business he created all conditions to make it illegal. In fact, small business as shoemakers, photographic services, manufacture of sweets products, provision a variety of repair technic services continued to persist. These activities were regulated by governmental license.

The post-war years were characterized by growth of White-Collar crime. After the war time, the number of White-Collar crimes in Ukrainian SSR increased sharply. The main reasons for this increase was post-war chaos in control of population and weak regulation of many spheres of social life. For example, the most popular object of White-Collar crime was food, goods and food cards. Because of deficit of food governmental authorities tried to control it with issue of food cards, but bosses of government food stores wrote out part of these cards on defunct people and then used those cards themselves for speculation or any other reasons. Only Kiev Department of USSR police had more than 200 cases of that kind.

The minister of USSR Mehlis in 1946 sent a volume letter of 56 pages to Stalin. Letter was about theft of collective farm property by managers. In conclusion, he wrote: ‘...Damages of collective farm property are so great that party must undertake measures against these people’¹⁹.

Stalin's death in 1953 happened abroad, which meant the beginning of a new historical period in the development of the USSR political and legal system. At the same time, scrapped of ruling mechanism provoked the growth of various types of crime in the country. Court statistic shows that the number of prisoners in the USSR who were convicted in hooliganism possessed the first place, while the second was taken by

¹⁸ Президиум ЦИК СССР, *Основные начала уголовного законодательства Союза ССР и Союзных республик 1924* (СЗ 1924, N 24) 204

¹⁹ Богданов С.В., Орлов В.Н., ‘Тоталитарная государственность и экономическая преступность в СССР в первые послевоенные годы’ (2009) Научные проблемы гуманитарных исследований №6 (2) 15

prisoners convicted in corruption. Therefore, the special importance for government had the fight against theft and appropriation of socialist property, corruption and other White-Collar crime. Share of such kinds of crime in the second half of 1950 - beginning of 1960 had tendency to grow. In 1960 corruption amounted 26.3% all registered crimes in the USSR. At the beginning of the 1950s police of the Ukrainian SSR found a criminal group, headed by director of the refinery factory, who was engaged in thefts of fuel in Kiev. Then First Secretary of the Central Committee of the Communist Party of Ukraine Khrushchev insisted that the court had to qualify actions of thieves in accordance with the Decree of the Supreme Soviet of the USSR on June 4, 1947 as well as 'economic counter-revolution'. According this court received political setup and sentenced offenders to the capital punishment.²⁰

Khrushchev believed that the key to successes for the effective fight against crime in the Soviet society will be the involvement of the general public to maintain law and order. He said that 'together with the Komsomol organizations, trade union organizations we called to pay special attention to such phenomenon of socialist society as bribery, speculation and other remnants of the past'²¹. Khrushchev planned to create special agency to struggle against corruption which would be controlled by himself. But soviet leader's plans for fighting with corruption were not realized. In October 1964, the Plenum of the CPSU, Khrushchev was removed from his post and sent into retirement. Professor of California University, Martin Malia, in his monograph notes that by the time Brezhnev came to power, the Soviet system was deeply deformed, extremely increased bureaucracy and totally ineffective model of management.²²

The main problem of the Ukrainian SSR in the Soviet Union during the reign of Brezhnev was corruption. All past leaders tried to avoid luxury items, but Brezhnev did not. Many stories were told by his colleagues. Brezhnev liked to ask for cars during trips abroad, he bartered with Henry Alfred Kissinger, American diplomat, his steel watches on gold and really felt in love with luxury items. Brezhnev not only gave an example of making the luxury items usual, he declined many of officials to corruption by his demands. Brezhnev liked expensive gifts for all holidays and that forced other politicians to find ways, legal

²⁰ Евгения Эвельсон, *Судебные процессы по экономическим делам в СССР* (Лондон, 1968) 61

²¹ Богданов С.В., 'Попытки Н.С. Хрущёва активизировать борьбу с экономической преступностью в СССР' (2012) Вестник архивиста 7

²² S. Bogdanov, 'The Soviet tragedy' (1996) University of California Press 347

or illegal, to satisfy boss's requirements. Situation did not change with any First Secretary of the Central Committee of the Communist Party of the Soviet Union (Leader of USSR) and as a result we can see disintegration of USSR.²³ After this event every member state of USSR became an independent subject of their own legislation, but main problem was in absence of it and it reflected on White-Collar crime in significant way. In 1991 Ukraine became an independent country and everybody recognized that USSR law did not influence on it and all bosses lost their power because they were in Moscow- capital of another country.

Reform of the country's economy, preserved in the early 90th, which was carried out in the conditions of socialism, provided the legalisation of business. At the same time there was no legal basis for it. The main problem of this period was the need of privatization, which started with a considerable delay, and there were no necessary provisions and theoretical and practical experience. Analyzing the economic substance of this reforms, it is necessary to note fallacy in methods of transfer securities of ex USSR's enterprises to labor collective, instead of open auction with foreign capitalists. That's all factors fetched to unfair redistribution of capital and grow of White-Collar crime. The most famous case of White-Collar crime was example of MMM, Ponzi scheme. MMM was created by Sergei Mavrodi in 1991 and the main idea was that in time when value of national currency fell rapidly Mavrodi created his own currency - Mamantovki which rose gradually, per 3-4 percent per day and 3 percent per day transformed into 1000 percent per year. Then he started aggressive advertising campaign on TV, he bought more than half of all advertising time on many TV channels. In 1994 Mavrodi won elections and became a Member Russian of Parliament with totally untouchable status. Everything was over after his arrest in 1997 and adjudication of MMM. Nowadays it hard to imagine but MMM had more than 5 million of investors in Ukraine, people bought cars, goods and immovable property for Mamontovki, many of banks accepted them.²⁴

One of the critical features of modern White-Collar crime in Ukraine is its integration into legal business, creating a powerful industrial and financial groups (corporations) that include their own banks, stock exchanges, insurance companies and other market institutions. Criminal corporation through corrupt relations penetrating into the financial

²³ Андрей Константинов, *Коррумпированный СССР* (Москва, 2006) 115

²⁴ Azubuike Victor, 'MMM under surveillance – EFCC' (15 November 2016)

<<http://dailypost.ng/2016/11/15/mmm-surveillance-efcc/>> accessed 8 April 2017

system, seeking to influence on policy. This is parallel network of industrial and financial relations and is part of the shadow economy (hidden economic activity), which, according to experts now account to 40% of Ukraine's GDP.

The most profitable White-Collar crime is a direct or indirect redistribution of public funds and assets, which primarily is due to withdrawn from circulation or direct theft of money and material resources (diversion use of budget funds, overpricing products or services provided to the state, concealment of raw materials, etc.).

In any case, this is due to global corruption, and various schemes of tax evasion, followed by laundering money.²⁵ The most famous example of White-Collar crime in Ukraine is Yanukovich case. President of Ukraine from 2010 to 2014 Victor Yanukovich built a corruption empire with all senior officials. After Euromaidan revolution process in Ukraine from end of 2013 to middle of 2014 Yanukovich with many officials escaped to Russian Federation. President of Russia Vladimir Putin, gave them political refuge and Russia citizenship.

Nowadays investigation of Yanukovich case continues and all losses are hard to calculate but Mahnitskyy - head of Anti-corruption Department in General Prosecutors office of Ukraine, says that ex-president of Ukraine Viktor Yanukovich stole from Ukrainian budget more than 100 billion dollars.²⁶

Corruption is the main problem of Ukraine and present governmental and international organizations are trying to struggle against it in all spheres and different ways. International organization provide independent oversight, while national politics work on anticorruption legislation. Their work was analyzed by Transparency International – independent international anti-corruption organization, which creates Corruption perceptions index – rate of countries which depends of them corruption conditions and we can see that situation slowly started to change, in 2014 Ukraine was on 142 place in contrast to 2015 when Ukraine took 130 place in that rate.²⁷

²⁵ О. Джужа, С. Чернявський, Криміналізація економіки України: сучасний стан, тенденції, напрями протидії: [тіньова економіка. Економічна злочинність. Корупція в Україні] (Київ, Право України 2005) 35-40

²⁶ Українська Правда, 'В ГПУ порахували, скільки вкрав Янукович'
<<http://www.pravda.com.ua/news/2014/04/30/7024075/>> accessed 8 April 2017

²⁷ Transparency International, 'Corruption Perceptions Index 2016'
<<https://www.transparency.org/country/UKR>> accessed 8 April 2017

We can make conclusion that anti-corruption reforms in Ukraine such as new anticorruption legislation, compulsory e-declaration of all officials and members of their families and lustration are working but still face with many problems. In the last year 41% of Ukrainian faced with corruption, according to the survey conducted by TNSUkraine.

The most corrupt spheres were medical (61%), education (34%), the security (24%), licensing regulatory authorities (19%), local authorities (18%).

Asked about the reasons for the widespread corruption in Ukraine, respondents named impunity of corrupt officials (59%), corruption of senior management (44%), lack of effective control (42%), tradition (36%), low salaries (24%).²⁸

Another sector where White-Collar crime take part is AID of government to commercial banks. Under Ukrainian law every commercial bank in the reason of avoiding bankruptcy can ask state which is represented in the NBU, about grant or interest-free credit. This rule open opportunities for White-Collar criminals from NBU or commercial bank because in case when grant or interest-free credit will not help and bank become bankrupt nobody is responsible. The conformation of it was fact that NACB start investigation about fact that between officials of the NBU and senior managers from list of Ukrainian commercial bank had collusion about AID. The list of banks, such as the City Commercial Bank, Delta Bank, Avtokrazbank, Odessa Pivdenkombank, Taurica and Kievan Rus. Investigators think that the NBU refinanced illegally this banks and this resulted in a waste of resources of the National Bank in the amount of 12 billion of Ukrainian hryvnia (near half of a billion in \$) and it is important to notice that all banks which were included in this list and took AID were bankrupt.²⁹ Nowadays, Ukraine is on the way of reforms which targeted on corruption and White-collar crime at all but everybody must recognize that is a very long and hard way on which we will see many of resonant cases and revelations.

²⁸ Телевізійна служба новин України, 'На думку українців суди та міграційна служба найбільш корумповані структури' <<https://tns-ua.com/news/na-dumku-ukrayintsiv-sudi-ta-mia-sluzhba-naybilshkorumpovani-strukturi>> accessed 10 March 2017

²⁹ Офіційний сайт Національного Антикорупційного бюро України 'Роз'яснення щодо інформації про розслідування кримінального провадження проти керівництва НБУ' (2016) <<https://nabu.gov.ua/novyny/rozyasnennya-shchodo-informaciyi-pro-rozsliduvannya-kryminalnogoprovadzhennya-proty>> accessed 09 April 2017

History of White-Collar crime and nowadays condition in U.S

From one of the theories first Europeans arrived to North America about 10.000-15.000 B.C. from Europe across iced Bering Strait and they did not have influence on the local population. Situation started to significantly changed in 1492 with Christopher Columbus arrivement on the continent and continue of colonization by other explorers.

They started to transplant European law institutions to their colonies, so early history of Americans law is history of more than 10 colonies with a strong European influence.

The first permanent settlement founded by the British in America in 1607. Even in 1606 the two companies were set up in England – Londons and Plymouths. With the establishment of companies creating boards of both the colonies of Virginia was provided. These councils were given the right to legislate provided, however only if they do not conflict with the English. Since colonists recruited in different ways and lived in divergent conditions of climate and soil, it should not be surprising then that the laws and customs of the colonies were quite diverse. During the 1600s, England was awash in political and religious upheaval, both of which would influence the structure of the English colonies as well as their developing criminal justice systems. Religious persecution in England proved a particularly powerful motivating force for colonization in the early years of the American colonies. Roman Catholics found a haven in Maryland, while Quakers sought refuge in Pennsylvania, southern New Jersey, and Rhode Island. Nearly 30,000 English Puritans, technically part of the official Church of England, immigrated to New England. Other religious minorities migrated from continental Europe seeking sanctuary from oppression as well.³⁰ Which law submitted to British colonies? The answer was given in London in connection with the case of Calvin in 1608 - subject to the application of the common law of England; settling in areas not cultivated by civilized nations, British nationals bring with them and the common law. English colonies in America fall under this rule. The date of application of the common law in all American colonies is considered, according to Kent, in 1607 (date of formation of the first colony). This provision, although very controversial (since there are no links between the various colonies did not exist until 1776. However, the principle of Calvin's, has one limitation: the common law of England applies only in the colonies 'to the extent that its rules

³⁰ Mitchel P. Roth, *Crime and Punishment: A History of the Criminal Justice System* (Wadsworth Cengage Learning 2011) 51

comply with the conditions of the colonies'³¹. In America of XVII century dominated was this restriction, rather than the principle of Calvin's case. The rules of English common law did not comply with the conditions of life of the American colonies. Demanded by experienced practitioners, the common law was not applicable in areas where there were no experienced layers and which did not care about them inviting or preparing. In addition, common law had developed by feudal society and for feudal society, a type of society, from which the American colonies were so far. The problems that arose to the colonists were completely new, which the common law could not expect. In addition, the common law was not liked by colonists, in most cases they were forced to emigrate because of persecution.³²

The situation changed in the XVIII century, with the improvement of living conditions of colonists, with the change in their economy and attitudes in the colonies there was a need for a more developed law. Common law was rethought in another way: first, because it can be used for protection against royal absolutism, secondly, because it seems like a link between all of British in America and could be used against threats coming from the French colonies - Louisiana and Canada. But many of problem did not find its solutions – lawyers are still not enough, and the judge with legal education or experience was rarity. There was a trend of more widespread use of common law – US courts have expressed their intention to apply different English law, for example 1677 The Statute of Frauds.³³ Independence proclaimed in 1776 and definitively established in 1783, created for former British colonies that became the United States of America, a completely new conditions. French threat decreased slightly as a result of the annexation of Canada by Britain in 1763 and completely disappeared from the acquisition of Louisiana by the United States of America in 1803. France became an American ally, while all hostile sentiments were directed against England. After the conquest of political independence emerged and became popular the idea of an independent American law. Republican ideals and ideas made strong conditions for a national law codification. It seemed appropriate that the United States Declaration of Independence and the US Constitution (proclaimed

³¹ Yale Journal of Law and the Humanities 9 'Edward Coke's report of Calvin's Case' (1997) Yale Journal of Law and the Humanities 74.

³² Roscoe Pound, *The Formative era of American Law* (Massachusetts, 1954) 40-48

³³ Давид Р., Жоффре-Спинози К., *Основные правовые системы современности* (Москва, Междунар. отношения 1996) 271

September 17, 1787) will be supplemented by codes. New Orleans French type codes have been adopted, including the Civil Code (1808).³⁴

Until the middle of the XIX century it was possible to doubt the final of the struggle that was waged in America between the supporters of the common law and followers of codification. Number of the states after independence, forbidden to refer to the English cases pronounced after 1776, the Union was riched by many territories where acted, at least theoretically, French or Spanish law and did not exist any common law tradition. In addition, America was inhabited by a crowd of new immigrants coming from countries where the common law was not known, and in which, for example, in Ireland did not like all English. Books of many lawyers were translated and published in the United States, a powerful movement wanted the codification of American law. David Dudley Field II from New York achieved in a number of states adopting of criminal, criminal procedure and civil procedure codes.

However, the United States was destined to remain in the common law system, with the exception for territory of New Orleans, which became the State of Louisiana in 1812. Other territories that have joined the Union, could theoretically obey French, Spanish or Mexican law. Triumph of the common law does not require special explanation. First of all, it is a triumph of tradition. English Language and English origin population in the United States retained the common law family. Both systems of law, however, never completely be identical. American law has developed under the influence of other factors, than English. The difference between English and American law initially explained by the impossibility of use English law in America. England – a European Island while USA – a continental land, with independence of neighbors. England – a country of traditions, USA, are proud of their ancestors who had thrown off colonialism and thus created a new home for immigrants of many races who was reject the ancient tradition. England - monarchy, US – presidential republic. US – federal state in which it is necessary to reconcile the general interests and the interests of the state. There are major differences in the economic structures of the two countries. Their population, different in quantity, different in its ethnic composition, by religion, lifestyle and mood. The American lifestyle is not ideal for the English. Even the language of Americans is slightly different from the

³⁴ Bentham J., *Works* (vol 4, 1843) 459-460

English language. Because the countries are so different from each other, of course, problems arise and solved in different ways.³⁵

The most destructive kind of White-Collar crime in US of 19th century was corruption, we can see it on example of William Magear Tweed- senator from New York, the leader of the US Democratic Party in New York, leader of 'Tweed Ring'. His name became synonymous of political corruption. According to minimal estimates, 'Tweed Ring' stole at least \$ 75 million from 1850 to 1873, according to the maximum - 200 million. For comparison - in 1867 the Russian Empire sold Alaska for just \$ 7 million. The State of New York in 1875 showed civil suit to Tweed for compensation of damage of \$ 200 million (4 billion of nowadays cost).³⁶

Cases became one of the main source of law in the US The law took clearly subordinate position: in the 19 century. More than 40% of the judgments handed down on the basis of case law. The constitutional order in the United States in modern times founded the world's oldest constitution in 1787, in which some amendments were made in the XX century. XVII amendment in 1913 established direct (instead of indirect) election of the state senators of Federal Congress. XVIII amendment in 1919 introduced the 'Prohibition' which almost immediately led to 'Golden times' of mafia structures in the alcohol business, and this amendment was subsequently canceled by XXI Amendment 1933. XIX amendment in 1920 recognized the unconstitutional restrictions on voting rights by basis of sex. Amendment XX 1933 recorded new terms taking position, as well as the first session of the newly elected Congress. XXII amendment in 1951 restricted the possibility of stay one person as president to two terms. Amendment XXIII in 1961 gave the inhabitants of the District of Columbia (Washington Capitals) the right to participate in presidential elections. Amendment XXIV in 1964 declared unconstitutional restriction of citizens – canceled limitation of electoral rights for nonpayment of taxes. XXV amendment in 1967 established the order of succession of the president position in the case of impeachment, death or deferment. Amendment XXVI in 1971 lowered for voters the age limit to 18 years (the electorate then immediately increased by 11.5 million

³⁵ Давид Р., Жоффре-Спинози К., *Основные правовые системы современности* (Москва, Междунар. отношения 1996) 272

³⁶ Mandelbaum, Seymour J., *Boss Tweed's New York* (Ivan R. Dee 1990) 74

people). Amendment XXVII in 1992 decided that the law what increased the remuneration of congressman shall come into force only for the next congressmans.³⁷

The Contemporary history of US is characterized not only by significant changes in the political system, constitution, state law, but also marked the evolution of its legal system as a whole. Fundamental importance for the formation of a federal common law has the decision of the Supreme Court in 1938 in the case of (*Erie Railroad v. Tompkins*). This case provides the basis for the normalization of relations between the common law states and the federal common law. The Supreme Court ruled that federal courts cannot create general commercial law independent of national doctrine and in case of conflict of laws apply to the federal common law.³⁸

The American legal system – is a complex and unique phenomenon, which includes the federal legal system in conjunction with the legal systems of the states. The specifics of the American Federation has created a phenomenon that has been called ‘legal duality’. Its essence the fact that the territory of each State is subject to two legal systems – its own and federal.

Statistic research can represent nowadays conditions of White-Collar crime in US in such way:

‘White-Collar crime costs more than \$300 billion for United States. for every 100,000 people in the United States, there are 5,317 arrests that are directly related to white collar crime, while White collar crime accounts for approximately 4% of the incidents reported to the FBI. Individual victims are the most common targets of white collar crime, accounting for nearly 75% of the total reported incidents. White collar criminals are 7 times more likely to target the government than they are to target a religious organization. The rarest form of white collar crime that is reported or investigated: bribery, accounting for less than 1% of all incidents. More than 88% of white collar crime incidents are never reported to law enforcement agencies, although about half of all incidents are reported to someone, such as a supervisor and only corporate crime inflicts far more damage than all street crime combined.’³⁹

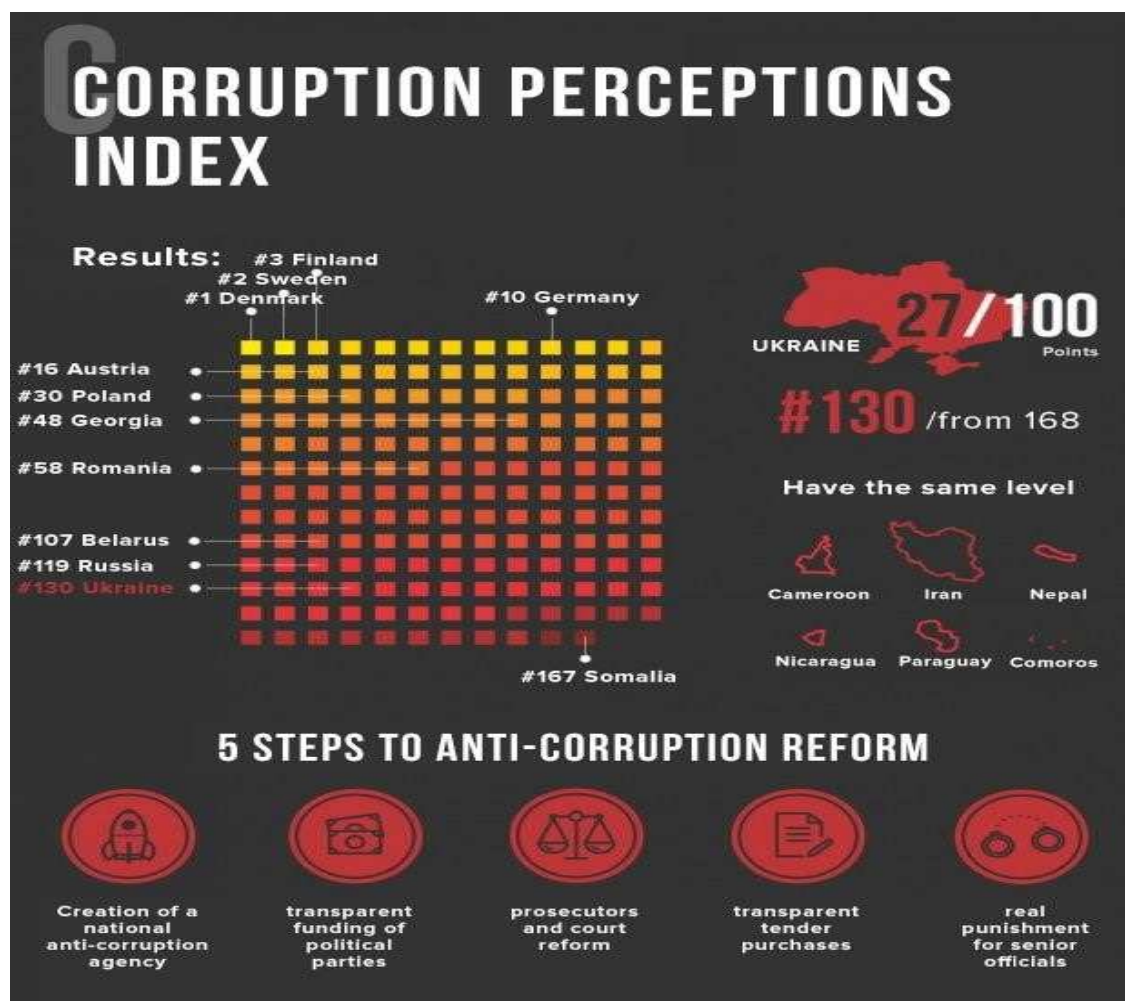
³⁷ Britannica Educational Publishing, *The U.S. Constitution and Constitutional Law* (New York, Britannica Educational Publishing 2012) 105–108

³⁸ Н.А. Крашенинникова, *Теория государства и права зарубежных стран*, Том 2 (Москва, Норма 2009) 604

³⁹ Brandon[Gaille] marketing expert & blogmaster, ‘34 Surprising White Collar Crimes Statistics’ (3 November 2014) <<http://brandongaille.com/34-surprising-white-collar-crimes-statistics/>> accessed 8 April 2017

Common and distinctive features of preconditions and nowadays conditions of White-Collar crime in two legal systems (EU and Ukraine)

As we see Ukrainian and European legal systems have many common features: they have a lot of collective episodes in history and many work is made by Ukrainian government to have a lot of collective episodes in future, but nowadays conditions of White-Collar crime in EU and Ukraine is radically different. It was shown in Corruption Perceptions Index 2015 outlined by Transparency International



Top places were taken by such European Countries as Denmark, Finland and Sweden. As we can see Ukraine took 130th place⁴⁰: despite the start of 5-step anti-corruption reform. We will have close look on this situation in the following articles of our research.

⁴⁰InfoKava, 'Table of results: corruption perceptions index 2015' <<https://infokava.com/35351-opublikovan-mezhdunarodnyy-reyting-vospriyatiya-korrupcii-ukraina-v-konce-spiska.html>> accessed 8 April 2017

We can make a conclusion that despite a common history of EU member states and Ukraine, the countries have got completely different level of development. In 14th century Ukraine was part of Grand Duchy of Lithuania and in 19th century Ukraine was part of Austro-Hungarian Empire, but still it inherited a main problem of post-Soviet states – high level of White-Collar crime in general and corruption in particular.

Legal basis of White-Collar crime

EU legal basis

EU does not have one code or law about White-Collar crime. It is built up from different laws on different levels, which set out an obligation on EU and Member States, and legal basis protection of EU financial interests, including counteraction to White-Collar crime. This law sources provide within the limits of EU and national parliaments competence and control of European Court of Justice.⁴¹

There are primary, secondary, institutional and substantive EU law. Primary EU law is treaty law and it contains the law of the basic Treaties of Paris (ECSC) and Rome (EEC, EURATOM), all accession treaties and all treaties amending the basic treaties (Single European Act, 1986, Maastricht 1992, Amsterdam 1997, Nice 2001 and Lisbon 2007) (EC Treaty, TEU, etc.). Moreover, Protocols, Declarations, Annexes connected to the treaties belong to primary EU law. As it is said by Professor *Peter Fischer* in Introduction to EU Law The Legal System of the EU, association and other agreements between the EU and third parties are also part of the EU legal system, as the Court of the EU held in the Brita Case (Judgment of 25 February 2010). In such a way, such treaties in the narrower sense also belong to primary EU law. Secondary EU law comprises all legal acts which are based on the treaties (regulations, directives, decisions, conclusions, frame-work decisions, etc). Association Councils, established by agreements between the EU and third countries, also belong to secondary European law. Institutional EU law refers to the EU institution, the legislative procedures, to the system of power sharing between EU and Member States, to the enforcement mechanisms of EU law, etc., while substantive EU law covers primary and secondary law containing substantive rules such as to the internal market, competition, environment, taxation, consumer protection, health, technology, trans-European networks, employment, social policy, education, culture, industry, energy, etc. As it turns out, about 70% of the Member States law is governed or at least influenced by substantive EU law.⁴²

With restriction of the treaties qualified EU institutions decide which misconducts require penalties under law and provide support and protection to rights of victims and offenders.

⁴¹ Professor Dr. Dr. hc. Peter Fischer, *Introduction to EU Law The Legal System of the EU*, LL.M. Program European and International Business Law (Austria, Vienna University 2017) 22

⁴² Ibid 22

As it is defined in the TFEU, the EU has competencies for criminal law in general: Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, it is noticed in Article 67(3) of TFEU, while TFEU Article 83(1) means that the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure but with minimization of rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with an international dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. Minimum rules can be adopted for offences, which are particularly serious and include cross-border aspect.

They include such kinds of White-Collar crime as: money laundering, corruption, counterfeiting of means of payment and cybercrime.

Article 83 (2) creates legal base to enforcement that rules on territory of all EU member states, the EU can also set EU-wide minimum rules and sanctions on White-Collar offences if these are essential to ensure that an EU policy is effectively implemented in the same way across the EU.

These priority ways of solution of fraudery and corruption problems in EU financial sphere is reflected in the TFEU Articles 310(6) which noticed that EU shall counter fraud and any other illegal activities affecting the financial interests of the Union, 325 which provides duty to EU and Member states to struggle against fraud and any other illegal activities which affect the financial system of the Union and provide measures, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the EU institutions, bodies, offices and agencies. EU members shall take the same measures to struggle against fraud which effects on the financial interests of the EU as they struggle against own financial interest. The Member States coordinate their activities aimed at protecting the financial system of the EU against fraud but another provisions of the Treaties cannot be broken. Member states and The Commission shall organize close and regular cooperation between the competent authorities.

After consulting with the Court of Auditors, The European Parliament and the Council are acting in accordance with the ordinary legislation and must adopt the necessary measures in the spheres of the prevention of and struggle against fraud in the financial system of the EU with a view to affording effective and equivalent protection in the all

EU members. Every year The Commission and EU members must submit report to Council and European Parliament about implementation of this article.⁴³

Article 86 of TFEU which provides obligation to The Council to establish a European Public Prosecutor's Office, which is created for investigating, prosecuting and bringing to judgment wrongdoings against EU financial interests of EU.

The Directive 2014/57/EU about Market Abuse and Regulation 596/2014 on Market Abuse, which improves EU law in area of market regulation and imposed duties on Member States to implement the Directive into their own legal systems according to which Member States are required to introduce effective, proportionate and dissuasive sanctions against offences which gets in touch with White-Collar crimes such as- insider dealing, unlawful disclosure of information and market manipulation. There will be EU definitions of these offences. Member States must provide that a judge can adjudge punishment for insider dealing or market manipulation up to four years and of unlawful disclosure of inside information up to at least two years. Member States can even make upper this level of sanctions.⁴⁴ They must also introduce sanctions for inciting, aiding and abetting market abuse and attempts to commit such offenses. Companies will be held liable for market abuse.⁴⁵

To protect money from budget austerity, the fight against misuse of EU money of tax payers is a priority for the EU.

As part of combined approach which will be in new Commission strategy against fraud and corruption, this connection responds to the challenge by setting out the deadline which will help to form or make a decision to the Commission in the protection of EU budget against all forms of White-Collar crime, including fraud. Protecting EU public money by effective legislation throughout the Union to become one of the main for the national authorities.

Damage which caused the financial system of EU make all citizens taxpayers, victims of such wrongdoing, and the implementation of Union policies is endanger. The protection of EU financial system against White-Collar crime such as fraud and corruption is the

⁴³ Proposal for a Directive of European Parliament and of the council of 11 July 2012 on the fight against fraud to the Union's financial interests by means of criminal law COM/2012/0363 final [2012]

⁴⁴ Directive 2014/57/EU and Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) OJ L 173/179

⁴⁵ Official EU website, 'Criminal law policy' <<http://ec.europa.eu/justice/criminal/criminal-law-policy/>> accessed 9 April 2017

main target for the Commission and the European Parliament because victory in such struggle will make them more effective and credible.⁴⁶

It is called in particular for the legitimization of all necessary measures for the institution of a European Public Prosecutor's Office. Within the Council, strong support for fight against White-Collar crime and fraud has been expressed.⁴⁷

Another EU authority which struggles against fraud and corruption into EU funds is OLAF. It was created in 1999 by The Commission Decision 1999/352 as EU authority with an independent investigative mandate.⁴⁸ 3 billion euro were recovery to the EU budget with help of this authority.

The most recent addition to the Justice and Home Affairs agenda is the Stockholm programme. The programme introduces and develops the steps towards criminal law at EU level. It sets out the European Union's priorities for the areas of Freedom, security and justice through the prism of criminal law as a European policy area. This area of priorities is further developed in chapter V in the TFEU with the starting point of article 67 TFEU. Among the Stockholm programme's priorities is the recommended development of a focused and purposeful internal security strategy in order to improve the protection of citizens and the fight against crime. One section pays a particular attention to White-Collar crimes such as money laundering, tax evasion and corruption.⁴⁹ Corruption is presented by two types: passive and active. Passive corruption is a deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute

⁴⁶ European Parliament Resolution 2009/2167(INI) of 6 May 2010 on the protection of the Communities' financial interests – Fight against fraud – Annual Report 2008 [2010]; European Parliament Resolution 2010/2247(INI) of 6 April 2011 on the protection of the Communities' financial interests – Fight against fraud – Annual Report 2009 [2011]

⁴⁷ Communication from the Commission to the European Parliament, The Council, The European economic and social committee and The Committee of the regions of 26 May 2011 On the protection of the financial interests of the European Union by criminal law and by administrative investigations An integrated policy to safeguard taxpayers' money COM/2011/0293 final [2011]

⁴⁸ Commission Decision 1999/352/EC of 28 April 1999 establishing the European Anti-fraud Office (OLAF) [1999] OJ L 136/20

⁴⁹ Notices from European Union Institutions, Bodies, Offices and Agencies 2010/C 115/01 of 4 May 2010 The Stockholm programme – an open and secure Europe serving and protecting citizens [2010] OJ C 115/4, 23

passive corruption and every Member State shall take the necessary measures to ensure that conduct of the type is made a criminal offence.

Active corruption is defined as a deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute active corruption, and every Member State shall take the necessary measures to ensure that conduct of the type is made a criminal offence too.⁵⁰

From 2003 and Framework decision from 2003/568/JHA EU legal basis separated corruption in public and private sectors and made legal persons liable for such offences.⁵¹

The problem of White-Collar crime is reflected on national legislation of EU Member States and as we can see the one of the instrument for this is the Directive 2005/60/EC of the European Parliament and of the Council of 26th of October 2005 on the prevention of the use of the financial system for the purpose of money laundering. The Directive proscribe different forms of money laundering (Art. 1 (1) and (2)) and bind the Member States to introduce proportionate, dissuasive and effective sanctions for money laundering (Art. 39 (1)), but the Directive does not provide for aggravating or mitigating circumstances and this can be the cause of the differences among the different States.

Member States also have subjects of their own regulation, for example the mens rea of money laundering. In France, Italy, Latvia, Poland, Romania and Sweden, the mens rea is intention while in Cyprus the mens rea requires that the author knows or ought to have known that any kind of property constitutes proceeds of an offence, in contrast to Spain, where the mens rea is intention or serious negligence. In Germany, the mens rea is intent, or, regarding the knowledge about the origin of the property, gross negligence in time when in Hungary, the mens rea of concealment or conversion of the property is intent.

⁵⁰ Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests (adopted 27 September 1996, entered into force 17 October 2002 among the fifteen old Member States) OJ C 313/10, art 2, 3 (the First Protocol of the Treaty on European Union).

⁵¹ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector [2003] OJ L 192 54

However, gross negligence is sufficient, if the White-Collar offender uses the property in his business activities or financial operations.⁵²

In general, recurrence or previous convictions are aggravating circumstances. Some national codes contain other articles about aggravating circumstances. In France, Germany, Italy, Latvia and Poland, specific forms of joint commission are considered aggravating circumstances. In Cyprus, Germany, Hungary and Poland, the amount of the benefits is a deteriorative circumstance. In Italy and in Hungary the special status of offender is considered to be a deteriorative factor. In Poland, Hungary and Germany, the perpetrator may avoid criminal liability for such White-Collar crime as money laundering by reporting about it to public authorities. Sweden is the only jurisdiction with provisions regarding facilitate circumstances. Thus, in cases of money laundering of small amounts of money, the sentence may be reduced. The Directive does not provide for aggravating or mitigating circumstances and this can be the case of different States. The effects of the aggravating and mitigating circumstances vary. In France recidivism leads to a compulsory minimization of punishment. In Italy and Spain, the aggravating and the mitigating circumstances lead to a compulsory influence on the sentence. In Germany, only the specific disapproving conditions lead to increase of the sentence. In Latvia and in Sweden, not always, the aggravating conditions can lead to an increase of the sentence, while Romania the aggravating conditions lead to increase of the penalty and the mitigating circumstances lead to a compulsory decrease of the legal minimum of the penalty.

Member States are also free to choose other sanctions because of having more influence on subjects of such wrongdoing.

⁵² Proposal No 1781/2006 of 05 February 2013 for a Regulation of the European Parliament and of The Council on information accompanying transfers of funds COM/2013/044 final [2013]

Sanction \ Country	Cyprus	France	Germany	Hungary	Italy	Latvia	Poland	Romania	Spain	Sweden
Closure of Premises										
Publication of Decision										
Prohibition from holding directional positions in legal entities										
Prohibition from frequenting certain places										
Prohibition from making payments										
Expulsion of non-citizens										
Loss of public license										
Driving disqualification										
Parental rights effected										
Loss of civic rights										
Prohibition on holding public office										
Prohibition from undertaking certain professions, including disqualification										
Prohibition from making contact with certain individuals										
Prohibition from leaving Country										
Forfeiture of economic proceeds										
Confiscation/deprivation orders										
Community Service										

EU Member States are different not only in some field of legislation, but in practical use of it, too. For example, in Cyprus, only 1 person was convicted for money laundering in 2012. And in 2013 there was no imprisonment imposed on anyone. While in Germany 285 persons were found guilty for the same kind of White-Collar crime just in 2012.⁵³ Summarizing all the data we can make a conclusion, that problem of White-Collar crime has a significantly good law regulation. The main reason of it is EU policy and loses from it, for example nearly four hundred and eighty billions of US dollars are laundered in all EU Member states⁵⁴ and corruption costs between 179 and 990 billion of euro for 2009⁵⁵.

⁵³ European Commission Final Report Study on criminal sanction legislation and practice in representative Member States prepared by Thomson Reuters Aranzadi for DG Justice of the European Commission under Contract No. JUST/2011/JPEN/PR/0066/A4 [2013] (European Commission Final Report)

⁵⁴ FATF, 'Money laundering' <<http://www.fatf-gafi.org/faq/moneylaundering/>> accessed 9 April 2017

⁵⁵ European Parliament Report PE 579.319 Organised Crime and Corruption: Cost of Non-Europe in the area of Organised Crime and Corruption (Annex II – Corruption) European Added Value Unit [2016]

Ukrainian legal basis

Ukrainian legal basis are built up from international treaties which were ratified by Verhovna Rada, Constitution of Ukraine, special legal code and laws. Enforcement, punishment and prevention, in majority cases are provided by National Criminal Code of Ukraine, which is based on the Constitution of Ukraine and the principles and norms of international law and special laws. Offence under National Criminal Code of Ukraine is guilty, socially dangerous act (action or inaction) which was committed by subject, this code determines subject as ‘person who has committed crime at the age of which criminal liability can be (16 years)’⁵⁶. National Criminal Code of Ukraine distinguishes between common and special subject. Special subject exists for special kind of crimes where it can be for example governmental or official only.

Ukrainian crime law is very detailed because according to National Criminal Code of Ukraine only doing which determined in this code could be recognized as crime and analogy of law cannot be used. Ukrainian criminal law determined many of White-Collar crimes, such as:

- offer or giving bribery to official,
- accepting the offer, promise or receipt of improper benefits by officer,
- bringing the bank to bankruptcy,
- legalization (laundering) of profits from crime,
- illegal insider trading,
- the abuse of power or position,
- illegal embezzlement or appropriation of property,
- illegal actions of remittance documents, payment cards and other means of access to bank accounts, electronic money or equipment for their production,
- fictitious business running,
- intentional bankruptcy,
- financial fraud,
- illegal privatization of public property.⁵⁷

⁵⁶ National Criminal Code of Ukraine [2001] № 2341-III, art. 18

<<http://zakon0.rada.gov.ua/laws/show/2341-14>> accessed 10 April 2017

⁵⁷ National Criminal Code of Ukraine, art. 191, 205, 209, 218, 232, 233, 364, 368

Science the volume of the Master thesis is limited, we cannot have a close look at all White-Collar crimes which are provided by Ukrainian legislation, so we will stop only on the most spread and harmful ones.

One of those is corruption. Corruption is a main problem of nowadays Ukraine and also this is one of the main barriers between Ukraine and EU. Ukraine legislation provides a detailed determination of corruption. It says that ‘the use of an official person granted or related to him opportunities in order to obtain illegal advantage or acceptance of promise / offer / giving of an illegal benefits appoint to any request to or by another natural or legal person to persuade that person to unlawful use granted him authority and related opportunities’⁵⁸.

We can see that legal definition of the corruption is wide and obtain many of cases from bribery to abuse of power.

Subjects of corruption in Ukraine contain more than one thousand of official titles, we will just innumerate some of them: President of Ukraine, Minister of Ukraine, Vice Prime Ministers of Ukraine, ministers and other heads of central executive bodies that not part of the Cabinet of Ministers of Ukraine and their deputies, all Ukrainian Prosecutors. Officials of National bank of Ukraine, the Accounting Chamber, the Commissioner of the Verkhovna Rada of Ukraine on human rights, Deputies of Ukraine, Deputies of local councils, Civil servants, officials of local governments, military officials, all judges, officials of the Security Service of Ukraine, officials of Diplomatic Service, officials of international organizations, officials of any legal person, auditors and notaries.

According to Articles 368 of National Criminal Code of Ukraine, punishment for bribery is lower than in US. In Ukraine it starts from \$600 fine to 12 years of imprisonment and depends from post and size of a bribe, while punishment for bribe offering varies from \$100 fine to two years of imprisonment and might be treated as punishment for bribery. Another problem of bribery is that corruption and bribery in Ukraine are investigated by three national authorities: prosecutors, special services and special Anti-corrupt Bureau of Ukraine. This matter of facts might presuppose the range of additional difficulties in their cooperation.⁵⁹

⁵⁸ Law of Ukraine On Principles of Prevention and Combating Corruption [2011] № 3206-VI, art. 1
<<http://zakon0.rada.gov.ua/laws/show/3206-17>> accessed 10 April 2017

⁵⁹ National Code of Criminal Procedure of Ukraine [2012] № 4651-VI, art. 216
<<http://zakon0.rada.gov.ua/laws/show/4651-17>> accessed 10 April 2017

Bringing the bank to bankruptcy is a second problem of nowadays Ukraine which is caused by White-Collar crime. In the period from 2014 until end of the 2016 in Ukraine, eighty eight bank became bankrupts⁶⁰ and it caused a billion dollars damages for Ukraine. All parties might be interested in the bankruptcy of the bank, exception is only a physical investor, because officials from National Bank of Ukraine can provide loans and credits for this bank, while officials of commercial bank can transfer all actives according to their own interests and leave to government zero actives and billions of debts.

In National Criminal Code of Ukraine such wrongdoing is determined according to Article 218-1 as Bringing the bank to bankruptcy and provides penalty from one to five years of imprisonment.

Liability for legalization (laundering) of profits from crime is established by Article 209 of National Criminal Code of Ukraine and it does not matter in which way this money was earned, it may be a particular crime against property, bribery, smuggling, financial fraud, tax evasion and so on. National Criminal Code of Ukraine provides punishment for such wrongdoing by fining (starting from \$300) or up to 5 years of imprisonment. Liability for trading with use of insider information is provided by Article 232 of National Criminal Code of Ukraine, according to this article insider information is ‘any unpublished information about the issuer, its securities or transactions on them, and if it will be made public could significantly affect on the value of securities of the issuer. Unpublished should consider any information which is not published in newspapers intended for public access or otherwise (through television, radio, by notice to the public events during an open trial etc.) are not communicated to the undefined groups of people. Insider should be considered the information which the issuer under the legislation duties provides for a specific government body. It is not insider information about the valuation of securities and or financial and economic condition of the issuer, if it is obtained solely on published information or information from other public sources not prohibited by law.’ Article 209 also provides liability not only for use insider information in trading but for any divulgation of this information. Such offences can be punished only by fine, up to \$3000.⁶¹

⁶⁰ Офіційний сайт Національного банку України, ‘Реорганізація та ліквідація’
<https://bank.gov.ua/control/uk/publish/article?art_id=75535> accessed 3 April 2017

⁶¹ National Criminal Code of Ukraine, art. 209

The abuse of power or position is wrongdoing which is determined in Article 364 of National Criminal Code of Ukraine. Under the abuse of power or position should be understood the use by official his power against the interests of service or submission or decisions which are binding for other natural or legal persons. The abuse of power or position is characterized by special features:

1. Using official authority or official position against the interests of service and Ukraine
2. Was committed for mercenary motives or other personal benefit or for the benefit third parties
3. Causing substantial harm to legally protected rights and interests of individual citizens, or state and public interests, or interests of legal entities
4. Involves the relationship between the White-Collar criminal, his behavior and corollary which is caused from his illegal actions or inaction

The absence of one from these things indicates absence of abuse of power or position.

US legal basis

Analyzing rules of American law regulating responsibility for certain types of White-Collar crimes, it seems necessary to focus on legal regulation of the relationships which cause particularly significant damage and have influence on economy.

Among these types of crimes US criminologist include:

- bribery;
- White-Collar fraud (including crimes committed by them through abuse of office);
- money laundering.

Bribery appears in three main forms of offenses in the American legislation and law doctrine:

- simple bribery – determined as offence against public and public administration;
- commercial bribery – offence against business and competition;
- bribery in the field of sport.

Corruption is not limited by mentioned forms, but in terms of legislation (both on the federal and state levels) these four areas represent majority of reasons for officials to became the object for prosecution.⁶²

The field of bribery in public administration in US is very detailed and sets out legislation governing liability for corruption. The term public official is determined in United States Code in Title 18/Part I/Chapter 11/Article 201 as ‘Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror’.

According to this law, subjects of bribery are not only those who receive bribes, but also those who give them. In the context of chapter 11 of United States Code the bribers are distributed within three categories of officials:

- public officials – members of Congress, members of US standing committees, officers, employees or persons acting on behalf of the United States, departments,

⁶² Никифоров Б.С., Решетников Ф.М., *Современное американское уголовное право* (Москва, Наука 1990) 156

offices, agencies of executive power by virtue of official duties or under the authority and the jury;

- persons selected to serve as public officials;
- special government employees – officials or employees of federal legislative and executive bodies, independent of any US authority who work with or without a fee for minimum 130 days per year.

The punishment for such kinds of offences has rather a financial character. According to United States Code in Title 18/Part I/Chapter 11/Article 215 subject of such wrongdoing can be fined three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted but not more than \$1,000,000 in special situations he can be imprisoned not more than one year.

Commercial bribery is an unpunishable doing in every state in contrast to bribery in public administration which is punished under the Criminal Codes of all states.

Commercial bribery is blamable only in certain states. The federal legislation establishes liability only for obtaining bribes by officials of federal banks and other financial institutions for providing loans, extension of credit and other operations conducive to private persons, firms or corporations.⁶³

In the law of the state, where the liability for commercial bribery takes place, for example in New York, it is determined as ‘confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs’⁶⁴.

It is generally considered that bribe is a cash consideration which is directly transferred to the agent, servant or representative, but usually all is performed in a veiled form. For example, bribe cannot be transferred directly to the recipient, it can be transferred to members of his family. Many of States predict such opportunity, for instance, Mississippi law provides responsibility for wife of official in case of receipt money, goods, movable property or any other rights with her knowledge and consent.⁶⁵ In the majority of States

⁶³ United States Code [2015] Title 18/Part I/Chapter 11/§§ 215-216
<<http://law.justia.com/codes/us/2015/title-18/part-i/chapter-11/>> accessed 10 April 2017 (US Code)

⁶⁴ New York Penal Law Code [2016] Part 3/Title K/Art. 180.00
<<http://law.justia.com/codes/newyork/2016/pen/part-3/title-k/article-180/180.00/>> accessed 10 April 2017

⁶⁵ Mississippi Code [2015] Title 97/Chapter 9/Art. 1/§ 97-9-5
<<http://law.justia.com/codes/mississippi/2015/title-97/chapter-9/article-1/section-97-9-5/>> accessed 10 April 2017

commercial bribe builds up on lack of knowledge of the head of a corporation or of the receipt of bribes to its employees or agent.⁶⁶

Despite the fact that this kind of White-Collar crime has a fairly broad prevalence, not all law enforcement authorities in the United States are fighting against commercial bribery. They assume that private firms should protect own interests in this sphere, but private business often is not interested in litigation, being afraid of newspaper hype, which may adversely effect company's reputation.

Bribery in the field of sport opens opportunities for corruption, because it is related to private and politician interest. Bribery in sport has many forms, for example, sport referees and teams can get money for match fixing, with the help of which money can be laundered.

According to US Code briber in sporting contests is determined as 'whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest'. Such wrongdoing can lead to 5 years long imprisonment term'⁶⁷.

The White-Collar fraud takes a special place in US offences. This is crime committed inside of public institutions or private companies, when employee, using his official position, withdraws property or benefits at the expense of his employer.

The law of many states, in particular New York Penal Law, in accordance with the recommendations of Mode US Code, does not emit a White-Collar fraud as kind of White-Collar crime and sees it as a way of committing the ordinary theft, in spite of a number of other State Codes, which provides another solution to the problem for example, California Penal Code.⁶⁸

It seems paradoxical, but the excretion of embezzlement from the theft often puts offenders on a better position. Despite that fact that volume of embezzlement is sometimes more than hundreds of thousand dollars, offenders are in better position in contrast to persons who committed theft. Embezzlement always entails a less strict

⁶⁶ С.В. Изосимов, Уголовная ответственность за преступления, совершаемые руководителями коммерческих и иных организаций, по уголовному законодательству США (Уфа, 2000) 132

⁶⁷ US Code, art. 224

⁶⁸ California Penal Code [2016] Part 1/Title 13/Chapter 6/Section 503-515

<<http://law.justia.com/codes/california/2016/code-pen/part-1/title-13/chapter-6/>> accessed 10 April 2017

punishment. For example, Article 18-2408 of Idaho Statutes Title 18. Crimes and Punishments with the help of which theft can be punished by imprisonment up to for 20 years and Article 18-4606 of Idaho Statutes Title 18. Crimes and Punishments which can punish fraudster who commit embezzlement by imprisonment up to for 10 years. An exception can be found in the District of Columbia Code Division IV. Criminal Law and Procedure and Prisoners, which is provides imprisonment up to 10 years for theft (Article 22-220), and for embezzlement of county property Colombia – up 20 years of imprisonment (Article 22-1201).⁶⁹

Among the crimes committed by employees of public institutions and private companies, attention is drawn to such acts, which are entrusted to them in the reason of their office position and related to the sale information. Competing organizations and private firms who seeking to insider information about official plans of governmental institutions, for example, information where would be build a new residential area to buy some land which will increase in the price. The damage from these crimes is often huge. Title 18/Part I/Chapter 93/Article 1905 of United States Code is created for struggle against such offences, it provides punishments for such White-Collar criminals up to one year of imprisonment and movement from their job.

Despite the fact, that many law scientists distinguish White-Collar crime as independent type of offences, it is not reflected in law sources and legal norms about punishment and responsibility of White-Collar criminals. Thus, it is randomly presented in different titles and parts of United States Code.

FBI define money laundering as ‘the process by which criminals conceal or disguise their proceeds and make them appear to have come from legitimate sources’. Money laundering is usually associated with crimes that provide a financial gain, and criminals who are engaged in money laundering derive their proceeds in many ways. Some of their crimes are:

- Complex financial crimes,
- Health care fraud,
- International and domestic public corruption.

⁶⁹ С.В. Изосимов (п 65) 133

Offenders who want to legalize their money can use a huge variety of methods and it is difficult to provide a complete audition for all of these spheres which were used by criminals:

- Financial institutions;
- International trade;
- Precious medals;
- Real estate;
- Third party service providers;
- Virtual currency;
- Games of chance (lottery and casino).⁷⁰

The US anti-money laundering regime is based primarily on two statutory schemes: first is the Money Laundering Control Act (MLCA) and second is the Bank Secrecy Act (BSA). Federal criminal money laundering laws are enforced primarily by the Justice Department, both in Washington, DC and through local US Attorneys. The Criminal Division of the Justice Department has an Anti-Money Laundering and Asset Forfeiture Section dedicated to coordinating money laundering investigations and litigation. Money laundering allegations are investigated by both federal and local law enforcement agencies, including the Federal Bureau of Investigation, Drug Enforcement Administration, US Customs Service, the Criminal Investigative Division of the Internal Revenue Service, the Secret Service and many others.⁷¹

In Title 18/Part I/Chapter 95/Articles 1956-1957 of United States Code is reflected responsibility for money laundering, offender can be punished by fine up to \$500,000 or imprisonment up to 20 years.

⁷⁰ Official website of FBI, 'White-Collar Crime' <<https://www.fbi.gov/investigate/white-collar-crime>> accessed 10 April 2017

⁷¹ Mark Pieth, *A Comparative Guide to Anti-Money Laundering: A Critical Analysis Of Systems In Singapore, Switzerland, The Uk And The USA* (Edward Elgar Pub 2004) 349-350

International legal basis

International legal basis of White-Collar crime is a part of independent legal branch of public international law, which governs cooperation, detection, investigation and punishment in combating international crimes in States which signed treaty. It significantly differs from the classical international law in the subject of regulation. In international legal basis of crime struggle in general and White-Collar crime in particular, a subject is a person who committed a certain act, rather than the State.

As for countries which are noticed in our research, the most suitable for analysis might be United Nations Conventions, because US, Ukraine and all Member States of EU are members of this international organization. So, convention is 'a formally concluded and ratified agreement between States. The term is used generically to refer to instruments binding at international law, concluded between international entities (States or organizations). Under the Vienna Conventions on the Law of Treaties, a treaty must be (1) a binding instrument, which means that the contracting parties intended to create legal rights and duties; (2) concluded by states or international organizations with treaty-making power; (3) governed by international law and (4) in writing'⁷².

First which we will analyze is United Nations Convention against Corruption and, as we can notice from title of this convention, it is fully dedicated to corruption – one of the most ruinous kind of White-Collar crime.

After having analyzed this document we can make a conclusion that it was primarily created for:

- corruption was harmed to the sustainable development of people;
- seriousness of problems and threats lead by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law;
- corruption is not a local matter, it is a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it mandatory;

⁷² H.W. Fowler, F.G. Fowler, R.E. Allen, *The Concise Oxford Dictionary of Current English*, (8th edn, Clarendon Press, Oxford 1990 and United Nations Treaty Collection, Treaty Reference Guide 1999) 895

- Concerned further about cases of corruption that, which may constitute a significant proportion of the budget and resources of States, and that threaten the political stability and sustainable development of those States;
- United Nations convinced that a versatile approach is required to prevent and combat corruption effectively.⁷³

The aims the Convention is performing are the following:

- ‘To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- To promote integrity, accountability and proper management of public affairs and public property.’⁷⁴

According to this convention public official is determined as:

- ‘any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority,
- any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party,
- any other person defined as a public official in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, ‘public official’ may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Part.’⁷⁵

We can see that this term is the widest and enfolds all national legislation definitions, and also provides its own.

⁷³ General Assembly resolution of United nations Office on Drugs and Crime 58/4 of 31 October 2003 United Nations Convention against Corruption [2003] A/RES/58/4, art. 2, 4 (Convention against Corruption)

⁷⁴ Convention against Corruption, art. 1

⁷⁵ Convention against Corruption, art. 2

Therefore, this document provides obligation to implement such measures in legislation of participants:

- measures to strengthen independence and prevent opportunities for corruption among members of the judiciary (judges, prosecutors);
- measures prevent corruption in the private business sector;
- measures to provide domestic regulatory and supervisory regime, financial institutions and banks;
- adopt such legal base and other measures to establish as criminal offences for committed intentionally: the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties and the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit;
- adopt a necessary legal base to establish as criminal offences laundering of proceeds of crime and Obstruction of justice when committed intentionally;
- establish the liability of legal persons for participation in the offences which connect with corruption;
- provide effective protection for witnesses and experts who give testimony concerning offences, as appropriate, for their relatives and other persons close to them;
- ensure of a body or bodies or persons specialized in combating corruption through law enforcement.⁷⁶

Obviously, United Nations Convention against Corruption has many of no-binding recommendations:

⁷⁶ Convention against Corruption, art. 11, 12, 14(1), 15, 17, 23, 25, 32, 36

- adopting such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally in the course of economic, financial or commercial activities, bribery in the private sector, embezzlement of property in the private sector;
- adopting such legislative and other measures as may be necessary to establish as a criminal offence the concealment when it is committed intentionally, without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences;
- in contrast to witnesses protection of reporting persons – persons who report about crime is not binding obligation.⁷⁷

According to United Nations Convention against Corruption States Parties shall cooperate in:

- Extradition,
- Transfer of sentenced persons,
- Mutual legal assistance,
- Transfer of criminal proceedings,
- Law enforcement cooperation,
- Joint investigations,
- Special investigative techniques.⁷⁸

While looking closer at United Nations Convention against Transnational Organized Crime we can understand that it is mainly dedicated to White-Collar crimes, such as corruption or money laundering. Convention obliges Member States participants to adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures which might be necessary to establish as criminal offences for corruption and money laundering when committed intentionally.⁷⁹

⁷⁷ Convention against Corruption, art. 21, 22, 24, 32

⁷⁸ Convention against Corruption, art. 44-50

⁷⁹ General Assembly resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organized Crime [2000] A/RES/55/25, art. 6, 8 (Convention against Transnational Organized Crime)

Offence is considered to be intentional according to Article 3 (2) of United Nations Convention against Transnational Organized Crime, in case one of the following is detected:

- It is committed in more than one State;
- It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- It is committed in one State but has substantial effects in another State.

This Convention provides obligation to Each State Party to create legal norms in their own legislation which are fair to the gravity of noticed in Convention offences and makes possible prosecution, adjudication and sanctions. Each State Party shall ensure that its courts or other competent authorities keep in mind the grave nature of the offences covered by this treaty and establish under its domestic law a long statute of limitations period for corruption and money laundering and a longer period where the offender has evaded the administration of justice.⁸⁰

Confiscation means ‘permanent deprivation of property by order of a court or other competent authority’⁸¹ and shall be adopted to the greatest extent of possible and such measures may be necessary to enable confiscation:

- Profits of crime derived from offences which were noticed in this Convention or property in the value of which corresponds to that of such profits;
- Property or other instrumentalities used in or destined for use in crimes covered by this treaty.

If proceeds obtained in illegal way, partially or completely, have been transformed into other property, such property shall be subject for measures instead of the proceeds. Property which was confiscated shall become an estate of State Party which initiates this confiscation.⁸²

According to this Convention extradition is possible only if four points occur

⁸⁰ Convention against Transnational Organized Crime, art. 11

⁸¹ Convention against Transnational Organized Crime, art. 2

⁸² Convention against Transnational Organized Crime, art. 12, 14

- the person or organized criminal group are situated on the territory of the requested State Party;
- the offence for which extradition is sought is punishable under the domestic law the requesting State Party;
- the offence for which extradition is seek is providing under the domestic law the requesting State Party;
- the offence for which extradition is seek is providing under the domestic law requested State Party.

If these four points do not occur, extradition under this Convention is impossible. Any person against whom proceedings are being carried out in connection with any of the offences to which this Convention is applied, shall be guaranteed fair judgment at all stages of the proceedings and enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present and nothing shall be interpreted as obligation to extradite if the requested State Party has grounds for believing that the request has been made for the purpose of prosecuting a person in the reason of his political opinions, sex, race, religion, nationality or ethnic.⁸³ On the next stage, we will have a close look at United Nations International Code of Conduct for Public Officials. This document provides general rules for public officials on international level. It determines term public office as ‘a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government’⁸⁴ and provide obligation to be attentive, fair and impartial to manage state resources carefully and take responsibility for them.⁸⁵

Public official shall not use their authority in commercial interest of themselves or member of their families. They cannot take any office in commercial organizations and report about any conflict of interest between duties of public officials and private interests. Budget money, property, services or information cannot be used in activities

⁸³ Convention against Transnational Organized Crime, art. 16

⁸⁴ General Assembly resolution 51/59 of 12 December 1996 United Nations International Code of Conduct for Public Officials [1996] A/RES/51/59, art. 1 (United Nations International Code of Conduct for Public Officials)

⁸⁵ United Nations International Code of Conduct for Public Officials, art. 1

not related to their official work.⁸⁶ Public officials must declare personal profits.⁸⁷ Any gift which may have influence on performance of public official functions cannot be received, directly or indirectly.⁸⁸ Information which relates to duty of public official and is confidential shall be kept confidential, exceptions can be provided by national legislation.

We can make an intermediate conclusion that international law determines many of terms from our research and creates many of obligations to national legislation but, unfortunately, has lack of enforcement. Good example of it is Viktor Yanukovych's case (former Ukrainian president), who fled to Russian Federation after the Euromaidan. Nowadays his location is a well-known fact and he does not refute this, but Russian Federation which takes part in Convention against Corruption and Convention against Transnational Organized Crime and provides obligations caused by this convention to their own legislation, does not want to extradite Ukrainian ex-president Victor Yanukovych and in such a way is breaching Article 44 of United Nations Convention against Corruption.

⁸⁶ United Nations International Code of Conduct for Public Officials, art. 2.

⁸⁷ United Nations International Code of Conduct for Public Officials, art. 3

⁸⁸ United Nations International Code of Conduct for Public Officials, art. 4

Comparison of three legal systems (US, EU and Ukraine)

Having analyzed three legal systems: US, EU and Ukrainian, we can say that the simplest is Ukrainian legal basis, because it includes legislation only on national level (Constitution of Ukraine and National Criminal Code of Ukraine) with small influence of international institutions, in contrast to EU legal basis, which was built from different laws on different levels, which sets out an obligation on EU and Members States and US law which consists of different law sources: federal law, states law and precedent.

In EU legislation is built up by the European Parliament and the Council and directives adopted in accordance with the ordinary legislative procedure but with minimization of rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with an international dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. Minimum rules can be adopted for offences, which are particularly serious and include cross-border aspect.⁸⁹ While in Ukraine changes to National Criminal Code of Ukraine can be adopted only with a help of a majority of parliament votes of Verhovna Rada of Ukraine.⁹⁰

Article 325 of TFEU, which provides obligation to EU and Member states to struggle against fraud and any other illegal activities which affecting the financial system of the Union and provide measures, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the EU institutions. The similar can be found in US law on federal level.⁹¹

In the EU according to Protocol PIF of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests corruption can be defined as:

‘Passive corruption – the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute passive corruption and every Member State shall take the necessary measures to ensure that conduct of the type is made a criminal offence. Active

⁸⁹ Consolidated version of the Treaty on the Functioning of the European Union (TFEU) 2012/C of 26 October 2012 OJ C 326/01, art. 83(1)

⁹⁰ Constitution of Ukraine [1996] № 254к/96-BP, art. 91

<<http://zakon0.rada.gov.ua/laws/show/254k/96Bp/>> accessed 10 April 2017

⁹¹ US Code, ch. 47

corruption - the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute active corruption, and every Member State shall take the necessary measures to ensure that conduct of the type is made a criminal offence too⁹² and in US and Ukraine legal systems determine this wrongdoings as corruption too, in contrast to corruption in the field of sport and private sector.'

Corruption in the field of sport and private sector is punishable in US according to Article 224 of US Code and Article 165 TFEU, 'the Union shall contribute to the promotion of European sporting issues, while taking account of the specificity of sports. Union acts shall be aimed at developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen'. In this sense tackling match-fixing could be considered in the core of the EU competence in the sports field. The Framework Decision on combating corruption in the private sector – Council Framework Decision 2003/568/JHA on combating corruption in the private sector of 22 July 2003- which creates legal base to criminalization bribery in the field of sport and private establishes and creates detailed rules on the liability of legal persons and deterrent sanctions, but it found a bad feedback. The first implementation report of the Framework Decision indicated that enactment in national legislative systems of EU Member States was very poor. Member States had failed to capture the true meaning of the elements of the offence in 2007. The second implementation report also showed another data and 9 member states have correctly transposed all the elements of the offence in 2011 (Match-fixing in sport in EU 2012), in comparison with Ukraine where bribery in field of sport is included in definition of fraud.⁹³

Commercial bribery is not a punishable doing in every state of US, it is punishable only in certain states. The federal legislation establishes liability only for obtaining bribes by officials of federal banks and other financial institutions for providing loans, extension of credit and other operations conducive to private persons, firms or corporations⁹⁴ but not

⁹² The First Protocol of the Treaty on European Union, art. 2, 3

⁹³ Джужа О.М., Савченко А.В., Черней В.В., *Науково-практичний коментар Кримінального кодексу України* (Київ, Кондор-Видавництво 2016) ст. 190

⁹⁴ US Code, art. 215-216

to private persons. The same situation is in EU according to Report from the Commission to the European Parliament in 2011 and the on combating corruption in the private sector not all EU States transposed provisions on criminalisation of all elements of active and passive bribery and the provisions on the liability of legal persons. Depending on progress, the Commission will consider proposing a Directive to replace the Framework Decision.⁹⁵ In Ukraine commercial bribery is not regulated too. National Criminal Code of Ukraine criminalize only receipt of illegal remuneration by employees of state enterprises, institutions or organizations⁹⁶ and it caused many problems to business and fair competition:

- the loss of fair competition skills;
- the desire for quick and light beneficiation demotivate staff and leads to lower qualifications and professionalism of a personnel;
- jeopardizes the reputation of the company;
- reduce the competitiveness of products through increased costs (through the purchase at a higher price);
- reduction of quality (if purchase poor quality services or raw materials).

Thus, the negative impact of corruption in the private sector has two main areas. First, it prevents formation of normal business and competition. Secondly, it promotes corruption agreements in the public sector through the development of informal links inside economic.

According to anti-corruption survey in the private sector, outlined by Ernst and Young in 2013, 31% of respondents from EU believe that they lost contracts due to corrupt practices used by their competitors and the same percent does not believe efficiency of government's methods in such sector.⁹⁷ 45% of respondents say that they have not entered a specific market or pursued a particular opportunity because of corruption risks, 39% say their company has lost a bid because of corrupt officials, and 42% say their competitors give bribes.⁹⁸

⁹⁵ Official website of European Commission, 'Implementing the existing anti-corruption framework' <http://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-humantrafficking/corruption_en> accessed 10 April 2017

⁹⁶ National Criminal Code of Ukraine, art. 354

⁹⁷ Ernst and Young, 'Anti-corruption survey in the private sector' (Luxemburg, 2013) <http://www.cc.lu/uploads/media/Luxembourg_Fraud_Survey_2013-E_Y.pdf> accessed 10 April 2017

⁹⁸ PwC, 'Confronting corruption in private sector report outlined by PwC' (2008)

In EU Member States and States in US are subjects for their own regulation in some fields of law regulation of White-Collar crime, while Ukraine is a whole subject for own independent regulation. But situation can be significantly changed, because Ukraine is going to be EU Member State in nearest future. In Legislature of Ukraine registered bill Amending the Constitution of Ukraine and it provides to local authorities rights to changed and regulate provisions of National Criminal Code of Ukraine and National Tax Code of Ukraine.⁹⁹

Approach to punishment of White-Collar crime offender is different in US, EU and Ukraine. In US legislators found a financial punishment more suitable because briber can be fined three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted but not more than \$1,000,000 in special situations he can be imprisoned not more than for one year¹⁰⁰. In many cases a tolerant ration could be find in many EU Member States – very mild sanctions for bribery is established in Austrian Criminal Code (Strafgesetzbuch), where the maximum penalty for public officials who took bribe is three years of imprisonment¹⁰¹. While Ukrainian legislation provides more strict punishment for bribery – up to twelve years of imprisonment¹⁰².

It seems paradoxical, but the excretion of embezzlement from the theft often puts offenders on a better position in many US States. In spite of that fact that volume of embezzlement sometimes is more than hundreds of thousands dollars, offenders are in better position in contrast with persons which committed theft. Embezzlement always entails a less strict punishment. For example, Article 18-2408 of Idaho Statutes Title 18. Crimes and Punishments with help of which theft can be punished by imprisonment up to for 20 years and Article 18-4606 of Idaho Statutes Title 18. Crimes and Punishments which can punish offender who commit embezzlement by imprisonment up to for 10 years. Such paradox cannot be found in EU legislation and Criminal code of Ukraine provide responsibility up to 8 years for theft and 12 years for embezzlement¹⁰³. Crime

<http://www.pwc.com/th/en/publications/assets/confronting_corruption_printers.pdf> accessed 10 April 2017

⁹⁹ Draft Law on Amendments to the Constitution of Ukraine (concerning decentralization of power) [2015] № 2217a <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55812> accessed 11 April 2017

¹⁰⁰ US Code, art. 215

¹⁰¹ Austrian Criminal Code (Strafgesetzbuch) [1998] BGBl. I Nr. 112/2015, Section 332(1)

¹⁰² National Criminal Code of Ukraine, art. 368

¹⁰³ National Criminal Code of Ukraine, art. 84, 185

Process on offenders who committed White-Collar crime is closely similar in all countries being compared. In Ukraine courts accept bail in briber cases, because according to Ukrainian code of Criminal Procedure bribe and another kinds of White-Collar crimes are nonviolent crimes. The same situation is in many EU Member States - bail is the main preventive measure, since the accused (as a subject of process) need to collect evidences for protection or proof of innocence.¹⁰⁴

Significantly different is statistic data. In US for money laundering were sentenced 668 offenders in 2016¹⁰⁵, while in many EU countries as Cyprus, only 1 person was convicted for money laundering in 2012. According to analysis of Cyprus court statistic, nobody was imprisoned in 2013.¹⁰⁶ The same situation was in Ukraine- only one person was found guilty for money laundering in 2012.¹⁰⁷ While in Germany 285 persons were found guilty for the same kind of White-Collar crime in 2012.¹⁰⁸

Despite the fact, that many law scientists distinguish White-Collar crime as independent type of offences, this is not reflected in law sources and legal norms. White-Collar crimes are reflected in different titles and parts of US, EU and Ukrainian legal sources.

¹⁰⁴ К. Б. Калиновский, *Уголовный процесс современных зарубежных государств* (Россия, 2014) 211

¹⁰⁵ Internal Revenue Service, 'Statistical Data - Money Laundering & Bank Secrecy Act (BSA)' (2016) <<https://www.irs.gov/uac/statistical-data-money-laundering-bank-secrecy-act-bsa>> accessed 10 April 2017

¹⁰⁶ European Commission Final Report Study on criminal sanction legislation and practice in representative Member States prepared by Thomson Reuters Aranzadi for DG Justice of the European Commission under Contract No. JUST/2011/JPEN/PR/0066/A4 [2013] (European Commission Final Report)

¹⁰⁷ Офіційний сайт Національного інституту стратегічних досліджень України, 'Щодо стану запобігання та протидії легалізації (відмиванню) доходів, одержаних злочинним шляхом, та фінансуванню тероризму' (2014) <<http://www.niss.gov.ua/articles/1305/>> accessed 9 April 2017

¹⁰⁸ European Commission Final Report (n 105)

The most popular types of White-Collar crimes and their particular qualities

Bribery and corruption in public sector

Such kind of White-Collar crime as bribery cannot be committed without two sides: Briber and bribe offeree (bribe) and in many cases offenders look for intermediaries.

Now let's define the sides of White-Collar crime starting with a briber. Briber - a person with official position who accepts or demand bribe in any form. But according to Bribery in Public Procurement Report outlined by OECD it is impossible to determine single type of person responsible for bribery. Rather, all sorts of people as well as legal entities may act as briber in some cases and many corporations have complex business and corporate structures which make the identification of bribe offeree and briber difficult. Large multinationals corporation, for example, are incorporated in different countries and have thousands of employees all around the World. Controls and identification of bribery transactions is difficult too because diverse business practices and cultures operate simultaneously in companies.

The next side is bribee – a person who offers to official bribe in any form, while the subject of this wrongdoing can be different. This bribe might be from one official to another or bribe from a corporation to official in any reason and simply bribe from a drunk driver to policeman on the road. Unfortunately, many present legislations have not implemented criminalization of offer bribe to public sector officials, but Article 15 of United Nations Convention Against Corruption – ‘Bribery of national public officials Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties’¹⁰⁹ changed significantly situation and influenced on Ukrainian legal system too and Ukrainian Parliament criminalized such kind of White-Collar crime¹¹⁰.

¹⁰⁹ General Assembly resolution of United Nations Office on Drugs and Crime 58/4 of 31 October 2003 United Nations Convention against Corruption [2003] A/RES/58/4, art. 15 (Convention against Corruption)

¹¹⁰ National Criminal Code of Ukraine [2001] № 2341-III, art. 368-4
<<http://zakon0.rada.gov.ua/laws/show/2341-14>> accessed 10 April 2017

The last participant is intermediary (middle man) – a person who is acting on behalf of the briber to make bribery more safety for briber and bribee in the most cases they actual persons or legal entities. Several different sorts of persons can act on the behalf of the briber, such as intermediaries, charity founds, bank and pay system officials, agents as well as other officials. Intermediaries are also called middlemen, particularly in connection to bribery and intermediary encompasses all these potential actors. Corporations call upon persons to act on their behalf, in particular in international business transactions. These persons have various functions, for example, they may be hired to steer contracts from the government to the purchasers. Bribers can generally refer to intermediaries of their choice, with the intermediary being established in their own country or abroad in the reason of making investigation hardly.¹¹¹

Bribery is one of the most ancient of White-Collar crimes, its roots can be found in the early history, but nowadays it is hard to imagine a modern governmental, judicial, legislative, or other system in which bribery is not criminalized. The offense reflects many of the key factors that tend to characterize White-Collar crime: its culprits (who give bribes or take them) are typically high level professionals with upper-income and bribery is normally committed in the context of governmental activities. At the same time, bribery's harms and victims are difficult to detect in the reason of complex multilevel schemes. Bribery norms also differ significantly from society to society: what may be considered deviant or criminal in the US may be regarded as common practice in Ukraine and definition of bribery varies from jurisdiction to jurisdiction. A general characterization suggests that bribery involves the abuse of public office for personal profits and gain. A more practice definition can be offered - a briber is bribed by a bribe offeree if and only if briber ask, accepts, or agrees to accept, something of value from person who offers bribe in exchange for any professional inactivity or activity. What turns a bribe into a crime rather than a legitimate exchange of money for value or a gift? The answer is in penal theory. We define a bribe as the payment for a corrupt act as abuse of power and making bribe who made the payment depend on briber. As long as the favor

¹¹¹ Organisation For Economic Co-operation and Development (OECD Report), *Bribery in Public Procurement* (OECD Publishing 2007) 35-42

provided should not be exchanged for money, the act is corrupt, and the payment for it should be determined as bribe.¹¹²

It is very hard to distinguish bribes from gifts, tips, rewards, and campaign contributions but in theory, the distinction is easy and clear. Bribes involve an agreement to exchange money or something of value in return for influence, while gifts, tips, rewards, and donations to political parties or charity organizations are unilateral and they are given without any profit or feedback to reciprocate. This is not to doubt that gifts are also given in return for some feedback that has already been rendered, as tips or rewards or in expectation feedback, as in the 'exchange' of 14 February gifts. Bribes should also be separated from extortion and blackmail from criminology point of view.¹¹³

Bribery is one of the most harmful White-Collar crimes and it corrupt political and business life by inviting illegal grounds for decision making and creates political instability situation, distorts markets, make completion unfair, undermines legitimacy, retards development, wastes resources, creates cynicism, undercuts confidence in decision-making institutions, and potentially leads to injustice, unfairness, and inefficiency.

International surveys, as Transparency International's Corruption Perceptions Index, suggest that different cultures practice and tolerate bribery and other forms of corruption tare very different in research countries. There are a number of factors, in some countries, public employees are so poorly compensated that bribes may be the only way for them to make a living wage¹¹⁴. Good example of it is Ukraine, were salaries of governmental officials are on significantly low level (policeman 250 euro¹¹⁵, minister 500 euro¹¹⁶).

A major part of commercial services are linked to public procurement. In many countries (Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland and the United States) public procurement

¹¹² Henry N. Pontell, Gilbert L. Geis, *International Handbook of White-Collar and Corporate Crime* (Springer-Verlag New York Inc. 2007) 459

¹¹³ Lawrence M. Salinger, *Encyclopedia of White-Collar and Corporate Crime* (2nd edn, Arkansas State University, Jonesboro 2010) 122

¹¹⁴ Ibid 122-123

¹¹⁵ Law of Ukraine On State Service [2015] № 889-VIII, art. 51
<<http://zakon3.rada.gov.ua/laws/show/889-19>> accessed 11 April 2017

¹¹⁶ Law of Ukraine On the National Police [2015] № 580-VIII, art. 105
<<http://zakon2.rada.gov.ua/laws/show/580-19>> accessed 11 April 2017

accounts for 15% of GDP and while public procurement can mean valuable opportunities, it is also opened to bribery. Corruption undermines markets and welfare, and exerts a corrosive effect on society by eroding trust in leaders, institutions and business itself. Culture of corruption can easily take on legs and is hard to remove.¹¹⁷

Corruption refers to the abuse of official powers, privileges, and resources for personal profits, either for oneself or for others. The powers, privileges, or resources are not personal and official is just a holder. For government entities, this group would include citizens. Corruption occurs when an agent sets aside his or her role as a representative or agent of one or more others and acts on his or her account. In a traditional example, an employee of a private company offers a bribe to an employee of a government. In each case, the actions of these two people reflect on them and on their organizations. Determination of offender can be changed and it depends from way in which crime is committed, for instance, when the company employee offers a bribe, the law likely will impute this action to his or her corporation, especially if there is prospective benefit for the corporation from the payment. If the employee does this with the knowledge and assent of the corporation, then both the employee and the corporation have committed crime but if the employee does this without the knowledge of the corporation, then the employee has committed crime not only against society but against the corporation, in violation of his or her implied contractual duties of loyalty and good faith.¹¹⁸

The determination of victims in criminology science of comparative countries is rather interesting. In US popular are two theories:

- First, corruption involves an interaction of two interested parties, where one of parties is public official and another party is legal entity or private person. For instance, crime profit for official and illegal service or inactivity for bribee and nobody is a real victim of this situation. We can see many corruption acts which lack self-defined victim to report to law enforcement authorities. This fact single outs corruption from crimes such as robbery or rape in which there often are direct victims.

¹¹⁷ OECD Report (n 110) 99

¹¹⁸ Lawrence M. Salinger (n 112) 227

- Second, theory is more classical and determines as victims moral and law or state and taxpayers¹¹⁹.

In EU corruption is not determined as victimless crime, victims of corruption are citizens and taxpayers who bring money on existence of public administration. The General Prosecutor of National Audit Office in Italy Furio Pasqualucci determined corruption as ‘immoral and hidden tax paid by citizen... one whose social impact may affect negatively the economic development of all country’ and it is cost, only for one EU Member State Italy, more than fifty billion per year.¹²⁰

Ukrainian criminology determines victims of corruption in original way too. Criminologists from Ukraine think that it is an order of civil service, moral and taxpayer.¹²¹ Some Ukrainian criminologists suggest that victims are all, with the exception of an official being corrupted.¹²²

¹¹⁹ Henry N. Pontell, Gilbert L. Geis (n 111) 462

¹²⁰ Dirk Tänzler, *The Social Construction of Corruption in Europe* (Routledge 2016) 135

¹²¹ Андрушко П.П., Арсенюк Т.М., Бантишев О.Ф., *Науково-практичний коментар до Кримінального Кодексу України* (Київ, Інститут Генеральної прокуратури України, Український інформаційно-правовий центр 2001) ст. 365-2, 368

¹²² В. Калитаєв ‘Кримінально-правова характеристика прийняття пропозиції, обіцянки або одержання неправомірної вигоди службовою особою’ (2013) *Держава і право*, Випуск 60 376

Bribery and corruption in private sector

Moreover, to all of the provisions criminalizing payments to public officials, recent years have also seen a trend to criminalization of commercial bribery, in which payments are made to employees of corporations or any private business.¹²³

Corruption in private sector has been identified as one of the most important constraints to business development. At the same time there is evidence that corruption in private sector plays the role of a barrier to entry and the impact on firm growth and productivity. Corruption in business can also limit the growth of private sector. Corporations that are forced to go underground do not have the same opportunities as firms operating in the open market in terms of access to the pay systems and public services. This situation limits all their perspectives and reflects on their productivity. Business operating in the underground have to control limit of their expansion to avoid unnecessary attention. It is well known that business in the underground sector are generally smaller and less productive than legal firms. Bribes have a significantly big impact on business' productivity. If we compare business in EU Member States with the same out of EU we will find that bribery is more harmful in non-EU countries. This provides us with evidence that corruption in private sector is more damaging for business productivity in countries with higher level of White-Collar crime and weaker legal power.¹²⁴

The private sector plays a significantly big role in improving the well-being of societies, communities and individuals. It can help to improve economy condition and people's financial state, open access to health care, education and other services. It can create economic opportunities to the young, the poor, the disenfranchised and continue improvement of future for their families. It can create ideas, innovation and efficiency in the use of resources, help meet challenges of our times. The private sector can also fail; however, it can enrich a small group at the cost of other people. Business also can be harmful for environment and avoid innovations. It can create destabilize society and corruption in social, markets, governments and international relations and destroy prestige of any country. Corruption risks in the private sector and success in controlling them are challenges for modern society and business.¹²⁵

¹²³ Lawrence M. Salinger (n 112) 124

¹²⁴ Gonzalo F. Forgues-Puccio, *Corruption and the Private Sector: A review of issues* (Oxford Policy Management February 2013) 1-4

¹²⁵ Transparency International, *Global Corruption Report 2009: Corruption and the Private Sector*

In recent years, many functions of public officials were transferred to business that created a trend of criminalizing commercial bribery. Services that were once thought of as governmental monopoly – such as operating prisons, schools, post offices – have increasingly been taken over by business because of changing and liberalization of law. Meanwhile, functions as exclusively private in the past – such as banking and insurance – have in many instances become partly nationalized, or at least subject to extensive government involvement. Without an authentic distinction between public and private spheres, a sharp distinction between bribery in public and private sector would be intolerable and it found reflection in United Nations Convention against Corruption and special EU directives and then in national legislations, unfortunately many of US States have not legal norms about corruption in private sector.¹²⁶ Judging by a current day, situation will be changed in the nearest years and criminalization of private sector bribery will take place in every US States criminal codes.

Private sector corruption is not a marginal issue but a central concern for business – in developing countries. It affects all countries and United States with Europe too. It touches government and business relationships in China, manufacturing in India, farmers in Latin America and industrial in Africa, central Asia and the Middle East. It is problem for large-scale conglomerates, family-owned businesses and individual entrepreneurs. It spoils investment climate in Ukraine. Moreover, the problem appears to be growing.¹²⁷

According to statistic researches, criminology determined three White-Collar criminal types and it directly depends from office position of the offender. The first type is owners of companies, board members of companies, partners in law firms and chief executive officers of corporations. The second type is consultants, investors, lawyers and brokers. The third level is middle managers, independent contractors, and singleworking individuals. In our sample of 305 convicted White-Collar criminals in 84 cases, we find 91 individuals (30% first type), 137 individuals (45% second type), and 77 individuals (25% third type).

The total amount of damages caused by White-Collar criminals according to this research made around 8 million. The smallest crime amount was less than \$200 thousand, and the largest – more than \$2 million. The median value for crime amount is near \$1 million.

(Global Corruption Report published 14 September 2009) 3

¹²⁶ Lawrence M. Salinger (n 112) 125

¹²⁷ Transparency International, 'Global Corruption Report 2009' (n 124) 4

This indicates that most crimes were medium, and a few cases of White-Collar crime involved very large amounts of money. In total 84 cases representing 27 percent of convicted persons were single-criminal cases, that means that they committed crime alone or participation of partners was not proved. In 22 cases, there were couple of convicted offenders. Then follows three criminals in 15 cases, four criminals in 11 cases, five criminals in five cases, six criminals in two cases, seven criminals in one case, eight criminals in two cases, and 16 criminals in one case, so we can make a conclusion that in the majority of cases this is a group crime.¹²⁸

While public (or government) corruption has allure a lot of attention, private or business corruption has been unrecognizable. A specific form of corruption, namely, paying a bribe to a private official, is easily identifiable as unethical and possibly illegal, but this is not found enough of regulation. Private bribery also has serious organizational results.¹²⁹ The World Bank firstly has noticed this problem in 1997 ‘the problem of corruption lies at the intersection of the public and private sectors. It is a two-way street. Private interests, domestic and external, wield their influence through illegal means to take advantage of opportunities for corruption and rent seeking, and public institutions succumb to these and other sources of corruption in the absence of credible restrains’¹³⁰. No sector or industry is unaffected by corruption, but some are hit harder than others. More than a half of all corporations in the construction sector or the gas, oil and mining sector complained that bribery by competitors had devoid them of business opportunities. In a different survey, more than a half of all the polled executives operating in the energy, mineral resources and telecommunications sectors reported having been asked for bribes to in the last year.¹³¹

Distorts competition, raises the cost of doing business, creates business uncertainty – this is not a full list of business losses from corruption in private sector. Bribery is not the only form of corruption by which private business can be affected. Embezzlement by employees, corporate fraud, and insider trading can cause far more damage. As the size

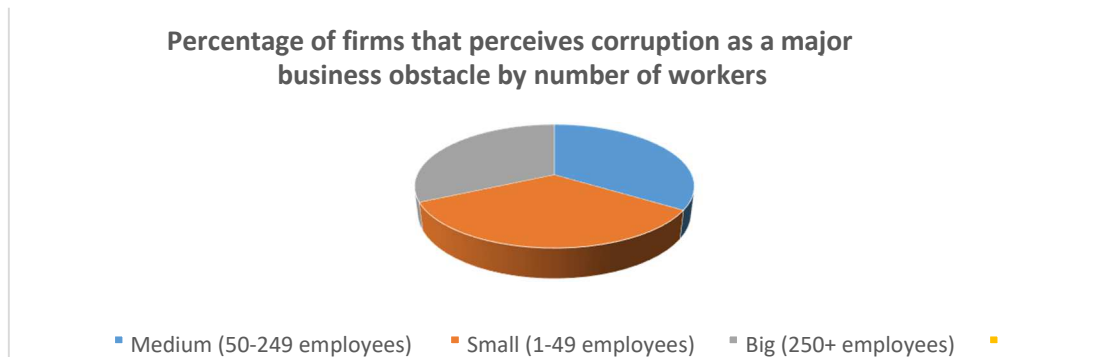
¹²⁸ Petter Gottschalk, *Policing White Collar Crime: Characteristics of White Collar Criminals* (CRC Press 2014) 43-44

¹²⁹ C. Gopinath ‘Recognizing and Justifying Private Corruption’ (2008) *Journal of Business Ethics* Vol. 82, No. 3 747

¹³⁰ Zoe Pearson, *Corruption and Anti-Corruption* (An International Human Rights Approach to Corruption), edited by Peter Larmour and Nick Wolanin (ANU Press 2013) 33

¹³¹ Transparency International, ‘Global Corruption Report 2009’ (n 124) 5

of a firm rose, controlling of employees is becoming more difficult but it does not cause incising of White-Collar crime in the reason of more strict policy of big companies and other security measures, we can see it on the graph below.¹³²



Graph 1. (UNIDO and UNODC (2007) pg. 2/World Bank, Investment Climate Survey).

Instead facts from graph, public opinion has developed in the way that only employee and owner of big corporations commit a majority of White-Collar crimes and develop corruption in private sectors the main reason for this myth is hype of press around such cases.

¹³² Gonzalo F. Forgues-Puccio (n 123) 5

Corruption in field of sport

Sport is a global business engaging millions of people and generating profit for more than US\$145 billion per year¹³³ and only FIFA concluded the 2014 financial year with a profit of USD 141 million¹³⁴. Fixing of matches, problems in the governance of sports organizations, and the staging of major sporting, attempts to stop corruption in the field of sport, nevertheless, are still on the low level.

There are wide-ranging types of fraud and corruption to be found in sport and this type of business is a very compliant to corruption, fraud and any kinds of White-Collar crime, actually it is an area with need of specially research and attention. Corruption, though part of sport, is often ignored or downplayed and defended as different from that occurring in other businesses. Sport is a business and as such it will countenance the same types White-Collar crime as businesses everywhere, such as fraud, insider trading, corruption, tax evasion, as well as the more sensational and specific problems of match and spot-fixing. While there are many different types of White-Collar crimes in sport, in our work we will have a look only at the most popular of them, such as: bribery, voteridding, illegal disclosure of information, abuse of power, fraud, embezzlement, tax evasion and money laundering.

Bribery is the offering, promising, giving, accepting or soliciting a privilege as a motivation for action or inaction that is legal or illegal, ethical or unethical. Incline is expressed in gifts, loans to private charity organization fees or other profits. For instance, it can be bribing sports officials to fix the result of a match or sporting competition.

Vote-rigging is a control of the number of applicants that appear at elections or controlling the number of votes that are counted in vote. For instance, sport organization electing a head who has win election by manipulation with number of votes or illegal counting.

Abuse of power is any activity or inactivity carried out to influence an institution's policies and final resolutions in order to have a specific outcome. Even if it is not prohibited by law, these acts can become corrupted if incommensurate levels of impact are apparent from individuals or organizations.

¹³³ Transparency International, 'Global Corruption Report' (23 February 2016) <http://files.transparency.org/content/download/1961/12856/file/2016_GCRSport_EN.pdf> accessed 11 April 2017

¹³⁴ FIFA Congress, 'FIFA Financial report 2014' (28 and 29 May 2015) <https://resources.fifa.com/mm/document/affederation/administration/02/56/80/39/fr2014weben_neutral.pdf> accessed 11 April 2017

Illegal disclosure of information is a passing of insider information or sensitive data that should be kept in secret. For example, doctor who prepares sportsmen for competition and know his health conditions and weak sides and sell this information to the opponents. Fraud in the field of sport is the act of deliberately deceitful someone in reason to gain unfair profits. For example, promoter deal with his boxer to lose the fight and gain profits on totalizator.

Embezzlement is a theft or peculation of sports organization funds and budgets resources. For instance, sports officials create ghost undertaking and transfer moneys of ghost services on its banking accounts.

Tax evasion is an illegal nonpayment of taxes. For example, sport organizations shall pay income tax but officials create offshore and transfer money on offshore bank account for ghost services to minimize income and tax burden. Sport organizations can be always used by another business to minimize tax burden.

Money laundering in the field of sport is the process of masking of the origin ownership of illegal profits and making this profits legal with the help of ghost or real finance operations. For this purpose, many other kinds of White-Collar crimes in field of sport can be used, such as bribery, embezzlement or abuse of power.¹³⁵

The main problem of corruption in field of sport and especially corruption in FIFA is a lack of information. Just between 2011 and 2014 FIFA apportioned US\$2.05 million to each of its 209 member football associations (FAs). This included one-off payment in 2014 of US\$1.05 million to the World Cup Championship, in the same period FIFA gave US\$102 million to the six regional football Confederations and check legality of this operations is closely to impossible because more than 80% of FAs have no financial records publicly available, less than quarter of FAs have no websites and prior majority, 85 % of FAs do not publish what they do with their money, while FIFA publishes on its website some details of how FAs spend the development funds from FIFA. It was only in 2014 that FIFA asked for written, audited accounts for its own use. Some of these were published on the FIFA webpage. According to FIFA, not all member associations

¹³⁵ .Dr Graham Brooks, Dr Azeem Aleem, *Fraud, Corruption and Sport* (Palgrave Macmillan 2013 edition (25 Sept. 2013) 9-11

complied by the March 2015 deadline and any further financial assistance payments will not be paid until they do it.¹³⁶

¹³⁶ Transparency International, *The transparency international football governance league table* (Report published 1 November 2015) 4-5

Money laundering

Money laundering refers to the process of obscuring the illegal roots of profits derived from crime. Apart from the popular metaphor of taking dirty money and cleaning it to look legal, this term comes from another story about legendary gangster Al Capone. He was the first who invented strategy of using legal business to decriminalize illegal profits. According to his biography he using laundromats and other small businesses to decriminalize profits from bootlegged business during the Prohibition in the United States of America.¹³⁷ This concept was developed by Meyer Lansky, who's idea was to protect the crime money from US authorities. He is reputed to have developed the modern money laundering approach and creation of a system where a dirty crime cash from US was taken to Switzerland and loaned back to undertakings which were controlled by the various criminal groups. Nowadays, the loan-back concept is the most popular mechanism for laundering money, which can obscure the real timing of the illegal funds, is still one of the more popular mechanisms for laundering cash. It allows the beneficiary to document, declare, and utilize cash while providing limited recourse for government investigators.¹³⁸

Predicate criminals such as bank robberies, drug dealers, or kidnapers are motivated by illegal profits, but it leaves the offenders with the problem of introducing large value of cash into the financial system without attention of law enforcement authorities. For instance, the problem of bank robberies who, sometimes, steal millions in cash, it is hard to imagine, how to put it in another bank account.¹³⁹

Money laundering is an extensive keyword of many techniques to move illegal profits into the legitimate economy. Money laundering can be used to transfer illegal profits in legal, cleanse the proceeds of crime or avoid taxes. In many cases this is a crime that supports another crime, which produces cash that cannot be spent freely.¹⁴⁰

Money laundering is characterized by three main features to help objects with authentication and enforcement striving. First primary step of money laundering is called placement. Placement is a launch of illegal funds into the financial system. Depositing

¹³⁷ David Chaikin and J.C. Sharman, *Corruption and Money Laundering: A Symbiotic Relationship* (Palgrave Series in Asian Governance) (AIAA 2009) 14

¹³⁸ Jonathan E. Turner, *Money Laundering Prevention: Deterring, Detecting, and Resolving Financial Fraud* (1 edn, Wiley 2011) 1-2

¹³⁹ David Chaikin and J.C. Sharman (n 136) 15

¹⁴⁰ Lawrence M. Salinger (n 112) 611-613

illegal cash into bank account or buying money shares in legal undertakings. Second step is called layering, which is numerous transactions to hide the original source of money in the financial system. Sending money into offshore jurisdiction, quick buying and selling of property or shares of undertakings or transferring the funds back in small increments is an example of layering. The third step can be different. For instance, carrying illegal cash into games of chance or totalizator, buying chips and later change them as winnings. The last step is called integration; integration is the point at which laundered cash are returned to legitimate uses.¹⁴¹

As we noticed money laundering in majority of cases is connected with other crimes such as drug trafficking or corruption, unfortunately drug trafficking is not an object of our research so we stopped only on connection of money laundering with corruption. Problems of corruption and money laundering have a destroying effect on national economy, national and international security and social wellbeing. The World Bank and the International Monetary Fund regard corruption as main reason for poverty of billions of people. Money laundering is a very important to all crimes which commits in profitable reason: the trafficking arms, people or drugs, fraud and primarily for corruption. Corruption and money laundering are connected not only because they are of one nature, but more importantly the presence of corruption tends to create and mutually reinforce the incidence of money laundering.¹⁴²

Corruption produces big money, in most cases in cash and this cash need to be laundered, value of dirty cash in World's financial system appraise to \$1 trillion per year and volume of this money are from corruption profits. The recovery of funds stolen by corrupt officials and stashed abroad is one of the most important goals of many countries suffered from corruption.¹⁴³

However, money laundering shall not be forgotten as independent kind of White-Collar crime. Anti-fraud employee from corporations, auditors, financial investigators, prosecutors are all focused on different stages of these crime, but usually forget to pay attention on an incomplete understanding of what this process is and how it can work and many persons who interested are forgotten too, while it is important to understand the role, meaning and history of this White-Collar crime in the reason to see how it started

¹⁴¹ Ibid 613

¹⁴² David Chaikin and J.C. Sharman (n 136) 1

¹⁴³ David Chaikin and J.C. Sharman (n 136) 1

and increased impact on crime world, business functions and economy in general. Today money laundering is an independent illegal business, with significant influence on economy of many countries.

Today, in the era when entity can be registered online simply with knowledge of personal data in many countries, and majority of banking operations can be performed with the help of online-banking apps, money laundering transferred in high profitable business in which people with middle professional skills can earn significant profits with little perceived risk.¹⁴⁴

But, we shall not forget about another classical approach of legalizing of crime money, such as casino and other games of chance. The importance of it can be shown by numbers. Game business generated nearly US\$ 70 billion in 2006 just in US and this numbers did not include the income from the Internet casinos, which income was more than US\$ 11 billion in the same year.

Casinos always accept payments in cash, the exchange of cash for chips is always full of people and foreign visitors and that makes financial system of casinos very hard to be checked and controled. This chaos movement of cash and people also born lack of clarity and this attacks organized crime. One more interesting question of money laundering with use of casino is crise ships with casinos. It is an important question by which jurisdiction their business is regulated: jurisdiction of country where the ship is registered or where this business operates. Many countries do not have specific regulations for this issue, and result in a lack of legal action which limits the ability of law enforcement authorities to prosecute any illegal activity. Moreover, there is the possibility of online casinos and other games of chance, which opens another way for money laundering and causes to national authorities a new task how to enforce official controls to prevent money laundering in this area. Moreover, there is no control over foreign guests in any real or online casino.¹⁴⁵

¹⁴⁴ Jonathan E. Turner (n 137) 90

¹⁴⁵ Fausto Martin De Sanctis, *Football, Gambling and Money Laundering: A Global Criminal Justice Perspective 2014* (Springer; 2014 edition (1709) 78-79

Cyber (computer) crimes

Computers play a significant big role in our everyday life, if we have a close look at this we will understand how this phenomenon change law, finance, business and life in general. In less than 30 years, computers and the Internet have affected every element of modern society. Worldwide Internet usage increased from almost nothing in 1994 to nearly 2 billion users worldwide at the start of 2012, 78 percent US citizens were online in 2011. The current social networking leaders as social networks, had over billion worldwide users. Internet connectivity is, however, not limited to just computers. In 2008, the number of gadgets connected to the Internet was bigger than population of our planet, and this number will increase, and by 2020 more than 50 billion devices will be connected to the Internet and this is why computer and Internet security is one of the most important field of future.¹⁴⁶ Investigator authorities, police, technical experts, criminologist define the concept of cyber crime in different ways, and it is clear because computer crimes relate to sociological, legal and technological sciences. Analysts have attempted to frame the fundamental characteristics of cyber crime with limited consensus. Current definitions vary significantly, depending on the legal instrument or organization conditions, and also computer crime has many names: high technology crime, cyber crime, computer misuse, computer related crime, e-crime, technology enabled crime and others, and all these terms are different. Highlighting the extent of confusion and lack of consistency, the definition of computer crime provided by the Association of Chief Police Officers. According to the Association of Chief Police Officers computer crime provide the ‘use of networked computer or Internet technology to commit or facilitate the commission of crime’, so it is clear that term computer crime or the same can be used only for crime were computer was the instrument of it but not the direct object.¹⁴⁷

Computer hacking was born by access to Internet and computers. Many internet pages are related to hack instructions as well as books, though most significant computer hacking occurs by those well skilled professionals, workers of IT corporations. A dispute exists with computer hacking in examining its need to secure computer networks and permeate computer systems illegally with vicious goal. The poverty of resources to

¹⁴⁶ Todd G. Shipley, Art Bowker (ed), *Investigating Internet Crimes: An Introduction to Solving Crimes in Cyberspace* (Newnes 2012) 1

¹⁴⁷ Cameron S. D. Brown, ‘Investigating and Prosecuting Cyber Crime: Forensic Dependencies and Barriers to Justice’ (January – June 2015) *International Journal of Cyber Criminology* Vol 9 Issue 1 55

investigate and prosecute hackers and low possibility of their identification and need of professional skills place hacking and the majority of computer crimes in the category of White-Collar crimes. This process can have harmful effects on consumers or business because computer system of undertaking can come under the control of the criminal hacker group. Marker of a hacker is engaging in disruptive, unethical and criminal behaviors that impact numerous people, hacker groups also targeting on computer users to gain illegal access to an individual PC or corporate computer system, in the majority of cases the main reason for it is illegal profit. Allowance to reach a computer system is prohibited for extraneous persons and the intent of what a hacker does once he or she has access to PC or computer system. The possibilities provided by cyber crime are now recognized by organized crime and terrorist groups. Computer crime is a real danger for many countries, with the opportunity of disabling the whole country through the use of the Internet. With cyber crimes data provided online and in another different sources, there is concern about increasing numbers of hackers.

Depending on the field of study, there are numerous types of computer criminals, let's start from hackers. Although many suspect who would be labeled as hacker do not call themselves such or regard their practices as criminal offence, their intent and skill level place them in a group. The purpose of the hacker is a debative question because the act of hacking is an illegal practice, though soften factors do arise. Online offenders who hack into a PC or a computer system with an evil-minded purpose are referred to a 'crackers' or 'black hats', depending on their structure and professional level. People who have low level of hack skills or use hacking information from Internet or books can be referred to as 'script kiddies'. Persons with a technology degree or a formal relevant college degree and high professional skills are referred to differently, based on their intent. Offenders who engage their crime for the public good, from their point of view are referred to as hacktivists, white hates, or ethical hackers while, criminals whose job is to engage in cyber crime are placed into another group.

There are numerous techniques used in computer hacking and numerous forms of harmful software programs or malware that are used in computer hacking. Viruscreating programs set out to copy and affix themselves to other programs to enter another PC. The Melissa virus used e-mail addresses from stricken system to send emails with virus and replicate itself in the e-mail addresses to beat a computer or system. A Worm virus is similar, but

it can replicate alone or send itself to other computers. A Trojan horse virus appears to be a license software, but with is a hidden devastating element in the program.¹⁴⁸

Nowadays technologies make prosecution of these crimes harder as well as punishment of offenders, while life of cyber criminals become easier. Main factors for this phenomenon are anonymous cryptocurrencies and Darknet.

Cryptocurrencies- can be separated for two big groups, first this is no anonymous, for instance QIWI money¹⁴⁹, they work only with your bank card. Second is anonymous, for example Bitcoin. It was created by Satoshi Nakamoto in 2009. According to Michael Caughey Bitcoin 'is an experimental new digital currency that enables instant payments to anyone, anywhere in the world. Bitcoin uses peer-to-peer technology to operate with no central authority: managing transactions and issuing money are carried out collectively by the network. Bitcoin is also the name of the open source software which enables the use of this currency. Bitcoin is one of the first implementations of a concept called crypto-currency which was first described in 1998 by Wei Dai on the cypherpunks mailing list. Building upon the notion that money is any object, or any sort of record, accepted as payment for goods and services and repayment of debts in a given country or socio-economic context, Bitcoin is designed around the idea of using cryptography to control the creation and transfer of money, rather than relying on central authorities.'¹⁵⁰ Nowadays this is currency for majority of illegal operation in the Interned in the reason of closely impossible of determination of a final recipient.

Darknet is described by various scholars in different ways. Described it as 'websites whose operators can conclear their identity with sophisticated anonymity systems'¹⁵¹.

Enter Darknet is impossible with casual web-browser as Google Chrome or Safari, to join it user shall download and install special software - TOR¹⁵² or any another onion browser, because special browser masks you IP address. Deepweb is also sphere of anarchy, anonymity and any legal regulation, web sites cannot be banned by provider, so you can find ads about hitmans, hackers, and drug dealing. For instance, one of the biggest drug

¹⁴⁸ Lawrence M. Salinger (n 112) 194-196

¹⁴⁹ QIWI, 'Novelty action of Landing' <<https://qiwi.com/landing/novelty.action>> accessed 10 April 2017

¹⁵⁰ Michael Caughey, *Bitcoin Step by Step* (2013) 5

¹⁵¹ Pavan Duggal, *Darknet, Anonymity, & Law* (Saakshar Law Publications 2015) 7

¹⁵² Tor Project, 'Tor: Overview' <<https://www.torproject.org/about/overview.html.en>> accessed 11 April 2017

cartels, named Silk Road was established in Darknet by Ross Ulbricht, student from US.¹⁵³

Of course, White-Collar criminals cannot miss such opportunity to advertise their services in Dark web, so with the help of special browser as TOR and special searcher as EVIL you can find ads about money laundering or middleman for bribery in your country. Since computer crimes are considered as White-Collar crimes, attention, resources and focus tend to be held in other criminal aspiration. There is debate among experts of the severeness of cyber crime and computer hacking, as well as its ethical position. Computer hacking can be viewed as vital thing to help strengthen computer security for PC and online corporate services, though the actions which are prohibited by law. The intention of hacking becomes overriding to the debative question, aftermath of hacking can be harmful for individuals and society in general, which is a specific of many White-Collar crimes. Instead fact that cybercrimes continue to lift from year to year, hacking will continue to be a vital skill and asset for online offenders.¹⁵⁴

¹⁵³ Official website of FBI, 'Ross Ulbricht, the Creator and Owner of the Silk Road Website, Found Guilty in Manhattan Federal Court on All Counts' (5 February 2015)
<<https://www.fbi.gov/contactus/field-offices/newyork/news/press-releases/ross-ulbricht-the-creator-and-owner-of-the-silk-roadwebsite-found-guilty-in-manhattan-federal-court-on-all-counts>>
accessed 11 April 2017

¹⁵⁴ Lawrence M. Salinger (n 112) 196

Fraud

Fraud can be determined as a distortion of truth for the purpose of inducing another in reliance upon it to part with some costly thing belonging to him or to surrender a legal right. Fraud is always illegal and it makes of a misrepresentation, which causes actual prejudice or which is potentially prejudicial to another. Criminalists also distinguish fraud of different groups:

Advance Fee Fraud. Victims are approached by any distance form, such as SMS, fax, or e-mail without previous contact. Victims' addresses are taken from telephone directory, business journals, magazines, or newspapers. A typical advance fraud letter describes the need some activities for business. In this type of fraud, in which advance-fee fraudsters attempt to secure a prepaid commission for an arrangement that is never actually be done. Advance fee fraud is developing quickly with the Internet and nowadays this kind of fraud is a current epidemic and costs for business undertakings and insurance companies millions dollars per year. The popularity of the Internet and new methods of distance communication in the last decades has made this kind of fraud worldwide spread. Advance fee fraudsters use specific methods that operate the bounded rationality and unmanned behavior of victims.

Bank Fraud. The classical way to commit Bank Fraud is to send thousand or better millions of e-mails to online users from the name of national authority or bank and prompted customers to send personal and credit card information, and then use it to make illegal purchases. We can see in this example all parts of fraud, such as distortion of truth, purpose to breach somebody legal right on something and coronal motif. Check fraud also is kind of bank fraud and can be committed in the way of stealing somebody check book or odd job of it.

Click Fraud. This occurs when an individual or computer program clicks on websites or online advertising ads without any intention of learning more about the advertiser or making a purchase, because when somebody click on an ad displayed by a web searcher, the advertiser pays money for each click, because it help to route potential buyers directly to its product. Click fraud is a big problem of web searchers and other companies which are interesting in online advertisement. Some companies hire contractors, typically from a developing countries to fraudulently click on a another company ads in the reason to

increase their marketing costs. Click fraud can also be done with special software programs which doing the clicking.

Credit Card Fraud. This problem increases with popularity of online banking and can be described in use of stolen credit card details to purchase services or goods in the name of the cardholder. Also, credit card can be physically stolen or details obtained from your mobile bank account that are not properly secured. Card details may also be purchased from people who are able to access this information. Credit card fraud can be considered as a kind of bank fraud.

Subsidy Crime. This type of criminal offences is typical for developing countries. It can be committed when government give subsidies on any kind of activity. A person or a company might provide false information when applying for government subsidies or use the subsidies for ghost agreements. This kind of fraud is always very similar to kickbacks.¹⁵⁵

In question of protection of fraud, we shall rely firstly on ourselves and secondly on public authorities and corporate antifraud teams. Protection from fraud directly depends from kind of fraud from which you want to be protected. To protect from bank fraud you need to make sure your computer has modern anti-virus software and a firewall, use of anti spy programs is also good idea and before you going to bank online web page ensure that the locked padlock or unbroken key symbol is showing in your browser, make sure that internet address has been changed to https from http and that will make a secure connection. Also be wary of unreclaimed electronic letters, like emails from your partner asking for personal financial information for money transfer. Banks or the police would never contact you to ask your secure bank data and always access internet banking web pages by typing the bank's Internet address into your web browser. Never go to a website from a link in an email and provide your personal details.¹⁵⁶

¹⁵⁵ Petter Gottschalk (n 127) 5-10

¹⁵⁶ National Fraud and Cyber Crime Reporting Centre (Action Fraud), 'Bank card and cheque fraud' <<http://www.actionfraud.police.uk/fraud-protection/bank-card-cheque-fraud>> accessed 11 April 2017

Ponzi Schemes (Pyramid schemes)

Ponzi Scheme was named in such way in honor of the first owner of such fraudulent kind of business. It was Charles Ponzi who in 1920s opened investment fund and paid dividends to investors from income from new inventions.¹⁵⁷ Criminologist, national authorities and layers also define this phenomenon in different ways. According to EU Commission this is 'scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of product'¹⁵⁸, while U.S securities and exchange commission define it as 'investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Ponzi scheme organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the fraudsters focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business.'¹⁵⁹

Run Ponzi scheme is very simple. The managers collect money from investors and of course promising huge profits in a fixed terms. Owner has to do two things: first - return a portion of the invested money as profit and recruit new investors, whose money will be used to generate a fund for promised payments. To find second level of investors is usually the hardest part of this crime, but majority of criminal can do it and second level investors are recruited, the scheme often drives its own growth. The best friend of Ponzi schemes is not marketing or advertisement, it is gossip, because when word of early profits and ritzy investors spreads, new investors pour in Ponzi scheme with pleasure. With more money the owner is able to pay off more people. The scheme can maintain the charade and skim off money for himself only until new investors are coming with money. When this money source ended up the whole scheme crashed.

¹⁵⁷ Mitchell Zuckoff, *Ponzi's Scheme: The True Story of a Financial Legend* (Random House Trade Paperbacks 2005) 6-7

¹⁵⁸ Official website of European Commission, 'Ponzi Schemes' (Black list items) <http://ec.europa.eu/justice/consumer-marketing/unfair-trade/unfair-practices/is-it-fair/blacklist/blacklistitems/blacklist_item11_en.htm> accessed 11 April 2017

¹⁵⁹ Official website of U.S. Securities and Exchange Commission, 'Ponzi Schemes' (Fast Answers) <<https://www.sec.gov/fast-answers/answersponzihtm.html>> accessed 11 April 2017

The Ponzi schemes can bring large profits for those who start them or join at the beginning. Ponzi scheme can function only as long as there are people with money to support the next level of the scheme, people above are safe.¹⁶⁰

But how high profit business can differ from Ponzi Scheme? There are two main differences. Firstly, casual source of business profit is service or trade and if the main source of income is investments from other investors we can make a conclusion that this is Ponzi scheme. And secondly, if the amount of profit consistently exceeds the added value, which currently provides business, this project is a pyramid.¹⁶¹

¹⁶⁰ James Walsh, *You Can't Cheat An Honest Man* (1st edition, Silver Lake Publishing January 1998) 2122

¹⁶¹ James Walsh (n 159) 20

Solution to problem of White-Collar crime on national and international levels

Regulation of White-Collar crime

As we can see from this Master Thesis problem of White-Collar crime makes worst every sphere of our lives. It has influence on social, economic, national and international authorities, the Internet, business, trade and competition. That is why we shall analyze how White-Collar crime is regulated on all levels.

Firstly, we will have a close look at international level to regulate this problem. We start from International law about White-Collar crime, because law is the best instrument to regulate any kind of crime and under the Vienna Conventions on the Law of Treaties, 'a treaty must be (1) a binding instrument, which means that the contracting parties intended to create legal rights and duties; (2) concluded by states or international organizations with treaty-making power; (3) governed by international law and (4) in writing'¹⁶². United Nations Convention against Corruption is signed by all countries which were noticed in our research and according to Kofi A. Annan Secretary-General of United Nations 'The adoption of the United Nations Convention against Corruption will send a clear message that the international community is determined to prevent and regulate corruption'¹⁶³.

This convention was created for: regulation of corruption on national and international levels, stop harmful influence of corruption on society, values of democracy, ethical values and justice development and provide approach to regulate, prevent and combat corruption effectively.¹⁶⁴ Purposes of this Convention are:

'To promote and strengthen measures to prevent and combat corruption more efficiently and effectively, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption and promote integrity, accountability and proper management of public affairs and public property.'¹⁶⁵

Second is the United Nations Convention against Transnational Organized Crime. It provides instruments to regulate: corruption or money laundering and makes obligation to Member States participants to adopt, in accordance with domestic law, such legislative

¹⁶² H.W. Fowler, F.G. Fowler, R.E. Allen, *The Concise Oxford Dictionary of Current English*, (8th edn, Clarendon Press, Oxford 1990 and United Nations Treaty Collection, Treaty Reference Guide 1999) 931

¹⁶³ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption* (Austria, United Nations Office on Drugs and Crime 2004) iii-iv

¹⁶⁴ Ibid 2, 4

¹⁶⁵ Ibid, art. 1

and other measures may be as necessary to establish as criminal offences for corruption and money laundering when these White-Collar crimes are committed intentionally.¹⁶⁶

Also this convention determines offence international if 'it is committed in more than one State and crime was committed in one State but a substantial part of its preparation, planning, direction or regulation takes place in another State. It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State. Crime is committed in one State but has substantial effects in another State'¹⁶⁷.

This Convention provides obligation to Each State Party to create legal norms in their own legislation which are fair to the gravity of noticed in Convention offences and makes possible prosecution, adjudication and sanctions.¹⁶⁸ In this legal act also noticed one of the most important instruments to regulate White-Collar crime on international level - extradition.

According to this convention extradition is possible only if four points take place. First, the person or organized criminal group are situated on the territory of the requested State Party. Second, the offence for which extradition is sought is punishable under the domestic law the requesting State Party. Third, the offence for which extradition is seek is providing under the domestic law the requesting State Party. Fourth, the offence for which extradition is seek is providing under the domestic law requested State Party.¹⁶⁹

Also, countries provide ways to regulate White-Collar crime on national level with the help of legislation, agitation, propaganda and social advertisement. For instance, on Ukrainian television or billboards there are a lot of social advertisement against corruption from national authorities or international organization, which agitate citizens to fair business practices as well as governmental officials to give a fair service and not receiving bribes. But effectiveness of this method is also a big question. The most effective is way of legal definition and regulation on which we have had a close look in paragraph 2 of this masher thesis.

Since White-Collar crime includes business as victim in many cases, typical organization loses 5% of revenues every year due to fraud, about \$895 billion was lost in the US last

¹⁶⁶ General Assembly resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organized Crime [2000], art. 6, 8 (Convention against Transnational Organized Crime)

¹⁶⁷ United Nations Convention against Transnational Organized Crime, art. 3 (2)

¹⁶⁸ United Nations Convention against Transnational Organized Crime, art. 11

¹⁶⁹ United Nations Convention against Transnational Organized Crime, art. 16

year, corporations do not rely on national authorities or honesty of people and tried to regulate level of White-Collar crime by their own instruments. For instance, they provide training for their personal to let them know how to detect fraud or others White-Collars crimes inside or outside the company and set up anonymous White-Collar crime reporting hotline.¹⁷⁰

Analyzing this Master Thesis, we can make a conclusion that the most effective way to regulate corruption is law method, but law is not presented just by legal acts, the main thing which transforms legal act into law is law enforcement. As we can see international legal basis are well prepared and also many professionals from different spheres spend months and days on its drafting and negotiations but unfortunately, because of lack of enforcement many of these articles do not work in practice. Main proof for it is statistic data. For instance, in Cyprus, only 1 person was convicted for money laundering in period from 2012 to 2013, at the same time in Germany 285 persons were found guilty for the same kind of White-Collar crime only in 2012¹⁷¹ and we know that this two countries are under regulation of Anti-money laundering directive.¹⁷²

¹⁷⁰ John E. Surrette, 'The Effects of White Collar Crime on Business Today' (June 2016) <<http://www.kahnlitwin.com/blogs/business-blog/the-effects-of-white-collar-crime-on-business-today>> accessed 11 April 2017

¹⁷¹ European Commission Final Report Study on criminal sanction legislation and practice in representative Member States prepared by Thomson Reuters Aranzadi for DG Justice of the European Commission under Contract No. JUST/2011/JPEN/PR/0066/A4 [2013] (European Commission Final Report)

¹⁷² Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2015] OJ L 141/73

Prevention

Crime prevention is a system of measures taken by state bodies, public organizations, authorities and others aimed at counteracting the processes of determination of crime, aimed at the re-socialization of potential criminals, preventing committing of new crimes. Crime prevention is a worthwhile goal, but that it is unlikely that punishment is the best way for it. Many study analysis have suggested that punishment is socially beneficial, but most of these studies fail to take into account negative effects on offenders. Those effects must be overlooked from all sides, even if the benefit done by punishment did outweigh the harm, that would not be sufficient to establish that it is justified in utilitarian terms: it must also be compared to alternative ways of reducing the crime rate.¹⁷³

Crime prevention is a wider term then we can see from the first look, although the meaning of this term may also embody fear of crime and sources of risk to person and goods other than from crime. In many countries term crime prevention is associated with the work of the police, the use of security measures and neighborhood watch, bur this is a huger concept, prevention is taken to refer to a huge range of methods, in majority of which the police play part or no role at all.

In modern society there are many reasons why crime is fundamentally a social Phenomenon, and crime is socially constructed. Majority of White-Collar crimes behavior involves social relationships, for instance relationships between bribers and middlemen are friendly relationships on the start.¹⁷⁴ Criminologists think in two ways, first is that prevention of crime more depends from the situation than person, while second is a directly opposite understanding - personal characteristic is a main factor of the crime. Situational crime prevention is an approach that focuses on modifying the settings in which White-Collar crime cannot be committed, it aims to change the situation in which crime takes place in order to affect rating made by potential criminals about the benefits and costs associated with committing particular crimes. Paying attention to specific forms of offence and analyzing the opportunities, give expansion to these problems. Situational crime prevention searches for identify weak sides in management and the atmosphere that give opportunity to commit a crime. That has a potential to decrease crime with the low

¹⁷³ Deirdre Golash, *The Case against Punishment: Retribution, Crime Prevention, and the Law* (NYU Press 2006) 147

¹⁷⁴ Nick Tilley, *Crime Prevention* (Willan 2009) 7, 80-81

economic and social costs possibility. These changes are intended to deter potential criminals by rise difficulties and the risks of crime, by making crime committing harder and less beneficial.

Situational crime prevention is a model that transfers attention from criminals into aspects of the circumstances that stimulate committing a crime. It is based on the theory that all actions are the result of an interaction between the characteristics of the potential offender and the background in which an act is performed'.¹⁷⁵ Likewise, the theory cannot be without critic.

Adversary claim that the approach is simplified and too theoretical, it disregards the many of criminological research set that the root reasons of crime are in deprivation resulting from genetic heritage, character or from cultural, racial, social, and economic inequality. To inspire that there is a direct link between offence and possibility is considered to be a pruning of the determination of human behavior. It is claimed to be an old, administrative approach to offence prevention. Majority of critique is not directed at the approach, but at the rational choice which is a principal part of this theoretical foundations. The criminal is shown as a thinking individual who is able of making prohibited decisions and who seeks to gain profits from committing crimes. But research indicates that many of physical conditions such as stress, depression, exhaustion and drug or alcohol intoxication have an impact on an individual's selfcontrol and on their choice.¹⁷⁶

Crime prevention strategy can take many forms as social and legal and including social legal classes for public officials and corporation employee to improve knowledge of people and prevent them from committing of antisocial behavior and crimes.

The design of programs to improve the social conditions and institutions shall be adopted by specialist from many spheres as law, phycology, sociology and education, because it will help to have a real influence on society in general and individual behavior in particular.¹⁷⁷ Also governmental officials shall make access to such program and problems for public organizations as Transparency International.

¹⁷⁵ Harald Haelterman, *Crime Script Analysis: Preventing Crimes Against Business* (Springer 2016) 29-30

¹⁷⁶ Ibid 38-39

¹⁷⁷ Ibid 38-39

Control

Classical scenes from old Hollywood movies are familiar to every cinema goer, where are fraudsters and other offender escapes from the prosecutors crossing the border of the state. These scenes, show limits of police in the US prior to the emergence of international law enforcement, also very many reflect the basic challenge facing international crime control efforts. But now cooperation is growing and mission of law enforcement authorities in the development of strong and huge net of justice to control, prevent and struggle against crimes and offenders. Investigating international offences has evolved from a limited number of police possibilities and extradition agreements to a high assemblage of law enforcement mechanisms and institutions. Based on past experience, future international crime control cooperation will substantially depend on the degree to which law enforcement issues can be depoliticized.¹⁷⁸ For instance, Ukraine did not extradite Sergey Mavrodi, owner of MMM – the biggest Ponzi scheme of Post-Soviet union to Russian Federation in the political reasons and it helped Sergey Mavrodi to run to South Africa, where he started a new Ponzi scheme Richmond Berks which provides up to 1.5% daily for it investors.¹⁷⁹

The growth of international crime control is evident in the spread of new criminal laws and an aggressive push for international homogenization of such laws¹⁸⁰, but we want to show another approach to the ways of White-Collar crime control.

Joseph Nye in 2004 provided definition what soft power is and why nation-states should adopt soft power before or with classical instruments to confront a range of matters. ‘An attraction to shared values and the justness and duty of contributing to the achievement of these values’ are, according to Nye, the decisive parts for cooperation. Although Nye’s work concerns useful social practices which can be applied to White-Collar crime control. Crime control is often understood as something strictly enforced as the power structures of the national authorities. While crime control can be done in another soft way by social services or the soft policing practices.¹⁸¹

¹⁷⁸ Peter Andreas, Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (Oxford University Press 2006) 3-7, 233

¹⁷⁹ MMM, ‘Новые проекты’ <<http://mmm-mavrodi.com/vozvrat-deneg/2-uncategorised/503-richmondberks.html/>> accessed 11 April 2017

¹⁸⁰ Peter Andreas and Ethan Nadelmann (n 177) 233

¹⁸¹ Daniel McCarthy, *‘Soft’ Policing: The Collaborative Control of Anti-Social Behavior* (UK, Department of Sociology at the University of Surrey 2014) 3-4

Example of soft policing is a method of Neighbourhood Policing, it has its source in a more general philosophy of authority, whereby activities carried out by the special authority aim at diminution fears and concerns shared by locals, and consist of a broad range of roles and activities, designed to raise community confidence and improve the quality of contact between the authority and citizens also soft policing helps to improve relations between the authority and public to support cooperation and searching of solutions to local problems. Another idea of soft policy is not to focus clearly on the offenders but also pay attention on those deemed to be at risk of offending.¹⁸²

A considerable development in the acceptance of soft policing ideas was the establishment of the state's anti-social behaviour campaign from the late 1990s in US.

It provides towards 'working on' young people for their protection from crime way, as kind of social police mission. There were many of psychotherapeutic benefits for officers to do this –because they have seen a real possibility to change people, in addition fulfilling their important goals in their own personal development.¹⁸³ However, there might be found some other preventive measures that would be highly effective in White-Collar crime prevention. Soft policing can help to struggle with fraud or any other corporate crime. But it does not help to reduce level of computer related crimes in general and online casinos in particular.

Preventive measures have also been introduced in a number of other countries. The Cypriot House of Representatives, in Cyprus, passed legislation, which made prohibited all forms of online games of chance with the exception of sports betting and lottery games offered solely by Europe's biggest company OPAP. In a like manner, Greece has recently made prohibited 400 domains operating without a license and manage its national Internet providers to ban Greek citizens' access to such web pages. Against the Greek Gaming Act, which permit the licensing of online casinos, ministerial incited processes which conspired to prevent any operator other than OPAP from giving a license. Banned firms faced penalties of €20000 per day fine for each type of games of chance offered, €10,000 for marketing their products and €200,000 for each direct sailing attempt to a Greek citizen. Germany has made pilot steps before opening up its monopolized games of chance market to a fair competition. The Interstate Treaty on Gambling 2012, with the

¹⁸² Daniel McCarthy (n 180) 4-5

¹⁸³ Ibid 148

exception which was made only for Schleswig Holstein. Following a Court of Justice of the European Union ruling that the Interstate Treaty on Gambling 2008 counter with many of the rights granted in European treaties, compromise was found in making to its states' monopoly on the online sports betting. Although a general ban on online gambling has been supported, The Interstate Treaty on Gambling 2012 contains a trial clause which admit up to twenty licensed providers to accept bets on sport. Yet, to date, licences have not been provided, as states look to fail liberalization of market.¹⁸⁴

So in many cases prevention makes a lot of sense, but we cannot prevent all crimes and unfortunately to reduce with help of it crime level to zero point is impossible. That is why national authorities shall have a close look not only on crime situation in their country and try to prevent White-Collar crimes only with legal help, creative method of prevention, like Soft policing can give result too. Also we have many countries with low economic level and they banned some kinds of games of chance, good example of it is Greece and Ukraine.¹⁸⁵ Making countries which made games of chance prohibited, especially countries with high level of such kind of White-Collar crime as corruption only lose from this decision, because casinos transform into another kind of high profitable criminal business which cannot subsist without corruption constituent, while all profits can replenish the state treasury in case of legalizing and monopolizing by state authority this kind of business.

¹⁸⁴ James Banks, *Online Gambling and Crime: Causes, Controls and Controversies* (UK, Sheffield Hallam University 2014) 23-24

¹⁸⁵ Law of Ukraine On the prohibition of gambling business in Ukraine [2009] № 1334-VI <<http://zakon2.rada.gov.ua/laws/show/1334-17>> accessed 12 April 2017

Struggle against

Having analyzed the peculiarities of White-Collar crimes we conclude that every type of this offence presupposes different measures of fighting against. Now we should dwell on each kind separately to work out an overall strategy for improvement of current situation of White-Collar crime in the countries mentioned in our research.

Bribery and corruption. As we know situation with corruption in US, EU and Ukraine is different. According to Corruption Perceptions Index 2016 outlined, by Transparency International many of EU countries, such as Sweden, Switzerland, Germany, Austria, Belgium poses leading places in terms of corruption struggle and prevention. After them goes US (18th place). As it seems, Bulgaria appears to be the most corruptive EU country (75th), many experts excuse it by post-Soviet influence. Apparently, Ukraine poses 131 out of 176 that makes it outside of this rate.¹⁸⁶ We may anticipate that approaches for countries with different corruption rate should be different. Middle rete countries such as Bulgaria, Romania and Hungary ought to pay attention to practices of countries that are more successful in this field (Sweden or Switzerland). That will encourage legging-behind countries to implement successful practices in corruption combating, while successful countries (Germany, Austria, Belgium, Sweden, Switzerland) should continue implementation of mechanisms of prevention and struggle against corruption and remain examples for the rest countries. US has own opinion about ways for a corruption combating, Corruption Perceptions Index 2016 in US is one of leading in the World, but the costs of corruption are still significantly huge. Corruption leads to injustice, misallocation of resources, economic decay and destroys the trust of citizens in their governments and in the law in particular.

For a long period the United States have been taking part in the combating against international bribery. It accepts the Foreign Corrupt Practices Act in 1977, domestic legislation which forbids US citizens, other persons and businesses that fall under the jurisdiction of this act from bribing foreign officials. After that, the Anti-Bribery Convention was signed in 1997 and took effect in 1999, which according to Transparency International calls the gold standard in the corruption combating. In 2009 the OECD Council adopted the 'Recommendation for Further Combating Bribery of Foreign Public

¹⁸⁶ Transparency International, 'Corruption Perceptions Index 2016'
<<https://www.transparency.org/country/UKR>> accessed 8 April 2017

Officials' and emitted 'Good Practice Guidance' to increase the detection and prevention of foreign bribery and consolidate company programs. Also US makes many of extra anti-corruption Work at international anti-corruption organizations: The OECD has adopted recommendations to strengthen honesty and prevent corruption in public sector. The US has taken the guide in the OECD's Development Assistance Committee (DAC) to create particularized instruments to supervise purchases and evaluate fiscal transparency. The US takes part in the Steering Committee of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. The international assembly with the G 20, works to liquidate safe havens for illegal profits. Its members take pains to guarantee that law on national level will be free for sharing the information to combat bribery, money laundering, tax evasion. More than six hundred agreements have been signed under its patronage. In March 2016, the OECD convened a Ministerial Meeting on the Anti-Bribery Convention to open a new era of international law enforcement. Attorney General Lynch led the US delegation and described US successes in combatting bribery.¹⁸⁷

Nowadays Ukraine is on the way to integration with EU but this is a hard road with numerous governmental reforms. Transparency International recommended to Ukraine five-step reform in anti-corruption sector, this include creation of special anti-corruption governmental organization, e-declaration for officials, transparent tender purchase, real punishment for senior officials, court and prosecutor's reforms.¹⁸⁸

Now, Ukraine provides legal basis for creation of special anti-corruption governmental organization¹⁸⁹, e-declaration for officials of all levels¹⁹⁰, transparent tender purchase was provided by special procedure and open web-site¹⁹¹ and legal basis about national

¹⁸⁷ Official website of U.S Mission to the Organization for Economic Cooperation and Development, 'Combating Corruption' <<https://usoeed.usmission.gov/mission/combating-corruption.html>> accessed 12 April 2017

¹⁸⁸ Transparency International, 'How to stop corruption: 5 key ingredients' (10 March 2016) <http://www.transparency.org/news/feature/how_to_stop_corruption_5_key_ingredients> accessed 12 April 2017

¹⁸⁹ Law of Ukraine On National Anti-Corruption Bureau of Ukraine [2014] № 1698-VII <<http://zakon2.rada.gov.ua/laws/show/1698-18>> accessed 12 April 2017

¹⁹⁰ Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine on Peculiarities of Officers' Representation of Declarations on Assets, Income, Expenses and Obligations of Financial Nature in 2016 [2016] № 1022-VIII <<http://zakon3.rada.gov.ua/laws/show/1022-19>> accessed 12 April 2017

¹⁹¹ Official website of Public Procurement - Prozorro <<https://prozorro.gov.ua/en>> accessed 12 April 2017

prosecutors was significantly changed¹⁹². But court system was not reformed and no senior official was faced with real punishment.

Money laundering. The starting point for success in anti-money laundering actions is in the understanding of different techniques criminals use to invite their criminal gains into the legal financial system.

Nowadays, money and information can move from one jurisdiction to another in seconds. The Bank of America processed \$224,400,000,000,000, PayPal processed around \$145,000,000,000; Western Union approximately \$81,000,000,000; the Automated Clearing House Network processed \$36,900,000,000; and this number do not include crypto currencies. On the one hand, the technological progress and new financial instruments increase the rapid growth of the digital economy and international business. On the other hand, it gives new instrument for White-Collar criminals. EU anti-money laundering legislation is well-grounded upon the twelve conceptual objectives showed in Chapter one and tested in Chapter two by reference to existing tools. Together, these concepts make able Member States to struggle against money laundering from all possible retaliatory angles: organized crime groups, private sector employees abusing their positions of trust from within financial institutions and enterprises legal persons and legal arrangements used as vehicles by criminals; those public servants and officials abusing their positions.¹⁹³

Many of crime possibilities for money laundering have not found their law regulation. For instance, Bitcoin or another crypto currency. According to European Central bank ‘virtual currencies do not qualify as currencies from a Union perspective. In accordance with the EU Treaties and the provisions of Council Regulation (EC) No 974/98, the euro is the single currency of the Union’s economic and monetary union, i.e., of those Member States which have adopted the euro as their currency. Consistent with the approach, which has either already been adopted, or is currently being considered, by other jurisdictions regulating virtual currency exchange platforms, including Canada, Japan and the United States, the ECB recommends defining virtual currencies more specifically, in a manner

¹⁹² Law of Ukraine On the Public Prosecutor’s Office of Ukraine [2014] № 1697-VII <<http://zakon2.rada.gov.ua/laws/show/1697-18>> accessed 12 April 2017

¹⁹³ Emmanuel Ioannides, *Fundamental Principles of EU Law Against Money Laundering Economic* (MICA 2014) 145-146

that explicitly clarifies that virtual currencies are not legal currencies or money'¹⁹⁴ but this is only recommendation and it cannot be enforced by any EU authority. So such instrument for money laundering is still legal and uncontrolled by EU.

Cyber (computer) crimes. In a perfect world, we are able to protect ourselves from all possible computer crimes with a help of special programs. Unfortunately, level of our knowledge in computer science cannot give me opportunity to describe here technical aspects of combating computer crimes. The World is not perfect as well as special software. Each software has strengths and weaknesses. Each program has an appropriate and inappropriate use, so we should study each program carefully and also do not be afraid to ask for help. Only literate users can stop cyber crimes. It is impossible for everyone to know absolutely everything about software so, do not hesitate to contact specialists and also use firewalls and special anti-virus problem in many cases this will be enough.¹⁹⁵

Also such programs or web-pages which hide your IP from provider¹⁹⁶ or open to you access to Darknet as TOR browser¹⁹⁷ shall be prohibited on international and national levels.

Fraud and Ponzi Schemes. First instrument to struggle against fraud is anti-fraud education of personal Business around the world is losing up to 5 percent of their profits of fraud. Applied to the 2011 Gross World Product this number of annual fraud loss is more than \$3.5 trillion. Anti-Fraud organizations present five steps plan for fraud combating: firstly, let to your employees be initiative. Construct and support internal controls specifically created to fraud combating. Adopt an Honor Code for employees. Set rule that CEOs will not be tolerate for any unethical behavior. Create a reporting system, such as an anonymous hotline, to help fraud combating. Secondly, establish head-hunter's procedure. Every business should create formal employment guidelines and when employing staff, make small background investigations. Check diplomas, employment and credit histories as well as recommendations. Of course, after hiring

¹⁹⁴ Opinion of the European Central Bank CON/2016/49 of 12 October 2016 on a proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, 3

¹⁹⁵ Albert J. Marcella, Ph.D. Robert S. Greenfield, *Cyber Forensics: A Field Manual for Collecting, Examining, and Preserving Evidence of Computer Crimes* (CRC Press 2002) 297

¹⁹⁶ Easy-hide-IP.com <<https://easy-hide-ip.com/>> accessed 12 April 2017

¹⁹⁷ Tor Project <<https://www.torproject.org/>> accessed 12 April 2017

interpret new employee with company ethics and anti-fraud programs. Thirdly, train employees in fraud prevention. When checked employees are on the job, they shall be trained in fraud prevention. Make sure that employees know some simple fraud prevention techniques. Fourthly, make audit a regular practice. The areas which are of high risk to machinations, such as inventory or financial departments, are first targets for planned audits. Unplanned audit of those and all parts of the business is destructive for fraudsters. Fifthly, do not hesitate to call an expert. For a majority of undertakings, fraud examination is not a core business activity. That is why, when fraud is detected, it is important to call the anti-fraud expertise of a Certified Fraud Examiner and report to competitive authorities.¹⁹⁸

Aftermath of Ponzi schemes can be overcome by yourself and national authorities, so if you think you are investor in a Ponzi scheme, break off contact immediately and do not invest any more money, then provide all information to national authorities. After that, alert your bank immediately if you have given Ponzi scheme managers your bank details. Also save any written communications you with Ponzi scheme, it can help you give evidences to the authorities. Recognize that you are now likely to be a target for other frauds because they can sale details about investors to another criminal. Example of classical scheme is a phone call from fake authority to you as victim of Ponzi scheme, offering you to return your money for bribe or fee.¹⁹⁹

¹⁹⁸ Association of Certified Fraud Examiners (ACFE), 'Businesses: Take These Five Steps to Combat Fraud' <<http://www.acfe.com/press-release.aspx?id=4294975785>> accessed 12 April 2017

¹⁹⁹ Official website of U.S. Commodity Futures Trading Commission, 'Avoid Fraud' <<http://www.cftc.gov/ConsumerProtection/FraudAwarenessPrevention/index.htm>> accessed 12 April 2017

Conclusions

Despite a huge significance of White-Collar crime for business and well-being of economic and our World in general, not enough attention was drawn to this topic. The term White-Collar crime is not new and taking a consideration all mentioned above and research we have done on the field of White-Collar crime presence we can conclude that the early definition of White-Collar crime term is out of days and should be edited. As we consider White-Collar crime should be defined as crime committed by a person of respectability and high social status in the course of his occupation or professional skills. Definition we suggest prims up the idea of professional and its influence on such kinds of White-Collar crime as money laundering, computer crime and Ponzi schemes, since the majority of this crimes are committed by professionals be incorrectly out of official work.

The main White-Collar crimes are bribery, money laundering, fraud, cyber computer crimes and Ponzi Schemes. Economy and budget suffers the most from it. As we understand the pure control of White-Collar crime may have a negative influence on every sphere of society's life. The most vulnerable are sphere are business and international authority of the nation, as it is next to impossible to build up a developed country on corruptive basement. Our Master Thesis research single out many strategies for White-Collar detection, control, prevention and combating against.

By our research we manage to prove that White-Collar crime of different nature have the same elements.

1. Subject – person who commit that crime is governmental, represent or have close connection to business.
2. Object – the most popular object of such crimes is financial interest.
3. Method of commitment of crime nonviolent crime (committed with out weapons).

By means of our Master Thesis we could work out a strong strategy for prevention and struggling of White-collar crime on national and international levels.

In this master thesis we analyzed White-Collar crime in general, applying existing knowledge of new conditions and technic methods, provide possible solutions and recommendations for legal ways and other ways which are created to prevent, struggle and control of White-Collar crime. In measures of this Master Thesis we answered the

question what might be done by lawyers and citizens in the field of White-Collar crime problem solution

Structuring the work which has been done we could focus on a history development of this phenomenon with nowadays knowledge, moreover concentrate on legal bases of different countries with different law systems and traditions, after that we had possibilities to divide general term White-Collar crime on smallest parts and finally, we found solutions for each of them.

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Annexes

Abstract

Awareness and analyzing of White-collar crime is a crucial process in law and political studies. It connects many law spheres such as business, criminal, privacy, tax and some others. Studies of international White-collar crime is a cooperation of national law, implementation of international law and their enforcement. Because of lack law regulation and enforcement White-collar crime is rather flourishing crime. Level of extension depends on the development of a country. According to researches made in last decades, ignorance of these offences lead to financial loses in private and public sector. The strategies that might be undertaking on the field of White-collar crime should be effective rather stimulating than punitive, and improve stability and health of economy. As practice of a countries with higher corruption perceptions index shows despite implementation of existing laws should undergo strict control.

Present day economic and political situation enforce legal systems for rapid and thought changes in legal system. This legal changes will improve social, political and economic stability and well-being. Apart of mentioned above, not only struggle against is important but control, prevention and regulation of this problem are important too. In this work we analyzed approaches, experience and success of developing and develop countries and find problems and solutions for both.

Abstract

Das Bewusstsein und die Analysierung der Verbrechen von den Weißkragen sind die bedeutenden Prozesse in der Recht- und Politikwissenschaft. Es verbindet viele rechtlichen Gebiete wie das Wirtschafts-, Straf-, Datenschutz-, Steuerrecht und anderen. Die Studien der internationalen Verbrechen von den Weißkragen sind die Kooperation von dem Völkerrecht, der Umsetzung des internationalen Rechts und deren Vollstreckung. Die Straftaten der Weißkragen sind eher die blühenden Verbrechen, weil es nicht genug Regulation und Durchsetzung gibt. Das Ausmaß der Erweiterung hängt von der Staatsentwicklung ab. Zuzufolge der letzten Forschungen wirkt die Unwissenheit dieser Straftaten die finanziellen Verluste im privaten und öffentlichen Sektor aus.

Strategien, die im Feld der Straftaten von den Weißkragen benutzt werden könnten, müssen nicht strafbar, sondern anregend sein und die Stabilität und Gesundheit der Wirtschaft verbessern. Die Praxis der Staaten mit höheren Korruptionswahrnehmungsindex zeigt, dass trotz die existierenden Gesetze umgesetzt werden, braucht man die strenge Kontrolle.

Derzeit verstärkt wirtschaftliche und politische Situation die rechtliches System für die schnelle Änderungen im Rechtssystem. Diese Änderungen wird in die Gesetz die soziale, politische und wirtschaftliche Stabilität und das Wohlstand eines Landes verbessern. Außerdem, nicht nur Kampf dagegen ist wichtig, sondern die Kontrolle, die Prävention und die Regulierung von diesen Problem sind insbesondere wichtig. In dieser Arbeit wir haben Ansätze, Erfahrungen und Erfolge der bis jetzt entwickelten Ländern untersucht sowie versuchen die Probleme und Lösungen für beide such.

