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## Theoretical and empirical approaches towards a better understanding of corporate crime in Hungary<sup>1</sup>

### Teoretyczne i empiryczne próby lepszego rozumienia przestępczości związanej z działalnością przedsiębiorstw na Węgrzech

**Abstract:** The purpose of this study is to collect the relevant data and to formulate the theoretical background of corporate crime from a Central-Eastern European perspective. One of the main goals of the study is to explore and elucidate the complex interrelationships between corporate crime and the Hungarian market economy's functioning. The different approaches for defining white-collar and corporate crime are summarised. An overview of the theoretical background of such crime is given. The general economic situation in Hungary is discussed, along with various available data, in order to examine the extent of corporate crime in Hungary. A detailed guideline for the empirical study of these crimes is also presented.

**Keywords:** white-collar crime, corporate crime, definitions, surveys, Hungary

**Abstrakt:** Celem tekstu jest zebranie danych oraz sformułowanie z perspektywy Europy Środkowo-Wschodniej podstaw teoretycznych dla lepszego rozumienia przestępczości związanej z działalnością przedsiębiorstw (*corporate crime*). Artykuł ma za zadanie zgłębienie i wyjaśnienie złożonych relacji zachodzących między tego rodzaju przestępczością a funkcjonowaniem gospodarki rynkowej na Węgrzech. Przeanalizowane zostaną różne podejścia dotyczące definiowania przestępczości

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związanej z działalnością przedsiębiorstw oraz przestępczości białych kołnierzyków, przedstawiony zostanie także przegląd założeń teoretycznych dotyczących popełniania tego rodzaju czynów zabronionych. Tekst omawia generalną sytuację gospodarczą Węgier i na jej tle przedstawia dane obrazujące możliwy zakres przestępczości związanej z działalnością przedsiębiorstw na Węgrzech. W artykule prezentowane są także szczegółowe założenia i wytyczne dotyczące empirycznego badania tego rodzaju przestępczości.

**Słowa kluczowe:** przestępczość białych kołnierzyków, przestępczość związana z działalnością przedsiębiorstw, definicje, badania ankietowe, Węgry

## Introduction

The aim of this research is to elucidate the characteristics of corporate crime in Hungary. This type of crime has been on the rise since the change of regime. The objective of this study is to improve the relationship between representatives of the criminal justice system and representatives of the private sector in order to more effectively combat corporate crime. It is of the utmost importance to understand the circumstances which promote corporate and white-collar crime.

It is necessary to deal with the problem of white-collar and corporate crime, because the harm in the morals of the society or organisation is high, and it staggers the public confidence.<sup>2</sup> It follows to gain a deeper understanding of its characteristics, and to describe effective prevention and law enforcement systems is also needed.

The purpose of the study is to collect relevant data and set up the theoretical background of corporate crime from the point of view of post-socialist Central-Eastern European countries. One of the main goals of this study is to explore and elucidate the complex interrelationships between corporate crime and the functioning of the Hungarian market economy.<sup>3</sup>

In this paper, the different approaches to defining white-collar and corporate crime are summarised. An overview of the theoretical background of these activities is provided. The general economic situation in Hungary is summarised, and the various data which are available from scholarly studies and official governmental reports are presented in order to examine the extent of corporate crime in Hungary. Finally, a research plan is outlined, which serves as a guideline of our ongoing activity and, hopefully, which will be useful for other researchers working on this topic in other countries.

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<sup>2</sup> I. Jávör, D. Jancsics, *The role of power in organizational corruption. An empirical study*, "Administration & Society" 2016, Vol. 48, Iss. 5, pp. 527–558.

<sup>3</sup> M. Tóth, *Piacgazdaság és büntetőjog* [in:] M. Lévy (szerk.), *A piacgazdaság kiépülése és a gazdasági bűnözés*, Magyar Kriminológiai Társaság, Budapest 1995, pp. 4–35.

## 1. Defining white-collar and corporate crime

The renaissance of Sutherland's views on white-collar crime (he wrote that white-collar crime 'may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation'<sup>4</sup>) is related to changes occurring in societies, i.e., after several decades of prosperity frequent economic crises weakened the public's trust in the financial-economic system and its representatives. Many people lost their savings, homes, and pension funds and went bankrupt; therefore, it is understandable that part of society widely demanded the people responsible to be named and punished.

Sutherland has mostly dealt with the areas known in the literature as 'corporate crime'<sup>5</sup> and 'state-corporate crime'.<sup>6</sup> The majority of these cases fall into the category of economic or occupational crime or the abuse of power. Sutherland showed many examples of corruption, bribery, insider trading, abuse of power, fraud, tax fraud, economic crime, anti-trust violations, high finance crime, embezzlement, bankruptcy, violations of embargoes, patent crime, consumer and advertising crime, etc.

The development of the concept of white-collar crime can be seen in the literature. It has also been referred to as, e.g., elite deviance, economic crime, commercial crime, occupational crime, or corporate crime.

The features that different definitions of white-collar crime have in common is that it occurs during a legitimate occupation, is motivated by financial gain, and is devoid of direct and deliberate violence.

I agree with Friedrichs that 'we should treat white-collar crime as a broad umbrella term for a class of crimes fundamentally distinct from conventional crime, and disproportionately involving middle- and upper-class individuals and organisations'.<sup>7</sup> Friedrichs expressed the view that white-collar crime can be described in many ways as there are various existing terms used to do so. I go along with his notion that we must review the below-mentioned typology – which was developed by him – to categorise the various types of white-collar crime. These principal criteria are as follows:

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<sup>4</sup> E.H. Sutherland, *White-Collar Crime*, Dryden Press, New York 1949, p. 9; idem, *The white-collar criminality*, "American Sociological Review" 1940, Vol. 5, Iss. 1, pp. 1–12.

<sup>5</sup> D. Friedrichs, *Trusted Criminals. White Collar Crime in Contemporary Society*, Wadsworth, Belmont, CA 2010.

<sup>6</sup> J.R. Aulette, R. Michalowski, *Fire in Hamlet. A case study of state-corporate crime* [in:] K.D. Tunnell (ed.), *Political Crime in Contemporary America. A Critical Approach*, Garland, New York 1993, pp. 171–206.

<sup>7</sup> D. Friedrichs, *White-collar crime in Europe. American reflections* [in:] J. van Erp, W. Huisman, G.V. Walle (eds.), *The Routledge Handbook of White-Collar and Corporate Crime in Europe*, Routledge London 2015, pp. 552–553.

- a) the context in which illegal activity occurs, including the setting (e.g., a corporation or government agency) and the level within the setting (individual or organisational),
- b) the status or position of the offender (e.g., wealthy or middle-class, chief executive officer or employee),
- c) the primary victims (e.g., the general public or individual clients),
- d) the principal form of harm (physical injury or economic loss),
- e) the legal classification (e.g., fraud, insider trading, or criminal bankruptcy).<sup>8</sup>

In the 1960s in the American literature, scholars began classifying the different kinds of crime and their perpetrators into particular categories in order to develop a more precise explanation of criminality, as well as to establish a more effective mechanism for prevention. Clinard and Quinney argued that white-collar crime can be divided into two types: corporate crime and occupational crime. Corporate crime was described as ‘offenses committed by corporate officials for their corporation and the offenses of the corporation itself’.<sup>9</sup> Occupational crime was defined as a ‘violation of the legal codes in the course of activity in a legitimate occupation’.<sup>10</sup> We can state that corporate crime is a type of crime whereby the corporation itself benefits from the actions of its employee, whereas occupational crime is an illegal activity whereby the employee profits from the way he/she uses his/her legitimate occupation. They rethought Sutherland’s original definition of white-collar crime and did not include the status of the offender.

Pontell pointed out that the traditional status-based meaning of white-collar crime raises important empirical and interpretative questions. Furthermore, it could be a central question as to why people who live otherwise conventional and law-abiding lives and usually already have significant wealth commit white-collar crime.<sup>11</sup>

Starting in the 1970s the explanations of white-collar criminality split into two main groups according to whether the offense is committed by an organisation or an individual. Friedrichs concluded that the following types of crimes are fundamentally and closely related to white-collar crime: corporate crime (illegal and harmful acts committed by officers and employees of corporations to promote corporate [and personal] interests, e.g., corporate theft or corporate financial manipulation); occupational crime (illegal, harmful, financially driven activities committed within the context of a legitimate, respectable occupation, e.g., retail

<sup>8</sup> Idem, *Trusted...*, op. cit., p. 7.

<sup>9</sup> M.B. Clinard, R. Quinney, *Criminal Behavior Systems. A Typology*, Holt, Rinehart & Winston, New York 1973, p. 188.

<sup>10</sup> Idem, *Criminal Behavior Systems. A Typology*, Holt, Rinehart & Winston, New York 1967, p. 131.

<sup>11</sup> H. Pontell, *Theoretical, empirical, and policy implications of alternative definitions of “white-collar crime”*. “Trivializing the lunatic crime rate” [in:] S.R. Van Slyke, M.L. Benson, F.T. Cullen (eds.), *The Oxford Handbook of White-Collar Crime*, Oxford University Press, New York 2016, pp. 39–58.

**Table 1.** Defining White-Collar Crime according to Payne

Source: B.K. Payne, *White-Collar Crime. The Essentials*, SAGE Publications, Los Angeles 2013, p. 30.

crime, crimes of professionals, or employee crime); governmental crime (a range of activities wherein the government itself or government agencies generate illegal or demonstrably harmful acts, e.g., state crime); state–corporate crime (illegal or injurious actions that occur when one or more institutions of political governance pursue a goal in direct cooperation with one or more institutions of economic production and distribution);<sup>12</sup> high finance crime (criminal activity from the realm of high finance, from banking to the securities markets); and crimes of globalisation and technocrime.<sup>13</sup>

<sup>12</sup> J.R. Aulette, R. Michalowski, *Fire...*, op. cit.

<sup>13</sup> D. Friedrichs, *Trusted...*, op. cit., pp. 7–8.

In a discussion of the evolving concept of white-collar crime we should also mention the following approaches, which in my opinion are insufficient: organisational deviance (actions contrary to norms maintained by others outside the organisation, but supported by the internal operating norms of the organisation)<sup>14</sup> and organisational crime (illegal acts of an individual or group of employees of an organisation to enhance certain operational goals of the organisation, which have a serious physical or economic impact on employees, consumers, or the general public).<sup>15</sup>

Payne considered different approaches in order to classify white-collar crime (see Table 1).<sup>16</sup>

Edelhertz thought that Sutherland's definition was too limited. He recommended the following one instead: an 'illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid payment or loss of money or property, or to obtain business or personal advantage'.<sup>17</sup> He delineated four main types of white-collar crime: 1) crimes by people operating on an individual, ad hoc basis for personal gain in a non-business context (e.g., tax fraud or credit card fraud); 2) crimes committed in the course of one's occupation by those operating inside businesses, governments, or other establishments or in a professional capacity, in violation of their duty of loyalty and fidelity to employer or client (e.g., embezzlement or accepting bribes); 3) crimes incidental to and in furtherance of business operations, but not constituting the central purpose of such business operations (e.g., abuse of trust or misusing oversight of medical products); and 4) white-collar crime as a business or as the central activity of the business (e.g., fraud in financial markets).

I do not agree with Edelhertz's approach because he broadens Sutherland's original term in a way that includes practically several types of non-violent crimes independently from the social status of the offenders.

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<sup>14</sup> M.D. Ermann, R.J. Lundman, *Corporate and Governmental Deviance. Problems of Organizational Behavior in Contemporary Society*, Oxford University Press, New York 1978, p. 7.

<sup>15</sup> L.S. Schragger, J.F. Short, *Toward a sociology of organizational crime*, "Social Problems" 1978, Vol. 25, Iss. 4, pp. 407–419.

<sup>16</sup> B.K. Payne, *White-Collar Crime. The Essentials*, SAGE Publications, Los Angeles 2013, p. 29–30.

<sup>17</sup> H. Edelhertz, *The Nature, Impact and Prosecution of White-Collar Crime*, Law Enforcement Assistance Administration, US Department of Justice, Washington, DC 1970, pp. 3–4.

## 2. Theoretical background for White Collar and Corporate Crime

*‘Why do smart people with decent incomes, or big businesses with good reputations, risk shame, ruin and possibly prison, or the destruction of their business?’ – a question raised by Friedrichs.<sup>18</sup>*

There is a long history of efforts to describe criminal behaviour. I share Friedrichs’s opinion that in modern times theory typically serves as a framework for social scientists’ attempts to explain crime. However, we not only wish to analyse crime (why the incidence of white-collar crime varies among occupations and industries across time and space, and which situational factors contribute to crime), but also criminality (what makes individuals or organisations commit white-collar crime) and criminalisation (the process of entities and individuals being defined as criminal).<sup>19</sup> The latter could be important because the majority of white-collar, corporate, or economic crime is a crime because it is prohibited by law (*mala prohibita*), contrary to other crimes, e.g., homicide, theft, or robbery, which are *mala per se*, meaning they violate the principal norms of a community or society. And we know that ‘unacceptable behaviour’ (and what is ‘crime’) depends to a large extent on ‘moral entrepreneurs’, who are key people (such as politicians, journalists, or activists) who seek to revise public attitudes regarding a certain issue.

In the scope of this paper I will not have the chance to explain all the relevant theories, but I would like to provide an overview of the most important ones. First we mention the theoretical works dealing with the learning criminal behaviour, e.g. Edwin Sutherland’s Differential Association Theory, Albert Bandura’s Cognitive Social Learning Theory, Sykes’s and Matza’s Neutralization Theory, Albert Bandura’s Moral Disengagement Theory, and Travis Hirschi’s Social Control Theory.

Under the category of social explanations of crime (‘The Sick Society’) we can list Émile Durkheim’s Anomie Theory, Robert K. Merton’s Instrumental/Structural Anomie Theory and Differential Opportunity Structures, Albert Cohen’s Status Frustration Theory, Robert Agnew’s Revised Strain Theory, Messner’s and Rosenfeld’s Institutional Anomie, and Nikos Passas’s Global Anomie Theory.

Organisational Criminology raises the question of the few bad apples or a bad barrel that is the crime is committed by only a few individuals within the organisation or the whole organisation is involved. We have to mention the following publications: Henry Mintzberg’s *Structuring of Organization*, Maurice Punch’s *Suit Violence: Why Managers Murder and Corporations Kill*, Whyte’s *Organization Man*, Randall’s *Organization Man Revised*, David Jaffe’s *What Is an Organization:*

<sup>18</sup> D. Friedrichs, *Trusted...*, op. cit., p. 219.

<sup>19</sup> *Ibidem*, p. 220–221.

*Organizational Metaphors*, Needleman and Needleman's *Two Theories of Criminogenesis*, Coleman's *Motivation and Opportunity: Understanding the Causes of White-Collar Crime*, and Susan P. Shapiro's *The Social Control of Interpersonal Trust: Principle-Agency Theory*.

We can divide the different criminological theories into four types according to the four main paradigms (classical, positivist, interactionist, and critical). However, I will present herein the most important ones – in my opinion – in connection with white-collar and corporate crime, with a view to describing whether it is a social or individual explanation of crime; I will deal with organisational criminology as well.

Finally it is worth to mention the classical deterrence theory developed by Beccaria in 1764, in his book entitled *On Crimes and Punishments*,<sup>20</sup> in context of white-collar crime. According to Beccaria, punishment can prevent individuals from offending if the punishment is swift, certain, and proportional. Individuals are rational beings and as John Braithwaite wrote, 'white-collar criminals are more deterrable than common criminals because their crimes are more rational and calculating and because they have more of all of the things that can be lost through criminal justice sanctions.'<sup>21</sup>

## 2.1. Individual explanations of crime: Social process theories

One of the first learning theories is the differential association theory, which was developed by Sutherland in 1939. Differential association theory consists of a series of 9 propositions that describe how individuals learn criminal behaviour. The general concept of the theory is that individuals learn from their peers through a process in which they learn how to perpetrate crime, why to commit certain crimes, and which laws regulate those crimes. The propositions are as follows:

1. Criminal behaviour is learned; it is not inherited.
2. Criminal behaviour is learned in interaction with other people through a process of communication.
3. The majority of the learning of criminal behaviour occurs within intimate personal groups.
4. Learning criminal behaviour includes learning techniques of committing a certain crime, which may be very complicated or very simple, and learning the specific direction of motives, drives, rationalisations, and attitudes.

<sup>20</sup> C. Beccaria, *On Crimes and Punishments*, Hackett Publishing, Indianapolis, IN 1986.

<sup>21</sup> J. Braithwaite, *Challenging just deserts. Punishing white-collar criminals*, "Journal of Criminal Law and Criminology" 1982, Vol. 73, Iss. 2, p. 760.

5. The specific direction of motives and drives is learned from perceptions of various aspects of the legal code as being favourable or unfavourable.
6. A person becomes delinquent because of an excess of definitions favourable to violation of the law over definitions unfavourable consequences to violating the law. This is the key of differential association.
7. Differential associations may vary in frequency, duration, priority, and intensity.
8. The process of learning criminal behaviour by association with criminal and anti-criminal patterns involves all of the same mechanisms involved in any other learning.
9. Though criminal behaviour is an expression of general needs and values it is not excused by those general needs and values, since noncriminal behaviour is also an expression of the same needs and values.<sup>22</sup>

A few studies have tested the differential association theory to describe white-collar crime. Piquero and her colleagues<sup>23</sup> used data from a survey of 133 MBA students to investigate whether the theory would explain students' decisions to market and produce a hypothetical drug that was about to be recalled (the respondents knew this). The decision to market the drug even though it was going to be recalled was tied to a more corporate climate and to co-workers' attitudes. Robin<sup>24</sup> emphasised that learning theory is relevant in terms of the skills needed to perpetrate white-collar offences and the motives for offending. Many white-collar crimes involve highly complex and technically skilled actions.

Neutralisation theory was developed by Skyes and Matza<sup>25</sup> to explain how juvenile delinquents drift in and out of delinquent behaviour. They argued that juveniles understand right from wrong and that before committing delinquent acts, they neutralise or rationalise their behaviour as appropriate. Neutralisation occurs before the criminal act and provides offenders the mental strength they need to commit the crime. Accounts are offered after the act and allow the offender to distance themselves from the label of criminal.<sup>26</sup> Skyes and Matza described five techniques of neutralisation they believed juveniles used to rationalise their misconduct, which in my point of view could apply to white-collar criminals as well:

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<sup>22</sup> E.H. Sutherland, *Principles of Criminology*, J.B. Lippincott, Philadelphia 1947, pp. 5–9.

<sup>23</sup> N.L. Piquero, S.G. Tibbetts, M.B. Blankenship, *Examining the role of differential association and techniques of neutralization in explaining corporate crime*, "Deviant Behavior" 2005, Vol. 26, Iss. 2, pp. 159–188.

<sup>24</sup> G.D. Robin, *White-collar crime and employee theft*, "Crime and Delinquency" 1974, Vol. 20, Iss. 3, p. 259.

<sup>25</sup> D. Matza, *Delinquency and Drift*, Wiley, New York 1964; G.M. Sykes, D. Matza, *Techniques of neutralization. A theory of delinquency*, "American Sociological Review" 1957, Vol. 22, Iss. 6, pp. 664–670.

<sup>26</sup> M.L. Benson, *Denying the guilty mind. Accounting for involvement in a white-collar crime*, "Criminology" 1985, Vol. 23, Iss. 4, pp. 583–607.

denial of injury, denial of victim, appeal to higher loyalties, denial of responsibility, and condemnation of condemners. Studies show<sup>27</sup> that older individuals are more likely to neutralise their misbehaviour than younger workers. Research also shows that workers learn the appropriate types of rationalisation for their job from their co-workers.<sup>28</sup>

The theory of accounts<sup>29</sup> used by Scott and Lyman maintains that an account is a 'statement made by a social actor to explain unanticipated or untoward behaviour'.<sup>30</sup> According to Scott and Lyman, three types of accounts exist: denials, justifications, and excuses. Types of denials characteristic of white-collar criminality include denial of crime, denial of fact, denial of awareness, and denial of guilt. In contrary to denials – where offenders reject responsibility for the act – justifications are 'accounts in which one accepts responsibility for the act in question but denies the pejorative quality associated it'.<sup>31</sup> Justifications include denial of law, defence of entitlement, borrowing, metaphor of the ledger, and denial of wrongfulness. Scott and Lyman defined excuses as 'socially approved vocabularies for mitigating or relieving responsibility'.<sup>32</sup> Excuses in the case of white-collar crime could include the appeal of accident (for example, the BP oil company case), the appeal of defeasibility, and scapegoating.

According to Payne<sup>33</sup> white-collar offenders know right from wrong and they can drift in and out of acceptable and unacceptable acts. They try to minimise the types of sanctions given to them.

Control Theory addresses the question, 'Why do people not commit crime?'<sup>34</sup> According to Hirshi, individuals' bond through the four elements of attachment, belief, involvement, and commitment to society keep them from engaging in criminal behaviour. The weaker the bond, the more likely criminal behaviour will follow.

Lasley<sup>35</sup> conducted surveys of 435 executives employed by a large multinational automotive manufacturer in order to consider how well Hirshi's control theory describes white-collar criminality. He found that executives with a stronger attachment to their company, stronger involvement in corporate activities, and stronger beliefs in organisational rules were less likely to perpetrate white-collar crime.

<sup>27</sup> N.L. Piquero, S.G. Tibbetts, M.B. Blankenship, *Examining...*, op. cit.

<sup>28</sup> D. Dabney, *Neutralization and deviance in the workplace. Theft of supplies and medicines by hospital nurses*, "Deviant Behavior" 1995, Vol. 16, Iss. 4, pp. 313–331.

<sup>29</sup> M.B. Scott, S.M. Lyman, *Accounts*, "American Sociological Review" 1968, Vol. 33, Iss. 1, pp. 46–62.

<sup>30</sup> *Ibidem*, p. 46.

<sup>31</sup> *Ibidem*, p. 47.

<sup>32</sup> *Ibidem*.

<sup>33</sup> B.K. Payne, *Incarcerating White-Collar Offenders. The Prison Experience and Beyond*, Charles C. Thomas, Springfield, IL 2003.

<sup>34</sup> T. Hirschi, *Causes of Delinquency*, University of California Press, Berkeley 1969.

<sup>35</sup> J.R. Lasley, *Toward a control theory of white-collar crime offending*, "Journal of Quantitative Criminology" 1988, Vol. 4, Iss. 4, pp. 347–362.

Self-control theory was developed by Gottfredson and Hirshi.<sup>36</sup> They argued that crime was caused by the presence of low self-control. According to them, individuals with low self-control are 'impulsive, insensitive, physical, risk-taking, short-sighted, and non-verbal'.<sup>37</sup> They wrote that criminality is the tendency of individuals to pursue short-term gratification with little consideration for the long-term consequences of their actions. Hirshi and Gottfredson were critical of white-collar crime theories that explained such behaviour by focusing on the nature of the occupation rather than on the characteristics of the individual offender. They concluded that low self-control interacts with opportunity, the result being misconduct.

The Routine activities theory was created by Cohen and Felson<sup>38</sup> as a structural theory to explain how different social changes work together to impact crime rates. According to them, crime occurs when the following three elements exist at the same time and place: 1) the presence of motivated offenders, 2) the absence of capable guardians, and 3) the availability of suitable targets.

Payne points out that 'with a downturn in the economy, businesses have been forced to become more competitive. This may cause that some businesses are more motivated to engage in such wrongdoing as false advertising and price fixing'.<sup>39</sup>

The Rational choice theory was developed by Clarke and Cornish.<sup>40</sup> The theory was based on the utilitarian approach of classical school and the traditional economic decision-making theory. Accordingly, a 'potential' perpetrator decides to commit a criminal offence to meet his/her needs.

This purposeful behaviour is shown in light of the risks, efforts, and benefits he will have if he commits a criminal offence. This act is deliberate. According to the rational decision theory, offences are committed by reasonably thinking people who weigh the risk of failing against the potential gains.

According to Albrecht and Searcy's<sup>41</sup> study, a corporate crime occurs when there is no formal effort to respond to the misconduct and the control mechanisms in the workplace are inadequate.

Albrecht<sup>42</sup> developed the Fraud Triangle Theory, which was based on Cressey's views and Sutherland's differential association theory (see above). Cressey pointed out that 'trusted persons become trust violators when they conceive of themselves

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<sup>36</sup> M.R. Gottfredson, T. Hirschi, *A General Theory of Crime*, Stanford University Press, Stanford, CA 1990.

<sup>37</sup> Ibidem, p. 90.

<sup>38</sup> L.E. Cohen, M. Felson, *Social change and crime rate trends. A routine activities approach*, "American Sociological Review" 1979, Vol. 44, Iss. 4, pp. 588-608.

<sup>39</sup> B.K. Payne, *White-Collar...*, op. cit., p. 280.

<sup>40</sup> R. Clarke, D. Cornish, *Modeling offenders' decisions* [in:] M. Tonry, N. Morris (eds.), *Crime and Justice*. Vol. 6, University of Chicago Press, Chicago 1985, pp. 147-185.

<sup>41</sup> W.S. Albrecht, D.J. Searcy, *Top 10 reasons why fraud is increasing in the U.S.*, "Strategic Finance" 2001, Vol. 82, Iss. 11, p. 58.

<sup>42</sup> W.S. Albrecht, *Iconic fraud triangle endures*, "Fraud Magazine" 2014, July/August.

as having a financial problem which is non-shareable, are aware this problem can be secretly resolved by violation of the position of financial trust, and are able to apply to their own conduct in that situation verbalisations which enable them to adjust their conceptions of themselves as trusted persons with their conceptions of themselves as users of the entrusted funds or property.<sup>43</sup> He stipulated that embezzlement occurs if three elements are present at the same time: 1) a non-sharable problem, 2) an opportunity for violation of trust, and 3) a set of rationalisations that define the behaviour as appropriate in a given situation. He has never referred to his approach as the fraud triangle, but we could describe him as the father of the fraud triangle concept. According to his findings, Albrecht labelled three factors which promote fraud: situational pressures, opportunities, and personal integrity. Finally, he concluded that individuals are motivated to commit fraud when three elements come together: 1) some kind of perceived pressure, 2) some perceived opportunity, and 3) some way to rationalise the fraud as not being inconsistent with one's values.<sup>44</sup>

## 2.2. The social explanations of crime: 'The Sick Society'

The social explanations put the emphasis on different social structure approaches to explain criminality, rather than to view a criminal act as an individual's own behaviour.

The strain theories focus on the way stresses and strains contribute to criminal offences. In connection with white-collar and corporate crime, three strain theories would be applicable: the classical strain theory, the institutional anomie theory, and the general strain theory.

The Classical Strain Theory was developed by Merton.<sup>45</sup> Merton's hypothesis is that an individual engages in illegitimate activities if he/she is unable to achieve economic success. The question is whether this applies to white-collar criminals because they have already achieved financial success. Merton's anomie theory was based on the fact that the opportunities to achieve success are not equally distributed among all members of society. He analysed the types of goals people want to achieve and the type of institutionalised tools which are available to them. Those in the lower classes have fewer tools for achieving success – the disparity between goals and tools leads to strain. When a person faces such a situation, either the goals or the means must change in order to make him/her feel successful. According to the method individuals use to adjust to goals and means, Merton drew up five behavioural patterns: conformists, innovators, retreatists, rebels, and ritualists.

<sup>43</sup> R.D. Cressey, *Other People's Money*, Patterson Smith, Montclair 1973, p. 30.

<sup>44</sup> W.S. Albrecht, *Iconic...*, op. cit.

<sup>45</sup> R.K. Merton, *Társadalmi struktúra és anómia* [in:] idem, *Társadalomelmélet és társadalmi struktúra*, Osiris Kiadó, Budapest 2002, pp. 213–243.

Merton basically explained the lower class' offender crimes against property. However, Braithwaite<sup>46</sup> reminds us that certain companies which are constantly breaking the rules and are then obliged to pay fines can be considered ritualists. They regard the amount paid in fines as a cost of doing business.

### 2.3. Institutional anomie theory<sup>47</sup>

Messner and Rosenfeld,<sup>48</sup> in their book entitled *Crime and the American Dream*, described how American society favours the pursuit of material success, even if one could not achieve it by legal means. According to them, the culture affects social institutions. However, the institutions are unable to control people's behaviour. Messner and Rosenfeld note that four values (achievement, universalism, individualism, and materialism) which central to American culture largely supports criminal behaviour. The problem is that individuals are socialised to succeed at any cost, but not all individuals are given the same opportunities for success; they are also socialised in a way that encourages success either through legal or illegal tools. Messner and Rosenfeld analysed the role of economic institutions in achieving The American Dream and found three main features. Firstly, other institutions, e.g., education or the role and value of family, are devalued against economic institutions. Secondly, the other institutions are beginning to adapt to economic needs; for example, family life is determined by work schedule. Thirdly, the economic norms penetrate into the rules of other institutions.

General strain theory was created by Agnew.<sup>49</sup> This approach combines Merton's theory with social and psychological aspects. It concluded that failure to achieve financial goals is not the only cause of crime. The stress, frustration, anger, and despair people experience during their daily interactions play an important role in committing crime. Agnew emphasised three sources of strain in one's life that could lead to crime. The first one is the failure to achieve positively valued goals. In terms of white-collar crime, being passed over for promotion or paid unfairly could lead one to commit a criminal offence. The second one is the removal or expected removal of a positively valued motivation. Individuals who have invested a lot in their career and moved up the organisational ladder might face stress from maintaining their status. In many cases, these people turn to fraud or embezzlement when they have some hidden financial problems (for example, a huge stock

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<sup>46</sup> J. Braithwaite, *The nursing home industry* [in:] M.H. Tonry, A.J. Reiss (eds.), *Beyond the Law. Crime in Complex Organizations*, University of Chicago Press, Chicago 1993, pp. 11–54.

<sup>47</sup> S. Messner, R. Rosenfeld, *Crime and the American Dream*, Wadsworth, Belmont, CA 2007.

<sup>48</sup> *Ibidem*.

<sup>49</sup> R. Agnew, *A revised strain theory of delinquency*, "Social Forces" 1985, Vol. 64, Iss. 1, pp. 151–167; *idem*, *Foundation for a general strain theory of crime and delinquency*, "Criminology" 1992, Vol. 30, Iss. 1, pp. 47–88.

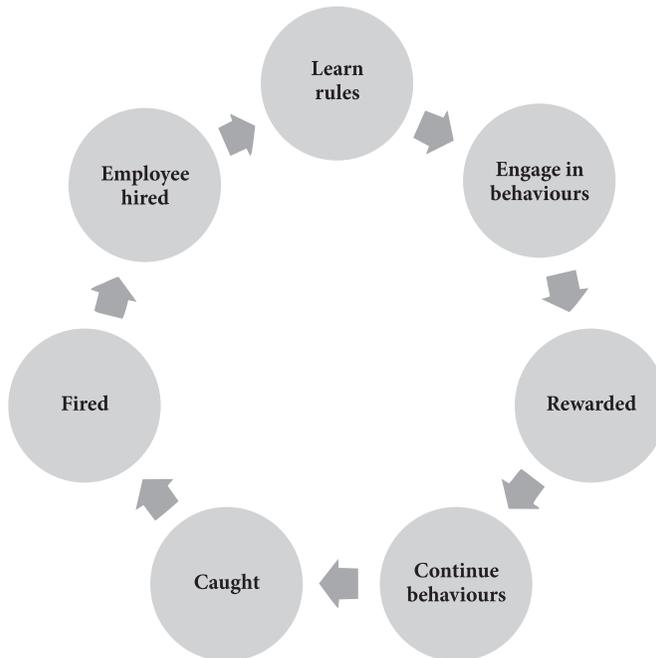
market downturn). One solution of this financial problem could be a temporary or permanent withdrawal of company funds. The third source of strain is the tension which appears because of negative impacts, from an illegitimate workplace lawsuit, for example.

## 2.4. Explaining corporate crime

Corporate crime is committed either by the organisation itself or by an individual committing it in the interests of the organisation. It is challenging to explain corporate behaviour.

Theorists have also described the way that organisational processes influence wrongdoing. According to different approaches, Payne<sup>50</sup> laid out the cycle of corporate crime, a process-orientated explanation of corporate crime (see Table 2).

**Table 2.** The cycle of corporate crime



Source: B.K. Payne, *White-Collar Crime. The Essentials*, SAGE Publications, Los Angeles 2013, p. 285.

<sup>50</sup> B.K. Payne, *White-Collar...*, op. cit., p. 284–285.

Employees learn the rules of expected behaviour in their corporation. In some cases, organisational rules may come into conflict with social laws. The employees may break social laws to further the organisation's goals. Employees are rewarded for helping the organisation achieve its aims. If they are caught breaking the rules, they may be fired. In such cases, new employees are hired into the position and the cycle begins again.<sup>51</sup>

Tillman and Pontell<sup>52</sup> suggested that corporate crime is more often found in larger organisations, those with complex ownership structures and which are growing quickly. To Yeager,<sup>53</sup> corporate crime is more likely to occur in larger organisations, because they see the penalties as a cost of doing business; however, they are more repellent to any damage to their reputation experienced after illegal acts.

I agree with Payne that 'corporations have goals, and rules are assigned that prescribe behaviours [which] corporate actors are expected to follow in their efforts to attain corporate goals... [T]here is evidence that pressure from the top of an organisation may encourage wrongdoing by employees.'<sup>54</sup>

## 2.5. Organisational criminology

Hall defined an organisation as 'a collectivity with a relatively identifiable boundary, a normative order (rules), ranks of authority (hierarchy), a communications system, and membership-coordinating systems (procedures); this collectivity exists, on a relatively continuous basis in an environment, and engages in activities that are usually related to a set of goals; the activities have outcomes for organisational members, the organisation itself, and for society.'<sup>55</sup>

According to this definition, large private companies (e.g., General Motors, Parmalat, Coca-Cola, Siemens, and Ford), governments, political parties, non-governmental organisations, small businesses, academic institutions, and scientific 'think tanks' all fall under the umbrella of organisational criminology.

Punch<sup>56</sup> emphasised that corporate violence is widespread and highly damaging. Corporate acts are perpetrated through the normal and legitimate conduct

<sup>51</sup> Ibidem, p. 284.

<sup>52</sup> R. Tillman, H. Pontell, *Organizations and fraud in the savings and loan industry*, "Social Forces" 1995, Vol. 73, Iss. 4, pp. 1439–1463.

<sup>53</sup> P. Yeager, *Analyzing corporate offenses* [in:] J.E. Post (ed.), *Research on Corporate Social Performance and Policy*, JAI Press, Greenwich, CT 1986.

<sup>54</sup> B.K. Payne, *White-Collar...*, op. cit.

<sup>55</sup> R.H. Hall, *Organizations: structures, processes, and outcomes*, Upper Saddle River, N.J.: Prentice Hall, 1999, p. 30, cited in: D. Jaffee, *Organization Theory. Tension and Change*, McGraw Hill, Boston 2001, p. 5.

<sup>56</sup> M. Punch, *Suit violence. Why managers murder and corporations kill*, "Crime, Law and Social Change" 2000, Vol. 33, Iss. 3, pp. 243–280.

of business. Offenders are well-educated, socially acceptable citizens who distance themselves from crime and criminal behaviour.

He analysed the structural and cultural determinant that can promote corporate violence. He concluded that corporate culture enables managers to distance themselves from the harmful consequences of their decisions. He studied the different features of a corporation and listed the following factors as important: the size and complexity of the organisation, the goals of the corporation, the company as a total institution, the corporate culture, and the means/motive/opportunity structures of the organisation. The size, complexity, and segmentation found in large corporations can contribute to a lack of control, to deviant subcultures, to poor communication, and to the obfuscation of authority. Bad news may not necessarily be conveyed to higher-ups. 'The necessity to achieve organisational goals may enhance practices where the ends are held to justify the means.'<sup>57</sup> The Mertonian 'strain' perspective could be financial strain, the stress of controlling markets, the pressure to harm competitors, or the strain of consolidating power. He mentioned in connection with corporate culture that 'there are inferences that some industries seem to sponsor a rule-breaking mentality'.

Braithwaite stipulated in 1985 that 'while it is middle management who perpetrates the criminal acts, it is top management who set the expectations, the tone, [and] the corporate culture that determine the incidence of corporate crime.'<sup>58</sup>

Coleman<sup>59</sup> focused on two conditions related to the causes of white-collar and corporate crime: motivation and opportunity. He defined motivation as 'a set of symbolic constructions, defining certain kind of goals and activities as appropriate and desirable and others as lacking those qualities.'<sup>60</sup> The individual's personality plays a facilitating role in formulating their motivation: psychologically 'normal,' egocentric, reckless, or ambitious. Cultural factors include the culture of competition – which means the desire to earn fast money; high reward and low detection/punishment; and the fear of failing. Another point is that organisations provide rationalisations for individuals in a state of moral conflict. Complex organisations shape an individual's motivation, through unique pressures or the fear of dismissal, for example. According to Coleman, opportunity has four components. The first is the actor's perception of how great a gain he/she can expect from a given opportunity. The second one is the perception of potential risks, such as the risk that the criminal act will be detected and punished. The third factor is the compatibility of the opportunity with the ideas, rationalisations, and beliefs the individual actor already has. Finally, the evaluation of a forbidden opportunity is made in

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<sup>57</sup> Ibidem.

<sup>58</sup> J. Braithwaite, *White Collar Crime*, "Annual Review of Sociology" 1985, Vol. 11, Iss. 1, pp. 1–25.

<sup>59</sup> J.W. Coleman, *Toward an integrated theory of white-collar crime*, "American Journal of Sociology" 1987, Vol. 93, Iss. 2, pp. 406–439.

<sup>60</sup> Ibidem, p. 409.

comparison with the other opportunities the actor is aware of.<sup>61</sup> As far as opportunity is concerned, the decision-making of a given firm is influenced by the competitive market involving competitive firms. When it comes to a regulatory environment, we can say that the more regulation there is, the more crime can be found as well.

According to Needleman and Needleman,<sup>62</sup> crime may desired behaviour then employees are coerced into criminality, and its affect the normal activity.

## 2.6. Summary

The different theoretical approaches focus on different criminal activities. These may vary among industries, markets, political environments, or scientific collectives. As we can see, organisational criminology deals with the organisation and its characteristics; the focus has changed from individual to organisational cultural components. Sometimes, even the jungle of legal regulations creates the potential for infringement. The aim when establishing a theory is to understand individuals' actions, the origin of motivation, the creation of opportunity, and the allocation of the necessary institutional reactions, as well as the modus operandi of regulation, deterrence, and punishment.

## 3. The economic situation in Hungary

In 1990, 40 years of socialist rule in Hungary ended. The former regime was a one-party system and featured a planned economy with a hegemonic Marxist–Leninist ideological framework. This regime change moved the country towards a capitalist society based upon a parliamentary democracy, a market economy, social, cultural, and political pluralism, the protection of human rights, and membership in the political, economic, and military organisations of 'Western' countries. This transformation had an enormous impact on all aspects of the social, political, and economic life of the country.<sup>63</sup>

Before the regime change, economic activity was almost completely risk-free. During the socialist period, the market was imitated, so the risk of market competition was strongly limited. 'Bankruptcy' was unknown, and 'reorganising finances'

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<sup>61</sup> Ibidem, p. 424.

<sup>62</sup> M.L. Needleman, C. Needleman, *Organizational crime. Two models of criminogenesis*, "The Sociological Quarterly" 1979, Vol. 20, Iss. 4, pp. 517–528.

<sup>63</sup> M. Lévy, *A gazdasági bűnözés jogi kontrollja Magyarországon a rendszerváltozás óta* [in:] *Bűnügyi Tudományi Közlemények 9. Tanulmányok*, Bíbor Kiadó, Miskolc 2012, pp. 103–104.

Table 3. Statistical profile of Hungary in 2017<sup>64</sup>

|  | Unit             | 2009  | 2010  | 2011  | 2012  | 2013  | 2014  | 2015  | 2016  |
|--|------------------|-------|-------|-------|-------|-------|-------|-------|-------|
| <b>Production and income</b>                           |                  |       |       |       |       |       |       |       |       |
| GDP per capita   | USD current PPPs | 20573 | 21467 | 22729 | 22998 | 24366 | 25494 | 26446 | 26689 |
| Gross National Income (GNI) per capita                 | USD current PPPs | 19640 | 20470 | 21674 | 22081 | 23729 | 24426 | 25206 | ..    |
| Household disposable income                            | Annual growth %  | -3.7  | -2.6  | 3.5   | -3.1  | 2.0   | 3.3   | 1.9   | ..    |
| <b>Economic growth</b>                                 |                  |       |       |       |       |       |       |       |       |
| Real GDP growth  | Annual growth %  | -6.6  | 0.7   | 1.7   | -1.6  | 2.1   | 4.0   | 3.1   | 2.0   |
| Net saving rate in household disposable income         | %                | 3.4   | 3.4   | 4.1   | 2.6   | 4.3   | 5.7   | 4.3   | ..    |
| Gross fixed capital formation                          | Annual growth %  | -8.3  | -9.5  | -1.3  | -3.0  | 9.8   | 9.9   | 1.9   | -15.5 |
| <b>Economic structure: share or real value added</b>   |                  |       |       |       |       |       |       |       |       |
| Agriculture, forestry, fishing                         | %                | 3.5   | 3.5   | 4.6   | 4.6   | 4.6   | 4.7   | 4.1   | 4.5   |
| Industry including energy                              | %                | 24.8  | 25.8  | 25.9  | 26.3  | 25.9  | 26.5  | 27.8  | 27.0  |
| Construction   | %                | 4.9   | 4.2   | 4.1   | 3.9   | 4.0   | 4.3   | 4.1   | 3.4   |
| Trade, repairs, transport, accomm., food services      | %                | 17.6  | 17.7  | 18.0  | 17.8  | 18.6  | 18.5  | 18.5  | 18.9  |
| Information, communication                             | %                | 5.6   | 5.4   | 5.3   | 5.3   | 5.3   | 5.2   | 4.9   | 4.9   |
| Finance and insurance                                  | %                | 5.0   | 5.0   | 4.8   | 4.6   | 4.0   | 3.9   | 3.7   | 3.5   |
| Real estate  | %                | 8.6   | 8.6   | 8.4   | 8.5   | 8.3   | 7.8   | 7.7   | 7.8   |
| Professional, scientific, support services             | %                | 8.8   | 9.0   | 9.0   | 9.0   | 9.1   | 9.0   | 8.9   | 9.2   |
| Public admin., defence, education, health, social work | %                | 18.2  | 17.8  | 17.0  | 17.2  | 17.2  | 17.1  | 17.3  | 17.8  |
| Other services (ISIC Rev.4 R – U)                      | %                | 3.0   | 3.0   | 2.9   | 2.9   | 2.9   | 3.0   | 2.9   | 2.9   |
| <b>Government deficits and debt</b>                    |                  |       |       |       |       |       |       |       |       |
| Government deficit                                     | % of GDP         | -4.6  | -4.5  | -5.5  | -2.3  | -2.6  | -2.1  | -1.6  | -1.8  |
| General government debt                                | % of GDP         | 84.0  | 85.9  | 94.9  | 97.8  | 95.7  | 98.4  | 97.0  | 97.1  |
| General government revenues                            | % of GDP         | 46.0  | 45.0  | 44.2  | 46.2  | 46.8  | 46.9  | 48.5  | 45.6  |
| General government expenditures                        | % of GDP         | 50.6  | 49.5  | 49.7  | 48.6  | 49.3  | 49.0  | 50.0  | ..    |



Table 3. Continue

|   | Unit            | 2009  | 2010  | 2011  | 2012   | 2013   | 2014  | 2015   | 2016  |
|---|-----------------|-------|-------|-------|--------|--------|-------|--------|-------|
| <b>Foreign direct investment (FDI)</b>        |                 |       |       |       |        |        |       |        |       |
| Outward FDI stocks                            | Mln USD         | 21623 | 22315 | 26357 | 37717  | 38318  | 39050 | 34860  | 24908 |
| Inward FDI stocks                             | Mln USD         | 98872 | 90851 | 85331 | 104009 | 108579 | 99359 | 84460  | 79243 |
| Inflows of foreign direct investment          | Mln USD         | 1998  | 2195  | 6315  | 14427  | 3404   | 7752  | -14811 | -5927 |
| Outflows of foreign direct investment         | Mln USD         | 1852  | 1173  | 4713  | 11717  | 1887   | 3780  | -15980 | -8802 |
| <b>Prices and interest rates</b>              |                 |       |       |       |        |        |       |        |       |
| Inflation rate: all items                     | Annual growth % | 4.2   | 4.9   | 3.9   | 5.7    | 1.7    | -0.2  | -0.1   | 0.4   |
| Inflation rate: all items non food non energy | Annual growth % | 4.6   | 3.7   | 1.0   | 3.9    | 3.8    | 2.3   | 2.0    | 1.5   |
| Inflation rate: food                          | Annual growth % | 3.9   | 2.8   | 7.2   | 6.0    | 2.6    | -0.8  | 0.6    | 0.3   |
| Inflation rate: energy                        | Annual growth % | 2.7   | 10.8  | 9.0   | 8.7    | -5.5   | -6.8  | -7.6   | -3.8  |
| Producer Price Indices (PPI): manufacturing   | Annual growth % | -0.1  | 5.7   | 8.6   | 5.2    | 1.1    | 0.6   | -3.3   | -2.0  |
| Long-term interest rates                      | %               | 9.12  | 7.28  | 7.64  | 7.89   | 5.92   | 4.81  | 3.43   | 3.14  |
| <b>Unemployment</b>                           |                 |       |       |       |        |        |       |        |       |
| Unemployment rate: total labour force         | %               | 10.0  | 11.2  | 11.0  | 11.0   | 10.2   | 7.7   | 6.8    | 5.1   |
| Unemployment rate: male labour force          | %               | 10.3  | 11.6  | 11.1  | 11.3   | 10.2   | 7.6   | 6.6    | 5.1   |
| Unemployment rate: female labour force        | %               | 9.7   | 10.7  | 11.0  | 10.6   | 10.1   | 7.9   | 7.0    | 5.1   |
| Long-term unemployment: total unemployed      | %               | 42.4  | 50.3  | 48.8  | 46.6   | 49.8   | 48.9  | 46.7   | 47.3  |

Source: OECD country statistical profile: Hungary 2017;

[https://read.oecd-ilibrary.org/economics/country-statistical-profile-hungary-2017-4\\_csp-hun-table-2017-4-en#page1](https://read.oecd-ilibrary.org/economics/country-statistical-profile-hungary-2017-4_csp-hun-table-2017-4-en#page1) [access: 5.03.2019].

did not mean liquidation, but meant action would be taken centrally to ensure profits. This approach has been deeply fixed in the thinking of economic actors.

Since the regime change, a revamped tax system, market reforms with price and trade liberation measures, and a new market-based banking system have been developed. The former state-owned companies have been privatised.

Table 3 shows that the gross domestic product (GDP) of Hungary has been increasing since 2012, but income levels are still low. The income level in Hungary is one of the lowest among OECD countries. The main business areas are industry, trade, repairs, transport, accommodation, food services, real estate, and the information and communications sector. The general government debt is 97% of the GDP. The average workers' tax rate is 48% of the labour cost. The unemployment rate has decreased from 2010; in 2016 it was 5.1%.

### 3.1. Sources of corporate crime in Hungary

We know that it is difficult to measure corporate crime because in many situations there is no direct victim or the victim is unaware of the offence. The definition of 'crime' is also ambiguous.<sup>65</sup>

To examine the level of corporate crime in Hungary, we have to combine data from different sources, namely, the official crime statistics, proceedings of the various regulatory agencies (e.g., the Hungarian Competition Authority, the Central Bank of Hungary [CBH], the Directorate of Financial Market Supervision, the National Tax and Custom Administration, and the Hungarian Authority for Consumer Protection), and research (e.g., PricewaterhouseCoopers's and Transparency International's surveys of Hungary).

### 3.2. The number of economic crimes reported

It is rather difficult to learn the extent of economic crime from the official crime statistics (see Table 4). The problem with these numbers is that the background legislation is changing constantly (e.g., acts on taxation or acts on bankruptcy regulations). The low number of cases shows the high latency of these activities, as well. The majority of the cases are infringement of accounting regulations, criminal bankruptcy, budget fraud, and embezzlement. There are some crimes in which there are no criminal investigations for years: insider securities trading, fraud

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<sup>65</sup> For more, see C. Walburg, *The measurement of corporate crime. An exercise in futility?* [in:] J. van Erp, W. Huisman, W. Gudrun (eds.), *The Routledge Handbook of White-Collar and Corporate Crime in Europe*, Routledge, London 2015, pp. 25–38.

regarding capital investment, or agreement to restrain competition in public procurement and concessions, for example.

**Table 4.** The number of economic crimes reported in Hungary between 2009 and 2014<sup>66</sup>

| Crime   | 2009  | 2010  | 2011   | 2012  | 2013  | 2014  |
|---|-------|-------|--------|-------|-------|-------|
| Misleading consumers  | 3     | 6     | 3      | 5     | 4     | 8     |
| False marking of goods  | 466   | 313   | 191    | 200   | 437   | 97    |
| Violation of the financial interest of the European Community | 12    | 19    | 30     | 19    | 18    | 15    |
| Infringement of accounting regulations                        | 2,890 | 3,577 | 3,522  | 994   | 584   | 630   |
| Insider securities trading                                    | 1     | -     | 1      | 1     | 1     | -     |
| Criminal bankruptcy   | 402   | 295   | 316    | 333   | 311   | 271   |
| Economic fraud  | -     | -     | -      | -     | -     | 1     |
| Infringement of trade secret                                  | 13    | 18    | 10,021 | 6     | 11    | 2     |
| Defalcation   | 6     | 4     | 5      | 7     | 6     | 7     |
| Withdrawal of the cover of debt/lending fraud                 | 21    | 24    | 15     | 20    | 4     | 3     |
| Credit fraud  | 413   | 518   | 472    | 383   | 271   | 131   |
| Misappropriation of funds                                     | 54    | 75    | 97     | 92    | 81    | 87    |
| Violation of industrial design rights                         | 99    | 37    | 20     | 11    | 31    | 209   |
| Foreign trade activities without licence                      | 22    | 41    | 20     | 44    | 36    | 15    |
| Dealing in stolen goods                                       | 517   | 359   | 289    | 121   | 57    | 14    |
| Conspiracy to commit excise violation                         | 73    | 68    | 8      | 13    | 33    | 67    |
| Budgetary fraud   | 1,622 | 2,009 | 1,554  | 1,523 | 2,178 | 2,284 |
| Money laundering  | 46    | 17    | 13     | 16    | 16    | 21    |
| Organisation of pyramid schemes                               | -     | -     | -      | -     | -     | 1     |
| Marketing of a product of poor quality                        | 16    | 16    | 6      | 7     | 7     | -     |
| Curtailment of registered capital or primary capital          | -     | -     | 2      | -     | -     | -     |
| Embezzlement  | 4,341 | 3,966 | 4,054  | 4,782 | 4,332 | 4,634 |
| Concealment of assets for avoiding liability                  | 2     | 1     | -      | 2     | -     | -     |

<sup>66</sup> C. Gyóry, É. Inzelt, *Fehérgalléros, gazdasági és korrupciós bűnözés* [in:] A. Borbíró, K. Gönczöl, K. Kerezi, M. Lévay (eds.), *Kriminológia*, Wolters Kluwer, Budapest 2016, p. 463.

**Table 4.** Continue

| Crime   | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|------|------|------|------|------|------|
| Fraud regarding capital investment                                      | -    | 2    | -    | -    | -    | -    |
| Breach of business secrecy  | -    | -    | -    | -    | 496  | 3    |
| Agreement to restrain competition in public procurement and concessions | 1    | -    | -    | -    | -    | -    |
| Imitation of competitors  | -    | -    | -    | -    | 8    | 54   |
| Misuse of excise tax authority  | 269  | 147  | 59   | 36   | 19   | 13   |

Source: C. Györy, É. Inzelt, *Fehérgalléros, gazdasági és korrupciós bűnözés* [in:] A. Borbíró, K. Gönczöl, K. Kerezi, M. Lévy (eds.), *Kriminológia*, Wolters Kluwer, Budapest 2016, p. 463.

## 4. Regulatory and supervisory agencies' figures

### 4.1. The Hungarian Competition Authority

The Hungarian Competition Authority (HCA) was established by Act LXXXVI of 1990 on the prohibition of unfair market practices and began operations on 1 January 1991. The aim in establishing the Authority was to prohibit anticompetitive behaviour and to protect the freedom and fairness of competition. The Competition Act, which is currently in force, is Act LVII of 1996 on the prohibition of unfair and restrictive market practices, and it came into force on 1 January 1997. Besides the provisions on competition, the Act declares the legal status of the Authority and regulates its basic structure and operation, as well as the procedures which it conducts. With Hungary's accession to the European Union the HCA became a member of the European Competition Network, consisting of the national competition authorities of the EU Member States and the Directorate-General for Competition of the European Commission. As such, the HCA is required to apply EC competition law under certain conditions. The activity of the HCA in relation to the fairness and freedom of competition is to enforce the competition rules for the benefit of the public in a way which increases long-term consumer welfare and competitiveness at the same time. Furthermore, the HCA promotes competition in general: it endeavours to create competition where no competition exists on the market and it promotes appropriate state regulation to be put in place. The tasks of the HCA in connection with the safeguarding of competition rest on the following three pillars: 1) competition supervision proceedings – the enforcement of

national and Community competition law, 2) competition advocacy – the HCA tries to influence state decisions, and 3) competition culture – the objective of the Authority is to contribute to the development of competition culture by disseminating knowledge about competition policy in order to raise public awareness of competition issues and by promoting the development of competition-related legal and economic activities of public interest. The HCA is a state administrative authority, which is independent of the government and reports only to the Hungarian Parliament.<sup>67</sup>

#### 4.1.1. The proceedings of the Authority

**Table 5.** The number of cases initiated by the HCA between 2011 and 2015<sup>68</sup>

|                             | Number of cases 2011 | Number of cases 2012 | Number of cases 2013 | Number of cases 2014 | Number of cases 2015 |
|-----------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Unfair commercial practices | n.a.                 | 51                   | 62                   | 66                   | 66                   |
| Restrictive agreements      | n.a.                 | 6                    | 11                   | 17                   | 12                   |
| Abuse of dominant position  | n.a.                 | 5                    | 5                    | 6                    | 8                    |
| Control of concentrations   | n.a.                 | 38                   | 31                   | 36                   | 54                   |
| <b>All cases</b>            | 109                  | 100                  | 109                  | 125                  | 140                  |

**Table 6.** Number of cases closed by the HCA between 2011 and 2015

|                             | Number of cases 2011 | Number of cases 2012 | Number of cases 2013 | Number of cases 2014 | Number of cases 2015 |
|-----------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Unfair commercial practices | 71                   | 56                   | 61                   | 69                   | 59                   |
| Restrictive agreements      | 6                    | 5                    | 15                   | 13                   | 10                   |
| Abuse of dominant position  | 6                    | 5                    | 5                    | 7                    | 7                    |
| Control of concentrations   | 31                   | 36                   | 37                   | 35                   | 49                   |
| <b>All cases</b>            | 114                  | 102                  | 118                  | 124                  | 125                  |

<sup>67</sup> Hungarian Competition Authority, <http://www.gvh.hu/en/gvh> [access: 7.02.2019].

<sup>68</sup> The data were based on the Annual Reports of the Hungarian Competition Authority on Competition Law and Policy Developments in Hungary 2011, 2012, 2013, 2014, 2015.

In Tables 5 and 6 one can see that there is a general increase in the number of cases initiated and closed by the Hungarian Competition Authority. The majority of these cases were connected with unfair commercial practices and control of concentrations. Cases dealing with the former are interesting because enforcement of the legislation on consumer protection is divided among the HCA, the Hungarian Authority for Consumer Protection, and the Central Bank of Hungary (the former Hungarian Financial Supervisory Authority merged into the CBH). The main goal of the HCA's consumer protection activity is to ensure undistorted competition and to maximise consumer welfare through the freedom of consumer choice.

Representative cases are discussed below.

In 2011, the HCA imposed competition supervision fines amounting to a total of 34.5 million HUF (approx. 123,000 EUR) on six taxi companies, because they had concluded a restrictive agreement in November 2006 to acquire the contractual partners of Rádió Taxi, in the so-called 'taxi cartel' case.

In the 'mill cartel' case, the HCA imposed fines amounting to 50 million HUF (approx. 180,000 EUR) on three milling companies for anticompetitive conduct relating to the public procurement tender opened in July 2006 by the Agricultural and Rural Development Agency for '[t]he production of food aid from intervention grain stock and its delivery into warehouses specified by the client'. The cartel members allocated among themselves the market for the supply of flour fortified with vitamins. They agreed that any of the parties which wins a tender, they sign a subcontracting agreement with the other party to produce half of the fortified flour, in exchange for half of the wheat payable through the public tender.

One of the cases concerning control of concentrations in 2011 was the Axel Springer AG/Ringier AG transaction which affected the markets of newspaper publication, printing, distribution, and advertising; the parties wanted to concentrate their Central Eastern European companies in the form of a new joint holding company.

In 2012, in the case of a cartel on the rail freight transportation market, the HCA imposed a competition supervision fine of 1,250 million HUF (approximately 4.2 million EUR) on Győr-Sorpon-Ebenfurti Vasút Zrt, MÁV Magyar Államvasutak Zrt., and Rail Cargo Hungaria Árufuvarozási Zrt. for infringing competition regulations by concluding restrictive agreements aimed at dividing the rail freight market between themselves and by applying a common tariff system.

In 2013, the MVM/E.ON gas merger case was the takeover of E.ON's Hungarian natural gas business unit – E.ON Földgáz Trade Zrt. – and E.ON Földgáz Storage Zrt. by the state-owned Hungarian energy group, Magyar Villamos Művek Zrt. (MVM). MVM's acquisition of 100% of the shares of the two undertakings was the aim of the transaction. Besides the Hungarian authorities, the transaction was investigated by the competition authorities of Germany, Austria, Romania, and Serbia.

In 2014, the Kereskedelmi és Hitelbank Zártkörűen Működő Részvénytársaság (K&H bank) had engaged in practices capable of deceiving consumers when

it categorically claimed in its advertising campaign concerning the savings product 'K&H Mix' that an annual interest of 7.8% could be earned, though in reality this was only true if consumers satisfied certain special conditions. In this case, the competition council imposed a fine of 80 million HUF (267,000 EUR).

Also in 2014, the Netrisk.hu Első Online Biztosítási Alkusz Zrt. (an insurance company) engaged in commercial practices capable of deceiving consumers when it claimed that the cost of switching insurers would be considerably higher the following year and that the best offers and cheapest MTPL policies were to be found on its website. It also made claims related to the lowest price and alleged savings. The HCA established infringement, imposed a fine of 50 million HUF (approx. 167,000 EUR), and ordered the discontinuation of the infringing practices.

In a cartel case in the public procurement of medicines, the HCA established that EUROMEDIC-PHARMA, HUNGAROPHARMA, TEVA, PharmAuditKft., and MEZADIN had committed a single, complex, and continuous infringement aimed at and having the effect of restricting competition, when during the public tender process they manipulated the procurement notice, conferred prior to submitting their offers to agree the prices they would submit, and divided the market between themselves. Besides establishing infringement, the Competition Council obliged the companies to pay a total fine of almost 2.5 billion HUF (8 million EUR).

**Table 7.** Fines imposed (in millions EUR) between 2011 and 2015<sup>69</sup>

|                             | Fines imposed in 2011 | Fines imposed in 2012 | Fines imposed in 2013 | Fines imposed in 2014 | Fines imposed in 2015 |
|-----------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Unfair commercial practices | 1.4                   | 1.8                   | 2                     | 4.5                   | 1.8                   |
| Restrictive agreements      | 0.28                  | 4.2                   | 35.3                  | 19.2                  | 10.5                  |

It should be mentioned that the activity of the HCA in recent years has been perceptibly influenced by politics. The Authority did not initiate (or was prevented from doing so by a change in the law) any procedure in several cases where cartelisation was rather obvious. For instance, it happened in 2012 when, under political pressure, the supermarket price of watermelons was fixed. A new regulation was introduced for the agri-food sector wherein the responsible minister can decide whether the case represents cartelisation or not. Despite the previous, rather strict practice, in the case of one recent enormous concentration, the foundation of

<sup>69</sup> The data were based on the Annual Reports of the Hungarian Competition Authority on Competition Law and Policy Developments in Hungary 2011, 2012, 2013, 2014, 2015.

Közép-Európai Sajtó és Média Alapítvány (the Central European Press and Media Foundation) in 2018, the HCA remained silent. Then, the government declared it to be a strategic industry of national importance, and therefore, the case was not under the authority of the HCA.

## 4.2. The Central Bank of Hungary's Financial Supervision Board

The primary objective of the Central Bank of Hungary is to achieve and maintain price stability. The main tasks of the CBH are to hold and manage official reserves in foreign currency and gold, to develop and monitor the payment and settlement systems, to issue forint banknotes and coins (the exclusive right of cash issuance), to collect and publish statistical information, to set and publish official exchange rates, and to promote the stability of the financial system. The CBH is a member of the European System of Central Banks.<sup>70</sup>

The Financial Supervision Board of the CBH monitors the activities of financial and capital market institutions, funds, insurance companies, and institutions of the financial infrastructure (regulated market, clearinghouse, and central depository), both on-site and off-site, using the tools of prudential supervision (i.e., supervision investigating the business soundness), as well as market surveillance and consumer protection tools and measures. The purpose of the supervision is to ensure the timely recognition and appropriate management of risks in order to protect the stability of the system and confidence in its financial intermediaries. The Central Bank monitors the activities of financial institutions when it comes to preventing and combating money laundering and the financing of terrorism. The CBH is committed to financial consumer protection and to market surveillance intended to eliminate unauthorised, unlicensed financial service providers.<sup>71</sup>

The Supervision Board of the Central Bank of Hungary is responsible for the prudential supervision of 1,608 institutions; the distribution of these institutions by type is shown in Table 8.<sup>72</sup> In 2016, the CBH launched 126 prudential and 36 market surveillance inspections and completed 129 prudential and 50 market surveillance inspections. The CBH issued a total of 1,736 prudential legal enforcement and licensing resolutions, while in the areas of market surveillance and issuer oversight it passed 86 legal enforcement resolutions in total. The measures taken included the imposition of prudential institutional fines amounting to 1.168 billion HUF,

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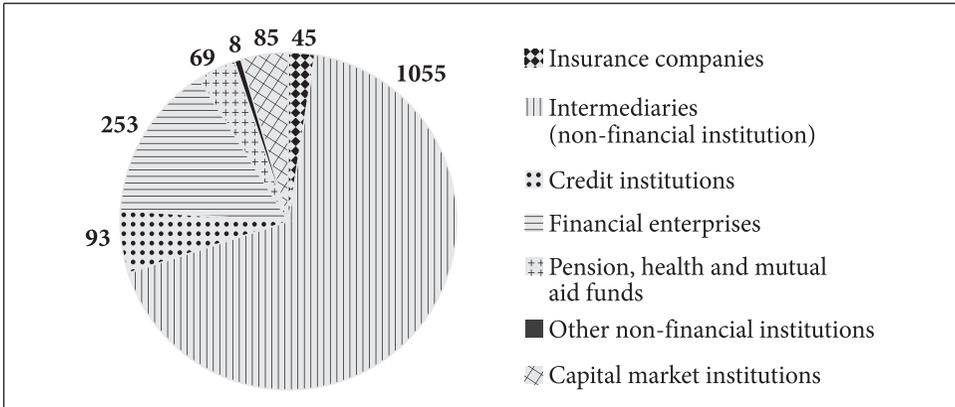
<sup>70</sup> Magyar Nemzeti Bank, Organisation, <https://www.mnb.hu/en/the-central-bank/organisation> [access: 7.02.2019].

<sup>71</sup> Magyar Nemzeti Bank, Supervision, <https://www.mnb.hu/en/supervision> [access: 7.02.2019].

<sup>72</sup> 2016 Business Report and financial statements of the Magyar Nemzeti Bank, <https://www.mnb.hu/letoltes/mnb-annual-report-2016.pdf> [access: 7.02.2019].

prudential personal fines amounting to 221 million HUF and market surveillance and supervisory fines of 3.889 million HUF.<sup>73</sup>

**Table 8.** Number of supervised entities by type<sup>74</sup>



Source: 2016 Business Report and financial statements of the Magyar Nemzeti Bank, p. 33.

## 5. Survey(s)

Unfortunately, there have been few studies in Hungarian criminology dealing with corporate crime. Because of this paucity we have only a few studies based on empirical research.

One of the well-known worldwide studies conducted by PricewaterhouseCoopers is the 'Global Economic Crime Survey'. This is a victim survey, which means that the researchers asked CEOs about economic crimes which were committed against their company. According to the 2016 survey data, the most common type of economic crime in Hungary is misappropriation of funds (46%). The top four types of economic crime reported by the study respondents were bribery and corruption (38%), tax fraud (21%), cybercrime (17%), and procurement fraud (17%).<sup>75</sup> According to the Central and Eastern European part of the survey from 2016, the internal offender is a male (72%) between the ages of 31 and 40 years

<sup>73</sup> Ibidem, p. 33.

<sup>74</sup> Ibidem.

<sup>75</sup> PricewaterhouseCoopers, Underestimated threats? Global and Hungarian Economic Crime Survey 2016, [http://www.pwc.com/hu/en/publications/economic-crime-survey/assets/gazdasagibuzozes2016\\_en\\_web.pdf](http://www.pwc.com/hu/en/publications/economic-crime-survey/assets/gazdasagibuzozes2016_en_web.pdf) [access: 7.02.2019].

(46%), working for the company for 3–5 years, and holding a university degree (47%). When it comes to external perpetrators, the results show it would most likely be a consumer (34%). The consequences against an internal perpetrator would be dismissal (64%), informing law enforcement agencies (27%), taking civil action (9%), and notifying a regulatory authority (9%). This behaviour on the part of companies could be the reason why misappropriation of funds or other crimes are not so visible in the crime statistics. According to the survey, only a small percentage of the cases are reported to the police.

## 6. Ongoing and future research plan

It is evident that the reports of the authorities and the research conducted do not provide a full picture of corporate crime in Hungary, so this ongoing study was initiated in order to gain a better understanding of the situation. Another objective of the study is to improve the relationship between representatives of the criminal justice system and representatives of the private sector in order to more effectively combat corporate crime. It is of the utmost importance to understand the circumstances that promote corporate and white-collar crime.

The research is focused on the offenders' basic characteristics (e.g., gender, age, marital status, educational level, place of residence, or criminal record) but more emphasis is placed on the creation of corporate misconduct, the perpetrators' motives, and the role of the corporate culture or the corporation itself. We will analyse who reported the incident to the police, if any report was made. If the police did not know about certain criminal activities, we will try to uncover the reason why the company did not file any report of it.

During the examination of the offender's basic characteristics, it is essential to analyse the perpetrators' social and personal circumstances.

According to Wheeler and his colleagues, white-collar perpetrators are more likely to have a college education, to be white males, to be older, to have a job, to have committed fewer offenses, and to have started their criminal careers later in life than conventional offenders.<sup>76</sup>

We have investigated all of the legally binding court files of bribery and trading in influence (N=272) from 2010 and we have concluded that offenders were mainly between 26–55 years of age, that 47% of them had at least a vocational school diploma, 62% were married or cohabiting, and one-third of them had

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<sup>76</sup> S. Wheeler, D. Weisburd, N. Bode, *Nature and Sanctioning of White-Collar Crime*. 1976–78, National Institute of Justice, Rockville, MD 1988.

a prior criminal record.<sup>77</sup> This means that they display other features than conventional offenders.

The key questions are as follows:

1. Who is the typical perpetrator in corporate crime cases by gender, age, marital status, educational level, place of residence, and prior criminal record?
2. What are the motivations of the offenders to commit corporate misconduct? Is it embedded in the firm's corporate culture?
3. What is the organisational structure (integrity policy, accountability, and the responsibility of the firm) and the organisational culture (loyalty and solidarity of colleagues) of the institution where these misconducts were committed?
4. Who reported the incident to the police?
5. How effectively can the criminal justice system detect economic crimes?<sup>78</sup>
6. What kind of cooperation could be formed between companies and the police?

Furthermore, we would also like to study the types of tools which the investigative authorities can use to detect and investigate corporate crime. We intend to evaluate what kinds of effects the social, political, and economic system and the regulatory environment have on the existence of economic and corporate crime. We hope that our research will contribute to more effective prevention and the exploration of corporate crime cases.

It is important to know about the experiences and opinions of the representatives of the private sector (CEO, CFO, and middle managers) and of ambassadors and attachés regarding the status of the Hungarian market and trends in corporate and economic crime. We would like to examine the features of corporate and economic crime with the knowledge of representatives of the private sector in order to increase the effectiveness of the fight against corporate crime. We will conduct approximately 25–30 interviews with people from the above-mentioned study groups. We will also organise a focus group meeting to elicit their thoughts and opinions on the difficulties involved in their everyday operations.

The other pillar of the research will focus on the opinions, perceptions, and experiences of representatives of the criminal justice systems, namely, police officers and lawyers. We will conduct approximately 15–20 interviews with police officers and lawyers in order to collect their opinion and then analyse economic and corporate crime and corruption cases from the criminal justice system's

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<sup>77</sup> É. Inzelt, K. Kerecsi, M. Lévy, *Korrupciós bűncselekmények a büntető igazságszolgáltatás tükrében*, ELTE ÁJK, Budapest 2014, pp. 1–156.

<sup>78</sup> G. Finszter, *A korrupció nyomozása*, "Belügyi Szemle" 2011, Vol. 59, Iss. 11, pp. 75–97; M. Holán, *Korrupciós bűncselekmények az új büntetőkönyvben*, HVG-ORAC Lap-és Könyvkiadó, Budapest 2014.

perspective. We will organise focus group meetings with police officers, prosecutors, judges, and lawyers.

Knowledge of the types of crime, the offenders, and the reasons behind corporate crime may be helpful in penal policy decisions, crime policy, and crime prevention.

A further question has to be answered: How can corporations and corporate criminals avoid justice? In this context, the problems of detection, the experiences of investigation, the difficulties of proof, and the mechanism of the functioning of the justice system will also be analysed. We hope that in this way, more complex and reliable conclusions could be drawn.

## Summary

The theoretical part of the present work covers the definitions of white-collar and corporate crime, including the most important (sometimes diverse) views. The social and individual backgrounds of these types of crimes are presented, based on the most relevant recent theories. The main features of the economic-political transition in Hungary are surveyed, and the appearance of novel forms of criminal activity is emphasised. The sources of corporate crime in Hungary are presented and examined by analysing the data from state authorities such as the Hungarian Competition Authority, the Central Bank of Hungary, the Directorate of Financial Market Supervision, and studies (by PricewaterhouseCoopers, for example). A detailed guideline of our ongoing project is described; this might be useful for other researchers working in this area in other countries and may serve as an outline for co-operative research efforts.

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