

A White Collar Crime: Embezzlement in Banking Law

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The idea of white-collar crime was first introduced by Edwin H. Sutherland during his presidential address at the American Sociological Society Meeting in 1939. There he raised concern over the criminological community's preoccupation with low-status offender and "street crimes" and the relative inattention given to the offenses perpetrated by people in higher status occupations. In his book, *White Collar Crime*, Sutherland explained further 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" (p. 9). Unfortunately, this definition seemed to spark more debate rather than further delineate the range of criminal behaviors that constitute white-collar crime. People continue to focus on the word "approximately" and use that as a basis to stretch or shrink the scope of white-collar crime to serve their purposes.

Currently, the definition of white-collar crime is still hotly contested within the community of experts. Although there is a multitude of variations, there appears to be three major orientations: those that define white-collar crime by the type of offender (e.g., high socioeconomic status and/or occupation of trust); those that define it in terms of the type of offense (e.g., economic crime); and those that study it in terms of the organizational culture rather than the offender or offense. However, the definition expanded over time and now focuses more on the type of offenses involved, which are generally those committed during normally legal business transactions, where dishonesty and cheating are the central components.¹

Much of society tends to view white collar crime as being less grievous than other criminal offenses, lacking the gravity and heinous nature associated with violent transgressions or even drug-related crimes. Even the punishment differs, as white collar criminals are more often sentenced to confinement in minimum security prisons than to maximum security prisons.²

Additionally, there are also those that confine the definition mainly to economic crime, as well as others that include corporate crimes like environmental law violations and health and safety law violations.

The Elements of Embezzlement

The Offender

In terms of criminal law, the one who acts contrary to law is an offender. In some circumstances in the Turkish Criminal Code (hereinafter "TCC"), for a crime to exist, an offender must be in certain judicial or actual conditions. For example, the existence of the crime of embezzlement, as stated in Article 274 of the TCC, the offender shall be a public official. This crime is known as a "peculiar crime" since it cannot be committed by just anyone.

As explained above, a crime that is regulated in Banking Law can only be committed by some specific people, so it has a unique qualification. This qualification of offender separates the crime of Banking Law from the crime of embezzlement in TCC. Pursu-

¹ http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs_wcc.pdf

² <http://www.hg.org/white-collar-crime.html>

ant to the Banking Law, embezzlement can only be committed by “any member of a board of directors or employee of a bank.” Being a bank member or employee is a fundamental element of the crime. For this reason, according to Banking Law, embezzlement is a peculiar crime in the strictest sense.

All members of the bank can be an offender of this crime pursuant to Article 160. It is important to note that they own the goods as part of their job, and that serves as a material part of the crime.

Judicial Subject of the Crime

The judicial subject of a crime is a legal entity or an interest violated by a crime. An entity refers to all kinds of things that are suitable for satisfying people’s needs. An interest is that existing between people with an entity and is a relationship that enables one to use the entity for fulfilling peoples’ needs. Constituting the judicial subject of crimes means that a legal entity or an interest violated by crime may belong to people, a family, society or the State, and they accordingly have personal, social or public characteristics. The legal entity or an interest violated by embezzlement takes place in Banking Law and is related to a Bank’s properties. The first and third subsection of Article 160 of the Banking Law regulates the losses that banks suffer. Article 162 recognizes a petition right for those concerned, and admits that violated interests by such a crime are assets that belong to the bank.

Substantial Subject of the Crime

The substantial subject of the crime is a thing or a person that has had a crime committed against it. The people or thing that caused the crime is included in the definition. Therefore, a substantial subject of the crime is a person or a thing that has experienced the crime.

In Banking Law Article 160, the substantial subject of crime is emphasized as “any money, valuable document, securities or other assets.” The goods that constitute a substantial subject of crime may belong to people or a bank. If a bank employee, during the

course of business, steals money that was intended to be used for a banking transaction, he will be guilty of embezzlement.

Material Element of the Crime

There are several material elements that must be met in order to complete the crime of embezzlement. First, as a result of his course of employment or duty, he is in possession of the goods. Embezzlement can occur in cases where goods are transferred in to the possession of a bank officer due to his duty as a bank employee. For instance, a customer wants to deposit money in his bank account but is in a hurry and instead gives his money to a security guard working at the bank to deposit for him. If instead, the guard retains the money, this will be a breach of faith crime, not embezzlement. However, if the customer had instead given his money directly to the bank teller, but the bank teller put it in his own account instead, then the bank teller has committed embezzlement (also see, decision of Court of Appeal 7. Chamber dated 10.11.2010 and numbered 2007/10635 and Court of Appeal 5. Chamber dated 27.02.1979 numbered 1979/436).

In the context of possession, there is no differentiation made between direct or indirect possession. In Banking Law, embezzlement can be committed using various methods, such as acquiring the goods directly or providing payments in excess of a person’s account balance. Once embezzlement takes place, repaying or compensating for the damage done may mitigate the punishment, but will not abrogate the crime. By reasoning, it is an instantaneous crime in the TCC, meaning that it occurs as soon as the taking is committed, even if the task is not completely carried out or finished.

Mental Element of the Crime

Pursuant to Banking Law, a wrongful intention is required for the crime of embezzlement to occur. This means that the person who embezzled must have knowingly or purposefully intended the embezzlement. Reckless or negligent acts will not constitute embezzlement, since the mental element will not be met.