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False Reporting

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Abstract: In this paper I have tried to briefly examine some aspects regarding the crime of false declaration, a crime whose content was recently completed, in 2020 by Government Emergency Ordinance no. 28/2020. In the analysis we considered the objective side and the subjective side of the crime with references to the recent jurisprudence of the Romanian courts, as well as to the jurisprudence of the Constitutional Court in this matter. I also referred to the other provisions that criminalize this act, provisions that are found in some special laws with criminal provisions, emphasizing the need to apply them in judicial practice. The novelties concern the examination carried out as well as the frequent references to the recent judicial practice. The paper is part of a university course to be published this year at a publishing house in the country. Given the way it is based, the paper can be useful for students of the country's faculties, as well as law practitioners.

Keywords: Offense; objective side; subjective side

1. Introduction

The *offense of false statements* consists in the act of a person (natural or legal) who, following the occurrence of a / some legal consequences, for himself or for another, makes statements inconsistent with the truth of a civil servant or an institution of those provided in art. 175 of the Criminal Code, if, according to the provisions of the law or the concrete circumstances, the statement made serves to produce those consequences.

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According to the provisions of paragraph (2) of the same article, the crime in question will also exist if the above-mentioned act is committed to conceal the existence of a risk of infection with an infectious disease.

We specify that the text in force differs from the initial wording, being modified by art. sole point 1 of the Government Emergency Ordonance no. 28/2020 for the amendment and completion of Law no. 286/2009 on the Criminal Code¹ published in the Official Monitor no. 228 of March 20, 2020.

The changes occurred in the content of the incrimination text consist in the increase from 3 months to 6 months of the minimum limit of the punishment in the case of the standard normative modality provided in par. (1) and the incrimination of the deed from par. (2).

We mention that the provisions for sanctioning the incriminated actions in paragraph (1) are also found in other special laws with criminal provisions, to which we will continue to refer.

Thus, such provisions are found in article 18¹ paragraph (1) - (3) and in article 18³ para. (1) and para. (3) of Law no. 78/200 for the prevention, discovery and sanctioning of acts of corruption, with subsequent amendments and completions, amended and supplemented by Law no. 283/2020 regarding the amendment of Law no. 78/2000 for the prevention, detection and sanctioning of acts of corruption and for the imposition of other measures transposing Directive (EU) 2017 / 1.371 of the European Parliament and of the Council of 5 July 2017 on combating fraud against the financial interests of the Union by legal means criminal².

According to the provisions of article 18¹ paragraph (1) of Law no. 78.2000, the act *of using or presenting false, inaccurate or incomplete documents or statements, if the act results in the unjustified obtaining or withholding of funds or assets from the budget of the European Union or the budgets administered by it or on its behalf, shall be punished with imprisonment from 2 to 7 years and a ban on exercising certain rights.*

By paragraph (2) of the same article is sanctioned with the same penalty *for failing to provide, knowingly, the data required under the legal provisions for obtaining or withholding funds or assets from the budget of the European Union or budgets*

¹ Published in the Official Monitor of Romania, Part I. no. 228 of March 20, 2020.

² Published in the Official Monitor of Romania, Part I. no. 1199 of December 9, 2020.

administered by it or on its behalf, if the act has resulting in the unlawful obtaining or unjustified withholding of such funds or assets.

Considering the relatively large funds allocated by the European Union, the legislator provided in paragraph (3) and the sanctioning of the case in which special consequences have been caused (in this case the punishment limits are increased by half.

In article 18³ of the same normative act, at paragraph (1) and paragraph (3) other false declarations consisting *in the use or presentation of false, inaccurate or incomplete documents or declarations, which result in the unlawful diminution of resources to be transferred to the European Union budget or to budgets administered by it or in her name is punishable by imprisonment from 2 to 7 years and a ban on exercising certain rights.*

In a manner similar to the previous text, in case the mentioned deeds produced *particularly serious consequences, the special limits of the punishment are increased by half [paragraph (3)].*

Other provisions by which false statements are sanctioned can be found in art. 282 of Law no. 416/2001 on the guaranteed minimum income, with subsequent amendments and completions¹ “according to which the *declaration of a larger number of family members or the declaration of incomes lower than the real ones, in order to obtain undue material benefits, constitutes an offense and is punished accordingly the provisions of the Criminal Code*, in the provisions of art. 28 of Law no. 176/2010 on integrity in the exercise of public functions and dignities, for the amendment and completion of Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, as well as for the modification and completion of other normative acts², *where it is provided that the act of persons who intentionally submit declarations of assets or declarations of interests that do not correspond false in statements and is punished according to the Criminal Code* and in art. 29 paragraph (5) of Law no. 236/2018 on the distribution of insurance, which shows that *obtaining and using the authorization or approval of the A.S.F. or registration in the A.S.F. by using false statements or other illicit means constitutes a crime and is punished according to the provisions of article 326 of Law no 286/2009, with subsequent amendments and completions.*

¹ Published in the Official Monitor of Romania, Part I. no. 401 of July 20, 2001.

² Published in the Official Monitor of Romania, Part I. no. 621 of September 2, 2010.

We note that if the incidence of such provisions is found, they will be retained with priority in relation to the provisions contained in the Criminal Code.

The examined crime was also provided in the Criminal Code of 1969 at article 292, with the same marginal title.

A comparative analysis of the texts from the initial wording (from 1969 and 2014), reveals the fact that in the content of the text only one modification was made, respectively the replacement of the phrase “of an organization from those provided in article 145)” with “a state body or institutions or another unit of those referred to in article 145”.

Otherwise, the marginal title, the legal content, including the penalty limits, has not changed from the original wording.

On the other hand, a comparative analysis between the current regulation and the original one from the 1969 Criminal Code, offers us the possibility to highlight some similarities, as well as some differences.

Thus, we notice that the text from paragraph (1) is almost identical to that of the Criminal Code of 1969, the difference being the replacement of the phrase mentioned above.

Another difference is the increase in the minimum sentence of imprisonment from 3 months to 6 months in the new law.

The last change consists in the introduction in paragraph (2) of an aggravated normative modality that was not foreseen in the initial wording.

2. The Premise Situation

Committing the offense of making false statements presupposes the pre-existence of a situation or circumstance which involves a statement to be made by a natural or legal person before a civil servant or public institution, a statement intended to produce a number of legal consequences.

3. Constituent Content

3.1. The Objective Side

The material element of the objective side is achieved by the action of making statements that do not correspond to the truth of a person from those provided in article 175 or a unit in which it operates in order to produce legal consequences.

Within the meaning of criminal law, a statement is considered to be untrue if it is false in whole or in part.

The incomplete statement (by which the author knowingly omits the statement of true facts absolutely necessary for the purpose for which the statement was made) or the statement by which the author makes statements inconsistent with objective reality will also be considered to be inconsistent with the truth.

The statement “may be made orally or in writing, simple or with explanations, spontaneously or on request, in Romanian or in a foreign language through an official translator.” (Dongoroz et al., 1972, p. 458)

If the oral statement is considered, we mention that it must be made in person and recorded by the person before whom it is made in a document.

For the aggravated normative modality provided in paragraph (2) of the incriminating text, the material element of the objective side is made by declaring that it is not true in order to produce a legal consequence committed to hide the existence of a risk of infection with an infectious disease.

The concealment can be achieved by not declaring this situation in front of the competent bodies.

The risk involves “the possibility of reaching a danger, of having to face a trouble or of suffering a damage; possible danger” (Ristea, 2020, p. 198).

It is considered a contagious disease that spreads easily and contaminates (DEX-1998, p. 488).

In order to complete the objective side, it is necessary to ascertain the existence of some *essential requirements*.

The *first essential requirement* presupposes that the statement made be one of those which, according to the law and the special circumstances in which the active subject is, serve to produce a / some legal consequences.

In this regard, the jurisprudence noted that “As a municipal councillor, based on the same criminal resolution, defendant A. falsely completed the wealth declarations for the years 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016, unrealistically stated in the 2009 and 2010 statements under the heading “debts” that he had taken out a loan from his father, B., in the amount of EUR 250,000, due in 2010, the same amount being defendant in the statements from 2011-2016 under the heading “income from other sources”, as being inherited from his father. Intentionally entering false statements in the wealth declaration constitutes the offense of false statements. If it orders the defendant to be convicted of committing the crime of making false statements, consisting in entering false statements in the wealth declarations, the court shall partially annul, according to art. 25 paragraph (3) C, criminal procedure, wealth declarations, under the aspect of false mentions in their contents.”¹

At the same time, if the false statement is not given to serve to produce legal consequences, the deed will not meet the typical conditions of the crime.

In this regard, in judicial practice it was decided that “On 24.06.2015 the defendant presented himself to the police, following the request of these bodies which, making checks following the traffic detection of the defendant on 14.06.2016, found that he does not have a driving license, on which occasion, in the report concluded on 24.06.2015, the statement of the defendant was recorded according to which he would have a driving license issued by IPJ C. In this case, the defendant gave a statement contained in a lawsuit - a report which, following the judicial investigation and the corroborated analysis of the evidence, proved to be untrue, but what the defendant sought was to conceal that he had committed a crime, namely that he drove on public roads without a driver's license. It cannot be considered that the phrase “for the purpose of producing legal consequences” from the constitutive content of the crime of false statements also refers to those actions of the defendant undertaken in order not to hold him liable for other acts, as the latter fall within the scope of the defendant's law in defence. It is true that later, when J.I. acquired the status of suspect and defendant, he returned to this statement, acknowledging that the driving license presented is false, but it cannot be argued that only the suspect and the defendant have the right to defence, and not the perpetrator, as it would. This right, which is guaranteed by the fact that the evidence is administered only during the criminal proceedings, and the suspect must be informed of the accusation and his right to be

¹ I.C.C.J., s. pen., dec. no. 381/A of November 6, 2017, available on www.scj.ro, apud, (Udroiu, 2021, p. 1073).

assisted by a lawyer. (...) Thus, although the police had indications since 18.06.2015 that the defendant did not have a driving license, nevertheless on 24.06.2015, instead of informing them in a criminal trial the charge, his right to be assisted by a lawyer and the right not to be charged, however, they took a statement from him, later using it as evidence against him in a new charge, that of false statements. For these reasons, the court, finding that the deed is not provided by criminal law, in the sense that the defendant's statement of 24.06.2015 was not made by the defendant in order to produce legal consequences, but in order not to incriminate him for the crime of driving on public roads of a vehicle without a driving license.”¹

Another essential requirement is that the incriminated action does not fall within the constitutive content of another crime (as in the case of a false statement made by a witness who will fall under the provisions of Article 273 of the Criminal Code - false testimony).

It is necessary that the statement in the conditions mentioned be made before the body provided for in the text of the indictment and not in a criminal, civil, disciplinary or other case in which witnesses are heard.

The deed will not meet the conditions of objective typicality if the statement not corresponding to the truth is made in front of another person than those provided in article 175 or an authority in which it operates, such as a private legal person.

With regard to the need to identify the essential requirements, to establish their existence, the Constitutional Court in its jurisprudence held that “For the act of making a statement that is not in line with the truth for the offense of making false statements, it must be stated, inter alia, that the essential requirement that the untrue statement is one of those which, according to law or circumstance, serves to produce any legal consequence must be fulfilled. In the absence of such a legal or factual possibility, the statements would be mere verbal manifestations, devoid of any legal effectiveness. The ability of the declaration to produce legal consequences derives, first of all, from the law, in the conditions in which the law is the one that establishes, as a rule, the obligation of the declaration, the conditions and terms in which it must be made and determines its effects. The existence of cases in which the law provides that the declaration produces legal consequences does not present any difficulty, as the normative act that provides for this attribution of the declaration (for example, civil status declarations, income declarations, tax returns, etc.) will be taken into

¹ Court of Appeal Bucharest, s. I pen., dec. no. 254 of 21.02.2017, available on www.sintact.ro, apud (Udroiu, 2021, pp. 1073-1074).

account. At the same time, the ability of the statement to produce legal consequences may arise from certain factual circumstances, most often unforeseen, such as exceptional situations (force majeure, state of necessity) which do not allow delays in considering statements. Therefore, sometimes the factual circumstances - exceptional situations, such as the state of emergency or force majeure - cause a statement to have legal consequences. In other words, statements that serve, depending on the circumstances, to produce legal consequences are those that are made in exceptional circumstances - such as external events, unpredictable, absolutely invincible and inevitable (force majeure) or immediate danger and cannot be removed otherwise (state of necessity), when the occurrence of legal consequences cannot be postponed”¹.

In the judicial practice it was noted that “The deeds of the defendant A, who on August 25, 2008 and September 12, 2008, made three requests to the National Archives - Constanța County Service, registered under no. x4 of 25 August 2009, x5 of 12 September 2008 and x6 of 12 September 2008, by which he requested the issuance of extracts from the registers of this institution, each time declaring falsely, expressly under the sanction of art. 326 C. pen., That he is the great-grandson of the deceased T. and S., although this circumstance is not true, meet the constitutive elements of the crimes of false statements (three facts).”²

The doctrine stated that “the statement of the injured person who, on the occasion of being a civil party in a criminal trial, indicates an amount greater than the actual value of the damage does not meet the constitutive elements of the crime of false statements.” (Udroiu, 2021, p. 1074).

Also, “the filing of a request for a summons may not constitute a means of committing the offense of making false statements, regardless of the subject-matter of the claim and the merits of the claim; Nor may false statements be made in statements made in the statement of defence, in the counterclaim, in the response to the statement of defence or in the statements made during the administration of the interrogation and which do not constitute confession” (Udroiu, 2021, p. 1074).

In this respect, the jurisprudence noted that “As it results from the text of the criminalization of the crime of false statements above, it is irrelevant whether or not there were concrete legal consequences, respectively whether the interrogation

¹ Constitutional Court, Decision no. 631 of October 15, 2019, published in M. Of. no. 1019 of December 18, 2019, apud (Udroiu, 2021., p. 1072).

² I.C.C.J., s. pen., dec. nr. 87/14.04.2014, available at www.scj.ro, apud, (Iugan, 2020, p. 455).

produced any consequences on the solutions adopted by the courts in civil matters. In this sense, the phrase “in order to produce a legal consequence” from article 326 of the Penal Code, circumscribes the purpose of the action of improper declaration of the truth, and not the consequence of this action, provided that the respective declaration is apt to produce that legal consequence in the copy of which it was given. In accordance with article 348 para. (1) C, Civil procedure, is the confession of the recognition by one of the parties, on its own initiative or during the interrogation procedure, of a fact on which the opposing party bases its claim or, as the case may be, the defence. In this respect, confession is the evidence administered in the case, while the interrogation, not being a means of proof, but a probative procedure, as noted by the prosecutor, is the way in which the petitioner tried to obtain from the respondent a confession provoked, this being also the purpose of the interrogation. Consequently, any other statements made by the interrogated party in the civil proceedings, when taking the interrogation, other than those by which he acknowledges, in whole or in part, the claims made by the opposing party (confessions), do not constitute evidence within the meaning of article 250 Civil code, representing simple statements that must be proven, having the same “probative value” as the claims of the parties made by the request for summons, objection, response to the objection, written notes, etc. Or, according to article 326 of the Criminal Code, in order to meet the constitutive elements of the crime of false statements, it is necessary that the statement made serve, according to the law or circumstances, “to produce that legal consequence” and not a legal consequence, as claimed, the difference terminology chosen by the legislator revealing that the statement made can be used to produce the legal consequences that it determines according to the law or the circumstances, and not of any such consequences. In that regard, the statements of the interviewee, other than the confessions, although made in order to produce the legal consequence consisting in the detention by the courts and the dismissal of the applicant's action, are not capable of serving, by the very fact that they were made, in producing those legal consequences, not having sufficient probative effect, given that such claims must be proved by the means of law administered in the case in question. Therefore, it cannot be claimed that the constitutive elements of the crime of false statements have been fulfilled, as long as the court cannot rely, according to the law or the circumstances, on the simple statements made during the interrogation and in the absence of other means of proof administered in cause, the statements being necessary to be proved following the corroboration of all the evidentiary material administered. Moreover, even if the court relies exclusively on such assertions, the only remedy is to exercise remedies.

However, in the present case, the statement of the respondent given during the administration of the interrogation does not serve, *ut singuli*, according to the law or the circumstances, to produce that legal consequence consisting in detaining her in the factual situation, being necessary to be proved by the administration of legal means. (...) As the statements made by the parties in the request for summons, the statement of defence or the reply to the statement of defence are to be proved by the evidence administered in the case, without being able to withhold The evidence before the court, which proves to be unfounded, nor the statements made during the administration of the interrogation and which do not constitute confessions cannot lead to the meeting of the constituent elements of the crime of false statements, for the same reasons, namely that their assessment should be made the evidence in question.”¹

If “a person commits the offense of false statements, and then uses the document containing the false statement in order to produce the legal consequences provided by law or resulting according to the circumstances that were pursued at the time of the declaration, the use of false statements will not be retained not being typical, but only the crime of false statements” (Udroiu, 2021, p. 1076).

At the same time, if, as a result of “the statement, a new official document is issued that unrealistically certifies certain circumstances, which is subsequently used, a contest of offenses will be held between false statements and improper participation in intellectual forgery” (Udroiu, 2021, p. 1076).

The same author argues that “the offense of falsifying statements committed by presenting a false document constitutes a special incrimination of the use of forgery, which will be retained in application of the *specialia generalibus derogating principle*” (Udroiu, 2021, p.1076).

In this sense, in the judicial practice it was noted that “the detention of a single crime, respectively that of false statements, provided by art. 326 of the Criminal Code, is justified, but not on the consideration retained by the prosecutor, in the sense that it could operate the absorption of the crime of forgery, provided by article 323 Thesis II Criminal Code in the crime of false statements, provided by article 326 of the Criminal Code, but on the grounds that the false statement made in the manner provided by art. 326 of the Criminal Code and its use for the production of the consequences that it determines according to the law or the circumstances attract the

¹ Jud. Cluj-Napoca, Criminal Division, decision no. 1268/2017, available on www.sintact.ro, apud, (Udroiu, 2021, pp. 1074-1075)

retention only of the crime of false statements, having a special character. As noted in the judicial practice under the previous Criminal Code (the constituent elements of the two crimes being the same today), the crime of false statements excludes, by its very normative content, the existence - in competition - of the crime of use of fake. As such, a person's act of authenticating a statement to the State Notary in which he asserts unrealistic circumstances and then submitting that statement to an authority constitutes only the offense of making false statements, not the use of forgery. However, natural absorption operates only when, in theory, both offenses could be retained, both absorbing and absorbed, the essential criterion being that the absorbing offense cannot be consumed without committing the absorbed offense.”¹

The aggravated normative modality provided in paragraph (2) was introduced by Government Emergency Ordinance no. 28/2020 due to the special conditions generated by the pandemic caused by the SARS CoV - 2 virus, the purpose of this regulation being to avoid providing false information to the authorities with concrete responsibilities in preventing and combating this pandemic.

The action by which the material element of the objective side is accomplished is accomplished by declaring it to be untrue, made to conceal the existence of a risk of infection with an infectious disease.

The offense examined is commissive and is committed “by declaring untrue circumstances, including the form in which the communication of data on the existence of a risk of infection with an infectious disease is made by completing a false declaration in order to avoid institutionalized quarantine (e.g. the one required at the entrance to the country regarding the transit of a red zone); in this case, the commission of the crime provided by article 352¹ Criminal Code nor the competition between this crime and the false statements. “(Mihail Udroi, 2021, page 1081).

The *immediate consequence* is the creation of a state of danger for the protected social relations.

The *causal link results* from the materiality of the deed (ex re), not being necessary to be proved by the competent judicial bodies.

The jurisprudence held that “(...) the act of the defendant T.A.G. to give a statement that does not correspond to the truth about the circumstances in which the road accident occurred in which, on the night of 14/15 January 2015, the Skoda Octavia

¹ Jud. Cluj-Napoca, s. pen., c. no. 1268/2017, available on www.sintact.ro, apud, (Udroi, 2021, pp. 1076-1077)

car with registration number form BH-52 handed over to a police officer of Bihor Police County Department - Road Service in order to obtain a repair permit and to favour the perpetrator targeted by a potential criminal investigation is typical, meeting both objectively and subjectively the constituent elements of the crime of false statements, provided by art. 326 Criminal Code. The Court considers that the premise of the offense is that there is a circumstance in which it is necessary to submit a statement to a civil servant or the unit in which he carries out his activity in order to produce legal consequences. Thus, according to article 80 of the Government Emergency Ordinance no. 195/2002, in case of damage to a vehicle in other circumstances than in a traffic accident, the driver is obliged to appear within 24 hours from the finding to the police unit in the area where the event occurred, for the preparation of the finding documents, and according to art. 801 of the Government Emergency Ordinance no. 195/2002, the repair of the vehicle is made on the basis of the finding document issued by the police unit. As it results from the statement given by the witness T.S.I., policeman within Bihor Police County Department - Road Service, who took over the statement of the defendant, in the case of tamper-proof statements without victims, the driver involved in the accident is issued a repair permit. Obviously, the statement made and recorded by defendant T.A.G. in the "buffer" form it is likely to lead to legal consequences. The material element of the objective side is the action of the defendant T.A.G. to make a statement that does not correspond to the truth in front of a person from those provided in article 175 Criminal Code (the policeman from the Oradea Municipality Police - Road Service). In this case, the essential requirements attached to the material element are met: 1. The statement of the defendant T.A.G. is one of the statements which, according to the circumstances of the case, serves to produce legal consequences, on the basis of which the documents necessary for the repair of the damaged car can be obtained; 2. The statement of the defendant T.A.G. it was made in order to produce a legal consequence, through which the aim was to report a factual situation that did not correspond to the truth in order to obtain the authorization to repair the damaged vehicle, as well as to favour a perpetrator targeted by a potential criminal investigation. Contrary to the findings of the Court of First Instance, the Court considers that it is not necessary for the false declaration to be followed by the drawing up of an official document, in this case the repair authorization, for the false declaration to be made by the defendant. in order to produce a legal consequence (obtaining the repair permit) and that it could serve to produce that consequence, if the witness T.S.I., a policeman within Bihor Police County Department - Road Service, who took over the defendant's statement, was

not aware of the road accident in which the Skoda Octavia car had indeed been implicit and in which he had conducted research. On the other hand, the Court notes that in the event of a collision (any traffic incident which causes damage to at least one vehicle without damaging the integrity of a person's body) the only mandatory obligation is that of the driver of the vehicle to appear in court. hours after the finding at the police station where the incident took place, for the preparation of the finding documents, there is no similar provision on the part of the police officer, in the sense that he would have to go to the scene to verify the reality declared on their own responsibility by the driver of the vehicle; 3, Statement of Defendant T.A.G. it is not subject to special criminal law as to its veracity. The immediate consequence is a state of danger to public confidence in the truth of a statement made to a public official or to the unit in which he carries out his activity, in order to produce legal consequences. Being a dangerous crime, the causal link between the deed and the consequence produced results from the very commission of the action which constitutes the material element provided by the incrimination norm (ex re).The court considers that the crime of false statements was consumed when the defendant presented the complete statement, with unreal content, the policeman from the Oradea Police - Road Service, since, on the one hand, the action to present the statement, in order to obtain the authorization of repairs and the favouring of the perpetrator, realizes the material element of the crime provided by art. 326 of the Penal Code, and, on the other hand, the statement being presented to the body entitled to grant it legal efficiency serves, according to the law, by the simple fact that it was made, to produce the legal consequences targeted by the defendant. The Court emphasizes that whether or not the legal consequences pursued by the defendant are relevant are irrelevant to the commission of the offense of misrepresentation.”¹

3.2. The Subjective Side

The form of guilt with which this crime is committed is direct intent.

The *essential requirement* is that the declaration be made in order to produce one or more legal consequences.

¹ Court of Appeal Oradea, s. pen., dec. no. 211/2018, unpublished, apud (Udroiu, 2021, pp. 1079-1080).

4. Conclusions

The incrimination of the false deed in statements in the Criminal Code represents in fact a certain consistency of the Romanian legislator, manifested over time. On the other hand, compared to the previous regulations, we find that the legislator supplemented the incriminating text with an aggravated normative modality that will be retained in case the author made statements that were not true, in order to produce a legal consequence, for him or for another, to hide the risk of infection with an infectious disease. Significant for this crime is the fact that the provisions by which this action is sanctioned are also found in other normative acts with criminal provisions, in which case these provisions have priority in relation to those contained in the Criminal Code, but only for the acts express reference in the special law. In a general conclusion, we appreciate that against the background of the proliferation of crime in the field, it is necessary to maintain and improve this incrimination.

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