

DECLARATION THE FALSE INFORMATION: ANALYSIS THE STRUCTURE OF A CRIME**I. Mytrofanov**

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Purpose. The aim of this research is the need of interpreting corpus delicti of the declaration of false information as a reason for starting realization of the criminal liability on the declaration subject's submitting deliberately false information in the declaration or deliberate failing to submit such declaration. **Methodology.** The formal-logical method for the interpretation of the concepts used by the legislator when describing the crime of declaring false info. We project the possible different interpretations of these concepts, cotoran may arise in the practice of the criminal law in failure of Declaration within the period or to amend the Declaration of false information. **Results.** Having studied the corpus delicti of declaring false information, the author comes to the following conclusion: 1) declaring false information is a corpus with so called formal corpus. So it is necessary to determine the consequences of the conducted action to establish its existence; disposition of the Article 366¹ is blanket that requires interpretation with studying corresponding comments of the anti-corruption and tax legislation; 3) the subject of declaring false information is special subjects listed in the point 1, subpoint «а» of the point 2 of the part 1 of the Article 3 of the Law of Ukraine «About preventing corruption»; 4) the Article 366¹ of the Criminalny Code of Ukraine complements the legal basis of counteracting corruption concerning illegal enrichment of the corresponding special. **Originality.** For the first time systematically baziruetsya the corpus delicti of declaring false info. This is due to the fact that the science of criminal law such a composition has not been investigated, Criminalny Code of Ukraine previously did not contain the analyzed composition of crime. **Practical value.** This work will help to practice criminal law in the failure of the Declaration period or to amend the declaration of false information. Moreover, this article is a starting point for further improvement of the norms of criminal law establishing a penalty for declaring false information.

Key words: declaration of false information, corpus delicti, corruption counteraction, corruption crime, the special subject of the crime, the subject of the declaration.

ДЕКЛАРУВАННЯ НЕДОСТОВІРНОЇ ІНФОРМАЦІЇ: АНАЛІЗ СКЛАДУ ЗЛОЧИНУ**I. І. Митрофанов**

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У статті проаналізовано склад злочину – декларування недостовірної інформації. Прیدілено увагу об'єкту, об'єктивній та суб'єктивній сторонам злочину. При цьому окремо акцентується увага на за відомості для суб'єкта декларування недостовірності поданої інформації. Враховується відсутність законодавчої вказівки на суспільно небезпечні наслідки у тексті статті 366¹ Кримінального кодексу України, що свідчить про формальний склад аналізованого злочину. Відмічається, що в такому випадку злочин вважається закінченим з моменту вчинення самого діяння. Встановлення наслідків вчиненого діяння законодавець не вимагає від правозастосовувача. Досліджено коло суб'єктів декларування недостовірної інформації. Стаття Кримінального кодексу України, що передбачає склад декларування недостовірної інформації, є цілком бланкетною, тому для з'ясування її змісту необхідно звертатися до антикорупційного та податкового законодавства.

Ключові слова: декларування недостовірної інформації, склад злочину, протидія корупції, корупційний злочин, спеціальний суб'єкт злочину, суб'єкт декларування.

PROBLEM STATEMENT. Nowadays is characterized by a slow and chaotic reformation of Ukrainian social life. The main problem is corruption in the state administration levelling all positive changes in Ukraine concerning to formation on the basis for developing civilized society on the territory of Ukraine in the future. The reformation of Ukrainian state is connected with the compliance to the action plan including liberalization of the visa regime for Ukraine by the European Union (further – EU). It also includes the questions in legal assurance of such liberalization by changing the current legislation and the anti-corruption legislation. The aforementioned changes do not pass by the Law of Ukraine about the criminal liability (LUaCL) that is viewed by some legislators as almost the only opportunity to influence social processes in the direction required by it (not by the state and its citizens).

Changes in the Ukrainian legislation were made to fulfil recommendations of the UE experts concerning

improvement in the regulations of anti-corruption legislation given within the frameworks of negotiations concerning liberalization the EU visa regime for Ukraine. The Law of Ukraine «About preventing corruption» from October 14, 2014 № 1700-VII introduces the Article 366 to the Criminal Code of Ukraine (further – CC) establishing the main punishment in the form of punishment from 2,500 to 3,000 tax-free allowance of citizens' incomes or public works from 150 to 240 hours or imprisonment up to two years, as well as additional punishment such as depriving of right to hold certain posts or conduct certain activities up to three years, if a subject of declaring submits deliberately false information in the declaration of the person authorized to fulfil functions of the state or local authorities (further – declaration) envisaged by the Law of Ukraine «About preventing corruption» or deliberate failing to submit such declaration by the subject of declaration.

The aforementioned norm of CC in Ukraine is viewed as one of the means of resistance to corruption that will prevent illegal enrichment of officials. Social determination observed and it is connected in the dynamics of the punished in cases of corruption. The main cause of spreading corruption among state officials practically unlimited opportunities for the redistribution of assets, lack to sufficient mechanisms of control and responsibility is in nowadays Ukraine. Corruption has become total [1]. There is a considerable potential of the means in criminal-legal support of corruption resistance in the CC of Ukraine. Simultaneously the legislator tries to complement the arsenal of criminal-legal means with the Article 3661.

The aforementioned article is new for LUaCL. It needs to be comprehended and interpreted the same its content that will contribute to the normal practice of applying legislation. In other words, neither scientific society, nor practitioners have a strong point of view on the corpus delicti envisaged in the Article 3661 of the CC. The task of the science is that criminal legislation which produces scientific based understanding of the legislative articles that will facilitate application for the norms of criminal law by practitioners.

Thus, the aim of this research is the need of interpreting corpus delicti to the declaration of false information as a reason for starting realization of the criminal liability on the declaration subject's submitting deliberately false information in the declaration or deliberate failing to submit such declaration.

EXPERIMENTAL PART AND RESULTS OBTAINED. The norm of criminal law is designed for simultaneous prevention and regeneration functions. These functions are realized with one norm of the criminal law and characterize it on different levels of the obligation fulfilment: 1) not to conduct illegal criminal actions envisaged by it; 2) to give a report about the conducted illegal criminal action in the conditions of the mechanism of realizing criminal liability [2]. The criminal-legal obligation is derivative from the constitutional obligation or other obligation connected with it. President of Ukraine, Head of the Supreme Council of Ukraine, his/her First Deputy Head and Deputy Heads, Prime Minister of Ukraine, the First Vice-Prime Minister of Ukraine, Vice-Prime Minister of Ukraine, Ministers, other heads of the central executive bodies that are not included into the Cabinet of Ministers of Ukraine and their Deputies, Head of the Security Service of Ukraine, General Prosecutor of Ukraine, Head of the National Bank of Ukraine, Head and other members of the Court of Auditors, Ombudsman of Ukraine, Head of the Supreme Council of the Autonomous Republic of Crimea, Head of the Council of Ministers of the Autonomous Republic of Crimea, people's deputies of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea, deputies of the local councils, village, town and city heads, state officials, officials of the local authorities, military officials of the Armed Forces of Ukraine, State State Special Communication Service of Ukraine and other military entities except for the conscripts, judges of the Constitutional Court of Ukraine, other professional judges, members,

disciplinary inspectors of the Higher Qualification Committee of Judges of Ukraine, officials of the secretariat of this Committee, Head, Deputies, secretaries of the sections of the High Council Of Justice as well as other members of the High Council Of Justice, people's assessors and jurors (during the fulfilment of these functions), rank and file and head personnel of the state criminal-executive service, tax police, head personnel of the bodies and divisions of the civil defence, the State Bureau of Investigations, the National Anti-Corruption Bureau of Ukraine, officials of the bodies of the prosecutor's office, the Security Service of Ukraine, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine, diplomatic service, state forest protection, state protection of the nature reserves, central body of the executive power providing formation and realization of the state tax policy and the state policy in the field of customs service, members of the National Agency on Preventing Corruption, members of the Central Election Commission, policemen, officials of other state bodies, bodies of the authority of the Autonomous Republic of Crimea, officials of the juristic persons of public right that are not specified in the point 1 of the part 1 of the Article 3 of the Law of Ukraine «About Preventing Corruption» (further – subjects of declaration) are obliged to fill in the declaration for the previous year in the form established by the National Agency for Preventing Corruption (further – NAPC) on the official web-site of NAPC till April 1 every year.

To realize the criminal liability for submitting deliberately false information in the declaration by the subject of declaration, there must be conducted an action comprising corpus delicti envisaged in the Article 3661 of the CC of Ukraine – submitting declaration with false information or deliberate failing to submit the declaration. The legislator classifies this crime as a crime in the field of official activity and professional activity connected with providing public services. The object for the analysed corpus delicti is social relationships concerning the process of fulfilling the state power, interests of the state service and the service in the bodies of local authorities as well as a normal order of administrating certain enterprises, establishments and organisations independent of their sector or administration appurtenance, field of activity or form of ownership and social relations that appear while conducting professional activity connected with providing public services. The perfectly accurate fulfilment of the regulation in the Constitution of Ukraine, corresponding orders and requirements of other laws of Ukraine, conducting activity of realization the authority of the bodies of the state power and administration by the official should be understood as the interests of the state service. The interests of the service in the bodies of local authorities can be determined in the same way. According to the Part 2 in the Article 19 according the Constitution of Ukraine, bodies of the state power and bodies of the local authorities, their officials are obliged to act only on the basis, within the commission and in the way envisaged by the Constitution and laws of Ukraine. The direct object of deliberate declaring false information is the

bases on the law and other legal acts normal activity of the corresponding state bodies, bodies of the local authorities, state or communal establishments as well as the administration of the Armed Forces, other military formations that can be disturbed by the usage of official commissions for the personal enrichment. One of the guarantees the normal use of the administrative functions is a financial control over the activity of officials. True declaration of incomes received by them while fulfilling the aforementioned function is its constituent.

The subject of the declaration of false information is the declaration reflecting such information. Doubtfulness lies in submitting distorted information in the declaration about the existing objects of taxation or in hiding their existence when such hiding proves the information to be not only incomplete but also false that takes place when the subject of the declaration does not inform about all his/her bank accounts. The data are the main significant feature of the information (sense of the declaration content) and the information is the data and is the information given in the declaration reflecting the property status of the official that is nothing but the data. Thus, the Article 46 of the Law of Ukraine «About preventing corruption» determines information given in the declaration. The part 1 this Article comprises regulations for giving information in the declaration: objects of mortgage that belong to the subject of declaration and the members of his/her family according to the right of private property including common property or are rented by them or according to another right of usage independent of the form of deal for receiving such right; objects of incomplete building, objects that are not taken into exploitation or the property rights for which are not registered in the order established by the law, such as: a) the objects that belong to the subject of declaration or the members of his/her family according to the right of property within the frameworks of the Civil Code of Ukraine; b) objects located on the plot of land belonging to the subject of declaration or the members of his/her family according to the right of private property including common property or are rented by them or according to another right of usage independent of the form of deal for receiving such right; c) the objects totally or partially built from materials or at the expenses of the subject of declaration or the members of his/her family; valuable personal property the cost of which exceeds 100 minimal salaries established on January 1 of the reported year that belongs to the subject of declaration or the members of his/her family according to the right of private property including common property or are rented by them or according to another right of usage independent of the form of deal for receiving such right, etc.

The punishment for submitting deliberately false information by the subject of declaration concerning property or another object of declaration that has the cost can be set only in the case when such information differs from the true one in more than 250 minimal salaries. The minimal salary on January 1, 2015 was 1,218 UAH, so the data in the declaration concerning property or another object of declaration should differ

from the true ones in the sum over 304,500 AUH, and in 2016 (the minimal salary on January 1, 2016 was 1,378 UAH) – over 344,500 UAH).

It is well known that the objective side of the crime is made from features characterising it from the external side. They lead to the conclusion who made a crime and not the other infringement. The objective side of the declaration structure is characterized by two forms of actions: 1) submitting deliberately false information by the subject of declaration in the declaration (activity); 2) deliberate failing to submit such declaration by the subject of declaration (inactivity). The law does not connect these actions with any results since they are not significant from the point of view of the LUaCL while declaring, and their meaning concerning the socially dangerous action is minimal. Criminal consequences are out of the frames *corpus delicti*.

The legislator does not formulate any specific socially dangerous consequences in the text of the Article the Special part of the law about criminal liability cannot lead to the conclusion that damaging the interests protected by the law does not play any role for people's deputies of Ukraine and the society when determining the action as a crime. The norm of criminal legislation is based mostly on the well-known socio-economic, philosophic basis. Its essence lies in understanding that certain illegal actions and crimes influence significantly the object infringement making harm or creating the thread making it. Nevertheless, it is useless to point them from the point of view for forming basis realization of the criminal liability as to the appropriate subjects for declaring false information.

Any activity being the reflection of the person's behavioural act in the external world always presumes his/her conscious activity. The objective side of declaring false information being an external (physical) being the external (physical) embodiment of the action together with the internal (psychic) side make up an inseparable entity, but this entity exists in the real behavioural act of the person, and in the theoretical aspect we determinate the objective side of the committed crime and its subjective one. It appears that the issue determining the deliberate submitting of the false data in the declaration by the subject of declaration is studied separately from such deliberateness together with the analysis of the subjective side for declaring false information in achieving the goal of perceiving the essence of such declaration as a crime in the field of official activity.

Disposition the Article 366¹ of the CC of Ukraine is blanket. So everyone should study normative instructions of the anti-corruption and tax legislation to understand its content. Nowadays the order of submitting declaration by the subject of declaration is established by the Law of Ukraine «About the principles of preventing and counteracting corruption». Thus, a person submits officially till April 1 at the place of work (service) the declaration about property, income, expenses and obligations of the financial character for the previous year that must be promulgated in the order established by the Law of Ukraine «About the principles of preventing and counteracting corruption». In 2016 the officials who hold the responsible of especially

responsible post on the day of the starting the system of submission and promulgation according to the Law of Ukraine «About preventing corruption» (the Article 50 of the Law) are obliged to submit declarations for the previous year in the order established by this Law during 60 days since the start of the system.

There is a legislative trick connected with the establishment the start of submitting and promulgating the declaration in the transitional regulations the Law of Ukraine «About preventing corruption». Thus, the paragraph 2 the point 2 of the transitional regulations there is a norm concerning it. According to this norm, the NAPC accepts the decision about starting the system of submitting and promulgating the declarations of people authorized to fulfil the functions of the state and local authorities. The subject of declaration that did not have the opportunity to submit the declaration about property, incomes, expenses and obligations of the financial character (further – declaration about property) for the previous year at the place of work till April 1 because the vacation connected with pregnancy and delivery or caring for a child, because the temporary disability, being abroad, being under arrest submit such declaration for the reported year till December 31. The subjects of declaration retiring or stopping activity connected with fulfilling the functions the state of local authorities in other ways submit the declaration about property for the period not covered with declarations submitted earlier. The subjects of declaration having retired and stopped activity connected with fulfilling the functions of the state in local authorities are obliged to submit the declaration about property for the previous year according to the form and in the order established by the Law of Ukraine «About the principles of preventing and counteracting corruption» at the place of their last work (service) during one year.

Since start the electronic declaring the notion «declaration submitting» will have other meaning, since such submitting is carried out by filling the electronic declaration on the official web-site of the NAPC. Declaring is informing the NAPC by the subjects of declaration all data concerning their proprietorial status and received incomes. Electronic declaring is a complex program and machine means the submitting deflations by the subjects of declaration in the electronic form. The declaration submitted in the form of electronic document equals to the declaration on paper and has equal juristic power according to the anti-corruption legislation.

Deliberate failing to submit the declaration can take place only in the case when submitting declaration is compulsory for the subjects of declaration that is established by the anti-corruption legislation. Anti-social orientation to submit the declaration lies in the fact that in some cases a person should act: to submit a declaration or not. Really the reasons for failing to fulfil the declaration established by the law are insignificant. It is not right to state that inactivity is an exceptionally passive behaviour. While committing a crime the guilty can conduct the most active activity but his/her behaviour is considered to be inactive, if he/she fails to fulfil the declaration established by the law.

Failing to submit the declaration is not just an avoiding from fulfilling the obligation to declare incomes, since avoiding can be interpreted wider including avoiding paying taxes, fees or other obligatory payments (further – taxes) by failing to submit the declaration but not the declaration submission by itself. Thus, avoiding the objective direction on failing to conduct the obligatory actions presumes availability additional conditions (ending of the term of submitting declaration to NAPC; availability the opportunity to submit the declaration; factual avoiding to pay taxes in the amount that exceeds the minimal free-tax income of the citizens established by the law in a thousand or more) when failing to submit the declaration is transformed into avoiding to pay taxes. In such cases the totality of crimes envisages by the Articles 212 and 366¹ the CC of Ukraine is possible.

When determining the moment is finishing the crime, one should take into consideration that criminal-legal consequences cannot take place till the term finishes submission of the deflation, since the person has the right not to submit the declaration till its ending. Failing to submit the declaration as a socially dangerous inactivity begins after ending the term of its submission from the moment when there has appeared the obligation to submit it and the person has had a physical opportunity to submit the declaration but has not done it or declared factually deliberate false data in the declaration. So, the crime envisaged by the Article 366¹ the CC is considered finished from the moment of the actual failing to submit the declaration during the corresponding controlled period in the terms established by the anti-corruption legislation or submitting deliberate false data. The Article 366¹ the CC does not require the determination of the consequences in such actions by those who apply the law.

The subjective side declaring false data is characterized by deliberate form of guilt. The intention should be direct, i.e. The person understands social danger of his/her action and wishes to avoid the timely submission the declaration concerning property or another object of declaration that is valuable (if such data differ from the real costs in 250 minimal salaries). Herewith the wish of the person is a compulsory element of the subjective side. That is why it is important to pay attention to the fact that the information given in the submitted declaration should be distorted deliberately and the person submitting it has to understand it till the moment he/she fill in the electronic form on the official web-site of the NAPC.

Deliberateness refers to untruthfulness the data, i.e. The guilty understands that the data specified in the declaration are not real and wish them to become known to the bodies and anti-corruption and society in the whole. Deliberately means beforehand [3]. Beforehand is interpreted as some time before something [4]. Thus, deliberate means known beforehand, without doubt. In its turn «without doubt» is interpreted as something being above doubts, doubtless, indisputable [5]. In the context of norms in the criminal law interpreted, deliberateness should be understood not just as knowing true data by a person but also as a knowledge that is, first of all, is known to him/her beforehand (before), and

secondly, the true knowledge («beforehand»). Psychological and legal essence of the analysed criminal-legal notion lies in this etymological formula.

Any conscious behaviour of a person is motivated and directed towards the achievement in a certain aim. Due to it, the right juristic estimation of the studied is impossible without taking into account motives and the aim the guilty is guided with committing criminal infringement on the social relations that appear in connection with fulfilment of the state power, interests of the state service and the service in the bodies of local authorities, as well as a normal order of administrating separate enterprises, establishments and organizations independent of their sector or department appurtenance, field of activity or form of ownership. In the Article 366¹ the CC of Ukraine the legislator does not specify optional features of the subjective side of the corpus delicti. So, in the construction of this corpus delicti the motive, the aim of activity and the emotional state of the person is not determinant in the end and do not influence the qualification of the committed crime against the normal activity in certain state bodies, bodies of the local authorities, state or communal establishments as well as administrative apparatus in the Armed Forces, other military formations of Ukraine based on the laws and other normative-legal acts.

The subject of declaring false information is special, i.e. physical responsible person at the age of becoming criminally liable that has committed the crime which subject can be only a certain person (part 2 of the Article 18 of the CC of Ukraine). According to the analysis of the disposition of the Article 366¹ of the CC of Ukraine and the text of comments to it, the subject of declaration described above (the part 1 and the part 2 of the Article 45 of the Law of Ukraine «About preventing corruption») is liable to punishment for submitting deliberate false data in the declaration or deliberate failing to submit the declaration. Interpretation of the notion “people authorized to fulfil functions of the state or local authorities” does not make any difficulties, although there appear some issues of reviling the content of the notion of people are equalled to people authorized to fulfil functions of the state or local authorities aimed at the Law of Ukraine «About preventing corruption» – officials of juristic persons of public right (subpoint «a», point 2 of the part 1 of the Article 3 of the Law of Ukraine «About preventing corruption»). It is connected with the lack of legal interpretation of the notion «official of juristic persons of public right» in the law.

Part 2 of the Article 2 of the Law of Ukraine «About the state service» from December 16, 1993 № 3723-XII comprises definitions of officials being heads or deputy heads of the state bodies and their apparatus, other state officials fulfilling organizational-ordering and advising functions according to laws or other normative acts. In addition, the point 1 of the part 1 of the Article 2 of the Law of Ukraine from December 12, 2015 № 889-VIII does not use the notion «official» but substitute it with the notion «State service official» understood as an initial structural unit of the state body envisaged by the structure and staff list with obligations within authority established by the legislation determined in the part 1 of

the Article 1 of this Law. According to the Article 2 of the Law of Ukraine «About the service in the bodies of local authorities», the official of the local authorities is a person working in the bodies of local authorities, having corresponding post authority concerning fulfilment of organizational-disposing and advising functions and receiving salary at the expenses of the local budget. The main criterion of perceiving a person as an official is fulfilment of organizational-disposing and administrative-economic functions [6].

Organizational-disposing obligations are connected with managing industry sectors, staff, part of work, production activity of certain employees at the enterprises, in establishments or organizations independent of their form of ownership (heads of ministries, other central bodies of executive power, state, collective or private enterprises, establishment and organization, their deputies, heads of structural subdivision (heads of shops, heads of departments, laboratories, faculties), their deputies, people managing parts of work (master craftsmen, construction managers, foremen, etc.). Administrative-economic obligations are obligations of managing or disposing state, collective or private property (establishing the order of its storage, processing, realization, control over these operations, etc.). Such authority in different volumes is given to heads of plan-economic, supplying, financial departments and services, heads of warehouses, shops, workshops, ateliers, their deputies, head of the enterprise departments, department revisers and controllers, etc. A person is an official when he/she fulfils corresponding functions or obligations all the time and not temporary or according to the special authority in terms of these obligations or authority is given to him/her by the legal body or official in the order established by the law [7].

According to the subpoint «a», the point 2 the part 1 of the Article 3 the Law of Ukraine «About preventing corruption» the subject who declaring false information is an official of a juristic person of public right that according to the part 2 of the Article 81 in the Civil Code of Ukraine is created by the ordering act of the President of Ukraine, body of the state power, body of the power of the Autonomous Republic of Crimea or body of the local authorities. Other words, the official or the juristic persons who created such ordering act or a person in juristic holding the post connected with fulfilling organizational-disposing or administrative-economic obligations or fulfil such obligations temporal or according to the special authority in the order established by the law.

CONCLUSIONS. Having studied the corpus delicti of declaring false information, the author comes to the following conclusion: 1) declaring false information is a corpus with so called formal corpus. So it is necessary to determine the consequences of the conducted action to establish its existence; disposition of the Article 366¹ is blanket that requires interpretation with studying corresponding comments of the anti-corruption and tax legislation; 2) the subject of declaring false information is special subjects listed in the point 1, sub point “a” of the point 2 part 1 of the Article 3 in the Law of Ukraine «About preventing corruption»; 3) Article 366¹ of the CC

of Ukraine complements the legal basis of counteracting corruption concerning illegal enrichment of the corresponding special subjects.

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ДЕКЛАРИРОВАНИЕ НЕДОСТОВЕРНОЙ ИНФОРМАЦИИ: АНАЛИЗ СОСТАВА ПРЕСТУПЛЕНИЯ**И. И. Митрофанов**

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В статье анализируется состав преступления – декларирование недостоверной информации. Уделяется внимание объекту, объективной и субъективной сторонам преступления. При этом акцентируется в отдельности внимание на за ведомости для субъекта декларирования недостоверности представленной информации. Учитывается отсутствие законодательного указания на общественно опасные последствия в тексте статьи 366¹ Уголовного кодекса Украины, что свидетельствует о формальном составе анализируемого преступления. Отмечается, что в таком случае преступление считается оконченным с момента совершения самого деяния. Установление последствий совершенного деяния законодатель не требует от правоприменителя. Исследуется круг субъектов декларирования недостоверной информации. Статья Уголовного кодекса Украины, предусматривающая состав декларирования недостоверной информации, является бланкетной, поэтому для толкования ее содержания необходимо обращаться к антикоррупционному и налоговому законодательству.

Ключевые слова: декларирование недостоверной информации, состав преступления, противодействие коррупции, коррупционное преступление, специальный субъект преступления, субъект декларирования.

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