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Ukrainian Law Enforcement Reform Digest

Digest is dedicated to the process of reform of law enforcement authorities in Ukraine, first of all of police, prosecution authorities, State Bureau of Investigation and criminal justice legislation. It is published with the aim to better inform the society, expert community and international institutions on the state of reforming mentioned authorities and spheres of their activity.

I. NATIONAL POLICE

System of law enforcement authorities in Ukraine undergoes a long transformation process from soviet system of internal affairs authorities directed at protection of state security to law enforcement agencies with European standards, which should be oriented on provision of services to population and human rights observance.

However, as of the beginning of 2017, changes occurring in police have a more non-systemic character as a result of the lack of detailed, step-by-step roadmap for conducting a reform elaborated in the form of one comprehensive document, and the very process of reforming is sometimes oriented on the interests of the institution itself rather than on the needs of people.

1. Legislation regulating police activities

1.1. Parliament Failed to Support Disciplinary Statute of the National Police

On December 21, the Verkhovna Rada of Ukraine discussed a draft law On Disciplinary Statute of the National Police of Ukraine (registration №

4670) which was being prepared for discussion as a necessary and important stage of police reform for 18 months. The draft law failed to get a sufficient number of votes and was sent for the repeat second reading.

At present, the procedure for bringing to disciplinary liability in the National Police is regulated by the Disciplinary Statute of Law Enforcement Bodies as of 2006. It contains outdated procedures that in practice are often used by managers as grounds for informal pressure on their subordinates. This statute leaves an ordinary police officer unprotected since it does not contain safeguards against abuse or legal guarantees for protection of a police officer.

That is why adoption of a new Disciplinary Statute is an important component of the reform – this is a document that clearly defines service discipline, grounds and procedure for bringing officers to disciplinary liability, identifies the rights of a police officer subject to liability, etc. More specifically, Article 15 of the draft statute stipulates that cases should be examined by disciplinary commissions, members of which can be civil society representatives, and this is

an element of public control of police activities that increases transparency of the respective procedure.

Draft law form on the website of the Verkhovna Rada of Ukraine: <https://goo.gl/pkWqTE>

Disciplinary Statute of the National Police: Are Police Officers Not Human Beings? An article by CPLR expert Oleksandr Banchuk for Ukrainska Pravda: <https://goo.gl/GDswpb>

1.2. Draft Law on Increasing Road Traffic Safety Registered

On November 14, a governmental draft law on strengthening liability for specific violations in the road traffic sphere (registration №7286) was registered in the Parliament. The objective of the draft document is to strengthen liability for violations committed by drivers, and to improve mechanisms of bringing them to liability for such violations.

At the same time, despite an appropriate aim, this draft law contains a number of threats for human rights, which were mentioned both by the Main Scientific and Expert Department of the Verkhovna Rada, and by civil society experts.

More specifically, these are the following problems:

1. *Disproportionate sanctions that will provoke small-scale corruption.* The draft law proposes to increase the amount of fine for overspeeding by more than fifty kilometers per hour to 200 minimal untaxed incomes of citizens (i.e. 34,000 hryvnias). While agreeing with the need to increase the amount of fine, it is difficult to agree with such amount of fine that for many drivers is unaffordable and will provoke bribery. Regarding the amount, we are talking about a criminal fine that ruins the balance between a division of respective sanctions for administrative and criminal offenses.
2. *Regulation of the driver's behavior during communication with a police officer that will return the practices of old traffic inspection.* The draft law suggests that the driver will have to not only show but give the driver's license to a police officer during examination of documents. The same can be said about extremely controversial amendments to the Law of Ukraine On Road Traffic, which contains extremely detailed regulation of behavior of a driver and a passenger when stopped by a police officer for vehicle examination.
3. *Violation of the principle of legal certainty resulting from introduction of a new reason for*

stopping a vehicle – checking possible alcohol intoxication. The draft law proposes to extend the list of cases when a police officer has the right to stop a vehicle. Establishing the practice of so-called blind checks for examining possible alcohol intoxication of the driver is questionable from the point of view of the Ukrainian legislation, and will create grounds for abuse by police officers.

Draft law form on the website of the Verkhovna Rada of Ukraine: <https://goo.gl/b4Ry69>

1.3. Cabinet of Ministers Clarified the Procedure for Using Special Means by Servicemen of the National Guard of Ukraine

On December 20, the Cabinet of Ministers of Ukraine approved the Resolution that defined the procedure and the list of special means that can be used by servicemen of the National Guard of Ukraine.

The resolution clarifies the rules – first of all, in the cases when the National Guard is not involved in public order protection. It should be reminded here that the Law does not contain a separate procedure for the National Guard using special means. The National Guard follows the provisions of the law on police only when involved in protecting peaceful assemblies, diplomatic offices, etc. However, legislation does not regulate the rules of servicemen's behavior in other cases. Therefore, the new rules clarify the existing provisions of a legislative act having the supreme force and contain a list of types of special means that are not regulated by the law.

At the same time, the Human Right Coalition caucus criticizes new rules and believes they are politically motivated and aimed at increasing the possibilities for fighting political opponents in Ukraine. Their criticism refers in the first place to the fact that the Resolution provides only for the types of special means without naming specific items. Identification of acceptable parameters of special means with regard to their physical, chemical and other impact on a human organism is vested in the Ministry of Health Care. Such wording does not require their certification, control of origin and tactical technical characteristics. This opens a way to arbitrary use of special means with potential lethal impact. In fact, same criticism refers of activities of National Police and today remains a problem that was identified in 2015 by experts of the Council of Europe.

Text of the statement of the Human Rights Coalition caucus: <https://goo.gl/45HHWR>

2. Institutional changes

2.1. National Police Reorganized the System of Receiving Calls to the Unified 102 Line

On November 6, the National Police of Ukraine reorganized the systems of receiving calls coming to the unified 102 line. Previous experience of work of the Centers for Management of Police Teams (CMPTs) in individual regions was taken into consideration. In this way, police tries to shorten the time of responding to calls that in the past were also taken by duty units of SUB and HUB police stations in different localities, and information was entered in a paper log.

The changes include receiving calls to the 102 line in an oblast center. After the information is received, the team closest to the place receives an electronic call through dispatchers who directly manage all teams and all forces and means of the Main Department of the National Police in the region, response groups of patrol police in the districts, and patrol police teams in the towns.

Information on the official website of the Ministry of Interior of Ukraine: <https://goo.gl/Jy4ywG>

2.2. Security Police Included in Prevention System of the National Police

On November 3, the National Police announced reorganization of the prevention system through including security police into it. This means that security police work will be aligned with the standards of work of patrol police, and all officers will have to be retrained taking into consideration experience of work of patrol police. Therefore, security police teams will be included into the unified system of location of police teams and will also respond to calls for assistance received by 102.

However, this does not mean that security police will now be subordinated to patrol police, but a new link will be added to the existing police system of prevention and responding to violations. In the past, security police was involved in this work in some regions only in individual situations.

2.3. Security Police Included in Prevention System of the National Police

On December 26 during the end-of-year press conference, plans concerning unifying patrol police work and making the standard of its work uniform till the end of 2018 were presented. As of today, an order was approved on creating patrol police departments in the regions that will replace patrol police in individual towns. In other words, that means replacement of vertical subordination to Kyiv with vertical subordination to the head of

the Main Department of Police in the region. The reason for this is increasing efficiency of operative management of police forces in the region.

It should be reminded that in the beginning of reforms, avoiding pressure from regional police management was the reason why patrol police was created as an inter-regional agency with clear subordination to the single center. Same subordination can be seen in such inter-regional territorial agencies as the internal security department or economic protection department that ensures impartiality and neutrality of their work.

In view of this, such step of the National Police management is ambiguous since it can lead to negative outcomes.

Press conference of the Head of National Police, Serhii Kniaziev: <https://youtu.be/6F9ud62Wdl8>

3. Strategic documents and reform evaluation

3.1. Government Approved Mol Development Strategy till 2020

The Cabinet of Ministers of Ukraine in its Resolution as of November 15 approved the Strategy of Development of the System of the Ministry of Interior of Ukraine for the period ending 2020. The majority of provisions of the new document in the state policy sphere refer to National Police, and the minority – to the State Migration Service and service centers of the Ministry of Interior of Ukraine. Other departments, activities of which are regulated and coordinated through the Mol, are almost not mentioned in the document.

The majority of provisions of the new document in the state policy sphere do not envisage specific results or evaluation criteria that could be used in the future for evaluating the status of implementation of the document. At present, the final text of the Strategy has not been published, and there is no step-by-step action plan – the Plan of Action for Strategy Implementation, with development of which within three months the Government tasked the Ministry of Interior.

However, a number of comments and proposals prepared by the Group on Law Enforcement Reform of the Reanimation Package of Reforms (RPR) was not taken into consideration. In view of this, the expert community has concerns about actual efficiency of this document, and a possibility to evaluate its impact on law enforcement reform in the future.

More details on approval of the Strategy: <https://goo.gl/7XPRv3>

Text of the draft Strategy 2020 on the official website of the Ministry of Interior of Ukraine: <https://goo.gl/xkG81f>

II. PROSECUTOR'S OFFICE

1. Legislation regulating prosecutor's activities

1.1. Parliament Cancelled Requirement to Decrease the Number of Prosecutors

On December 7, the Verkhovna Rada of Ukraine adopted the Law (registration № 7160), which cancelled provisions of the Law of Ukraine On Prosecution concerning decrease of the number of prosecutors to 10, 000 from January 1, 2018.

We remind that the Law on prosecution required a gradual decrease of the number of prosecutors starting 2015. As of October 2017, this number totaled 11, 313 and Ukraine is still the leader in Europe in terms of the number of prosecutors.

Such decision of the Parliament runs contrary to the processes of reforming the system of justice in Ukraine since pursuant to amendments to the Constitution as of June 2, 2016 the functions and powers of prosecution were significantly limited. Prosecution was finally deprived of the general oversight function, representation of citizens' interests in courts, and later it will be deprived of the possibility to exercise oversight in detention facilities. Despite the new constitutional provisions, management of the Prosecutor General's Office and the parliamentary majority were not willing to decrease the number of prosecutors. However, the adopted law will not change the situation with the workload of prosecutors at a local level – they will continue to be overloaded with work because distribution of prosecutors at the central, regional, and local levels is disproportionate.

2. Prosecution Lost Powers to Carry Out Pre-Trial Investigation of Crimes

On November 20, the five-year term expired that

was provided for in the Criminal Procedure Code of Ukraine, during which prosecution exercised powers with regard to investigation of crimes that fall within the powers and authorities of the SBI. At present, prosecutorial investigators have powers to complete investigation of the previously initiated criminal proceedings but not more than for two years. At the same time, investigators from prosecution do not have a right to investigate new criminal proceedings, i.e. information about which was entered in the Uniform Register of Pre-Trial Investigations after November 20, 2017.

Thus, the current situation is that the SBI has not started its work yet, and according to the rules of investigative jurisdiction, there is nobody else who has powers and authorities to investigate such crimes.

On November 20, the Prosecutor General's Office of Ukraine officially announced on its website about the end of powers of prosecution to investigate crimes falling within the terms of reference of the SBI: *Taking into consideration the fact that at present the SBI has not started its work yet, and prosecution has lost the powers to investigate crimes falling within the terms of reference of the SBI, a solution to this problem may be heads of prosecution offices using their power to entrust another agency with carrying out pre-trial investigation as provided for in Part 5 Article 36 of the CPC (in view of the inability of the SBI to carry out efficient pre-trial investigation because it has not started working yet), and procedural supervisors using their right to personally carry out investigative (search) and procedural actions (Clause 4 Part 1 Article 36 of the CPC of Ukraine).*

Information about actual continuation of investigation by prosecutions of crimes falling within the terms of reference of the SBI on the website of the Prosecutor General's Office of Ukraine: <https://goo.gl/imR3Z9>

III. STATE BUREAU OF INVESTIGATION (SBI)

An important reform in law enforcement must be the creation of the State Bureau of Investigation – the main controller of all law enforcement officers, high-level officials and judges.

The State Bureau of Investigations is a pre-trial investigation body authorized to investigate crimes committed by politicians, members of Parliament, civil servants, judges, prosecutors, police officers and other staff members of law enforcement agencies.

1. SBI Director Appointed

In 2016-2017, a selection commission was working to select the SBI Director and Deputy Directors. On November 22, the President of Ukraine appointed Roman Truba the SBI Director after he was selected by the selection commission. Roman Truba worked in prosecution – namely, a prosecutor of a district prosecution office in Lviv Oblast, and then on managerial positions in the Prosecutor General's Office.

The selection commission also selected the First Deputy Director of the SBI – Olha Varchenko who headed the Office of Procedural Management, Support of State Prosecution and Representation in Court of the Department for Investigation of Especially Important Cases in Economic Sphere of the Prosecutor General's Office of Ukraine, and Deputy Director of the SBI – Oleksandr Buriak who held office of the Deputy Head of Department for Investigation of Criminal Proceedings by Investigators of Prosecution Offices and Procedural Management of Public Prosecution Office in Kyiv.

For more details about the steps of the SBI management, see the blog of an expert of the Ukrainian Institute for the Future, Denys Monastyrskyi, on censor.net: <https://goo.gl/pCWQc4>

On necessary legislative amendments that need to be initiated by the SBI management, see an article by the Manager of the Group on Law Enforcement Reform of the RPR in Ukrainska Pravda: <https://goo.gl/vWCnQP>

2. Government Approved SBI Structure

On December 13, 2017 the Cabinet of Ministers of Ukraine approved the organizational structure of the State Bureau of Investigations: 15 departments and 4 independent units of the central apparatus, 7 territorial departments, Academy of the State Bureau of Investigations, Research and Development Institute of the State Bureau of Investigations.

As of today, the competition has been announced for positions of directors of seven territorial departments and ten positions in the central apparatus of the SBI. Selection will be done by the same commission that selected the SBI management in accordance with requirements of the respective law.

More details about the SBI structure on the website of the Government: <https://goo.gl/xWjkk4>

More details about competition for managerial positions and the current members of the selection commission on the website of the Government: <https://goo.gl/Tx9vbx>

3. Strategic Program of SBI Activities for the Next Five Years Presented

On December 20, 2017 to ensure implementation of requirements of the Law, SBI Director Roman Truba presented the program of activities of the new agency for five years. The program sets forth priorities of the Bureau's activities, actions necessary to start full-fledged work, the procedure for implementation of provisions of the law on cooperation with the public, schedule of fulfilment of the list of tasks as

well as the criteria for evaluation of their fulfilment.

Strategic program of the SBI activities for 2017-2022 on the website of the Government: <https://goo.gl/U94LiR>

Before this, the SBI Director participated in a presentation of expectations of the expert community and the public from the State Bureau of Investigations included in the results of survey, State Bureau of Investigations: Priorities of Work, prepared by the Association of Ukrainian Human Rights Monitors on Law Enforcement (UMDPL Association) and the Center of Policy and Legal Reform. The survey was focused on the issues related to investigative jurisdiction of the SBI, the process for selection of managers and officers of the SBI, the Bureau's work at a regional level, the possibility to carry out operative and search activities, independently receiving information from communication channels, etc. At the same time, the main common and diverging points were identified in opinions of the public and the experts.

The results of survey, State Bureau of Investigations: Priorities of Work: <https://goo.gl/wkiBFg>

Information about presentation of survey results involving the SBI Director: <https://goo.gl/NjPqVk>

4. Draft Law on Improving Certain Legislative Provisions on SBI Activities Registered

On December 26, a draft law was registered in the Verkhovna Rada on amending some laws of Ukraine for improving certain provisions related to activities of the State Bureau of Investigations (registration № 7450). The objective of the draft law is to ensure efficiency of work of the State Bureau of Investigations, and to eliminate collisions with the norms of effective legislative documents in this sphere.

Among other things, it is suggested: to clarify investigative jurisdiction of the SBI; to increase the existing list of the SBI units in the Law of Ukraine On Operative Search Activities and to authorize them to receive information from transport telecommunication networks (so-called wiretapping); cancel the militarized status of the major part of the SBI officers, and grant them the status of civil servants except for specific categories of individuals; to set quotas for representatives of the Public Oversight Council of the SBI in selection commissions, etc.

Draft law form on the website of the Verkhovna Rada of Ukraine: <https://goo.gl/pNezat>

IV. CRIMINAL JUSTICE LEGISLATION

1. Constitutional Court of Ukraine Recognized CPC Provisions on Automatic Prolongation of Detention of Individuals as Unconstitutional

On November 23, the Constitutional Court of Ukraine adopted Decision №1-p/2017 upon submission of the VR Commissioner for Human Rights. The third sentence of Part 3 Article 315 of the CPC of Ukraine is recognized unconstitutional. In other words, a preventive measure in the form of detention may not be prolonged automatically after the statement of accusation has been forwarded to the court at the stage of preparatory proceedings, if the prosecution does not file a petition for its continuation, change or cancellation.

This is a benchmark decision for development of the legal system of Ukraine. First, the Constitutional Court took into consideration the European Court practice concerning justification of court decisions on detention according to Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms for motivating its decision. Second, the Constitutional Court ruled that a court that continues or decides on a preventive measure in the absence of a motivated petition from the prosecutor is not an unbiased court that fails to perform the function of justice since in fact it performs the function of prosecution

The text of Decision №1-p/2017 on the website of the Constitutional Court of Ukraine: <https://goo.gl/fTjZhE>

2. New Procedure Codes came into force

On December 15, new procedural codes came into force – the laws necessary for the beginning of work of the new Supreme Court.

Before the text of the codes was published, the wording of amendments to the Criminal Procedure Code was not known. Some of the most dangerous amendments to the CPC (more specifically, those related to timelines of investigation) were eventually removed from the final wording. However, there are still provisions that will become effective as of March 15, 2018 and they will have a negative impact in terms of efficiency of investigation of crimes and respect for human rights.

For instance, granting an exclusive right to commission expert analysis to the court means that defense is deprived of its competitive right to independently involve experts, and prosecution will have to wait for a court decision to carry out the required expert analysis, for instance, to establish

the cause of death. Furthermore, according to the amendments, investigators' and prosecutors' requests will be examined by a court at the place of registration of the investigating agency. Therefore, the majority of police investigators will have to constantly travel to courts located in oblast centers 100-200 kilometers away from the possible crime scene, which will paralyze investigation of cases.

At the same time, on December 15 amendments to the Law On Forensic Medical Examination came into force, according to which any expert analysis in criminal proceedings has to be carried out by the state expert institutions. These amendments in practice completely cancel the principle of competition in criminal justice since the state expert institutions will work primarily to the orders of investigators and prosecutors, and defense will have no possibility to commission alternative expert examination by private specialists.

Other dangers are related to the possibility to appeal against a statement of suspicion of crime, permanent panels in first instance courts, disruption of the balance of adversariality of the parties, etc.

More details about negative consequences of legislative amendments can be found in an article by an expert of the Group on Law Enforcement Reform of the RPR, Zlata Symonenko: <https://goo.gl/FSZTbo>

3. Parliament Approved Law on Protection of Businesses

On November 16, 2017 a law on amending some legislative acts related to guarantees of the rights of participants of criminal proceedings by law enforcement agencies during pre-trial investigation, which received the name of the law against *mask shows* or the *law on protection of business* was adopted.

The law requires *mandatory complete video recording of each search*, the obligation to allow lawyers to be present during search of their clients, and the need to organize technical audio recording of all court hearings on examination of requests for search, seizure and arrest of property, use of preventive measures, etc.

However, courts do not have enough rooms equipped with the systems for technical recording of hearings, which resulted in permanent queues of investigators and prosecutors who have to wait for several hours every day from early morning for appropriate hearings. On the other hand, absence

of queues of prosecutors in courts before the Law came into force can be a sign of the situation when respective hearings were held in judges' offices or with violation of the prescribed procedure.

The Law also contains *provisions on the need to close the proceedings if they were previously closed by an investigator or a prosecutor*. This restriction was caused by the negative practice when state agencies repeatedly opened and closed proceedings on the same fact, which had a negative influence first of all on representatives of businesses. Yet, this rule can block any investigation and result in large-scale violation of victims' rights since any case that was unjustifiably closed in the past can not be forwarded to or examined by a court.

This can also violate the general principle of an automatic start of pre-trial investigation, which was introduced by the CPC back in 2012. Instead of entering information automatically, an investigator/prosecutor will have to check existence of non-cancelled resolutions on similar facts. Clearly, it is practically impossible to find out completely before entering information in the Uniform Register of Pre-Trial Investigations whether the resolution refers to closure of the same fact specified by the applicant. Introduction of this norm can result in delays with responding to a criminal offence, and to creation of legal grounds for refusal to register criminal proceedings for victims and applicants.

More details about problems of the adopted Law in an article of the CPLR expert, Oleksandr Banchuk, for Mirror Weekly: <https://goo.gl/nQqnWJ>

4. Parliament Approved Law on Protection of Businesses

A draft law on amending some legislative acts of Ukraine concerning simplification of investigation of certain categories of criminal offenses (registration № 7279) (principal) was registered in Parliament. The draft law envisages introduction of an institute of misdemeanors. At the same time, an alternative draft law №7279-1 was registered. It was drafted by the experts on the basis of many years of their work in this sphere.

Draft law № 7279 (principal) is supported by the Prosecutor General's Office and the Ministry of Interior. However, the approach envisaged by the draft law is extremely superficial and in fact means only renaming low gravity crimes as misdemeanors. At the same time, the draft law provides for a transfer of 40% low gravity crimes (72 crimes in total) to the category of medium gravity crimes. In other words, the investigators will continue to

investigate all these crimes, and therefore there will be no decrease of the investigation workload as promised.

Furthermore, draft law № 7279 contains a number of threats for human rights and freedoms, such as:

- *violation of the right to individual freedom* (Article 298-2): the draft law introduces eight new reasons for detaining an individual that directly violate the Constitution, for instance, a person's trying to leave the place of incident (without specifying the incident), alcohol intoxication, absence of documents, etc.;

- *violation of the principle of legal certainty* (Article 298 of the CPC): the document contains provisions that allow questioning people before the beginning of investigation, confiscating means and tools, etc. At the same time, neither the current wording of the CPC nor the suggested amendments contain a description of respective procedures;

- *violation of the right to protection*: criminal proceedings should be completed within 48 hours from the moment of notification on suspicion or within 20 days if a person does not admit being guilty. This is an unrealistic period, especially taking into consideration which crimes will be classified as misdemeanors. Furthermore, this is a clear signal to law enforcement staff to try to receive confession at any price;

- *prosecution will disclose its materials not before the beginning of court proceedings but only during the court hearing* (Article 314-2). This means that before the court hearing defense will not know the exact accusation and will not be able to build defense (collect evidence, summon witnesses, and so on);

- *for the simplified procedure in criminal proceedings, participation of a defense lawyer and consent of the victim are no longer necessary*. Prosecutor's desire and a confession of the person who did not receive legal assistance will be enough.

- *neglect of the presumption of innocence*: the main goal of a simplified procedure for investigating misdemeanors will become pushing the suspect to confession, which has to become the "queen of proof" again. It will be allowed now to prove that the person is guilty using the new sources of evidence – the person's explanations, medical examination, specialist's conclusion, and readings of technical devices. On the basis of such evidence, a person can be imprisoned for up to two years.

Draft law № 7279 returns the Soviet penal rules of investigation, and the institute of misdemeanors will be turned into a purely punitive procedure that has no place for adversariality and human rights.

On December 20, the Parliamentary Committee on Legal Support for Law Enforcement Activities examined both draft laws at its meeting and suggested the MPs should adopt draft law №

7279 (principal) as a basis following the results of examination in the first reading.

Unfortunately, the Committee supported only façade changes contained in the principal draft law that purely mechanically rename low gravity crimes as misdemeanors, and entail threats to human rights and freedoms.

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Association of Ukrainian human rights monitors on Law Enforcement (Association UMDPL) – non-governmental human rights organization implementing systemic all-Ukrainian monitoring of human rights and fundamental freedoms on law enforcement agencies activity.

Activities (programms):

- Expertise and Analytics programm;
- Development of civic control;
- Education;
- Penitentiary programm.

More about organization and results of work – www.umdpl.info/police-experts

Centre of Policy and Legal Reform (CPLR) – is a Ukrainian think-tank that promotes reform in the law and politics of Ukraine. The organization has its general goals the strengthening of democracy, the rule of law and good governance in our country. The Centre was established in 1996.

CPLR works through research, policy advising, monitoring of public decision making and via civic education. The work of CPLR is focused on the following policy areas: constitutionalism, public administration, judiciary, and criminal justice. The issues of human rights, combating corruption and gradual adaption of the Ukrainian legal system to the standards of the European Union are cross-cutting themes throughout all policy areas.

More about organization and results of work – <http://pravo.org.ua/en>

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