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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.

1.1. Parliament Adopted New Disciplinary Statute of the National Police

On 15 March, the Verkhovna Rada of Ukraine adopted a Disciplinary Statute of the National Police of Ukraine (draft law №4670). Since more than 100 amendments were introduced during the adoption, the final version of the text is currently

unknown. As of end of April, the law is awaiting for the signature of the President, and thereafter it will become effective within 3 months.

At present, the Police is guided by the Disciplinary Statute of Law Enforcement Bodies dated 2006, which does not substantially differ from the regulations of 1990s. This document has been granting for a long time unlimited disciplinary power of the management over their subordinates.

The new Statute repeats many of the provisions of the old one, but finally the Police will have new rights for protection during the official investigation, and disciplinary proceedings will be considered not single-handedly by the manager, but by a commission. Disciplinary commissions consist of the police officers from various departments, and they may also include representatives of civil society.

A card of the draft law on the website of the Verkhovna Rada of Ukraine: <https://goo.gl/NQtUQG>

1.2. Experiment on Introducing Detectives Will be Extended to all Regional Centers of Ukraine

Head of the National Police Sergiy Kniazev informed on 12 April about the beginning of the third phase of introducing a detective service. As of April 2018, detective departments were launched in every regional police department.

This is about the stage of reforming a criminal block, which unites the functions of Investigators and Operations Officers under the united chain of command. Unfortunately, there has been no public reports in connection with this experiment, so it is too early to speak about its effectiveness.

Sergiy Kniazev also announced that the results of the experiment will be presented at a subject-matter committee of the Verkhovna Rada of Ukraine to initiate shortly some legislative amendments to the status of the Operations Officers of the Police.

Details on the website of the National Police of Ukraine: <https://goo.gl/LN1zV7>

1.3. Strategy of Development of the Ministry of Internal Affairs 2020 published

On 15 November 2017, a Strategy of development of the Ministry of Internal Affairs 2020 was adopted, while the final text of the Strategy was published in the "Official Bulletin of Ukraine" only on 23 March 2018.

At the same time, the Agenda on implementation of the Strategy is yet to be prepared, even though the Government decided that the Ministry of Internal Affairs was to elaborate it within a 3 month period, namely until 15 February 2018. This Agenda should clearly indicate activities, time schedule for their implementation, executors, and performance indicators for implementation of these activities on reforming the agency.

In the end of April, the Ministry of Internal Affairs started to elaborate on such a document with a methodological support of the European Union Advisory Mission. In May, working groups, together with the representatives of civil society will be focusing on activities agenda for every section of

the Strategy. Monitoring over the implementation of the planned activities will be conducted by the Reforms Task Team, established within the Ministry.

We remind that the provisions of the previous document – "Issues of reforming the internal affairs bodies of Ukraine" dated 2014 – was not fully implemented, and after 2015 the agency stopped to elaborate Agenda on its implementation.

Text of Strategy 2020 on the website of the Verkhovna Rada of Ukraine: <https://goo.gl/bHKVnd>

1.4. Law on Reforming the Parking System for Transport Vehicles Published

The Law on reforming the sphere of transport vehicles parking was adopted by the Parliament on 21 December 2017, but was awaiting for the signature of the Head of State for more than 3 months. This Law must resolve the problem with uncontrolled process of stopping and parking of motor vehicles in big cities of the country (its administrative centers).

As for now, the Police lacks personnel and financial resources to resolve these issues due to a massive number and chaotic nature of transport stopping, and local self-governance bodies are deprived of any powers in the sphere of countering illegal parking.

The published Law envisages introduction of photo- and video-recording of violations of the rules for motor vehicles stopping and parking, including the automatic one, increase of fines for violation of these rules, evacuation of transport vehicles, parked in violation of these rules etc.

The Law will become effective within half a year, on 27 September 2018. Such a long transition period is necessary, in particular, for local self-governance to purchase technical equipment to record violations and to conduct a competitive recruitment for new officials – parking inspectors. As such, one of the amendments before the second reading of this Law became a provision on changes of the status of parking inspectors, to recognize them as local self-governance officials.

II. PROSECUTOR'S OFFICE

Reform of prosecutorial bodies started only after the Revolution of Dignity, although it was one of the commitments to the Council of Europe from the times of accession to this organization and adoption of the

Constitution of Ukraine. For a long time, prosecution preserved its centralized and militarized structure with absolute internal subordination of prosecutors to their line managers established back in the Soviet times.

Over the last three years, a new Law on Prosecution was adopted (2014), prosecution lost its general oversight function (2014), the General Inspectorate was created (2015), prosecutorial self-government bodies and the Qualification and Disciplinary Commission began their work (2017), and public prosecution offices were deprived of their powers to carry out pre-trial investigation of crimes (2017). At the same time, several initiatives were not completed, and no evaluation of overall reform efficiency was done.

2.1. Qualification and Disciplinary Commission of Prosecutors Established its Own Secretariat

Experts of the Council of Europe draw attention to the necessity of establishing the Secretariat in composition of the Qualification and Disciplinary Commission of Prosecutors in its Report based on the results of needs assessment of the Council of Prosecutors of Ukraine and the Qualification and Disciplinary Commission of Prosecutors dated September 2017.

The Secretariat was established in accordance with Decision of Qualification and Disciplinary Commission of Prosecutors №213п-18 dated 4 April. The Commission determines that for its proper work, taking into consideration the experience of similar state bodies in the system of justice, such as High Qualification Commission of Judges of Ukraine and High Council of Justice, it is necessary to establish a Secretariat of the Commission in the number of approximately 300 employees.

Prior to this Decision, in conformity with the order of Prosecutor General Lutsenko Yu.V. dated 26 May 2017№ 31-шц, the Office of organizational management of the activity (Secretariat) of the Qualification and Disciplinary Commission of Prosecutors of the Department of personnel and state service of the Prosecutor General's Office of Ukraine functioned in the structure and staffing table of the Prosecutor General's Office of Ukraine.

We remind that the Qualification and Disciplinary Commission of Prosecutors does not belong to the system of prosecution, but is a body, which maintains its activity and is a separate legal entity of public law. As such, the fact that the Commission lacked its Secretariat, and that the functions of the Commission's Secretariat were implemented by a structural department of another legal entity, namely,

the Department of Prosecutor General's Office of Ukraine, deprived Commission of such an obligatory feature of a legal entity as organizational unity.

This dictates the necessity to create its own Secretariat to provide independence of this body.

Decision №213п-18 on the website of the Qualification and Disciplinary Commission of Prosecutors: <https://goo.gl/6YN6i7>

2.2. Council of Prosecutors Addressed Prosecutor General with a Proposal to Return Class Ranks to Prosecutors SBI Supervision was created

On 18 April, the Council of prosecutors of Ukraine acknowledged that absence of prosecutors' class rank or the order of their equation to a special or military rank, creates a difference in approaches to material and social provision of prosecutors, disciplinary responsibility, and reward, which has a negative impact on the unity of the system of prosecution bodies of Ukraine.

In this connection, the Council of Prosecutors of Ukraine decided to address the Prosecutor General with a proposal to initiate a number of amendments to the Law of Ukraine "On Prosecution" regarding the possibility to grant class ranks to prosecutors who are working in the bodies of prosecution of Ukraine. Apart from that, in their appeal they mention that Decree of the Verkhovna Rada of Ukraine №1795-XII dated 06 November 1991 "On adoption of the Provision on class ranks of the members of bodies of the prosecution of Ukraine" should be brought into conformity with the requirements of current legislation.

We remind that one of the achievements of the Prosecution's reforming process was demilitarization and transformation of this body into a civil service of the European type. Prosecutor, as a person who is exercising public charges in the court and procedural management over pre-trial investigation, does not need class ranks to effectively conduct professional duties.

Apart from this, a new method to determine payment for work of prosecutors (article 81 of the Law on Prosecution) does not establish any surcharges to prosecutors for having class ranks and titles.

Information on the website of the Council of Prosecutors: <https://goo.gl/rftXez>

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.

3.1. Verkhovna Rada Returned for Refinement Draft Laws on State Bureau of Investigation

On 13 March MPs returned to additional first reading after refinement all three legislative initiatives - № 5395 (initiator – Mykola Palamarchuk), № 6430 (Governmental); № 7450 (initiators – Mustafa Nayyem and others).

Draft laws concerned clarification of investigative jurisdiction of SBI, granting to operational units and units of internal control the powers on implementation of intelligence tracking activity, change of location of territorial bodies to avoid influence from local authorities etc. At the same time, Draft Law №7450 envisaged transfer of powers on selection of SBI management from external commission to internal one. The aim of such changes was effective and timely competition for managing positions.

On 17 April, the Verkhovna Rada subject-matter committee supported a refined version of Draft Law №5395-д. However, the provisions of other draft laws were not taken into account.

The refined Draft Law provides for a number of provisions, necessary to launch SBI, for example, introduction of the position of operations officer or granting the opportunity to bring to disciplinary responsibility an employee of SBI. At the same time, it contains dangerous provisions, for example a) refusal of decentralization, which lies in transferring of territorial departments to big cities; b) establishment of qualification requirements to regional managers who facilitate formation of territorial bodies with former members of law-enforcement agencies.

Text of Draft Law №5395-д on the website of the Verkhovna Rada of Ukraine: <https://goo.gl/2nm7zn>

3.2. First Composition of the Council of Public Control

(CPC) Elected members

On 30 March, the Constituent Assembly of the Council of Public Control at State Bureau of Investigation took place. As it was envisaged by the experts, predominantly “pocket” activists were elected to the CPC, which represent interests of separate political groups.

The reason is non-transparent and obsolete mechanism of formation of CPC – voting for yourself among other existing candidates. This mechanism was transferred to the Law on SBI from Decree № 996 of the Cabinet of Ministers as of 2010, which requires amendments. With the total number of 99 candidates, positions in CPC were received by those candidates who were included in the “agreed” lists. As such, the majority of future members of CPC was already known a couple of hours before the Constituent Assembly started, and 10 hours before the results were announced, a list was published on the Internet.

On 27 April, the Director of SBI signed an order on appointment of members of CPC. At the same time, Roman Truba initiated a change of the procedure in favor of online-voting. Civil society experts will be involved in elaborating these changes.

We remind that CPC of SBI consists of 15 members and is elected for a period of 1 year. Among its powers, in particular: preparation of the conclusions to SBI reports, delegating 3 members to the disciplinary commission and other powers, provided by the law.

Information on the elected candidates to CPC of SBI on the website of SBI: <https://goo.gl/obx72B>

Analysis of candidates to CPC of SBI conducted by NGO “StateWatch”: <https://goo.gl/54cLG1>

Methodology of the analysis of candidates to CPC of SBI, conducted by NGO “StateWatch”: <https://goo.gl/mYi1mY>

Position of the Director of SBI on violations during the formation of CPC in the blog on LB.ua: <https://goo.gl/hJDW1z>

3.3. Director of SBI Published a Report on his Activities in line with the Law Provisions

On 30 March, Director of SBI Roman Truba published a report on his activities for December 2017-March 2018. According to Article 23 of the Law on SBI the Director of this body is obliged to provide annual report on his or her activity till 01 April.

The report provides information on the main stages of formation of SBI, the state of the competitive selection to this body, necessary changes to the legislation for its launch, cooperation with the public etc. In particular, it was informed that SBI received its own premises, and the address is: Kyiv City, 15-b Symona Petliury Street.

Text of the report on SBI activity for December 2017-March 2018: <https://goo.gl/SyMrRu>

3.4. Competitions for Positions in the Bureau is Ongoing

Different commissions – *external and internal* – are in charge of competitions for the positions in the State Bureau of Investigation. According to the Law, the competition for managing positions in the units of the central office, directors of territorial bodies, managers and employees of units of internal control, shall be conducted by *external commission*, formed according to the quotas of the President, the Cabinet of Ministers, and the Verkhovna Rada (the same Commission which elected Director of SBI and deputies), which consists only of 9 members.

All other positions are being selected by the *internal commission*, which consists of 5 members (3 from SBI and 2 from the civil society).

External Commission

External Commission shall conduct a competition for 170 managing positions. As for now, a competition is announced for 27 positions, and as of 12 April, 731 document packages were received from the candidates. Currently they are under consideration.

Internal Commission

In March, a competition was announced for 701 positions to SBI, among them – 455 to 7 territorial departments, which are located in such cities as Kyiv, Lviv, Khmelnytskyi, Mykolaiv, Melitopol, Poltava, Kramatorsk. Each territorial department has a competition for 65 positions.

As of 11 April, the documents were received from approximately 700 candidates. With a view to detailed and full selection of experts, the competitions were prolonged until 03 May, and minimal working experience was decreased from 5 to 3 years for those candidates who wish to become investigators of SBI, and currently are working in the prosecution and other government bodies (categories “a” and “b”).

A list of positions under competition, on the website of the Cabinet of Ministers: <https://goo.gl/JW5tCi>

Expert assessment of the competition by member of the internal commission Oleksandr Lemienov in the blog of “Ukrainska Pravda”: <https://goo.gl/q6zqTf>

IV. CRIMINAL JUSTICE

There is still a problem with harmonization and approximation of criminal and criminal procedural legislation with the European standards. Since adoption of the CPC in 2012, this law has been going through chaotic and unsystematic changes (such as Lozovyi’s amendment), which necessitates systematization of changes. Both amendments to the CPC of Ukraine and the CC of Ukraine have a strong impact on fighting corruption that today is one of the largest challenges faced by Law Enforcement agencies. More specifically, introducing misdemeanors influences efficiency of activities of the criminal justice bodies in general, more specifically - workload of investigative and operative units, efficiency of the criminal law, and adherence to the principle of inevitability of punishment.

4.1. Existence of Investigative Unit in the Ministry of Justice Recognized Unconstitutional

On 24 April, the Constitutional Court of Ukraine

decided to recognize part 6 of Article 216 of Criminal Procedure Code unconstitutional.

The Constitutional Court decided that creating units in the structure of the Ministry of Justice which conduct investigations of crimes committed in the territory or in the premises of penitentiary system contradicts the provisions of the Constitution. Such decision was taken because of the hierarchical subordination of the investigative bodies to top officials of the Ministry of Justice which cannot ensure independence of investigation of crimes against persons who are currently in the penal or detention facilities that are at the same time subordinate to the Ministry.

Unconstitutional provisions of the Code will cease to have effect within 3 months, and during this time, the Verkhovna Rada is required to bring legal regulation in conformity with this Decision.

During the plenary session of the Court, the expert of the Centre of Policy and Legal Reform Olena

Soroka informed about the conclusion of the Center on this matter, which is *amicus curiae*.

Decision of the Constitutional Court: <https://goo.gl/AHCJAQ>

Conclusion prepared by Olena Soroka, expert of Centre of Police and Legal Reform: <https://goo.gl/4NRnM2>

4.2. Parliament did not Support Draft Law which Completely Excludes “Lozovoyi Amendment” from Criminal Procedure Code

On 15 March, the Verkhovna Rada rejected Draft Law №7547 which provided for cancellation of new provisions of Criminal Procedure Code introduced by “Lozovoyi Amendment”. MPs were talking about a “compromise” version prepared by the relevant committee, which preserved some of the new rules for crimes in the sphere of economic activity, public service, and against justice (sections VII, XVII, and XVIII of the Special Part of the Criminal Code).

4.3. Parliament Approved Draft Law № 8151 which Cancels Requirement to Address the Court Exceptionally Based on the Place of Registration of Pre-Trial Investigation Body

On 22 March, the Verkhovna Rada adopted as a whole Draft Law № 8151 (authors – Olena Sotnyk and other MPs). The draft law excludes one of the provisions of “Lozovoyi amendment”, namely the one that provides that a motion on implementation of the provision measures of the criminal proceedings, conducting searches, imposing preventive measures or commissioning of expert evidence be submitted to a local general court whose territorial jurisdiction covers a relevant pre-trial body.

As such, investigative bodies received an opportunity to appeal with their respective motions not to the 25 local courts, but to the courts whose jurisdiction covers relevant investigative units as it was before.

4.4. Draft Law which Cancels Majority of Provisions of “Lozovoyi Amendment” is Registered in the Verkhovna Rada

On 06 April Draft Law № 8249 was registered in the Verkhovna Rada (authors – Olena Sotnyk and others), which cancels the majority of the negative changes to the Criminal Procedure Code of Ukraine introduced by the so-called “Lozovoyi Amendment”.

Namely, the following provisions will be excluded from the Criminal Procedure Code of Ukraine which became effective on 15 March and provided for:

- any expertise shall be conducted not according to the decision of the investigator, but upon the decision of the investigative judge;
- monopoly is introduced over the expertise in criminal proceedings in state bodies (changes to the Law “On Forensic Expertise”).

At the same time, the Draft Law improves *new rules for calculation of period of time* of pre-trial investigation by increasing it by 6 months. Despite the fact that they can be pro-longed an unlimited amount of times (without going beyond the statute of limitations, according to the Criminal Code of Ukraine), these rules can facilitate the increase of corruption and avoiding responsibility by guilty persons. Since every time when the term of pre-trial investigation is being prolonged within the statute of limitations of bringing to criminal responsibility, the investigator has to prove such necessity. At the same time, there is a risk that the judge will not prolong the term and it will lead to closure of the proceedings.

Also the possibility remains to cancel a *notification of suspicion* upon the decision of the investigative judge, which can lead to the loss of the results of the investigation based on the decision of one judge.

Draft Law on the website of the Verkhovna Rada of Ukraine: <https://goo.gl/Z8QRzN>

Article of the expert of the Association of Ukrainian Human Rights Monitors Yevhen Kravchuk “A circle of agreements and promises: what will happen to “Lozovoyi amendments?” in the blog on “LB.ua”: <https://goo.gl/MGPqJM>

Expert discussion “Lozovoyi amendments. Legal and political consequences” at Horshenin Institute: <https://goo.gl/HqEW8X>

IV. CRIMINAL JUSTICE

The Draft Law on National Security of Ukraine was adopted in the first reading

On 5 April, the Parliament supported in the first reading a Draft Law proposed by the President

of Ukraine On National Security of Ukraine (registered № 8068). Alternative Draft Law № 8068-1, submitted by a group of MPs was rejected, but it was decided to take into account its provisions while working on the refinement

of the main Draft before its second reading.

The Draft Law is directed at bringing the system of national security of Ukraine in conformity with the standards of member states of NATO. However, the Draft Law that was supported by the Parliament contains substantial discrepancies with the European standards and provisions of the Constitution of Ukraine.

In particular:

- including ministries and other bodies of executive power (police, migration service, transport service etc.) to the security sector is a direct violation of the European Standards. Recommendation of the Parliamentary Assembly of the Council of Europe 1713 (2005) on democratic control over security sector of the member states specifies that the legislation should put a clear division line between bodies of security and intelligence from one side, and law-enforcement agencies from the other side, taking into account the

difference of their tasks and powers;

- granting law-enforcement functions to the Security Service does not go in line with the counter-intelligence mode of operation of this body;

- the requirement for the Government to report to the President on national security issues violates the grounds of functioning of a parliamentary-presidential state;

- granting unconstitutional powers to the President regarding appointment and dismissal of top leadership of the Armed Forces of Ukraine upon the submission of the Minister of Defense, and also top leadership of other military bodies upon the submission of heads of respective bodies of the executive branch, overall leadership of the intelligence agencies etc.

The Parliament should amend the abovementioned provisions before adopting this Law as a whole.

IV. CRIMINAL JUSTICE

According to the **Concept of reforming criminal justice of Ukraine** (2008), financial police remains the only body which has not been established, and the system of investigation of crimes which fall in the scope of its jurisdiction, has not been reformed.

According to the requirements of **IMF and G7**, this must be a civil service under the Ministry of Finance with consolidated powers within one agency in order to avoid duplication of functions.

In March 2016, a group of MPs proposed a Draft Law on **“Financial Police”** № 4228 dated 15.03.2016. Within these 2 years, the Draft Law has not been considered by the relevant committee of the Verkhovna Rada of Ukraine.

The next step became the presentation in February 2017 of a Government Draft Law which provided for the establishment of the **Service of Financial Investigations (SFI)**. This Draft Law was elaborated by the Ministry of Finance, and on 22 March of the same year it was adopted as a Governmental Draft Law. However this Draft

Law has not been registered in the Parliament. The reason why the Government refused to submit the Draft Law to the Verkhovna Rada remains unknown.

During March-April 2018 3 Draft Laws which should reform the system of financial investigations **were registered in the Verkhovna Rada of Ukraine:**

1) **the main draft law** (№8157 dated 19.03.2018; author – **Nina Yuzhanina** and others) “On National Bureau of Financial Security” (NBFS);

2) **alternative one** (№8157-1 dated 20.03.2018; author – **Andrii Zhurzhyi** and others) “On National Bureau of Financial Security”;

3) **second alternative one** (№8157-2 dated 03.04.2018; author – **Tetiana Ostriкова** and others) “On Legal Grounds of Organization and Activity of the Financial Police” (Financial Police).

On 4 April, the Ministry of Finance of Ukraine provided a conclusion upon the results of work on the main Draft Law №8157. The Ministry expressed 18 substantial objections regarding

the Draft Law, and provided an overall conclusion that the version requires substantial refinement and **cannot be adopted as a whole**.

On 5 April, the Draft Law authored by Nina Yuzhanina was recognized by the President as urgent. According to paragraph 3 of the Decision of the Constitutional Court of Ukraine 2-рп/2001, which explains the provisions of Article 93 of the Constitution, the urgency of the draft law can be determined at the stage of legislative initiative which takes place during the submission of the Draft Law to the Verkhovna Rada. Thus, the President does not have the powers to determine a Draft Law of an MP as urgent, only his own.

On 18 April 2018, during the session of the relevant committee, the above-mentioned

legislative initiatives were considered. **All three draft laws were recommended to be supported by the MPs as a whole, and adopted in the first reading.**

Article of defense lawyer Zlata Symonenko "New generation of tax police" in "Novoye Vremya. Business": <https://goo.gl/yXJnU5>

Article of the expert of the Association of Ukrainian Human Rights Monitors Yevhen Kravchuk "Reform of the tax police: who will come as replacement?" in the blog on "LB.ua": <https://goo.gl/zj9rRX>

Article of former prosecutor, manager of RPR group on law-enforcement agencies Volodymyr Petrakovskiy "Bureau of financial security of the President in "Ekonomichna Pravda": <https://goo.gl/dPL9ht>

Negative conclusion of the Ministry of Finance of Ukraine: <https://goo.gl/c4s9dH>

Expert Discussion with participation of the authors of the Draft Laws at Horshenin Institute (video): <https://goo.gl/cLvoPn>

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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 program;
- Development of civic control;
- Education;
- Penitentiary program.

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 adaptation 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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