

(Cabinet of Ministers of Ukraine, central executive bodies, and, in particular, the Ministry of Economic Development); trade and agriculture of Ukraine, which ensures the formation and implementation of state policy in the field of labor, employment and labor migration; local state administrations); diplomatic and consular missions of Ukraine in the EU countries; local governments of Ukraine; public administration bodies of the host country-EU.

Emphasis is placed on possible areas of improvement of domestic legislation and practice of its application in the research area.

Key words: administrative and legal status, citizens of Ukraine-labor migrants, EU countries, external labor migration, public administration bodies.

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ESTABLISHMENT OF THE COMMUNITY ACQUIS IN THE FIELD OF PUBLIC HEALTH

Statement of the problem and its relevance. Research on the development of European Public Health standards is aimed at improving the health of the population by contributing to the process of shaping the sphere of Public Health policy and practice. Over the past two centuries, health care has made tremendous strides, most vividly illustrated by the significant reduction in mortality and disability from many infectious diseases. Health measures, such as tobacco control, salt reduction, improved diet and physical activity and the reduction of unsafe alcohol consumption, are among the key actions that can accelerate progress in the fight against non-communicable diseases in Europe and beyond its borders. There is growing evidence that many of these interventions are cost-effective and have long-term benefits for society.

The purpose of this article is to provide the analysis of the Community acquis development and to reveal the goals and strategies of the European Union, its policy on further health challenges.

Analysis of research of publications. The genesis of public health was considered in the works of such scientists as: G.A. Rosen¹, M. McKee, B. Rechel, H. Kluge, T. Tulchinsky². Reports on the application of Directives, regulations and the actual overviews and reports were made my European Journal of Public Health³.

Presentation of the main article. For centuries, people have reported that public association is a key factor in improving the health of the population. Particularly in large cities, hygiene measures have been invited. The first evidence of sanitation was found by archaeologists – water mains and sewers, which were found in ancient Egypt, India, Troy and in the cities of the state Incas. In medieval Europe, the struggle against sanitation solves similar methods. The beginnings of legal regulation of health care can be seen in the creation of an administrative system, which at that time was engaged in disease prevention, inspection of sanitary conditions and health care, which existed almost until the XIX century¹.

For the first time in the acts of primary law of the subjects of European integration, the right to health care was mentioned in Article 69 of the Treaty establishing the European Coal and Capital Society (ECSC), concluded in 1951 by Germany, France, Belgium, the Netherlands, Italy and Luxembourg⁴.

The Lisbon Treaty of 2009 emphasized important health policy, recognizing that “a high level of human health must adhere to and identify and implement all Community policies and activities”. The EU has successfully implemented a comprehensive policy through the Health for Growth Health Strategy and its Action Program (2014–2020) and a collection of secondary legislation. The European Social Fund Plus (ESF +) continues to provide funding for the 2021–2027 trial period⁵.

The Lisbon Treaty entered into force on 1 December 2009 following a lengthy process of negotiation and ratification in all Member States of the European Union (EU). This has led to several changes in the European Community's policy, but in the field of health the existing principle remains: it will continue to be subject to the principles of subsidiarity. This provides rules that allow the Union only to complement national health policies and to act at the levels of common competence formed by activities with the support, coordination or support of the actions of Member States⁶.

The Union shall have competence to support, coordinate or complement the actions of the Member States. At European level, such actions should include the protection and improvement of human health. In defining and implementing its policies and activities, the Union shall take into account the requirements of promoting high levels of employment, ensuring adequate social protection, combating social exclusion and a high level of education, training and protection of human health⁷.

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However, there are several innovations in the Treaty that have affected health policy. The role of civil society, represented by the European Parliament, has been significantly strengthened. Parliament and the Council may adopt incentives designed to protect and improve human health, in particular to combat major transboundary disasters, monitoring, early warning and serious transboundary health threats³.

The Treaty clearly introduces an approach to monitoring and evaluation as an integral part of health policy, emphasizing the need for systematic collection and analysis of information on the processes and impacts of public health measures. Having a more robust legal framework will allow the European Commission, in close contact with Member States, to promote initiatives aimed at developing guidelines and indicators, organizing the exchange of best practices and preparing the necessary elements for periodic monitoring and evaluation⁸.

The new provisions will promote and strengthen cooperation between European countries in activities aimed at:

- promoting the development of common indicators to assess results and outcomes;
- establishing a framework for a systematic review of needs; and
- regular monitoring of activities and periodic evaluation of results in the areas of health promotion and disease prevention and control⁹.

The concept of health monitoring and evaluation, introduced more prominently by the EU legal framework, should be used to ensure the implementation of the European Community's commitment to achieving and maintaining a high level of human health protection¹⁰.

Actions to monitor and combat serious cross-border health threats will be promoted at EU level, encouraging cooperation between Member States to improve the complementarity of their health policies. Obviously, the issue of cross-border cooperation is particularly important in relation to infectious diseases. Although the role of the European Center for Disease Prevention and Control (ECDC) is already recognized as valuable at EU level, the Treaty can stimulate action to further enrich approaches to early warning, monitoring and evacuation of surveillance measures, as well as technical and scientific evaluation of prevention and control measures. communities¹¹.

In addition, under the Lisbon Treaty, mental health is specifically mentioned, cooperation between Member States in the field of health is encouraged in cross-border areas, coordination on health issues between Member States is strengthened, including the possibility of establishing guidelines and indicators, organizing the exchange of best practices and preparing periodic monitoring and evaluation, while measures to improve monitoring, early warning and combating serious cross-border threats to health and tobacco and alcohol policy (“incentives”) are also specifically mentioned¹².

The Lisbon Treaty set out three strategic objectives for EU health policy: promoting health – to prevent disease and promote a healthy lifestyle by addressing nutrition, physical activity, alcohol, tobacco and drug use, environmental risks and injuries. Given the aging population, the special health needs of the elderly also need more attention, and more attention has recently been paid to mental health; protecting citizens from health threats – Improving surveillance and preparedness for epidemics and bioterrorism and increasing the ability to respond to new health challenges, such as climate change; supporting dynamic health systems – to help Member States' health systems respond to the challenges of an aging population, the growing expectations of citizens and the mobility of patients and health professionals, and to help Member States make their health systems sustainable.

The establishment of specialized agencies such as the European Medicines Agency (EMA) and the European Center for Disease Prevention and Control (ECDC) has strengthened the EU's commitment to health policy. Health has also benefited from policy areas such as the environment and nutrition, among many others. The entry into force of the REACH framework for the evaluation and registration of chemicals, as well as the establishment of the European Food Safety Authority (EFSA) have also been indicators of multidisciplinary efforts to improve the health of European citizens⁵.

Information and communication technologies improve the entire life cycle of health issues, from prevention to diagnosis and treatment, control and management of health and lifestyle. Digitization of the health sector is part of the EU's Digital Single Market strategy and has enormous potential¹³.

Public health can benefit from a significant increase in the availability of information about how people live their daily lives. However, the same information can also be used to the detriment of public health. Commercial organizations have widely used the achievements of computing power to describe in detail our daily lives and consumption patterns¹⁴.

Thus, it is difficult to overestimate the role of Parliament because it has consistently contributed to the establishment of health policy. He has also actively sought to strengthen and promote health policy through numerous opinions, studies, debates, written declarations and own-initiative reports on a wide range of issues. The Committee on the Environment, Public Health and Food Safety (ENVI) is Parliament's main body on health and is responsible for more than 10% of Parliament's overall legislative activity.

Recently adopted key pieces of legislation include, for example, a new regulation on clinical trials, medical devices and in vitro diagnostic devices, as well as cross-border healthcare, the Tobacco Products Directive and decisions to establish health financing programs¹⁵.

The Lisbon Treaty has become a major development, as the well-being of countries is inextricably linked to health. Indeed, “welfare” becomes a horizontal point (Article 9 of the Treaty on the Functioning of the European Union; TFEU) and the integration of health issues (Article 168 TFEU), both of which state that the European Commission's proposals must always take into account their possible adverse effects on health, and that they should be changed if this is problematic¹⁴.

The EU can adopt health legislation in accordance with the Treaty on the Functioning of the European Union: Article 168 (protection of public health), Article 114 (approximation of laws) and Article 153 (social policy). Areas in which the EU has adopted legislation include: patients' rights to cross-border medical care; pharmaceuticals and medical devices (pharmacovigilance, falsified drugs, clinical trials); serious transboundary health threats; tobacco; organs, blood, tissues and cells.

For example, EU citizens have the right to access health care in any EU country and to receive reimbursement for care abroad in their own country. Directive 2011/24 / EU on patients' rights to cross-border healthcare sets out the conditions under which a patient may travel to another EU country to receive medical care and reimbursement. It covers the cost of health care, as well as prescription and delivery of medicines and medical devices. As health policies and systems become increasingly interlinked, the Directive facilitates access to: information on available medical care in other European countries; healthcare alternatives and / or specialized treatment abroad.

The regulations strike the right balance between maintaining the sustainability of health systems while protecting patients' right to treatment outside their home country. Directive: Creates a network of national contact points; search for available translations of the previous link to provide clear and accurate information on cross-border healthcare. Creates EU rules on the minimum list of elements to be included in a medical prescription accepted from one EU country to another (cross-border prescription). Encourages the further development of European reference networks of medical expertise, the expansion of cooperation between EU countries with additional benefits for the assessment of health and e-health technologies¹⁶.

Drugs, alcohol and tobacco use are lifestyle factors that seriously affect people's health, and combating them is a major issue in health policy. The Tobacco Products Directive (Directive 2014/40 / EC¹⁷; applicable since 2016) and the Tobacco Taxation Directive (Council Directive 2011/64 / EC¹⁸) were important stages in this process. The possible implications of the implementation of the EU Drugs Strategy 2013–2020¹⁹ and the EU Alcohol Strategy 2006–2012 (COM (2006) 0625)²⁰ are subject to discussion and further evaluation.

Conclusions. Thus, the Lisbon Treaty has become a fundamental document for regulating many areas, including health. Consolidate and improve health standards in countries. In general, EU action in the field of health is currently linked to incentives and cooperation measures. The European Commission has an important supporting role to provide guidance and tools to facilitate cooperation and facilitate the effective operation of national systems. The EU is currently facing the following challenges: achieving greater economic efficiency; competitiveness together with security; addressing new global threats, such as antimicrobial resistance; evidence-based policy development; elimination of risk factors for non-communicable diseases and promotion of vaccination. In parallel, a number of sectoral directives have been adopted, which are of a recommendatory nature to member states. The Lisbon Treaty has established the principle of cooperation between countries for further development in the field of health care. The principle of subsidiarity has remained unchanged, meaning that Member States have the right to regulate their own health care, but to listen to the Union's recommendations and guidelines. The pressing issues of employment, social protection, combating social exclusion and protecting human health were mentioned. The treaty also introduced the concept of health surveillance and monitoring in countries, which will allow for a rapid response and improvement of national situations, especially with regard to infectious diseases or viruses. In particular, the Lisbon Treaty will make the decision-making process more efficient, increase democratic accountability through association with the European Parliament and national parliaments, and strengthen external coherence. All these improvements will provide the EU with better protection of the interests of its citizens on a daily basis. New opportunities to address the transboundary effects of energy policy, civil protection and the fight against serious transboundary health threats.

¹ Rosen, G. A History of Public Health, Baltimore / London: The Johns Hopkins University Press, 1993.

² EU Alcohol Strategy 2006–2012 (COM(2006)0625); URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0625&from=EN>

³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. OJ C115, 9 May 2008, TITLE XIV, PUBLIC HEALTH, Article 168 (ex Article 152 TEC) point 5; URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2008.115.01.0001.01.ENG&toc=OJ%3AC%3A2008%3A115%3ATOC

⁴ The Treaty establishing the European Coal and Capital Society (ECSC). – URL: https://zakon.rada.gov.ua/laws/show/994_026

⁵ European Parliament official website; Public Health; URL: <https://www.europarl.europa.eu/factsheets/en/sheet/49/public-health>

⁶ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. OJ C115, 9 May 2008, TITLE XIV, PUBLIC HEALTH, Article 168 (ex Article 152 TEC) point 5; URL: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2008:115:SOM:EN:HTML>

⁷ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. OJ C115, 9 May 2008, TITLE I Categories and Areas of Union Competence, Article 3, point 1; URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2008.115.01.0001.01.ENG&toc=OJ%3AC%3A2008%3A115%3ATOC

⁸ Regulation (EC) No 851/2004 of the European Parliament and of the Council establishing ECDC, Title XIV, Public Health, Article 168 (ex Article 152 TEC) point 2. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2008.115.01.0001.01.ENG&toc=OJ%3AC%3A2008%3A115%3ATOC

⁹ Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control, OJ L 142, 30 April 2004, p. 1; URL: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0851>

¹⁰ Commission of the European Communities (2008), Communication from the Commission to the European Parliament and the Council; com(2008) 741 final; sec(2008) 2792; URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008DC0741>

¹¹ Commission of the European Communities (2008), Communication from the Commission to the European Parliament and the Council; com(2008) 741 final; sec(2008) 2792; URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008DC0741>

¹² Explaining the Treaty of Lisbon; MEMO/09/531 Brussels, 1 December 2009; URL: https://ec.europa.eu/commission/press-corner/detail/en/MEMO_09_531

¹³ European Commission official website; Shaping Europe's digital future; URL: <https://ec.europa.eu/digital-single-market/en>

¹⁴ Health policy and European Union enlargement. European Observatory on Health Systems and Policies Series; Edited by Josep Figueras, Martin McKee, Elias Mossialos and Richard B. Saltman. Open University Press.– 2004; URL: https://www.euro.who.int/_data/assets/pdf_file/0004/98392/E82999.pdf

¹⁵ Written expertise for the ENVI Committee; URL: <http://www.europarl.europa.eu/committees/en/envi/supporting-analyses.html> 15. Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare. Official Journal of the European Union L 88/45; URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0024>

¹⁴ Health policy and European Union enlargement. European Observatory on Health Systems and Policies Series; Edited by Josep Figueras, Martin McKee, Elias Mossialos and Richard B. Saltman. Open University Press. 2004; URL: https://www.euro.who.int/_data/assets/pdf_file/0004/98392/E82999.pdf

¹⁶ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare. Official Journal of the European Union L 88/45; URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0024>

¹⁷ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC. Official Journal of the European Union L 127/1; URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.127.01.0001.01.ENG&toc=OJ%3AL%3A2014%3A127%3ATOC

¹⁸ Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco *OJ L 176, 5.7.2011, p. 24–36* Official Journal of the European Union L 176/24; URL: <https://eur-lex.europa.eu/eli/dir/2011/64/oj>

¹⁹ EU's Drug Strategy 2013-2020 Official Journal of European Union; URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:402:FULL&from=EN>

²⁰ EU Alcohol Strategy 2006-2012 (COM(2006)0625); URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0625&from=EN>

Резюме

Мальзам Ю.Ю. Становлення *acquis* Європейського союзу у сфері охорони здоров'я.

Необхідно проаналізувати становлення європейських стандартів у сфері охорони здоров'я. Аналіз та вивчення міжнародно-правових документів та наукових робіт, що містять положення про *acquis* ЄС. У статті досліджено розвиток нормативно-правової бази ЄС, основні договори Європейського співтовариства у сфері охорони здоров'я, зміни та поліпшення внесені цими міжнародно-правовими документами. Лісабонський договір став фундаментальним документом для регулювання багатьох сфер, включаючи охорону здоров'я. Консолідував та вдосконалив стандарти охорони здоров'я в країнах європейської зони. Загалом дії ЄС у галузі охорони здоров'я на сьогодні пов'язані із стимулами та заходами співпраці. Розглянуто важливу допоміжну роль Європейської комісії у наданні настанов та інструментів для полегшення співпраці та сприяння ефективному функціонуванню національних систем. Лісабонський договір встановив принцип співпраці між країнами для подальшого розвитку в галузі охорони здоров'я. Принцип субсидіарності залишився незмінним, тобто держави-члени мають право регулювати власну охорону здоров'я, але прислухатися до рекомендацій та вказівок Союзу. Було зазначено нагальні питання зайнятості, соціального захисту, боротьби із соціальною ізоляцією та охорони здоров'я людей. Договір також запровадив концепцію нагляду за здоров'ям та моніторингу в країнах, що дозволить швидко реагувати та покращувати національну ситуацію, особливо щодо інфекційних захворювань чи вірусів. Зокрема, Лісабонський договір зробить процес прийняття рішень більш ефективним, посилить демократичну підзвітність через асоціацію з Європейським парламентом та національними парламентами та зміцнить зовнішню узгодженість. Усі ці вдосконалення забезпечать ЄС щоденний кращий захист інтересів своїх громадян. Нові можливості для вирішення транскордонних наслідків енергетичної політики, цивільного захисту та боротьби з серйозними транскордонними загрозами здоров'ю. У даний час ЄС стикається з такими проблемами: досягнення більшої економічної ефективності; конкурентоспроможність разом із безпекою; вирішення нових глобальних загроз, таких як антимікробна стійкість; розробка політики на основі фактичних даних; усунення факторів ризику незаразних захворювань та сприяння вакцинації. Паралельно було прийнято низку галузевих директив, які мають рекомендаційний характер для держав-членів. Вивчаються цілі та стратегії Європейського Союзу щодо праці у напрямку охорони здоров'я. Проаналізовано політику ЄС щодо подальших викликів у сфері охорони здоров'я. Досліджено розвиток та становлення *acquis* ЄС.

Ключові слова: охорона здоров'я, *acquis* ЄС, договори, Європейський Союз, стандарти.

Резюме

Мальзам Ю.Ю. Становление *acquis* Европейского Союза в сфере здравоохранения.

Необходимо проанализировать становление европейских стандартов в сфере здравоохранения. Анализ и изучение международно-правовых документов и научных работ, содержащих положения о *acquis* ЕС. В статье исследовано развитие нормативно-правовой базы ЕС, основные договоры Европейского сообщества в сфере здравоохранения, изменения и улучшения внесены этими международно-правовыми документами. Изучаются цели и стратегии Европейского Союза по труду в направлении здравоохранения. Проанализированы политику ЕС в отношении дальнейших вызовов в сфере здравоохранения. Исследовано развитие и становление *acquis* ЕС.

Ключевые слова: здравоохранение, *acquis* ЕС, договоры, Европейский Союз, стандарты.

Summary

Yuliia Malzam. Establishment of the Community acquis in the field of health care.

It is necessary to analyze the development of European standards in the field of health care. Analysis and study of international legal documents and scientific papers containing provisions on the EU acquis. The article examines the development of the EU legal framework, the main agreements of the European Community in the field of health, changes and improvements made by these international legal instruments. The goals and strategies of the European Union in the field of health work are being studied. EU policy on further health challenges is analyzed. The development and formation of the EU acquis are studied.

Key words: health care, EU acquis, treaties, European Union, standards.

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ДОСТУП ДО КОНВЕНЦІЙНИХ ПРАВ ШУКАЧІВ ПРИТУЛКУ: ВИБРАНА ПРАКТИКА ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ

Постановка проблеми. Інститут притулку та захист прав шукачів притулку – актуальний напрям як для глобального, так і детального дослідження, адже це є як важливою складовою міжнародного права, так і суспільно значущою проблемою. Враховуючи стрімкий розвиток людства у найрізноманітніших сферах, вдосконалення засобів та інструментів, які реально полегшують життя, статистичні дані Агентства ООН у справах біженців свідчать про те, що щохвилини двадцять людей у світі вимушені покинути свій дім у пошуках захисту, а загалом кількість шукачів притулку на кінець 2019 р. сягнула позначки 4 млн 148 тис. осіб¹. Найбільше шукачів притулку перебуває в Туреччині (понад 3 млн осіб), Німеччині та у США. Якщо ж детальніше міркувати про шукачів притулку, то їхня кількість як у Європі, так і у світі загалом протягом останнього десятиліття збільшилася в чотири рази (від понад 920 тис. осіб у 2012 р. до понад 4 млн осіб у 2019 р.). В Європі найбільший «скачок» щодо раптового збільшення їх кількості відбувся у 2015 р. Відтак пошук ефективних шляхів захисту та реалізації прав шукачів притулку у світлі практики ЄСПЛ є одним із можливих і реальних способів для забезпечення таким особам не лише міжнародного захисту, а й доступу до конвенційних прав, що зрештою повинні стати невід’ємними та невідчужуваними для кожного.

Аналіз останніх досліджень і публікацій. Актуальність цієї теми провокує багатогранне та багатоаспектне дослідження, здійснене протягом останніх 20 років численними науковцями в Україні та світі, передусім у контексті міжнародного права та прав людини. Серед українських вчених, які приділяли у своїх працях увагу інституту шукачів притулку варто виокремити таких: М. Гнатовський, В. Гринчак, О. Поєдинок, М. Сірант, І. Софінська², С. Шевчук³ та інші. Важливі дослідження у цій сфері проводяться такими міжнародними інституціями, як Міжнародна організація у справах біженців та Управління Верховного комісара ООН у справах біженців (далі – УВКБ ООН).

Формулювання мети статті. Проблема захисту прав шукачів притулку у сучасному світі займає вагоме місце, оскільки пошук притулку є явищем масовим та територіально поширеним, тому ставимо перед собою мету сформулювати правовий наратив характерних особливостей правового статусу особи як шукача притулку на підставі практики Європейського суду з прав людини (далі – ЄСПЛ).

Виклад основного матеріалу. У період глобалізації інститут притулку є важливою складовою міжнародного права, а пошук притулку – явищем дуже поширеним. Попри те, що сьогодні світ характеризується високим рівнем мобільності й у людей з’явилась можливість не обмежувати себе кордонами однієї держави для реалізації своїх прав, свобод та можливостей, все ще існують ті, хто вимушений перетинати кордони не з власного бажання, а через необхідність міжнародного захисту. Останніх загальноприйнято називати шукачами притулку (*asylum-seekers*). Шукач притулку – це особа, яка не є біженцем, однак потребує захисту, оскільки змушена виїхати із держави свого громадянства внаслідок загрози її життю, безпеці чи свободі у зв’язку із побоюваннями застосування щодо неї смертної кари або тортур, нелюдського або такого, що принижує гідність, поводження чи покарання або загальнопоширеного насильства в ситуаціях міжнародного або внутрішнього збройного конфлікту чи систематичного порушення прав людини і не може чи не бажає повернутися до цієї держави внаслідок зазначених побоювань⁴.

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