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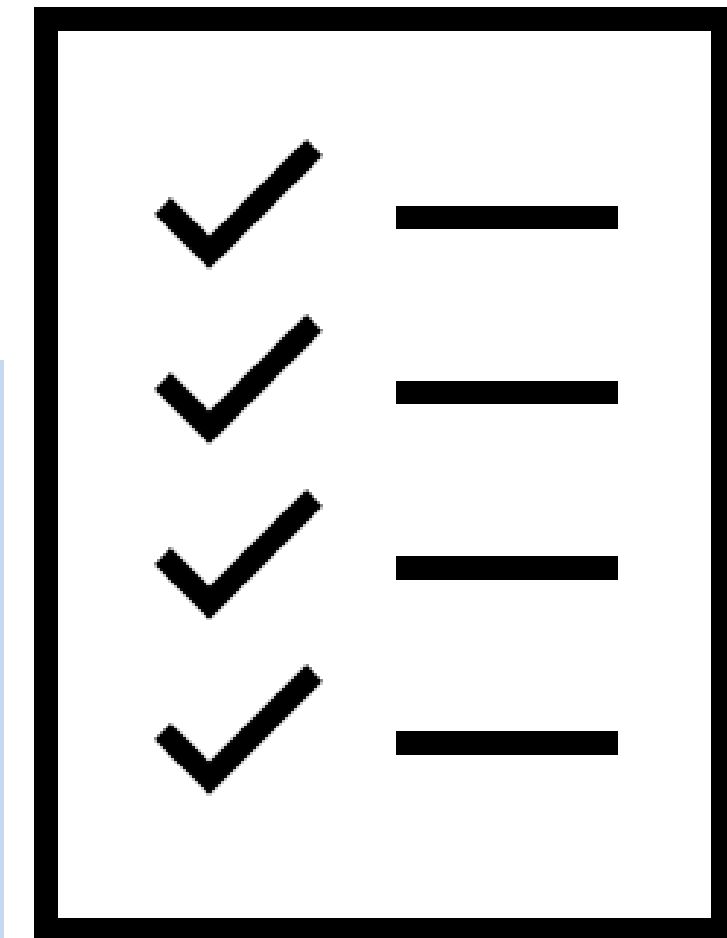


Case studies of access to land/freedom to roam in Europe

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Access to land and freedom of movement as fundamental rights

HUMAN FREEDOM

- The ability to act as one sees fit,
- making a choice of a certain behavior,
- doing all that is within the limits of the law.

Human freedom is a natural and inherent value, therefore it exists independently of the state and the law

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UNIVERSAL DECLARATION OF HUMAN RIGHTS



All human beings are born free and equal in their dignity and in their rights. They are endowed with reason and conscience and should act towards others in a spirit of brotherhood

Every person

- has the right to move freely,
- to choose his place of residence within the borders of any country.

UNIVERSAL DECLARATION OF HUMAN RIGHTS



Every person has:

- the right to leave any country,
- including his own, and to return to his own country,

Every person,
in case of persecution, has the right
to seek and enjoy asylum in other
countries.



CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS



purpose of the Council
of Europe:

- to achieve greater unity among its members
- and that one of the ways to achieve this goal is to protect and develop human rights and fundamental freedoms

EU - RIGHT TO PROPERTY



PROTOCOL No. 1 TO THE CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

- Every natural and legal person has the right to respect for his property.
 - No one shall be deprived of his property,
 - * except in the public interest and under the conditions provided by law and in accordance with the general principles of international law

EU FREEDOM OF MOVEMENT



- by freedom of movement is meant:**
- freedom of movement and choice of residence within the territory of a country;
 - freedom to leave any country, including one's own;
 - The prohibition of expelling one's own citizen from the country, either individually or as part of a collective expulsion;
 - The prohibition on depriving its own citizen of the right to enter the territory of its own country;
 - prohibition of collective expulsion of foreigners.

EU FREEDOM OF MOVEMENT VS. LEGALITY CRITERION



International Covenant on Civil and Political Rights

- the criterion of legality of residence

It guarantees freedom of movement only to persons lawfully residing in the territory of each state.

Restriction of freedom of movement requires a law for this purpose.

Rationale:

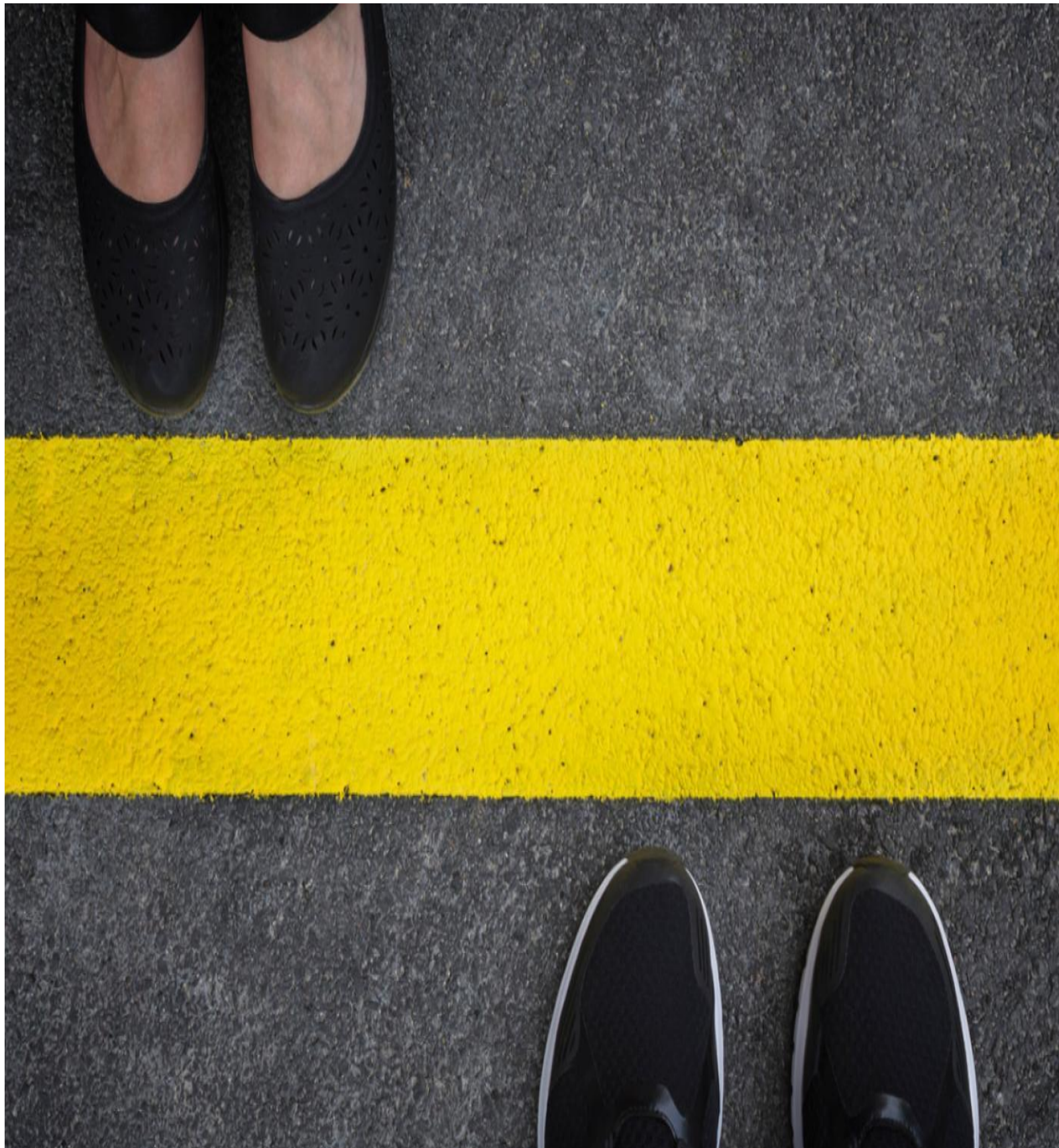
- the need to protect state security, public order, public health or morals, or the rights and freedoms of others and are consistent with other rights recognized in the Covenant

EU FREEDOM OF MOVEMENT VS. LEGALITY CRITERION



- restriction of freedom of movement must be established by the state in an act of statute, which excludes the possibility of arbitrary decisions, without an adequate legal basis for this,
- the restriction must be accompanied by substantive justification, that is, proof of the fulfillment of certain conditions.

BORDERS



Regulation 2016/399 on the EU Code on the rules governing the movement of persons across borders (Schengen Borders Code)

The common rules on the movement of persons across borders should not undermine or affect the right to free movement enjoyed by citizens of the Union and members of their families, as well as citizens of third countries and members of their families who, under agreements between the Union and its Member States, on the one hand, and those third countries, on the other, enjoy a right to free movement equivalent to that of Union citizens.

BORDERS

In an area where free movement of people is possible, the reintroduction of border control at internal borders should remain the exception.

There should be no border control or imposition of formalities just for crossing such a border.



Introduction of principle borders:



In an area where free movement of people is possible, the reintroduction of border control at internal borders should remain the exception.

There should be no border control or imposition of formalities merely because of the crossing of such a border.

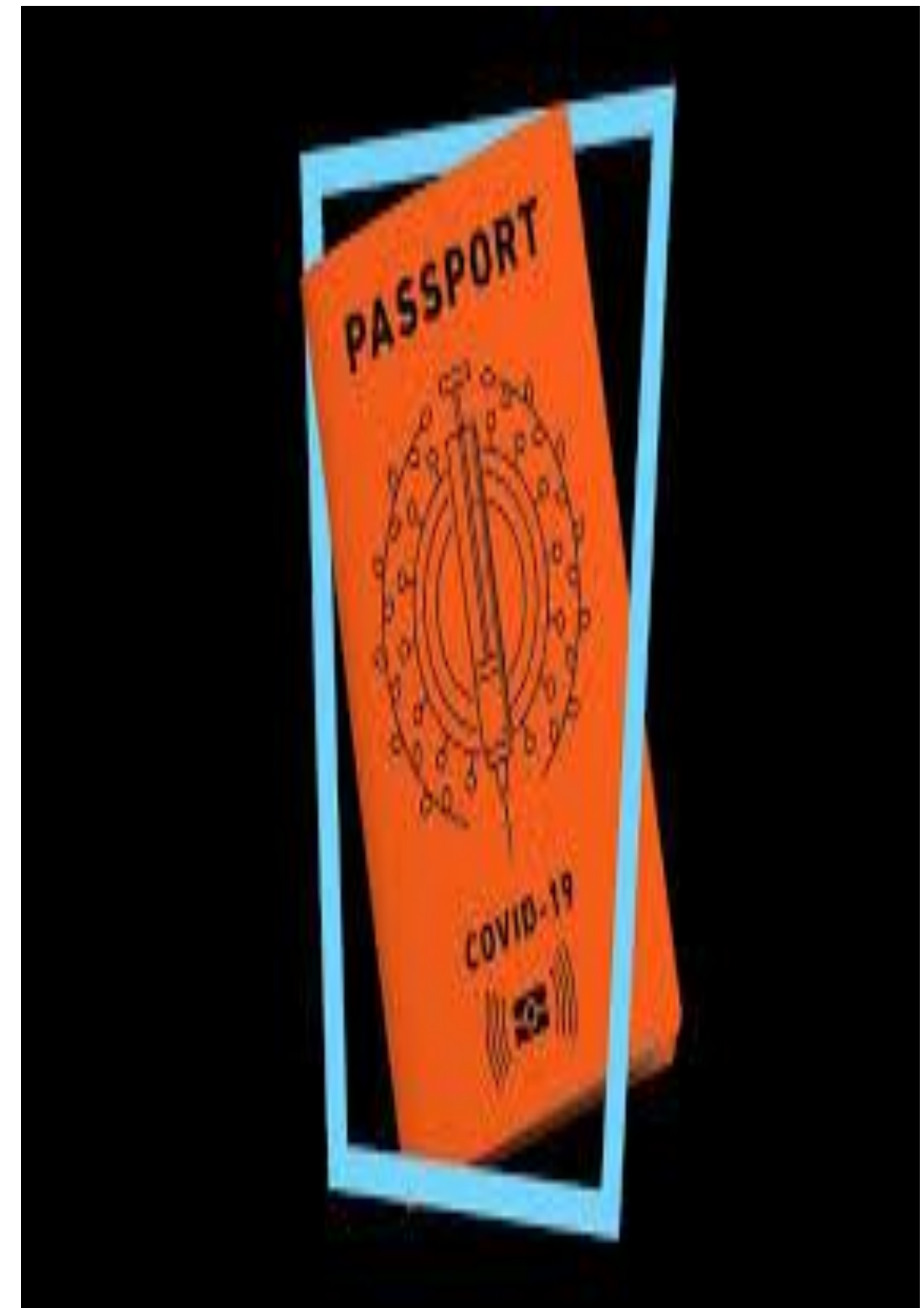
The creation of an area where the free movement of people across internal borders is ensured is one of the major achievements of the Union.

In such an area without internal border control, it is necessary to respond jointly to situations that significantly affect public order or internal security of the area, a part of it or one or more Member States, by providing for the possibility of temporarily reintroducing internal border control in exceptional circumstances, but without prejudice to the principle of free movement of persons.

Border control

Given the impact that such definitive measures may have on all persons with the right to move within the area without internal border control, the conditions and procedures for reinstating these measures should be specified to ensure that they are exceptional and that the principle of proportionality is observed.

The scope and duration of the reinstatement of these measures should be limited to the absolute minimum necessary to respond to a serious threat to public order or internal security.



Border control

temporary reintroduction of internal border controls affects the free movement of persons, any decision to reintroduce such control should be taken in accordance with jointly established criteria and should be notified to the Commission or recommended by a Union institution as appropriate,



Border control



* in any case, the reintroduction of internal border control should remain an exception and should take place only as a last resort, to a strictly limited extent and for a limited period of time,

* based on specific, objective criteria and on an assessment of the necessity of the measure, which should be controlled at the Union level.





Where a serious threat to public order or internal security requires immediate action,

Member States should be able to reintroduce border control at their internal borders for a period of up to ten days.

Any extension of this period must be subject to monitoring at the Union level.

Example

Can countries temporarily reinstate border controls?



C-368/20 and C-369/20 (Landespolizeidirektion Steiermark)
Judgment
Court of Justice
dated April 26, 2022.

The case concerned Austria, which reintroduced border controls with Slovenia in 2015 in the wake of the migrant crisis.

These controls were extended based on various exceptions under the Schengen Code.

The request for a preliminary ruling, which was referred to the CJEU, concerned a person who, while traveling by car from Slovenia to Austria, was fined twice for not having a valid travel document.

Example

~~Can countries temporarily reinstate border controls?~~

The fined driver challenged both fines before an Austrian administrative court, alleging that internal Schengen border controls are contrary to EU law.

The Austrian administrative court asked the CJEU to interpret EU regulations, specifically the Schengen Borders Code.



Question for the Advocate General of the CJEU

Specifically:



- **whether the Schengen Borders Code precludes the reapplication of the gray-month exception in the event that a member state continues to face a serious threat to public order or internal security after that period has expired**

Opinion of the CJEU Advocate General



- the ombudsman proposed to answer this question in the negative,
- he added , that, if it is in fact a continuation of a previous serious threat, the principle of proportionality requires compliance with particularly restrictive criteria,
- interpretation, according to which an exception cannot be reapplied several times in a row, can lead to unacceptable and even absurd results,
- serious threats to public order or internal security, after all, need not be limited in time,

Opinion of the CJEU Advocate General



- interpretation could have a negative impact on the powers to maintain public order and protect internal security, which are reserved to member states.
- if a member state were forced to abolish strictly necessary controls at its borders after the expiration of the six-month time limit, this would make it impossible for that member state to exercise the powers and duties incumbent upon it.
- it is inconceivable that the European legislator intended such a result and thus precluded the possibility of reapplying the exception at issue in the event of a "renewed threat."

Opinion of the CJEU Advocate General

The spokesman recalls, among other things.

- The Schengen Borders Code aims not only to abolish any control at internal borders, but also to maintain public order and combat any threats to public order,
- therefore, the powers and duties of the member states in this area cannot be limited by absolute deadlines.



Opinion of the CJEU Advocate General



- Although the Ombudsman believes that the Schengen Borders Code should be interpreted to permit in principle the reapplication of the exception at issue in the event of a "reoccurrence of a threat,"
- he believes that where the serious threat under consideration is substantially similar to a previous serious threat, the proportionality requirement entails significant limitations in this regard, as it establishes particularly restrictive conditions for the purposes of such reapplication.



Opinion of the CJEU Advocate General

In particular, the Member State concerned must justify, on the basis of concrete, objective and exhaustive analyses, first, why it would be appropriate to resume controls, assessing the degree of effectiveness of the original measure reinstating controls.

Second, it should explain the reasons why the measure is still necessary, answering the question of why no other, less restrictive measure would be sufficient, such as, for example, the use of police control, intelligence, EU-level police cooperation and international police cooperation.

The Advocate General does not believe:



- that a Member State that subjects EU citizens to the control of persons at internal borders, as required by the Schengen Borders Code, is acting in a manner contrary to the right to free movement of EU citizens, as guaranteed by the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union.
- it follows that the possible imposition of a penalty for violating the obligation to present a passport or identity card is not contrary to EU law under such circumstances.

BORDER BARRIERS AND SAFETY CONSIDERATIONS Example.



Law of October 29, 2021.

on the construction of state border security

The law defines the rules for the preparation and implementation of the security of the state border, which is an

external border within the meaning of Article 2(2) of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March

2016 on the EU Code on the Rules Governing the Movement of Persons across Borders

(Schengen Borders Code) , by physically, technically or electronically securing it, including against illegal crossing, hereinafter referred to as the "barrier".

Article 2 (1) The barrier shall be the devices for the protection of the state border referred to in

Article 10 (1) of the Law of October 12, 1990 on the protection of the state border.

The barrier on the border with Belarus

- as a manifestation of the Polish state's determination to curb mass illegal migration into the country,
- blocking that any illegal migration route to Europe should pass through Poland.

Dam size and conditions:

-the size of the dam 5.5 meters high: 5 meters are steel poles, topped by a half-meter coil of wire so that it is impossible to cross to the other side. Modern electronic methods of border management will also be used (motion sensors along the entire border, cameras).

In addition, Poland's eastern border will be reinforced with an additional 750 Border Guard

officers.



Why a dam and a law ?



- is the result of increasing attempts by migrants to illegally cross the border of the European Union
 - is the result of the crisis created by the Belarusian regime
- illegal migration supported by Belarusian services can destabilize the political situation and threaten the security of Poland and the European Union.

Dam construction in Hungary:

- The fence is 155 kilometers long and 3 meters high.
- is meant to keep out any number of people.

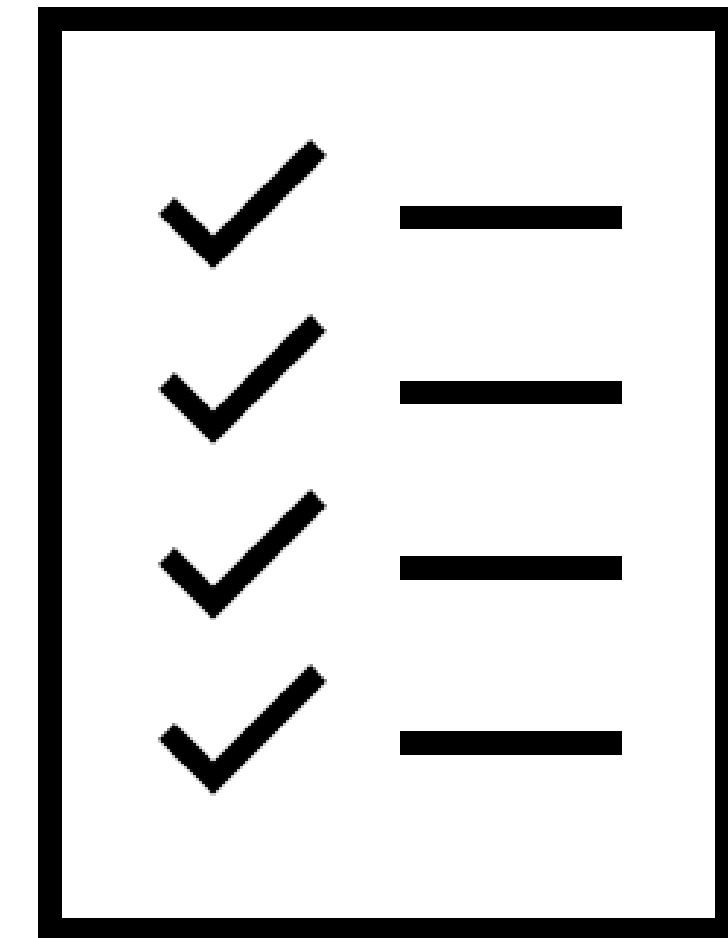
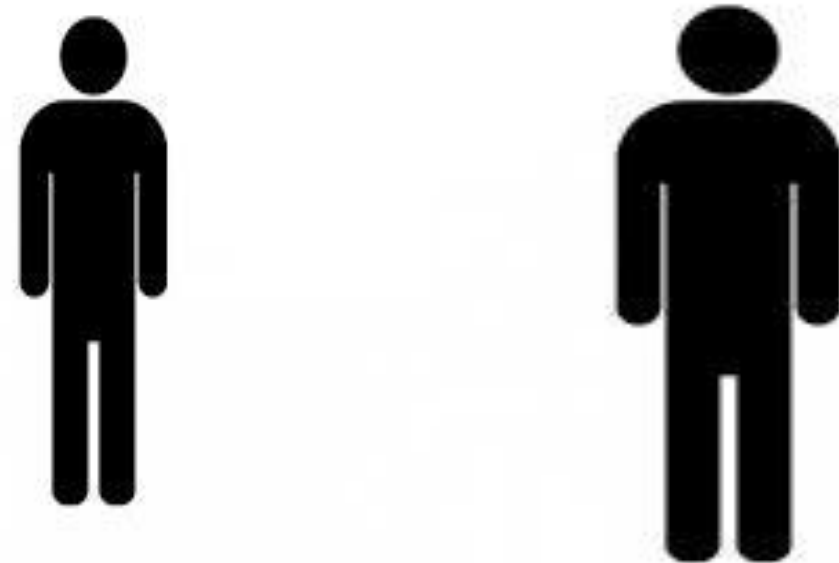
In 2015, Hungary became a major transit country for refugees and migrants trying to reach Western Europe. By the time Hungarian authorities erected a fence on the border with Serbia and Croatia in 2015, more than 378,000 migrants had entered Hungary.



Summary / key messages of the lecture



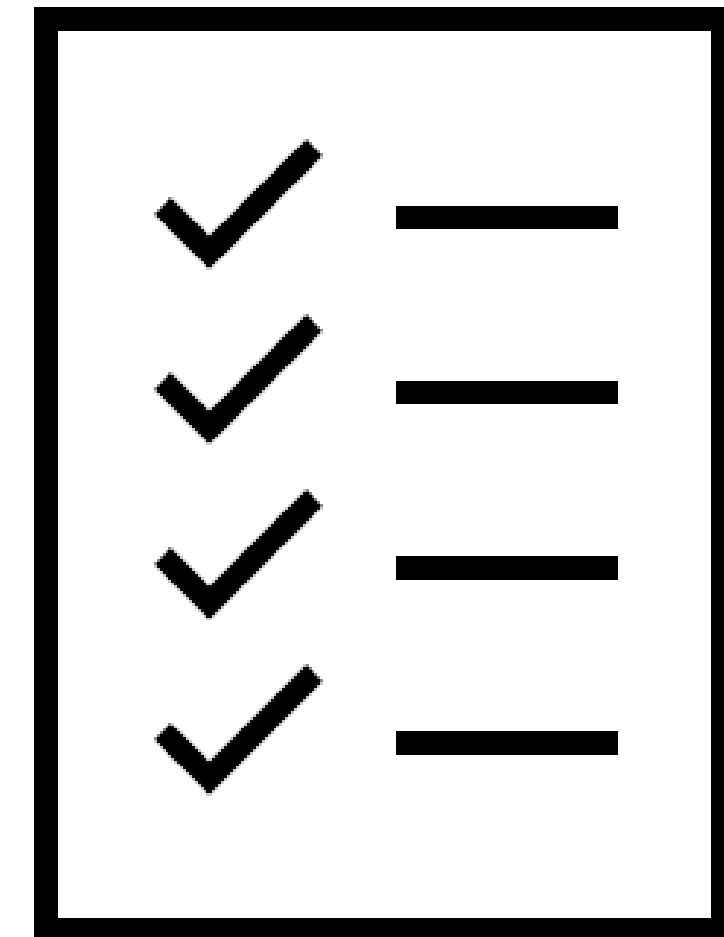
1. What does freedom mean to you as a basic human right?



Summary / key messages of the lecture



2. Should freedom of movement have borders?
3. Can the right to land be restricted?
4. Can an EU country facing persistent serious threats to public order or internal security reintroduce controls at its internal borders?
5. What arguments would you give for building border barriers?



Thank you for your attention

Any question? Doubts?

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