

# Problems of observing fundamental rights while performing official duties at the state border

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**Abstract.** *In the study, the author presented a theoretical definition of fundamental rights, as well as provided an insight into the fundamental rights of the main person. Next, the author has examined the fundamental right in the context of fulfilling the duties of border guard officials and the possible causes of conflict situations, as well as described the solutions to the causes (factors) of these conflict situations. At the end of the research, the author has put forward conclusions, as well as put forward proposals for improving the situation and qualitative observance of fundamental rights while performing official duties.*

**Keywords:** *fundamental rights, intercultural communication, legal regulation, State Border Guard officials.*

## Introduction

Human history shows that it is interwoven with interactions according to the most just attainable human type and conditions. In the center are the questions of what is just, what are natural rights, whether a person is capable of being free and others. The struggle for influence, power and property, characteristic of human evolution, encourages a deeper understanding of the peculiarities of human interaction (Nacionālā enciklopēdija - Pamattiesības, 2024). Fundamental rights are based on the idea that every person is a value and that the model of human governance should be one that aims to protect these values (Satversme, 1922).

Victims of human rights violations at borders find it difficult to seek redress in national courts. For victims, initiating legal proceedings is often not a priority. It is also challenging given their lack of legal knowledge, lack of means to bring a case and concerns about negative repercussions should they initiate a complaint. As most incidents occur in remote areas, often at night, there is usually scarce solid evidence (Guidance on investigating alleged ill-treatment at borders, 30.07.2024.).

In order to achieve the goal of the study, the following research tasks have been defined:

1. To study the literature on the observance of fundamental rights by border guards.
2. To study the external and internal regulatory acts affecting fundamental rights issues during the performance of official duties.
3. Draw conclusions and develop proposals for instilling fundamental rights in border guards while performing official duties.



The following research methods were used within the research: literature research method, analysis method, descriptive method, statistical and data processing method.

Research period - 2023 - August 2024.

### **Concept and importance of fundamental rights in modern society**

Fundamental rights are universal and inalienable rights that are granted to every human being regardless of their nationality, gender, race, religious belief, political affiliation or other characteristics. These rights are recognized and protected in international legal norms and national legal systems of countries. Fundamental rights are an essential basis for human dignity, freedom and equality, and they are necessary to ensure the full development and participation of a person in society.

The main fundamental rights include:

1. Right to life: Right to life is a fundamental human right that protects a person's life against unlawful destruction. These rights are enshrined in many international treaties, such as the UN Universal Declaration of Human Rights.

2. Right to liberty and security: Everyone has the right to liberty and security. This includes protection against unlawful arrest, detention or deportation, and the right to a fair and speedy trial.

3. Right to a fair trial: Everyone has the right to a fair and impartial trial by an independent and impartial tribunal. This includes the right to defence, fairness and equality before the court.

4. Freedom of speech and expression: This right provides individuals with the opportunity to freely express their views, thoughts and opinions, as well as the right to receive and disseminate information without interference from the state or others.

5. Freedom of religion and belief: Everyone has the right to freely choose, practice and change his religion or belief. This right also includes the freedom not to believe in any religion.

6. Inviolability of home and private life: Everyone has the right to privacy, privacy of home and privacy of correspondence. State intervention in these areas is allowed only in special and legally justified cases.

7. Equality before the law: All persons are equal before the law and have the right to equal protection under the law, regardless of gender, race, nationality, religion or other factors.

8. Right to education: Everyone has the right to education that is accessible and of high quality. These rights are essential to ensure personal development and the well-being of society.

9. Right to work and fair working conditions: Everyone has the right to choose a job and receive fair pay and decent working conditions. It also includes the right to rest and holidays.

10. Right to health and well-being: Everyone has the right to health care and living conditions conducive to his physical and mental well-being, including food, housing and clean water (Nacionālā enciklopēdija - Pamattiesības, 2024).

The classic function of fundamental rights is to ensure human rights against the state. It is the subjective right of a person to demand some specific action or inaction from the state, thereby limiting and directing the use of state power. The subject of fundamental rights is both a natural person and a legal entity under private law. Since the 21st century power relations and nature are changing, as non-state structures, such as technology companies, gain power over people due to the development of science and technology, new challenges arise for the understanding and protection of basic human rights (Protecting fundamental rights within the Union, 2016.). The function of fundamental rights can no longer be limited to limiting and directing state power, it occupies a more important place in defining the boundary in private law relations, namely in protection against the actions or inactions of other people. However, it is an open question whether advances in science and technology can reach a point where the understanding of human dignity, freedom, integrity and privacy as values underlying fundamental rights changes in such a way that there is a basis for a different definition of boundaries in human relations, which have significantly affected opportunities provided by technology and science.

Fundamental rights are interrelated and interdependent. Respecting and protecting them is essential to ensure a democratic and just society. States have an obligation to guarantee these rights to all citizens and to provide protection mechanisms in cases where they are violated. Similarly, in all state institutions, including the State Border Guard, officials must observe and respect basic human rights while performing their official duties (Cilvēka pamattiesības, 2024.)

### **The main reasons for a tense situation and violations of fundamental rights in the world and in Latvia.**

The European Union's Fundamental Rights Agency's July 30, 2024 Guidelines on Investigations of Possible Ill-treatment at Borders indicate that there are very few national investigations into incidents resulting in possible ill-treatment of migrants and refugees at borders. This is particularly true of the many credible reports of serious violations of fundamental rights at the

EU's external land and sea borders (Guidance on investigating alleged ill-treatment at borders, 30.07.2024.).

Very few national trials lead to convictions. The report also highlights that there is a sense of impunity among officials in many Member States.

Victims who have not obtained justice in national courts are increasingly seeking redress at the ECtHR. Currently, more than 30 cases related to alleged ill-treatment at the EU's external borders are awaiting a ruling at the ECtHR. Some of the cases the ECtHR has ruled so far point to systemic weaknesses in national investigations. Examples include: insufficient efforts to locate and interview victims and witnesses; obstruct the work of lawyers; lack of access to key evidence, such as border surveillance footage, body cams, GPS locations and internal communications of border guards, border police and police; and, more generally, giving greater weight to the testimony of officials than to that of victims and witnesses (Guidance on investigating alleged ill-treatment at borders, 30.07.2024.).

Global trends in people crossing borders, both legal and illegal, reflect global changes in economics, politics, technology and security. These trends are related to migration, trade, international conflict and human rights situations.

1. Legal border crossing:

a) Globalization and mobility.

Globalization has increased the movement of people between countries, as international trade, tourism and migration for work and education increase. Technological developments such as biometrics and digital visa applications have made border crossings more efficient and safer.

b) Visa facilitation.

Many countries have introduced visa-free regimes or e-visas to promote tourism and business development. This is especially common among the countries of the European Union and other large economies where the free movement of persons is encouraged.

c) Humanitarian migration.

Refugees and asylum seekers fleeing conflict, persecution or natural disasters legally cross borders in search of safety in other countries. International laws and conventions, such as the 1951 Refugee Convention, regulate the rights of such persons.

d) Economic migration

Economic migrants often cross borders legally to find better-paying work or to improve their quality of life. Many countries implement special migration programs that attract skilled workers or investors (Cilvēka pamattiesības (I) – likumdošana un tiesības uz dzīvību, 2020).

2. Illegal border crossing:

a) Human smuggling and human trafficking.

Human smuggling and trafficking is a global problem fueled by organized crime. Migrants, especially from countries with low economic development or regions of conflict, are often exploited and transported across borders illegally. These actions lead to serious human rights violations and security problems.

b) Stricter border control.

Many countries have stepped up border controls using technology such as drones, sensors and biometrics to reduce illegal entry. Because of these measures, migrants often seek more dangerous and difficult routes, which increase the number of tragic accidents.

c) Transit countries and migrant routes.

Migrants and refugees often use transit countries to reach their destination. These countries often lack the resources and infrastructure to adequately accommodate large numbers of migrants, which puts strain on local communities and increases the risk of human rights abuses.

d) Political and economic sanctions.

In some regions, illegal migration is on the rise due to political and economic sanctions that limit population movement and economic opportunities. Migrants are often forced to seek alternative, illegal routes to leave their country.

e) Pandemic impact.

The Covid-19 pandemic has had a significant impact on both legal and illegal border crossings. Many countries temporarily closed their borders, causing a sharp increase in illegal border crossings and creating new security and health problems (Cilvēka pamattiesības (I) – likumdošana un tiesības uz dzīvību, 2020).

Many countries use biometric technologies (for example, fingerprints, facial recognition) to strengthen border control and ensure effective identification of persons, new technologies and systems are being introduced that allow the professional activities of border guards to be performed more strictly, qualitatively and time-saving. It helps in the fight against human trafficking and illegal immigration (Nacionālā enciklopēdija - Pamattiesības, 2024).

International cooperation and training of border guards has become an important factor in improving the efficiency of border control. Many countries cooperate with international organizations to exchange information and experiences that contribute to the monitoring of both legal and illegal border crossings (Protecting fundamental rights within the Union, 2016.). Officials of the State Border Guard actively work and participate in various courses, seminars, projects and working groups of the international training agency Frontex. Knowledge is regularly updated and professional experience gained in connection with the observance of the fundamental

rights of individuals when crossing the state border. Officials of the State Border Guard also actively participate in various international events in the field of fundamental rights offered by other countries and other international agencies. Participation in this type of events continuously increases the professionalism and experience of State Border Guard officials and provides an opportunity to share this acquired international experience with colleagues at their duty stations.

These trends highlight the need for a balanced approach where security is ensured while respecting human rights and promoting international cooperation.

Respect for fundamental rights at the national border is a critical issue, as border guards face many difficult situations in which they have to balance national security with respect for human rights. Taking into account modern trends and also the threat from illegal immigration, the fight against illegal immigration has become one of the most recent topical issues in the performance of duties of State Border Guard officials.

Ineffective legal protection against widespread border violations poses a risk to the rule of law as defined in Article 2 of the Treaty on European Union. When implementing EU legislation on integrated border management and regulating the treatment of persons detained in connection with illegal crossing of the EU's external border, the EU and Member States should pay the utmost attention to ensuring that all justified violations of rights are investigated quickly and effectively. The Schengen Evaluation and Monitoring Mechanism is an important monitoring tool in this regard. Border management authorities not only in Latvia but also in other European countries must take preventive actions. These include basic rights training, clear instructions on zero tolerance for abusive behavior, wearing name or number tags to identify individual officers on patrol, and increased basic rights monitoring of border operations (Guidance on investigating alleged ill-treatment at borders, 2024.).

Some of the fundamental rights issues that may arise while performing official duties at the national border are:

1. Rights of asylum seekers: border guards may encounter asylum seekers. International and national laws provide for the right to seek asylum, and it is important that these persons are not deported to countries where their life or freedom would be threatened (non-refoulement principles) (Protecting fundamental rights within the Union, 2016.). However, border guards may sometimes face pressures or restrictions that prevent them from fully exercising these rights. Border guards often have to deal with situations where persons try to lie about threats in their home country or other factors mentioned in

various international and national regulatory acts in order to grant asylum to a person.

2. Combating human trafficking and human smuggling. Victims of human trafficking are often forced to cross national borders (Cilvēka pamattiesības (II) – ierobežojamas, lai aizsargātu citu cilvēku tiesības, 2020.). Border guards must be able to recognize such cases and ensure the protection of victims and violations of their rights. However, lack of resources and training can make effective action difficult. Officials of the state border guard, while performing their duties at the border, often find cases of illegal border crossing. Combating human trafficking and human smuggling is made more difficult by the fact that the State Border Guard officials, detecting these cases at the scene and communicating with the violators, cannot fully clarify all the necessary circumstances related to the case, cases of human trafficking. are rarely detected also because persons who have illegally crossed the state border are often afraid of the consequences, responsibility and the organizers of human trafficking themselves. Compared to other countries, such as Estonia, where all persons who are escorted across the country's border in one way or another are identified as victims of human trafficking, in Latvia it is mandatory to prove the fact of "exploitation" in order for the case to be considered human trafficking. Consequently, for evidentiary purposes, private individuals are often required to ask private questions, which may result in these questions being discriminatory in some way.

3. Prevention of abuse and violence: In some cases, there have been reports of behavior by border guards that violates human rights, such as excessive use of force or inhumane treatment of detainees. This may include physical abuse, verbal abuse or inadequate conditions in detention centres (Cilvēka pamattiesības (II) – ierobežojamas, lai aizsargātu citu cilvēku tiesības, 2020). Mostly also in several videos and voice recordings of border guards seen in the mass media, where non-normative vocabulary and possible violent treatment of persons crossing the State border can be treated as a violation of fundamental rights, because State Border Guard officials are not really trained and are not competent to act in conditions of increased stress.

4. Right to privacy: When checking people's documents, luggage and other private items, the person's right to privacy must be respected (Cilvēka pamattiesības (II) – ierobežojamas, lai aizsargātu citu cilvēku tiesības, 2020). Border guards must be trained to carry out these checks in accordance with the law without conflicting with a person's right to privacy. In this factor, it could be mentioned that violations are also often observed, because it has already become a routine for border

guards to express some incorrect sentence regarding the private life of individuals without realizing that in today's society, all of this can be recorded.

5. Transparency and fairness of the procedure: It is essential that all measures taken by the border guards, which affect the basic rights of the individual, are transparent, legally justified and fair (Cilvēka pamattiesības, 2024.). This includes the right to a lawyer, information about the reasons for the arrest, as well as the right to a fair and speedy trial. In addition to this and the above-mentioned point, it could be added that a very positive factor is the introduction of the so-called "self-monitoring" and video recorders in the performance of official duties, which provides much more discipline to State Border Guard officials and makes the control of officials more convenient and objective.

6. Discrimination and Prejudice: Border guards may sometimes act in a discriminatory manner, either unconsciously or intentionally, based on a person's nationality, race, religion, or other factors. This can lead to unfair treatment or even violations of fundamental rights (Cilvēka pamattiesības, 2024.). This factor also depends more or less very individually on the inner world of each official, prejudices and the influence of others, which often also serves as a reason for a prejudiced and discriminatory attitude towards the border crosser in the explanations. In the author's view, this kind of problem could be prevented by introducing as many young border guards as possible during training and practice to situations where the border guard should objectively assess any conflict situations between border crossing guards of different nationalities, races and skin colors.

If national border guards violate the fundamental rights protection measures provided for in the Schengen Borders Code or the European Border and Coast Guard Regulation, the Member State is responsible for conducting an investigation based on the rules and procedures established by national legislation. The obligation of Member States to carry out effective investigations in relation to allegations of violations of fundamental rights derives from Article 19 of the Treaty on European Union. It requires Member States to provide legal remedies to ensure effective legal protection in areas covered by EU law (Guidance on investigating alleged ill-treatment at borders, 2024.).

Clear regulations, proper training and continuous monitoring are needed to address these issues. International organizations such as the UN and the European Union often develop guidelines and conduct training to help countries and their border guards better respect human rights.



The overall statistics on violations of fundamental rights committed by border guards or border police officers in the performance of their official duties are quite meager. This is possible, explained by the fact that such cases contain personal data information in accordance with the requirements of the type of personal data regulation, this information is not deleted and reflected in the statistical protection indicators of the entire institution. While training in the international FRONTEX, the officials of its visiting department that with the help of non-governmental organizations, the agency received 4 complaints in 2022 and 3 complaints in 2023 about violations of fundamental rights committed by the State Border Guard official. But it was also pointed out the fact that each case must be evaluated individually and objectively, therefore the fact of the committed violation was not clear and proven.

If the EU finds that Member States do not investigate claims of fundamental rights during border management, it can consider this to be a shortcoming in the implementation of the EU's Schengen rules. For example, under the Schengen Evaluation and Monitoring Mechanism. The Council of the EU recommended that Greece strengthen the fundamental rights component of the governance framework for national border management. It also recommended that Greece carry out a thorough and swift investigation into the reported serious allegations of ill-treatment (Guidance on investigating alleged ill-treatment at borders, 2024).

### **Conclusions and suggestions**

It is not uncommon for State Border Guard officials to carry out actions that many institutions, including non-governmental organizations, treat in the mass media as violations of fundamental rights while performing their official duties. Also, while attending various types and levels of training at the international training agency FRONTEX, the author of the study has encountered and been addressed by the officials of the fundamental rights department of the FRONTEX agency about various situations of violations of fundamental rights, about which complaints have been received from border crossing persons. By comparing complaints that are publicly available, his personal experience, the opinion of non-governmental organizations, as well as the principles of fundamental rights, the author can draw the following conclusions:

1. Situations often arise in the state border guard in which, due to various circumstances, border guards violate or are very close to violating fundamental rights;

2. The above-mentioned situations arise or may arise due to circumstances dependent on or independent of the border guard, which are

often cases when border crossing persons, due to unclear circumstances, become aggressive, or even cross the border with the aim of provoking conflict situations with state officials;

3. When training new border guards and raising the qualifications of existing border guards, it would be useful and necessary to model these conflict situations so that qualified persons (psychologists) could evaluate officials and assess the psychological and emotional stability of officials in solving and responding to conflict situations.

At the end of the research, the author has put forward the following proposals:

1. In order to reduce the possibility of violations of fundamental rights in the course of official duties, it would be useful for State Border Guard officials to create as many simulations of conflict situations as possible, so that both lecturers and specialized specialists (psychologists) could carry out psychological and analysis of emotional stability, as well as to detect in time the officials who are unable to react adequately and professionally in the mentioned conflict situations.
2. The State Border Guard, at the institutional level, should create and develop closer cooperation with the Office of the Ombudsman of Latvia, as well as with non-governmental organizations that operate and receive complaints in cases of violations of fundamental rights, as a result of which it would be easier to identify the problems that have arisen in the institution in the field of violations of fundamental rights and to find a more successful solution to these problems.

## References

1. Cilvēka pamattiesības (I) – likumdošana un tiesības uz dzīvību. (2020). Retrieved August 26, 2024, from <https://lvportals.lv/skaidrojumi/321164-cilveka-pamattiesibas-i-likumdosana-un-tiesibas-uz-dzivibu-2020>
2. Cilvēka pamattiesības (II) – ierobežojamas, lai aizsargātu citu cilvēku tiesības. (2020). Retrieved August 29, 2024, from <https://lvportals.lv/skaidrojumi/321250-cilveka-pamattiesibas-ii-ierobejojamas-lai-aizsargatu-citu-cilveku-tiesibas-2020>
3. Cilvēka pamattiesības. (2024). Retrieved August 21, 2024, from <https://www.tiesibsargs.lv/theme/cilveka-pamattiesibas/>
4. Guidance on investigating alleged ill-treatment at borders. (2024, July 30). Retrieved September 4, 2024, from <https://fra.europa.eu/en/publication/2024/guidance-investigating-alleged-ill-treatment-borders?page=2#read-online>
5. Nacionālā enciklopēdija – Pamattiesības. (2024). Retrieved from <https://enciklopedija.lv/skirklis/184185-pamatties%C4%ABbas>

6. Protecting fundamental rights within the Union. (2016). Retrieved September 2, 2024, from <https://www.europarl.europa.eu/about-parliament/lv/democracy-and-human-rights/fundamental-rights-in-the-eu>
7. Satversme. (1922). Retrieved August 22, 2024, from <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme>