

Ref: CommHR/MOF/sf 067-2026

Marcin KIERWIŃSKI

Minister of Interior and Administration of the Republic of Poland

Strasbourg, 1 April 2026

Dear Minister,

I write further to my exchange of letters with the Polish authorities concerning legislation providing for the temporary suspension of the right to asylum at the Poland-Belarus border. In my previous letters, I acknowledged the challenges posed by the instrumentalisation of migration and the destabilising actions of the Belarusian authorities. At the same time, I stressed that the practice of summary returns of persons across the border to Belarus, without an individual assessment, carries a risk of violations of the rights protected by the European Convention on Human Rights.

In this connection, I am concerned about reports that the Polish authorities apply the legislation to the effect that access to asylum is suspended in every case in which border guards consider that the person has crossed the Poland-Belarus border irregularly. This has reportedly even included persons who had moved to, or attempted to move to another EU member state, such as Germany, and were then returned or refused at Poland's border.

In this regard, I note information about the recent removal of a group of Afghan nationals from Poland to Afghanistan, who were not provided with an opportunity to lodge asylum applications. As I understand at least some of them were not stopped at the Poland-Belarus border but expressed their wish to apply for asylum elsewhere in the country. I have also noted reports that in November 2025, the European Border and Coast Guard Agency (Frontex) suspended a planned removal flight of Pakistani nationals from Poland, following concerns that Poland violated procedural safeguards prohibiting removal without an individual assessment of a risk of persecution in the country of origin.

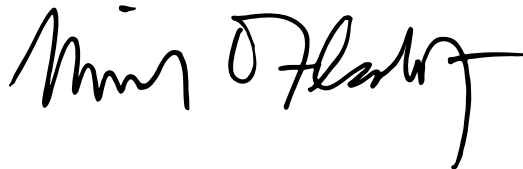
With regard to these practices, I recall that the European Court of Human Rights (the Court) has consistently held that the refoulement prohibition deriving from Article 3 ECHR requires states to carry out a rigorous and individualised assessment of the risks faced by each person prior to removal. The Court has further emphasised that persons must have a genuine and effective possibility to submit arguments against their expulsion and to have their claims properly examined by the competent authorities in view of their individual circumstances. This applies to all persons within the jurisdiction of a member state, irrespective of their migration status or the circumstances of their entry.

I am further concerned that law and practice in relation to challenges to removal decisions may not be in line with requirements of the right to an effective remedy under Article 13 ECHR. The Court has held that remedies in relation to any claim that there are substantial grounds for fearing a real risk of treatment breaching Article 3 ECHR should have automatic suspensive effect. I understand that the current legal framework in Poland does not meet this requirement. Furthermore, although individuals can apply to domestic courts to have the execution of their removal suspended, this is reportedly sometimes hampered by delays or non-submission of the case file by border control authorities thus preventing the courts from making a timely decision. Concerns have also been raised with me that difficulties in accessing legal assistance, and very late notification of the timing of the removal may prevent individuals from accessing remedies.

Taking account of these concerns, I would welcome information on the relevant measures taken by the Polish authorities to ensure compliance with the ECHR in its migration management.

I remain ready to continue dialogue with the Polish authorities on these matters with a view to ensuring full respect for human rights standards while addressing the challenges related to migration management.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael O'Flaherty', with a stylized, cursive script.

Michael O'Flaherty