

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

Date: 1 May 2025

Index Number: EUR 37/9322/2025

# POLAND: LAW “SUSPENDING” ASYLUM CLAIMS IS A FLAGRANT VIOLATION OF INTERNATIONAL LAW AND POSES A SERIOUS THREAT TO THE RIGHTS OF REFUGEES AND MIGRANTS

On 27 March 2025, the Prime Minister of Poland, Donald Tusk, signed off an order of the Council of Ministers introducing a 60-day suspension of the right to submit applications for international protection at the country's borders with Belarus.<sup>1</sup> The order triggers the new powers granted to the Polish authorities under the “*Law on amending the Act on granting protection to foreigners on the territory of the Republic of Poland*” (hereinafter “the new Polish law” or “the new law”), adopted by the Polish Parliament on 21 February 2025, which allows the Government to temporarily limit the acceptance of international protection applications in situation of alleged “instrumentalization” of migration movements.<sup>2</sup>

The concept of “instrumentalized” migration presents the facilitation of migration movements by a third country as a tactic of “hybrid warfare”. It has been invoked since 2021 by Poland, Latvia, Lithuania and more recently by Finland, as an excuse to adopt damaging and regressive migration policies and practices. Like similar legislation in Lithuania,<sup>3</sup> Latvia,<sup>4</sup> and Finland,<sup>5</sup> the new Polish legislation does nothing to protect people from the actions of Belarus against refugees and migrants,<sup>6</sup> but rather compounds the harm done to them by removing people's rights to seek asylum and exposing them to a risk of refoulement by the Polish authorities, including as a result of violent summary forced returns (“pushbacks”), which have been well documented by Amnesty International<sup>7</sup> and others at this border.<sup>8</sup>

The powers introduced by the new Polish law effectively codify the carrying out of unlawful forced returns (“pushbacks”) at the border, by empowering border guards to disregard asylum applications without consideration for people's individual circumstances. They are inconsistent and incompatible with the obligations of international law binding on Poland, as well as with the Polish constitution, and pose a threat to the lives and human rights of people wishing to apply for asylum at the border.

<sup>1</sup> Order of the Council of Ministers, “on the temporary restriction of the right to submit an application for international protection”, item no. 390, 27 March 2025, at: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20250000390>

<sup>2</sup> Bill no. 924 “amending the Act on granting protection to foreigners within the territory of the Republic of Poland”, at: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20250000389/O/D20250389.pdf>. The law also introduces an expanded definition of instrumentalization, discussed later in the text, as well as “additional grounds for depriving refugee status of foreigners who pose a threat to state security and foreigners convicted of a particularly serious crime by a final judgment”.

<sup>3</sup> Amnesty International, Lithuania: Legalizing illegal pushbacks gives green-light to torture, 20 April 2023, [www.amnesty.org/en/latest/news/2023/04/lithuania-legalizing-illegal-pushbacks-gives-green-light-to-torture/](https://www.amnesty.org/en/latest/news/2023/04/lithuania-legalizing-illegal-pushbacks-gives-green-light-to-torture/)

<sup>4</sup> Amnesty International, Latvia: Legal amendments would empower border guards to torture and push back migrants and refugees, 21 June 2023, [www.amnesty.org/en/latest/news/2023/06/latvia-legal-amendments-would-empower-border-guards-to-torture-and-push-back-migrants-and-refugees/](https://www.amnesty.org/en/latest/news/2023/06/latvia-legal-amendments-would-empower-border-guards-to-torture-and-push-back-migrants-and-refugees/)

<sup>5</sup> Amnesty International, Finland: Emergency law on migration inconsistent with EU law and must be “rigorously scrutinized”, 12 July 2024, [www.amnesty.org/en/latest/press-release/2024/07/finland-emergency-law-on-migration-inconsistent-with-eu-law-and-must-be-rigorously-scrutinized/](https://www.amnesty.org/en/latest/press-release/2024/07/finland-emergency-law-on-migration-inconsistent-with-eu-law-and-must-be-rigorously-scrutinized/)

<sup>6</sup> Amnesty International, Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum seekers and migrants facing pushbacks from the EU, 20 December 2021, [www.amnesty.org/en/latest/news/2021/12/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu/](https://www.amnesty.org/en/latest/news/2021/12/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu/)

<sup>7</sup> Amnesty International, Poland: Cruelty Not Compassion, at Europe's Other Borders, 11 April 2022, [www.amnesty.org/en/documents/eur37/5460/2022/en/](https://www.amnesty.org/en/documents/eur37/5460/2022/en/)

<sup>8</sup> Human Rights Watch, Poland: Brutal Pushbacks at Belarus Border - Border Guards Use Force, Deny Access to Asylum Procedures, 10 December 2024, [www.hrw.org/news/2024/12/10/poland-brutal-pushbacks-belarus-border](https://www.hrw.org/news/2024/12/10/poland-brutal-pushbacks-belarus-border); Oxfam, Egala, Trapped, Pushed Back and Tortured: Poland's Crackdown on Refugees at Europe's Border, 18 March 2025, [www.oxfam.org/en/press-releases/trapped-pushed-back-and-tortured-polands-crackdown-refugees-europes-border](https://www.oxfam.org/en/press-releases/trapped-pushed-back-and-tortured-polands-crackdown-refugees-europes-border)

The Polish legislation is also inconsistent with the new EU crisis and force majeure Regulation,<sup>9</sup> grossly exceeding the powers granted to member states under EU law in situations of alleged “instrumentalization”.

The present document is an analysis of the principal human rights issues raised by the temporary suspension of the right to seek asylum under the new Polish law.

Amnesty International calls upon Poland to immediately repeal both the decision to temporarily suspend the right to seek asylum and the *Law on amending the Act on granting protection to foreigners on the territory of the Republic of Poland* and fully reinstate conditions that ensure human rights and the principle of non-*refoulement* at the border with Belarus. The EU Commission must urgently review and publish its assessment of the compliance of the Polish law with EU law and finally launch infringement proceedings against the country for its longstanding violations of the rights of refugees and migrants.

## **POLAND'S ONGOING VIOLATIONS OF THE RIGHTS OF PEOPLE AT BORDERS SINCE 2021**

As evidenced in Amnesty International's 2022 research,<sup>10</sup> consistent with more recent research by reputable actors including Human Rights Watch, Oxfam and others,<sup>11</sup> from at least the summer of 2021, Poland has been violating the rights of people on the move at the Polish-Belarusian border by adopting a series of measures aiming to prevent people from accessing its territory and conducting unlawful and forced returns at the border. Poland has implemented measures to prevent people from entering the country's territory: it erected razor-wire fences, declared a state of emergency, sent military and territorial defense forces to the border, passed legislation that “codified” summary returns without procedural guarantees (“pushbacks”), denied people access to asylum, and blocked humanitarian organizations from delivering life-saving aid to those stranded in the border area.<sup>12</sup> Those measures have had devastating consequences on people on the move. From 2021 until the end of 2023 at least 55 migrants and asylum seekers were reported to have died due to lack of medical care, malnutrition and exhaustion.<sup>13</sup> With virtually no effort on the part of the Polish authorities to meet the needs of those crossing the Polish-Belarusian border, the burden of providing life-saving assistance fell to residents, activists, and volunteers. People tried to help organize cooperation networks and collected a significant amount of relief supplies, including food, clothing, and medical kits. A network of pro bono lawyers and volunteers helps people exercise their rights, including applying for international protection.<sup>14</sup> Reports indicate that the Polish authorities have been hostile to those efforts and in some instances human rights defenders have been prosecuted.<sup>15</sup>

## **THE LAW VIOLATES THE PRINCIPLE OF NON-REFOULEMENT AND THE RIGHT TO ASYLUM**

The new Polish law introduces the possibility to “temporarily limit” the right to make asylum applications if all the following conditions apply: “instrumentalization takes place”; “the actions taken within the framework of instrumentalization constitute a serious and real threat to the security of the state or society”; the temporary suspension of the right to seek asylum “is essential to eliminate the threats” and “other measures are not sufficient” to this end.<sup>16</sup> The law allows a

<sup>9</sup> Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147, <https://eur-lex.europa.eu/eli/reg/2024/1359/oj/eng>

<sup>10</sup> Amnesty International, Poland: Cruelty Not Compassion at Europe's Other Borders (EUR 37/5460/2022), 11 April 2022, <https://www.amnesty.org/en/documents/eur37/5460/2022/en/>

<sup>11</sup> Cited in full earlier in the text.

<sup>12</sup> Language adapted from: Amnesty International, Poland: Cruelty Not Compassion at Europe's Other Borders, above in full.

<sup>13</sup> Amnesty International, The State of the World's Human Rights: April 2024, 23 April 2024

Index Number: POL 10/7200/2024, p. 309, [www.amnesty.org/en/documents/pol10/7200/2024/en/](https://www.amnesty.org/en/documents/pol10/7200/2024/en/)

<sup>14</sup> Language adapted from: Amnesty International, Poland: Cruelty Not Compassion at Europe's Other Borders, above in full.

<sup>15</sup> Amnesty International Poland, Amicus Curiae to the Lubin District's Court, 15 December 2023, <https://www.amnesty.org.pl/wp-content/uploads/2023/12/Amicus-curiae-15.12.2023.pdf>; Amnesty International, Poland: Cruelty Not Compassion, at Europe's Other Borders, in full above. See also: Human Rights First, Five activists face trial in Poland after helping migrants, 20 January 2025, <https://humanrightsfirst.org/library/five-activists-face-trial-in-poland-after-helping-migrants/>; PICUM, Cases of criminalisation of migration and solidarity in the EU in 2023 <https://picum.org/wp-content/uploads/2024/04/Cases-of-criminalisation-of-migration-and-solidarity-in-the-EU-in-2023.pdf>

<sup>16</sup> It should be noted that the “justification” (“Uzasadnienie”) accompanying the legislative proposal does not unpack which alternative means have been considered by the Polish authorities ahead of concluding that the temporary suspension of asylum would be the most

suspension of a maximum of 60 days, extendable under certain conditions by a further 60 days if “the reasons for introducing this restriction have not ceased”.<sup>17</sup>

By way of the temporary suspension invoked on 27 March, the right to seek asylum was suspended for 60 days across the entirety of the border between Poland and Belarus, which stretches along over 400 km. As a result, border guards can effectively turn back people approaching this border, without carrying out an individualized assessment of their circumstances or protection claims, in violation of the principle of non-refoulement, which requires states not to return a person in any manner whatsoever to a place where they would be at real risk of serious human rights violations.<sup>18</sup> The principle tolerates no exception, including based on the conduct of people targeted by return measures or their way of travel. Importantly, as noted by UNHCR, the principle of non-refoulement does not cease to apply in situations of alleged “instrumentalization” or in presence of security concerns.<sup>19</sup>

The prohibition of *refoulement* imposes a procedural requirement upon states to assess the circumstances of each individual case to establish whether such risk exists. For a violation of this principle to materialize, it is not necessary for the violations to take place, but it is sufficient that the returning state has failed to adequately assess the existence of such risk.<sup>20</sup> As recently recalled by UNHCR in their comments to the new Polish law, access to an individualized asylum procedure is required for a state to fulfil the obligation of non-refoulement.<sup>21</sup> With the right to seek asylum at the Poland-Belarus border being generally suspended as a result of the new law, Poland is unable to guarantee an adequate and individualized assessment of the existence of a risk of harm upon return.

The latest suspension of the right to seek asylum in Poland affects the entirety of the land border, including the only open border crossing point,<sup>22</sup> meaning that people will have no recourse to alternative avenues to seek protection in the affected area. Returns conducted by the Polish authorities at this border, under the above circumstances, can also infringe the prohibition of collective expulsions. As put by UNHCR in their comments to the new Polish law:

“[d]enying an asylum-seeker access to territory at a closed land border point, in an area between States’ border facilities (“no man’s land”) or between official border points (at the “green border”) amounts to refoulement if the authorities fail to implement arrangements to ensure that the asylum-seeker can safely reach areas where asylum applications will be accepted without risk of refoulement...as of December 2024, only one crossing point remains open between Poland and Belarus along a more than 400km long border, with reports of individuals approaching this border point and expressing their intention to claim asylum not being permitted entry to Poland in some instances”.<sup>23</sup>

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effective solution. See: Draft bill amending the Act on granting protection to foreigners within the territory of the Republic of Poland, 19 December 2024, <https://orka.sejm.gov.pl/Druki10ka.nsf/O/BD1D81C1741E246AC1258C03004A7F5C/%24File/924.pdf>

<sup>17</sup> Art. 1 section 4 of the new law, introducing Articles 33a–33c.

<sup>18</sup> The principle of *non-refoulement*, which is a pillar of international human rights law, with its regulatory basis in Article 33 (1) of the Convention relating to the Status of Refugees (Refugee Convention), Article 3 in conjunction with Article 13 of the European Convention on Human Rights, Article 19(2) of the EU Charter of Fundamental Rights, and Article 3(1) of the UN Convention of December 10, 1984, against torture and other cruel, inhuman or degrading treatment or punishment.

<sup>19</sup> UN High Commissioner for Refugees (UNHCR), *Legal considerations on asylum and non-refoulement in the context of ‘instrumentalization’*, 26 September 2024, <https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148736>, para. 7.

<sup>20</sup> ECHR, Key Theme - Article 4 of Protocol No. 4 and Immigration, Summary returns of migrants and/or asylum-seekers (“push-backs”) and related case scenarios, Last updated: 28/02/2025, at: <https://ks.echr.coe.int/documents/d/echr-ks/summary-returns-of-migrants-and-or-asylum-seekers-push-backs-and-related-case-scenarios>; Amnesty International, Fundamental standards for the protection of refugees, April 1993, <https://www.amnesty.org/es/wp-content/uploads/2021/06/pol330031993en.pdf>

<sup>21</sup> As noted by UNHCR: “To ensure protection against refoulement, all State parties are required to ensure that persons seeking asylum have access to procedures which allow for the examination of their claims. Therefore, States must ensure access to asylum procedures in a protection-sensitive manner, including in times of emergency”. UNHCR, UNHCR Comments and Observations on the draft law amending the Act on Granting Protection to Foreigners in the territory of the Republic of Poland, para. 11, 12 December 2024, <https://www.refworld.org/legal/natlegcomments/unhcr/2024/en/149257>

<sup>22</sup> UNHCR, UNHCR Comments and Observations on the draft law, above in full.

<sup>23</sup> UNHCR, UNHCR Comments and Observations on the draft law, above in full, p. 4. Similar concerns have been raised by Poland’s Commissioner for Human Rights who, while noting that the road crossing in Terespol is the only open border crossing, observes that based on information received by its office, “applications for international protection are not always accepted from persons expressing a clear will to submit them” (unofficial translation), at: Poland’s Commissioner for Human Rights, Opinion on the Act amending the Act on granting protection to foreigners within the territory of the Republic of Poland, 9 March 2025, p. 17, [https://bip.brpo.gov.pl/sites/default/files/2025-03/Do\\_Senatu\\_cudzoziemcy\\_ochrona\\_zawieszenie\\_ustawa\\_9\\_03\\_2025.pdf](https://bip.brpo.gov.pl/sites/default/files/2025-03/Do_Senatu_cudzoziemcy_ochrona_zawieszenie_ustawa_9_03_2025.pdf), citing: Poland’s Commissioner for Human Rights, The Commissioner for Human Rights intervenes in the case of a family from Sudan not

UNHCR also highlights a risk that the new law might also impact the right to family unity as a result of the introduction of Article 33c, which suspends the possibility for families to submit joint applications in the context of the temporary suspension of asylum.<sup>24</sup>

On top of the procedural considerations made above, it must be noted that returns to Belarus also raise issues in terms of the substantive aspects of the prohibition of *refoulement*, on account of the risks that returnees could face in the country. In 2021 Amnesty International published evidence of the fact that Belarusian authorities had exposed asylum seekers and migrants trying to enter the EU to horrific torture or other ill-treatment, inhumane conditions, extortion and other abuse.<sup>25</sup> Human Rights Watch reported similar abuses in November 2021.<sup>26</sup>

## THE HUMANITARIAN EXCEPTIONS INTRODUCED IN THE NEW LAW FALL SHORT OF INTERNATIONAL LAW STANDARDS

The new law claims compliance with human rights law by introducing exceptions to the suspension of asylum applications in case of claims made by people belonging to what the law defines as “sensitive groups”. This category, regulated under art. 33b, includes unaccompanied minors, pregnant women, people “who may require special treatment” due to age and health, citizens of the country alleged to be using instrumentalization (which in this case means Belarusian nationals), as well as people in relation to whom, based on the judgement of the border guard, there are circumstances “clearly showing” a real risk of serious harm in the country from which they directly came to Poland (which, in the case of the current suspension, means Belarus). According to the impact assessment accompanying the legislative proposal, the decision on whether a person belongs to a “sensitive category” is left to the border guard.<sup>27</sup>

The exceptions introduced under art. 33b are inconsistent with international law and seek to unduly restrict Poland’s non-derogable obligations under the principle of non-*refoulement*. UNHCR observes that the exceptions “are not consistent with either the inclusion clauses contained in Article 1 or the principle of non-*refoulement* in Article 33(1) of the 1951 Convention”.<sup>28</sup> While asylum-seekers experiencing special reception needs, such as those listed in the law should receive dedicated forms of assistance in the context of the asylum procedure (and their needs can in some cases be relevant to assessing a risk of *refoulement*), their protection should not go to the detriment of the state’s obligations of non-*refoulement*, which is an absolute principle and applies to all irrespective of personal characteristics.<sup>29</sup>

The ability of this provision to produce protective effects at a practical level is also unclear. The assessment of people’s needs and conditions of vulnerabilities requires specially trained personnel as well as adequate time. It is highly questionable that such an assessment could be adequately conducted by border guards in the context of their brief interactions with people at the border, upon attempting to cross the border into Poland.<sup>30</sup>

Art. 33b includes in the list of “sensitive groups” people whom the border guard considers to be “at risk of serious harm in the country from which they directly came to Poland”, despite this category otherwise mainly consisting of people experiencing different humanitarian needs (unaccompanied minors, pregnant women, people “who may require special

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being allowed to enter Poland at the border crossing in Terespol, 8 January 2025, <https://bip.brpo.gov.pl/pl/content/rpo-rodzina-sudan-terespol-przejscie-graniczne-sg>

<sup>24</sup> UNHCR, UNHCR Comments and Observations on the draft law, above in full, paras. 22-24.

<sup>25</sup> Amnesty International, Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum seekers and migrants facing pushbacks from the EU, 20 December 2021, above in full.

<sup>26</sup> Human Rights Watch, 24 November 2021, “Die Here or Go to Poland” - Belarus’ and Poland’s Shared Responsibility for Border Abuses, <https://www.hrw.org/report/2021/11/24/die-here-or-go-poland/belarus-and-polands-shared-responsibility-border-abuses>

<sup>27</sup> Draft bill amending the Act on granting protection to foreigners within the territory of the Republic of Poland, above in full.

<sup>28</sup> UNHCR, UNHCR Comments and Observations on the draft law, above in full, p. 2.

<sup>29</sup> In its comments to the law UNHCR states: “While UNHCR appreciates the attention afforded to vulnerable asylum-seekers in the Bill [...] there is no basis in international law for limiting the application of the principle of non-*refoulement* or access to asylum procedures for the purposes of determining international protection needs to people who exhibit specific vulnerabilities that are readily apparent. [...] The prohibition of *refoulement* applies to all people without discrimination, including refugees, asylum-seekers, and others in need of international protection or at real risk of serious harm if removed.”, UNHCR, UNHCR Comments and Observations on the draft law, above in full, para 16.

<sup>30</sup> See similar considerations in: Amnesty International, Finland: Emergency law on migration is a “green light for violence and pushbacks at the border, 10 June 2024, [www.amnesty.org/en/latest/news/2024/06/finland-emergency-law-on-migration-is-a-green-light-for-violence-and-pushbacks-at-the-border/#:~:text=It%20risks%20serving%20as%20a,prevent%20entry%2C%20including%20by%20force](https://www.amnesty.org/en/latest/news/2024/06/finland-emergency-law-on-migration-is-a-green-light-for-violence-and-pushbacks-at-the-border/#:~:text=It%20risks%20serving%20as%20a,prevent%20entry%2C%20including%20by%20force)

treatment” due to age and health). There are no grounds in international law allowing Poland to limit its asylum and non-*refoulement* obligations to only protect people who would be at risk in Belarus, but not those who may be at risk in their country of origin or in third countries. The principle of non-*refoulement* extends to the prohibition of “chain-refoulement”, which occurs when one country forcibly sends someone to another country that subsequently sends them to a third country where they risk serious harm.<sup>31</sup> As such, Poland is required to not only consider whether people who are returned at the border would experience risks of serious violations in Belarus, but also whether Belarus would place them at risk of being subsequently returned to a country where they would be at risk. Secondly, to identify whether a person would be at risk in Belarus or elsewhere, it is essential for their individual circumstances to be adequately assessed. As discussed above, with the right to make asylum applications being generally suspended at the Polish border with Belarus, Poland is not able to fulfil this condition and is therefore acting at variance with the principle of non-*refoulement*.

Under Article 33b section 3, the new law specifies that the border guard would not carry the examination of whether a person belongs to a “sensitive group” in cases where “the border is crossed with the use of force and in cooperation with other people”. This provision raises further concerns as it not only strengthens the inconsistency of the new law with the principle of non-*refoulement* (which applies irrespective of the conduct of people targeted by a return measure), but it creates a real risk that even people with clear humanitarian needs would not be identified and cared for adequately where the border guards find that force is being used.<sup>32</sup>

Finally, the role assigned to the border guards under the new law is also cause for serious concern. EU law establishes clear roles for the authorities who are competent for different phases of the asylum decision, differentiating between, among others, those who are competent for receiving asylum applications, and those who are competent for examining the admissibility and merits of a claim.<sup>33</sup> The latter are defined as “determining authorities” and are competent for the examination of an applicant’s claim, through a personal interview of the applicant and based on the examination of relevant information and evidence, including evidence which the competent authority can request to produce, such as a fresh medical examination.<sup>34</sup> As proof of the complex nature of this assessment, EU law establishes that, under the ordinary procedure, member states must conclude the examination of the merits of an application within six months, which can be extended under certain circumstances.<sup>35</sup>

In Poland, the authority competent for assessing the merits of asylum applications is the Office for Foreigners (OFF),<sup>36</sup> whereas the border guard is responsible for receiving and transmitting the applications.<sup>37</sup> By empowering the border guard to assess if there are “circumstances” indicating a risk of harm in Belarus, the new law *de facto* expands their responsibilities, allowing them to conduct a sort of preliminary assessment of a person’s protection needs, which in turn determines whether a person can make an asylum claim.<sup>38</sup> The granting of these powers to the border guard has no foundation under EU or international law and contradicts the rule under Article 4 of Regulation 2024/1348,<sup>39</sup> whereby “the determining authority”, i.e. the OFF, “shall be the only authority, during the administrative procedure, with the power to decide on the admissibility and the merits of an application for international protection.”<sup>40</sup>

<sup>31</sup> Amnesty International, USA: “They did not treat us like people”: Race and migration-related torture and other ill-treatment of Haitians seeking safety in the USA, 22 September 2022, [www.amnesty.org/en/wp-content/uploads/2022/09/AMR3659732022ENGLISH.pdf](https://www.amnesty.org/en/wp-content/uploads/2022/09/AMR3659732022ENGLISH.pdf)

<sup>32</sup> On this see also the opinion of the Polish Senate’s Legislative Bureau, which observes that the new law does not specify how the authorities would document people’s attempts to make an asylum application, or a refusal to accept an asylum application from someone belonging to a “sensitive group”, in cases where “the border is crossed with the use of force and in cooperation with other people”, as per Art. 33b. Polish Senate Legislative Bureau, Opinion on the Act amending the Act on granting protection to foreigners within the territory of the Republic of Poland (print no. 272), 6 March 2025, p. 15 [https://bip.brpo.gov.pl/sites/default/files/2025-03/Do\\_Senatu\\_cudzoziemcy\\_ochrona\\_zawieszenie\\_ustawa\\_9\\_03\\_2025.pdf](https://bip.brpo.gov.pl/sites/default/files/2025-03/Do_Senatu_cudzoziemcy_ochrona_zawieszenie_ustawa_9_03_2025.pdf).

<sup>33</sup> Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, Articles 3 and 4 paras 1 and 2.

<sup>34</sup> *Ibid.*, Article 11, 12, 24, 34.

<sup>35</sup> *Ibid.*, Article 35.

<sup>36</sup> ECRE, Aida country report on Poland, 2023 update, p. 16, at: [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_2023-Update.pdf),

<sup>37</sup> ECRE, Aida report on Poland, above in full, p. 16-17

<sup>38</sup> On this see also UNHCR comments to the new law, above in full, para 25-27.

<sup>39</sup> Regulation (EU) 2024/1348, above in full, Art. 4.

<sup>40</sup> In a similar vein, UNHCR also expressed concerns about the lack of sufficient detail as to the interplay between the new powers granted to the border guard and the established competences of other state authorities: UNHCR Comments on the draft law, above in full, para. 25.



UNHCR expresses similar concerns about the role of the border guard under the new Polish law, stating: “that it is not clear whether front-line Border Guards are adequately trained or have the requisite administrative and judicial competencies to carry out these functions”.<sup>41</sup>

The Polish Senate’s Legislation Bureau has also observed that the “incompleteness” of the provisions of the new Polish law which regulate the Border Guard’s responsibilities towards people seeking asylum at the border during a temporary suspension of such right, “raises concerns regarding the compliance of the Act with the principle of specificity of legal provisions derived from Article 2 of the Constitution”.<sup>42</sup>

Finally, Amnesty International also shares the concerns expressed by UNHCR<sup>43</sup> and Poland’s Commissioner for human rights,<sup>44</sup> about the lack of clarity, under the new law, as to whether people would have a right to appeal the border guard’s decision.<sup>45</sup>

## **THE JUSTIFICATION ACCOMPANYING THE LEGISLATIVE PROPOSAL FOR NEW LAW CONSTRUCTS THE ACT OF APPLYING FOR ASYLUM AS A FORM OF INSTRUMENTALIZATION**

The new law defines the concept of “instrumentalization” as the carrying out, “by a country bordering the Republic of Poland or another entity”, of “activities aimed at enabling foreigners to cross the external border [irregularly] [...] in particular through the use of violence against officers protecting the border or in combination with the destruction of border infrastructure, which may result in the destabilization of the internal situation” in Poland.<sup>46</sup>

In the justification accompanying the legislative proposal for new law, it is alleged that people who are victims of “instrumentalization” practices are “instructed” “on how to prevent EU countries from carrying out returns to the Belarusian side, in particular by exercising the right to submit an application for international protection after their detention, despite the aim of reaching another EU Member State”.<sup>47</sup> It is profoundly alarming that the justification presents the exercise of the right to seek asylum by people who are considered to be victims of “instrumentalization” as an “element of instrumentalization activities”.

The attempt to present a person’s legitimate right to seek international protection as a form of “instrumentalization” must be rejected in the strongest terms. The right to seek asylum is a foundational component of the international human rights system, which must be protected irrespective of the way in which an individual crossed the border, including in cases where the person’s travel has been facilitated or even forced by a third country. As noted by UNHCR “refugees should not be sanctioned or considered as a security threat due solely to the fact that they are arriving or are seeking asylum as part of a so-called ‘instrumentalized’ movement”.<sup>48</sup>

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<sup>41</sup> UNHCR comments to the new law, above in full, Para 17.

<sup>42</sup> Polish Senate Legislative Bureau, Opinion on the Act amending the Act on granting protection to foreigners within the territory of the Republic of Poland, above in full. The Bureau observers, among other things, that the new law does not specify how the authorities would document people’s attempts to make an asylum application, or, as noted above, a refusal to accept an asylum application from someone belonging to a “sensitive group”, in cases where “the border is crossed with the use of force and in cooperation with other people”, as per Art. 33b (p. 15 of the Bureau’s opinion). It also notes that the law “does not regulate the procedure” based on which the Border Guards would fulfil their obligations under Art. 33b para. 2 and “does not indicate what actions the Border Guard body should take to establish that the person submitting the application belongs to a sensitive group”, nor the rights recognized to people potentially falling under this category (p. 15 of the Bureau’s opinion)

<sup>43</sup> UNHCR comments to the new law, above in full, para. 17.

<sup>44</sup> Poland’s Commissioner for human rights remarked the lack of clarity over the “procedure resulting in the refusal to accept an application for international protection” at time of a temporary suspension of the right to seek asylum and expressed concern regarding the right to challenge such refusal under the new law. Poland’s Commissioner for Human Rights, Opinion on the Act amending the Act on granting protection to foreigners, above in full, p. 17.

<sup>45</sup> Amnesty International expressed similar concerns in relation to the new legislation proposed by Finland to confront situations of “instrumentalization”, to which the new Polish law is inspired, at: [www.amnesty.org/en/latest/news/2024/06/finland-emergency-law-on-migration-is-a-green-light-for-violence-and-pushbacks-at-the-border/#:~:text=It%20risks%20serving%20as%20a,prevent%20entry%2C%20including%20by%20force](https://www.amnesty.org/en/latest/news/2024/06/finland-emergency-law-on-migration-is-a-green-light-for-violence-and-pushbacks-at-the-border/#:~:text=It%20risks%20serving%20as%20a,prevent%20entry%2C%20including%20by%20force)

<sup>46</sup> Art. 1 of the new Polish law.

<sup>47</sup> Unofficial translation. Draft bill amending the Act on granting protection to foreigners [...], p. 3, above in full.

<sup>48</sup> UNHCR, Legal considerations on asylum and non-refoulement in the context of ‘instrumentalization’, 26 September 2024, para. 2, <https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148736>

The fact of having been the victim of “instrumentalization” practices is wholly immaterial to someone’s international protection needs. Quite the opposite, the fact that an intermediary country has exposed people to dangers and exploitation, including by luring them to the border behind false promises and forcing them to cross the border (as documented in the case of Belarus)<sup>49</sup> involving violence, should be considered as a factor against their return to such country. In their legal considerations on “instrumentalization,” UNHCR notes that “the forcing, encouraging, or facilitating of movements of people to neighbouring or other countries creates grave risks and compounds the trauma and suffering of people on the move. This may include violations of their right to physical integrity, including by leaving them in situations of destitution.”<sup>50</sup>

## THE NEW LAW IS INCONSISTENT WITH THE EU REGULATION ON CRISIS AND FORCE MAJEURE OF 2024

While Amnesty International rejects the legitimacy of the concept of “instrumentalization” under international law, it must also be recalled that under the EU Regulation on crisis and force majeure – which is binding upon Poland – this concept is narrowly limited to situations where “a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State”.<sup>51</sup> Unlike the justification accompanying the draft Polish law, EU law does not assign any significance to the fact that individuals who are exposed to instrumentalization have applied for international protection in the process.

The justification accompanying the draft of the new Polish law defiantly admits that the definition of “instrumentalization” it proposes “goes beyond the scope” of the concept under the EU Regulation on crisis and force majeure.<sup>52</sup> As further detailed below, these open inconsistencies underline the imperative need for the EU Commission to express itself on the compliance of the Polish legislation with Union law.

The powers introduced by the new law also grossly exceed the derogations permitted under EU law to countries experiencing “instrumentalization” under the EU Regulation, which include allowing affected countries to delay the registration of asylum applications, or to extend the duration and expand the use of border procedures. These measures, however, require authorization from the European Commission following a reasoned request by the member state concerned. They do not in any case grant states powers to suspend the reception of asylum applications. To the contrary, Article 11 para. 10 of the Regulation, on the measures applicable to the asylum border procedures in situations of crisis or force majeure [including instrumentalization], is clear that “For the purpose of applying the derogations [relevant to the asylum border procedure] the basic principles of the right to asylum and the respect of the principle of non-refoulement,...shall apply to ensure that the rights of those who seek international protection, including the right to an effective remedy, are protected”.<sup>53</sup> The requirement that a reasoned request is submitted to the Commission, and authorization is provided for the derogations concerned, is also critical, as the measures imposed by one member state can influence the border situations in other EU member states.

## A THREAT TO THE RULE OF LAW IN POLAND

The new law is also a threat to Poland’s rule of law as it disregards the rights and principles of the Polish Constitution, particularly Article 56 which protects the right to seek asylum and receive protection in Poland.<sup>54</sup> The law has drawn

<sup>49</sup> Amnesty International, Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum seekers and migrants facing pushbacks from the EU, 20 December 2021, [www.amnesty.org/en/latest/news/2021/12/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu/](https://www.amnesty.org/en/latest/news/2021/12/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu/)

<sup>50</sup> UNHCR, Legal considerations on asylum and non-refoulement in the context of ‘instrumentalization’, above in full, para. 3.

<sup>51</sup> Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147.

<sup>52</sup> Draft bill amending the Act on granting protection to foreigners within the territory of the Republic of Poland, cited above in full, “justification” (“Uzasadnienie”), p. 4.

<sup>53</sup> In the preamble to Regulation 2024/1359, it is similarly stated that the Regulation “respects the fundamental rights of third-country nationals and stateless persons and observes the principles recognised by the Charter of Fundamental Rights of the European Union” including “the right to asylum and protection in the event of removal, expulsion or extradition”. See also: Iris Goldner Lang Instrumentalisation of Migrants: It is Necessary to Act, but How?, in: EU Immigration and Asylum Law and Policy, 15 October 2024, <https://eumigrationlawblog.eu/instrumentalisation-of-migrants-it-is-necessary-to-act-but-how/>; Steve Peers, The new EU asylum laws: taking rights half-seriously, Yearbook of European Law, 2024, yeae003, <https://doi.org/10.1093/yel/yeae003>

<sup>54</sup> The Constitution of the Republic of Poland, at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

criticism from public institutions in Poland, including the Polish Senate's Legislation Bureau and the Commissioner for Human Rights, who both raised issues regarding the constitutionality of the new law.<sup>55</sup>

In its opinion of 6 March 2025, the Bureau stated that the law "raises doubts as to its compliance with Article 31, paragraph 3 [...], according to which restrictions on the exercise of constitutional freedoms and rights may be established only by statute/law [...] and in a manner that does not violate the essence of these freedoms and rights".<sup>56</sup> It observes that the restriction introduced with the law "consisting in the impossibility of submitting an application for international protection directly violates the right established in Article 56 section 2 of the Constitution...thus, it violates the essence of this right".<sup>57</sup>

The new law also raises concerns in terms of guaranteeing due process and ensuring safeguards necessary to prevent arbitrary exercise of discretion or statutory powers by the executive, as it foresees that the temporary suspension of the right to seek asylum at the border is practically implemented through an executive act (a decree of the Council of Ministers). In this respect, the Polish Senate Legislative Bureau observes that the new Law raises two sets of issues under the Polish Constitution. First, the Bureau states that according to Article 31 of the Constitution, whereby "[a]ny limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute [...]", the new law should address "all important issues" relating to the limitation of constitutional rights. However, the Bureau notes, the law "does not specify the principles that the body authorized to issue the regulation could follow" when determining the timeframe of the suspension, its geographic scope, or when deciding to lift the suspension or extend its duration, nor "which body will determine that the conditions justifying the application of a restriction have been met" and "the criteria based on which it will be possible to determine whether these conditions have been met". As the law delegates to an act of the Council of Minister to set out the conditions for the suspension of asylum it "violates the principle of the exclusivity of the Act".<sup>58</sup> Poland's Commissioner for human rights expresses similar concerns about the decision, in the law, to delegate the implementation of the suspension of asylum to an act of the Council of Ministers.<sup>59</sup> The Commissioner also notes that the broad definition given to situations of "instrumentalization" under the new law "is incompatible with the principle of specificity of law (Article 2 of the Constitution) because such an open formulation raises fundamental doubts as to the precision of the criteria for applying this regulation".<sup>60</sup>

The lack of specificity of the new law can also be observed in relation to the pre-conditions required for the suspension of the right to asylum to be introduced. These require, among other things, that the suspension be "essential to eliminate the threats" and that "other measures are not sufficient" (Art. 33a. 1, point 3). However, the law is not prescriptive as to what alternative measures the authorities should explore prior to resorting to a suspension of the right to seek asylum, nor as to what obligations, if any, exist upon the authorities to demonstrate that such alternatives have been considered. The justification accompanying the legislative proposal does not provide further guidance in this sense, and the Council of Minister's order of 27 March, introducing the suspension, does not elaborate as to whether and which alternative means have been considered.

As the measures contemplated under the new law entail serious restrictions of people's constitutional rights – and in Amnesty International's view they in fact violate such rights –, this lack of prescriptiveness is particularly alarming, as it creates a risk of arbitrariness on the part of the Polish authorities, who are not required to respond for the process followed to determine that the suspension of asylum was the best option available.

Poland's Commissioner for human rights also sounds the alarm about the risks that the exercise of powers under the law would not be subjected to adequate scrutiny. He notes how acts of the Council of Ministers are not susceptible to legality checks by the Constitutional Tribunal nor appeals in the administrative Court, with the result that "it will not be possible for an independent judicial assessment of whether the government correctly applied the statutory grounds" to invoke a

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<sup>55</sup> Cited in full in earlier sections.

<sup>56</sup> Polish Senate Legislative Bureau, Opinion on the new Polish law, p. 9-10, unofficial translation, [https://bip.brpo.gov.pl/sites/default/files/2025-03/Do\\_Senatu\\_cudzoziemcy\\_ochrona\\_zawieszenie\\_ustawa\\_9\\_03\\_2025.pdf](https://bip.brpo.gov.pl/sites/default/files/2025-03/Do_Senatu_cudzoziemcy_ochrona_zawieszenie_ustawa_9_03_2025.pdf)

<sup>57</sup> Ibid., p. 10.

<sup>58</sup> Ibid., p. 10.

<sup>59</sup> Poland's Commissioner for Human Rights, Opinion on the Act amending the Act on granting protection to foreigners, above in full, p. 8 and p.18.

<sup>60</sup> Ibid., p. 8.



temporary suspension, and that “taking into account the ambiguity” of the definition of instrumentalization under the law “the introduction of a restriction will be entirely dependent on the discretion of the Council of Ministers”.<sup>61</sup>

## **RECOMMENDATIONS:**

### **TO THE POLISH AUTHORITIES:**

Amnesty International calls on the Polish authorities to:

- Immediately repeal the 27 March 2025 order introducing the suspension of the right to seek asylum, as well as the “*Law on amending the Act on granting protection to foreigners on the territory of the Republic of Poland*” and restore the conditions for all people seeking asylum in Poland to access a fair asylum procedure.
- Refrain from unlawful border control practices, such as pushbacks, collective expulsions and any other form of unlawful return.
- Conduct prompt, independent, impartial, transparent, and effective investigations into all allegations of unlawful forced returns and other violations.
- Introduce effective processes and procedures to identify people with humanitarian needs and conditions of vulnerability at the border and to provide them with adequate assistance.
- Halt the criminalization of human rights defenders assisting refugees and migrants in Poland and create conditions ensuring that they can operate unhindered.

### **TO THE EUROPEAN COMMISSION:**

Amnesty International calls on the European Commission to:

- Ensure that Poland urgently reinstates conditions of compliance with EU human rights and asylum law, including by halting the temporary suspension of the right to seek asylum.
- Urgently review and publish its assessment of the compliance of the Polish law with EU law, including the Charter of Fundamental Rights, and to firmly condemn efforts to suspend the right to asylum or any ongoing unlawful practices.
- Launch infringement proceedings against Poland for its longstanding violations of the rights of refugees and migrants, in contravention of EU law.

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<sup>61</sup> Ibid., p. 8.