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The voice of European lawyers

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CCBE comments in view of the political declaration of the Council of Europe ministers regarding ECTHR and migration

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Executive summary

By these comments, the CCBE wishes to contribute to the discussion in view of the upcoming political declaration concerning the interpretation and application of the European Convention on Human Rights and migration, which is to be adopted at a Ministerial Meeting of all Member States of the Council of Europe on 15 May 2026. This contribution discusses the content of the Steering Committee on Human Rights (CDDH) Outcome Document that is to serve as a basis for the future declaration. It points to the parts that may be problematic to reconcile with key principles, such as the independence of the judiciary.

The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law Societies of 46 countries, and through them more than 1 million European lawyers. The Committee of Ministers of the Council of Europe is preparing a political declaration concerning the interpretation and application of the European Convention on Human Rights (the Convention) which is to be adopted at a Ministerial Meeting of all Member States of the Council of Europe on 15 May 2026.

The Council of Europe Steering Committee on Human Rights (CDDH) has prepared a framework for that declaration,[1] describing the key aspects of the operation of the Convention and its interpretation by the European Court of Human Rights (the Court) and setting out topics which might be incorporated in the final political declaration. Its stated object is to reaffirm "*the obligation to ensure the effective enjoyment of the rights and freedoms guaranteed by the European Convention on Human Rights to everyone within the jurisdiction of Member States in the context of the contemporary challenges posed both by irregular migration and by the situation of foreigners convicted of serious offences, taking duly into account in particular governments' fundamental responsibility to ensure national security and public safety*".[2]

[1] Link to CDDH extra outcome document CDDH(2026)R3_EXTRA_Addendum (hereafter: "Outcome Document")
[2] Link to CDDH extra outcome document CDDH(2026)R3_EXTRA_Addendum (hereafter: "Outcome Document")

The CCBE welcomes the prospective role in the process of communication between the Court and Convention Actors ascribed to civil society and lawyers in the final section of the Outcome Document and welcomes the opportunity to contribute to this process. The CCBE looks forward to engaging in this respect.

In defence of the rule of law as one of the core values of democracy, the CCBE wishes to comment on some of the issues raised by the Outcome Document, which should be taken into account in the adoption of the final version of any political declaration. While noting the motivation of the CDDH, in the eyes of the CCBE any political declaration should by necessity include:

a. a recognition of the negative impact of a lack of resources for the Court for current delays in decision making;

b. a commitment by Member States to adequately fund court oversight in domestic asylum systems for expediting review and appeal procedures; and

c. a clear and cautious choice of language, which removes even an appearance of a risk of undue political influence on the interpretation of the Convention by the Court.

The CBBE is concerned by certain shortcomings in the Outcome Document in this regard, which are elaborated in more detail below.

Factual basis for any intervention

The CDDH Outcome Document first summarises the operation of the Convention system and particularly the interaction of Member States with the Court and then describes the existing case law relating to immigration and migration under the following five headings, which must be expected to form the main focus for the political declaration:

a. expulsion of foreign nationals convicted of serious criminal offences and extradition cases;

b. mass arrivals of migrants by land and sea;

c. instrumentalisation of migration;

d. decision-making in migration cases; and

e. innovative solutions to address migration.

That analysis of the Court's existing case law is preceded[3] by a recognition of the comparatively small scale of immigration and migration cases in the Court's case load. Such cases represent about 1.5% of cases pending before the Court on 1 January 2026 and over the last ten years have generated only 300 judgments finding violations out of a total of over 7,000 applications.[4]

[3] Outcome Document [19].

[4] *The Court's case-law on immigration matters*, European Court of Human Rights, February 2026 ECtHR and Factsheet on "75 years of the European Convention on Human rights - Focus On: Immigration", July 2025

The Outcome Document fails to underline the obvious conclusion that, important though the Court and the Convention undoubtedly are, neither could be regarded as central to the causes, or control or consequences of migration and immigration in Europe during the last decade, or now.

More factually doubtful is the suggested element for the political declaration that there are "*significant, complex migration-related challenges in various member States which were either unforeseen at the time the Convention was drafted or have evolved significantly since then"*. The Outcome Document seems to forget the European migration context at the time when the Convention was being drafted, when 12 million largely destitute ethnic Germans were converging on the new Federal Republic of Germany,[5] or the later arrival of 900,000 migrants in France in a few months in 1962 following the independence of Algeria. Even much more recently in Europe in 2015, migration pressure was significantly greater than now, as a result of the Syrian exodus, when 890,000 refugees were received in Germany alone[6] and over 1.2 million asylum applications were made in the EU.[7] Moreover, the number of applications for asylum in the EU has fallen each month since 2023, including by 19% in November 2025 in comparison with November 2024.[8]

The role of the lack of resources at the level of the Court and at the domestic level

Unfortunately, the Outcome Document does not recognise the significance and negative impact of delays in decision making both in the domestic asylum systems which are frequently seriously under-resourced[9] as well as in the Court's own procedure, even in identifiably urgent cases.[10] A commitment to enhancing available resources to reduce backlogs in immigration cases in the domestic courts and to enhance the Court's resources to accelerate its work would reflect Council of Europe Member States' commitments in the Reykjavík Declaration of 2023 including "[Their] *deep and abiding commitment to the European Convention on Human Rights and the European Court of Human Rights as the ultimate guarantors of human rights across our continent, alongside our domestic democratic and judicial systems"*.[11]

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[5] Some Facts about German Expellees in Germany (1952), Germany (West) Bundesministerium für Angelegenheiten der Vertriebenen.

[6] BAMF - Bundesamt für Migration und Flüchtlinge - Migrationsbericht 2018 - Migrationsbericht 2015

[7] Migration and asylum in Europe – 2024 edition - Interactive publications - Eurostat

[8] Overview | European Union Agency for Asylum

[9] All instances Nov 2025 | Flourish The number of cases awaiting a first instance decision remained at near record levels, with 857,000 pending at the end of November 2025. It is estimated that the total number of pending cases, including those in appeal or review, at the end of October 2025 (latest data) was approximately 1.2 million

[10] CCBE Proposals for reform of the ECHR machinery, 28 June 2019, available here, and see more recently the CCBE comments following up on the CCBE Statement on the letter published on 22 May 2025 concerning the interpretation of the European Convention on Human Rights, available here.

[11] Reykjavík Declaration, United around our values, 16-17 May 2023, available here

The role of the Court in interpretation of the Convention

Finally, the introductory part of the Outcome Document conveys some confusion as to the object of the Convention system and the interpretative role which Member States have to play in it. The Convention identifies the universal rights which the Member States have agreed to secure to everyone within their jurisdiction. That is their primary responsibility, for which the term "subsidiarity" may appear misleading. Apart from declaring these legal rights, the Convention provides an enforcement mechanism, primarily through the right of individual application open to anyone claiming to be a victim of a violation of those rights. It is the Court's task to adjudicate those complaints and its interpretation of the Convention is final,[12] just as its judgments are binding.[13]

Plainly to secure the effective recognition and observance of universal rights, a judicial institution must remain free from political pressure or influence so that it can decide cases independently. This places a duty of respect and distance on Member States of the Council of Europe towards the Court in the same way that in every State respecting the rule of law, the national executive must respect and remain subject to its domestic courts.

Consequently, the scope for Member States to influence the Court's interpretation of the Convention is inherently limited. As respondents, they plead like any party but are bound by the judgment. Similarly, Member States may intervene in cases brought against other Member States[14] and so indirectly indicate the importance attached to a particular issue, but short of initiating inter State applications, they have no power of initiative.

The role of domestic courts and the duties of Member States

At [22] the Outcome Document argues that where "*a State Party considers that its domestic courts could have applied the Court's jurisprudence differently, leading to a different outcome in a case, there is no avenue whereby a State can contest the domestic court's judgment before the Court"*, but this is irrelevant to the Convention procedure. First, Member States respecting the rule of law are bound to accept the judgments of their domestic courts. Secondly, the asserted misapplication of domestic law by domestic courts – in respect of which there is no empirical evidence – is not a matter within the Court's competence under Article 19. With regards to the latter, given additional resources, the Court could however consider how to increase the understanding of its jurisprudence which could strengthen the ECtHR's reception and application in national legal systems.

As a result, any political declaration runs the risk of impinging on the Court's judicial independence (and potentially influencing decision-making in the domestic courts), and two topical issues underline a difficulty which the final political declaration will certainly be confronted with.

a. First, on 12 February 2025, the Grand Chamber of the Court held a hearing in the cases of *COCG and others v Lithuania* concerning Cuban nationals, *HMM and others v Latvia*

[12] Article 32(1)
[13] Article 46
[14] Article 36

concerning a group of Iraqi Kurds and *RA and others v Poland* concerning a group of Afghan nationals encamped in the border area between Belarus and Lithuania, Latvia and Poland respectively. The applicants allege pushbacks by the national authorities of the respective respondent States into Belarus, which they consider to be an unsafe country, where they both fear ill-treatment and the risk of refoulement to their countries of origin. They invoke Article 3 and specifically complain that they have been unable to lodge applications for asylum in the respective Council of Europe Member State complained against. All are examples of instrumentalisation of migration, addressed by the Outcome Document from [50] to [57]. However, these cases remain pending with the Grand Chamber judgment awaited. A political declaration which addresses the central issue in these cases can scarcely avoid the impression of seeking to influence the Court.

b. Secondly, the Outcome Document addresses innovative solutions to address migration from [61] to [66]. Such solutions plainly include return hubs which have been the subject of intensive debate and negotiation in the EU framework of the draft Return Regulation.[15] These are novel and untested proposals which are nevertheless intended should become operational during 2026. They would involve the removal of individuals from certain EU Member States where their asylum applications have been rejected, but whose removal to their State of nationality is impracticable. Without commenting on the appropriateness of such solutions, their operation clearly gives rise to Convention issues. The inclusion of this topic in a political declaration is again difficult to reconcile with a constructive dialogue with the Court within its necessary boundaries in the Convention system. Furthermore, the EU proposals have not yet been adopted and not one agreement between any Council of Europe Member State and any other State under EU law has entered into public discussion about its legislative details.

Consequences with regard to particularly problematic proposed elements

In light of the above, some of the proposed elements should not form part of any political declaration. Particularly problematic elements are flagged below.

First, some of the proposed elements for a political declaration are inappropriate because they are attempts to direct or at least influence the Court's interpretation of the Convention as well as that of national courts which apply the Convention and the Court's case law. Neither is appropriate: we refer in particular to the following points, regarding the interpretation of Article 3:

> *p. 10: "- Recall that the absolute prohibition of inhuman or degrading treatment or punishment reflects that it relates to the most serious forms of ill-treatment, and consider that the minimum level of severity of ill-treatment that constitutes inhuman or degrading treatment or punishment must therefore remain high and constant, and be clearly and consistently applied at all levels, avoiding unnecessary constraints on decisions to extradite, or to expel foreign nationals."*

[15] Proposal for a regulation establishing a common system for the return of third-country nationals staying illegally in the Union, 11 March 2025, available here.

p. 11: "- Underline that the Convention does not purport to be a means of requiring the States Parties to impose Convention standards on other States."

"- Note that, in light of the above, caution should be exercised when applying case-law of the Court, including by the domestic courts, concerning the situation in a State Party when assessing whether the expulsion or extradition of an individual to a non-State Party would violate a State Party's obligations under Article 3 of the Convention."

As regards Article 8:

p. 13: "Note that if the Court finds that there are strong reasons to substitute its assessment for that of national authorities, it is important that the Court makes clear its awareness of the particularities of national legal systems and traditions, including for example the extent to which the length of a sentence of imprisonment reflects the seriousness of an offence, and fully and clearly explains its reasons."

Likewise, one of the proposed elements relating to the wholly novel topic of the instrumentalisation of migration (where there is no established case law) could also be read as an inappropriate attempt to influence and even to distort the Court's case law regarding 'democracy capable of defending itself':

p. 18: "Note that the concept of "democracy capable of defending itself," as developed in the case-law of the Court, may be relevant when States Parties face instrumentalisation of migration."

This concept was first developed by the Court in the landmark case of *Vogt v Germany Application no. 17851/91* , a case concerned with freedom of expression under Article 10, and was applied subsequently in other cases relating to freedom of expression and the balance between human rights within a democratic society. It would be unprecedented to apply this analysis to cases which concern the fundamental right to seek asylum as recognised by the Refugee Convention of 1951 and cases concerning the exclusion of human beings from European territory and therefore also from our societies.

In summary, elements which could be interpreted as an attempt to undermine the legitimacy of the ECtHR should be excluded from any political declaration. The final declaration should abstain from citing case law in a one-sided way which would accordingly be misleading.

The importance of open and constructive dialogue

The final section of the Outcome Document addresses Communication on Convention standards and dialogue between Convention actors. It proposes that the political declaration could "*Emphasise the importance of open, informed and constructive dialogue and communication on the functioning of the Convention system in a manner that strengthens public confidence in the protection of human rights, upholds the rule of law, and enhances trust in the Convention framework as a whole*". Naturally, this is to be welcomed, particularly in the light of

the misinformation about the role of the Court and the Convention in (supposedly) "*protecting the wrong people*" asserted by very senior politicians at an early stage of the present process.[16]

One suggestion for inclusion in this part of the political declaration which is particularly to be welcomed is the suggestion that the effective protection of human rights "*depends upon domestic courts articulating clearly in their judgments the application to the facts of a case of relevant Convention standards, including where relevant an adequate balancing between the rights of the applicant and the interests of society*". The CCBE has advocated for specific practical ways in which domestic courts might reflect this approach in their judgments, whether favourable or unfavourable to Convention arguments, by a so-called "endorsement process" which could focus on the domestic protection of Convention rights and facilitate the Court's review if cases subsequently come before it.[17]

The CCBE emphasises the role of lawyers and civil society in this context and reiterates its willingness to participate in a joint effort to improve the rule of law, European democratic values and the effective protection of fundamental and human rights.

[16] Lettera_aperta_22052025.pdf and for a response see: EN_PDS_20251204_CCBE-comments-following-up-on-the-CCBE-Statement-on-the-letter-of-nine.pdf

[17] EN_PDS_20190628_CCBE-Proposals-for-reform-of-the-ECHR-machinery.pdf at 9 and EN_PDS_20201113_CCBE-Proposals-to-DH-SYSC-V.pdf at D