

Submission to the Steering Committee for Human Rights (CDDH)

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This submission² is addressed to the Steering Committee for Human Rights (CDDH) in the context of its work following on from the Informal Ministerial Conference as set out in the Ministers' Deputies' decisions of 10 December 2025.³ The CDDH has been asked "to prepare elements for a political declaration reaffirming 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".

Given this is a matter of significant public importance, we make this submission in good faith, in the interests of contributing to a thorough consideration of the substantive issues at stake, as well as the potential consequences of the eventual political declaration.

1. The process to date

It is welcome that the Committee of Ministers (CM) has unanimously mandated the CDDH to provide the analysis and factual elements upon which a political declaration might be finalised. **The CDDH is the appropriate forum for such a reflection having demonstrated its objectivity, substantive expertise and professionalism** in the preparation of studies related to the longer-term future of the system of the ECHR,⁴ the selection and election of judges,⁵ the place of the ECHR in the European and

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² This submission has been prepared in light of the working documents made available by CDDH in advance of its first meeting on 13-15 January 2026, in particular CDDH(2026)01, 6 January 2026.

³ CM/Del/Dec(2025)1546/4.3 Informal Ministerial Conference (Strasbourg, 10 December 2025) – Follow-up, 10 December 2025.

⁴ Report on the longer-term future of the system of the European Convention on Human Rights, 2015.

⁵ Report on the process of selection and election of judges of the European Court of Human Rights, 2017, and on Issues relation to Judges of the European Court of Human Rights, 2023.

International legal order,⁶ as well as its work on and analysis of the Interlaken Process.⁷ The technical reports of the CDDH led directly to Protocols No. 15 and 16, which have had a profound impact on how the Court operates and demonstrate the practical import of the work of the CDDH.

However, it is a matter of regret that this process initially developed in the informal, rather politicised manner that it did,⁸ initially excluding the competent Council of Europe statutory actors and other bodies. This approach created space for speculation, misinformation and significant negative momentum. In some member states, it amplified often fallacious or vexatious criticism of the European Court of Human Rights and national judiciaries in public commentary, without allowing the statutory or other actors a credible common platform to effectively engage with these critiques.⁹

As the CDDH conducts its work, it is important to note that it can only deliver on the mandate and with the resources assigned to it by the CM. This process, therefore, must be seen not as an abstract legal exercise, but as providing the basis for a political negotiation between the member states. **It is the prerogative of member states to discuss ways to enhance the protection of human rights**, including by improving the effectiveness of the control mechanism of the ECHR and implementation at national and European levels. In the spirit of multilateral cooperation, this includes **honestly articulating the full range of challenges in realising obligations in practice with a view to ameliorating those challenges**. There should be no taboos in this regard, rather good faith engagement by all relevant stakeholders based on objective facts and evidence.

In terms of timelines, on 10 December 2025 the CM set in motion a process with three key deadlines: 1) technical work of the CDDH to conclude by 22 March 2026; 2) political negotiation with a view to adoption in Chişinău on 14/15 May 2026¹⁰ and 3) a report from the Secretary General before the end of 2026. **Given the substantive complexity of the issues at stake, and the scope and potential impact of a political**

⁶ Report on the place of the ECHR in the European and International legal order, 2019.

⁷ The Interlaken Process - Report on Measures taken from 2010 to 2019 to secure the effective implementation of the European Convention on Human Rights, 2020.

⁸ See Letter of Nine, 22 May 2025,

https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf. See also Alice Donald and Andrew Forde, [Countdown to Chişinău: The Risk of Politicising the ECHR over Migration](#), EJIL:Talk!, 19 December 2025.

⁹ Alice Donald and Andrew Forde, [Reinforce, Reform or Rupture? The Future of the European Convention on Human Rights](#), EJIL:Talk!, 29 October 2025; Alice Donald, [A Badge of Dishonour: Will the UK Conservatives Follow the Far-Right Towards ECHR Withdrawal?](#), Verfassungsblog, 29 September 2025.

¹⁰ 135th Session of the Committee of Ministers of the Council of Europe, 14-15 May 2026, Republic of Moldova. Coincides with the handover of the CM Chairmanship to Monaco.

declaration, including the potential for unintended consequences, this is an inexplicably short timeline. Such a compressed timeframe precludes any meaningful consultation beyond the members and observers of the CDDH itself. This represents a fundamental risk, potentially undermining the outcome through cursory treatment of the substantive issues, deficient analysis at member state level, and insufficient stakeholder engagement.

Notwithstanding these limitations, it is our view that member states should seek to **maximise their outreach and engagement** on the core issues of concern. For example, they **could arrange domestic consultations** with key stakeholders including National Human Rights Institutions, equality bodies, human rights civil society organisations, advocates, academics and human rights defenders, to ensure they are fully appraised of the perspectives of these stakeholders in shaping their national positions.

Finally, we note that the Secretary General has been mandated to engage in international discussions on migration, based on his Four-point plan,¹¹ and to report back to the CM by the end of 2026. It is still unclear what the scope or purpose of this exercise is, given that the deadline is notably six months *after* the political declaration will have been adopted in Chişinău.

2. Issues raised in the Joint Statement of 27 states

The 27 member states aligned to the Joint Statement delivered to the Conference of Ministers of Justice of the Council of Europe on 10 December 2025¹² consider it “imperative to ensure that the Convention framework is fit to address today’s challenges”, in order to meet five challenges. While noting that 19 member states did not sign the Joint Statement, we consider it important to engage with its assumptions, arguments, and evidential basis, as it represents the position of almost two-thirds of Council of Europe member states and raises significant concerns. Below, we discuss the five challenges in turn, with reference to the Joint Statement, as well as the CDDH document on “Possible issues for inclusion in a political declaration” issued on 6 January 2026¹³ and the Conclusions of the Informal Ministerial Conference. We also

¹¹ SG/Inf(2025)29, [Speaking notes of the Secretary General and the Deputy Secretary General to the 1539th meeting of the Ministers’ Deputies](#) (Valletta, Malta, 7 October 2025).

¹² Hereafter, “the Joint Statement”; available at <https://www.gov.uk/government/news/joint-statement-to-the-conference-of-ministers-of-justice-of-the-council-of-europe>.

¹³ CDDH, Possible issues for inclusion in a political declaration, CDDH(2026)01, 6 January 2026; hereafter “CDDH(2026)01”.

engage selectively with these documents on the matter of the key principles in the interpretation and application of the Convention.

2.1 Expulsion of foreigners convicted of serious crimes

The first challenge identified in the Joint Statement concerns the expulsion of foreign nationals convicted of serious crimes and the correct balance to be struck under Article 8 ECHR in cases where they have acquired ties to their host country. The statement proposes that the balance be “adjusted so that more weight is put on the nature and seriousness of the offence committed and less weight is put on the foreign criminal’s social, cultural, and family ties”. As CDDH(2026)01 notes, the Court has set out precise criteria that domestic authorities should take into account when assessing the proportionality of the interference with a settled migrant’s private or family life when balanced against the public interest being pursued by an expulsion order.¹⁴ CDDH(2026)01 further notes that the Court conducts a process-based review of such cases,¹⁵ in keeping with the principle of subsidiarity.¹⁶

The Joint Statement says the purpose of the “rebalancing” it seeks is “to ensure that we *no longer* see instances where foreigners convicted of serious crime, including serious violent crime, sexual assault, organised crime and human and drug trafficking, cannot be expelled” (emphasis added). The precise meaning of this statement is unclear. It could indicate that in certain expulsion cases, domestic courts would be restricted or prohibited from conducting a balancing exercise under Article 8 and/or that the intention is to limit the scope of other rights such as Article 5 and Article 6 ECHR. This proposition could lead to states behaving incompatibly with their obligations not only under the ECHR, but also other regional and international standards, including the International Covenant on Civil and Political Rights and (for EU member states) the Charter of Fundamental Rights of the European Union. Moreover, if the suggestion is that the Court itself should be restricted in its application of Convention rights in expulsion cases, this would be incompatible with respect for the interpretive authority of the Court under Article 32 ECHR.

It is important that, as indicated in CDDH(2026)01,¹⁷ the political declaration **recalls that the Court authoritatively and independently interprets the Convention** in accordance with relevant norms and principles of public international law. In addition,

¹⁴ CDDH(2026)01, paras 68-70.

¹⁵ CDDH(2026)01, p. 3 and para 71. Where a balancing exercise has been undertaken at the national level in conformity with the criteria laid down in the Court’s jurisprudence, the Court has generally indicated that it will not substitute its own assessment for that of the domestic courts, unless there are strong reasons for doing so.

¹⁶ CDDH(2026)01, p. 3.

¹⁷ CDDH(2026)01, p. 4 and para 7.

the political declaration should **avoid the use of imprecise or ambiguous terminology** which risks creating uncertainty as to states' intentions and leading to divergent interpretations.

We note that states such as the UK¹⁸ and Denmark¹⁹ have in recent years accorded progressively greater weight to the public interest in cases concerning the expulsion of foreign nationals convicted of serious offences without the Court finding their decisions to be in violation Article 8,²⁰ except in rare instances.²¹

We suggest that, before member states seek to restrict the scope of Article 8, they should **first review their national legal and administrative frameworks** and ensure that decision-makers are given detailed guidance as to how to apply Article 8 in cases concerning expulsion of foreigners convicted of serious crimes, bearing in mind the discretion national authorities enjoy in view of the margin of appreciation and “the Court’s growing tendency to privilege ‘process-based review’ of domestic court judgments”.²²

To the extent that the inability to expel foreign national offenders is a challenge for some states, solutions will be found by **identifying a clear evidence base at national level both as to the scale of the perceived problem and its causes**. The significant disparity in the rate at which foreign nationals who are ordered to leave European states are, in practice, removed (ranging from 10% to 99%)²³ indicates the existence of obstacles to removal at national level, such as administrative, resourcing and logistical factors,²⁴ which are unrelated to matters of human rights interpretation.

2.2 Clarity about inhuman and degrading treatment

The Joint Statement proposes that:

The scope of “inhuman and degrading treatment” under Article 3, which is an absolute right, should be constrained to the most serious issues in a manner which does not prevent State Parties from taking proportionate decisions on the

¹⁸ Nick Nason, [Briefing: what is the law on deporting foreign criminals and their human rights?](#), Free Movement blog, 5 October 2023; Kirsty Hughes, [Immigration and proposals to amend Article 8 ECHR](#), UK Constitutional Law blog, 19 November 2025.

¹⁹ Harriet Ní Chinnéide, [The expulsion of migrants: the Court rules in four cases against Denmark this September](#), Strasbourg Observers, 20 October 2023.

²⁰ See, e.g., *Ndidi v United Kingdom*, Application no. 41215/14, 14 September 2017.

²¹ See, e.g., *Sharifi v Denmark*, Application no. 31434/21, 5 September 2023.

²² CDDH(2026)01, para 11.

²³ Council of Europe, [Migration Key Facts Sheet](#), November 2025, pp. 15-16.

²⁴ See, e.g., Sarah Singer, [Why is it so difficult for the UK to deport foreign criminals?](#), The Conversation, 31 October 2025.

expulsion of foreign criminals, or in removal or extradition cases, including in cases raising issues concerning healthcare and prison conditions.

The heading indicates the need for clarity, but **the statement risks creating legal uncertainty**. There is a disjuncture between the acknowledgement that the prohibition of inhuman and degrading treatment is absolute, permitting no derogation or balancing, and the call for states to be able to take “proportionate” decisions in expulsion or extradition cases. The statement proposes to maintain the absoluteness of Article 3 by narrowing its scope in certain cases, i.e. by suggesting that particular forms of ill-treatment that are established as inhuman or degrading within the scope of Article 3 should no longer be considered as prohibited in expulsion and extradition cases. Two examples are given; “healthcare” cases concerning the removal of seriously ill individuals,²⁵ and cases where an individual would run a real risk of experiencing inhuman and degrading prison conditions in the destination state.

CDDH(2026)01 recalls that the absolute nature of the prohibition on torture and inhuman or degrading treatment or punishment is reflected in the principle of non-refoulement, which is a peremptory norm of public international law. We note, however, the inclusion in CDDH(2026)01 of a reference to *Harkins and Edwards v United Kingdom*, as follows:

Recall that the Convention does not purport to be a means of requiring the States Parties to impose Convention standards on other States, such that treatment which might violate Article 3 of the Convention because of an act or omission of a Contracting State might not attain the minimum level of severity which is required for there to be a violation of Article 3 in an expulsion or extradition case.²⁶

This does not appear to be consistent with the more recent judgment in ***Sanchez-Sanchez v the United Kingdom***, in which the **Grand Chamber overturns the relativist approach adopted in *Harkins and Edwards*** and explicitly clarifies that:

...the prohibition of Article 3 ill-treatment remains absolute. In this regard, it does *not consider that any distinction can be drawn between the minimum level of*

²⁵ CDDH(2026)01, para 33; the Court’s “high threshold” for finding a violation being (i) cases where where the person is in the terminal stages of an illness and removal would expose them to a real risk of dying under the most distressing circumstances and (ii) cases where the individual is not close to death but would, if expelled, be exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy.

²⁶ CDDH(2026)01, p, 5 (see also para 30), citing *Harkins & Edwards v United Kingdom*, Application nos. 9146/07 & 32650/07, 17 January 2012, para. 129.

*severity required to meet the Article 3 threshold in the domestic context and the minimum level required in the extra-territorial context (emphasis added).*²⁷

The relevant case-law guide of the Court reiterates that “a distinction cannot be drawn between the domestic and extra-territorial contexts as regards the minimum level of severity required to meet the Article 3 threshold.”²⁸ It is important that discussions on the political declaration proceed on the basis of an **accurate and comprehensive reflection on the Court's case law**.

We note also that the Joint Statement uses the phrase “*including* in cases raising issues concerning healthcare and prison conditions” (emphasis added). This suggests that these examples are not meant to be exhaustive and that other forms of inhuman or degrading treatment could in future be considered as not prohibited in expulsion and extradition cases. For example, the non-refoulement duty under Article 3 encompasses protection from, inter alia, being removed to face a real risk of: violence at the hands of state or non-state actors;²⁹ gender-based violence³⁰ including female genital mutilation;³¹ ill-treatment inflicted in detention;³² ill-treatment by virtue of membership of a group systematically exposed to persecution;³³ and being subject to the death penalty in the destination state.³⁴ This part of the Joint Statement is **dangerously open-ended** and, if adopted in the declaration, would create uncertainty both as to the threshold for determining treatment falling within the scope of inhuman or degrading treatment and the categories of people protected from it.

Moreover, member states should **refrain from a blanket or categorical approach** to determining the scope of Article 3 given that cases may involve complex, cumulative circumstances and the real risk of ill-treatment in any given case can only be determined through individualised assessment.

The Joint Statement does not acknowledge the **already cautious approach** of the ECtHR in applying Article 3 in expulsion and extradition cases.³⁵ Nor does it take

²⁷ *Sanchez-Sanchez v the United Kingdom*, Application no. 22854/20, 3 November 2022, para 99. See also *Trabelsi v Belgium*, Application no. 140/10, 4 September 2014, para 116.

²⁸ [Guide on the case-law of the European Convention on Human Rights: Immigration](#), updated on 31 August 2025, para 83.

²⁹ *Khasanov and Rakhmanov v Russia*, Application nos. 28492/15 and 49975/1, 29 April 2022.

³⁰ *N v Sweden*, Application no. 23505/09, 20 July 2010.

³¹ *R.B.A.B. and Others v the Netherlands*, Application no. 7211/06, 7 June 2016.

³² *Liu v Poland*, Application no. 37610/18, 6 October 2022.

³³ *Khasanov and Rakhmanov v Russia* (n 29).

³⁴ *Al-Saadoon and Mufdhi v United Kingdom*, Application no. 61498/08, 2 March 2010.

³⁵ CDDH(2026)01, p. 5 and para 30. See also J. T. Theilen (2025), Framing Migration in Human Rights: How the Reasoning of the European Court of Human Rights Legitimises Border Regimes, *European Journal of Migration and Law* 27(1) 66-93.

account of the possibility of host states obtaining **diplomatic assurances** from destination states as a means of removing the risk of ill-treatment, which, if they provide sufficient guarantees in line with the Court's case law, may allow expulsion or extradition to proceed.³⁶ We suggest that, as for Article 8, before member states seek to restrict the scope of Article 3, they should **first review their national legal and administrative frameworks** and ensure that decision-makers are given detailed guidance as to how to apply Article 3 in cases concerning expulsion and extradition.

In summary, we fear that the approach adopted on Article 3 in the Joint Statement crosses a Rubicon. It muddies the waters about the severity of inhuman or degrading treatment, and the absoluteness of its prohibition in a way that **could be exploited by states acting in bad faith within and beyond Europe**, not only in expulsion cases, but also within their own jurisdictions.

2.3 Innovative and durable solutions to address migration

The third proposition in the Joint Statement is that states seeking “innovative and durable” solutions to address irregular migration “should not be prevented from entering into cooperation with third countries regarding asylum and return procedures, once the human rights of irregular migrants are preserved”. The Court **does not in principle preclude removal of individuals to a safe third country as long as non-refoulement is upheld**, including the duty to assess the risk of denial of access to asylum proceedings in a presumed safe third country.³⁷

The statement says that the rights of irregular migrants will be “preserved” and it could therefore be read as compliant with states’ obligations under the ECHR. However, in practice its effects would have to be determined alongside the rest of the statement, in particular the proposal to “constrain” the scope of inhuman or degrading treatment.

2.4 Decision-making in migration cases

The fourth proposition in the Joint Statement is that states “should not be prevented from applying clear rules and processes to facilitate timely decisions under Article 8 that can then be enforced, and which reflect the appropriate balance between the individual’s rights and the public interest”. Improving the quality and efficiency of justice

³⁶ CDDH(2026)01, para 32. See also [Guide on the case-law of the European Convention on Human Rights: Immigration](#), updated on 31 August 2025, para 85.

³⁷ CDDH(2026)01, para 31. See *Ilias and Ahmed v Hungary*, Application no. 47287/15, 21 November 2019.

is a key function of the Convention system and striking an appropriate balance between individual and public interests case-by-case is inherent in the qualified nature of Article 8 (see 2.1).

It is unclear who or what is or are perceived as preventing the achievement of efficient justice. The efficiency of justice is overwhelmingly a domestic matter, dependent on national administrative and judicial processes. If the implication is that the Strasbourg Court contributes to inefficiency through its interpretation of Article 8, this argument requires detailed substantiation with reference to the Court's case law, as well as data on national-level decision-making.

2.5 Instrumentalisation of migration

The Joint Statement calls for recognition of the “extremely sensitive geopolitical context” and the need to ensure national security and public safety in cases where human rights are instrumentalised by “hostile regimes and individual applicants with ulterior motives”.

Three cases against Poland, Latvia and Lithuania concerning instrumentalised migration are currently pending before the Grand Chamber. **No evidence has been adduced to show that the applicants in these cases have “ulterior motives”.**³⁸ We suggest that effective responses to instrumentalised migration should **target the state actors engaging in instrumentalisation and not the individuals being instrumentalised.**³⁹

Further, it is premature, and particularly without substantiation, to suggest that the Court is not sufficiently mindful of the geopolitical context.⁴⁰ The cases pending before the Grand Chamber are the first time the Court has considered instrumentalised migration. It will be aided in its adjudication by third-party interventions by nine states that are not party to the cases, as well as interventions by the Council of Europe Commissioner for Human Rights, UN bodies, national and international NGOs and humanitarian organisations, and ombudspersons.⁴¹ **Out of respect for the interpretive authority of the Court under Article 32, member states should avoid any attempt to influence the Court in active proceedings.**

³⁸ Research indicates that people seeking asylum in Poland, Latvia and Lithuania are frequently from nationalities with relatively high asylum recognition rates; see Aleksandra Ancite-Jepifánova, [Migrant Instrumentalisation: Facts and Fictions - Realities On the Ground at the EU-Belarus Border](#), Verfassungsblog, 21 September 2023.

³⁹ As is currently being pursued by Lithuania at the International Court of Justice.

⁴⁰ See, e.g., Witold Klaus and Magdalena Kmak (2025) [ECtHR jurisprudence amid political shifts: rolling back the protection against pushbacks](#), *The International Journal of Human Rights*, 1–20.

⁴¹ See <https://www.echr.coe.int/w/grand-chamber-hearings-concerning-poland-latvia-and-lithuania>.

2.6 The living instrument doctrine and the importance of non-regression

The Joint Statement refers to the living instrument doctrine, urging appropriate account to be taken of “developments, both factual and legal, that have evolved significantly in recent decades and were unforeseen at the time the Convention was drafted”. The principle that the ECHR should be interpreted dynamically has been applied over decades on matters ranging from the rights of LGBTQ+ people to protection from intrusive digital technologies.⁴² Read in the context of the Joint Statement as a whole, this passage appears to invoke the principle of dynamic interpretation in order to justify regression in human rights protection – and, as discussed above, potentially significant and open-ended regression for entire categories of people at that.

This is problematic from the perspective of the Convention. The “maintenance and further realisation” of human rights and fundamental freedoms is an objective enshrined in the Preamble to the ECHR and Article 1 of the Statute of the Council of Europe. A primary goal of the ECHR is to offer a minimum level of protection of fundamental rights and freedoms in all contracting states.⁴³ Thus, the Convention constitutes the floor rather than the ceiling of states’ obligations in terms of respect for and protection of fundamental rights and freedoms. Based on Article 1 ECHR, and in line with principle of subsidiarity, states parties to the ECHR are obliged to secure that minimum level of protection to “everyone within their jurisdiction”. As a supervisory body, the Court is empowered to assess if states have complied with their obligations in specific cases,⁴⁴ as well as having competence to interpret and refine these obligations, thereby determining the minimum level of protection that states must guarantee.⁴⁵

For states to misuse the process now under way to unwind normative progress under the guise of the living instrument doctrine would be **incompatible with both the spirit and the letter of these Convention provisions**. Moreover, it would **contradict**

⁴² See generally: CDDH Report on the place of the European Convention on Human Rights in the European and international legal order, CDDH(2019)R92Addendum1, adopted by the CDDH at its 92nd meeting (26–29 November 2019), paras 84–96.

⁴³ The nature of Convention obligations as minimum obligations is emphasised by Article 53 ECHR, which states that: “Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.”

⁴⁴ Under Article 34 ECHR.

⁴⁵ Based on Article 19 ECHR (establishing the Court to ensure contracting states’ observance of the engagements undertaken under the ECHR) and Article 32 (stating that the Court’s jurisdiction “shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto”).

commitments made in successive high-level declarations, most recently the Reykjavik Declaration of 2023.⁴⁶

3. Conclusion and next steps

We welcome the engagement of member states with the Council of Europe, which is a precondition for an effective system. It is critically important that discussions about the system are conducted in good faith, respecting the sanctity of the independence of the judiciary and the principles of universality and non-regression, and are in keeping with the object and purpose of the Convention and the Council of Europe Statute. The political declaration should **rearticulate and demonstrate commitment to these fundamental principles**, as set out in the Reykjavik Declaration, previous high-level declarations, the Conclusions of the Informal Ministerial Conference of 10 December 2025, and the factual premises set out in the Secretary General's four-point plan concerning the European Convention on Human Rights.⁴⁷

It is also vital that the formulation of the political declaration is informed at all stages by **data and evidence**. There is no uniform migration experience across European states, but rather a variety of public policy challenges experienced to different degrees by different states. It is discouraging that the Joint Statement rests on certain generalised assumptions – e.g. that the Court's interpretation of the ECHR is at the core of states' difficulties in the migration context and that migration is associated with criminality – which are not substantiated.⁴⁸

For member states to arrive at targeted and effective solutions, the necessary starting point is a **triage of the full range of the issues** they face. This should encompass domestic factors that may impede the efficient removal of individuals who have no legal right to remain in a state, such as resource constraints or administrative delays. A further imperative is the development of **clear legal and administrative frameworks at national level** where these do not exist, to ensure that decision-makers in immigration systems are well equipped and resourced to apply Convention rights in compliance with their obligations and within the considerable scope for discretion afforded by the Court.

⁴⁶ “We reaffirm our primary obligation under the Convention to secure to everyone within our jurisdiction the rights and freedoms defined in the Convention in accordance with the principle of subsidiarity, as well as our unconditional obligation to abide by the final judgments of the European Court of Human Rights in any case to which we are parties.”, p. 4.

⁴⁷ SG/Inf(2025)29, (n 11)

⁴⁸ Migration cases represent a small fraction of the applications pending before the European Court of Human Rights – 922 out of almost 60,000 as of December 2025 – the vast majority of which are likely to be found inadmissible; see European Court of Human Rights, [75 years of the European Convention on Human Rights - Focus On: Immigration](#), December 2025, p. 2. See also Olivier Marie and Paolo Pinotti, [Immigration and Crime: An International Perspective](#), Journal of Economic Perspectives 38(1), Winter 2024, pp. 181–200.

In summary, the political declaration should be informed by data and case law analysis to provide a **transparent evidence base both for the perceived problems and proposed solutions**.

In the same vein, member states must **eschew performative interventions** if they are to respond effectively to attempts to “distort and weaken”⁴⁹ the ECHR system. Instead, governments can **pursue meaningful dialogue with the Court** on matters of specific concern or serious issues of general importance through various means, including coordination and co-operation on third-party interventions;⁵⁰ requests for referral of cases to the Grand Chamber;⁵¹ and maximising jurisprudential coherence by means of the Superior Courts Network and the possibility of requesting advisory opinions under Protocol No. 16 to the Convention.⁵²

Finally, in the context of **threats to the rule of law-based international order**,⁵³ we urge member states to proceed with caution to avoid provoking “negative contagion”⁵⁴ within the Council of Europe or across other normative frameworks, or exacerbating an atmosphere of hostility towards refugees, people seeking asylum and other migrants.⁵⁵ It is unprecedented for member states to initiate a process aimed at reducing the rights of certain categories of people. It is all the more bewildering that some states are pursuing this course precisely at a moment when the Council of Europe is so focused on securing peace, justice and accountability in Ukraine, after Russia triggered the largest refugee crisis in Europe since the end of the Second World War. The CM’s credibility in this matter is dependent on its steadfast adherence to international law and fundamental Council of Europe values.

⁴⁹ Joint Statement (n 12).

⁵⁰ Utilising the [Execution Coordinators Network](#); see also CDDH(2026)01, p. 4 and para 16. We note also the inclusion in CDDH(2026)01 p. 5, drawn from the [Copenhagen Declaration](#) (para 38), inviting the Court “to adapt its procedures to make it possible for other States Parties to indicate their support for the referral of a Chamber case to the Grand Chamber when relevant. Expressing such support may be useful to draw the attention of the Court to the existence of a serious issue of general importance within the meaning of Article 43 (2) of the Convention”, which is worthy of consideration.

⁵¹ CDDH(2026)01, p. 4.

⁵² CDDH(2026)01, para 17.

⁵³ See, e.g., Human Rights Watch, [World Report 2025](#).

⁵⁴ Veronika Fikfak, [ECHR Reform: A Danger of Contagion in Relation to Article 3](#), UK Constitutional Law Association, 9 December 2025.

⁵⁵ Myria Georgiou and Rafal Zaborowski, [Council of Europe report: Media coverage of the “refugee crisis”: A cross-European perspective](#), DG1(2017)03.