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**Mr Margaritis SCHINAS**  
Vice-President for Promoting our European Way of Life

**Ms Ylva JOHANSSON**  
Commissioner for Home Affairs

Strasbourg, 9 March 2020

Dear Vice-President Schinas, dear Commissioner Johansson,

I am writing to you in relation to your preparation of a New Pact on Migration and Asylum. As part of my mandate to promote the effective observance of human rights within the Council of Europe area, I have carried out extensive work on the protection of the rights of migrants, including refugees and asylum seekers, in EU member states and in countries in the EU's immediate neighbourhood. Recent developments at the border between Turkey and Greece demonstrate, once again, the need for any action on asylum and migration to be firmly underpinned by human rights, effective solidarity and responsibility sharing. Since we have not yet met in person, I would like to share in writing some observations on the most crucial human rights issues that I have encountered during my country visits and field missions, my discussions with stakeholders on the ground, and my constant dialogue with national authorities, in the hope that you will find this information useful for the preparation of the Pact.

### **1. Reception emergencies: solving humanitarian crises and preventing new ones**

Severe humanitarian emergencies involving migrants, including asylum seekers, have been allowed to develop and to continue, both within the EU and the wider Council of Europe area. Whilst a complex range of factors play a role, the lack of preparedness and of a quick and adequate humanitarian response to increasing numbers of arrivals have exacerbated this problem. I am appreciative of the financial and other assistance the EU has provided. However, lack of coordination by national authorities, and concerns about transparency and accountability in the spending of available funding have often been highlighted to me by stakeholders on the ground. Addressing these emergencies is a major challenge, but one that needs to be tackled with renewed vigour to ensure that such unacceptable situations are resolved and that new ones are prevented from emerging.

### **2. Saving lives at sea: increasing search and rescue capacity and improving coordination**

I continue to be seriously worried about the lack of effective human rights protection of migrants attempting to cross the Mediterranean. The reduction of state-led search and rescue operations, combined with countries' withdrawal from their rescue responsibilities and the adoption of restrictive measures and practices affecting private vessels saving persons in distress at sea have resulted in a lack of adequate rescue capacity in the Mediterranean and of effective coordination. This is increasing risks to life and exposing intercepted migrants to return to unsafe places. In June 2019, I published my [Recommendation](#) 'Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean'. This document provides detailed guidance to Council of Europe member states on how to apply a human rights compliant approach to sea crossings, including on the issue of search and rescue. I enclose a copy for your information.

### **3. Solidarity: a crucial element for addressing human rights issues**

Neither of the two above-mentioned issues can be solved without solidarity between countries. I fully support the European Commission's focus on improving solidarity. In this respect, I have consistently emphasised the need for a more predictable system of responsibility sharing for persons rescued at sea, which would ensure prompt and safe disembarkation. I have also called for the swift relocation of vulnerable persons, especially unaccompanied minors, from countries facing reception emergencies. The effective implementation of family reunification rules for unaccompanied minors and others with family links in other countries, such as those applicable within the EU, is also crucial. This would lighten the load on frontline states and prevent irregular and dangerous secondary movements. Finally, the expansion of safe and legal routes for those outside Europe, through increasing resettlement places, setting up humanitarian corridors and lifting restrictions on family reunification is also essential. I will

continue to try to impress the importance of this on Council of Europe member states and look forward to exploring how I can support the Commission's efforts in these areas.

#### **4. Migration co-operation with third countries: ensuring transparency and accountability**

Co-operation with third countries is an increasingly prominent element of the migration policies of Council of Europe member states, individually and collectively. Whilst a legitimate instrument, such external co-operation may also entail human rights risks when it comes to its impact on those affected by such policies, especially when the third country has a poor human rights record. In my above-mentioned Recommendation, I have set out a framework to make much-needed improvements with regard to transparency and accountability for the human rights impact of member states' external action. This includes carrying out human rights risk assessments and developing risk mitigation strategies. This should be complemented by monitoring mechanisms and an effective system of redress. The possibility of public scrutiny of (planned) co-operation activities and their results is also a crucial element for improving human rights safeguards. This framework can hopefully provide inspiration when developing the parts of the Pact dealing with third-country migration co-operation.

#### **5. Protecting rights at borders: combating pushbacks and ensuring access to asylum**

Council of Europe member states' borders are increasingly becoming areas where serious violations of the rights of migrants, including asylum seekers, occur. Illegal pushbacks deprive those in need of protection from access to asylum procedures and are sometimes accompanied by severe ill-treatment. These practices are now commonplace in several member states across the Council of Europe area, including several within the EU. Despite overwhelming evidence, national governments have often been unwilling to even acknowledge alleged violations, let alone carry out effective investigations. Independent monitoring mechanisms urgently need to be established and strengthened to tackle pushbacks. A shared, human rights compliant approach to this is necessary across Europe, not least because such practices are increasingly justified not just as protecting countries' own national borders but also Europe's collective borders.

#### **6. Immigration detention: investing in alternatives and ending child detention**

After several years of apparent decline in the use of immigration detention, I am concerned that this instrument is again increasingly resorted to, with its effects on returns often still doubtful and the considerable suffering on those detained still fully obvious. There is a strong need for investment in alternatives to immigration detention. Knowledge of, and experience with, such alternatives continues to grow and should be built on. In this context, I particularly draw your attention to the work of the Council of Europe Steering Committee on Human Rights (CDDH) on the legal and practical aspects of effective alternatives to detention. Furthermore, I fully support the conclusion of the UN Committee on the Rights of the Child that the detention of children, on account of their or their parents' immigration status, is never in the children's best interests. Ending the use of immigration detention of children, whether unaccompanied or with their families, is a vital step in guaranteeing children's rights.

#### **7. Civil society: defending human rights defenders**

I remain particularly concerned about the backlash against civil society actors who play a crucial role in many areas of asylum and migration policy, including the preservation of the right to life and dignity at sea, the provision of legal and other essential assistance, and promoting integration. They have faced increasing pressure, restrictions, administrative and judicial harassment as well as stigmatisation. In line with the EU's commitments to human rights defenders and the protection of civil society more generally, I believe tackling the issue of the criminalisation of NGOs and individuals working with migrants and asylum seekers is of key importance.

I would gladly provide you with more information in relation to these observations and look forward to discussing these and other areas of common interest with you in person in the near future.

Yours sincerely,



Dunja Mijatović