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STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

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POSSIBLE ISSUES FOR INCLUSION IN A POLITICAL DECLARATION

I. Introduction

1. The decisions adopted by the Ministers' Deputies on follow-up to the Informal Ministerial Conference held in Strasbourg on 10 December 2025 require the CDDH "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".

2. The CDDH is invited "to report back before 22 March 2026 to allow for the Ministers' Deputies to finalise the declaration to be submitted, together with the other relevant documents, for adoption at the 135th Session of the Committee of Ministers (Chișinău,14-15 May 2026)".

3. The present document contains possible basic elements for a political declaration, taking inspiration from previous relevant declarations, the Conclusions adopted at the Informal Ministerial Conference on 10 December 2025, and the settled case-law of the Court.

4. The document also includes an appendix containing a description of the system of the European Convention on Human Rights (the Convention) and of those of its provisions that are relevant in the context of migration, and an analysis of the application of relevant provisions in the specific factual contexts defined by the mandate given to the CDDH.

II. Possible basic elements for a political declaration

5. This section contains possible basic elements for a political declaration, along with indications of their sources of inspiration, notably in previous relevant declarations,[1] the Conclusions adopted at the Informal Ministerial Conference on 10 December 2025,[2] and the settled case-law of the Court. Where the proposed text is closely based on the wording of a particular source, the description of that source is underlined.

Issue	Element	Reference declarations
Object and purpose of the Convention (preamble)	Recall the extraordinary contribution of the system established by the Convention to the protection and promotion of human rights and the rule of law in Europe, as well as its central role in the maintenance and promotion of democratic security and peace throughout the Continent.	Reykjavik Copenhagen Brussels Brighton Izmir Interlaken
	Reaffirm the deep and abiding commitment of the States Parties to the Convention as a cornerstone of the system for protecting the rights and freedoms set forth in the Convention.	Reykjavik Copenhagen Brussels Brighton Izmir Interlaken

[1] In particular, those adopted at the High-Level Conferences in Interlaken (2010), Izmir (2011), Brighton (2012), Brussels (2015), and Copenhagen (2018), and the Reykjavik Declaration adopted at the Fourth Summit of Heads of State and Government of the Council of Europe (2023).

[2] Referred to in the table below as "IMC".

	Reaffirm the States Parties' rejection of attacks at high political levels on the rights protected by the Convention and the judgments of the Court seeking to safeguard them.	Reykjavik
Primary responsibility (Article 1)	Underline the primary obligation for all States Parties to the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention in accordance with the principle of subsidiarity.	Reykjavik Copenhagen Brussels Brighton Interlaken
National implementation	Recall that the overall human rights situation in Europe depends on States' actions and the respect they show for Convention requirements, which requires the engagement of and interaction between a wide range of actors to ensure that legislation, and other measures and their application in practice comply fully with the Convention.	Copenhagen Interlaken
Subsidiarity/ margin of appreciation	Underline the importance of the principle of subsidiarity and the margin of appreciation for the implementation of the Convention at the national level by the States Parties, which reflect that the Convention system is subsidiary to the safeguarding of human rights at national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions	Reykjavik Copenhagen Brussels Brighton
	Welcome the continuing further development of the principle of subsidiarity and the doctrine of the margin of appreciation by the Court in its jurisprudence	Copenhagen
	Recall that 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.	Copenhagen Case-law
	Invite the Court, when examining cases related to asylum and immigration, to assess and take full account of the effectiveness of domestic procedures and, where these procedures are seen to operate fairly and with respect for human rights, to avoid intervening except in the most exceptional circumstances.	Izmir
Effective remedies (Article 13)	Recall that a central element of the principle of subsidiarity is the right to an effective remedy under Article 13 of the Convention.	Copenhagen
	Underline the importance of States Parties providing domestic remedies, where necessary with suspensive effect, which operate effectively and fairly and provide a proper and timely examination of the issue of risk in accordance with the Convention and in light of the Court's case law.	Izmir
Shared responsibility	Underline the importance of the notion of shared responsibility between the States Parties, the Court and the Committee of Ministers to ensure the proper functioning of the Convention system	Reykjavik Copenhagen Brussels Brighton Izmir Interlaken
	Recognise the role of the Council of Europe Commissioner for Human Rights and of national human rights institutions and civil society organisations in monitoring compliance with the Convention and the Court's judgments.	Reykjavik Copenhagen Brussels Brighton
	Underline the need to secure an effective, focused and balanced Convention system, where the States Parties effectively implement the Convention at national level, and where the Court can focus its efforts on identifying serious or widespread violations, systemic and structural	Copenhagen

	problems, and important questions of interpretation and application of the Convention.	
Role of the Court (Article 19)	Recall the important achievements of the Court through its judgments and decisions in supervising compliance with the Convention and defending the values underpinning the Council of Europe.	Reykjavik
	Recall that the Court acts as a safeguard for individuals whose rights and freedoms are not secured at the national level and may deal with a case only after all domestic remedies have been exhausted. It does not act as a court of fourth instance.	Copenhagen Brighton Izmir Interlaken
Admissibility (Article 35)	Welcome the Court's continued strict and consistent application of the criteria concerning admissibility and jurisdiction, including by requiring applicants to be more diligent in raising their Convention complaints domestically, and making full use of the opportunity to declare applications inadmissible where applicants have not suffered a significant disadvantage.	Copenhagen Interlaken
	Invite the Court to ensure that it continues to apply fully, consistently and foreseeably all admissibility criteria and the rules regarding the scope of its jurisdiction, *ratione temporis, ratione loci, ratione personae* and *ratione materiae.*	Izmir Interlaken
Jurisdiction of the Court/ interpretation (Article 32)	Recall that the Court authoritatively interprets the Convention in accordance with relevant norms and principles of public international law, and, in particular, in the light of the Vienna Convention on the Law of Treaties, giving appropriate consideration to present-day conditions.	Copenhagen Brighton
	Express continued appreciation for the Court's efforts to ensure that the interpretation of the Convention proceeds in a careful and balanced manner.	Copenhagen
Right of individual application (Article 34)	Reaffirm the States Parties' strong attachment to the right of individual application to the Court as a cornerstone of the system for protecting the rights and freedoms set forth in the Convention.	Reykjavik Copenhagen Brussels Brighton Izmir
Right of individual application/ interim measures	Underline the obligations of States Parties under Article 34 of the Convention not to hinder the exercise of the right to individual application, including by observing Rule 39 of the Rules of the Court regarding interim measures.	Brussels Izmir
Referral to the Grand Chamber (Article 43)	Recall that by determining serious questions affecting the interpretation of the Convention and serious issues of general importance, the Grand Chamber plays a central role in ensuring transparency and facilitating dialogue on the development of the case law.	Copenhagen
	Reiterate the invitation to the Court to adapt its procedures to make it possible for other States Parties to indicate their support for the referral of a case to the Grand Chamber when relevant, which 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.	Copenhagen
Third-party interventions (Article 36)	Recall that an important way for the States Parties to engage in a dialogue with the Court is through third-party interventions.	Copenhagen
	Encourage the States Parties further to increase coordination and co-operation on third-party interventions, including by building the necessary capacity to do so and by communicating more systematically through the Government Agents Network on cases of potential interest for other States Parties.	Copenhagen

Execution of judgments (Article 46)	Underline the fundamental importance of the full, effective and prompt execution of the Court's judgments and the effective supervision of that process to ensure the long-term sustainability, integrity and credibility of the Convention system.	Reykjavik Brussels Interlaken
	Underline the States Parties' unconditional obligation to abide by the final judgments of the Court in any case to which they are parties.	Reykjavik Brussels
Interpretative authority of judgments	Underline the importance of taking into account the case-law of the Court in a way that gives full effect to the Convention.	Reykjavik Brighton Interlaken
Judicial dialogue	Encourage further strengthening of the comprehensive dialogue between the Court and the Supreme and Constitutional Courts of the States Parties, including through the Superior Courts Network and the advisory opinions delivered under Protocol No. 16 to the Convention.	Reykjavik Copenhagen Brussels Brighton
Dialogue between Convention actors	Welcome and encourage open dialogues between the Court and States Parties as a means of developing an enhanced understanding of their respective roles in carrying out their shared responsibility for applying the Convention.	Copenhagen Brussels Brighton
Migration/ challenges	Note with concern the serious and complex challenges posed by irregular migration, such as instrumentalisation of migration, smuggling of migrants, trafficking in human beings and other criminal activities in this context.	IMC
	Reiterate the challenges related to the expulsion and return of foreigners convicted of serious offences, while respecting human rights.	IMC
Migration/ States' rights & responsibilities	Recall the fundamental responsibility of governments to ensure national security, public safety and the economic well-being of the country.	IMC
	Recall that States Parties have the undeniable sovereign right to control aliens' entry into and residence in their territory. This right must be exercised in accordance with the provisions of the Convention.	Case-law IMC
	Stress the importance of States Parties' managing and protecting borders, which may include putting arrangements in place at their borders designed to allow access to their national territory only to persons who fulfil the relevant legal requirements.	Case-law
	Recall the States Parties' right to establish their own immigration policies, potentially in the context of bilateral cooperation or in accordance with their obligations stemming from membership of the European Union.	Case-law
Migration/ extradition (Article 3)	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.	Case-law
	Welcome the Court's caution in finding that removal from the territory of a State Party would be contrary to Article 3 of the Convention.	Case-law

Appendix

I. The system of the European Convention on Human Rights

1. The European Convention on Human Rights (the Convention, the ECHR) is a treaty that was adopted by the member States of the Council of Europe in November 1950. All European States are now parties to the Convention other than the Russian Federation, which ceased to be a party in September 2023, following its expulsion from the Council of Europe, and Belarus. A process is underway intended to lead to the accession of the European Union to the Convention.

2. The preamble to the Convention recalls the States Parties' "common heritage of political traditions, ideals, freedom and the rule of law" and their resolve to "take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration" of Human Rights that was adopted by the General Assembly of the United Nations in 1949.[3]

3. Article 1 of the Convention obliges States Parties to secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention and in any of the additional protocols that they have ratified.[4] This reflects the principle of subsidiarity set out in the preamble to the Convention, according to which the States Parties have "the primary responsibility to secure Convention rights and freedoms defined in the Convention and the protocols thereto".[5]

4. The jurisprudence of the Court makes clear that the States Parties enjoy a margin of appreciation in how they apply and implement the Convention, depending on the circumstances of the case and the rights and freedoms engaged. This reflects that the Convention system is subsidiary to the safeguarding of human rights at national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions. The margin of appreciation goes hand in hand with supervision under the Convention system.[6]

5. Jurisdiction for the purposes of Article 1 of the Convention is normally defined in geographical terms by reference to the State Party's national territory. In exceptional circumstances, jurisdiction may arise outside the State Party's national territory, notably when the State exercises either (i) effective power or control over the person concerned or (ii) effective control over the foreign territory where that person is located.[7]

6. The States Parties' primary responsibility to secure Convention rights is reinforced by the obligation under Article 13 of the Convention to provide an effective domestic remedy to anyone whose Convention rights are violated. Article 13 is a central element of the principle of subsidiarity.[8]

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[3] The Universal Declaration on Human Rights is a non-binding instrument. Its provisions have since been given legal effect through the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights.

[4] For the sake of concision, the expression "Convention rights" will be used to refer to the rights and freedoms defined in Section I of the Convention and in any of the additional protocols that a State Party has ratified.

[5] The relevant recital was added to the preamble by Protocol No. 15 to the Convention, which was adopted in 2013 and entered into force in 2021.

[6] Declaration adopted at the High Level Conference on the Future of the European Court of Human Rights, Brighton, April 2012, para. 11.

[7] See e.g. *Al-Skeini & otrs v. United Kingdom*, [GC], no. 55721/07, 07 July 2011, paras. 133-137, and further information on the case-law in the Court's *Guide on Article 1 of the European Convention on Human Rights*, February 2025.

[8] Declaration adopted at the High Level Conference meeting in Copenhagen in April 2018, para. 13.

7. The European Court of Human Rights (the Court) is established under Article 19 of the Convention to ensure the observance of the engagements undertaken by the States Parties in the Convention and the protocols thereto. Under Article 32, the Court's jurisdiction extends to all matters concerning the interpretation and application of the Convention which are referred to it in accordance with the relevant provisions.

8. The Court interprets the Convention in accordance with relevant principles of public international law, as codified in the Vienna Convention on the Law of Treaties. It takes a dynamic and evolutive approach,[9] treating the ECHR as a living instrument which must be interpreted in the light of present-day conditions and in accordance with developments in international law.[10] This allows the Court to ensure that the ECHR is applicable even in contexts that did not exist when it was drafted, as reflected in the cases brought before it.[11]

9. The Court may indicate to a State Party any interim measure which it considers should be adopted in cases of imminent risk of irreparable harm to a Convention right, which, on account of its nature, would not be susceptible to reparation, restoration or adequate compensation. It may do this where necessary in the interests of the parties or the proper conduct of the proceedings. The Court bases this procedure on the right of individual application under Article 34 of the Convention,[12] which includes an undertaking by States Parties not to hinder in any way the effective exercise of this right, along with the States Parties' obligation under Article 1 and the Court's supervisory competence under Article 19.[13] The procedure is codified in Rule 39 of the Rules of Court.

10. Article 35(1) of the Convention sets out criteria for admissibility of individual applications. Amongst other things, it allows the Court to accept applications from individuals only after all domestic remedies have been exhausted. Taken in combination with Articles 1 and 13 of the Convention, this is another manifestation of the principle of subsidiarity and reflects the shared responsibility of the States Parties and the Court for the effective implementation of the Convention.

11. The importance of Articles 13 and 35(1) of the Convention is underlined by the Court's growing tendency to privilege "process-based review" of domestic court judgments. This has been especially apparent since 2012, when two judgments of the Grand Chamber of the Court affirmed that where the balancing exercise between the rights at stake has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts.[14] [15]

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[9] *Scoppola (No. 2) v. Italy* [GC], no. 10249/03, 17 September 2009, para. 104.

[10] *Demir and Baykara v. Türkiye* [GC], no. 34503/97, 12 November 2008, para. 146. See also *Öcalan v. Türkiye* [GC], no. 46221/99, 12 May 2005, para. 163, and *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, para. 101.

[11] For further analysis of the Court's interpretative practice, see *CDDH Report on the place of the European Convention on Human Rights in the European and international legal order*, November 2019.

[12] *Mamatkulov & Askarov v. Türkiye* [GC], nos. 46827/99 & 46951/99, 04 February 2005, paras. 99-129.

[13] See the Court's *Practice Direction on Requests for Interim Measures (Rule 39 of the Rules of Court)*, March 2024.

[14] *Axel Springer AG v. Germany [GC],* no. 39954/08, 7 February 2012, para. 88; *Von Hannover v. Germany (No. 2)* [GC], no. 40660/08, 7 February 2012, para. 107. The Court has taken a similar "process-based review" approach with respect to parliamentary scrutiny of legislation: see e.g. *Animal Defenders International v. United Kingdom* [GC], no. 48876/08, 22 April 2013.

[15] See further *CDDH Report on the first effects of Protocol No. 15 to the European Convention on Human Rights*, CDDH(2025)R102 Addendum 2, June 2025, paras. 15-21; also *Revisiting subsidiarity in the age of shared responsibility*, Background Document for the Judicial Seminar 2024, Registry of the European Court of Human Rights, January 2024.

12. Article 35(3)(b) of the Convention requires the Court to declare inadmissible any individual application if it considers that the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits. The Court has shown reluctance to apply the manifest disadvantage criterion in cases involving Articles 2 (right to life), 3 (prohibition on torture and inhuman or degrading treatment or punishment), or 5 (right to liberty and security) of the Convention, and has noted the need to take due account of the importance of the freedoms of thought, conscience and religion (Article 9), expression (Article 10), and assembly and association (Article 11) when applying it.[16] The safeguard clause in Article 35(3)(b) is intended to cover cases which, notwithstanding their trivial nature, raise serious questions affecting the application or the interpretation of the Convention or important questions concerning national law.[17] [18]

13. A Chamber of the Court may relinquish jurisdiction to the Grand Chamber where the case before it raises a serious question affecting the interpretation of the Convention or the Protocols thereto. Where the resolution of a question raised in a case before the Chamber might have a result inconsistent with the Court's case-law, the Chamber shall relinquish jurisdiction in favour of the Grand Chamber.[19] Following a Chamber judgment, any party to a case may, in exceptional circumstances, request that the case be referred to the Grand Chamber under Article 43 of the Convention. The request shall be accepted if the case raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or a serious issue of general importance.

14. The judgments of the Court have binding force under Article 46(1) of the Convention, with the States Parties undertaking to abide by a final judgment in any case to which they are parties. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments, in accordance with Article 46(2) of the Convention. The ultimate choice of the measures to be taken remains with the States under the supervision of the Committee of Ministers, provided the measures are compatible with the "conclusions and spirit" set out in the Court's judgment.[20] This reflects the freedom of choice attaching to the States Parties' primary obligation to secure Convention rights.[21]

15. Under Protocol No. 16 to the Convention, designated highest courts and tribunals of a State Party may request the Court to give advisory opinions on questions of principle relating to the interpretation or application of Convention rights. Such requests may be made only in the context of a case pending before the requesting court.[22] According to the preamble to the protocol, this procedure is intended to further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity. Advisory opinions under Protocol No. 16 are not binding.

16. States Parties and other persons may make third party interventions in cases before Chambers and the Grand Chamber of the Court under Article 36 of the Convention. A State Party one of whose nationals is an applicant in the case has the right to intervene, as does the Council of Europe Commissioner for Human Rights. Other States Parties and persons may intervene at the invitation of the President of the Court. Third party interventions are also possible in advisory opinion proceedings under Protocol No. 16: as of right, for the State Party to which the requesting

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[16] See further *Practical Guide on Admissibility Criteria*, European Court of Human Rights, August 2025.
[17] See *Explanatory Report to Protocol No. 14*, para. 39.
[18] Article 35 also includes further admissibility criteria of lesser relevance in the present context.
[19] See Article 30 of the Convention, read in the light of Rule 72 of the Rules of Court.
[20] *Ilgar Mammadov v. Azerbaijan (Article 46(4))* [GC], no. 15172/13, 29 May 2019, para. 182.
[21] *Papamichalopoulos & otrs v. Greece (Article 50)*, no. 14556/89, 31 October 1995, para. 34.
[22] As stated in the Explanatory Report to Protocol No. 16, the advisory opinion procedure is not intended to allow for abstract review of legislation which is not to be applied in that pending case. There is in fact no procedure that would allow the Court to conduct an abstract review of national law or practice.

court pertains and for the Commissioner for Human Rights; and at the invitation of the President of the Court, for other States Parties or persons. Third party interventions allow States Parties to express their views to the Court on the legal or factual points of interest to them, even in the absence of a relevant case brought against them.[23]

17. The Court also engages in other forms of dialogue with Convention actors outside the context of judicial proceedings. The Superior Courts Network was created in response to the 2012 Brighton Declaration and the 2015 Brussels Declaration. Intended to enrich dialogue and implementation of the Convention, it was launched on a test basis in October 2015 and now consists of 111 superior courts from all Council of Europe member States and five observer courts. The Court also regularly receives visits from ministers, other senior officials, and judges from the member States. The Committee of Ministers holds biannual meetings with the President of the Court. The Court's Registry holds regular meetings with the Government Agents of the States Parties, as well as meetings with civil society organisations.

18. The Convention has been subject to a number of reforms since it was created. The most significant reforms of the control mechanism were introduced by Protocol No. 11, which entered into force in 1998, and Protocol No. 14, which entered into force in 2010.[24] Other protocols have added further optional rights to those protected by the Convention system (for example, Protocols Nos. 4, 6 and 7 – see further below).

19. The Convention system has been the subject of political declarations adopted at a number of high-level conferences in recent years, including at Interlaken (Switzerland) in 2010, Izmir (Türkiye) in 2011, Brighton (United Kingdom) in 2012, Brussels (Belgium) in 2015, and Copenhagen (Denmark) in 2018.[25] The Reykjavik Declaration adopted at the Fourth Summit of Heads of State and Government of the Council of Europe in 2023 also addressed the Convention system at length.

II. The Convention and migration

20. As the Court has stated on multiple occasions, States Parties have the undeniable sovereign right to control aliens' entry into and residence in their territory. This right must be exercised in accordance with the provisions of the Convention.[26] The Court has stressed the importance of managing and protecting borders and recognised that States may in principle put arrangements in place at their borders designed to allow access to their national territory only to persons who fulfil the relevant legal requirements. The Court has also acknowledged the right of States to establish their own immigration policies, potentially in the context of bilateral cooperation or in accordance with their obligations stemming from membership of the European Union.[27] It has observed that the right to political asylum is not contained in either the Convention or its Protocols,[28] and that in cases concerning the expulsion of asylum-seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the 1951 Refugee Convention.[29]

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[23] See further Rule 44 of the Rules of Court and the Practice Direction on third-party intervention.
[24] More recently, Protocol No. 15 introduced further reforms (including amendment of the preamble – see above) and Protocol No. 16 introduced a new advisory opinion procedure (see above).
[25] For an overview of the 2010-2019 "Interlaken Process" and its results, see *The Interlaken Process*, Council of Europe, November 2020.
[26] See e.g. *Amuur v. France*, no. 19776/92, 25 June 1996, para. 41.
[27] *N.D. & N.T. v. Spain* [GC], nos. 8675/15 & 8697/15, 13 February 2020, paras. 167-168.
[28] See e.g. *Vilvarajah & otrs v. United Kingdom*, no. 13163/87 & otrs, 30 October 1991, para. 102.
[29] *F.G. v. Sweden* [GC], no. 33611/11, 23 March 2016, para. 117.

21. The Convention and its protocols contain only four provisions relating directly to migration: Article 5, insofar as it permits and provides procedural safeguards for the arrest or detention of an individual for purposes of immigration control; Article 16 (restrictions on political activity of aliens); Article 4 of Protocol No. 4 to the Convention (prohibition of collective expulsion of aliens);[30] and Article 1 of Protocol No. 7 (procedural safeguards relating to the expulsion of aliens).[31]

22. In the context defined by the CDDH's present mandate, certain other Convention provisions may be relevant. These include Article 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment or punishment, Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), and Article 13 (right to an effective remedy).

23. What follows will present these rights in general terms. Their application in particular factual circumstances will be dealt with in corresponding sections below.

24. Article 2 of the Convention, as originally drafted, prohibits the intentional deprivation of life save in the execution of a sentence of a court following conviction of a crime for which this penalty is provided by law. Subsequent developments – notably the ratification and implementation by all member States of Protocol No. 6 to the Convention on abolition of the death penalty – have led the Court to determine that capital punishment has become an unacceptable form of punishment that is no longer permissible under Article 2 and that it amounts to inhuman or degrading treatment or punishment under Article 3.[32] On this basis, the Court considers that States Parties to the Convention are prohibited from extraditing or deporting an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there.[33]

25. As regards torture under Article 3 of the Convention, the Court has observed that "In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. [It] appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element, as recognised in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating".[34]

26. The Court has stated that "The prohibition of inhuman or degrading treatment, enshrined in Article 3 of the Convention, is one of the most fundamental values of democratic societies. It is also a value of civilisation closely bound up with respect for human dignity, part of the very essence of the Convention".[35] Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.[36] The Court has taken into account the

[30] Protocol No. 4 has been ratified by all member States other than Greece, Switzerland, Türkiye and the United Kingdom.
[31] Protocol No. 7 has been ratified by all member States other than Germany, the Netherlands and the United Kingdom.
[32] *A.L. (X.W.) v. Russia*, no. 44095/14, 29 October 2015, para. 64.
[33] *Al-Saadoon & Mufdhi v. United Kingdom*, no. 61498/08, 2 March 2010, para. 123.
[34] See e.g. *Petrosyan v. Azerbaijan*, no. 32427/16, 4 November 2021, para. 68.
[35] *Ilias & Ahmed v. Hungary* [GC], no. 47287/15, 21 November 2019, para. 124.
[36] *Al-Saadoon & Muhfdhi v. United Kingdom*, 61498/08, 02 March 2010, para. 121.

individual's own behaviour in the circumstances when determining whether the level of severity has been reached.[37]

27. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing them. In considering whether a punishment or treatment was "degrading" within the meaning of Article 3, the Court will have regard to whether its object was to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.[38]

28. The prohibition on torture and inhuman or degrading treatment or punishment is absolute and derogation from it is not permitted in any circumstances. Since the prohibition is absolute, irrespective of an individual's conduct, the nature of the offence allegedly committed by the individual is irrelevant for the purposes of Article 3.[39] As well as being the subject of Article 3 of the Convention, the prohibition is a peremptory norm of public international law that must be respected regardless of a State's particular treaty obligations.

29. 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.[40] This prohibits States from sending an individual to a place outside their jurisdiction in relation to which there are substantial grounds for believing that there is a real risk of that individual being subjected to such ill-treatment. The principle of non-refoulement is reflected in the Court's case-law under Article 3.[41]

30. The Court has also, however, underlined that "the Convention does not purport to be a means of requiring the Contracting States to impose Convention standards on other States. This being so, treatment which might violate Article 3 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."[42] The Court has also reiterated that "it has been very cautious in finding that removal from the territory of a Contracting State would be contrary to Article 3 of the Convention. It has only rarely reached such a conclusion since adopting the *Chahal* judgment [in 1996]. The Court would further add that, save for cases involving the death penalty, it has even more rarely found that there would be a violation of Article 3 if an

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[37] See *E.A. & H.A.A. v. Greece*, no. 14969/20, decision of 03 July 2025, in which the Court was led "to think that the conditions the first applicant lived in did not amount, in her own opinion, to a treatment reaching the threshold of article 3 or a fight for survival, since a housing offer which may have appeared unsatisfactory, but of which it is neither claimed not evidenced that it would breach *per se* the conditions of this article, was not seized to escape an allegedly unbearable situation" (para. 50). It may be noted that in an earlier case, a Committee of the same Section of the Court had found that conditions in the same reception and identification centre during the same period amounted to a violation of Article 3 (*T.A. & otrs v. Greece*, no. 15283/20 & otrs, 03 October 2024, para. 12).

[38] *Al-Saadoon & Muhfdhi v. United Kingdom*, 61498/08, 02 March 2010, para. 121.

[39] See e.g. *Saadi v. Italy* [GC], no. 37201/06, 28 February 2008, para. 127.

[40] International Law Commission, *Report of the Seventy-first Session*, Chapter V. Peremptory norms of general international law (*jus cogens*), 2019, A/74/10; International Organisation for Migration, *International Migration Law Unit Information Note on the Principle of Non-refoulement*, October 2023.

[41] See *Soering v. United Kingdom*, no. 14038/88, 07 July 1989, para. 88, and subsequent judgments.

[42] *Harkins & Edwards v. United Kingdom*, 9146/07 & 32650/07, 17 January 2012, para. 129.

applicant were to be removed to a State which had a long history of respect for democracy, human rights and the rule of law."[43]

31. Where the risk of ill-treatment relates to the individual's country of origin, States may seek instead to remove that individual to a third country, without examining the merits of their claim for protection against removal to their country of origin.[44] In such circumstances, the State must first determine whether or not there is a real risk of the individual being denied access, in the receiving third country, to an asylum procedure that affords sufficient guarantees to avoid their being removed, directly or indirectly, to their country of origin without a proper evaluation of the risks they face from the standpoint of Article 3 of the Convention. If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the individual should not be removed to the third country concerned.[45]

32. In cases under both Article 2 and Article 3, the risk may be obviated by obtaining diplomatic assurances from the receiving State. However, diplomatic assurances are not in themselves sufficient to ensure adequate protection against the risk. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time.[46] The Court has articulated a number of considerations relevant to assessing the adequacy of diplomatic assurances.[47]

33. The Court has found that the removal of a seriously ill person may give rise to a violation of Article 3 of the Convention in certain circumstances. One such situation is where the person is in the terminal stages of an illness and removal would expose them to a real risk of dying under most distressing circumstances.[48] Otherwise, an issue under Article 3 may arise only in very exceptional circumstances, which the Court has defined as "situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being 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. [These] situations correspond to a high threshold for the application of Article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness."[49]

34. There is also a prohibition on the removal of an individual to a place where they would face a real risk of being subject to a flagrant denial of justice in criminal proceedings, as guaranteed by Article 6 of the Convention. The Court has found that a flagrant denial of justice exists where the criminal case against the applicant would involve evidence obtained by torture,[50] and where trial would be before a military commission that lacked guarantees of independence and impartiality, was not established by law, and was likely to admit evidence obtained by

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[43] Idem, para. 131.
[44] For the purposes of the present document, the term "removal" will be used as a general expression covering all legal circumstances in which an individual is sent outside the State's jurisdiction. More specific terms, such as extradition or expulsion, will be used where necessary in the immediate context.
[45] *Ilias & Ahmed v. Hungary* [GC], no. 47287/15, 21 November 2019, paras. 134-138.
[46] *Othman (Abu Qatada) v. United Kingdom*, no. 8139/09, 17 January 2012, para. 187.
[47] Ibid., para. 189.
[48] *D. v. United Kingdom*, no. 30240/96, 02 May 1997, paras. 51-53.
[49] *Savran v. Denmark* [GC], no. 57467/15, 07 December 2021, para. 129.
[50] *Othman (Abu Qatada) v. United Kingdom*, no. 8139/09, 17 January 2012, para. 285.

torture.[51] It has also given general indications of particular forms of unfairness that could amount to a flagrant denial of justice.[52]

35. The Court has suggested that removal to a real risk of flagrant denial of the right to liberty and security under Article 5 of the Convention could amount to a violation of that article. As with the corresponding situation under Article 6, a high threshold must apply. This could be reached by, for example, the receiving State arbitrarily detaining the individual for many years with no intention of bringing them to trial, or the individual being imprisoned for a substantial period following conviction after a flagrantly unfair trial.[53]

36. Article 4 of Protocol No. 4 prohibits “any measure compelling aliens, as a group, to leave the country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group”.[54] The Court interprets the term expulsion as “referring to any forcible removal of an alien from a State’s territory, irrespective of the lawfulness of the person’s stay, the length of time he or she has spent in the territory, the location in which he or she was apprehended, his or her status as a migrant or an asylum-seeker and his or her conduct when crossing the border.”[55] The prohibition on collective expulsion also applies to individuals within the extraterritorial jurisdiction of a State Party.[56]

37. The Court considers that the existence of family life within the meaning of Article 8 of the Convention is essentially a question of fact depending upon the real existence in practice of close personal ties, including marriage-based relationships as well as *de facto* family ties, such as applicants living together, in the absence of any legal recognition of family life, or where other factors demonstrated that the relationship had sufficient constancy.[57] Other factors will include the length of the relationship and, in the case of couples, whether they have demonstrated their commitment to each other by having children together.[58] A child born of a marital relationship is *ipso jure* part of that relationship; hence, from the moment of the child’s birth and by the very fact of it, there exists between the child and its parents a bond amounting to "family life", even if the parents are not then living together.[59] A biological kinship between a natural parent and a child alone, without any further legal or factual elements indicating the existence of a close personal relationship, however, is insufficient to attract the protection of Article 8. As a rule, cohabitation is a requirement for a relationship amounting to family life. Exceptionally, other factors may also serve to demonstrate that a relationship between a natural parent and a child has sufficient constancy to create *de facto* “family ties”.[60]

38. The Court has noted that not all settled migrants, no matter how long they have been residing in the country from which they are to be expelled, necessarily enjoy “family life” there within the meaning of Article 8. However, as Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual’s social identity, it must be accepted that the totality of social

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[51] *Al Nashiri v. Poland*, no. 28761/11, 24 July 2014, para. 567; *Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, 24 July 2014, para. 557.
[52] *Harkins v. United Kingdom* [GC], no. 71537/14, decision of 15 June 2017, paras. 62-65.
[53] *Othman (Abu Qatada) v. United Kingdom*, no. 8139/09, 17 January 2012, para. 233.
[54] *Conka v. Belgium*, no. 51564/99, 5 February 2002, para. 59.
[55] *N.D. & N.T. v. Spain* [GC], nos. 8675/15 & 8697/15, 13 February 2020, para. 185.
[56] *Hirsi Jamaa & otrs v. Italy* [GC], no. 27765/09, 23 February 2012, paras. 169-182.
[57] *Paradiso & Campanelli v. Italy* [GC], no. 25358/12, 24 January 2017, para. 140.
[58] *X, Y & Z v. United Kingdom* [GC], no. 21830/93, 22 April 1997, para. 36.
[59] *Berrehab v. the Netherlands*, no. 10730/84, 21 June 1988, para. 21.
[60] *Katsikeros v. Greece*, no. 2303/19, 21 July 2022, para. 43.

ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8.[61]

39. Article 8 is a qualified right, meaning that interference with private or family life is permitted under certain circumstances. To be permissible, such interference must be in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The test of necessity requires that the interference be proportionate to the public interest being pursued.

40. Article 5 protects individuals against arbitrary deprivation of liberty. It specifies the circumstances in which individuals may be lawfully detained, in accordance with a procedure described by law. These include "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition" (Article 5(1)(f)). Whilst there is no requirement that detention under Article 5(1)(f) be reasonably considered necessary, there is an obligation to prosecute the underlying deportation or extradition proceedings with due diligence.[62]

41. In the context of confinement of asylum-seekers, the question may arise as to whether the confinement amounts to a "deprivation of liberty" for the purposes of Article 5 of the Convention, as opposed to a mere restriction on liberty of movement. The Court's approach has evolved in recent years, so as to remain "practical and realistic, having regard to the present-day conditions and challenges."[63] The relevant factors for distinguishing between restriction on liberty of movement and deprivation of liberty include i) the applicant's individual situation and their choices, ii) the applicable legal regime of the respective country and its purpose, iii) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events, and iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants.[64] When examining the duration of the individual's relevant situation, the Court has considered relevant the fact that the national authorities "were working in conditions of a mass influx of asylum-seekers and migrants at the border, which necessitated rapidly putting in place measures to deal with what was clearly a crisis situation."[65]

42. Article 5(2), (4) and (5) set out procedural guarantees for individuals who have been deprived of their liberty. In the context of immigration control, Article 5(2) requires an arrested person to be informed promptly, in a language that they understand, of the reasons for their arrest. Article 5(4) entitles a person to take proceedings by which the lawfulness of their detention shall be decided speedily by a court and their release ordered if the detention is not lawful. Article 5(5) establishes an enforceable right to compensation for victims of arrest or detention in contravention of Article 5.[66]

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[61] *Maslov v. Austria* [GC], no. 1638/03, 23 June 2008, para. 63.
[62] See e.g. *A & otrs v. United Kingdom* [GC], no. 3455/05, 19 February 2009, para. 164.
[63] *Ilias & Ahmed v. Hungary* [GC], nos. 47287/15, 21 November 2019, para. 213. The Court's approach in this case can be compared with the approach taken in earlier cases, for example *Amuur v. France* (no. 19776/92, 25 June 1996) concerning confinement in an airport transit zone, in which it stated that "The mere fact that it is possible for asylum-seekers to leave voluntarily the country where they wish to take refuge cannot exclude a restriction on liberty", and that "this possibility becomes theoretical if no other country offering protection comparable to the protection they expect to find in the country where they are seeking asylum is inclined or prepared to take them in" (para. 48).
[64] Ibid. para. 217.
[65] Ibid., para. 228.
[66] These safeguards apply also to deprivation of liberty on all other grounds permitted by Article 5.

43. The procedural safeguards of Article 5(2), (4) and (5) may be seen alongside those set out in Article 13 (right to an effective remedy) and Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) for those States that have ratified this protocol.[67]

44. Article 13 requires States Parties to provide a domestic remedy before a competent national authority affording the possibility of dealing with the substance of an arguable complaint of a violation of a Convention right and of granting appropriate relief. States Parties are afforded a margin of appreciation in conforming with their obligations under Article 13, which thus does not require any particular form of remedy. The remedy may be provided by a judicial or a non-judicial body, although in certain circumstances the former may be essential. A remedy before a non-judicial body may be effective if that body is independent, procedural safeguards are afforded to the applicant, and its decisions are legally binding. The remedy must be effective in practice as well as in law. The effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant.[68]

45. In the migration context, the Court has stated that a remedy for an arguable complaint of a violation of Article 2 or Article 3 following removal must have automatic suspensive effect.[69] A remedy for an arguable complaint of violation of the prohibition of collective expulsion under Article 4 of Protocol No. 4 alone, however, does not impose such an obligation, but merely requires that the person concerned should have an effective possibility of challenging the expulsion decision by having a sufficiently thorough examination of his or her complaints carried out by an independent and impartial domestic forum.[70]

46. Article 1 of Protocol No. 7 prohibits expulsion except in pursuance of a decision reached in accordance with the law. It gives the subject of an expulsion decision the right to submit reasons against their expulsion, to have their case reviewed, and to be represented for these purposes before the competent authority or a person(s) designated by that authority. Paragraph 2 of this article, however, permits the expulsion of an individual before the exercise of these rights when such expulsion is necessary in the interests of public order or is grounded on reasons of national security. As distinct from Article 5(2), (4) and (5) and Article 13, Article 1 of Protocol No. 7 establishes guarantees for persons not deprived of their liberty and that apply in cases that do not engage other rights or freedoms guaranteed under the Convention and its protocols.

47. The Convention is not the only international treaty containing human rights provisions that are relevant in the migration context. The following are of particular note:

- The International Covenant on Civil and Political Rights (ICCPR), which contains provisions corresponding to those set out in the Convention and certain of its protocols, amongst others;
- The 1951 UN Convention relating to the status of refugees (Refugee Convention) and its 1967 Protocol, which regulate the recognition and situation of refugees, including a prohibition on refoulement under Article 33 of the Refugee Convention and procedural guarantees under Article 32 that reflect those of Article 1 of Protocol No. 7 to the ECHR.
- The UN Convention Against Torture, which, amongst other things, establishes a definition of torture (Article 1) and prohibits refoulement to another State where there are substantial

[67] Decisions relating to immigration and to the entry, residence and removal of aliens do not engage a civil right such as to bring them within the scope of the right to a fair trial under Article 6 of the Convention: see e.g. *M.N. & otrs v. Belgium* [GC], no. 3599/18, decision of 05 May 2020, para. 137.
[68] See further *Guide on Article 13 of the European Convention on Human Rights: Right to an effective remedy*, European Court of Human Rights, August 2025.
[69] See e.g. *M.S.S. v. Belgium & Greece* [GC], no. 30696/09, 21 January 2011, para. 293.
[70] *Khlaifia & otrs v. Italy* [GC], no. 16483/12, para. 279.

grounds for believing that the individual would be in danger of being subjected to torture (Article 3).

All Council of Europe member States are parties to the ICCPR, the 1951 Refugee Convention and the UN Convention Against Torture.

48. The European Union Charter of Fundamental Rights contains rights corresponding to those set out in the Convention and its protocols. It also contains an explicit prohibition on refoulement and a right to asylum. The Charter is binding on EU member States when applying EU law.

49. There are also numerous other international treaties, including of the Council of Europe, that address migration-related issues. As these are of lesser relevance in the context defined by the CDDH's present mandate, they will not be examined further.

III. The application of the Convention in specific migration-related contexts

50. This section will examine the interpretation and application of the Convention in the context of specific factual situations, as indicated by the CDDH's present mandate.

A. Irregular migration

51. The following factual situations may be considered as relevant under the heading of irregular migration: mass arrivals by sea; mass arrivals by land elsewhere than at official border crossing-points; and "instrumentalization of migration" by neighbouring States with hostile political intent. The unpredictable nature of mass arrivals, whether by sea or by land, may give rise to particular issues regarding reception and detention conditions.

i. Mass arrivals by sea

52. The Court has found that the rescue of migrants from vessels in distress on the high seas by a naval ship flying the flag of a State Party and crewed by its military personnel brought the rescued migrants within the jurisdiction of that State for the purposes of Article 1 of the Convention.[71] The State Party was thereafter under an obligation not to remove those migrants to a receiving country in which they would run a real risk of being subjected to treatment contrary to Article 3 of the Convention.[72]

53. The Court has since reaffirmed that the crucial test in establishing extraterritorial jurisdiction is whether the State Party exercises "effective control" over the area where the events in question occurred or over the persons concerned. For example, the provision of financial and technical assistance to another State's coastguard and the coordination of the rescue operations involving that State's coastguard vessel, without the persons concerned being taken aboard a vessel flying the flag of the State Party or being under the *de facto* control of its agents, has been found insufficient to establish "effective control".[73]

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[71] *Hirsi Jamaa & otrs v. Italy* [GC], no. 27765/09, 23 February 2012, paras. 76-82.
[72] Ibid., paras. 122-123.
[73] *S.S. v. Italy*, no. 21660/18, 20 May 2025, paras. 91-108. The Court reached this conclusion having reiterated that "problems with managing migratory flows cannot justify having recourse to practices which are incompatible with [States Parties'] obligations under the Convention" and underlined that "the special nature of the maritime environment cannot justify an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention which the States have undertaken to secure to everyone within their jurisdiction" (para. 111).

ii. Mass arrivals at land borders

54. Where individuals gain unauthorised access to the territory of a State Party by participating in a large-scale and forceful breach of the border and are subsequently removed by the authorities, a lack of individual removal decisions can be attributed to the fact that those individuals did not comply with the requirement to make use of genuinely and effectively accessible official entry procedures that would have allowed them to submit an application for protection against refoulement. In such circumstances there would be no violation of Article 4 of Protocol No. 4.[74] The Court has since confirmed this approach also in cases that did not involve the use of force to make an unauthorised border crossing. In doing so, it has noted that where the State Party has provided genuine and effective access to means of legal entry that secure the right to request protection under the Convention, it may, in the fulfilment of its obligation to control borders, require applications for such protection to be submitted at the existing border crossing points. Consequently, the State may refuse entry to its territory to aliens, including potential asylum-seekers, who have failed, without cogent reasons, to comply with these arrangements by seeking to cross the border at a different location.[75]

55. An individual who is admitted to the territory is entitled to the guarantees against refoulement in violation of Articles 2 and 3, including when arriving as one of a large number of migrants, and against collective expulsion, as described in preceding sections. This includes access to an effective remedy under Article 13.

iii. "Instrumentalisation of migration"

56. The expression "instrumentalisation of migration" is not a legal term. It has been used in recent years to refer to a neighbouring State's deliberate policy, pursued with hostile political intent, of encouraging and/or facilitating irregular migration, including by unlawful border crossing, sometimes involving threats or physical violence against the migrants.

57. From a purely factual perspective, these situations bear a certain resemblance to others involving mass arrivals at land borders. For the States affected, however, the involvement of the authorities of a neighbouring State and those authorities' hostile political intentions are significant distinguishing features of the phenomenon.

58. The Court has not yet delivered judgment in a case involving such "instrumentalisation of migration". Three cases are currently pending before the Grand Chamber, which held hearings on all three in February 2025.[76] The Court's press releases announcing the Grand Chamber hearings describe these cases as "concerning alleged "pushbacks" at the Belarusian borders from summer 2021 to summer 2023." They variously involve issues under Articles 2, 3, 5 and 13 of the Convention and Article 4 of Protocol No. 4.

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[74] *N.D. & N.T. v. Spain* [GC], nos. 8675/15 & 8697/15, 13 February 2020, paras. 209-211 and 231.
[75] *A.A. & otrs v. North Macedonia*, no. 55798/16 & otrs, 05 April 2022, paras. 114-115.
[76] These cases are *R.A. & otrs v. Poland*, no. 42120/21, *H.M.M. & otrs v. Latvia*, no. 42165/21, and *C.O.C.G. & otrs v. Lithuania*, no. 17764/22. A significant number of other States Parties intervened as third parties in these cases.

iv. Reception conditions

59. As regards reception conditions in general, the Court attaches considerable importance to an individual's status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection. It notes the existence of a broad consensus at the international and European level concerning this need for special protection. State responsibility under Article 3 could arise where an asylum-seeker, in circumstances wholly dependent on State support, is faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity, unable to cater for their most basic needs: food, hygiene and a place to live.[77]

60. The unpredictable nature of irregular migration flows presents challenges to States Parties when responding to the material needs of migrants. The Court has taken into account the attitude of the authorities when confronted with such challenges, noting the fact that they had not remained indifferent to a situation of hardship and had taken measures to improve material conditions of reception within a short time, when determining whether the situation reached the minimum level of severity required to amount to a violation of Article 3.[78]

61. Individuals confined in a transit zone may be fully dependent on the host country's authorities for their most basic human needs and be under those authorities' control, even if their confinement does not amount to deprivation of liberty within the meaning of Article 5. In such circumstances, it is the responsibility of the authorities not to subject them to such conditions as would constitute inhuman and degrading treatment contrary to Article 3.[79] The Court has considered factors including the material conditions at the zone, the length of the applicants' stay there, and the possibilities for human contact with other asylum-seekers, UNHCR representatives, NGOs and a lawyer as relevant to determining whether the situation complained of reached the minimum level of severity necessary to constitute inhuman treatment within the meaning of Article 3.[80]

v. Detention conditions

62. Article 3 of the Convention applies to immigration detention in the same way as to other forms of deprivation of liberty. The Court has stated that, "Having regard to the absolute character of Article 3 of the Convention, an increasing influx of migrants cannot absolve a State of its obligations under that provision, which requires that persons deprived of their liberty must be guaranteed conditions that are compatible with respect for their human dignity. Even treatment which is inflicted without the intention of humiliating or degrading the victim, and which stems, for example, from objective difficulties related to a migrant crisis, may entail a violation of Article 3. However, it would certainly be artificial to examine the facts of the case without considering the general context in which those facts arose. In its assessment, the Court thus bears in mind, together with other factors, that the impugned situation stemmed to a significant extent from the situation of extreme difficulty confronting the national authorities at the relevant time."[81] The Court has also considered relevant other factors, not directly related to migration, that created significant difficulties for authorities responsible for migration-related issues.[82]

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[77] *M.S.S. v. Belgium & Greece* [GC], no. 30696/09, 21 January 2011, paras. 251-254.
[78] *B.G. v. France*, no. 63141/13, 10 September 2020, paras. 88-89.
[79] *Ilias & Ahmed v. Hungary* [GC], no. 47287/15, 21 November 2019, paras. 186-187.
[80] Ibid., para. 194.
[81] *Khlaifia & otrs v. Italy* [GC], no. 16483/12, 15 December 2016, paras. 184-185.
[82] See e.g. *E.A. & H.A.A. v. Greece*, no. 14969/20, decision of 03 July 2025: "The Court further takes into account the repercussions of the Covid-19 outbreak and the efforts made by the authorities to manage the crisis" (para. 50).

63. Irregular migration flows often include children. For children accompanied by a parent or parents, the following three factors are relevant to the assessment of whether any deprivation of liberty has involved a violation of Article 3: (i) the child's young age; (ii) the duration of the detention; and (iii) the suitability of the premises with regard to the specific needs of children.[83] The vulnerability of the child in terms of their health or personal history are also relevant. Whether the conditions of detention amount to a violation of Article 3 also depends on its duration.[84] Unaccompanied irregular migrant children undoubtedly fall within the category of the most vulnerable persons in society, such that a State Party is required to protect and take care of them by taking adequate measures in accordance with their positive obligations under Article 3.[85] On this basis, very poor conditions of detention, even when lasting for only two days, have been found to amount to a violation of Article 3.[86]

64. As regards confinement in a land border transit zone, the Court considers that "where … it was possible for the asylum seekers, without a direct threat for their life or health, known by or brought to the attention of the authorities at the relevant time, to return to the third intermediary country they had come from, Article 5 could not be seen as applicable to their situation in a land border transit zone where they awaited the examination of their asylum claims, on the ground that the authorities had not complied with their separate duties under Article 3." In other words, the fact that an individual can leave confinement in a land border transit zone only by returning to the third country from which he crossed that border does not of itself transform the confinement into deprivation of liberty for the purposes of Article 5.[87]

B. The situation of foreigners convicted of serious offences

65. This issue can be taken as referring in particular to decisions to deport or expel a person following their conviction for a serious criminal offence by a domestic court of the State Party concerned.

66. Four main general issues may arise in this context. First, detention pending deportation as permitted by Article 5 of the Convention; second, the principle of non-refoulement notably under Articles 2 and 3 of the Convention; third, the right to respect for private and family life under Article 8; and fourth, procedural guarantees under Article 13 of the Convention and Article 1 of Protocol No. 7. This section will focus on issues arising under Article 8, sufficient relevant information on the others having been given in preceding sections.

67. The Court has set out precise lists of criteria that domestic authorities should taken into account when assessing the proportionality of the interference with a settled migrant's private or family life with the public interest being pursued by the expulsion order.

68. In the case of expulsion of an individual with an established family life, the relevant criteria are:

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[83] *M.D. & A.D. v. France*, no. 57035/18, 22 July 2021, para. 63.
[84] See e.g. *R.M. & otrs v. France*, no. 33201/11, 12 July 2016, para. 75.
[85] *H.A. & otrs v. Greece*, no. 19951/16, 28 February 2019, para. 171.
[86] *Rahimi v. Greece*, no. 8687/08, 05 April 2011, para. 168.
[87] In the case of *Ilias & Ahmed v. Hungary*, the Court found that the confinement did not amount to deprivation of liberty within the meaning of Article 5. By contrast, in its judgment in *Z.A. & otrs v. Russia*, no. 61411/15 & otrs, delivered on the same day by a Grand Chamber of the same composition applying the same four-part test, the Court found that confinement in an airport transit zone did amount to deprivation of liberty on account of deficiencies in the applicable legal regime, the excessive duration of the confinement and delays in examination of the applicants' asylum claims, the conditions of confinement, and the absence of any practical possibility of leaving the zone (paras. 140-156).

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time elapsed since the offence was committed and the applicant's conduct during that period;
- the nationalities of the various persons concerned;
- the applicant's family situation, such as the length of a marriage, and other factors expressing the effectiveness of a couple's family life;
- whether the spouse knew about the offence at the time when he or she entered into a family relationship;
- whether there are children from the marriage and, if so, their age;
- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled;
- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.[88]

69. In the case of the expulsion of young adults who have not yet founded a family of their own, the relevant criteria are fewer and include:

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time that has elapsed since the offence was committed and the applicant's conduct during that period; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.[89]

70. The Court will also have regard to the duration of the exclusion order. For a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion.[90]

71. The Court conducts a process-based review of such cases. Where independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately weighed up the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be strong reasons for doing so.[91]

72. For foreigners without settled status, whose family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of the family life within the host State would from the outset be precarious, a violation of Article 8 of the Convention will be likely only in exceptional circumstances.[92]

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[88] Criteria from *Üner v. the Netherlands* [GC], no. 46410/99, 05 July 2005, paras. 57-58.
[89] Criteria from *Maslov v. Austria* [GC], no. 1638/03, 23 June 2008, para. 71.
[90] *Levakovic v. Denmark*, no. 7841/14, 23 October 2018, para. 37.
[91] *Savran v. Denmark* [GC], no. 57467/15, 07 December 2021, para. 189.
[92] *Alleleh & otrs v. Norway*, 569/20, 23 June 2022, para. 90.