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REVISED DRAFT TEXT FOR THE OUTCOME DOCUMENT CONTAINING ELEMENTS FOR A POLITICAL DECLARATION

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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". 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)".

2. In response to this mandate, the CDDH held extraordinary plenary meetings, in hybrid format, on 13-15 January, 25-27 February, and 10-12 March 2026. Members, participants, and observers were given the opportunity to make written submissions in advance of the January meeting and to submit written comments on the preliminary draft of the present document in advance of the February meeting.

3. The present document will continue with a general introduction to relevant aspects of the system of the European Convention on Human Rights (the Convention), articulated around the fundamental principle of subsidiarity and the related concepts of the margin of appreciation and the shared responsibility of the States Parties, the European Court of Human Rights (the Court), and the other Convention bodies. It will then identify and examine the specific migration-related issues that fall within its mandate, in each case describing the factual situation, analysing the relationship with the Convention, indicating the views of the CDDH on these issues, and on that basis proposing possible elements for the political declaration, taking inspiration also from previous high-level declarations. It concludes with an appendix containing a compilation of the possible elements that the CDDH has prepared.

II. The Convention system

4. The European Convention on Human Rights (the Convention) is a political symbol and legal guarantor of its State Parties' shared commitment to human rights and fundamental freedoms based on a regional system of mutual obligations and collective enforcement.

5. The principle of subsidiarity is fundamental to the Convention system. It is reflected in the States Parties' primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto,[2] subject to the supervisory jurisdiction of the Court,[3] and to provide effective domestic remedies for allegations of violations.[4] Only when such

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[1] Document prepared by the Secretariat following the extraordinary CDDH meeting on 13-15 January.

[2] Article 1 of the Convention.

[3] Preamble to the Convention, as amended by Protocol No. 15, which was adopted in 2013 and entered into force in 2021.

[4] Article 13 of the Convention. The Court has stated that a remedy for an arguable complaint of a violation of Article 2 (right to life) or Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) following removal must have automatic suspensive effect.[4] A remedy for an arguable complaint of violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion) alone merely requires that the person concerned should have an effective possibility of challenging the expulsion

remedies have been exhausted may an individual bring a case before the Court,[5] whose role is subsidiary to that of the States Parties.[6] The Court, which was established to ensure the observance by the States Parties of their obligations under the Convention,[7] has jurisdiction over all matters concerning the interpretation and application of the Convention and the Protocols thereto, as defined by Article 32 of the Convention. The Court's judgments are binding on a respondent State in the case.[8]

6. Inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.[9] 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.[10]

7. The margin of appreciation is subject to careful judicial calibration in the cases decided by the Court.[11] The Court's jurisprudence on the margin of appreciation recognises that in applying certain Convention provisions, such as Article 8, there may be a range of different but legitimate solutions which could each be compatible with the Convention depending on the context. This is relevant when assessing the proportionality of measures restricting the exercise of rights or freedoms under the Convention.

8. It is primarily for the national authorities, notably the courts, to interpret and apply domestic law in a manner that gives full effect to the Convention. The Court's role is ultimately to determine whether the way in which that law is interpreted and applied produces consequences that are consistent with the principles of the Convention.[12] Where the domestic courts have carefully examined the facts, applied the relevant human rights standards consistently with the Convention and the Court's case-law, and have adequately weighed up the individual interests against the public interest in a case, the Court would require strong reasons to substitute its own view for that of the domestic courts.[13] In matters of national security, the Court has noted that national authorities enjoy a wide margin of appreciation and that significant weight must be attached to the judgement of the domestic authorities, and especially of the national courts, which are better placed to assess relevant evidence.[14]

9. The principle of subsidiarity reflects the shared responsibility of the States Parties and the Court, along with the other Convention bodies – namely the Committee of Ministers when supervising execution of the Court's judgments, the Parliamentary Assembly when electing the Court's judges, and the Commissioner for Human Rights when intervening in cases as a third party – for the effective implementation of the Convention. In this spirit of shared

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decision by having a sufficiently thorough examination of his or her complaints carried out by an independent and impartial domestic forum.

[5] Article 35 of the Convention.

[6] Explanatory Report to Protocol No. 14 to the Convention, para. 12.

[7] Article 19 of the Convention.

[8] Article 46 of the Convention.

[9] *Soering v. United Kingdom*, no. 14038/88, 07 July 1989, para. 89.

[10] Brighton Declaration, para. 11

[11] CDDH Report on the First Effects of Protocol No. 15 to the European Convention on Human Rights, June 2025, para 15.

[12] *Halet v. Luxembourg* [GC], no. 21884/18, 14 February 2023, para. 159.

[13] *M.A. v. Denmark* [GC], no. 6697/18, 09 July 2021, para. 149.

[14] *Gaspar v. Russia*, no. 23038/15, 12 June 2018, para. 43 and *Beghal v. the United Kingdom*, no. 4755/16, 28 February 2019, para. 95.

responsibility, it is crucial that the States Parties and the Court fulfil their respective roles, and that each fully respects the role of the other. It is therefore to be welcomed that all States Parties have incorporated the Convention into their domestic legal systems, often at constitutional level, and that domestic courts increasingly refer to the Court's judgments when applying the Convention.

10. For a system of shared responsibility to be effective, there must be good interaction between the national and European level. This implies, in keeping with the independence of the Court and the binding nature of its judgments, a constructive and continuous dialogue between the States Parties and the Court on their respective roles in the implementation and development of the Convention system, including the Court's development of the rights and obligations set out in the Convention. Such interaction may anchor the development of human rights more solidly in European democracies.[15]

11. Member States are provided with a range of opportunities to express their understanding of the interpretation and application of the Convention and its Protocols without prejudice to full respect for the Court's jurisdiction over these matters,[16] its independence, and the binding nature of its judgments.[17] Within the framework of the Convention, States Parties may express their views in the course of proceedings before the Court, either as respondents or through third party interventions. Within the broader framework of the Council of Europe, their positions may be reflected in recommendations and other non-binding instruments of the Committee of Ministers, and in declarations and other texts adopted at summits, conferences, and other high-level events.

12. These expressions of view form part of the dialogue inherent in the Convention system and respect the balance established by the Convention between the national and international levels.[18] The President of the Court has recently stated that "The Court has been receptive to the messages conveyed in [previous political] declarations, which have also as a general rule been helpful to the Convention system", whilst underlining that "the integrity of its judicial role relies on the full respect of the separation of powers and the absence of any kind of political pressure."[19]

13. The Court communicates its jurisprudence primarily via its judgments, including important judgments in the area of migration. It should be noted that of the cases currently pending before the Court, only approximately 1.5% relate to migration (870 applications out of 53,194, as of 1 January 2026). Over the past ten years, the Court has processed 436,391 applications, of which around 2% (7,387) have concerned migration. Of these applications, the vast majority (6,861) were declared inadmissible or struck out of the list. The remaining 526 applications led to 393 judgments. The Court found violations in 300 of these judgments, covering around 450 applications, which represents roughly 6% of all migration-related applications lodged with the Court.[20] These judgments have an important impact insofar as they are taken into account by domestic courts across the Council of Europe's member States when determining cases before them.

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[15] Copenhagen Declaration, para. 33.
[16] Article 32 of the Convention
[17] Article 46 of the Convention.
[18] In this connection, it may be noted that the frequency of references to the principle of subsidiarity and the doctrine of margin of appreciation increased following the initiation of the Interlaken reform process in 2010, the adoption of the Brighton Declaration in 2012, and peaking in 2014 and 2015. Arguably, the prospect alone of entry into force of Protocol No. 15 already had an impact in terms of influencing their visibility in the case-law. See CDDH Report on the First Effects of Protocol No. 15 to the European Convention on Human Rights, June 2025, para. 53.
[19] Reported in "Judicial pragmatism", *A Lawyer Writes*, 30 January 2026, https://substack.com/home/post/p-186222351.
[20] *The Court's case-law on immigration matters*, European Court of Human Rights, February 2026.

14. The Court also communicates its jurisprudence through advisory opinions delivered in accordance with Protocol No. 16 and engages in dialogue with other Convention actors in various ways. These include the Superior Courts Network that was launched in 2015 and 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.[21]

Possible elements

15. Possible elements for expressing the essential issues mentioned above in the political declaration, inspired by declarations adopted at previous high-level declarations,[22] are set out in the appendix.

III. Specific migration-related issues

16. On the basis of its terms of reference read in the light of the conclusions of the Informal Ministerial Conference, the CDDH agreed to address the following factual situations, which represent significant, complex challenges in various member States and were either unforeseen at the time the Convention was drafted or have since evolved significantly:

- expulsion of foreign nationals convicted of serious criminal offences and extradition cases;
- mass arrivals of migrants by land and sea;
- instrumentalisation of migration;
- decision-making in migration cases;
- innovative solutions to address migration.

17. On a general level, it should be recalled that States Parties have the undeniable sovereign right to decide on and control foreign nationals' entry into and residence in their territory. In this regard, State Parties have the right to establish their own immigration policies and pursue immigration control as a public interest.[23] This right must be exercised in accordance with the provisions of the Convention.[24] There is broad consensus within the international community regarding the obligation and necessity for the States Parties to protect their borders (which may also be the external borders of the Schengen Area) in a manner which complies with the Convention guarantees.[25] The Court has 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, with specific rules applying to those claiming asylum.[26] It 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

[21] Further information on these practices in 2025 can be found in the Court's Annual Report for 2025.
[22] For further information on the source of these possible elements, see doc. CDDH(2026)01.
[23] *F.G. v. Sweden* [GC], no. 43611/11, 23 March 2016, para. 111.
[24] See e.g. *Amuur v. France*, no. 19776/92, 25 June 1996, para. 41.
[25] *N.D. & N.T. v. Spain* [GC], nos. 8675/15 & 8697/15, 13 February 2020, para. 232.
[26] *M.K. and Others v. Poland*, no. 40503/17, 23 July 2020, para. 178.
[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.

itself examine the actual asylum applications or verify how the States honour their obligations under the 1951 Refugee Convention.[29]

18. The Convention and its protocols contain only four provisions explicitly related 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] Other articles, especially Articles 3 and 8, may also be relevant and the Court has developed their application to migration through its case-law. The application of these provisions in the factual situations indicated above will be examined in the following sections.[32]

Possible elements

The political declaration could:

- *Acknowledge that the majority of migrants residing legally in the States Parties contribute positively to the receiving societies and that migrants' fundamental rights and freedoms should be respected and protected in accordance with the principle of non-discrimination.*
- *Recall that States Parties have the undeniable sovereign right to decide on and control foreign nationals' entry into and residence in their territory. States Parties have the right to establish their own immigration policies, potentially in the context of bilateral or regional cooperation, and pursue immigration control as a public interest. However, these rights must be exercised in accordance with the provisions of the Convention*
- *Recall that it it is an obligation and a necessity for States Parties to protect their borders in compliance with Convention guarantees*
- *Recall 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, with specific rules applying to those claiming asylum*
- *Acknowledge that there are significant, complex challenges in various member States which were either unforeseen at the time the Convention was drafted or have evolved significantly since then*
- *Acknowledge that the failure to address these challenges adequately may weaken public confidence to the Convention system*

a. Expulsion of foreign nationals convicted of serious criminal offences and extradition of foreign nationals

19. States Parties' right to control foreign nationals' entry into and residence in their territory includes the possibility to expel foreign nationals who have committed serious offences. States Parties also have the right to extradite individuals who have been charged or convicted of serious offences. These rights must be exercised in compliance with the States' obligations under the Convention. The Court's approach to examining the risk that the

[29] *F.G. v. Sweden* [GC], no. 43611/11, 23 March 2016, para. 117.
[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] For further information, see document CDDH(2026)01 and, more extensively, the various case-law guides to be found on the Court's ECHR-KS Knowledge Sharing Platform.

individual's Convention rights would be violated does not vary according to the legal basis for the removal.[33]

20. The inability to expel or extradite an individual convicted or charged with a serious offence can lead to significant challenges for States, including in relation to their fundamental duties to guarantee their populations' right to live in peace, freedom and security, notably by protecting public safety and national security and preventing disorder and crime. If not clearly explained and understood, an inability to take such action may risk weakening public confidence in the Convention system.

21. It may be recalled that where a Contracting State considers that its domestic courts could have applied the Court's jurisprudence differently, leading to a different outcome in a case, there is no avenue whereby a State can contest the domestic court's judgment before the Court. States may, however, subject to their particular constitutional arrangements and in accordance with the Convention and the principles established by the Court, develop and clarify domestic frameworks ensuring the effective and context-specific application of the relevant Convention rights, including Articles 3 and 8, in cases involving expulsion and extradition. This would be a means of giving practical effect to the principles of subsidiarity and shared responsibility, subject to the supervisory jurisdiction of the Court in accordance with the appropriate margin of appreciation.

Possible elements

The political declaration could:

- *Underline that the inability to expel or extradite an individual convicted or charged with a serious offence can lead to significant challenges for States, including in relation to their fundamental duties to guarantee the right to everyone within their jurisidiction to live in peace, freedom and security, notably by protecting public safety and national security and preventing disorder and crime*
- *Encourage States Parties to develop and clarify domestic frameworks ensuring the effective and context-specific application of the relevant Convention rights, including Articles 3 and 8, in cases involving expulsion and extradition*

Issues arising under Article 3

22. The prohibition of torture or inhuman or degrading treatment or punishment under Article 3 is absolute. This is reflected in the principle of non-refoulement, codified in other international instruments,[34] and reflective of customary international law. The Court has applied this principle to mean that States Parties may not expel or extradite an individual where substantial grounds have been shown for believing that this would result in a real risk of being subjected to treatment contrary to Article 3 in the receiving country.[35] The assessment of whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment in breach of Article 3 must necessarily be a rigorous one.[36]

23. As regards the right not to be subjected to inhuman or degrading treatment or punishment under Article 3, its absolute nature reflects the fact that it relates to the most serious forms of ill treatment. The ill-treatment an individual alleges he or she will face if expelled or extradited must attain a minimum level of severity if it is to fall within the scope of Article 3.[37] The assessment of this minimum is relative and depends on all the circumstances

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[33] *Khasanov & Rakhmanov v. Russia* [GC], nos. 28492/15 & 49975/15, 29 April 2022, para. 94.
[34] E.g. Article 33 of the 1951 Refugee Convention and Article 3 of the UN Convention Against Torture.
[35] *Soering v. United Kingdom*, no. 14038/88 , 07 July 1989, para. 91.
[36] *Chahal v United Kingdom* [GC], no. 22414/93 , 15 November 1996, para. 96.
[37] *Savran v Denmark* [GC), no. 57467/15, 07 December 2021, para. 122.

of the case, such as duration of the treatment, its physical or mental effects and in some cases, the sex, age, and state of health of the victim.[38] In the context of deprivation of liberty, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention if it is to fall within the scope of Article 3.[39]

24. The Court has made clear that a high threshold for ill-treatment to be considered as inhuman or degrading applies also in cases involving expulsion or extradition. In 2012, the Court recalled 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", adding 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 applicant were to be removed to a State which had a long history of respect for democracy, human rights and the rule of law."[40] The Court has repeatedly stated that "the Convention does not purport to be a means of requiring the Contracting States to impose Convention standards on other States".[41] In a case concerning assessment of the risk of a sentence of life imprisonment without possibility of parole following extradition to a non-State Party, the Court noted that "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]

25. The Court has found that the extradition or expulsion of an applicant would violate the prohibition on inhuman or degrading treatment in cases concerning a variety of individual circumstances. The Court's judgments in these cases have been applied by States Parties' domestic courts in numerous expulsion and extradition cases involving a range of circumstances. This reflects the inherently case-specific nature of the Court's case-law and calls for careful consideration when applying the threshold it has developed, particularly where domestic courts are dealing with circumstances different from those examined by the Court in a particular judgment.

26. The Court has noted that the effect of finding a violation of Article 3 in an extradition case would be that a person would never stand trial unless he or she could be prosecuted in the requested State, or the requesting State could provide the assurances necessary to facilitate extradition. The Court has also noted that allowing an individual to escape with impunity is an outcome that would be difficult to reconcile with society's general interest in ensuring that justice is done in criminal cases. It would also be difficult to reconcile with the interest of Contracting States in complying with their international treaty obligations, which aim to prevent the creation of safe havens for those charged with the most serious criminal offences.[43]

27. In the case of extradition, the Court has noted that Article 1 of the Convention cannot be read as justifying a general principle to the effect that, notwithstanding its extradition obligations, a State Party may only surrender an individual if satisfied that the conditions awaiting him in the country of destination are in full accord with each of the safeguards of the Convention.[44] Nonetheless, where there is no directly applicable case-law from the Court, domestic courts may seek to apply principles taken from judgments concerning the situation in States Parties when determining whether removal to a non-State Party would violate Article 3. For example, as regards general conditions of detention, the Court has generally found that a State Party must ensure that a person is detained in conditions "which are compatible with

[38] *Kudla v. Poland* [GC], no. 30210/96, 26 October 2000, para. 91.
[39] *Kudla v. Poland* [GC], no. 30210/96, 26 October 2000, para. 92.
[40] *Harkins & Edwards v. United Kingdom*, 9146/07 & 32650/07, 17 January 2012, para. 131.
[41] *Harkins & Edwards v. United Kingdom*, 9146/07 & 32650/07, 17 January 2012, para. 129.
[42] *Babar Ahmad & otrs v. United Kingdom*, no. 24027/07 & otrs, 10 April 2012, para. 177.
[43] *Sanchez-Sanchez v United Kingdom* [GC], no. 22854/20, 03 November 2022, para. 94.
[44] *Soering v United Kingdom*, no. 14038/88, 07 July 1989, para. 86.

respect for his [or her] human dignity" and "do not subject him [or her] to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, his [or her] health and well-being are adequately secured".[45] For example, in cases concerning prison conditions, domestic courts have sought to apply judgments concerning acceptable cell sizes in a State Party to assess the relevant situation in a case involving expulsion or extradition to a non-State Party.[46] Further guidance may be needed to assist domestic courts when assessing whether local conditions in non-States Parties reach the Article 3 threshold.

28. The Court has found that, in certain very exceptional circumstances, the removal of a seriously ill person may give rise to a violation of Article 3. 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 the most distressing circumstances".[47] The Court has clarified that very exceptional circumstances may also exist where the individual is not at imminent risk of dying. This would be so where "substantial grounds have been shown for believing that [an individual] … 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 serious, rapid and irreversible decline in his or her health resulting in intense suffering or to a significant reduction in life expectancy".[48] This approach should be applied in such a way that the threshold for inhuman and degrading treatment or punishment is met only in "very exceptional circumstances and given the compelling humanitarian considerations at stake",[49] recognising that there is no obligation for the returning State to alleviate the disparities between its own healthcare system and the level of treatment existing in the receiving State.[50]

29. In addition, in cases of removal to third countries the Court has held that the expelling State needs to assess the living conditions for asylum-seekers in the receiving third country.[51] In case the living conditions are so dire as to amount to inhuman or degrading treatment, article 3 implies an obligation not to expel the individual to that country.[52] When determining whether a situation of extreme material poverty may raise an issue under Article 3, the Court has held that a responsibility under article 3 may arise "where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity".[53] Further guidance may be needed to assist domestic courts when assessing a situation against this threshold, in particular when a range of different factors is involved that, whilst having a negative impact on the individual's situation, do not each in isolation amount to inhuman or degrading treatment. Further guidance may also be needed on what role the general socioeconomic situation in the third country plays in that context.

30. Where a risk of violation of Article 3 following expulsion or extradition has been shown to exist, it may be obviated by obtaining diplomatic assurances from the receiving State, on condition that they provide 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.[54] The Court has articulated a number of considerations relevant to assessing the adequacy of diplomatic assurances, and has in a

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[45] *Kudla v Poland* [GC], no. 30210/96, 26 October 200, para. 94.
[46] See e.g. *Mursic v. Croatia* [GC], no. 7334/13, 20 October 2016.
[47] *D. v. United Kingdom*, no. 30240/96, 02 May 1997, para. 53.
[48] *Paposhvili v. Belgium* [GC], no 41738/10, 13 December 2016, para. 183.
[49] *D. v. United Kingdom*, no. 30240/96, 02 May 1997, paras. 53-54; *Paposhvili v. Belgium* [GC], no 41738/10, 13 December 2016, para. 177.
[50] *Paposhvili v. Belgium* [GC], no 41738/10, 13 December 2016, para. 192.
[51] *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, 21 November 2019, para. 131.
[52] *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, 21 January 2011, para. 365.
[53] *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, 21 January 2011, para. 253.
[54] *Othman (Abu Qatada) v. United Kingdom*, no. 8139/09, 17 January 2012, para. 187.

number of cases found that diplomatic assurances did provide sufficient protection against the risk of ill-treatment.[55]

Possible elements

The political declaration could:

- *Emphasise that the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the Convention is absolute. It permits no derogation, contains no exceptions, and allows for no legitimate interference*
- *Recall that the absolute prohibition of inhuman or degrading treatment or punishment reflects that it relates to the most serious forms of ill-treatment, and consider that the minimum level of severity of ill treatment that constitutes inhuman or degrading treatment or punishment must therefore remain high and constant, and be clearly and consistently applied at all levels, avoiding unnecessary constraints on decisions to extradite, or to expel foreign nationals*
- *Recall that the assessment of the minimum level of severity of ill treatment that constitutes inhuman or degrading treatment or punishment is relative and depends on all the circumstances of the case*
- *Express concern, as recognised by the Court, that where a person cannot be extradited to face trial or serve a penal sentence for a serious offence, this may give rise to impunity, allowing a person to evade justice in a country in which they have committed an offence, simply by virtue of having left that country; and consider that all possible steps must therefore be taken to avoid this, consistent with Convention obligations*
- *Underline that where an individual is being expelled or extradited, the quality of accessible healthcare in the receiving State should only give rise to a real risk of treatment contrary to Article 3 in very exceptional circumstances described in the Court's case-law, recognising that there is no obligation for the returning State to alleviate the disparities between its own healthcare system and the level of treatment existing in the receiving State*
- *Consider that where an individual is being expelled or extradited, the domestic courts and authorities in this context may benefit from further guidance on how to assess a range of individual socio-economic factors under article 3 that may have a negative impact on that individual's situation, but do not each in isolation amount to inhuman or degrading treatment, and on the role the general socioeconomic situation in the receiving country plays in that assessment*
- *Note that the Court has rarely found that there would be a violation of Article 3 if an applicant were to be expelled or extradited to a State which had a long history of respect of democracy, human rights and the rule of law*
- *Underline that the Convention does not purport to be a means of requiring the States Parties to impose Convention standards on other States*
- *Note that, in light of the above, caution should be exercised when applying case-law of the Court, including by the domestic courts, concerning the situation in a State Party when assessing whether the expulsion or extradition of an individual to a non-State Party would violate a State's obligations under Article 3 of the Convention*
- *Consider that domestic courts and authorities, when assessing whether conditions, such as detention conditions or access to socio-economic support, in a non-State Party may amount to a violation of Convention rights, may benefit from further guidance on how to apply a judgment of the Court concerning conditions in a State Party*
- *Consider that domestic courts and authorities may also benefit from further guidance on how cumulative circumstances may, taken together, amount to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, in violation of Article 3*

[55] *Othman (Abu Qatada) v. United Kingdom*, no. 8139/09, 17 January 2012, para. 189.

- *Note that recourse to diplomatic assurances may obviate a risk of violation of Article 3 following expulsion or extradition*

Issues arising under Article 8

31. The right to private and family life under Article 8 the Convention is a qualified right. The second paragraph of Article 8 allows public authorities to interfere with an individual's exercise of this right, so long as such interference is in accordance with the law and necessary in a democratic society in pursuit of the public interest. Amongst the legitimate interests that may justify interference are national security, public safety, the prevention of disorder or crime, and 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.

32. The point of departure for the analysis of issues under Article 8 of the Convention in cases of possible expulsion of a foreign national who has been convicted of a criminal offence is the fact that a foreign national does not have a Convention right to reside in a particular country, a rule which applies also to settled migrants. However, if a Member State's decision to expel such a person interferes with his or her right to private or family life under Article 8, the national authorities are under a duty to evaluate their individual situation in accordance with certain criteria.[56]

33. The Court has set out in its case-law the criteria that domestic authorities should take into account when assessing the proportionality of the interference with a settled migrant's private or family life to the public interest being pursued by the expulsion order. In the application of these criteria, the Court has not qualified the relative weight to be accorded to each criterion in the individual assessment, as this analysis is, in the first place, for the national authorities subject to supervision of the Court.[57] Thus, it is primarily for the national authorities to decide what importance they attach to the individual criteria in the balancing exercise, in view of striking the right balance between individual rights and interests and the weighty public interests of defending freedom and security in the societies of the States Parties.

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

- 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.[58]

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[56] *Levakovic v. Denmark*, no. 7841/14, 23 October 2018, para. 41.
[57] *Levakovic v. Denmark*, no. 7841/14, 23 October 2018, para. 41.
[58] Criteria from *Üner v. the Netherlands* [GC], no. 46410/99, 05 July 2005, paras. 57-58.

35. 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.[59]

36. 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.[60]

37. 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.[61]

38. 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.[62]

39. In order to increase the understanding of and guidance provided by the Court's case-law, decisions in which the individual rights of a convicted criminal prevail over the public interest in maintaining safety and preventing disorder and crime should be fully and clearly explained. In this connection, it is important that the Court in its judgments provides sufficient detail of any strong reasons for substituting its assessment of proportionality for that of domestic courts. It is also important for the Court – based on the information and materials provided to it by States Parties in the context of the proceedings before it – to give appropriate consideration to the particularities of national legal systems and traditions, including for example the extent to which the length of a sentence of imprisonment reflects the seriousness of an offence.

Possible elements

The political declaration could:

- *Recall that Article 8 allows public authorities to expel a foreign national from their territory even though such measure may interfere with their right to respect for private and family life, so long as such interference is in accordance with the law and necessary in a democratic society in pursuit of the legitimate aim. Legitimate aims that may justify interference are national security, public safety or the economic well-being of the country, the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others*

[59] Criteria from *Maslov v. Austria* [GC], no. 1638/03, 23 June 2008, para. 71.
[60] *Levakovic v. Denmark*, no. 7841/14, 23 October 2018, para. 37.
[61] *Savran v. Denmark* [GC], no. 57467/15, 07 December 2021, para. 189.
[62] *Alleleh & otrs v. Norway*, 569/20, 23 June 2022, para. 90.

- *Underline that the right balance must be struck between individual rights and interests and the weighty public interests of defending freedom and security in the societies of the States Parties*
- *Note 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*
- *Underline that it is primarily for the national authorities to carry out the balancing exercise, in light of the criteria stemming from the Court´s case-law, and assess whether there are relevant and sufficient reasons for expelling a foreign national that may pose a threat to public order and national security from their territory, including the weight they attach to the nature and seriousness of the crime committed by them*
- *Note that in matters relating to national security, the Court has noted that national authorities enjoy a wide margin of appreciation and that significant weight must be attached to the judgment of the domestic authorities, and especially of the national courts, which are better placed to assess relevant evidence*
- *Note that, according to the case-law of the Court, where the balancing exercise 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*
- *Note that if the Court finds that there are strong reasons to substitute its assessment for that of national authorities, it is important that the Court makes clear its awareness of the particularities of national legal systems and traditions, including for example the extent to which the length of a sentence of imprisonment reflects the seriousness of an offence, and fully and clearly explains its reasons*

b. Mass arrivals of migrants by land and sea

40. Recent years have seen large numbers of migrants arriving in various Council of Europe member States, both by sea and across land borders. Sudden mass irregular arrivals represent a complex challenge for frontline Member States and for their sovereign right to protect national borders and decide who enters their territory; they may also pose a threat to public order and national security and place great strain on reception and asylum systems.

41. Mass arrivals by sea represent a challenging contemporary issue that has significantly evolved over recent decades. It may be a result of persecution, conflict, violence, human rights violations, or events seriously disturbing public order in the migrants' countries of origin or in countries of transit. It is closely connected with the activity of criminal networks that are involved in smuggling of migrants and take advantage of vulnerable individuals, thereby endangering lives whilst seeking to maximise profits. Smuggling of migrants is a transnational criminal activity that challenges States' sovereign right to control their borders and increases the vulnerability of people on the move.[63] States must endeavour to prevent and disrupt these networks, whose activities are constantly evolving and adapting. In this connection, it may be recalled that a significant reduction in irregular maritime crossings may result in a reduction in the loss of lives at sea.

42. Migrants involved in mass arrivals are entitled to respect for and protection of their rights under the Convention and other European and international law. States must therefore respond to such situations in conformity with their Convention obligations. The Court has acknowledged that frontline States experience considerable difficulties in coping with increasing influxes of migrants and asylum seekers and has expressly recognised the burden and pressure this places on them.[64]

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[63] Parliamentary Assembly Resolution 2568 (2024), *A shared European approach to address migrant smuggling*, para. 1.

[64] *E.A. & H.A.A. v. Greece*, no. 14969/20, decision of 03 July 2025, paras. 45 & 47.

43. An individual who is admitted onto the territory of a State Party and thereby comes within its jurisdiction is entitled to the guarantees against refoulement in violation of Article 3, including when arriving as one of a large number of migrants, and against collective expulsion under Article 4 of Protocol No. 4. This requires access to an effective remedy under Article 13.

44. The Court has found that the rescue of migrants from vessels in distress on the high seas by a 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.[65] 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.[66] The prohibition on collective expulsion under Article 4 of Protocol No. 4 applies to individuals within the extraterritorial jurisdiction of a State Party, including those rescued at sea. States Parties are required to provide an effective remedy in such cases.[67]

45. 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 “State agent authority and control” 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”.[68]

46. Where individuals gain unauthorised access to the territory of a State Party by participating in a large-scale and forceful breach of a land 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 the prohibition on collective expulsion under Article 4 of Protocol No. 4.[69] The Court has since confirmed this approach also in cases that did not involve the use of force to make an unauthorised border crossing.[70]

47. Asylum-seekers are members of a particularly vulnerable population group in need of special protection. It may thus raise an issue under Article 3 if they are not provided with accommodation and thus forced to live on the streets for months, with no resources or access to sanitary facilities, and without any means of providing for their essential needs.[71] While the absolute character of the rights secured by Article 3 means that the challenges posed by mass irregular migration cannot absolve a State of its obligations under that provision, the Court has equally stressed that it would be artificial to assess the facts of individual cases in isolation

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[65] *Hirsi Jamaa & otrs v. Italy* [GC], no. 27765/09, 23 February 2012, paras. 76-82.
[66] Ibid., paras. 122-123.
[67] Ibid., paras. 169-182, 197-200.
[68] *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).
[69] *N.D. & N.T. v. Spain* [GC], nos. 8675/15 & 8697/15, 13 February 2020, paras. 209-211 and 231.
[70] *A.A. & otrs v. North Macedonia*, no. 55798/16 & otrs, 05 April 2022, paras. 114-115.
[71] *M.S.S. v. Belgium & Greece* [GC], no. 30696/09, 21 January 2011, paras. 235-264.

from the general context. In its assessment, it therefore takes into account, together with other factors, that the hardships endured by individuals stem to a significant extent from the situation of extreme difficulty confronting the authorities of a frontline state at a time of exceptional and sudden increase in migration flows.[72] The Court also takes into account the attitude of the authorities when confronted with such challenges, notably whether they had remained indifferent to a situation of hardship or 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.[73]

48. As regards confinement of asylum seekers 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 [the right to liberty and security] 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 they crossed that border does not of itself transform the confinement into deprivation of liberty for the purposes of Article 5.[74]

Possible elements

The political declaration could:

- *Recall that the arrival of large numbers of migrants represents a complex and evolving challenge for frontline States, including to their sovereign right to protect national borders and decide who legally enters the territory and their fundamental responsibility to ensure national security and public safety*
- *Recognise that irregular arrivals by sea represent a major risk of life for irregular migrants and that a significant reduction in irregular maritime crossings may result in a reduction in the loss of lives at sea*
- *Underline that States Parties must respond to such situations in conformity with their Convention obligations, recalling that the Court has acknowledged that frontline States experience considerable difficulties in coping with increasing influxes of migrants and asylum seekers and has expressly recognised the burden and pressure this places on them*
- *Stress the need to step up operational cooperation to prevent irregular migration and promote returns and to strengthen national measures and international cooperation against the human trafficking and migrant smuggling networks involved in mass arrivals, recalling Council of Europe standards in this area, including the Convention on action against trafficking in human beings*

c. Instrumentalisation of migration

49. Instrumentalisation of migration may be taken to refer to situations where migratory movements, including unlawful border crossings, are deliberately facilitated, encouraged or

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[72] *E.A. & H.A.A. v. Greece*, no. 14969/20, decision of 03 July 2025, paras. 45 & 47.

[73] *B.G. v. France*, no. 63141/13, 10 September 2020, paras. 88-89.

[74] 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).

exploited by a hostile State or other actor, in some cases involving the use of force, with the aim of exerting pressure on, destabilising or undermining another State and European democracies. Unlike other forms of irregular migration or spontaneous mass influxes, it is characterised by its intentional, externally driven, and strategic nature. As such, it can be seen as a contemporary phenomenon which has emerged in a specific geopolitical and security context, posing particular challenges not only for territorial integrity and national security, but for the Convention system as a whole.

50. Instrumentalisation by a hostile State or other actor may result in acute humanitarian crises, leaving migrants stranded at borders where they may be at significant risk of becoming victims of violence, exploitation, trafficking, smuggling, or inhuman or degrading treatment, without adequate protection or assistance.

51. Migrants involved in instrumentalised migratory movements and who are within the jurisdiction of a State Party are entitled to respect for and protection of their rights under the Convention and other European and international law. The enjoyment of these rights may, however, be subject to limitations permitted under the Convention and other European and international law. The Court has considered that the conduct of the individuals involved in attempts to irregularly cross the State border may be relevant in assessing the State's compliance with certain Convention obligations.[75] It may also be recalled that Article 31 of the 1951 Refugee Convention provides that States "shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened […], enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".

52. States Parties have a fundamental duty to protect everyone within their jurisdiction, to protect their borders and to maintain national security and public order. States' sovereign right to control foreign nationals' entry into and residence in their territories must be exercised in full compliance with the Convention and other applicable international obligations.[76] Hostile States and other actors cannot, however, be allowed to undermine European democracies and the values on which the Convention is founded and to abuse the system that it was established to protect. In this connection, the concept of "democracy capable of defending itself," as developed in the case-law of the Court, may be relevant.[77]

53. The particular characteristics of instrumentalisation of migration may raise new legal and factual issues concerning application of the Convention, especially in the context of current hybrid challenges. The Convention is a living instrument: it is interpreted in the light of present-day realities and remains applicable in response to novel challenges. It does not operate in a vacuum: when assessing the compliance of State authorities with their obligations under the Convention, the concrete context in which they act forms part of the overall assessment required under the Convention,[78] while fully preserving the essence of the rights

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[75] See *N.D. & N.T. v. Spain* [GC], nos. 8675/15 & 8697/15, 13 February 2020, para. 200-201, and *A.A. & otrs v. North Macedonia*, no. 55798/16 & otrs, 05 April 2022, para. 112, where the Court considered that a person's own conduct is a relevant factor in assessing the protection to be afforded under Article 4 of Protocol No. 4, and that the Court will take into account whether in the circumstances of the particular case the State provided genuine and effective access to means of legal entry.

[76] See e.g. *Amuur v. France*, no. 19776/92, 25 June 1996, para. 41.

[77] See e.g. *Rodina and Borisova v. Latvia,* nos. 2623/16 and 2299/16, 10 July 2025, para. 104, and *Bradshaw & otrs v. United Kingdom*, no. 15653/22, 22 July 2025, para. 114.

[78] See further *Ždanoka v. Latvia (no. 2)*, no. 42221/18, 25 July 2024*,* para. 55; *Communaute Genevoise d'Action Syndicale (CGAS) v. Switzerland* [GC], no.21881/20, 27 November 2023, paras. 162-163; *N.H. and Others v. France* nos. 28820/13, 75547/13 and 13114/15, 02 July 2020, para. 157; *Khalifa and Others v. Italy* [GC], no.16483/12, 15 December 2016, para. 238; *B.G. and Others v. France*,

guaranteed and ensuring that any measures adopted remain lawful and necessary in a democratic society.

54. Member States have expressed a need for clarity regarding the application of the Convention in the context of instrumentalisation of migration, including on the appropriate balance between individual rights and legitimate public interests. At present, there is no established case-law of the Court on this issue as such. States Parties look forward to receiving guidance from the forthcoming Grand Chamber judgments in three pending cases,[79] in which the applicants have variously invoked Articles 2, 3, 5 and 13 of the Convention, as well as Article 4 of Protocol No. 4, and the respondent states and some of the intervening third parties requested the Court to interpret the Convention in light of another State's instrumentalisation of migration.[80]

55. The phenomenon of instrumentalisation of migration has been recognised by various European bodies, including in Parliamentary Assembly Resolution 2404 (2021) on Instrumentalised migration pressure on the borders of Latvia, Lithuania and Poland with Belarus,[81] and in European Union law.[82] Member States have expressed the need for acknowledgement by the Council of Europe of the phenomenon and its detrimental impact on the principles of state sovereignty, territorial integrity, and national security.

56. Beyond that, the Council of Europe may provide a forum for dialogue among member States to address the challenges emerging in this context, thereby contributing to the coherence, effectiveness and credibility of the Convention system.

Possible elements

The political declaration could:

- *Acknowledge that instrumentalisation of migration may be taken to refer to situations where migratory movements, including unlawful border crossings, are deliberately facilitated, encouraged or exploited by a hostile State or other actor, in some cases involving the use of force, with the aim of exerting pressure on, destabilising or undermining another State and European democracies. It can be seen as a new contemporary phenomenon which has emerged in a specific geopolitical and security context, posing particular challenges for territorial integrity and national security, and risks undermining support for and the integrity of the Convention system*
- *Note with concern that instances of instrumentalisation by a hostile State or other actor may result in acute humanitarian crises, leaving migrants stranded at borders where they may be at significant risk of becoming victims of violence, exploitation, trafficking, smuggling, or inhuman or degrading treatment, without adequate protection or assistance*
- *Underline that migrants involved in instrumentalised migratory movements are entitled to respect for and protection of their rights under the Convention and other European and international law, subject to limitations permitted under the Convention and other European and international law*

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no.63141/13, 10 September 2020, para. 73; *E.A. and H.A.A. v. Greece*, no.14969/20, decision of 03 July 2025, para. 47.

[79] 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.

[80] See e.g. *Grand Chamber hearing concerning alleged "pushbacks" at the Polish-Belarusian border*, European Court of Human Rights press release, 12 February 2025.

[81] See Res. 2404 - Resolution - Adopted text.

[82] See Regulation (EU)2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 (Regulation - EU - 2024/1359 - EN - EUR-Lex).

- *Recognise that the conduct of the individuals involved in attempts to irregularly cross the State border may be relevant in assessing the State's compliance with certain Convention obligations*
- *Recall that instrumentalisation of migration creates challenges with respect to States Parties' fundamental duty to protect everyone within their jurisdiction, to protect their borders and to maintain national security and public order*
- *Note that the concept of "democracy capable of defending itself," as developed in the case-law of the Court, may be relevant when States Parties face instrumentalisation of migration*
- *Underline that a hostile State and other actor cannot be allowed to undermine European democracies and the values on which the Convention is founded and to abuse the system that it was established to protect*
- *Recall that the Convention is a living instrument: it is interpreted in the light of present-day realities and remain applicable in response to novel challenges. It does not operate in a vacuum: when assessing the compliance of State authorities with their obligations, the concrete context in which they act forms part of the overall assessment required under the Convention*
- *Look forward to receiving guidance from the Court regarding the application of the Convention in this context*

d. Decision-making in migration cases

57. As noted above, situations of mass irregular arrivals create challenges for national asylum systems, including decision-making processes on claims for international protection. In this context, States Parties should ensure that migration-related decision-making processes are clear, predictable and timely, enabling the effective enforcement of lawful decisions while ensuring access to effective remedies and judicial oversight in accordance with the Convention. As the Court noted in one case, "the provision of a more efficient system of determining large numbers of asylum claims rendered unnecessary recourse to a broader and more extensive use of detention powers."[83] In order to avoid undue delay, States may seek to use country information and guidance to facilitate the more efficient consideration of large volumes of asylum applications, whether in normal or accelerated procedures, while maintaining the consideration of specific individual or changed circumstances in accordance with the general principle of individualised decision-making.

58. Some guidance in this area may be found in the 2009 Committee of Ministers Guidelines on human rights protection in the context of accelerated asylum procedures. The explanatory memorandum to these guidelines notes that "'accelerated asylum procedures' abrogate from standard procedural timescales and normally applicable guarantees with a view to accelerating the decision making-process. The general meaning of this expression is to indicate that certain claims are treated faster than others and that, generally, accelerated procedures feature lesser procedural guarantees than may be applied, for example, to clearly well-founded or clearly unfounded cases. This expression may thus also refer to procedures used in respect of asylum applicants at borders and asylum applicants who have no documents or present false documents or have not respected the deadlines for lodging their application or other procedural rules, etc." The explanatory memorandum also underlines the importance of creating exceptions from accelerated procedures for complex cases, which should be "examined by means of a careful and individualised determination within the regular asylum procedure and offering full procedural guarantees."

59. The Court has recognised the need for States faced with large numbers of asylum seekers to have the necessary resources to deal with such cases. It does not question the value and legitimacy of having an accelerated procedure, in addition to the normal procedure

[83] *Saadi v. United Kingdom* [GC], no. 13229/03, 29 January 2008, para. 80.

for processing asylum applications, for applications which appear to be unfounded or abusive.[84] The Court has consistently found that States have a legitimate interest in maintaining a system of accelerated procedures in respect of abusive or clearly ill-founded applications.[85] The mere fact that an asylum application is processed under an accelerated procedure and therefore within a limited time-frame cannot, therefore, in itself, allow the Court to conclude that the examination carried out was ineffective.[86] At the same time, the Court has found that speedy processing of an applicant's asylum claim should not make the remedies available to the applicant ineffective in practice, as this would be contrary to the Convention.[87] Likewise, the Court has accepted that States may confine the assessment of a subsequent asylum application to an examination of the question whether relevant new facts have been brought forward, and that when no such facts are found they are not required to conduct their assessment with the same thoroughness. However, the examination of that question should not be carried out in too restrictive a manner.[88]

60. Member States may therefore benefit from further guidance on how national law and measures on accelerated decision-making can be applied consistently with the Convention, including the weight to be accorded to States' legitimate interests in immigration control and public safety, and the relevant factors/ criteria to be assessed.

Possible elements

The political declaration could:

- *Encourage member States to ensure that migration-related decision-making processes are clear, predictable and timely, enabling the effective enforcement of lawful decisions while ensuring access to effective remedies and judicial oversight in accordance with the Convention.*
- *Recall that situations of mass irregular arrivals create challenges for national asylum systems, including decision-making processes on claims for international protection*
- *Recall in this connection the 2009 Committee of Ministers Guidelines on human rights protection in the context of accelerated asylum procedures, as may be applied for example to clearly well-founded or clearly unfounded cases*
- *Note that the use of country information and guidance, such as that relating to the situation of particular groups of people in a country, may facilitate the more efficient consideration of large volumes of asylum applications, whether in normal or accelerated procedures, without prejudice to the general principle of individualised decision-making*
- *Consider that further intergovernmental co-operation and guidance on how large volumes of decisions in migration cases, whether in normal or exceptional circumstances, can be taken efficiently, fairly and consistently with Convention obligations*

e. Innovative solutions to address migration

61. A number of member States have explored and are exploring the possibility of implementing innovative solutions in response to irregular migration, including through cooperation with third countries regarding effective asylum systems and efficient procedures for the return of persons found not to be in need of international protection.

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[84] *I.M. v. France*, no. 9152/09, 2 February 2012, para. 142.
[85] See *S.H. v. Malta*, no. 37241/21, 20 December 2020, para. 90; *R.D. v. France*, no. 34648/14, 16 June 2016, para. 56; and *E.H. v. France*, no. 39126/18, 22 July 2021, para. 201.
[86] *Sultani v. France*, no. 45223/05, §§ 64-65, 20 September 2007
[87] *I.M. v. France*, no. 9152/09, 02 February 2012, para. 142.
[88] *A.M.A. v. the Netherlands*, no. 23048/19, 24 October 2023, para. 78; *M.D. and M.A. v. Belgium*, no. 58689/12, 09 January 2016, para. 65.

62. States Parties may establish their own immigration policies, which may include cooperation with third countries. The Convention does not prevent this, provided that they continue to fulfil their Convention obligations.[89]

63. Amongst the forms of innovative solution that have been envisaged by several member States are processing in a third country of requests for international protection, third country "return hubs", and co-operation with countries of transit.[90] In that context, the CDDH notes the report of the Commissioner for Human Rights entitled *Externalised asylum and migration policies and human rights law* of 4 September 2025.

64. The Court has not yet had the opportunity to rule on cases concerning all forms of innovative solution that have been envisaged. It has, however, examined cases involving removal of an asylum-seeker to a third country, without the merits of their claim for protection having first been considered by the national authorities in the State Party concerned.

65. In the circumstances of the relevant cases, Court has indicated that it needs to ascertain whether the State authorities examined thoroughly whether the applicants would have access to an adequate asylum process in the third country and sufficient guarantees against their direct or indirect removal to the country of origin without a proper evaluation of any risks they might face of a violation of their rights under Article 3 of the Convention.[91] 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.[92] States must also ensure that the person removed to the third country will not be subject to a real risk of exposure to torture or inhuman or degrading treatment contrary to Article 3 in that country.

66. The Court has identified a number of procedural guarantees in relation to the above issues that should be afforded under the domestic law of the State that is considering whether to remove an individual to a safe third country for examination of their claim to international protection.[93] Committee of Ministers Recommendation No. R(97)22 containing guidelines on application of the safe third country concept provided guidance in this area. The CDDH is currently examining the need for and feasibility of updating this recommendation.

Possible elements

The political declaration could:

- *Recall that States Parties may establish their own immigration policies, which may include cooperation with third countries, provided that they continue to fulfil their Convention obligations*
- *Highlight that it is important that States, including those that are exposed to mass arrivals, can pursue innovative solutions to address and potentially deter irregular migration*
- *Note that amongst the forms of innovative solution that have been envisaged by several member States are processing requests for international protection in a third country, third country "return hubs", and co-operation with countries of transit*
- *Underline the importance of establishing fair and efficient procedures for the return of persons found not to be in need of international protection*

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[89] See *N.D. & N.T. v. Spain* [GC], nos. 8675/15 & 8697/15, 13 February 2020, paras. 167-168.
[90] For present purposes, a "third country" is any country that is neither the individual's country of origin, nationality or former habitual residence nor the country in which they currently find themselves.
[91] *M.A and Z.R. v. Cyprus*, no. 39090/20, 8 October 2024, para. 90.
[92] *Ilias & Ahmed v. Hungary* [GC], no. 47287/15, 21 November 2019, para. 134.
[93] *Ilias & Ahmed v. Hungary* [GC], no. 47287/15, 21 November 2019, paras. 139-141.

IV. General themes

67. Examination of the issues within the CDDH's current mandate have exposed three inter-linked general themes: the clarity and consistency of the Court's case-law in various ways (or, in some situations, its absence); the importance of context to the Court's decision-making and a proper understanding on the national level of the applicability of principles emerging from its case-law; and the need for effective communication on Convention standards and dialogue between Convention actors. These themes form the basis for practical proposals on how to address some of the issues that have been examined, as set out in the elements mentioned above and compiled in the appendix.

a. Clarity and consistency of the case-law

68. The importance of clarity and consistency of the Court's case-law, which was noted in several previous high-level declarations,[94] is relevant also in the context of migration. This is linked to the importance of context, of which the significance and consequences must be clearly apparent in judgments if principles arising from the case-law are to be correctly applied by national authorities. It is also important that when the Court substitutes its own assessment of the merits for that of a national court, its strong reasons for doing so are clearly explained.

Possible elements

The political declaration could:

- *Reaffirm 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*
- *Express continued appreciation for the Court's efforts to ensure that the interpretation of the Convention proceeds in a careful and balanced manner*
- *Underline the importance of taking into account the case-law of the Court in a way that gives full effect to the Convention*
- *Recall that the judgments of the Court need to be clear and consistent. This promotes legal certainty, helps national courts apply the Convention more precisely, and helps potential applicants assess whether they have a well-founded application*
- *Welcome the Court's continued efforts to ensure the clarity and consistency of its case-law, taking into account the applicability of the principles it establishes in different contexts and circumstances*

b. The importance of context

69. The factual context of a case is important on different levels.

70. It is important that the Court takes the context of a case properly into account when applying the Convention and developing case-law principles. Indeed, the Court has noted that the Convention does not operate in a vacuum and that, when assessing the compliance of State authorities with their obligations under the Convention and, in particular, when scrutinising the proportionality of an interference, it has to take into account the general context of the case at both the domestic and the international or regional levels.[95] For example, when determining whether the threshold of severity for treatment or punishment to be considered as inhuman or degrading has been met, the Court has observed that some element of

[94] See e.g. Interlaken Declaration, para. (4), Brighton Declaration, para. 23, Brussels Declaration, para. A.1., Copenhagen Declaration, para. 27.
[95] *Ždanoka v. Latvia (no. 2)*, no. 42221/18, 25 July 2024, para. 55.

suffering and humiliation is inevitable in the context of deprivation of liberty.[96] It has also distinguished between the situation in a State Party and that in a non-State Party when applying Article 3 standards,[97] and referred to context when applying various rights in situations relating to mass arrivals of migrants (see further above). This case-law indicates the potential for flexible application of the Convention in the context of unprecedented new circumstances, including through its interpretation as a living instrument.

71. It is therefore also important that a domestic court considers the circumstances of the specific case underlying a judgment of the Court when applying principles taken from that judgment in the context of its own case.

Possible elements

The political declaration could:

- *[Underline the importance of context to the application of Convention rights]*
- *Highlight that in accordance with the principle of subsidiarity and the concept of the margin of appreciation, there may be a range of different but legitimate solutions when applying certain Convention provisions, each of which could be compatible with the Convention depending on the context*
- *Recall that the Court has previously stressed that in the context of asylum-seekers, its approach towards the interpretation of the Convention should be practical and realistic having regard to the present-day conditions and challenges, and accepted that its examination shall bear in mind the existence of exceptional circumstances of a case without which its assessment would be artificial*
- *Consider that domestic authorities may benefit from further guidance on how to evaluate the significance of the context of the specific case underlying a judgment of the Court when applying principles taken from specific judgments of the Court*
- *Encourage the Court to take note of the manner in which its case-law has been applied at national level and the views set out by States Parties in this Declaration*

c. Communication on Convention standards and dialogue between Convention actors

72. It is important that open, informed and constructive dialogue and communication on the functioning of the Convention system takes place, in a manner that strengthens public confidence in the protection of human rights, upholds the rule of law, and enhances trust in the Convention framework as a whole.

73. In order to ensure variously that national authorities fully appreciate the importance of context when applying principles arising from specific judgments of the Court, that the Court is fully cognisant of the full relevant context when determining a case, that potential issues relating to clarity and consistency of the case-law are brought to the attention of the Court, and that the public is properly informed about the Convention system and its standards, a range of procedural and institutional avenues exist at both national and European levels.

74. In keeping with the principle of subsidiarity, it is for the States Parties themselves to promote the appropriate application of Convention standards by national authorities, in accordance with the Court's case-law and subject to the interpretative jurisdiction of the Court. This could be done, for example, through internal administrative policy guidance, whose

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[96] *Kudla v. Poland* [GC], no. 30210/96, 26 October 2000, para. 94.

[97] See the case-law on access to medical care and Article 3, in particular *D. v. United Kingdom*, no. 30240/96, 02 May 1997 and *Paposhvili v. Belgium* [GC], no 41738/10, 13 December 2016; on extradition to a risk of life imprisonment without possibility of parole, *Babar Ahmad & otrs v. United Kingdom*, no. 24027/07 & otrs, 10 April 2012.

Convention compatibility may be challenged before domestic courts, or through legislative standards. The Court considers that the quality of judicial and parliamentary review of the necessity of a general measure is of particular importance when determining its proportionality, including to the operation of the relevant margin of appreciation.[98]

75. For the States Parties, the primary means of engaging with the Court is by making submissions in proceedings on cases before the Court, whether as a respondent State or as a third party. The respondent State in a case may ask for a Chamber judgment to be referred to the Grand Chamber of the Court for further consideration of a serious question affecting the interpretation or application of the Convention.[99] States Parties, as member States of the Council of Europe, can also express their collective views on Convention-related issues through the adoption of instruments of the Committee of Ministers, including recommendations, resolutions, and declarations, and the adoption of declarations or conclusions of high-level conferences. The process of supervision of execution of the Court judgments by the Committee of Ministers also gives States the opportunity to consider the implications and implementation of the Court judgments, and in certain circumstances to refer a matter back to the Court for a ruling on a question of interpretation of a judgment.[100]

76. The highest courts or tribunals of those States Parties that have ratified Protocol No. 16 may, in the context of a concrete case before them, request an advisory opinion of the Court on a question of principle relating to the interpretation or application of Convention rights. States Parties may consider ratifying Protocol No. 16, thereby providing a possible avenue for the national courts to seek guidance of the Court on questions of principle concerning the interpretation and application of the Convention, which may further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity. Dialogue between the Court and the highest courts and tribunals also takes place through the Superior Courts Network and meetings between the Court's judges and those of national courts.

77. Other Convention actors, including lawyers representing applicants and civil society organisations, are engaged in relation to Convention standards by various means. These include meetings with the Court's Registry, the Council of Europe's Human Rights Education for Legal Professionals (HELP) programme, their involvement in the work of steering committees and other standard-setting bodies and in co-operation projects, their participation in proceedings before the Court as third parties or in relation to supervision of execution of Court judgments under Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, and the organisation of conferences and other events dealing with Convention-related issues.

78. The following possible elements for a political declaration include a number of proposals for action to develop further communication on and dialogue within the Convention system. These proposals concern the national level, dialogue between national authorities, including courts and governments, and the Court, and the Council of Europe level.

Possible elements

- *Emphasise the importance of open, informed and constructive dialogue and communication on the functioning of the Convention system in a manner that strengthens public confidence in the protection of human rights, upholds the rule of law, and enhances trust in the Convention framework as a whole*

[98] *Animal Defenders v. United Kingdom* [GC], no. 48876/08, 22 April 2013, para. 108.
[99] Article 43 of the Convention.
[100] Article 46(3) of the Convention.

- *Welcome and encourage ongoing 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*
- *Recall that an important way for the States Parties to engage in a dialogue with the Court is through third-party interventions. Encouraging the States Parties, as well as other stakeholders, to participate in relevant proceedings before the Court, stating their views and positions, can provide a means for strengthening the authority and effectiveness of the Convention system*
- *Welcome the steps the Court has taken to increase third-party interventions, in particular in cases before the Grand Chamber, by giving notice in a timely manner of upcoming cases that could raise questions of principle, and ensuring that the questions to the parties are published at an early stage*
- *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 welcome the systematic communication amongst Government Agents on cases of potential interest for other States Parties*
- *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*
- *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*
- *Encourage those highest courts and tribunals of the States Parties that have not yet done so to consider joining the Superior Courts Network*
- *Encourage States Parties to consider ratifying Protocol No. 16 to the Convention to provide a possible avenue for the national courts to seek guidance of the Court on questions of principle concerning the interpretation and application of the Convention, which may further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity*
- *Invite member States to invest in targeted capacity-building for judges, prosecutors and relevant administrative authorities, including through systematic use of the Court's case-law guides and other publicly available materials*
- *Encourage domestic courts, in the context of the Court's process-based review as a manifestation of the principle of subsidiarity, to ensure that their judgments clearly articulate the application to the facts of a case of relevant Convention standards, including where relevant an adequate balancing between the rights of the applicant and the interests of society*
- *Note in this regard that it is therefore important that Governments are clearly presenting to the Court relevant considerations, including specific features of their national legal systems and legal traditions, so that the Court can appropriately address the circumstances of each case*
- *Note with approval the valuable dialogue that takes place through their judgments between national courts and the Court as to the interpretation and application of the Convention, and welcome the openness shown by the Court to consider in light of that dialogue its interpretation of the Convention*
- *Note that the Council of Europe provides a forum for dialogue among member States to address the challenges relating to migration*
- *Invite the Secretary General, within available resources, to support activities aimed at strengthening national implementation, capacity-building, and cooperation among member States and other stakeholders in line with the Declaration*

- *Express the wish to facilitate exchanges of good practice among member States on Convention-compliant migration and expulsion procedures and reflect, as appropriate, on procedural and institutional lessons arising from cases related to migration*
- *Mandate the appropriate intergovernmental committee to conduct further work on sharing best practices and exploring new ways to enhance communication about the Convention system, to promote a better understanding of the Court's jurisprudence, to counter and prevent misinformation about the Court's case-law, and to make effective use of third-party interventions and cooperation among Government Agents*

Appendix

Compilation of possible elements[101]

Issues	Elements
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
	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
	Reaffirm the States Parties' support for the Court's independence and the integrity of the Convention system
	Recall that inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights
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
Principle of non-discrimination (Article 14)	Recalling the principle of non-discrimination in the enjoyment of the rights and freedoms set forth in the Convention
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
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
	Welcome the continuing further development of the principle of subsidiarity and the doctrine of the margin of appreciation by the Court in its jurisprudence
	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
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

[101] ***TO BE COMPLETED WITH THE ELEMENTS ON MIGRATION-RELATED ISSUES AND GENERAL THEMES BEFORE TRANSMISSION TO THE COMMITTEE OF MINISTERS.***

	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
Shared responsibility	Underline the importance of the notion of shared responsibility between the States Parties, the Court and the Committee of Ministers, along with the Parliamentary Assembly and the Council of Europe Commissioner for Human Rights, to ensure the proper functioning of the Convention system
	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
	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 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
	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
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
	Express continued appreciation for the Court's efforts to ensure that the interpretation of the Convention proceeds in a careful and balanced manner
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
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
	Underline the States Parties' unconditional obligation to abide by the final judgments of the Court in any case to which they are parties