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Speaking notes of the Secretary General
and the Deputy Secretary General
to the 1539th meeting of the Ministers' Deputies
(Valletta, Malta, 7 October 2025)

Notes d'allocution du Secrétaire Général
et du Secrétaire Général adjoint
à la 1539e réunion des Délégués des Ministres
(La Valette, Malte, 7 octobre 2025)

The Secretary General's four-point plan concerning the European Convention on Human Rights:

This synoptic concept note seeks to consolidate the Council of Europe's proposal to address the concerns of some European political leaders regarding the issue of migration and the European Convention on Human Rights ("the Convention"). It sets out the **basic facts** regarding migration and the Convention, and outlines **measures which can be taken** within the Council of Europe's institutional framework to address the mentioned concerns.

The **basic factual premises** for the measures to be taken are the following:

- The Convention has a role of **constitutional instrument of European public order in the field of human rights**. It forms an inherent part of the European Union's institutional structure of the respect for the rule of law and human rights, and binds together the EU and non-EU states in a pan-European community of states based on the rule of law, respect for human rights and democracy.
- As any constitutional instrument, the Convention's **provisions are not set out in a prescriptively detailed manner**. There are only two Articles (introduced by additional protocols in 1963 and 1984) explicitly relating to immigration, that is Article 4 of Protocol No. 4, which prohibits collective expulsions, and Article 1 of Protocol No. 7 concerning procedural safeguards relating to expulsion of aliens.
- The European Court of Human Rights ("**the Court**") is an **independent and impartial judicial institution** set up to interpret and apply the Convention at the European level. However, in accordance with the **principle of subsidiary and margin of appreciation** – now enshrined in the Preamble to the Convention – the national authorities, notably the domestic courts, have the primary responsibility to apply the Convention. The Court affords great deference to the national determinations of the Convention issues.
- Overall, the **number of the Court's cases concerning migration is small and the number of violations found negligible**.¹

¹ Among the cases pending before the Court, 1.5% relate to immigration. Over the last ten years, the Court processed over 400 000 applications, of which around 2% concerned immigration. Of those, most were found to be inadmissible, and a minority ended in a judgment of the Court. Over the last ten years, the Court has found violations in less than 300 cases concerning immigration issues, that is in around 6% of the applications made to it concerning immigration cases. This does not mean that the Court has found

The Convention and the Court's case law do not operate in a vacuum but function in harmony with, and form part of, international law. In the context of migration, this relates, in particular, to the 1951 Refugee Convention, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the EU migration and asylum law.

Proposals for the **avenues to address the political concerns** regarding migration and the Convention:

1. **High-level conference and the adoption of a declaration on migration and the Convention.** Entrust the Council of Europe Steering Committee for Human Rights (CDDH) to prepare a political declaration to be adopted in 2026 at a dedicated conference of Foreign Ministers of the Council of Europe member states. This declaration could set out the states' views in relation to migration and the Convention, while, at the same time, guaranteeing the Court's judicial independence and impartiality. This text would clearly indicate how the High Contracting Parties understand the Convention in migration cases, including in relation to criminal activities. Research and empirical evidence show that the Court is not indifferent to such political declarations and considers them in its judicial work.²
2. **Disrupting smuggling gangs.** In parallel to action (1) above, advance the Council of Europe's work on drafting a new legal instrument to toughen our action to combat migrant smuggling. This work was already agreed by the Committee of Ministers and is part of the current discussions on the Council of Europe's Committee on Crime Problems (CDPC) Terms of Reference. This work could start in 2026, and first deliverables could be provided within twelve to eighteen months.
3. **Develop model agreements on returns and on "hubs"/externalisation of migration.** In addition to actions (1) and (2) above, creation of a new Migration Committee within the Council of Europe (the Secretary General is currently pursuing this initiative with the Committee of Ministers) as part of the package and include the development of international law compliant Model Agreements for: (a) return of asylum seekers whose application was rejected and/or have no right to stay in the territory, and (b) externalisation of migration.
4. **Engage in discussions at an international level on other instruments of international law relating to migration.** The debate around migration is as much on the Convention as it is on other instruments of international and EU law mentioned above, as well as the manner in which national courts interpret and apply these instruments in individual cases.

violations in 300 expulsion cases (for which there are no separate statistics available) but in 300 cases concerning migration in the broadest possible sense

² See CDDH Report on the first effects of Protocol No. 15 to the European Convention on Human Rights CM(2025)133-add1.