ECBA | Mondriaantoren 19th floor| Amstelplein 40 | 1096 BC Amsterdam | The Netherlands

EUROPEAN CRIMINAL BAR ASSOCIATION
An association of European Defence lawyers

Mondriaantoren 19th floor
Amstelplein 40
1096 BC Amsterdam
The Netherlands

secretariat@ecba.org
+31 20 782 02 08
www.ecba.org

Chamber of Commerce
KVK 87360322

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Mr. Mihai Popșoi
Chair of the Committee of Ministers of the Council of Europe
Avenue de l'Europe
F-67075 Strasbourg Cedex

CC: Secretary General of the Council of Europe
Steering Committee for Human Rights (CDDH)
Commissioner for Human Rights
Permanent Representations of the member States to the Council of Europe

Subject: ECBA observations ahead of the 134th Session of the Committee of Ministers (Chișinău, 14-15 May 2026): proposed Political Declaration on the European Convention on Human Rights and migration

Dear Mr. Popșoi,
Dear Chair of the Committee of Ministers of the Council of Europe,
Excellencies,

The European Criminal Bar Association ('ECBA') is an association of criminal defence lawyers across the forty-six member States of the Council of Europe. Since its foundation, it has advocated for the integrity of the rule of law and for the procedural and substantive rights of those subject to criminal proceedings, including in extradition, surrender, and removal contexts.

We write in the immediate run-up to the Chișinău Ministerial Session of 14-15 May 2026. Time, as the Committee is well aware, is exceptionally short: with the political declaration on the Convention and migration scheduled for adoption within weeks, the choices that will be confirmed in Chișinău will, in practical terms, define the trajectory of the European Convention on Human Rights ('ECHR') system for the coming decade. The ECBA considers it its professional duty to place before the Committee, in plain terms, three observations of principle and a corresponding request.

The first observation concerns the nature of the European Convention on Human Rights itself. The ECHR is not a regulatory framework whose protective scope may be calibrated, by political consensus, in response to the pressures of any given period. It was conceived, in the precise historical circumstances of the immediate post-war period, as a body of guarantees deliberately placed beyond the reach of ordinary political majorities. Those guarantees acquire their meaning precisely when they constrain a State at the very moment it would prefer not to be

constrained. The proposal to issue a political declaration operates a direct inversion of that founding premise. On the express terms of the Joint Statement of 10 December 2025, it seeks to "rebalance" Article 8 and to "constrain" the scope of Article 3 in respect of removal, extradition, and expulsion measures affecting a defined category of persons. In so doing, it treats ECHR rights as variables to be adjusted in response to the political seasons. Whatever the declaration's stated qualifications, an instrument conceived in these terms will be received by national administrations, domestic courts, and by the wider European public as an authoritative signal that the Convention's reach contracts when its application becomes politically inconvenient. The Committee is respectfully invited to consider, in the days that remain before Chișinău, whether such a signal is one which the Council of Europe can issue without compromising the system the ECHR was created to safeguard.

The second observation concerns the substantive premise of the Joint Statement of 10 December 2025 ('the Joint Statement'). That statement proceeds on the assertion that the European Court of Human Rights has, in migration-related matters, afforded Convention protection in certain migration-related cases in circumstances that states now regard as politically unsustainable, and that such protection should therefore be rebalanced or constrained for defined categories of persons. Stripped of its diplomatic language, this premise treats protection under the Convention as having been extended to persons whose continued protection is now considered to be inconvenient. Under the Convention there are no "wrong" people. There is no hierarchy of entitlement based on nationality, immigration status, or criminal record. Its rights attach to the human person as such. The absoluteness of Article 3, repeatedly reaffirmed by the Court since *Soering v United Kingdom* (1989) 11 EHRR 439 and *Chahal v United Kingdom* (1996) 23 EHRR 413, and never qualified in the Convention's drafting history, exists precisely to protect those whom political majorities at any given moment may regard as undesirable. Foreign nationals convicted of serious offences, irregular migrants, persons subject to extradition requests from third States (categories with which the ECBA is professionally familiar in its daily practice across the Convention area) are precisely those whose protection from torture, inhuman or degrading treatment, and disproportionate interference with private and family life, has come to be recognised by the Court's jurisprudence and the Convention's structure as the true test of the system's seriousness. A protection that holds only for the popular is no protection at all. A Convention that withdraws its guarantees from those whom contemporary public discourse has identified as undesirable is not the Convention of 1950 and weakens the rule of law settlement the ECHR was designed to entrench.

The third observation concerns the systemic risk inherent in the proposed course. The Convention is a single fabric. Once it is accepted that the Committee of Ministers may, by political declaration, modify the protective scope of Articles 3 or 8 in respect of one category of persons, the same technique becomes available, in principle, for use in respect of any other category whose protection may, in some future political moment, be perceived as inconvenient. The reasoning used for this purpose (the appeal to "today's challenges", the invocation of national security, the redefinition of the scope of an absolute prohibition rather than open derogation under the procedure foreseen by Article 15) is readily transferable to any field of the Court's case law. Member States within the Council of Europe have already shown, in recent years, a readiness to apply comparable arguments in contexts such as judicial independence, civil society regulation, and freedom of expression. The proposed declaration does not occur in a vacuum; it will be read, by governments inside and outside the Convention area, as authority for the proposition that fundamental rights protections may be adjusted by political consensus when their application becomes burdensome. Autocratic regimes will draw the appropriate inferences without prompting. The damage, in such a scenario, would extend well beyond migration policy and well beyond the lifespan of any present government.

To these three observations the Association adds, more concretely, that the operational premises of the Joint Statement are not, in the experience of practising criminal defence lawyers across Europe, supported by the actual state of the Court's case law. In extradition and expulsion proceedings (including those

routinely litigated before the Italian Corte di Cassazione, the German higher regional courts, the French Conseil d'État, the United Kingdom Supreme Court, and the equivalent jurisdictions throughout the Convention area) the Court has shown itself, particularly over the last decade, markedly deferential to national balancing exercises conducted in good faith, accepting diplomatic assurances where sufficiently substantiated, applying in healthcare-removal cases the stringent threshold defined since *Paposhvili v Belgium* (2017) 64 EHRR 16, and refraining from substituting its assessment for that of competent national authorities save in exceptional circumstances. The picture of an interventionist Court systemically obstructing migration management is not corroborated by the underlying jurisprudence; nor has any data supporting that picture accompanied the Joint Statement. The proposed retrenchment thus addresses a problem whose existence has not been demonstrated, while introducing a precedent whose damage to the system is foreseeable.

Finally, the ECBA recalls that Article 32 of the Convention vests the interpretive authority over its provisions in the Court itself, and that the principle of judicial independence was solemnly reaffirmed by Heads of State and Government in the Reykjavik Declaration of May 2023. A political declaration negotiated and adopted while pending Grand Chamber proceedings address the very questions on which it pronounces (instrumentalised migration on the eastern external borders being only the most evident example) sits uneasily with that principle. Member States retain, of course, every legitimate institutional channel for engagement with the Court's case law: third-party intervention, the supervisory function under Article 46, advisory proceedings under Protocol 16 where applicable, and the ordinary legislative and administrative response at national level. The collective issuance of a political declaration on the substance of pending and recent jurisprudence is not among those channels, and ought not, by adoption in Chișinău, to become one. Nor should any such declaration be adopted in the absence of consensus encompassing those member States (France, Germany, Spain and Türkiye among them) which host the principal share of refugees and persons under temporary protection in Europe, and whose non-participation has already materially diminished the representativeness and authority of the Joint Statement.

For these reasons, the ECBA respectfully urges the Committee of Ministers, in its session of 14-15 May 2026, to ensure that any political declaration emerging from the present process:

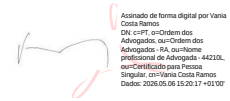
(i) reaffirms in unambiguous terms the absoluteness of the Article 3 prohibition and the principle of non-refoulement deriving from it, without qualification, narrowing of scope, or carve-out by category of person;
(ii) reaffirms the interpretive authority of the Court under Article 32 of the Convention and the floor-not-ceiling clause of Article 53; and
(iii) abstains from any formulation, however cautiously phrased, which would signal that the Convention's protections may be modulated in accordance with the identity of those who claim them.

The ECBA remains available to provide, at short notice and in whatever form the Committee may consider useful, concrete jurisprudential and comparative material drawn from the practice of criminal defence lawyers across the Convention area, with particular reference to the application of Articles 3 and 8 in extradition, surrender, and expulsion proceedings.

The European project of human rights protection was constructed in full awareness that fundamental rights become meaningful only when their guarantees are extended also (and indeed especially) to those whose protection is politically uncomfortable. To depart from that understanding, in Chișinău or elsewhere, would not resolve the legitimate public policy challenges States confront. It would, instead,

weaken the rule of law function of the Convention as a constraint on state power, and diminish the system whose stewardship and protection are entrusted to the Committee of Ministers.

Yours respectfully,



Vânia Costa Ramos
Chair of the European Criminal Bar Association