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CCBE comments following up on the CCBE Statement on the letter published on 22 May 2025 concerning the interpretation of the European Convention on Human Rights

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Executive summary

This paper analyses the three problems with the interpretation of the European Convention on Human Rights by the European Court of Human Rights asserted in an open letter of 22 May 2025, signed by nine heads of State or Government of Member States of the Council of Europe.

Those three problems arising from the Court's interpretation of the Convention are said to be the difficulty in expelling foreign criminals after their conviction, difficulty in keeping track of foreign criminals where their return is prevented by international law and the need to combat the instrumentalisation of immigration by Belarus and Russia on Europe's eastern border.

These criticisms of the Court are accompanied with a political view that "*what was once right might not be the answer of tomorrow*", which could be interpreted as undermining the post-war European consensus on the centrality of protecting human rights.

On analysis, these criticisms of the Court's interpretation of the Convention are not evidentially supported. Crucially, they miss the need to focus on accelerating domestic decision making in these sensitive areas as well as the Court's process and the prompt and effective implementation of the Court's judgments to which all Council of Europe Member States committed themselves in the Reykjavik Declaration.

Furthermore, the nine States concerned are all parties to the EU Charter on Fundamental Rights which expressly recognises the right to apply for asylum and separately the analogous rights to life and bodily integrity already protected by the Convention. Any attempt to unravel the Convention in this regard amounts to a collateral attack on fundamental rights also protected by EU law and their supervision by the Court of Justice of the European Union.

The CCBE maintains its support for additional resourcing of the Court's and national courts' capacity to hear and dispose of human rights cases, which will make the protection and implementation of fundamental rights more effective. The CCBE is eager to engage in further, substantive discussion on this topic with States' authorities and other relevant stakeholders.

Introduction

On 22 May 2025, the Prime Ministers or Presidents of nine States party to the European Convention on Human Rights ("the Convention") published a letter ("the Nine States' Letter") calling for revision of the interpretation of the Convention by the European Court of Human Rights ("the Court"), particularly in relation to its case law on the expulsion of foreign criminals.

On 4 June 2025, the CCBE adopted an immediate statement[1] in reaction to the Nine States' Letter, emphasising the need to respect the Court's judicial independence as a *sine qua non* for maintaining the rule of law.

This paper summarises the Court's relevant case law to demonstrate that the assertions in the Nine States' Letter are mistaken and that the Court does not impose inappropriate limits on States' sovereignty in the field of immigration or expulsion.

The CCBE urges the States to uphold their commitments to the full and effective application of the rights in the Convention as interpreted by the Court and implemented by national courts, applying the principle of subsidiarity. Subsidiarity recognises that the primary responsibility for protecting human rights and applying the Convention rests with the national authorities and particularly national courts.

Under Article 19 of the Convention, the Court's duty is subsidiary to national implementation: it is to ensure that States which ratify the Convention observe the engagements they have undertaken.[2]

The Nine States' Letter makes three main points. First, that international legal regimes developed in the past may no longer be appropriate: "*What was once right might not be the answer of tomorrow"*. Secondly, that the current immigration pressure in Europe is unprecedented: "*we now live in a globalized world where people migrate across borders on a completely different scale*". Thirdly, and critically, that the Court has "*extended the scope of the Convention too far as compared with the original intentions behind the Convention*", with the result that, *"in cases concerning the expulsion of criminal foreign nationals, the interpretation of the Convention has resulted in protecting the wrong people*".

The signatories argue specifically that:

a. They should "*have more room nationally to decide when to expel criminal foreign nationals who commit serious violent crimes*";

[1] CCBE Statement on the letter published on 22 May 2025 concerning the interpretation of the European Convention on Human Rights, 4 June 2025, available here.

[2] "To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis."

b. They need more freedom to decide how "*national authorities keep track of criminal foreigners who cannot be deported from our territories*"; and

c. They "*need to be able to take effective steps to counter hostile States which are instrumentalising migrants at their borders*".

1. The assumptions underlying the Nine States' Letter are questionable

It is appropriate to examine the validity of the primary assumptions of the 9 States' Letter. The international regime of human rights protection established particularly in Europe over the last 75 years rests on the assumption that fundamental rights are universal and that their protection is a valid goal in the interests of protecting democracy and the rule of law[3]. Indeed, the very signatories of the Nine States' Letter reiterated their solemn commitment to these values in the Reykjavik Declaration[4] only two years before the 9 States' Letter. It would be an astonishing political change of position to suggest that these values are no longer applicable, which could be understood by the words: "*What was once right might not be the answer of tomorrow"*.

Elsewhere in the Nine States' Letter, these universal values are asserted, but there is at least a regrettable ambiguity in this loose language.

Secondly, the assertion that the migration position in Europe is unprecedented is factually wrong. First, in the late 1940s, precisely when the Convention, the Refugee Convention and other international instruments such as the UN Declaration were being prepared, migration pressure was far more acute than now. In the late 1940's, over 12 million destitute German refugees descended on what would become the Federal Republic of Germany[5]. The scale of that example is exceptional, but many of the borders of Europe were redrawn causing large refugee movements across the continent. Viewed globally, even these figures are dwarfed by the scale of human movement in the partition of India and the creation of Pakistan (all of whom were entitled to live in UK). Similarly, on the

[3] Para 3 of the Preamble to the Convention states: "*Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend"*.

[4] Reykjavik Declaration, United around our values, 16-17 May 2023, available here: "*We reaffirm our deep and abiding commitment to the European Convention on Human Rights and the European Court of Human Rights as the ultimate guarantors of human rights across our continent, alongside our domestic democratic and judicial systems. We reaffirm our primary obligation under the Convention to secure to everyone within our jurisdiction the rights and freedoms defined in the Convention in accordance with the principle of subsidiarity, as well as our unconditional obligation to abide by the final judgments of the European Court of Human Rights in any case to which we are parties"*.

[5] Some Facts about German Expellees in Germany (1952), Germany (West) Bundesministerium für Angelegenheiten der Vertriebenen.

independence of Algeria from France in 1962 some 900,000 refugees moved to Metropolitan France over a few months.

Even much more recently in Europe in 2015, migration pressure was significantly greater than now, as a result of the Syrian exodus, when 890,000 refugees were received in Germany alone[6] and over 1.2 million asylum applications were made in the EU[7]. Moreover, the number of applications for asylum in the EU has fallen by 23% in comparison with last year[8].

These facts provide the context for the following analysis of the Court's interpretation of the Convention in relation to the opportunity for European States to expel convicted foreign criminals.

2. Number of expulsion cases by State recorded on HUDOC (Judgments + Decisions from 1967 until 30 June 2025)

Statistics relating to the number of cases submitted to the Court relating to expulsions are readily accessible. They show the following numbers of cases concerning expulsions for each of the nine States which subscribed to the Nine States' Letter:

State	Total Expulsion cases[9]
Austria	147
Belgium	178
Czechia	33
Denmark	137
Estonia	19
Italy	217
Latvia	59
Lithuania	25
Poland	82

[6] BAMF - Bundesamt für Migration und Flüchtlinge - Migrationsbericht 2018 - Migrationsbericht 2015

[7] Migration and asylum in Europe – 2024 edition - Interactive publications - Eurostat

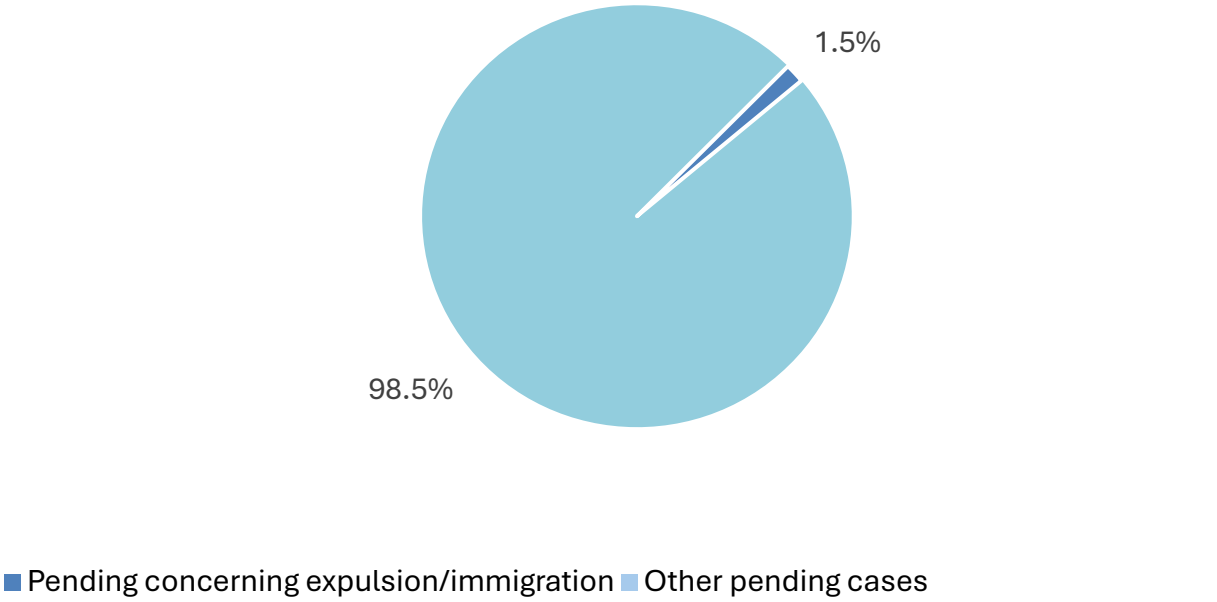
[8] Overview | European Union Agency for Asylum: "*In the first half of 2025, the EU+ received 399,000 applications for international protection, which marks a 23% decline from the same period in 2024*", EUAA Latest Asylum Trends.

[9] "Total expulsion cases" is the number of HUDOC judgments + decisions returned for each State under the keyword "expulsion." It includes cases concerning EU and non-EU citizens.

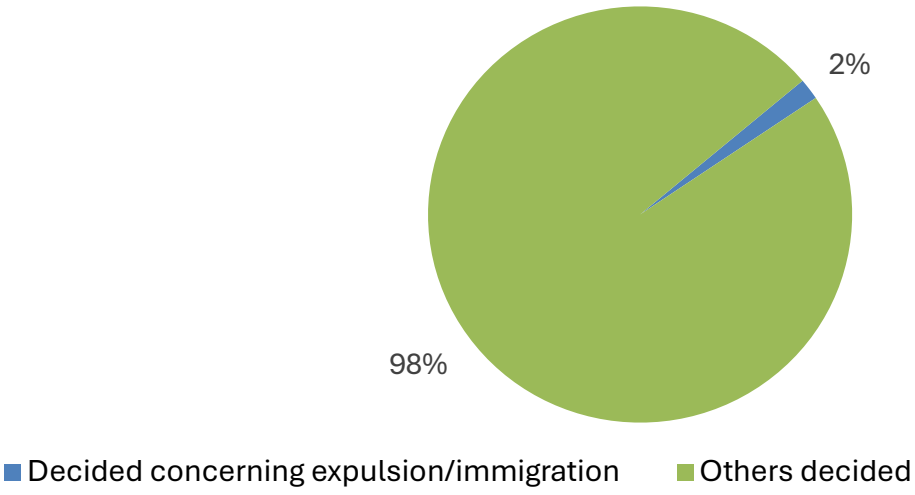
Total	**897**

3. Total number of "immigration" cases in the last ten years

A recent factsheet published by the Court[10], shows that the proportion of **applications submitted** to the Court in the last ten years which concern immigration matters is low. Between 1 January 2016 and 30 June 2025, among the cases pending before the Court, **1.5%** relate to immigration[11].

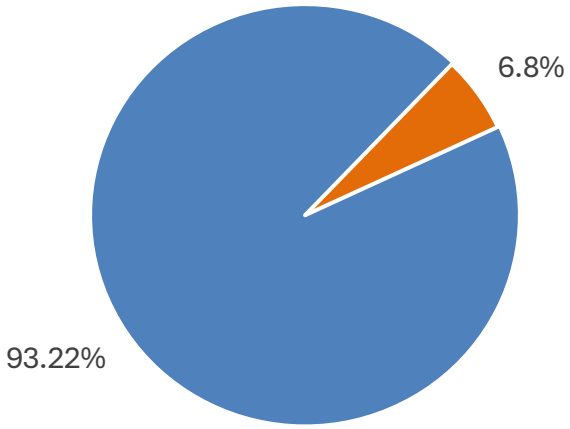


Over the last ten years, the Court **processed** 413,736 applications, of which around **2%** concerned immigration.



[10] ECtHR, Factsheet on "75 years of the European Convention on Human rights - Focus On: Immigration », July 2025, available here.
[11] 920 applications of 60,050 overall (as of 1 July 2025).

Out of the immigration-related applications, 6469 were declared **inadmissible or were struck** out of the list. The **remaining 505 applications led to 378 judgments**. The vast majority were rejected as inadmissible, i.e. not meriting full examination, or a judgment. The Court found a violation of the Convention in 291 of those 378 judgments concerning around 440 applications. Thus, over the last ten years, the Court has found violations in fewer than 300 cases judgments on immigration issues, that is in less than **7%** of the applications made to it concerning immigration cases.



■ Applications on immigration issues leading to rulings with at least one violation

■ Applications on immigration issues found inadmissible, not leading to a judgment or found without violation

4. Do the cases support the allegations in the 9 States' Letter?

4.1. The Court recognises a broad margin of appreciation

The Court's case law is well-established and has been long settled:

I. The Court's case law has recognised from the outset that the Convention does not regulate the right to enter or reside in a Member State: "*States have the right to control the entry, residence and expulsion of aliens. The Convention does not guarantee the right of an alien to enter or to reside in a particular country*" (*Muhammad and Muhammad v. Romania,* Grand Chamber (GC) (2020); *Ilias and Ahmed v. Hungary* GC (2019) and *De Souza Ribeiro v. France* GC (2012)).

II. No provision of the Convention expressly forbids the expulsion of a foreign national. Article 1 of Protocol No. 7 imposes minimum procedural safeguards on the expulsion process, but reasons of public order or national security may justify removal before the safeguards apply.

III. Expulsion is excluded if the person to be removed faces a real risk of inhuman and degrading treatment contrary to Article 3 in the country of destination (*Soering v UK* GC (1989)). This *Soering* case law reflects the fact that Article 3 is a non-derogable right. Such cases are understandably rare. However, the facts of Soering are informative: his extradition was sought to the USA where he was accused of double murder but faced death row. After the Court's judgment, the US request for his extradition was amended, so that the risk of a death sentence was excluded and he was extradited within months.

IV. Expulsion is also excluded in cases regarding Article 2 where an applicant has demonstrated that there would be a substantial risk to their life, for example, because it is intended to return them to a State which may apply the death penalty in their case (see for example *Al Nashiri v. Poland*).

V. Articles 2 and 3 contain absolute rights under the Convention. The court will assess risks for the person to be deported, focusing on foreseeable consequences. Stating that the Court's jurisprudence "*protects the wrong people*" in a way that prevents removal is a misrepresentation and it ignores specific analysis and balancing test that the Court applies to every case. After examining the case and when it finds that there are not enough guarantees to avoid violations, the Court merely enforces the rights, that the nine States recognized as supreme and universal values, when ratifying the Convention.

VI. Expulsion may be excluded exceptionally under Article 8, if it would involve a disproportionate interference with private or family life and notably, if the convicted person has no real connection with the country to which they are to be sent, such as where they were born there, but have spent most of their life in the country of their conviction.

a. As in all Article 8 cases, the Court accords the national authorities a "*margin of appreciation*" because they are inherently better placed than an international tribunal to assess the needs of their society. The margin of appreciation doctrine has been developed since *Handyside v UK* (1976) and since 2014 is incorporated expressly in the Convention Preamble.

b. The Court held in *Bouchelkia v France* (1997) that the seriousness of the offence committed was a key aspect of the assessment of whether expulsion was justified, concluding that it was justified in that case where a violent crime was at issue, even if committed by a minor.

c. By contrast, in *Maslov v Austria* GC (2008) that applicant's removal breached Article 8 because it was a disproportionate measure, where none of the offences involved violence and where the applicant had not re-offended after release.

VII. As these and many other concluded cases show, where domestic authorities apply the *Maslov* / *Üner* criteria, this interpretation of the Convention does not prevent the expulsion even of long-term, settled offenders (e.g. *Külekci v Austria*, *Salem v Denmark*, *Samsonnikov v Estonia*) notably where their offences involved violence.

VIII. This interpretation of the Convention by the Court does not realistically restrict the need expressed in the 9 States' Letter *to "have more room nationally to decide when to expel criminal foreign nationals who commit serious violent crimes"*. That Letter does not point to any decided case, still less a settled interpretation by the Court, which inappropriately restricts the right of national authorities to expel criminal foreign nationals who commit serious violent crimes.

It is important to note that EU countries, such as the signatories of the letter of 22 May, are also bound by the EU fundamental rights framework, especially the EU Charter.

4.2. No basis in the Court's case law for unwarranted restrictions on tracking foreign national offenders who cannot be removed from their host's territory

The Nine States' Letter refers to the need for greater freedom as to how national authorities keep track of foreign criminals who cannot be expelled. No detail is provided, but it must be assumed that if expulsion would otherwise be warranted, the relevant convictions are for serious offences and that the offenders will often still be in prison, where their supervision by the authorities would be a normal consequence of their conviction.

Subject to the relevant provisions of domestic law and assuming that domestic law clearly provided for the surveillance of foreign criminals post their release from prison, supervision post release would probably also be regarded as a normal consequence of conviction and so fall outside the protection of Article 8 (*Gillberg v. Sweden* GC (2012)).

Otherwise, if such surveillance was an interference with respect for private life, again assuming that it had a clear legislative basis, was amenable to challenge and was for a proportionate duration, it would be likely to represent a lawful and proportionate interference with the offender's Article 8 rights and be justified under Article 8(2).

The Court's case law does not reveal this to be a contentious issue.

4.3. The need to counter hostile States which are instrumentalising migrants at their borders

The issue of instrumentalisation of migrants is seen by Member States as an acute problem, especially following Russian aggression towards Ukraine and its further

development on the Russia Finland border as well as the border between Belarus and Poland, Latvia and Lithuania.

It is important to recall that as part of the New Pact on Migration and Asylum, a Crisis Regulation[12] was adopted that foresees derogations and special rules to be applied in cases of instrumentalisation. This framework aims to enable EU States to take effective steps to react to instrumentalisation situations.

In its paper regarding the initial proposal for a regulation on instrumentalisation, the CCBE pointed to the vulnerabilities of the derogations system from the point of view of compatibility with international and European law.[13]

On 12 February 2025, the Grand Chamber of the Court held a hearing in the cases of *COCG and others v Lithuania*[14] concerning Cuban nationals, *HMM and others v Latvia*[15] concerning a group of Iraqi Kurds and *RA and others v Poland*[16] concerning a group of Afghan nationals encamped in the border area between Belarus and Poland.

In each of those cases the applicants allege pushbacks by the national authorities of the respective respondent States into Belarus, which they consider to be an unsafe country, where they both fear ill-treatment and the risk of refoulement to their countries of origin. They invoke Article 3 and specifically complain that they have been unable to lodge applications for asylum in the respective Council of Europe Member State complained against.

It is therefore reasonable to expect that the Court's judgments in these cases will refer to and apply the established case law regarding Article 3 and 13 and will involve a detailed and intensely fact-specific assessment of the circumstances in each of those cases. Beyond that it would not be appropriate to speculate as to the outcome of the applications where the judgments of the Grand Chamber, following its hearings seven months ago, will be given in the near future.

In this context, it is also important to recall the approach of the court adopted in the case *N.D. and N.T. v. Spain* which concerned the situation on the Spanish-Moroccan border. It established a test that the Court applies in situations where "*individuals cross a land border in an unauthorised manner and are expelled summarily*".[17] This jurisprudence can

[12] 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, available here.
[13] CCBE position paper on the proposal addressing situations of instrumentalisation in the field of migration and asylum, 16/02/2023, available here.
[14] ECtHR, M.K. and others v Poland, 23.07.2020, available here.
[14] Lodged on 8 April 2022 and communicated to the Lithuanian Government on 2 December 2022.
[15] Lodged on 20 August 2021 and communicated to the Latvian Government on 3 May 2022
[16] Lodged on 20 August 2021 and communicated to the Polish Government on 27 September 2021.
[17] ECtHR, N.D. and N.T. v Spain, available here.

be hardly seen as restricting States' margin of action.

5. Conclusions from the points made above

There is one particularly stark aspect of these cases which illustrates a wider concern which the 9 States' Letter did not articulate, but which is nevertheless extremely relevant to the Court's judicial role in these and other cases, namely the time taken to determine cases pending before the Court.

The three abovementioned cases are emblematic of the more general fact that the Court is grossly over-burdened with cases. First, it is obvious that these three cases are urgent and raise issues of life and limb[18]. It is therefore noteworthy that the applications were introduced in 2021 and 2022, but that the hearing was held (after the Grand Chamber had assumed jurisdiction), in February 2025, some three years later. The comparison with the timetable in the *Soering* case is instructive in showing the enormous increase in the burden of the Court's case load in the thirty five year interval, given that the *Soering* case, which involved hearings before both the then European Commission of Human Rights as well as the Court, was decided within 364 days of its date of introduction[19].

The CCBE[20], like the Court itself[21] and the Committee of Ministers of the Council of Europe[22], has been concerned at the backlog of pending cases and the threat which this poses to the effective protection of human rights in Europe. The Court has undertaken a large variety of measures to attempt to mitigate the effects of this case load[23], but the fact remains that even urgent cases, like these three, take a long time to be determined[24].

In many cases, those delays follow lengthy domestic proceedings as domestic remedies are exhausted as Article 35 requires. The persistently high number of immigration cases

[18] In both *COCG v Latvia* and *RA and others v Poland* the Court indicated interim measures under Rule 39 arising from the facts of the applicant's complaints.
[19] The case was lodged with the (then) European Commission of Human Rights on 9 July 1988 and the judgment of the Plenary Court was given on 7 July 1989.
[20] CCBE Proposals for reform of the ECHR machinery, 28.06.2019, available here.
[21] CDDH(2019)08, The development of the Court's case-load over ten years
[22] The Interlaken Process - Human Rights Intergovernmental Cooperation .
[23] And the CCBE has made proposals which it considers could further address this problem, CCBE Proposals to DH-SYSC-V on enhancing the national implementation of the European Convention on Human Rights and the execution of judgments of the European Court of Human Rights, 12.11.2020, available here.
[24] Of concern in these cases is that, despite their obvious seriousness, both *COCG and others v Lithuania* and *HMM and others v Latvia* were only communicated to the respective respondent Governments well over six months after they were first lodged with the Court (see footnote 12 and 13 above). This delay is hard to explain.

in many domestic legal systems has caused long delays for which national resources have not always been forthcoming[25].

The problem of the delay in the Court's case handling, generated by an over-loaded docket, has a particular significance in expulsion cases. Already in the *Maslov* case the Austrian Government argued that the Court should not have taken account of factual developments subsequent to the final decision taken by the national courts[26]. The applicant had argued that his good conduct in that interval was a material consideration which mitigated against the domestic court's conclusion that he should be expelled in the light of his earlier criminal conduct.

This issue underlines a particular disadvantage arising from delay in the Court in processing expulsion cases and points to the possibility of a disconnect between the facts which are considered by the national courts and the fuller picture which the Court is able to consider in part because of the delays in its own procedure. Such a discrepancy is unlikely to enhance the co-operation between the perspective of the national authorities and the Court, on which the principle of subsidiarity relies.

6. Conclusions

In May 2023, at the Fourth Summit of Heads of State and Government of the Council of Europe, all the Member States recommitted themselves in the Reykjavik Declaration to the prompt and effective implementation of judgments of the Court[27].

Despite straightened economic pressures, all Council of Europe Member States need to commit additional resources to the prompt processing of human rights cases and to resourcing the Court adequately.

The CCBE is concerned about any adverse effects caused by mis-directed criticism of the Convention system as a whole and especially the Court's authoritative interpretation of the Convention, which contradicts that common European position.

Any discussion on legal issues related to the Convention and its interpretation, should take place within the existing relevant platforms of the Council of Europe. The CCBE is

[25] 25 _EPS public by MS | Flourish Bi-Annual' EUAA Mid Year Review pending first instance asylum cases by national jurisdiction. A key finding is that: "*The number of cases awaiting a first instance decision remained at near record levels, with 918,000 pending at the end of June 2025. It is estimated that the total number of cases, including those in appeal or review, awaiting a decision at the end of May 2025 (latest data) was approximately 1.3 million".*

[26] *Maslov v Austria* at [58] ff.

[27] See above, footnote 4, 4th Summit of Heads of State and Government of the Council of Europe: Reykjavik Declaration: United around our Values, available here.

eager to engage in further substantive discussion on improving effective human rights protection in Europe with States' authorities and other relevant stakeholders.