

Norwegian NGO Forum for Human Rights

Oslo, 17.03.2026

Statement:

The European Court of Human Rights must remain independent and its protection of human rights intact

Institutional Context

The European Court of Human Rights (ECtHR) is currently at the centre of an overt constitutional confrontation within the Council of Europe. Several governments have moved beyond policy disagreement and now openly contest the Court's interpretative authority, its jurisprudential method, and its binding supervisory role under the European Convention on Human Rights (ECHR), especially in the field of refugee protection.

On 22 May 2025, nine Member States – led by Denmark and Italy, and including Austria, Belgium, Czechia, Estonia, Latvia, Lithuania, and Poland – circulated a letter calling for a “new and open-minded conversation” on the Court's interpretation of the Convention. The letter distinguished between “law-abiding” migrants and a minority believed to form “parallel societies” or engage in criminal activities. It argued that the Court has expanded Convention guarantees beyond their “original intentions”, thereby limiting democratic governments' ability to expel non-nationals, maintain public order, and manage migration. In essence, the intervention challenges the Court's treaty interpretation and implicitly questions the scope of judicial authority under Article 32 of the ECHR.

At the Conference of Ministers of Justice on 10 December 2025, 27 Member States endorsed a joint statement reaffirming the importance of the Convention system and outlining seven guiding principles for its implementation in the context of migration. The statement welcomed the four-point initiative by the Secretary-General of the Council of Europe, Alain Berset, including the development of a political declaration on migration and the Convention for consideration at the Foreign Ministers' meeting in Chişinău on 15 May 2026.

The Conference – comprising all 46 Member States – mandated follow-up work on such a declaration, elevating the matter to the highest political level. On 6 January 2026, the Steering Committee for Human Rights (CDDH) issued a preparatory document identifying “Possible Issues for Inclusion in a Political Declaration”. It has been instructed to report

before 22 March 2026 to allow adoption at the 135th Session of the Committee of Ministers (14–15 May 2026).

Systemic Risks

The context of the 22 May 2025 letter extends beyond refugee law and migration policy. In several Member States, political actors are using stigmatising rhetoric that equates foreigners with criminality to justify restricting fundamental rights. Such oversimplified narratives threaten equality before the law and undermine the core principles of the Convention system.

Political pressure to alter or restrict an international court's jurisprudence poses a direct threat to judicial independence and the rule of law. Such interference risks undermining both the Court's institutional integrity and the binding quality of its judgments under international law.

Opposition to the Court often arises precisely because it performs its supervisory role, holding governments accountable through authoritative judgments, including findings of violations and awards of just satisfaction. The current pressure on the Court is part of a wider trend characterised by increasing anti-immigration sentiment, renewed assertions of unchecked sovereignty, and a growing willingness among certain governments to challenge supranational adjudication. This may reflect a gradual erosion of consensus around the universality and indivisibility of human rights.

The debate over the Court's migration jurisprudence should not obscure the main institutional issue: ongoing non-compliance with judgments by certain Member States. This problem extends beyond migration cases and includes rulings safeguarding fundamental democratic rights, such as those of opposition politicians, civil society actors, and independent media. The failure to enforce such judgments weakens the core principles of the Convention system and raises questions about Member States' commitment to their binding obligations.

Recommendations of the NGO Forum

In light of the foregoing, and ahead of the upcoming Chişinău Convention of Foreign Ministers of Council of Europe Member States, the undersigned member organisations of the Norwegian [NGO Forum](#) for Human Rights respectfully urge Member States to consider the following recommendations.

1. Public statements and institutional decisions affecting the Court must be grounded in solid facts and thorough legal analysis. Mischaracterisations, hyperbole, or politically motivated

narratives should not be allowed to undermine the Court's independence or its duty to protect human rights.

- a. The allegation that the European Court of Human Rights exceeds its mandate finds no support in its jurisprudence. While the Convention is recognised as a 'living instrument', the Court has employed this doctrine to ensure treaty interpretation in compliance with the 1969 Vienna Convention on the Law of Treaties and in light of contemporary conditions, not to depart from the text or the object and purpose of the European Convention on Human Rights as envisaged by its drafters.
- b. Empirically, only a small proportion of refugee protection and migration-related applications before the Court result in findings of violations. Sovereign control over entry and residence remains the fundamental assumption, and applicants must demonstrate a genuine risk of persecution, mistreatment, or other exceptional circumstances that justify protection. However, asylum seekers cannot be rejected at the border or denied refugee rights without a proper examination of their claimed refugee status or protection needs, in accordance with the 1951 Refugee Convention and the European Convention on Human Rights.
- c. Labelling asylum seekers as a serious national security threat is misleading. European countries have the administrative, financial, and institutional resources to register, process, and assess such claims in accordance with the rule of law. The largest contemporary refugee group in Europe includes more than 5 million Ukrainians who have received protection. However, the actual data does not support *alarmist* stories: the number of asylum seekers in Europe during the first half of 2025 decreased by 20 per cent compared to the same period in 2024.
- d. The protections under attack are not unique to the European Convention. They are enshrined in binding international instruments to which all Council of Europe member states have voluntarily committed. The 1984 UN Convention against Torture and the 1966 International Covenant on Civil and Political Rights establish the same fundamental guarantees: the absolute prohibition of torture and inhuman or degrading treatment, the principle of non-refoulement, the ban on collective expulsions, and minimum procedural safeguards. These norms are legal obligations, not optional policy choices. EU law further reinforces or expands these protections through the Charter of Fundamental Rights, EU primary law (treaty provisions), the adopted Qualification Regulation and the proposed Return Regulation.

2. The letter of 22 May 2025 used language that questioned fundamental human rights protections, including the prohibition of refoulement – an absolute and non-derogable norm rooted in both treaty law and customary international law. The statement of 10 December similarly implied that Article 3 of the Convention “should be constrained to the most serious issues in a manner which does not prevent State Parties from making proportionate decisions on the expulsion of foreign criminals, or in cases of removal or extradition, including issues related to healthcare and prison conditions.” Such framing risks undermining

the absolute nature of Article 3 protection, as affirmed by the Court's jurisprudence over the past 30 years.

- a. While Member States are free to comment on ECtHR judgments and case law, and retain the authority to amend the legal framework, including the Convention texts, they should refrain from instructing the Court's independent judges on how to interpret fundamental human rights guarantees.
- b. Opportunistic political considerations must not justify practices that erode fundamental human rights guarantees and the 1951 Refugee Convention. Any attempt to recalibrate absolute protections for expediency risks weakening both the safeguards themselves and the broader normative authority of the Convention framework, including the Court's independence.

Supporting organisations:

1. Human Rights Committee of the Norwegian Psychological Association
2. International Society for Health and Human Rights
3. International Commission of Jurists Norway (ICJ-Norway)
4. IPPF Norway – The Norwegian Association for Sexual and Reproductive Health and Rights
5. NOAS Foundation
6. Norwegian Bar Association Human Rights Committee
7. Norwegian Centre Against Racism
8. Norwegian Council for Africa
9. Norwegian Helsinki Committee
10. Norwegian Humanist Association
11. Rafto Foundation for Human Rights
12. Stefanus Alliance
13. United Nations Association of Norway