Meijers Committee

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Standing Committee of Experts on International Migration, Refugee and Criminal Law

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To: Permanent Representatives of the member States of the Council of Europe; Mihai Popșoi, Chairperson Committee of Ministers; Alain Berset, Secretary General of the Council of Europe.

Date: December 8, 2025

Subject: Meijers Committee letter in anticipation of the political declaration of the Committee of Ministers on the interpretation of the European Convention on Human Rights.

Dear Permanent Representatives,

Dear Chairperson,

Dear Secretary General,

On 10 December, a ministerial conference will take place at the initiative of the Secretary General of the Council of Europe. The conference intends to instruct the Committee of Ministers to draw up a political declaration for the Committee's meeting in Chișinău in May 2026 to clarify how the States Parties interpret the European Convention on Human Rights (hereafter: the Convention). These developments largely follow from the open letter of nine EU Member States of 22 May 2025 in which they expressed their criticisms of the European Court of Human Rights' (the Court) interpretation of the Convention. The nine EU Member States contended that the Court 'has extended the scope of the Convention too far', especially in asylum and migration cases. The Meijers Committee is concerned that the envisaged political declaration undermines the system of human rights protection in Europe, and the judicial independence of the Court.

The aim of the envisaged declaration of the Committee of Ministers is likely to be the limitation of the Court's interpretation of the Convention in the field of asylum and migration policy. Yet the Meijers Committee notes that the Committee of Ministers has no authority to restrict the Court's interpretation powers under Article 32 the Convention. Any views expressed in such a declaration are therefore of political nature and do not bind the Court in any way.

The Meijers Committee emphasizes the central tenet of the Convention system that obliges all States Parties 'to secure to everyone within their jurisdiction the rights and freedoms' in the Convention (Article 1). Excluding a single group, migrants, from this protection system or providing for a lower minimum level of protection for this group would erode equal treatment and could pave the way for excluding other vulnerable groups in society in the future, such as religious minorities, LGBTIQ+ people or criminal offenders, which may vary between States Parties.

Recent criticism directed towards the Court largely targets the 'living instrument doctrine', which allows the Court to respond to changes in the social and legal workings of its constituent states. The Meijers Committee observes that this doctrine has enabled the Court to give due consideration to evolving fundamental rights standards in national legal orders of the States Parties to the Convention, and developments inherent to the modernisation of societies. This doctrine has driven progress. Corporal punishment of school pupils is no longer considered acceptable and same-sex marriages, which were not recognised anywhere in the world at the time the Convention was signed, are now recognised as a form of family life deserving of legal protection. The Court and Convention also safeguard our online privacy and protect against online hate speech even though Internet and social media did not exist when the Convention was adopted. The Court, in its application of the living instrument doctrine, searches for common ground among the national legal orders of the Contracting States, thus following developments at the national level rather than initiating them. The Court, for example, accepted differences in the right to family reunification of refugees and beneficiaries of subsidiary protection, but not a three-year waiting period for beneficiaries of subsidiary or temporary protection (in *M.A. v.*

Denmark). The Court thus remains mindful of its subsidiary role, emphasizing that judicial intervention cannot replace legislative or administrative action, while at the same time affirming that democracy cannot be reduced to the will of the majority in disregard of the requirements of the rule of law.

The Meijers Committee also finds it unfortunate that critical reflections on the case law of the Court tend to misrepresent the approach of the Court in cases concerning asylum and migration. States Parties have authority to control migration and the Court consequently assesses asylum and migration cases with restraint in order to avoid unduly restricting the sovereignty of Member States in this area. The proportion of applications submitted to the Court which concern immigration matters is actually low; only 1.5% relate to immigration. Most applications were found to be inadmissible as the Court itself showed in a recent factsheet: 'Over the last ten years, the Court has found violations in fewer than 300 cases concerning immigration issues, that is in around 6% of the applications made to it concerning immigration cases'. In migration cases, the Court concludes only in exceptional circumstances that the right to family life protected by Article 8 of the Convention has been violated and often finds no violation in deportation cases. Factual accuracy matters because misconceptions about the Court's role in migration cases risk politicizing the Court and discussions within the Council of Europe. Misconstruction of subsidiarity and the Court's jurisdiction can expose it to political pressure, threatening the protection of human rights across Europe.

The Meijers Committee further notes that any attempt to curtail the Convention system will likely have limited practical effect on the States Parties' legal constraints on migration control, as human rights are safeguarded by multiple international instruments, including UN human rights treaties, the Refugee Convention and most notably EU Treaties and secondary legislation. EU law in particular regulates asylum and migration extensively. Moreover, the Charter of Fundamental Rights of the EU not only reaffirms the rights in the Convention, but adds others, such as the inviolability of human dignity (Article 1), the right to asylum (Article 18) and effective remedies (Article 47). Above all, the Charter explicitly allows for more extensive protection than the Convention and Member States' constitutions (Article 52(3)). The minimum level of human rights protection within the EU, consisting of 27 Member States, is thus higher than the 46 States Parties to the ECHR and members of the Council of Europe.

More importantly, politicizing the Court threatens its independence and undermines the protection of minimum human rights standards. Constructive dialogue with the Court is both legitimate and valuable but attempts to curtail its interpretative authority undermine the integrity of the Convention system. Rather, States Parties should use legitimate avenues to reflect on the Court's case law by using the possibility to request leave to submit written comments as third parties, by requesting reference of cases to the Grand Chamber following a judgment by the Chamber which they consider less favourable, or by taking part in the hearing in cases in which they are not the respondent party. Domestic courts may also seek advisory opinions from the Court about the way it should interpret rights and obligations emanating from the Convention on the basis of Protocol 16. Preserving the Court's independence is essential to maintaining trust, stability, and justice across Europe.

Please do not hesitate to contact us should you require further clarification. We remain available to discuss this topic with you in more detail.

Yours sincerely,

On behalf of the Meijers Committee,

Dr. Sanne Buisman, Chairwoman