

The Chisinau Declaration on the ECHR and Migration

Dr Jean-Pierre Gauci

Compiled by [Jean-Pierre Gauci](#), this blog post reflects perspectives shared at the [Rapid Response Webinar](#) convened by BIICL on Monday 18th May. The panel was chaired by Sir Tim Eicke and included as panellists: Prof. Alice Donald (Middlesex University), Rob Linham OBE (Ministry of Justice, UK), Daniel Holder (Committee for the Administration of Justice and FIDH), Prof. Veronika Bilkova (Venice Commission and Charles University), Raza Husain KC (Matrix Chambers), and Prof. Katja Ziegler (University of Leicester). BIICL is grateful to the panellists for their generosity in sharing their ideas and insights. This post was not reviewed by the panellists and as such any errors in are our own.

The [Chisinau Declaration](#) on the European Convention on Human Rights and Migration was adopted by the Council of Europe Committee of Ministers on 15th May 2026. It emerged from a political process set in motion by the so-called '[letter of the nine](#)', published in May 2025 and signed by nine Heads of State or Government, led by Italy and Denmark. That letter argued that, particularly in the fields of extradition and migration, the European Court of Human Rights had extended the Convention beyond its original intentions, with the result, in the signatories' view, that it was protecting the 'wrong people'.

Although the initiative began outside the Council of Europe framework, it was eventually brought back within it at the informal summit of 10 December 2025. There, the Committee of Ministers asked the Steering Committee on Human Rights to prepare elements for a declaration, and 27 States adopted a joint statement calling for greater clarity and a rebalancing of rights. The United Kingdom has played a key role in ushering the discussions within the steering committee for human rights (CDDH). For the UK, the Declaration and efforts around it must also be seen within the political context where there are significant calls from major political parties for the UK's withdrawal from the ECHR.

Process

A note first about process. The United Kingdom helped bring the process back within the Council of Europe framework. That move matters. For much of the second half of 2025, discussions were unfolding outside the institutional framework of the Convention system, which risked further damaging the structures of the system and multilateralism more broadly. Bringing the discussions back into the CoE framework also helped moderate some of the rhetoric that had defined the initial letter of the nine. In that respect, the process offers a reaffirmation of support for multilateralism and for the Council of Europe system, even if the [agenda remains regressive](#) in relation to migrants' rights. The tone of the declaration also shifts, and several important affirmations are included. Speakers at the webinar emphasised that the process benefited substantially from being brought 'in-house' and including through the support of the CDDH's expert secretariat.

At the same time, the limited engagement with civil society, the CoE Commissioner for Human Rights, national human rights institutions and other actors is striking, especially when compared with earlier Declaration processes. Although the CDDH formally includes observers, including civil society organisations such as FIDH, the scope for meaningful participation appears to have been far narrower here, partly in view of the nature of the discussions and the breakneck speed at which this process took place. The engagement of the Court with the process is also worth noting. It contrasts sharply with earlier moments of institutional contestation. For example, speakers noted how during the negotiations leading to the [Copenhagen Declaration](#) in 2018, the Court was more confident and visibly engaged: it challenged aspects of the draft text, pushed back against problematic terminology, and argued for stronger support for its own institutional functioning. By contrast, speakers described the Chisinau process as rushed, conducted at breakneck speed, and structured in a way that largely excluded external input.

As one would expect, the declaration is presented as a consensus text. Yet speakers stressed that it also bears the marks of difficult negotiation behind the scenes. It reads less like a settled common vision than like an uneasy compromise produced under significant political pressure. That is not unexpected especially in a field as politically charged as migration, but it is essential to understanding both the tone and the limits of the final text.

The Declaration and the Court

A critical point in this debate is the link between the declaration and the European Court of Human Rights. The role of the Court is changing. One speaker noted that the Court has effectively become an Apex Court, whose judgments influence the decisions of lower courts, which in this case means Courts at the domestic level. This of course broadens the impact(s) of this and other declarations. Another speaker noted that the declaration implies a further shift for the Court - almost to a Constitutional Court standing where it prioritises 'identifying serious or widespread violations, systemic and structural problems, and important questions of interpretation and application of the Convention.' Whilst it does not mean that the court will no longer deal with individual cases one sees in the declaration an attempt to move the court in that direction.

The Chisinau Declaration differs from previous declarations of the same nature in a very notable way. Previous declarations have focused on institutional and procedural matters whilst this declaration moves into matters of substantive interpretation of Convention rights. This is a very significant shift raising important questions of whether (and the extent to which) the declaration is intending to influence the way the Court interprets and applies the Convention.

The event highlighted different positionings on this question. Some States have taken exception to the framing of this declaration as an attempt to direct the Court. As one speaker put it, States talk into the ether and if the Court happens to take heed of what they are saying, then so be it. Whilst this may be true in pure theory, in practice, things are more complex. In fact, other speakers all noted that the intent of the declaration is clearly to influence the Court's thinking and this is apparent in some of the directive tone and wording of the declaration. To date, the argument that the declaration (including the very existence thereof and the specific content) is not an encroachment on judicial independence is not winning favour in the legal community and there seems to be coalescing a view amongst most commentators that this is exactly what the declaration is trying to do and is likely to do.

This is even more contentious given the fact that several relevant cases are currently before the court (see [here](#) and [here](#)). It raises significant rule of law issues including around the independence of the judiciary. It also raises broader questions about the legal status and practical effects of such declarations. Even where a declaration does not formally amend the Convention, it may still shape expectations, arguments and institutional behaviour. That makes it important to ask not only what the text says, but how it is likely to be used. One can expect States to use some of the same arguments, and the existence of the Declaration itself in their arguments before the Court as cases they are party to come to the fore. This would be in line with the projection of the Convention as a living instrument, able and indeed needing to be interpreted in light of current developments.

The declaration therefore raises important questions of international law, including the place of soft law and declarations by States Party in treaty interpretation.

Margin of Appreciation

If one of the declaration's central themes is institutional balance, another is the attempt to reshape the legal vocabulary through which migration control is discussed and justified in human rights terms. One area of concern is around the 'margin of appreciation'. Traditionally, that doctrine has allowed a degree of flexibility where non-absolute rights are at issue and where States may legitimately choose among different policy options. In the declaration, however, the language appears to promote the doctrine as a shield against (external scrutiny. Read in that way, the margin of appreciation risks becoming a means of insulating national migration policy from meaningful review by the European Court.

Immigration Policies and Migrants' Rights

To be sure, the declaration is more restrained than the documents and rhetoric that preceded it. There are no references to the Convention protecting the 'wrong people' and the final text adopts a more institutional register. Some of the more outright challenges were dropped. The declaration also goes out of its way to affirm support for the Convention, the Court and the broader Convention system. Those changes matter and are important. However, they do not remove the deeper concerns raised by the declaration's framing, underlying assumptions and likely effects. Key here is the assumption that the Convention, and the Court's case law are a problem that needs to be addressed. The declaration, and the way governments are presenting it to national electorates, risks legitimising this assumption.

A key theme of the declaration is its endorsement of so-called 'new approaches' to migration governance, referred to in earlier drafts as 'innovative solutions'. As one speaker noted that terminology is itself contentious: it emerged in political debates at EU level. More broadly, these notions have not been clearly defined. They come with significant and well documented structural and practical risks and for example, the CoE Commissioner for Human Rights has called for extreme caution to be applied to such

measures. We have also seen challenges to such measures within the UK, for example, with successful challenges to the [Rwanda scheme](#) (whereby the UK government was seeking to send people seeking asylum in the UK to Rwanda, the government of which would process their asylum claims).

Another key theme that emerges very clearly from the declaration and from the discussions at the webinar was the question of balancing between migrants' rights on the other hand and national security (and other grounds). For example, on Article 8, the declaration makes a number of remarks in paragraphs 31-33. Here the Declaration re-states the need to balance the right to family life with matters of, inter alia, national security. As one speaker noted Courts already defer extensively to the executive on determination of where that balance should be struck and the extent of the national security risk involved.

Speakers also repeatedly linked the declaration to wider developments at EU level, including the gradual entry into force of measures under the EU Pact on Asylum and Migration. Those developments provide an important backdrop, since a number of the Pact's measures have already attracted sustained criticism on human rights grounds.

What's missing?

What is striking, however, is not only what the declaration includes but also what it leaves out. Europe is facing a wider set of rule of law and democracy challenges, including democratic backsliding, attacks on judicial independence, pressure on civil society, threats to media freedom, corruption and foreign interference. These are not marginal issues for the Convention system. Yet the declaration is framed only around issues of migration. In that sense, as one speaker noted, the Chisinau Declaration is a comparatively moderate document, especially when measured against the rhetoric that preceded it, but it is also disappointingly advancing only a limited vision focused on one Council of Europe instrument, and one politically charged field: migration.

What's next?

What, then, comes next? At Council of Europe level, the declaration will be monitored through existing structures rather than through any new institutional mechanism. Even so, it is clear that States will continue to watch the Court closely, particularly in migration cases, and to assess whether its future jurisprudence reflects the concerns articulated in the declaration. One will have to wait and see whether those States that had sought a more radical agenda might try again or whether States will 'bank' what they got in this declaration, at least in the short to medium term. The real significance of the declaration will therefore have to be tracked over time: in domestic litigation, in arguments before the Strasbourg and domestic courts, and in the broader legal and political discourse surrounding migration control.

At domestic level some developments are already afoot. In the United Kingdom, for example, the [King's Speech](#) last week announced legislation intended to drive a more restrictive application of Article 8 in expulsion cases. Legislative movements are also under way elsewhere, including in Denmark. One notes also developments in EU law, including the implementation of the [Migration Pact](#) and the continuing significance of debates around EU accession to the Convention (with the [CJEU's Opinion](#) on this expected in the coming months). The impact of the declaration on how domestic courts approach cases will also need to be monitored carefully both in terms of cases directly touching on convention rights but also equivalent constitutional rights.

As several speakers observed, previous political declarations have often had only modest direct effects. Even so, the Chisinau Declaration captures and legitimises a particular political project: one that seeks to recalibrate the relationship between States, migrants and the Court. Its long-term significance may lie less in any immediate shift than in the cumulative pressure it places on the language, assumptions, expectations and institutional practices of the Convention system.

The risks associated with instrumentalising the Convention in pursuit of a political agenda will become apparent with time.

Author

[Dr Jean-Pierre Gauci](#) is the Arthur Watts Senior Research Fellow in Public International Law and Director of Teaching and Training at the British Institute of International and Comparative Law.

URL: <https://www.biicl.org/blog/129/the-chisinau-declaration-on-the-echr-and-migration>