

## ***Dura lex sed lex*- Defending the rights of exiles and refugees, a democratic guarantee for all citizens**

On December, 10<sup>th</sup> of 2025, the Council of Europe brought together in Strasbourg the 46 ministers from its member states in charge for migration issues to discuss a sensitive subject in Europe that has continued to tighten its migration policy. The objective of the meeting was to respond to the publication of an open letter published on May 22<sup>nd</sup>, 2025 by the leaders of nine countries mobilized by Italy and Denmark, with Austria, Belgium, Poland, the Czech Republic and the three Baltic States (Estonia, Latvia, Lithuania). These European countries engaged in an open attack on the European Convention on Human Rights (ECHR), the reference text adopted in 1950, but above all on its jurisprudence and interpretation by the judges of the European Court, a major institution of the Council of Europe. For its critics, it would impose "too many limits on the ability of States to decide who should be expelled from their territory" (1).

This new criticism by European political leaders against the magistrates of Strasbourg was initiated in 2024, before the European elections, by a small group of countries ideologically close on migration issues - Italy, Denmark, and Austria. The three European leaders wish to influence and harden European migration policy, in particular "rethinking the way in which the European Convention on Human Rights is interpreted", to reduce its supposed influence on European migration policy. This first letter was signed by fifteen countries, which called on the Commission appointed in 2024 to support "innovative" solutions in migration management and to redefine the concept of a "safe third country", for example allow the installation of centers for asylum seekers outside the Old Continent, as in Rwanda. The Commission had made legal proposals to set up these supposed "innovative" projects (2).

To prepare the meeting of December 10th, 2025, the European Court of Human Rights in Strasbourg recalled in an "explanatory note based on the exhaustive and authoritative jurisprudential guides published by the ECHR Registry" a very clear summary text, published in October 2025, on its role and the limits of its action in migration matters (3). It recalls that "the ECHR protects the rights and freedoms of all people subject to the jurisdiction of a member state of the Council of Europe, whether or not they are nationals of that country". Two articles of the Convention are particularly relevant to migration - Article 3 states that States may not expel a person to another country where there is a real risk that he or she will be subjected to torture or inhuman or degrading treatment. Article 8 of the Convention, which deals with the right to private and family life, means that close family members may only be separated if there are important reasons for doing so.

In its explanatory note, the European Court recalls the limits of the application of the ECHR concerning foreign nationals "certain rights protected by the Convention do not apply in the context of immigration. For example, States may detain foreign nationals for immigration control purposes, despite article 5 of the ECHR which guarantees the right to liberty and security. In addition, Article 6 (right to a fair trial) does not apply to disputes concerning the entry, stay or removal of foreign nationals, or the granting of asylum or expulsion.' The European Court also insists on the prerogatives of the States in matters of migration and therefore on the limits of its intervention, which is very limited 'the ECHR must generally be applied according to national circumstances, which national authorities are best placed to

evaluate and decide. This principle, known as the "margin of appreciation", was developed by the Court in its judgments and then added to the text of the ECHR by the governments of the Council of Europe following a conference held in Brighton, United Kingdom, in 2012."

The European Court finally places its interventions on migration issues, which are very marginal, in all the applications it has to deal with. "The Court has dealt with over 420,000 applications in the last ten years. Less than 2% of these (7,175) were related to immigration. Of the 7,175 applications related to immigration, more than 90% (6,657) were dismissed by the Court. Only about 450 applications related to immigration, or about one in a thousand, led the Court to find a violation of human rights." It is therefore both excessive and false to assert that the magistrates of Strasbourg would infringe on the prerogatives of the States in matters of migration which 'have the right to control the entry of foreign nationals into their territory, in accordance with international law.' The European Court recalls the texts signed by the member States of the Council of Europe with which they must comply in the field of the rights of exiles and refugees "notably the United Nations Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture."

Questioned on the attacks made to the ECHR, and on its interpretation by the magistrates of Strasbourg, several professors of public law in France and in Belgium agree to denounce an ideological instrumentalization without serious legal basis. For Pr dr Peggy Ducoulombier, professor of law at the University of Strasbourg, "we may not agree on this or that decision, but this system protects us all" (1). For Pr dr Céline Romainville, a law professor at the Catholic University of Louvain, critics "show off one or another decision, without putting it in its context, and without making a thorough analysis of all the jurisprudence" (1). For dr Philippe De Bruycker, lawyer at the Free University of Brussels. "If only these countries would detail the cases, they consider problematic, we could respond to this interpellation. It looks more like an ideological statement, very Trumpian, even a pressure coup, while several cases are pending, notably concerning practices of refoulement of migrants at the border between Poland or Lithuania and Belarus..

The most dangerous aspect about these attacks repeatedly formulated by European countries, democracies supposed to respect the rule of law, against the magistrates of a recognized institution, the European Court of Human Rights, is that they undermine the authority of decisions taken by judges, magistrates recruited on their legal skills, who only apply the law. By challenging the European Court of Human Rights, European countries are playing the sorcerer's apprentice. Attacking the European Convention on Human Rights whose mission is "to determine, in the general interest, matters of public order, thereby raising standards for the protection of human rights and expanding human rights jurisprudence throughout the community of States parties to the Convention" (4) is to undermine a 'constitutional instrument of European public order' in the field of human rights. *Dura lex sed lex*.

Bénédicte Halba, president of iriv ([www.iriv.net](http://www.iriv.net)) author of a weblog dedicated to migration issues - <https://actions-migration.blogspot.com/> janvier 2026

- (1) Cécile Ducourtieux et Philippe Jacqué, « CEDH : l'Union tente de canaliser le débat sur l'immigration », Le Monde, jeudi 11 décembre 2025
- (2) Philippe Jacqué, « Immigration : neuf pays européens veulent affaiblir la Cour européenne des droits de l'homme », Le Monde 24 mai 2025
- (3) Cour européenne des droits de l'homme, « La CEDH et les migrations », octobre 2025- <https://rm.coe.int/fr-echr-migration-brief-explainer-faq-fr-2765-7609-1921-v-1-1-/488028e7d0>
- (4) Cour européenne des droits de l'homme « Guide on the case-law of the European Convention on Human Rights », Strasbourg, Août 2025- [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_immigration\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_immigration_eng)