

## **Migrants and migration policies: is Europe still based on *the indivisible, universal values of human dignity, equality and solidarity*?**

*Opening speech by the President of MEDEL, Mariarosaria Guglielmi, at the International Conference “Double Border: Gender and Childhood in Modern Migrations. European Regulations and Human Rights”, University of Deusto- Bilbao, June 12, 2026.*

On behalf of MEDEL, I would like to thank the University of Deusto and our Spanish associations for co-organising today’s conference and for their hospitality. I welcome our distinguished speakers and thank them for joining us to share their views on key issues concerning the role of judges as impartial guardians of fundamental rights and the very future of the system established to protect them in the wake of the tragedies of the Second World War.

Last June, at the Palace of Europe in Strasbourg, we celebrated MEDEL’s 40th anniversary and the visionary project that inspired our founding fathers: when Europe was still divided by the Berlin Wall, MEDEL looked forward to the promotion of a European integration based on Rule of law and human rights, including among its statutory goals *the proclamation and defence of the rights of minorities and differences, in particular the rights of immigrants and the most disadvantaged, in a perspective of social emancipation of the most vulnerable.*

MEDEL has always considered European migration policies as a litmus test for the principles enshrined in our fundamental Charters.

The EU Charter of Fundamental Rights declares that the **Union is founded “on the indivisible, universal values of human dignity, freedom, equality and solidarity”**. In this Charter we stated that the EU is committed to ensuring the enjoyment of fundamental rights which entails **“responsibilities and duties with regard to other persons, to the human community and to future generations”**.

### **What remains of these solemn promises today?**

According to the International Organization for Migration (IOM)’s Missing Migrants Project<sup>1</sup>, which has been collecting information about dead and missing migrants since 2014, the Central Mediterranean Sea still represents the deadliest migration route in the world; the first quarter of 2026 recorded the highest death toll in over a decade for migrants trying to cross the central Mediterranean: around 765 people have died this year, over 460 more than during the same period in 2025. **Such impressive figures cast a shadow over the very survival of Europe as a community based on universal values defined as its *raison d’être*.**

Today marks the entry into force of the EU rules set out in the New Pact on Migration and Asylum adopted in 2024, covering border controls, asylum applications from migrants seeking protection in Europe, fingerprinting, transfers between EU countries and returns.

Celebrated in official speeches as an historic step, marketed as a solution aimed at promoting solidarity among Member States and streamlining border procedures, the new Pact represents the development and further enhancement of the *Fortress Europe*’s policies, that address the issue of immigration solely in terms of “security and public order”.

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<sup>1</sup> <https://missingmigrants.iom.int>

Over the years, “security and public order” have shaped national policies that have made extensive use of ‘legal criminalisation’ techniques linked to ‘illegal entry’ or ‘illegal stay’ of migrants; policies which have led to the criminalisation of support for migrants and humanitarian action – a “global phenomenon” which is now deeply rooted throughout the Europe and EU Member States; policies that have led to the adoption of regulations that hinder NGOs search and rescue operations at sea and to “legal” violence for the purpose of controlling the EU’s internal and external borders; policies of so-called “externalisation” of border management which, through memoranda of understanding and informal agreements with countries where democracy, rule of law and minimum standards of human rights protection are non-existent (suffice it to mention the Italy - Lybia memorandum of understanding and more recently, in 2023, the agreement between EU and Tunisia), have entrusted these countries with the management of migration flows, while redefining EU aid policies on the basis of the geographical location of third countries and their capacity to stem the flow of migrants rather than on the priorities of international development cooperation and humanitarian aid (“the reduction and, in the long term, the eradication of poverty”, as envisaged in art. 208 of the Treaty on the Functioning of the European Union).

Civil society organizations and experts sounded the alarm about the detrimental impact of the New pact on the rights of migrants and the key retrogressive measures -that threaten to reverse progress on non-refoulement and other fundamental guarantees- such as: the pre-entry screening procedure and automatic detention of migrants and asylum seekers, including minors, a procedure that perpetuates a deeply problematic hotspot approach to the management of irregular arrivals to Greece and Italy introduced in 2015; the legal fiction of “non-entry”, denying the arrival of individuals “not authorised to enter the national territory” of an EU Member State regardless of their physical presence; accelerated, substandard procedures to assess asylum claims rather than full and fair assessments; the expansion of the “safe third country” concept, ultimately shifting responsibility for asylum seekers to third states and heightening the risk of refoulement; the new “*instrumentalization of migrants*” paradigm: a vaguely grounded concept which – assuming the “*instrumental use*” by “*hostile*” third Countries actors with the aim of destabilising the EU - is essentially a detailed derogation regime, to be deployed in situations of crisis, such as large-scale arrivals from a third country, which is intended to allow Member States to deviate from standard asylum procedures. It is exactly by invoking the risk of the so-called migrants “*instrumentalization*” practices by Belarus, that countries such as Poland, Latvia, and Lithuania adopted wide-ranging, long-term domestic legislation to (forcedly) return migrants to a third Country without safe repatriation procedures and without any individual evaluation of their asylum applications<sup>2</sup>.

Migration, as the Italian legal philosopher Luigi Ferrajoli puts it, is the defining feature of a “new world order”; it is a request for and a vehicle of equality. But it is no longer merely populist rhetoric that has turned it into a threat to our security. We are facing what has been described as an emerging pattern of decline in established liberal-democratic constitutional orders in their commitment to human rights. We are facing a systemic attack on the supranational judicial architecture that should act as guarantor of the highest level of protection of fundamental rights, based on European and domestic Courts and relying on the role that national judges play in applying supranational sources.

The open letter published on 22 May last year signed by nine countries (EU and CoE members) calling for a shift in the Strasbourg Court’s interpretative approach in the field of migration and in cases concerning ‘irregular migrants’ (*wrong people*, said the letter), represented a worrying turn, as the Commissioner for Human Rights of the Council of Europe Michael O’Flaherty said: a letter based on the narrative of a loss of control of borders, putting a focus on criminality and grossly overspeaking its

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<sup>2</sup> A. Ancite-Jepifánova, ‘*Migrant Instrumentalisation: Facts and Fictions*’, *Verfassungsblog*, September 21, 2023 (<https://verfassungsblog.de/migrant-instrumentalisation-facts-and-fictions/>).

incidence within migrant communities with almost no reference to refugees fleeing persecution; a letter that contains baseless claims such as that according to which the Strasbourg Court would make the protection of our societies more difficult, disregarding how states can instead pursue legitimate goals like securing borders without backtracking on respect for human rights<sup>3</sup>.

A letter that behind the cautious tone, disguised an interference with the independence of the Court.

The declaration adopted a month ago in Chisinau by the Committee of Ministers of the Council of Europe (CoE) has crossed another line that its diplomatic phrasing cannot neutralise<sup>4</sup>. In its preamble the declaration asserts that “*inherent in the whole of the Convention on Human Rights is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights*”. This incipit clearly sets out the perspective of the Declaration, that is that of the states rather than that of individual rights: it ‘overlooks’ the fact that the Convention protects these rights, and not the general interest, just as it overlooks the fact that, with regard to fundamental rights, no balancing of interests can take place when we are referring to the prohibition of torture (Article 3) which, amongst other provisions, is absolute.

This declaration aims to shape what the Convention guarantees mean, inspired by States whose primary interest is in narrowing the Convention's reach in migration matters<sup>5</sup>. States claiming that the Court's case law lacks clarity on thresholds for ill-treatment in expulsion and extradition cases, or that family rights are interpreted too broadly to halt removals. As Commissioner O'Flaherty said after Chisinau, the false polarity between the public interest and individual rights is a thinly veiled attempt to compel the Court to lower standards and undermine absolute protection. “*Human rights are not a reward for good behaviour, nor are they a zero-sum game in which one group's security requires another's deprivation. They are held co-equally by everyone, by virtue of our shared humanity alone*”<sup>6</sup>.

**Our shared humanity, equality in dignity and rights: these are the values at stake when we talk about migration policies; these are the values to which we call on Europe and EU to remain faithful.**

Thank you very much for your attention. I wish you all a good conference.

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<sup>3</sup> <https://www.coe.int/en/web/portal/-/attacks-on-the-human-rights-of-migrants-put-all-our-rights-at-risk>

<sup>4</sup> <https://verfassungsblog.de/crossing-a-line-in-plain-sight/>

<sup>5</sup> <https://verfassungsblog.de/crossing-a-line-in-plain-sight/>

<sup>6</sup> <https://www.coe.int/en/web/commissioner/-/«-les-etats-europeens-doivent-affirmer-qu-un-etre-humain-ne-se-verra-jamais-attribuer-un-statut-inferieur-au-motif-qu-il-a-migre-»>