



COUNCIL OF EUROPE CONSEIL DE L'EUROPE
Committee of Ministers
Comité des Ministres

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Recommendation Rec(2002)4 of the Committee of Ministers to member states on the legal status of persons admitted for family reunification

*(Adopted by the Committee of Ministers on 26 March 2002
at the 790th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, and, in particular, its Article 8, which guarantees the protection of family and private life, its Article 14 which contains the principle of non-discrimination with regard to the rights granted, as well as the relevant case-law of the European Court of Human Rights;

Recalling the 1951 Convention relating to the Status of Refugees, the 1967 Protocol to this Convention as well as the Final Act to it and the United Nations Convention on the Rights of the Child;

Recognising that safeguarding family unity constitutes a universally recognised right enshrined in the Universal Declaration of Human Rights;

Conscious of the need to preserve and defend the best interest and well-being of minors and children and their particular need of protection and assistance;

Bearing in mind that family reunification is one of the major sources of immigration in most European states and that the residence status and other rights granted to the admitted family members are important elements in assisting the integration of the new migrants in the host society;

Considering that rules of member states on family reunion as an integral part of a coherent immigration and integration policy should be guided by common principles;

Taking into account Recommendation Rec(2000)15 of the Committee of Ministers to member states concerning the security of residence of long-term migrants, Recommendation No. (99) 23 of the Committee of Ministers on family reunion for refugees and other persons in need of international protection as well as Resolution (78) 33 of the Parliamentary Assembly on the Reunion of Families of Migrant Workers in Council of Europe member States;

Considering the important rights that have been granted to migrants and their family members under the European Convention on Social and Medical Assistance and its Protocol (1953, ETS Nos. 14 and 14A), the European Convention on Establishment (1955, ETS No. 19), the European Convention on the Legal Status of Migrant Workers (1977, ETS No. 93), the Convention on the Participation of Foreigners in Public Life at Local Level (1992, ETS No. 144), the European Convention on the exercise of children's rights (1996, ETS No. 160, the revised European Social Charter (1996, ETS No. 163) and the European Convention on Nationality (1997, ETS No. 166);

Recommends to governments to apply in their legislation and administrative practice the following principles:

I. Scope of application

1. For the purpose of this recommendation, the term “family members” covers all persons admitted to reside on the territory of a member state with a national or a lawfully residing alien in order to form or preserve the family unit.
2. For the purpose of this recommendation, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

II. Residence status of family members

1. After admission for family reunification, the family member should be granted an establishment permit, a renewable residence permit of the same duration as that held by the principal or a renewable residence permit.
2. In their decision on the length of the residence permit granted to children who are family members, member states should give primary consideration to the best interest and the wellbeing of these children.

III. Autonomy of the family member’s residence status in relation to that of the principal right holder

1. After a period of four years of legal residence, adult family members should be granted an autonomous residence permit independent of that of the principal.
2. In the case of divorce, separation or death of the principal, a family member having been legally resident for at least one year may apply for an autonomous residence permit. Member states will give due consideration to such applications. In their decisions, the best interests of the children concerned shall be a primary consideration.

IV. Effective protection against expulsion of family members

1. When considering the withdrawal, refusal to renew a residence permit or the expulsion of a family member, member states should have proper regard to criteria such as the person’s place of birth, his age of entry on the territory, the length of residence, his family relationships, the existence of family ties in the country of origin and the solidity of social and cultural ties with the country of origin. Special consideration should be paid to the best interest and wellbeing of children.
2. When the residence permit of a family member is either not renewed or withdrawn or expulsion ordered, member states should grant a right of appeal to competent independent administrative authorities or courts.

V. Equal access to the labour market, to education and to social rights for family members

1. Family members should enjoy treatment equal to principals as concerns access to employment. Waiting periods for family members of short-term residents introduced by member states due to labour market considerations should not exceed two years.
2. Family members should enjoy social rights, in accordance with the legislation of the member state concerned, equal to those enjoyed by principals with regard to health care as well as social security.
3. If they have access to the labour market, they should also enjoy equal treatment with nationals as regards working conditions and the membership of and active and passive participation in trade unions.

4. Family members should enjoy equal treatment with nationals – in accordance with the legislation of the member state concerned – with regard to education, vocational training, initial and further training and retraining, including university education, equal to that enjoyed by nationals.

VI. Free movement

Family members should enjoy, in accordance with the legislation of the member state concerned, free movement on the territory of the state of residence.

VII. Political participation of persons admitted for family reunification

1. After five years of lawful residence, family members should enjoy the right to vote and to stand for election in local authority elections, as set out in the Convention on the Participation of Foreigners in Public Life at Local Level, provided that they comply with the same legal requirements as nationals.

2. Family members should enjoy the same treatment as nationals with respect to the freedom of assembly, of association and of expression, in conformity with the relevant provisions of the European Convention on Human Rights.

VIII. Acquisition of nationality

Each member state should facilitate the acquisition of its nationality for family members of long-term principals, in accordance with its internal law and taking into consideration the provisions of the European Convention on Nationality (1997).

IX. Final clauses

1. This recommendation is without prejudice to the option open to a member state to grant a more favorable legal status to family members.

2. This recommendation does not affect the rights of long-term migrants as defined in Recommendation Rec(2000)15 of the Committee of Ministers to member states concerning the security of residence of long-term migrants.

3. Member states not having yet done so are encouraged to ratify the European Convention on Social and Medical Assistance and its Protocol (1953), the European Convention on Establishment (1955), the European Convention on the Legal Status of Migrant Workers (1977), the Convention on the Participation of Foreigners in Public Life at Local Level (1992), the European Convention on the exercise of children's rights (1996), the revised European Social Charter (1996) and the European Convention on Nationality (1997).