Parliamentary Assembly
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Recommendation 1686 (2004)[1]
Final version

Human mobility and the right to family reunion

Parliamentary Assembly

1. The right to respect for family life is a fundamental right belonging to everyone and one which is secured by a number of international legal instruments, such as the Universal Declaration of Human Rights (Article 16) and the European Convention on Human Rights (Article 8).

2. Family reunion is the term used to describe a situation in which members of a family come to join one of its members (the "sponsor"), who is lawfully resident in another country.

3. Several Council of Europe conventions, such as the European Social Charter (1961), the revised European Social Charter (1996) and the European Convention on the Legal Status of Migrant Workers (1977), as well as the United Nations Convention on the Rights of the Child (1989), encourage member states to promote the right to family reunion.

4. The right to family reunion in the European Union is one which applies to nationals of non- European Union member states and may be exercised, in principle, by migrants lawfully resident in a member state, persons having obtained refugee status according to the 1951 Geneva Convention relating to the Status of Refugees, as well as persons having been granted complementary or subsidiary protection.

5. The Parliamentary Assembly and also the Committee of Ministers in its recent recommendation on the legal status of persons admitted for family reunification (Rec(2002)4), reiterate their view that any immigration policy has a duty, in accordance with the principles declared at the Tampere European Council (1999), to uphold the principles of equal treatment between nationals of non-EU member states having legal status and citizens of the European Union and must consequently seek to ensure treatment on an equal footing with nationals.

6. The reconstitution of the families of lawfully resident migrants and refugees by means of family reunion strengthens the policy of integration into the host society and is in the interests of social cohesion.

7. However, the concept of "family" underlying that of family reunion has not been defined at European level and varies in particular according to the value and importance attached to the principle of dependence.

8. In its Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum seekers in Europe, the Assembly urged member states to interpret the concept of asylum seekers' families as including de facto family members (natural family), for example an asylum seeker's partner or natural children as well as elderly, infirm or otherwise dependent relations.

9. The Assembly notes with some concern that certain member states have shown a tendency to revise their immigration policy and impose tighter restrictions on the right to family reunion.

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 23 November 2004 (see Doc. 10123, report of the Committee on Migration, Refugees and Population, rapporteur: Ms Zapfl-Helbling; and Doc. 10179, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Gaburro).

10. While welcoming the preferential treatment granted to refugees in the recent European Union Council Directive on the right to family reunification (2003/86/EC), the Assembly expresses its regret that it does not recognise the right to family reunion for persons granted subsidiary protection, nor does it lay down harmonised provisions with regard to the conditions, procedures and timeframes for granting resident status and associated rights.

11. The Assembly also believes that certain provisions allowing for derogations that enable states to make applications subject to financial and housing-related conditions, integration criteria or age limits could, if applied strictly, pose a threat to the right to respect for family life, particularly the rights granted to children, and reinforce the risk of social exclusion of certain nationals of non-EU member states.

12. Consequently, the Assembly recommends that the Committee of Ministers:

12.1. increase its monitoring of compliance by member states with international legal instruments regarding family reunion, particularly compliance with the European Convention on Human Rights and the relevant recommendations of the Committee of Ministers in this field;

12.2. draw up proposals for the harmonisation and implementation of family reunion policies in member states and lay down a common definition of the family unit and rules regarding specific circumstances based on the recommendations set out in subparagraph 12.iii;

12.3. address, in the meantime, a recommendation to member states, urging them:

a. to apply, where possible and appropriate, a broad interpretation of the concept of family and include in particular in that definition members of the natural family, non-married partners, including same-sex partners, children born out of wedlock, children in joint custody, dependent adult children and dependent parents;

b. to grant the right to family reunion to persons benefiting from subsidiary protection;

c. to lay down that reasons must be given for any refusal to grant an application for family reunion and ensure that such a decision can be appealed before an independent body;

d. to impose less strict conditions for applicants in respect of financial guarantees, health insurance and housing and, in particular, to avoid any discrimination against women migrants and refugees which could result from their imposition;

e. to make administrative procedures as straightforward and transparent as possible and to harmonise at European level waiting periods, limiting them to a maximum of twelve months, and not to consider as grounds for rejecting the application the failure to provide certain documents that are not instrumental in the fulfilment of the conditions for family reunification;

f. to consider applications in a positive and humane spirit, providing necessary support for all vulnerable groups and applying appropriate assistance measures to refugees in the light of any economic difficulties they may be experiencing;

g. to facilitate family reunion, referring to Parliamentary Assembly Recommendation 1596 (2003) on the situation of young migrants in Europe, before the completion of the sometimes very lengthy procedure for determining refugee status, in exceptional cases and for humanitarian reasons;

h. not to return, in conformity with the case-law of the European Court of Human Rights and referring to Article 8 of the European Convention on Human Rights, illegal immigrants or asylum seekers whose application has been rejected if such a move could threaten the unity of their family, but rather to seek to solve the problem by bringing their situation into conformity with the law for humanitarian reasons;

i. not to return lawfully resident migrants and refugees to their countries of origin after they have served sentences for criminal behaviour, provided their main family ties are in the host country, and not to reject applications for family reunion solely on the grounds that the applicant (be it the "sponsor" or the "sponsored") has a criminal record;

j. to grant members of a reunited family legal status enabling them to integrate fully into the host society and to encourage the issuing of an autonomous residence permit to the spouse, non-married partner and children who reach the age of majority in order to afford them protection in the event of deportation, divorce, separation or the death of the principal right-holder;

k. to ensure that cases of abusive relationships within reunited families are detected and dealt with in a fair and humane manner, and that, in particular, women who are victims of domestic violence or forced marriage are not sent back to their countries of origin against their will;

l. to authorise members of the family of a non-national living lawfully in a member state to work in an employed or a self-employed capacity as soon as they are issued with a residence permit;

m. to introduce special programmes for the integration of families that have been reunited.