

---

## **Recommendation 1504 (2001)<sup>[1]</sup>**

### **Non-expulsion of long-term immigrants**

---

1. Legal immigrants who, while retaining their original nationality, have settled in a host country which is a member of the Council of Europe, in order to live there for a long period of time, may, in accordance with the law in force, be expelled from that country for reasons of public order, and in particular after they have been convicted, or even simply accused, in criminal proceedings.
2. These legal immigrants who have been living for many years in their host country, some of whom were born or brought up there, have integrated into their host society and are no longer humanly or sociologically foreigners. This is particularly the case of second-generation immigrants, for whom their parents' country is often unknown territory.
3. The application of expulsion measures against them seems both disproportionate and discriminatory: disproportionate because it has lifelong consequences for the person concerned, often entailing separation from his/her family and enforced uprooting from his/her environment, and discriminatory because the state cannot use this procedure against its own nationals who have committed the same breach of the law.
4. The Assembly takes the view that the lack of security of residence represented by the mere prospect of expulsion weakens the process of integration into society of aliens and their communities, and might well give rise to a suspicion of foreigners, whether or not they face expulsion.

5. The Assembly notes with concern that legal rules on expulsion without a time frame are being misused and regrets the fact that the European Court of Human Rights has not adopted any clear stance on the expulsion of long-term immigrants. This deprives them of the certainty of the law to which they are entitled in a law-based state.
6. The Assembly takes the view that an irreversible order to leave a country's territory is a penalty which ought no longer to be exercised without a time frame.
7. Under no circumstances should expulsion be applied to people born or brought up in the host country or to under-age children.
8. Those persons who were lawful residents in a country prior to establishment or restoration of the independence of that country should enjoy at least the same level of protection as long-term immigrants and, in particular, under no circumstances be expelled.
9. The Assembly finds it totally unacceptable that legal long-term immigrants who have been sentenced to expulsion are held in prison while they await their expulsion.
10. The Assembly considers that expulsion may be applied only in highly exceptional cases, and when it has been proven, with due regard to the presumption of innocence, that the person concerned represents a real danger to the state.
11. Taking account of Rec(2000)15 of the Committee of Ministers concerning the security of residence of long-term migrants, the Assembly recommends that the Committee of Ministers:
  - i. take steps to formulate a protocol to the European Convention on Human Rights concerning the protection of long-term migrants against expulsion;
  - ii. invite the governments of member states:

- a. to recognise that the expulsion of a long-term immigrant is a disproportionate and discriminatory sanction;
- b. to recognise that the threat of expulsion constitutes an obstacle to the integration of long-term immigrants;
- c. to undertake to ensure that the ordinary-law procedures and penalties applied to nationals are also applicable to long-term immigrants who have committed the same offence;
- d. to recognise that expelling persons on public order grounds, where their guilt has not been legally established, is contrary to the principle of presumption of innocence;
- e. to accept that expelling persons after they have served a prison sentence is a double punishment;
- f. to ensure that offences committed by long-term migrants which constitute a threat to or violation of public order are defined and penalised under criminal law in the same way as for nationals;
- g. to take the necessary steps to ensure that in the case of long-term migrants the sanction of expulsion is applied only to particularly serious offences affecting state security of which they have been found guilty;
- h. to guarantee that migrants who were born or raised in the host country and their under-age children cannot be expelled under any circumstances;

- i. to ensure that persons facing expulsion can secure detailed examination of their humanitarian situation in order to highlight the consequences of their possible expulsion for themselves and their families and, if appropriate, to adopt alternative measures;
- j. to take the necessary steps to grant persons subject to expulsion the following procedural safeguards:
  - the right to a judge;
  - the right to a trial in the presence of all parties;
  - the right to assistance by counsel;
  - the right to an appeal with suspensive effect, because of the irreversible consequences of enforcing the expulsion.

---

[1] *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 14 March 2001 (see Doc. 8986, report of the Committee on Migration, Refugees and Demography, rapporteur: Mrs Aguiar).*