1. Subject-matter concerned	☒ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to which Article of the Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	23 February 2017
Deciding body (in original language)	Grondwettelijk Hof / Cour Constitutionnelle
Deciding body (in English)	Constitutional Court
Case number (also European Case Law Identifier (ECLI) where applicable)	28/2017
Parties	Council for Alien Law Litigation
Web link to the decision (if available)	http://www.const-court.be/public/f/2017/2017-028f.pdf
Legal basis in national law of the rights under dispute	Article 42quater of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens (Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen / Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers)
Key facts of the case	The Council for Alien Law Litigation asked the following preliminary question to the Constitutional Court: Even though the periods of time, referred to in the provisions below, differ in their starting point, is Article 42quater of the law of 15 December 1980 on access to the territory,

(max. 500 chars)	residence, establishment and removal of aliens compatible with Articles 10 and 11 of the Constitution regarding the fact that the Minister or his delegate can, during the five years following the deliverance of a residence permit, terminate the residence permit of the spouse of a Belgian national or of an EU Member State national, when the marriage with him/her is dissolved and that during the fourth or fifth year of this period, the alien does not meet the conditions stipulated in Article 42quater, §4 *in fine* – namely, that the worker must have sufficient resources –, whereas in the application of Article 13 of the same law, the residence permit of the spouse of a third-country national admitted or authorised for unlimited residence, becomes unlimited once the period of three years after the deliverance of the residence permit has passed, in such a way that the minister cannot terminate the residence permit during the fourth or fifth year after the delivery of the residence permit, even if the marriage is dissolved during this period and the person does not work or has sufficient resources?
Main reasoning / argumentation (max. 500 chars)	Comparing the two provisions, it appears that in the case of the partner or spouse of a Belgian or EU national, the authority can, provided that the conditions are met, terminate the residence permit of that alien for a period of up to five years following the deliverance of a residence permit, whereas it is only three years for the partner or spouse of a third-country national. This constitutes a difference in treatment. (par. B 3.) Such a different in treatment must be reasonably justified in order not to constitute a violation of the principle of equality and non-discrimination. (par. B 7.2.) According to the Court, the categories are comparable. (par. B 8.) Furthermore, the difference in treatment is based on the residence status linked to the nationality of the spouse who is joined by a third-country national who has obtained his/her residence permit on the basis of family reunification. This criterion is objective for the Court. The Court must then examine whether it is pertinent, in regards to the goal of the provision in question. (par. B 9.) The change from three years to five years was made in order to transpose Directive 2004/38. According to the Constitutional Court, the objective of harmonisation cannot, in itself, justify the difference in treatment. Moreover, the legislator had the option of changing from three years to five years, but was not required to do so by Directive 2004/38. (par. B 10.1, 10.2 and 10.3.) The Council of Ministers argued that the legislator intended to fight against abuses of family reunification and marriages of convenience. The Constitutional Court replied that while those are legitimate objectives, nothing seems to show why the nationality of the spouse who is joined by his/her partner within the framework of family reunification is a relevant criterion to justify the difference in treatment. (par. B 11.1 and 11.2.)
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Directive 2004/38 did not require the legislator to change the period in which the authority can terminate a residence permit of a third-country national on the grounds of dissolved marriage from three to five years. There is unjustified difference in treatment between third-country nationals, who are spouses of Belgian or EU nationals and third-country nationals who are spouses of third-country nationals authorised for unlimited residence in regards to the time period during which the Minister can terminate their residence permit.

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	There is an unjustified difference in treatment. The answer to the question of the Council for Alien Law Litigation is negative: Article 42quater of the law of 15 December 1980 is not compatible with Articles 10 and 11 of the Constitution.
Key quotations in original language and translated into English with reference details (max. 500 chars)	*L'objectif de donner exécution à cette directive européenne ou d'harmoniser la législation belge avec la législation des autres Etats membres ne saurait, en soi, justifier une différence de traitement entre étrangers ressortissants de pays tiers à l'Union européenne, selon qu'ils ont obtenu leur droit de séjour dans le cadre d'un regroupement familial avec un conjoint belge ou possédant la nationalité d'un Etat membre d'une part ou avec un conjoint possédant la nationalité d'un Etat tiers d'autre part.* / The goal of implementing a European directive or of harmonising Belgian legislation with the legislation of other Member States cannot, in itself, justify a difference of treatment between third-country nationals, depending on whether they have obtained their residence permit in the framework of a family reunification with a Belgian or EU spouse on the one hand or a third-country national spouse on the other hand. (par. B 10.2.) *Bien que le législateur pouvait, au regard du droit de l'Union européenne, porter de trois à cinq ans la période au cours de laquelle il peut être mis fin, à certaines conditions, au droit de séjour d'un ressortissant d'un Etat tiers, conjoint d'un Belge ou d'un citoyen de l'Union européenne, en cas de dissolution du mariage, il n'était pas, en vertu de l'Article 37 de la directive précitée, tenu de le faire.* / Even though the legislator could, with respect to European Union law, change the period during which, under certain circumstances, the residence permit of a of a third-country national, spouse of a Belgian or EU national can be terminated from three to five years, in case of dissolution of marriage, he was not, according to Article 37 of the aforementioned Directive, required to do so. (par. B 10.3.)
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific Article.	No.