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| Subject-matter concerned | <input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 4 November 2010 |
| Deciding body (in original language) | Grondwettelijk Hof van België / Cour Constitutionnelle de Belgique |
| Deciding body (in English) | Constitutional Court of Belgium |
| Case number (also European Case Law Identifier (ECLI) where applicable) | 128/2010 |
| Parties | Court of First Instance of Liege (preliminary issue). |
| Web link to the decision (if available) | http://www.const-court.be/public/f/2010/2010-128f.pdf |
| Legal basis in national law of the rights under dispute | Articles 12bis and 40 to 47 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) |

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| Key facts of the case (max. 500 chars) | <p>The Court of First Instance of Liege asked the following preliminary question to the Constitutional Court: Are the Articles 40 to 47 of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens, in violation with Articles 10 and 11 of the Constitution, given that they do not provide that an alien asking for family reunification with a Belgian or European citizen spouse should be granted residence permit as soon as no answer has been given to their request when the time limit expires even though according to Article 12bis of the same law, the alien asking for family reunification with a third-country national admitted to reside in Belgium will be granted such a request in case no reply is received within nine month, when warranted extended depending on the closing date. (par B. 3.)</p> |
| Main reasoning / argumentation (max. 500 chars) | <p>The Court notes that Article 12bis §2 of the law of 15 December 1980 puts down a deadline and determines the consequence of the failure to meet said deadline. The Court also notes that Articles 40 to 47 of the law of 15 December 1980 do not regulate the legal regime of the deadline. (par B 5.2. and par B. 6.2.)</p> <p>The Court continues that Article 12bis §2 of the law of 15 December 1980 entails two guarantees: (1) the authorities should take a decision on family reunification within the deadline set; (2) authorization for family reunification is given when no decision is taken within the deadline in order to protect the third-country national in case the authorities fail to meet the deadline or to take a decision. (par B. 7.1.)</p> <p>According to the Court, there is no reasonable justification to deny such a guarantee to a third-country national who is married to a European or Belgian citizen who introduced a similar request. (par B 7.2.)</p> <p>The Court concludes that Articles 40 to 47 of the law of 15 December 1980 are not compatible with Articles 10 and 11 of the Belgian Constitution, because the legislator did not put down a deadline for the authorities to take a decision on the request for family reunification which is made at a Belgian diplomatic or consular post abroad and because it has not fixed consequences for the situation where no decision is taken within the set deadline. (par B. 9.)</p> |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | <p>The lack of a legal regime for the deadline for decisions regarding the family reunification of a third-country national spouse of a European or Belgian citizen is discriminatory and violates Articles 10 and 11 of the Constitution.</p> |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | <p>The answer to the question is positive. Articles 40 to 47 of the law of 15 December 1980 violate Articles 10 and 11 of the Constitution because they create an inequality between third-country national spouses of European or Belgian citizens on the one hand, and third-country national spouses of third-country nationals admitted to reside in Belgium on the other hand.</p> |

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| Key quotations in original language and translated into English with reference details (max. 500 chars) | <i>Les Articles 40 à 47 de la loi relative aux étrangers ne sont pas compatibles avec les Articles 10 et 11 de la Constitution en ce que le législateur n'a pas établi de délai dans lequel les autorités doivent prendre une décision relative à une demande de regroupement familial qui est faite auprès d'un poste diplomatique ou consulaire belge à l'étranger et en ce qu'il n'a pas établi la conséquence qui doit être attachée à l'absence d'une décision dans le délai prévu. Cette discrimination trouve son origine dans une lacune dans la législation, à laquelle seul le législateur peut remédier / Articles 40 to 47 of the Aliens' Law are incompatible with Articles 10 and 11 of the Constitution because the legislator did not provide for a deadline within which the authorities must take a decision on the request for family reunification made at Belgian diplomatic or consular post abroad and because it does not have fixed consequences for the situation where no decision is taken within the deadline set. This discrimination originates in a gap in the legislation, which only the legislator can remedy. (par B. 9.)</i> |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific Article. | No. |