

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	17 September 2015
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)	121/2015
Parties	Council for Alien Law Litigation
Web link to the decision (if available)	http://www.const-court.be/public/f/2015/2015-121f.pdf
Legal basis in national law of the rights under dispute	Article 42quater, §4 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 asks the following preliminary question to the Constitutional Court: Is Article 42quater §4, 4° of the law of 15 December 1980, combined or not with Article 11 of the same law, compatible with Articles 10, 11, 22, and 191 of the Constitution and

(max. 500 chars)	<p>Article 8 and 14 of the ECHR in the following interpretation where the spouse or partner, third-country national, having benefited from family reunification with another third-country national and victim of domestic violence can, according to Article 11 of the same law, keep his/her residence permit despite a relationship breakdown and even if the conditions of residence are no longer met, whereas the spouse or partner, third-country national, having benefited from family reunification with a Belgian or EU national and victim of domestic violence, must satisfy the condition of Article 42quater §4, last indent to benefit from the continuation of his/her residence permit in the case of relationship breakdown. (par. B 2.1.)</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Constitutional Court first observes that, according to Article 42quater of the law of 15 December 1980, the Minister can terminate the residence permit of a third-country national authorised to reside as a spouse or partner of a Belgian or EU national when there is a relationship breakdown within the first two years. However, the Minister cannot terminate the residence permit if the person has been the victim of domestic violence, as long as that person works or has sufficient means in order not to become a burden for the social security system. (par. B 5.1.)</p> <p>Therefore, the third-country national who had a relationship breakdown with his/her Belgian partner and who was the victim of domestic violence, does not hold a right to keep his/her residence permit enforceable against the authority. However, he/she does not automatically lose his/her residence permit. It is up to the Minister to decide whether or not the residence permit should be terminated. (par. B 5.2.)</p> <p>The Minister holds discretionary power in this matter and will need to take many elements into account, such as the reason why the alien ended the relationship. In that regard, the Minister will take domestic violence into consideration in the same way as he does when applying Article 11 of the law of 15 December 1980. (par. B 5.3.)</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The Minister has discretionary power when deciding whether or not to terminate a residency permit. According to the law, he must take multiple elements into consideration, such as the fact that the person has been the victim of domestic violence.</p> <p>The fact that an alien has been a victim of domestic violence does not grant him/her a right of continuation of his/her residence permit.</p> <p>The third-country national who has benefited from family reunification with a Belgian or EU national, and is the victim of domestic violence, can also see his/her residence permit maintained despite a relationship breakdown and even if the conditions of residence are no longer met.</p>
Results (e.g. sanctions) and key consequences or implications of the	<p>The alleged difference in treatment is non-existent. (par. B. 5.4.)</p> <p>Article 42quater of the law of 15 December 1980 is not incompatible with Articles 10, 11, 22 and 191 of the Constitution.</p>

case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>Il s'ensuit qu'à défaut de répondre aux conditions précitées, l'étranger non européen ayant cessé de cohabiter avec son époux belge en raison des violences domestiques qu'il a subies, ne dispose pas d'un droit au maintien de son séjour, opposable à l'autorité compétente. Il ne perd toutefois pas automatiquement son droit au séjour. En effet, il appartient au ministre compétent ou à son délégué de déterminer s'il convient de mettre un terme au droit de séjour de l'intéressé dans de telles conditions.</i> / It follows that failing to meet the above-mentioned conditions, the third-country national who has ceased to live together with his or her Belgian spouse, due to domestic violence that he/she has suffered, does not have a right to the continuation of his/her residence, enforceable against the authority. However, he/she does not automatically lose his/her residence permit. Indeed, it is up to the competent Minister or his delegate to determine whether or not the residence permit should be terminated in such circumstances. (par. B 5.2.)</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific Article.	<p>No.</p>