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Friday's judgment of the Supreme Court *en banc* declared the part of the Aliens Act that precludes granting temporary residence permits to same-sex registered partners of Estonian citizens for leading family life in Estonia unconstitutional and invalid.

The issue of the constitutionality of the Aliens Act arose from two court cases, in which the appellants contested the decisions of the Police and Border Guard Board to issue temporary residence permits. The residence permits were applied for by foreigners who wished to settle in Estonia with their registered partners who were Estonian citizens. The Circuit Court ruled that the Aliens Act is unconstitutional, as it does not include a legal basis for granting temporary residence permits in such a situation and initiated constitutional review proceedings in the Supreme Court.

According to the Supreme Court *en banc*, the main question of the case was whether the fundamental right to family life protects the right of same-sex registered partners to lead a family life in Estonia. Based on the principles of human dignity and equal treatment guaranteed by the Estonian Constitution, the Supreme Court found that the fundamental right to family life does extend to the right of same-sex partners to live in Estonia as a family.

Upon interpreting the constitution, the Supreme Court also considered the European Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights (ECtHR). The ECtHR has repeatedly found that same-sex couples can live in a stable and committed relationship just like straight couples. If it is a factual relationship, they are equally entitled to the protection of family life.

By agreeing with the decision of the Circuit Court, the Supreme Court assumed the position that the Aliens Act infringes the fundamental right to family and is therefore unconstitutional in the part in which it precludes granting temporary residence permits to same-sex registered partners of Estonian citizens for living as a family in Estonia. Even though same-sex partners of Estonian citizens can apply for residence permits on other grounds (e.g., for working), it does not provide them with sufficient certainty that they can lead family life in Estonia. The Supreme Court thus repealed the aforementioned part of the Aliens Act.

At the same time, the Supreme Court explained that the Aliens Act as a whole, including the restrictions of basic rights set forth therein, allow the state to control the arrival of foreigners in Estonia and their stay. By allowing to decide on whether and on what conditions foreigners are allowed in Estonia, the law enables to promote Estonia's constitutional objectives, including the protection of the internal peace and preservation

of the Estonian people. Upon achieving these goals, the state must, however, consider the need to protect people's private and family life and find ways to regulate the entry and stay of foreigners in Estonia with laws that are less infringing to fundamental rights.

COURT ORDER [1]

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