

# Living in another Member State: barriers to EU citizens' full enjoyment of their rights Germany 2017

Contractor: German Institute for Human Rights  
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1. Table 1 – Case law

<p><b>1.</b> <b>Subject matter concerned</b></p>	<p>X1) non-discrimination on grounds of nationality  <input type="checkbox"/> 2) freedom of movement and residence              - linked to which article of Directive 2004/38  <input type="checkbox"/> 3) voting rights  <input type="checkbox"/> 4) diplomatic protection  <input type="checkbox"/> 5) the right to petition</p>
<p><b>Decision date</b></p>	<p>17 February 2014</p>
<p><b>Deciding body (in original language)</b></p>	<p>Bundesverfassungsgericht (BVerfG)</p>
<p><b>Deciding body (in English)</b></p>	<p>Federal Constitutional Court</p>
<p><b>Case number (also European Case Law Identifier (ECLI) where applicable)</b></p>	<p>2 BvQ 4/14  ECLI: DE: BVerfG: 2014: qk20140217.2bvq000414</p>
<p><b>Parties</b></p>	<p>Applicant (Italian national)  Frankfurt am Main Higher Regional Court (<i>Oberlandesgericht</i>, OLG)</p>

<b>Web link to the decision (if available)</b>	<a href="http://www.bverfg.de/e/qk20140217_2bvq000414.html">www.bverfg.de/e/qk20140217_2bvq000414.html</a>
<b>Legal basis in national law of the rights under dispute</b>	Articles 3 (1) and 16 (2) of the <a href="#">Basic Law of the Federal Republic of Germany</a> ( <i>Grundgesetz, GG</i> ).
<b>Key facts of the case</b> (max. 500 chars)	US authorities requested the extradition of the applicant, an Italian national, for the prosecution of offences under Title 15 of the United States Code. This was based on an arrest warrant and a prosecution of a Grand Jury of August 2010. The applicant was arrested while entering Germany at Frankfurt am Main airport in 2013. The OLG Frankfurt ordered provisional arrest pending extradition on 24 June 2013. After having received the formal extradition request, the OLG Frankfurt declared the applicant's extradition to be permissible on 22 January 2014. The applicant applied for a preliminary injunction before the BVerfG on 6 February 2014 to prevent extradition. The court defeated the motion on 17 February 2014.
<b>Main reasoning / argumentation</b> (max. 500 chars)	The applicant argued that Article 16 (2) of the GG was applicable not only to German but also to EU nationals, since a different interpretation would infringe on Article 18 of the Treaty on the Functioning of the European Union (TFEU). The court argued that the decision of the OLG Frankfurt to extradite an Italian national did not constitute inequality in the sense of Article 3 of the GG. It was constitutional that Article 16 (2) of the GG only provided for protection against extradition to foreign countries for German nationals. This also constituted no violation of Article 18 of the TFEU because extraditions to third countries did not fall within the scope of application of the Law of the European Union. Therefore, there was also no need to request the Court of Justice of the European Union (CJEU) to give a preliminary ruling.
<b>Key issues (concepts, interpretations)</b>	The Federal Constitutional Court has, in this decision, confirmed a former decision (see BVerfG, Decision <a href="#">2BvR1347/08</a> of 28 July 2008) and has therefore reaffirmed that the protection of Article 16 (2) of the GG against extradition to foreign countries applies only to German nationals.

<b>) clarified by the case</b> (max. 500 chars)	
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The applicant was extradited to the USA and sentenced to a two year prison sentence. After having served this sentence, he applied for compensation to the District Court of Berlin (<i>Landgericht</i>, LG). The LG Berlin suspended the procedure with its Decision of 18 March 2016 and requested the CJEU to give a preliminary ruling. The LG argued that Article 16 (2) of the GG was applicable to non-German nationals. The case is still pending. The decision of the BVerfG has thereby been called into question by a lower court. Both the decision of the BVerfG and the LG Berlin have, however, issued their decisions prior to the decision of the CJEU in the case <a href="#">Petruhhin v. Latvijas Republikas Generalprokuratūra</a> of 6 September 2016</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>„Die Annahme des Oberlandesgerichts, das Deutschenprivileg aus Art. 16 Abs.2 Satz 1 GG müsse nicht auf Unionsbürger angewandt werden, ist verfassungsrechtlich unbedenklich. Das Bundesverfassungsgericht hat bereits entschieden, dass der Auslieferungsverkehr mit Drittstaaten keine Materie ist, die in den sachlichen Anwendungsbereich des Unionsrechts fällt, und das europarechtliche Diskriminierungsverbot daher in diesem Zusammenhang nicht zu berücksichtigen ist“</i>(See BVerfG, Decision 2 BvQ 4/14 of 17 February 2017, para. 22).</p> <p>Translation:  The OLG's assumption that the privilege for German nationals in Article 16 (2) of the GG is not to be applied to EU citizens is constitutional. The Constitutional Court has already decided previously that extraditions to third countries do not fall within the scope of application of the Law of the European Union. The European right to non-discrimination on grounds of nationality is therefore not to be considered in this context.</p>

<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	No.
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<b>2. Subject matter concerned</b>	<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 Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	16 November 2016
<b>Deciding body (in original language)</b>	Verwaltungsgerichtshof Hessen (VGH)
<b>Deciding body (in English)</b>	Higher Administrative Court of Hessen

<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	9 A 242/15
<b>Parties</b>	Bulgarian national Local aliens' registration office ( <i>Ausländerbehörde</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.lareda.hessenrecht.hessen.de/lexsoft/default/hessenrecht_lareda.html#docid:7731309">www.lareda.hessenrecht.hessen.de/lexsoft/default/hessenrecht_lareda.html#docid:7731309</a>
<b>Legal basis in national law of the rights under dispute</b>	Sections 28, 30 and 44 of the <a href="#">German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act (<i>Aufenthaltsgesetz, AufenthG</i>)</a> , and Sections 2, 4a, 5 and 11 of the <a href="#">German Act on the General Freedom of Movement for EU Citizens (<i>Freizügigkeitsgesetz/EU, FreizügG/EU</i>)</a> (for the old version of the code covering the period until 23 June 2011, see <a href="http://www.buzer.de/gesetz/4720/al28677-0.htm">www.buzer.de/gesetz/4720/al28677-0.htm</a> ).
<b>Key facts of the case</b> (max. 500 chars)	The claimant applied for the issuance of a residence card for EU citizens according to Section 5 of the FreizügG/EU. According to Section 5 of the FreizügG/EU, the claimant had to prove that she was entitled to a right of entry and residence according to Section 2 (1) FreizügG/EU. According to Section 2 (1) of the FreizügG/EU, EU citizens and their dependants entitled to freedom of movement shall have the right to enter and reside in the federal territory. Section 2 (2) of the FreizügG/EU establishes which persons are entitled to freedom of movement, for instance EU citizens who wish to reside in the federal territory as employees (No.1). Section 2 of the FreizügG/EU does not require EU citizens to provide proof of knowledge of the German language. The decision does not mention on which grounds a right of entry and residence was claimed. But the decision mentions that the claimant was receiving unemployment benefits at that time. The authorities, therefore, announced the loss of the entitlement to entry and residence and only issued a residence card after

	<p>the claimant had started working. After having married a German national, the claimant additionally applied for a residence permit according to Section 28 (1), No. 1 of the AufenthG. Section 28 (1,) No. 1 of the AufenthG provides for a temporary residence permit for spouses of German nationals. According to Section 28 (1), sentence 3, the temporary residence permit should be granted in derogation of Section 5 (1), No. 1 of the AufenthG according to which the foreigner's subsistence needs to be secure. According to Section 28 (1), sentence 5 in conjunction with Section 30 (1), No. 2 of the AufenthG, the spouse has to be able to communicate in the German language at least on a basic level. The local aliens' registration office did not grant residence as the claimant was unable to provide proof of knowledge of the German language as foreseen in Section 28 of the AufenthG. The claimant argued that, as an EU citizen, she did not have to provide such proof. The Administrative Court of Gießen (<i>Verwaltungsgericht, VG</i>) dismissed the case by reasoning that the premises of Section 28 (2) of the AufenthG were not fulfilled because the claimant had been involved in criminal proceedings. The VGH ruled that Section 28 of the AufenthG due to a most favourable clause (Section 11 (1), last sentence) was applicable. According to Section 11 (1), last sentence, the AufenthG shall apply if it establishes a more favourable legal status than the FreizügG/EU. The VGH further stated that the conditions of Section 28 of the AufenthG still had to be fulfilled.</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>The claimant argues that Article 28 of the AufenthG is applicable to EU citizens without them having to provide proof of language skills and income. Otherwise they would be discriminated against in comparison with third-country nationals, who according to Section 30 (1), sentence 3 of the AufenthG did not have to prove language skills if they did not have a right to take part in an integration course. According to Sections 11 (1) of the FreizügG/EU and 44 (4) of the AufentG, EU citizens did not have such a right.</p> <p>The VGH reasons that, in principle, according to Section 11 (1) of the FreizügG, the AufenthG shall apply if it establishes a more favourable legal status. The requirements of the AufenthG in this case however had to be fully met. The privileges given to EU citizens only applied if they exercised their rights under the FreizügG/EU. The privileges given by the FreizügG/EU could not be applied within the AufenthG. The fact that Sections 11 (1) of the FreizügG/EU and 44 (4) of the AufentG did not provide for the right to take part in an integration course, but only stated, that a EU citizen <u>may</u> be allowed to attend according to the available number of places on the course concerned, did not change the situation. This rule only applied to EU citizens who applied for</p>



	<p>residence under the FreizügG/EU and therefore had the privilege not to have an obligation to integration. If an EU citizen applied for residence under the AufenthG, he or she had to be treated as any foreigner who applied under the AufenthG and, therefore, also had an entitlement to take part in an integration course according to Section 44 (1) of the AufenthG. Therefore the EU citizen also had to prove language skills as required by Section 28 of the AufenthG. This did not constitute discrimination on the grounds of nationality since the claimant could always exercise the rights given to her through the FreizügG/EU. In that case she did not have an obligation to prove language skills.</p>
<p><b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)</p>	<p>The VGH has decided that in principle the most favoured clause derived from the principle of non-discrimination, Section 11 (1) of the FreizügG/EU, entitles EU citizens to a right of residence based on the AufenthG if this is more favourable than the rights foreseen in the FreizügG/EU. The requirements of the AufenthG in this case had to be fully met. This would not constitute a breach of the principle of non-discrimination in comparison to third-country nationals, since EU citizens could still make use of their rights according to the FreizügG/EU. In this case, the conditions of the AufenthG did not apply.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>According to the VGH (telephone call of 10 February 2017 and again on 22 June 2017) the decision is not final but still pending before the Federal Administrative Court. The VGH has, in its decision, allowed an appeal to the Federal Administrative Court (<i>Bundesverwaltungsgericht</i>, BVerwG) on the grounds that the case was of principal significance. The case would give the opportunity to establish fundamental considerations on the legal position of EU citizens in relation to the AufenthG. In fact, the question of whether an EU citizen who applies for residence according to the AufenthG has to fulfil the conditions set out there has been addressed in the legal literature (see, for instance, Bergmann/Dienelt, <i>Commentary on the AufenthG</i>, 11<sup>th</sup> edition, Section 11, para. 29) but not in previous jurisdiction.</p> <p>The question as to whether EU citizens are entitled to take part in an integration course has also been addressed in the legal literature. It has been said repeatedly that it is a breach of the principle of non-discrimination that such a right does not exist (see, for instance, Brinkmann, 'Ten years of the Freizüg/EU' ('<i>Zehn Jahre Freizügigkeitsgesetz</i>'), <i>Review on Foreigners' Law and Politics</i> (<i>Zeitschrift für Ausländerecht und Ausländerpolitik</i>), page 213). There was also a <a href="#">legislative proposal</a> to include such a right in the FreizügG/EU in</p>

	<p>2014. The proposal has however not been implemented into law. In practice, a right to take part is denied (as can be seen, for example, from the <a href="#">statements of the Federal Agency of Migration and Refugees</a> (<i>Bundesamt für Migration und Flüchtlinge</i>). A final court decision on this matter would therefore be important in practice.</p>
<p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>„Weder das FreizügG/EU noch die Vorschrift des § 1 Abs.2 Nr. 1 AufenthG schließen es aus, dass freizügigkeitsberechtigte Unionsbürger über die Günstigkeitsklausel des § 11 Abs.1 Satz 11 FreizügG/EU einen Anspruch auf Erteilung eines Aufenthaltstitels erwerben können...Die zusätzliche Erteilung eines Aufenthaltstitels an eine freizügigkeitsberechtigte Unionsbürgerin kommt allerdings nur in Betracht, wenn diese alle diesbezüglichen Anforderungen des Aufenthaltsgesetzes ohne Rückgriff auf ihren Status als Freizügigkeitsberechtigte erfüllt... Ein Anspruch auf Teilnahme im Integrationskurs besteht für freizügigkeitsberechtigte Unionsbürger nicht...Die Klägerin könnte verlangen, zusätzlich zu ihrem Freizügigkeitsstatus so gestellt zu werden, als würde allein das Aufenthaltsgesetz zur Anwendung kommen, was vorliegend zur Folge hätte, dass ihr ein Anspruch auf Teilnahme am Integrationskurs zustände“</i> (See VGH Kassel, Decision 9 A 242/15 of 16 November 2016, paras. 1, 34).</p> <p>Translation:  Neither the FreizügG/EU nor Section 1 (2), No. 1 of the AufenthG precludes the possibility for EU citizens to acquire an entitlement to residence via the most favoured clause of Section 11 (1) of the FreizügG/EU in conjunction with the AufenthG... The additional right to residence, according to the AufenthG, however, requires that the conditions of this law are met without making recourse to the rights from the FreizügG/EU... An entitlement to take part in an integration course does not exist for EU citizens... That said, the claimant could request that, in addition to the status according to the FreizügG the AufenthG is applicable. This would have the consequence of a right to take part in a course to integration.</p>
<p><b>Has the deciding body referred to the Charter of</b></p>	<p>No.</p>

<b>Fundamental Rights? If yes, to which specific article.</b>	
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<b>3. Subject matter concerned</b>	<p>X 1) non-discrimination on grounds of nationality  X 2) freedom of movement and residence  - linked to which article of Directive 2004/38  linked to Article 24 (2) of Directive 2004/38</p> <p><input type="checkbox"/> 3) voting rights  <input type="checkbox"/> 4) diplomatic protection  <input type="checkbox"/> 5) the right to petition</p>
<b>Decision date</b>	20 January 2016
<b>Deciding body (in original language)</b>	Bundessozialgericht (BSG)
<b>Deciding body (in English)</b>	Federal Social Court
<b>Case number (also European Case Law Identifier)</b>	B 14 AS 15/15 R

<b>(ECLI) where applicable)</b>	
<b>Parties</b>	Complainant (Spanish national) Berlin Jobcenter
<b>Web link to the decision (if available)</b>	<a href="http://juris.bundessozialgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bsg&amp;Art=en&amp;sid=f4b9911622a3c4f64d6828232ddea063&amp;nr=14304&amp;pos=0&amp;anz=3">http://juris.bundessozialgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bsg&amp;Art=en&amp;sid=f4b9911622a3c4f64d6828232ddea063&amp;nr=14304&amp;pos=0&amp;anz=3</a>
<b>Legal basis in national law of the rights under dispute</b>	Section 7 (1), sentence 2, No. 2 of the German Social Code, Book II ( <i>Sozialgesetzbuch, Zweiter Band, SGB II</i> ) (for the old version of the code covering the period until 22 December 2016, see <a href="http://www.buzer.de/gesetz/2602/al57919-0.htm">www.buzer.de/gesetz/2602/al57919-0.htm</a> ), and Sections 19 (1), 21, 27 (1) of the German Social Code, Book XII ( <i>Sozialgesetzbuch, Zwölfter Band, SGB XII</i> ) (for the old version of the code covering the period until 22 December 2016, see <a href="http://www.buzer.de/gesetz/3415/al0-56208.htm">www.buzer.de/gesetz/3415/al0-56208.htm</a> ).
<b>Key facts of the case</b> (max. 500 chars)	The complainant, a Spanish national, has lived in Germany since 2011, living on savings without being employed. His numerous job applications were without success. He applied for unemployment benefits according to the SGB II for the first time in 2013. His request was rejected by the local Jobcenter. The Berlin Social Court ( <i>Sozialgericht, SG</i> ) overruled the decision and ordered the Jobcenter to grant benefits according to the SGB II. The Higher Social Court ( <i>Landessozialgericht, LSG</i> ) overturned the ruling and decided that the complainant had no entitlement to unemployment benefits at all because Section 7 (1), sentence 2, No.2 of the SGB II, which provides for a rule of exclusion of benefits for persons in search of work applied. The BSG stated in its decision of January 2016 that the complainant was excluded from benefits according to SGB II, that he was however entitled to receive social benefits according to Sections 19(1), 27 (1) SGB XII.
<b>Main reasoning / argumentation</b>	According to Section 7 (1) of the SGB II a person is entitled to unemployment benefits if he or she is aged between 15 and the statutory standard pensionable age; if he or she is capable of work and eligible for

<p>(max. 500 chars)</p>	<p>benefits, and if the person has his or her usual place of residence in Germany. According to Section 7 (1) sentence 2, No.2 of the SGB II, foreigners staying in Germany for the sole purpose of looking for work will not receive benefits. The complainant argues that the exclusion from benefits according to Section 7 (1), sentence 2, No. 2 of the SGB II does not apply to him since the wording of the provision demanded him to be seeking work which was not the case since he had no reasonable chance of success. According to Rule 2.2.1a.2 of the <a href="#">administrative guidelines to the FreizügG/EU</a> (<i>Allgemeine Verwaltungsvorschrift zum FreizügG/EU</i>, a person who has no reasonable chance of success in finding a job is not seeking work in the sense of Section 2 of the FreizügG/EU.</p> <p>The BSG's decision is in accordance with earlier decisions and with the <i>Dano</i> and <i>Alimanovic</i> rulings of the CJEU, as it stated that Section 7 (1), sentence 2, No.2 of the SGB II was consistent with EU law, especially with Article 18 of the TFEU and Article 24 (2) of Directive 2004/38/EU. The BSG has not explicitly decided on the question of whether the claimant was to be qualified as job seeker or not. But it stated that Section 7 (1), sentence 2, No.2 of the SGB II, beyond its wording, also applied to EU nationals that had no right to entry and residence under the FreizügG/EU or the AufenthG at all. The claimant did not have a right to residence according to Section 2 (2) of the FreizügG/EU since he was neither employed nor pursuing an independent economic activity. Unemployment benefits were therefore excluded. The complainant was however entitled to social benefits according to Sections 19 (1) and 27 (1) of the SGB XII. Even if these benefits, according to the wording of Section 21 of the SGB XII, seemed to be excluded for persons able to work, the notion of "ability to work" was not to be interpreted in a strict sense.</p>
<p><b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)</p>	<p>The BSG, after the <i>Dano</i> and the <i>Alimanovic</i> decisions of the CJEU, has developed settled case law: Section 7 (1), sentence 2, No.2 of the SGB II, in accordance with the jurisdiction of the CJEU, was consistent with EU law. On the other hand, social benefits had to be warranted because a complete exclusion from benefits was not in accordance with the German Basic Law (<i>Grundgesetz, GG</i>) (first established in the BSG Decision B 4 AS 44/15 R of 3 December 2015). In the present case, the BSG has followed this path. Additionally, it has clarified that this jurisdiction also applies to persons in search of work without reasonable chances of success who have not had a right to residence for other reason so far, a case group that has not been decided on by the CJEU until now.</p>

<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The jurisdiction of the BSG has not led to a clear legal situation for jobseekers or social benefits claimants from EU countries. First of all, there are many minor courts dissenting with the BSG for different reasons. It has been argued that the SGB XII does not provide for social benefits for persons able to work (see, for instance, LSG Berlin-Brandenburg, decision of 15 January 2016, L 29 AS 20/16 B ER). It has also been argued that Section 7 (1), sentence 2, No. 2 of the SGB II was not constitutional (see, for instance, LSG Hessen, Decision L 6 AS 63/15 of 7 April 2015). Some courts have doubted both the constitutionality of Section 7 (1), sentence 2, No. 2 of the SGB II and the accordance with EU law despite the decisions of the CJEU (see, for instance, SG Mainz; see Table 5 below). As a result, the legislator has, with the Act on the Settlement of Claims of Foreign Persons in the Field of Work and Social Benefits ( <i>Gesetz zur Regelung von Ansprüchen von ausländischen Personen in der Grundsicherung für Arbeitssuchende und in der Sozialhilfe</i> ) of 22 December 2016 modified Section 7 of the SGB II and Section 23 of the SGB XII and has explicitly provided for an exclusion of work <u>and</u> social benefits for persons without the right of residence, in search of work or with a residence permit with the aim of seeking work (see <a href="http://www.bgbl.de">www.bgbl.de</a> ).
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>„Der Kläger erfüllt zwar die Leistungsvoraussetzungen des § 7 Absatz 1 Satz 1 SGB II, unterliegt jedoch dem Leistungsausschluss nach § 7 Abs. 1 Satz 2 Nr. 2 SGB II. Dem steht nicht das Recht der Europäischen Union (EU) oder das Grundgesetz (GG) entgegen. Für den Kläger kommen aber Leistungen der Sozialhilfe in Betracht“</i>(See BSG, Decision B 14 AS 15/15 R of 20 January 2016, para. 11).</p> <p>Translation:  The claimant is, in principle, subject to unemployment benefits according to Section 7 (1), Sentence 1 of the SGB II. Section 7 (1), sentence 2, No.2 of the SGB II which excludes him from benefits, is however applicable. This is in accordance with EU law as well as with the German Basic law. The claimant is however entitled to social benefits.</p>
<b>Has the deciding body referred to the Charter of</b>	No.

<b>Fundamental Rights? If yes, to which specific article.</b>	
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<b>4. Subject matter concerned</b>	X 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	18 April 2016
<b>Deciding body (in original language)</b>	Sozialgericht Mainz (SG)
<b>Deciding body (in English)</b>	Mainz Social Court
<b>Case number (also European Case Law Identifier)</b>	S 3 AS 149/16

<b>(ECLI) where applicable)</b>	
<b>Parties</b>	Uzbek national, Jobcenter
<b>Web link to the decision (if available)</b>	<a href="http://www3.mjv.rlp.de/rechtspr/DisplayUrteil_neu.asp?rowguid={DA58C2AC-17DD-4654-9563-EA6D63498AF9}">www3.mjv.rlp.de/rechtspr/DisplayUrteil_neu.asp?rowguid={DA58C2AC-17DD-4654-9563-EA6D63498AF9}</a>
<b>Legal basis in national law of the rights under dispute</b>	Section 7 (1), sentence 2, No. 2 of the German Social Code, Book II ( <i>Sozialgesetzbuch, Zweiter Band, SGB II</i> ) (for the old version of the code covering the period until 22 December 2016, see <a href="http://www.buzer.de/gesetz/2602/al57919-0.htm">www.buzer.de/gesetz/2602/al57919-0.htm</a> ); Sections 19 (1), 21, 27 (1) of the German Social Code, Book XII ( <i>Sozialgesetzbuch, Zwölfter Band, SGB XII</i> ) (for the old version of the code covering the period until 22 December 2016 see <a href="http://www.buzer.de/gesetz/3415/al0-56208.htm">www.buzer.de/gesetz/3415/al0-56208.htm</a> ), and Articles 1, (1) and 20 (1) of the Basic Law for the Federal Republic of Germany ( <i>Grundgesetz, GG</i> ).
<b>Key facts of the case</b> (max. 500 chars)	The claimant, an Uzbek national, living in Germany for several years together with his wife and their child, studied medicine in Germany and additionally worked during his studies. After having finished his studies while looking for work he applied for unemployment benefits according to the SGB II. He had a residence permit according to Section 16 (1), later according to Section 16 (4) of the German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act ( <i>Aufenthaltsgesetz, AufenthG</i> ). The Jobcenter rejected the claim for unemployment benefits according to Section 7 (1), sentence 2 of the SGB II which excludes persons from benefits if their residence in Germany is solely based on the purpose of searching for a job. The SG Mainz deferred the decision for obtaining a decision of the Federal Constitutional Court ( <i>Bundesverfassungsgericht, BVerfG</i> ) according to Article 101 (3) of the GG. The Social Court argued that such a decision was indispensable since Section 7 (1), sentence 2, No. 2 of the SGB II was unconstitutional. A decision of the BVerfG has not been issued so far.
<b>Main reasoning</b> /	The complainant argued that social benefits (SGB XII) had to be granted in accordance with the welfare state principle, Articles 1 (1) and 20 (1) of the GG. SG Mainz found that as social benefits were excluded for persons



<p><b>argumentation</b> (max. 500 chars)</p>	<p>in search of work; according to Section 21 of the SGB XII, they were not entitled to receive any benefits at all. However, the exclusion of unemployment benefits according to Section 7 (1), sentence 2, No. 2 of the SGB II was unconstitutional since the welfare state principle of Articles 1(1) and 20 (1) of the GG granted the right to a decent minimum standard of living. Since the Higher Social Court of the Rhineland Palatinate had already decided in the opposite direction in another case, the proceedings were deferred in order to obtain a decision from the BVerfG according to Article 101 (3) of the GG. SG Mainz addressed the question about whether Section 7 (1), sentence 2, No.2 of the SGB II was in accordance with the principle of welfare with reference to Article 1 in conjunction with Article 20 (1) of the GG and the right to a decent minimum standard living derived from this principle.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The decision of the SG Mainz at first glance seems to address a purely constitutional matter. The <i>Alimanovic</i> decision of the CJEU and the following jurisdiction of the BSG mentioned above (See Table 4) are however underlying. This can be seen from the detailed reasoning of the SG on the question of whether Section 7 (1), sentence 2, No. 2 of the SGB is in accordance with EU law, although the case does not even involve an EU national. The SG Mainz has emphasized that the provision cannot be justified by Article 24 (2) of Directive 2004/38/EU and therefore is not in accordance with Article 18 of the TFEU. SG Mainz has also pointed out that national courts are not directly bound to the decision of the CJEU on this question. The decision also gives a systematic overview of the abundant and inconsistent jurisdiction on the matter. Additionally, the SG Mainz states that Section 7 (1), sentence 2, No. 2 of the SGB II is not in accordance with the GG.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>If the BVerfG decides that Section 7 (1), sentence 2, No.2 of the SGB II is unconstitutional, this should also make the new Act on the Settlement of Claims of Foreign Persons in the Field of Work and Social Benefits (<i>Gesetz zur Regelung von Ansprüchen von ausländischen Personen in der Grundsicherung für Arbeitssuchende und in der Sozialhilfe</i>) of 22 December 2016 (see <a href="http://www.bgbl.de">www.bgbl.de</a>) obsolete. The jurisdiction of the CJEU on this matter would also be outdated. Then again, until a different law is established, EU citizens could claim unemployment benefits according to the SGB II.</p>

<p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>„ Der Ausschlussatbestand des § 7 Abs.1 Satz 2 Nr. 2 SGB II verstößt gegen das Grundrecht auf Gewährleistung eines menschenwürdigen Existenzminimums aus Artikel 1 (1) GG in Verbindung mit Artikel 20 GG (1) GG. Der gesetzliche Leistungsanspruch muss so ausgestaltet sein, dass er stets den gesamten existenznotwendigen Bedarf jedes individuellen Grundrechtsträgers deckt.</i></p> <p><i>Der Verstoß gegen das Grundrecht auf Gewährleistung eines menschenwürdigen Existenzminimums durch § 7 Abs.1 Satz 2 Nr. 2 SGB II kann nicht durch einen Verweis auf die Möglichkeit der Rückkehr in den Herkunftsstaat vermieden oder gerechtfertigt werden“</i>(See SG Mainz, Decision S 3 AS 149/16 of 18 April 2016, para. 1).</p> <p>Translation: The exclusion from benefits in Section 7 (1), sentence 2, No. 2 of the SGB II is not in accordance with the right to a decent minimum standard of living from Article 1 (1), in conjunction with Article 20 (1), of the GG. The entitlement to benefits by law has to be made in a way that the demand of every person under the protection of the GG is being met. The infringement on the right to receive a decent minimum standard of living cannot be met or justified by the reference to the possibility of returning to the country of origin.</p>
<p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p>	<p>No.</p>

<b>5.</b> <b>Subject matter concerned</b>	X 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to which article of Directive 2004/38 Articles 2, 3 (2) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	30 November 2015
<b>Deciding body (in original language)</b>	Landessozialgericht für das Land Nordrhein-Westfalen (LSG NRW)
<b>Deciding body (in English)</b>	Higher Social Court of North Rhine-Westphalia
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	L 19 AS 1713/15 B ER ECLI:DE:LSG NRW:2015:1130.L19AS1713.15B.ER.00
<b>Parties</b>	Bulgarian national Jobcenter

<b>Web link to the decision (if available)</b>	<a href="http://www.justiz.nrw.de/nrwe/sgs/lsg_nrw/j2015/NRWE_L_19_AS_1713_15_B_ER.html">www.justiz.nrw.de/nrwe/sgs/lsg_nrw/j2015/NRWE_L_19_AS_1713_15_B_ER.html</a>
<b>Legal basis in national law of the rights under dispute</b>	<p>Section 7 (1), sentence 2, No. 2 of the German Social Code, Book II (<i>Sozialgesetzbuch, Zweiter Band, SGB II</i>) (for the old version of the code covering the period until 22 December 2016, see <a href="http://www.buzer.de/gesetz/2602/al57919-0.htm">www.buzer.de/gesetz/2602/al57919-0.htm</a>); Section 3 of the <a href="#">German Act on the General Freedom of Movement for EU Citizens (Freizügigkeitsgesetz/EU, FreizügG/EU)</a>, and Sections 11 and 28 of the <a href="#">German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act (Aufenthaltsgesetz, AufenthG)</a>.</p>
<b>Key facts of the case</b> (max. 500 chars)	<p>The claimant, a Bulgarian national, is the mother of two children. She was living together with her children and their father, who also is Bulgarian national. The children's father was working full-time. The family applied for complementary unemployment benefits according to SGB II. The Jobcenter granted the father and children benefits, but reasoned that the claimant was excluded from benefits according to Section 7 (1), sentence 2, No. 2 of the German Social Code since she was in search of work. The Social Court Düsseldorf (<i>Sozialgericht, SG</i>) obliged the Jobcenter to grant benefits to the mother as well, reasoning that she was to be treated in the same way as a spouse according to Section 3 of the FreizügG/EU. The LSG did not share this view, but decided that the claimant was not to be excluded from benefits since she had a right of residence as the mother of the children according to Section 28 of the AufenthG.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The claimant and the SG reasoned that exclusions from benefits according to Section 7 (1), sentence 2, No. 2 of the SGB II in the present case did not apply. The exclusion clause does not apply if the applicant holds a residence permit other than one issued on the basis of searching for work. The SG reasoned that Section 3 (2), No. 1 of the FreizügG/EU provides the spouse of EU citizens who already have residence with a right of entry and residence. The LSG did not share this view and stated that the analogous application of Section 3 was not permissible since the legislator in Section 3 had expressly provided a definitive list of beneficiaries. The LSG further reasoned that the claimant did however have a different right to residence. The so-called most favoured clause applied. This clause is to be found in Section 11 (1) of the FreizügG/EU and is derived from</p>

	<p>the principle of non-discrimination in Article 18 of the TFEU which entitles EU citizens to a right of residence based on the AufenthG, if this is more favourable than the rights foreseen in the FreizügG/EU. The LSG has consequently assumed that the claimant had a right to residence according to Article 28 of the AufenthG, which entitles parents of minors, unmarried Germans or EU nationals with residence for the purpose of care and custody with a right to temporary residence. The LSG stated that, as a consequence, the exclusion clause in Section 7 (1), sentence 2, No. 2 of the SGB II did not apply.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The LSG clarified that Section 3 (2), No.1 of the FreizügG/EU only applies to the spouse or other persons explicitly mentioned in the provision, whereas an analogous application to the unmarried partner was not admissible. The LSG has not even mentioned the possibility of an interpretation in accordance with Article 3 of Directive 2004/38. The LSG has however pointed out the possibility of gaining residence via the most favoured clause and the AufenthG.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The decision of the LSG is based on a decision of the Federal Social Court (<i>Bundessozialgericht, BSG</i>) of 30 January 2013, <a href="#">B 4 AS 54/12 R</a>, which had already decided in a similar manner by stating that Section 3 (2), No.1 of the FreizügG/EU only applies to the spouse or other persons explicitly mentioned in the provision. The decision of the LSG Baden Württemberg of 16 May 2012, <a href="#">L 3 AS 1477/11</a>, argues the same. It can therefore be stated that, so far, there is agreement, that Section 3 of the FreizügG/EU is not applicable to the unmarried partner. There is no (higher) jurisdiction to date that argues the opposite. Even if the unmarried partner may be entitled to other rights via the AufenthG, these rights may differ and be weaker. Section 3 of the FreizügG/EU consequently cannot be seen as being in full accordance with Directive 2004/38.</p>
<p><b>Key quotations in original language and translated into</b></p>	<p><i>„Zwar kann die Antragstellerin als Partnerin eines Arbeitnehmers kein Aufenthaltsrecht als Familienangehörige aus einer analogen Anwendung des § 3 FreizügG/EU ableiten, da der Familiennachzug in § 3 FreizügG/EU abschließend geregelt ist. Der Antragstellerin kann aber ein Aufenthaltsrecht aus § 11 Abs.1 Satz 11</i></p>

<b>English with reference details</b> (max. 500 chars)	<p><i>FreizügG/EU i.V.m. § 28 Abs.1 S.1 Nr-3 AufenthG und Art. 18 AEUV zustehen“ (LSG NRW, Decision L 19 AS 1713/15 B ER of 30 November 2015, para. 15).</i></p> <p>Translation:  The claimant, as the unmarried partner of an employee, does not have a right to residence as a family member according to an analogous application of paragraph 3 of the FreizügG/EU since residence via a family union is conclusively regulated in Section 3. The claimant may however be entitled to a right to residence according to paragraph 11 of the FreizügG/EU in conjunction with paragraph 28 of the AufenthG and Article 18 of the TFEU.</p>
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	<p>No.</p>

<b>6. Subject matter concerned</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1) non-discrimination on grounds of nationality</li> <li><input checked="" type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> <li>- linked to which article of Directive 2004/38</li> </ul> </li> <li><input type="checkbox"/> 3) voting rights</li> <li><input type="checkbox"/> 4) diplomatic protection</li> <li><input type="checkbox"/> 5) the right to petition</li> </ul>
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<b>Decision date</b>	30 July 2013
<b>Deciding body (in original language)</b>	Bundesverwaltungsgericht (BVerwG)
<b>Deciding body (in English)</b>	Federal administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	1 C 15.12 ECLI:DE:BVerwG:2013:300713U1C15.12.0
<b>Parties</b>	Ghanaian national Local aliens' registration office
<b>Web link to the decision (if available)</b>	<a href="http://www.bverwg.de/entscheidungen/entscheidung.php?ent=300713U1C15.12.0">www.bverwg.de/entscheidungen/entscheidung.php?ent=300713U1C15.12.0</a>
<b>Legal basis in national law of the rights under dispute</b>	Articles 6 and 8 of the <a href="#">Basic Law for the Federal Republic of Germany (Grundgesetz, GG)</a> and Sections 5 and 36 of the <a href="#">German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act (Aufenthaltsgesetz, AufenthG)</a> .
<b>Key facts of the case (max. 500 chars)</b>	The claimant had entered Germany unlawfully. In Germany, he lived with his life partner who also was a Ghanaian national. Together they had two minor children; additionally the seven-year old daughter of the life partner from a former relationship lived in the household. This daughter had the Ghanaian and the German

	<p>nationality. The life partner was working part-time; the claimant was taking care of the children. The life partner and the two common children were in possession of residence permits. The claimant applied for a residence permit for family reunion which was rejected by the aliens' registration office. The Neustadt administrative court (<i>Verwaltungsgericht, VG</i>) has dismissed the claim for a residence permit according to Section 36 (2) of the AufenthG. The Higher Administrative Court Rhineland-Palatinate (<i>Oberverwaltungsgericht, OVG</i>) has obliged the aliens' registration office to provide the claimant with a residence permit according to Section 36 (2) of the AufenthG. The BVerwG has annulled the decision and has referred the case back to the OVG.</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>The claimant has applied for residence according to Section 36 (2) of the AufenthG that provides other dependants of a foreigner with a temporary residence permit for the purpose of subsequent immigration to join the foreigner, if necessary, in order to avoid particular hardship. The VG has negated the existence of particular hardship in the present case, reasoning that the legislator with Section 36 of the AufenthG did not provide a general right of entry but rather an exemption clause. The OVG has reasoned that there was particular hardship since the claimant without residence could not continue the family relation with his children. This family relation was also protected by Article 6 of the GG that protects marriage, family and children. The BVerwG has reasoned that the OVG has put the standard for Section 36 of the AufenthG too low, and that the case had to be further investigated. A negative decision would, however, have to be in accordance with EU law. Even if Directive 2004/38 was not applicable since the claimant was no family member in the sense of the directive, Articles 20, 21 of the TFEU were to be considered. It had to be prevented that a EU national did not have a different choice than to leave the EU to live with his or her family; he or she would in this case be affected in the core components (<i>Kernbestand</i>) of his or her rights as EU national. The reference to Articles 20 and 21 of the TFEU was however limited to very rare exceptions.</p>
<p><b>Key issues (concepts, interpretations) clarified by</b></p>	<p>In 2013, the BVerwG issued several decisions on the question of residence for dependants from third-countries. Besides the present decision, there have been the following: Decision 10 C 16.12 of 13 June 2013 and Decision 1 C 9.12 of 30 June. The BVerwG has with these decisions clarified that it will follow the jurisdiction of the CJEU, for example from the <i>Dereci</i> and the <i>O&amp;S</i> case, in that the status as an EU national prevents national measures that have the</p>



<b>the case</b> (max. 500 chars)	effect that the EU national may not exercise his or her rights. The BVerwG has however made clear that such an interpretation according to Articles 20, 21 of the TFEU will only be accepted in exceptional cases.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The decisions have ensured more legal clarity for family members from third countries.
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>„Die Verweigerung einer Aufenthaltserlaubnis gegenüber einem nachzugswilligen Mitglied einer „Patchwork-Familie“ kann in seltenen Ausnahmefällen einen Verstoß gegen Art. 20 AEUV darstellen (im Anschluss an EuGH, Urteil vom 6. Dezember 2012 - Rs. C-356/11, O. und S.)“ (BVerwG, Decision 1 C 15.12 of 30 July 2013, para. 1).</i></p> <p>Translation:  The rejection of a residence permit to a family member from a “patchwork-family” that is willing to follow the family may, in rare exceptional cases, constitute an infringement on Article 20 of the TFEU (following CJEU, C-356/11, <i>O and S</i>, Decision of 6 December 2012).</p>
<b>Has the deciding body referred to the Charter of</b>	No.

<b>Fundamental Rights? If yes, to which specific article.</b>	
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<b>7. Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 linked to Art. 3 (2) sentence 1 a Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	17 November 2016
<b>Deciding body (in original language)</b>	Oberverwaltungsgericht Berlin-Brandenburg (OVG)
<b>Deciding body (in English)</b>	Higher Administrative Court of Berlin-Brandenburg
<b>Case number (also European Case Law Identifier)</b>	OVG 2 B 13.16

<b>(ECLI) where applicable)</b>	
<b>Parties</b>	Pakistani national Local aliens' registration office
<b>Web link to the decision (if available)</b>	<a href="http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/13qw/bs/10/page/sammlung.psml?pid=Dokumentanzeige&amp;showdoccase=1&amp;js_peid=Trefferliste&amp;documentnumber=1&amp;numberofresults=1&amp;fromdoctodoc=yes&amp;doc.id=JURE160020322&amp;doc.part=L&amp;doc.price=0.0&amp;doc.norm=all#focuspoint">www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/13qw/bs/10/page/sammlung.psml?pid=Dokumentanzeige&amp;showdoccase=1&amp;js_peid=Trefferliste&amp;documentnumber=1&amp;numberofresults=1&amp;fromdoctodoc=yes&amp;doc.id=JURE160020322&amp;doc.part=L&amp;doc.price=0.0&amp;doc.norm=all#focuspoint</a>
<b>Legal basis in national law of the rights under dispute</b>	Sections 2, 3 and 11 of the <a href="#">German Act on the General Freedom of Movement for EU Citizens (Freizügigkeitsgesetz/EU, FreizügG/EU)</a> ; Sections 7 and 36 of the <a href="#">German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act (Aufenthaltsgesetz, AufenthG)</a> .
<b>Key facts of the case</b> (max. 500 chars)	The claimant applied for residence in Germany as a family member of his brother, a British national. He claimed that they had lived in one household in Pakistan where he, as a consequence of unemployment, was dependant on his brother. The local aliens' registration office denied his application. The Administrative Court of Berlin reasoned that there was no entitlement to residence since the brother was not a family member in the sense of Section 3 of the FreizügG/EU. There was also no entitlement with regard to Section 11 of the FreizügG/EU, in conjunction with 36 of the AufenthG. The wording of Section 36 of the AufenthG required unreasonable hardship. Since the brother could lead an independent life, this was not the case. The OVG Berlin-Brandenburg essentially followed the reasoning of the VG and dismissed the appeal. According to the OVG (telephone call of 10 February 2017) the decision is final.
<b>Main reasoning / argumentation</b>	The claimant argued that he was entitled to a right of residence through the application of Article 3 (2), sentence 1 of Directive 2004/38/EG. The OVG has stated that the claimant had no right to residence. Section 3 of the FreizügG/EU did not apply since the definition of a family member in this section did not apply to the brother. Unreasonable hardship in the sense of Section 36 of the AufenthG was not confirmed. A right to the

(max. 500 chars)	direct application of Article 3 (2), sentence 1 of Directive 2004/38/EG in national law did not exist. An interpretation of Section 3 of the FreizügG/EU in the light of the directive was not necessary since there was no gap in Section 3 that made such an interpretation necessary. The same applied to Section 36 of the AufenthG. The duty to adopt EU directives from Article 288 (3) of the TFEU had its limits regarding the principle of division of power from Article 20 (2) of the <a href="#">Basic Law for the Federal Republic of Germany</a> ( <i>Grundgesetz, GG</i> ) and in the principle of legal certainty if the wording of a provision was clear and not in accordance with the directive.
<b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)	The OVG has stated very clearly that an interpretation of Section 3 of the FreizügG/EU and Section 36 of the AufenthG in light of Directive 2004/38/EG, as demanded in the legal literature (see, for instance, Bergmann/Dienelt, <i>Commentary to the AufenthG</i> , 11 <sup>th</sup> Edition, Section 36, paras. 62-65), was not in accordance with the principle of the division of powers and the principle of legal certainty. It has further stated that a direct application of Directive 2004/38/EG was not admissible, even if the directive was not completely implemented under German law.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	It has been repeatedly stated in the legal literature that the insufficient implementation of Article 3 (2), sentence 1 of Directive 2004/38/EG into German law could be healed by interpreting the provisions of the FreizügG/EU and the AufenthG in the light of the provision (see, for instance, Schönberger/Thym (2014), <a href="#">‘Union Citizenship: Development, Impact and Challenges’</a> , XXVI FIDE Congress in Copenhagen, 2014, p. 569). The decision of the OVG shows that this not only necessarily the case, but that there are also opposing arguments. The decision of the OVG shows that there is no legal certainty on the topic and that a gap between German Law and the directive exists.
<b>Key quotations in original language and</b>	"...der Kläger kann seinen Anspruch auf Familiennachzug nicht unmittelbar aus Art. 3 Abs.2 Satz 1 lit. a) UnionsbürgerRL herleiten, selbst wenn die Richtlinie nicht oder nur unvollständig umgesetzt worden sein sollte. ...Schließlich kann der Kläger den Anspruch auf Erteilung eines Visums zum Familiennachzug zu seinem Bruder

<p><b>translated into English with reference details</b> (max. 500 chars)</p>	<p><i>nicht auf eine richtlinienkonforme Auslegung des innerstaatlichen Rechts stützen. Zwar sind die nationalen Gerichte aufgrund des Umsetzungsgebots des Art. 288 Abs.3 AEUV verpflichtet, bei der Anwendung des innerstaatlichen Rechts so weit wie möglich anhand des Wortlauts und des Zweckes dieser Richtlinie auszulegen....die unionsrechtliche Pflicht zur Verwirklichung des Richtlinienziels im Wege der Auslegung findet jedoch ihre Grenzen an dem nach innerstaatlichen Rechtstradition methodisch Erlaubten“ (OVG Berlin-Brandenburg, Decision OVG 2 B 13.16of 17 November 2016, para. 1 and subsequent).</i></p> <p>Translation: The claimant does not have a direct right to residence as a family member according to Article 3 (2), sentence 1a of Directive 2004/28/EG, even if the directive has not been fully or incompletely transformed. The claimant does not have a right to residence through the application of German law interpreted in light of the directive. National courts, according to Article 288 (3) of the TFEU, are obliged to apply the directive when interpreting German law as far as possible. This obligation is however limited by what is allowed within the methods of national legal tradition.</p>
<p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p>	<p>No.</p>

<p>8.</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p>
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<b>Subject matter concerned</b>	<p>X 2) freedom of movement and residence  - linked to which article of Directive 2004/38  Articles 6,7</p> <p><input type="checkbox"/> 3) voting rights  <input type="checkbox"/> 4) diplomatic protection  <input type="checkbox"/> 5) the right to petition</p>
<b>Decision date</b>	19 April 2016
<b>Deciding body (in original language)</b>	Landessozialgericht Baden-Württemberg (LSG)
<b>Deciding body (in English)</b>	Higher Social Court of Baden-Württemberg
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	L 11 EG 4629/14
<b>Parties</b>	Hungarian national City of Ulm, agency for parental allowance ( <i>Elterngeldstelle</i> )
<b>Web link to the decision (if available)</b>	<a href="http://lrbw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&amp;nr=20777">http://lrbw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&amp;nr=20777</a>

<b>Legal basis in national law of the rights under dispute</b>	Section 1 of the Federal Law on Parenthood Leaves and Parental Allowance ( <a href="#">Gesetz zum Elterngeld und zur Elternzeit, BEEG</a> ) and Sections 2 and 5 of the <a href="#">German Act on the General Freedom of Movement for EU Citizens (Freizügigkeitsgesetz/EU, FreizügG/EU)</a> .
<b>Key facts of the case</b> (max. 500 chars)	The claimant lived in Germany since November 2012. She did not work in Germany but applied for unemployment benefits according to the SGB II. Her child was born in December 2012. Therefore, the claimant applied for parental allowance in December for twelve months. Parental allowance is a state benefit for parents on parental leave. According to Section 1 (1) of the BEEG, persons are entitled to parental allowance if they have their usual place of residence in Germany and do not work while caring for the child. According to Section 1 (7) of the BEEG, persons without a right to entry and residence under the FreizügG/EU are only entitled to receive parental allowance if they have a right to residence according to the AufenthG. The application had been rejected by the administration reasoning that the claimant was not entitled to residence according to Section 2 of the FreizügG/EU in the period of time before the birth of the child. According to Section 2 (1) of the FreizügG/EU, EU citizens entitled to freedom of movement shall have the right to enter and reside in the federal territory. According to Section 2 (2) of the FreizügG/EU, an entitlement to freedom of movement exists, for instance, for employees (No.1) or for persons carrying out a vocational training (No.1) or for persons who are entitled to pursue an independent economic activity (No.3). The applicant did not fulfil any of these criteria. Furthermore, the applicant did not fulfil the criteria of Section 4 of the FreizügG/EU. According to Section 4 of the FreizügG/EU, non-gainfully employed EU citizens have a right to freedom of movement if they have adequate health insurance coverage and adequate means of supply. The Social Court Ulm ( <i>Sozialgericht, SG</i> ) dismissed the claim for the same reasons. The LSG found that the claimant had an entitlement for parental allowance according to Section 1 of the BEEG.
<b>Main reasoning / argumentation</b>	The LSG has reasoned that persons entitled to a right of entry and residence according to the FreizügG/EU generally have the same rights to parental allowance as German nationals. According to Section 2 (2) of the FreizügG/EU the following persons are entitled to freedom of movement: EU citizens who wish to reside in the federal territory as employees or to carry out vocational training (No.1); EU citizens seeking work, for a period

<p>(max. 500 chars)</p>	<p>of up to six months and exceeding this period only if they can prove that they continue to seek work and have reason to believe that they will find it (No. 1a); EU citizens who are entitled to pursue an independent economic activity (established self-employed persons) (No.2); EU citizens who, without taking up residence in the federal territory, wish to render services as self-employed persons pursuant to Article 57 of the Treaty on the Functioning of the EU (service providers), provided that they are entitled to provide the services concerned (No. 3); EU citizens as the recipients of services (No.4); EU citizens who are not gainfully employed, subject to the requirements of Section 4 (No. 5); dependents, subject to the requirements of Sections 3 and 4 (No. 6), and EU citizens and their dependents who have acquired the right of permanent residence (No.7). The question of whether a person is entitled to a right of residence and entry according to for instance Section 2 of the FreizügG/EU was not to be decided upon by the authorities for parental allowance. This decision and the declaration of loss of entitlement exclusively belonged to the competencies of the aliens' registration office.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The LSG has in this decision clearly stated that the decision on the question of entitlement to freedom of movement and the declaration of loss of entitlement may solely be made by the aliens' registration office. The Federal Fiscal Court (<i>Bundesfinanzhof</i>, BFH) has already decided in the same way for child benefits (<i>Kindergeld</i>) (BFH, Decision III B 127/14 of 27 April 2015). Before, the competent authorities had, in daily practice, often decided in a different way.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>More legal clarity.</p>



<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>"Ausländer, die auf der Grundlage des europäischen Gemeinschaftsrechts freizügigkeitsberechtigt sind, stellt § 1 Abs. 7 BEEG beim Bezug von Elterngeld vollständig mit deutschen Staatsangehörigen gleich. Die Überprüfung bzw. Feststellung, dass das Freizügigkeitsrecht nicht mehr besteht, obliegt der zuständigen Ausländerbehörde"</i> (LSG Baden-Württemberg, Decision L 11 EG 4629/14 of 19 April 2016, para. 1).</p> <p>Translation: Persons entitled to a right of entry and residence have the same rights to parental allowance according to Section 1 BEEG as German nationals. The question of whether a person is entitled to freedom of movement according to Section 2 of the FreizügG/EU and the declaration of loss of entitlement exclusively belongs to the competencies of the aliens' registration office.</p>
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	<p>No.</p>

<b>9.</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence
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<b>Subject matter concerned</b>	- linked to which article of Directive 2004/38 Articles 7 (1), 14 (2), 16 (1) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	16 July 2015
<b>Deciding body (in original language)</b>	Bundesverwaltungsgericht (BVerwG)
<b>Deciding body (in English)</b>	Federal Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	1 C 22/14 ECLI:DE:BVerwG:2015:160715U1C22.14.0
<b>Parties</b>	Hungarian national Local aliens' registration office ( <i>Ausländerbehörde</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.bverwg.de/entscheidungen/entscheidung.php?ent=160715U1C22.14.0&amp;add_az=1+C+22.14&amp;add_datum=16.07.2015">www.bverwg.de/entscheidungen/entscheidung.php?ent=160715U1C22.14.0&amp;add_az=1+C+22.14&amp;add_datum=16.07.2015</a>

<b>Legal basis in national law of the rights under dispute</b>	Sections 2,3,4,4a and 6 of the <a href="#">German Act on the General Freedom of Movement for EU Citizens (Freizügigkeitsgesetz/EU, FreizügG/EU)</a> .
<b>Key facts of the case</b> (max. 500 chars)	<p>The claimant has lived in Germany since 2004. In March 2006 she was given a residence certificate according to Section 5 of the FreizügG/EU. In 2010 the claimant had declared to the authorities that she did not want to apply for social benefits since she was supported financially by her children. In March 2010 the claimant applied for and also received social benefits according to SGB XII. In May 2012 the local aliens' registration office declared the loss of the entitlement to residence pursuant to Sections 2 (1) and 5 (4) of the FreizügG/EU, since the claimant did not have a right to permanent residence according to Section 4a of the FreizügG/EU and did not have a right to reside and enter according to Section 2 of the FreizügG/EU. According to Section 4a (1) of the FreizügG/EU, EU citizens who have resided lawfully and continuously in the federal territory for five years shall be entitled to enter into and stay in the federal territory, irrespective of whether the other requirements stipulated in Section 2 (2) of the FreizügG/EU are fulfilled (right of permanent residence). The claimant did not fulfil any of the prerequisites of Section 2 (2) of the FreizügG/EU and she did not establish that she had resided lawfully and continuously in the federal territory for five years. The Stuttgart Administrative Court (<i>Verwaltungsgericht, VG</i>) found that the claimant did have a right to permanent residence according to Section 4a of the FreizügG/EU. The appeal of the aliens' registration office was rejected by the Mannheim Higher Administrative Court (<i>Verwaltungsgerichtshof, VGH</i>). The BVerwG has not confirmed the decisions of the lower courts and has referred the case back to the VG for further investigation and clarification.</p>
<b>Main reasoning / argumentation</b>	<p>The claimant, as well as the VG and VGH, reasoned that a right of permanent residence according to Section 4a of the FreizügG/EU applied in the present case. Section 4a of the FreizügG/EU provides EU citizens who have resided lawfully and continuously in the federal territory for five years with a right to permanent residence. The claimant had reasoned that she had resided lawfully in the federal territory since the competent foreigner's authority had not declared the loss of a right to residence within five years.</p>

<p>(max. 500 chars)</p>	<p>The BVerwG reasoned that it was not sufficient for a right to permanent residence according to Section 4a of the FreizügG/EU that the authorities had not declared the loss in that period of time. "Lawful residence" could only be fulfilled by persons who had lawfully held a right to residence according to Section 2 (2) of the FreizügG/EU for five years. The court reasoned that Section 4a of the FreizügG/EU referred to Directive 2004/38 . Therefore according to Article 16 (1) of Directive 2004/38, lawful residence could only be fulfilled by persons who met the conditions of Article 7 (1) of Directive 2004/38 for five years. The BVerwG in that context explicitly mentioned that sufficient resources had to be established.</p> <p>The BVerwG pointed out that the lower courts, in particular, had to verify whether the claimant met the requirement of Article 7 in terms of "sufficient resources". It said that in the present case the lower court had not investigated sufficiently into the facts so that the question of whether the claimant had proven sufficient resources had to be referred back to the lower court. The Court stated that the lower Court would, if necessary, also have to address the question of whether maintenance provided by relatives who received unemployment benefits themselves was to be considered as "sufficient resources". The court, concerning the concept of sufficient resources, gave some general remarks (see below 'key issues') and explicitly referred to the jurisdiction of the CJEU in the <i>Grelczyk</i>, <i>Baumbast</i> and <i>Trojani</i> cases.</p>
<p><b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)</p>	<p>The BVerwG has clarified the term "lawful residence" in Section 4a of the FreizügG/EU. This is of practical relevance because the right to permanent residence according to this Section has gained in importance since the certification of the right to residence (<i>Freizügigkeitsbescheinigung</i>) was abolished in January 2013. Concerning the notion of "sufficient resources", the court has clarified that the jurisdiction of the CJEU will be followed. It has said that an expulsion measure shall not be the automatic consequence of a Union citizen's recourse to the social assistance system of the host Member State. This could only be the case if the citizen became an unreasonable burden to the social system. On the other hand the fact that a citizen did not claim social benefits was not enough to prove that he or she had sufficient resources. For the question of whether the citizen had become an unreasonable burden on the social assistance system, it had to be examined whether it was a case of temporary difficulties, and the duration of residence, the personal circumstances and the amount of aid granted had to be considered.</p>

	<p>As to the question about whether contributory benefits may be qualified as “sufficient resources”, this has been left out of this decision. The Court did not have the decisive facts, for instance if the relatives provided maintenance through receiving unemployment benefits themselves. The administrative guidelines to the FreizügG/EU, however, explicitly exclude non- contributory unemployment benefits under the SGB II from the concept of sufficient resources (see <a href="http://dip21.bundestag.de/dip21/brd/2009/0670-09.pdf">http://dip21.bundestag.de/dip21/brd/2009/0670-09.pdf</a>).</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Court gave some general ideas of how the concept of sufficient resources has been and will be interpreted in German jurisdiction. A few interesting points have, however, been left open since the final decision was referred to the lower court that had not investigated sufficiently into the facts. The VGH did not make a final decision because the parties agreed on a settlement in December 2015.</p> <p>The right to permanent residence according to Section 4a of the FreizügG/EU will, in practice, be limited to persons entitled to a right to entry and residence according to the FreizügG/EU, Both the European and the German jurisdictions on unemployment benefits, via the concept of sufficient resources, therefore, have indirect implications regarding the question of permanent residence.</p>
<p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>“Eine Verluststellung nach § 5 Abs.4 FreizügG/EU ist nicht bereits dann ausgeschlossen, wenn ein Unionsbürger sich fünf Jahre ständig im Bundesgebiet aufgehalten hat...Das Entstehen eines Daueraufenthaltsrechts nach § 4 a (1) FreizügG/EU setzt voraus, dass der Betroffene während einer Aufenthaltszeit von mindestens fünf Jahren ununterbrochen die Freizügigkeitsvoraussetzungen des Art. 7 Abs.1 der Richtlinie 2004/38/EG erfüllt hat“</i> (BVerwG, Decision 1 C 22/14 of 16 July 2015, para. 1).</p> <p>Translation: A decision according to Section 5 (4) of the FreizügG/EU about the loss of entitlement of residence is not excluded by the fact that an EU national has resided in Germany for five years. An entitlement to permanent residence, according to Section 4a (1) of the FreizügG/EU, requires the person concerned to have fulfilled the prerequisites of Article 7 (1) of Directive 2004/38 during a period of five years without interruption.</p>

<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	No.
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<b>10. Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 Article 28 (3) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	11 September 2015
<b>Deciding body (in original language)</b>	Bundesverwaltungsgericht (BVerwG)

<b>Deciding body (in English)</b>	Federal Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	1 B 39/15 ECLI:DE:BVerwG:2015:110915B1B39.15.0
<b>Parties</b>	Italian national Local aliens' registration office ( <i>Ausländerbehörde</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.bverwg.de/entscheidungen/entscheidung.php?ent=110915B1B39.15.0&amp;add_az=1+B+39.15&amp;add_datum=11.09.2015">www.bverwg.de/entscheidungen/entscheidung.php?ent=110915B1B39.15.0&amp;add_az=1+B+39.15&amp;add_datum=11.09.2015</a>
<b>Legal basis in national law of the rights under dispute</b>	Sections 6 and 7 of the <a href="#">German Act on the General Freedom of Movement for EU Citizens (<i>Freizügigkeitsgesetz/EU, FreizügG/EU</i>)</a> .
<b>Key facts of the case</b> (max. 500 chars)	The claimant has lived in Germany since 1983. In 2009, he was sentenced to life imprisonment for murder and has been serving the sentence since then. In 2011, the local aliens' registration office determined the loss of the entitlement to entry and residence according to Section 6 of the FreizügG/EU. According to Section 6 (1) of the FreizügG/EU, loss of the entitlement pursuant to Section 2 (1) can only be determined and the certificate confirming the right of residence under Community law and the EU residence permit withdrawn for reasons of public order, security or health (Article 45 (3), Article 52 (1) of the Treaty on the Functioning of the European Union). The notice included a deportation warning, according to Section 7 of the FreizügG/EU. According to Section 7 of the FreizügG/EU the notice to leave the federal territory shall include a deportation warning and set

	<p>a time limit for departure. The claimant brought action before the Saarlouis Administrative Court (<i>Verwaltungsgericht, VG</i>). The VG decided that a reason for loss according to Section 6 (5) of the FreizügG/EU existed, but that the decision was taken prematurely. According to Section 6 (5) of the FreizügG/EU, in the case of EU citizens who have been residents in the federal territory in the past ten years, a loss of entitlement pursuant to subsection 1 may only be declared on compelling grounds of public security. In the appeal before the Saarlouis Higher Administrative Court (<i>Oberverwaltungsgericht, OVG</i>), the action was however dismissed. The appeal to the BVerwG was rejected. The BVerwG has, in this decision, confirmed the reasoning of the OVG that the decision of loss of entitlement and entry on grounds of public security may be made before a prison sentence has been served.</p>
<p><b>Main reasoning / argumentation</b>  (max. 500 chars)</p>	<p>The claimant had argued that the decision of the aliens' registration office was taken prematurely. The decision concerning the loss of entitlement to entry and residence on compelling grounds of public security, according to Section 6 (5) of the FreizügG/EU and Article 28 (3) of Directive 2004/38, requires a decision about whether the security of the Federal Republic of Germany is affected. The claimant criticized the fact that the decision had only taken into account the claimant's behaviour as established by the criminal sentence. A positive development in prison and especially the positive development that was still to be expected had, however, not been taken into account.</p> <p>The BVerwG has reasoned that the decision concerning the loss of entitlement to entry and residence according to Section 6 of the FreizügG/EU and Article 28 (3) of Directive 2004/38, could be made long before a prison sentence had been served. Neither national law nor Directive 2004/38 made any legal specifications as to <u>when</u> the decision concerning the loss of entitlement to entry and residence was to be made. Successful resocialisation could be taken into account within the context of the decision, according to Section 7 (2) of the FreizügG/EU, which demands a time limit to be set for the re-entry ban.</p>
<p><b>Key issues (concepts, interpretations ) clarified by</b></p>	<p>There has been settled case law of the BVerwG as to the prerequisites for a decision concerning the loss of entitlement to entry and residence. This jurisdiction is in accordance with the jurisdiction of the CJEU. In addition to these decisions, the BVerwG has in the present decision only made clear that neither EU legislation nor German legislation has made any specifications as to when such a decision may be made. The court has found that an early decision is consequently in accordance with Directive 2004/38.</p>



<b>the case</b> (max. 500 chars)	
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The BVerwG has decided upon a temporal frame concerning decisions about the loss of entitlement to entry and residence in cases of compelling grounds of public security.
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>„Weder aus dem nationalen Recht noch aus Unionsrecht ergeben sich Vorgaben für den Zeitpunkt, zu dem die Behörde die Verlustfeststellung nach § 6 FreizügG/EU ausspricht. Diese kann ermessensfehlerfrei auch geraume Zeit vor dem Ende einer zu verbüßenden Strafhaft erfolgen“</i> (BVerwG, Decision 1 B 39/15 of 11 September 2015, para. 1).</p> <p>Translation: Neither national nor EU law sets any binding requirements concerning the time frame in which the aliens' registration office has to make a decision concerning the loss of entitlement to entry and residence according to Section 6 of the FreizügG/EU. Therefore, this decision may also be made long before a sentence has been fully served.</p>
<b>Has the deciding body referred to the Charter of</b>	No.

<b>Fundamental Rights? If yes, to which specific article.</b>	
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<b>11. Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 Article 30 (3) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	14 December 2016
<b>Deciding body (in original language)</b>	Bundesverwaltungsgericht (BverwG)
<b>Deciding body (in English)</b>	Federal Administrative Court
<b>Case number (also European Case Law)</b>	1 C 13/16 ECLI:DE:BVerwG:2015:160715U1C22.14.0

<b>Identifier (ECLI) where applicable)</b>	
<b>Parties</b>	Bulgarian national Local aliens' registration office ( <i>Ausländerbehörde</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.bverwg.de/entscheidungen/entscheidung.php?ent=141216U1C13.16.0&amp;add_az=1+C+13.16&amp;add_datum=14.12.2016">www.bverwg.de/entscheidungen/entscheidung.php?ent=141216U1C13.16.0&amp;add_az=1+C+13.16&amp;add_datum=14.12.2016</a>
<b>Legal basis in national law of the rights under dispute</b>	Sections 6, 7 and 11 of the <a href="#">German Act on the General Freedom of Movement for EU Citizens (<i>Freizügigkeitsgesetz/EU, FreizügG/EU</i>)</a> and Sections 62, 66 and 67 of the <a href="#">German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act (<i>Aufenthaltsgesetz, AufenthG</i>)</a> .
<b>Key facts of the case</b> (max. 500 chars)	The claimant had been expelled from Germany in 2005. After Bulgaria had joined the EU in 2007, he applied for the denial of the right to re-enter and stay in the federal territory to be limited. The aliens' registration office did not decide upon this application. In February 2010, the claimant, after re-entering Germany, was expelled again. In 2011, he received a penalty notice requiring him to pay the costs of expulsion and custody. The claimant filed an action before the Administrative Court of München ( <i>Verwaltungsgericht, VG</i> ) and was partly successful. In the appeal before the Higher Administrative Court of München ( <i>Verwaltungsgerichtshof, VGH</i> ) the penalty notice was completely quashed. The BVerwG has reasoned differently, but has also quashed the notice.
<b>Main reasoning / argumentation</b> (max. 500 chars)	Both the claimant and the VGH have reasoned that the former was entitled to freedom of movement since Bulgaria had joined the EU and that consequently the expulsion against him was no longer legally effective. Meanwhile, the BVerwG has reasoned that an expulsion, which was issued before the country of the claimant joined the EU is binding even after the country has joined the EU. The BVerwG has further reasoned that both Sections 62 of the AufenthG on custody awaiting deportation and Section 66 of the AufenthG on the costs of deportation are also applicable for EU nationals. The BVerwG has reasoned that, according to Section 11 of the

	<p>FreizügG/EU, the Residence Act shall apply in the absence of any special provisions contained in the FreizügG/EU. The BVerwG has however declared in the current case that the claimant did not have to take responsibility for the costs, since the aliens' registration office had not issued a formal decision in which it was stated that the stricter requirements concerning the limitation of the right to freedom of movement were fulfilled. Such a formal decision was required because of Article 30 (3) of Directive 2004/38.</p>
<p><b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)</p>	<p>The BVerwG has followed earlier verdicts of the BVerwG in that it has again declared that an expulsion, which was issued before the country of the claimant joined the EU, is binding even after the country has joined the EU. The BVerwG has furthermore clarified that the requirements of Article 30 (3) of Directive 2004/38 have to be met in this context. It has also decided that EU law does not contain a general prohibition to take EU nationals into custody awaiting deportation.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The BVerwG has developed settled case law on the question as to whether an expulsion, which was issued before the country of the claimant joined the EU, is binding even after the country has joined the EU. The BVerwG has also given a clear statement on the applicability of Article 30 (3) of Directive 2004/38 and the question of whether EU nationals may be taken into custody awaiting deportation.</p>
<p><b>Key quotations in original language and translated into English with</b></p>	<p><i>"Eine vor Erlangung des Unionsbürgerstatus nach den für Drittstaatsangehörige geltenden Vorschriften ausgesprochene bestandskräftige Ausweisung eines nunmehrigen Unionsbürgers wird mit dem Beitritt des Landes seiner Staatsangehörigkeit zur Europäischen Union nicht wirkungslos....Die Ausländerbehörde darf den Unionsbürger auf der Grundlage einer solchen Ausweisung nur abschieben, wenn sie zuvor in einer rechtsmittelfähigen Entscheidung festgestellt hat, dass die regelmäßig strengeren Voraussetzungen für eine</i></p>

<b>reference details</b> (max. 500 chars)	<p><i>Beschränkung seines Freizügigkeitsrechts als Unionsbürger vorliegen...Die einschlägige Regelung über die Abschiebehaft in § 62 AufenthG findet über § 11 Abs.2 FreizügG/EU Anwendung“ (BVerwG, Decision 1C 13/16 of 14 December 2016, paras. 1 and 14).</i></p> <p>Translation</p> <p>An expulsion which is issued before the country of the claimant joins the EU is binding even after the country joins the EU. The aliens' registration office may only expel an EU national based on such a decision, if before it issues a formal decision, the stricter requirements for the limitation of the right to freedom of movement are fulfilled. The provision on custody awaiting deportation in Section 62 of the AufenthG is applicable to EU nationals, according to Section 11 (2) of the FreizügG/EU.</p>
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	<p>No.</p>

<b>12. Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 Article 35 <input type="checkbox"/> 3) voting rights
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	<input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	4 December 2015
<b>Deciding body (in original language)</b>	Verwaltungsgericht Berlin (VG)
<b>Deciding body (in English)</b>	Administrative Court of Berlin
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	28 K 352.13 V
<b>Parties</b>	Indian national German Embassy in New Delhi
<b>Web link to the decision (if available)</b>	<a href="http://www.juris.de/jportal/portal/t/1cg8/page/jurisw.psml?pid=Dokumentanzeige&amp;showdoccase=1&amp;js_peid=Trefferliste&amp;documentnumber=1&amp;numberofresults=1&amp;fromdoctodoc=yes&amp;doc.id=JURE150019704&amp;doc.part=L&amp;doc.pri ce=0.0&amp;doc.hl=1#focuspoint">www.juris.de/jportal/portal/t/1cg8/page/jurisw.psml?pid=Dokumentanzeige&amp;showdoccase=1&amp;js_peid=Trefferliste&amp;documentnumber=1&amp;numberofresults=1&amp;fromdoctodoc=yes&amp;doc.id=JURE150019704&amp;doc.part=L&amp;doc.pri ce=0.0&amp;doc.hl=1#focuspoint</a>
<b>Legal basis in national law of</b>	Sections 2 and 3 of the <a href="#">German Act on the General Freedom of Movement for EU Citizens (Freizügigkeitsgesetz/EU, FreizügG/EU)</a> .

<b>the rights under dispute</b>	
<b>Key facts of the case</b> (max. 500 chars)	<p>In 2011, the claimant married a British national who has lived in Germany since 1984 and has held permanent residency status in Germany. The claimant then applied for a visa as a dependant at the German Embassy. The embassy after having investigated the claimant, rejected the issuance of a visa on the grounds that it could not be proven that the marriage had come into effect. The embassy had for instance investigated the social environment of the claimant and found that his wife had not been introduced to his friends. The embassy had also questioned the claimant and his wife and found contradictions in details of the description of the marriage proposal. The embassy had, therefore, concluded that it had to be suspected that the marriage had been contracted for the purpose of enabling the claimant to apply for a visa. The VG decided the conditions of Sections 2 and 3 of the FreizügG/EU, concerning the issuance of a visa, were fulfilled and the exclusion clause of Section 2 (7) of the FreizügG/EU did not apply. The embassy was therefore obliged to issue a visa according to these provisions.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The VG has reasoned that Section 2(7) of the FreizügG/EU has to be interpreted restrictively and in accordance with Article 35 of Directive 2004/38. According to Section 2 (7) of the FreizügG/EU, if the authorities have established that a dependant who is not an EU citizen does not subsequently immigrate to the federal territory in order to join the EU citizen or does not accompany the EU citizen in question so that they can live together as a family, the authorities may also determine that an entitlement to residence does not exist. The VG has reasoned that the wording of the provision is too wide and has to be interpreted in a way that a visa may only be negated if it is established that a marriage has the <u>sole</u> aim of allowing the dependant to immigrate. Only this interpretation was in accordance with Article 35 of Directive 2004/38 and Article 28 of the preliminary considerations of Directive 2004/38. The burden of proof would lie on the authorities. From the passport of the wife it has been shown that she regularly travelled to India to meet the claimant.</p>
<b>Key issues (concepts, interpretations)</b>	<p>The VG has made clear that Article 2 (7) of the FreizügG/EU may be too wide to be in accordance with Directive 2004/38.</p>

<b>) clarified by the case</b> (max. 500 chars)	
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>Since the decision has been made by VG, it does not carry much weight. It is however interesting that it takes up a position that has been mentioned repeatedly in the legal literature. It has been said that Section 2 (7) of the FreizügG/EU is lacking legal definitions of the terms "abuse of rights" and "fraud" as well as being too far-reaching in its use and, therefore, not in accordance with EU law (see, for example Hofmann (2016), <i>Commentary to the FreizügG/EU</i>, Second Edition, 2016, para. 48).</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>"§ 2 Abs.7 Satz 2 und 3 FreizügG/EU ist aufgrund unionsrechtlicher Vorgaben einschränkend dahin auszulegen, dass das Visum nur dann versagt werden kann, wenn die Ehe lediglich zu dem Zweck geschlossen oder begründet wurde, dem Nachziehenden die Einreise in das oder den Aufenthalt im Bundesgebiet zu ermöglichen"</i> (VG Berlin, Decision 28 K 352,13 V of 4 December 2015, para. 1).</p> <p>Translation: Section 2 (7), sentence 2 and Section 3 of the FreizügG/EU are to be interpreted restrictively and in accordance with EU law: a visa may only be negated if a marriage has the sole aim of allowing the accompanying person to immigrate or claim residence in the federal territory.</p>

<b>13.</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38
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<b>Subject matter concerned</b>	X 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	31 March 2016
<b>Deciding body (in original language)</b>	Bundesverfassungsgericht (BVerfG)
<b>Deciding body (in English)</b>	Federal Constitutional Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	2 BvR 1576/13 ECLI:DE:BVerfG:2016:rk20160331.2bvr157613
<b>Parties</b>	Claimant: two individuals The Free State of Bavaria (Freistaat Bayern)
<b>Web link to the decision (if available)</b>	<a href="http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2016/03/rk20160331_2bvr157613.html">www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2016/03/rk20160331_2bvr157613.html</a>
<b>Legal basis in national law of</b>	Articles 15 (2) and 18 of the Bavarian Municipal Code ( <a href="#">Gemeindeordnung, GO</a> ); Article 11 of the Bavarian Rural District Regulations ( <a href="#">Landkreisordnung, LKrO</a> ); Article 1 of the Electoral Law for the Municipalities and Rural Districts in Bavaria ( <a href="#">Gemeinde und Landkreiswahlgesetz, GLKrWG</a> ); Articles 2, 7,

<b>the rights under dispute</b>	12 and 101 of the Bavarian Constitution ( <a href="#">BayerischeVerfassung, BV</a> ) and <a href="#">Articles 3 and 28 (1) of the Basic Law for the Federal Republic of Germany (Grundgesetz, GG)</a> .
<b>Key facts of the case</b> (max. 500 chars)	<p>The Bavarian GLKrWG was changed on 26 July 1995. The new Article 1 introduced a right to vote in municipal elections for all EU nationals. After a referendum in October 1995, Bavaria introduced the possibility to file public petitions (<i>Bürgerbegehren</i>) and public decisions (<i>Bürgerentscheide</i>) in the municipalities and rural districts. According to Article 15 (2) of the GO and Article 11 (2) of the LKrO, all members of the municipalities and rural areas who are allowed to vote, according to the GLKrWG, may also participate in public petitions and public decisions, consequently EU nationals may now also take part. The claimants filed a popular action (<i>Popularklage</i>) before the Bavarian Constitutional Tribunal (<i>BayerischerVerfassungsgerichtshof, BayVGH</i>) and reasoned that the new law was not in accordance with the Bavarian Constitution. The BayVGH dismissed the action with its decision of 12 June 2013 (BayVGH, Decision <a href="#">Vf.11-VII-11</a> of 12 June 2013) . The claimants then filed a constitutional complaint before the BVerfG, which did not accept the constitutional complaint for adjudication.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The claimants have reasoned that the participation of EU nationals in public petitions and decisions is not in accordance with Articles 2, 7, 12 and 101 of the Bavarian Constitution, since the articles mentioned do not explicitly mention EU nationals. They have further reasoned that such participation is not in accordance with Article 28 (1), sentence 3 of the GG, since this provision only mentions the participation of EU nationals in communal elections, not in public petitions and decisions.</p> <p>The BayVGH has reasoned that the provision is in accordance with Article 28 (1) of the GG, on the basis that the failure to mention public petitions and decisions does not mean that the legislator has excluded this possibility explicitly. The wording of the GG as the BV had to be seen in light of historical context. Against the background of EU legislation and the systemic compatibility, EU nationals had to be given the right to participate in public petitions and decisions.</p> <p>The BVerfG has reasoned that the decision of the underlying question first of all concerned the decision-making competency of the federal states, and in turn the BayVGH. The BVerfG could get involved only if the former court had infringed on the prohibition of arbitrary decisions, as stated in Article 3 (1) of the GG. This was not the case since the court's interpretation of Article 28 of the GG was not arbitrary.</p>

<b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)	<p>The decision concerning whether EU nationals should be given the right to participate in public decisions and petitions, first of all, belongs to the federal states. The GG does not explicitly prohibit such decision, therefore, such a decision is not arbitrary.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The federal states may decide on provisions that allow for EU nationals to take part in public decisions and petitions.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>„Die Annahme, dass Art. 28 Abs. 1 Satz 3 GG eine Abstimmungsberechtigung von Unionsbürgern anderer Mitgliedstaaten bei kommunalen Bürgerbegehren und -entscheiden nicht verbietet, ist jedenfalls nicht willkürlich....Das Homogenitätsprinzip des Art. 28 Abs. 1 GG fordert ein Mindestmaß an verfassungsstruktureller und materieller Homogenität der Landesverfassungen mit dem Grundgesetz.... Es gebietet jedoch keine Uniformität. Einer im Vergleich zur Bundesebene stärkeren Ausgestaltung von plebiszitären Verfahren auf der Ebene der Länder steht Art. 28 Abs. 1 GG nicht entgegen“</i> (see BVerfG, Decision BvR 1576/13 of 31 March 2016, para. 57).</p> <p>Translation:</p>

	<p>The assumption that Article 28 (1), sentence 3 of the GG does not prohibit EU nationals from the right to vote in public petitions and decisions is not arbitrary. The principle of homogeneity in this article demands a minimum level of homogeneity concerning the constitutional structure and the material law. It does however not demand uniformity. A stronger elaboration of plebiscitarian elements than foreseen in the GG is not contrary to the principle of homogeneity.</p>
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<b>14.</b> <b>Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	31 January 2014
<b>Deciding body (in original language)</b>	Staatsgerichtshof der Freien Hansestadt Bremen (StGH)
<b>Deciding body (in English)</b>	Constitutional Court of Bremen
<b>Case number (also European Case Law Identifier)</b>	St 1/13

<b>(ECLI) where applicable)</b>	
<b>Parties</b>	City Parliament of Bremen, represented by the President of the City Parliament ( <i>Bürgerschaft der Freien Hansestadt Bremen (Landtag)</i> , vertreten durch den Präsidenten der Bürgerschaft)
<b>Web link to the decision (if available)</b>	<a href="http://www.staatsgerichtshof.bremen.de/entscheidungen-1469">www.staatsgerichtshof.bremen.de/entscheidungen-1469</a>
<b>Legal basis in national law of the rights under dispute</b>	Paragraph 1 of the Bremen Electoral Law ( <a href="#">BremischesWahlgesetz, BWg</a> ): paragraph 1 BWg, which is reproduced in its entirety in the court decision, Article 66 of the Bremen State Constitution ( <i>Bremische Landesverfassung, BLV</i> ) and Articles 20 and 28 of the Basic Law for the Federal Republic of Germany ( <a href="#">Grundgesetz, GG</a> ).
<b>Key facts of the case</b> (max. 500 chars)	On its first reading, on 24 January 2013, the Bremen City Parliament adopted a draft law for the extension of the right to vote, which included a new paragraph 1a, allowing EU nationals to vote in the Bremen state elections. The Bremen City Parliament applied for judicial review proceedings to examine the statutory provisions regarding their compliance with the constitution ( <i>Normenkontrollverfahren</i> ) before the StGH. The StGH found that paragraph 1a of the BWg was not in accordance with Articles 20 (2), sentence 2 and Article 28 (1), sentence 3 of the GG.
<b>Main reasoning / argumentation</b> (max. 500 chars)	The new paragraph 1a of the BWg was based on Article 66 of the BLV, which claims that state power is derived from the people. The wording of Article 66 does not mention German nationality. Therefore, it was argued that elections were not restricted to German nationals. The StGH however decided that, according to Article 20 (2), sentence 2 and Article 28 (1), sentence 2 of the GG, the right to participate in elections is reserved for German nationals. The right to vote in county and municipal elections, as provided for by Article 28 (1), sentence 3 of the GG, for persons who possess citizenship of any Member State of the European Union did not change this principle. Given the principle of homogeneity, the states may not enact provisions dissenting from the GG. The principle of homogeneity is to

	<p>be found in Article 28 (1), sentence 1 of the GG which states that the constitutional order in the Federal States (Länder) must conform to the principles of a republican, democratic and social state governed by the rule of law, within the meaning of the Basic Law. According to Article 28 (1), sentence 2 of the GG, in each federal state, county and municipality the people shall be represented by a body chosen in general, direct, free, equal and secret elections. Article 28 (1), sentence 3 makes an exception in that it does not refer to the (German) people but provides for the possibility for persons who possess citizenship in any Member State of the European Community to vote and to be elected in accord with European Community law but only in county and municipal elections.</p>
<p><b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)</p>	<p>The federal states may not enact provisions that allow EU nationals to vote in state elections. This would only be possible if the German Constitution were to be changed.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>An extension of the right to vote to include all EU nationals is not to be expected according to this decision. Dissenting decisions from other states have not been subsequently issued.</p>
<p><b>Key quotations in original</b></p>	<p><i>"Die Beteiligung an Wahlen, durch die die Ausübung der Staatsgewalt legitimiert wird, ist nach Art. 20 Abs. 2 S. 2 GG und Art. 28 Abs. 1 S. 2 GG in Bund, Ländern und Gemeinden allein deutschen Staatsangehörigen</i></p>

<p><b>language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>vorbehalten. Das in Art. 28 Abs. 1 S. 3 GG vorgesehene Kommunalwahlrecht für Unionsbürgerinnen und Unionsbürger hat an diesem Grundsatz nichts geändert. Den Ländern ist es aufgrund des bundesverfassungsrechtlichen Homogenitätsgebots verwehrt, bezüglich der Zusammensetzung des Wahlvolkes abweichende Regelungen zu treffen."</i> (StGH Bremen, decision of 31 January 2014, Page 1)</p> <p>Translation:  According to Article 20(2), sentence 2 and Article 28 (1), sentence 2 of the GG, the right to participate in elections of the federation, the states and the municipalities, by which the exercise of power by the state is legitimised, is reserved for German nationals. The right to vote in county and municipal elections, as provided by Article 28 (1), sentence 3 of the GG for persons who possess citizenship of another EU Member State does not change this principle. Given the principle of homogeneity, the states may not enact provisions dissenting from the GG.</p>
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*Note:*

*All internet pages were last accessed on 20 April 2017.*

2. Table 2 – Overview

The overall number of decisions is large and cannot be easily quantified. As concerns the topics of diplomatic and consular protection and the right to petition, there were no relevant decisions at all. As concerns the topic of the right to vote, there are no recent decisions besides the two decisions set out in the report.

	<b>non-discrimination on grounds of nationality</b>	<b>the right to move and reside freely</b> in another Member State	<b>the right to vote and to stand as candidates</b>	<b>the right to enjoy diplomatic protection</b> of any Member State	<b>the right to petition</b>
<b>Please provide the total number of national cases decided and relevant for the objective of the research if this data is available (covering the reference period)</b>					