

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to which article of the 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
Decision date	14 December 2016
Deciding body (in original language)	Bundesverwaltungsgericht (BverwG)
Deciding body (in English)	Federal Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	1 C 13/16 ECLI:DE:BVerwG:2015:160715U1C22.14.0
Parties	Bulgarian national Local aliens' registration office (<i>Ausländerbehörde</i>)
Web link to the decision (if available)	www.bverwg.de/entscheidungen/entscheidung.php?ent=141216U1C13.16.0&add_az=1+C+13.16&add_datum=14.12.2016
Legal basis in national law of the rights under dispute	Sections 6, 7 and 11 of the German Act on the General Freedom of Movement for EU Citizens (<i>Freizügigkeitsgesetz/EU, FreizügG/EU</i>), www.gesetze-im-internet.de/freiz_gg_eu_2004/ , www.gesetze-im-internet.de/englisch_freiz_gg_eu/index.html ,

	Sections 62, 66 and 67 of the German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act (<i>Aufenthaltsgesetz, AufenthG</i>), www.gesetze-im-internet.de/aufenthg_2004/ , www.gesetze-im-internet.de/englisch_aufenthg/index.html
Key facts of the case (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.
Main reasoning / argumentation (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 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.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	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.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	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>Key quotations in original language and translated into English with reference details (max. 500 chars)</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 strengerer Voraussetzungen für eine Beschränkung seines Freizügigkeitsrechts als Unionsbürger vorliegen...Die einschlägige Regelung über die Abschiebehaft in § 62 AufenthG findet über § 11 Abs.2 FreizügG/EU Anwendung“</i> (BVerwG, decision of 14 December 2016, 1C 13/16, paragraphs 1 and 14.</p> <p>An expulsion which has been issued before the country of the claimant joined the EU is binding even after the country has joined the EU. The aliens’ registration office may only expel an EU national based on such a decision, if before it has issued a formal decision that 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>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No.</p>