

Subject-matter concerned	☐ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to which article of the Directive 2004/38 ☒ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	31 March 2016
Deciding body (in original language)	Bundesverfassungsgericht (BVerfG)
Deciding body (in English)	Federal Constitutional Court
Case number (also European Case Law Identifier (ECLI) where applicable)	2 BvR 1576/13 ECLI:DE:BVerfG:2016:rk20160331.2bvr157613
Parties	Claimant: two individuals The Free State of Bavaria (Freistaat Bayern)
Web link to the decision (if available)	www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2016/03/rk20160331_2bvr157613.html
Legal basis in national law of the rights under dispute	Articles 15 (2) and 18 of the Bavarian Municipal Code (<i>Gemeindeordnung, GO</i>), www.gesetze-bayern.de/Content/Document/BayGO , Article 11 of the Bavarian Rural District Regulations (<i>Landkreisordnung, LKrO</i>), www.gesetze-bayern.de/Content/Document/BayLKrO , Article 1 of the Electoral Law for the Municipalities and Rural Districts in Bavaria (<i>Gemeinde und Landkreiswahlgesetz, GLKrWG</i>), www.gesetze-bayern.de/Content/Document/BayGLKrWG , Articles 2, 7, 12 and 101 of the Bavarian Constitution (<i>BayerischeVerfassung, BV</i>), www.bayern.landtag.de/dokumente/rechtsgrundlagen/bayerische-verfassung/ , Articles 3 and 28 (1) of the Basic Law for the Federal

	Republic of Germany (<i>Grundgesetz</i> , GG), www.gesetze-im-internet.de/gg/BJNR000010949.html , www.gesetze-im-internet.de/englisch_gg/index.html .
Key facts of the case (max. 500 chars)	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>Bayerischer Verfassungsgerichtshof</i> , BayVGh) 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 of 12 June 2013, Vf.11-VII-11, www.bayern.verfassungsgerichtshof.de/11-VII-11-Entscheidung.htm). The claimants then filed a constitutional complaint before the BVerfG, which did not accept the constitutional complaint for adjudication.
Main reasoning / argumentation (max. 500 chars)	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. 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. 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.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	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.
Results (e.g. sanctions) and key consequences or	The federal states may decide on provisions that allow for EU nationals to take part in public decisions and petitions.

implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<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 of 31 March 2016, BvR 1576/13, Paragraph 57). 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.