

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38 <input checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	19 April 2010
Deciding body (in original language)	Ústavní soud
Deciding body (in English)	The Constitutional Court
Case number (also European Case Law Identifier (ECLI) where applicable)	IV. ÚS 1403/09 ECLI:CZ:US:2010:4US.1403.09.1
Parties	Plaintiff: The preparatory committee for the referendum on the separation of Březhrad from the statutory city of Hradec Králové
Web link to the decision (if available)	http://nalus.usoud.cz/Search/GetText.aspx?sz=4-1403-09_1
Legal basis in national law of the rights under dispute	<p>The Act on Municipalities No. 128/2000 Coll. establishes the conditions by which a part of a municipality can separate and establish a new municipality if the citizens of the newly established municipality agree to this in a local referendum. According to paragraph 21, article 1 of the Act, the newly established municipality must have at least 1,000 citizens.</p> <p>The Act on Local Referendum No. 22/2004 Coll. establishes the conditions for holding a local referendum. The subject of the local referendum must not be against the law.</p>
Key facts of the case (max. 500 chars)	The plaintiff wanted to hold a local referendum on the issue of the separation of Březhrad (part of the city Hradec Králové) from the statutory city of Hradec Králové. The local board refused to hold the referendum because the outcome of the referendum could not be legally implemented]: the newly established municipality would have fewer than 1,000 citizens. The plaintiff filed a complaint and the case reached the Constitutional Court. One of the questions was whether the minimum required number of citizens had to include only Czech citizen with a permanent residence in the municipality or could also include foreign nationals that have their permanent residence there.

Main reasoning / argumentation (max. 500 chars)	The Constitutional Court stated that the interpretation of the word ‘citizen’ in paragraph 21, article 1 of the Act on Municipalities as ‘citizen of the Czech Republic’ would be too limited. The Act on Municipalities also gives certain rights to foreign nationals with a permanent residence. Therefore the right interpretation of ‘citizen’ would be ‘Czech citizen and also a person that is older than 18 years old and has permanent residence in the municipality, if it is set by an international treaty that the Czech Republic is bound by and that was published (in practical terms the only international treaty that comes under consideration is the TFEU).
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Constitutional Court affirmed the broader definition of the legal term ‘citizen’ in the Act on Municipalities. This broader interpretation is based on the duty to interpret the law in a manner consistent with European law.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Constitutional Court stated that paragraph 21, article 1 of the Act on Municipalities is in accordance with the Constitution, but it must be interpreted in a manner consistent with European law, e.g. EU citizens with permanent residence in the municipality must be counted among the 1,000 citizens legally required for establishing a new municipality. This also implies a broadening of the definition of ‘citizen’ for the whole Act on Municipalities.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>36. Zůstává otevřen prostor i pro druhou, širší interpretaci pojmu občan ve smyslu § 21 odst. 1 obecního zřízení, na kterou byl krajský soud upozorňován stěžovatelem (srov. str. 3 napadeného rozsudku, v němž stěžovatel uváděl, že s cizinci hlášenými tam k trvalému pobytu by oddělená obec podmínku 1 000 občanů splňovala), a k níž se kloní i Ústavní soud. Podle tohoto výkladu musejí být pod interpretovaný pojem "občan" zahrnuti i osoby zmiňované v § 17 obecního zřízení, podle něhož "Oprávnění uvedená v § 16 má i fyzická osoba, která dosáhla věku 18 let, je cizím státním občanem a je v obci hlášena k trvalému pobytu, stanoví-li tak mezinárodní smlouva, kterou je Česká republika vázána a která byla vyhlášena.". Takovou mezinárodní smlouvou je pak Smlouva o fungování Evropské unie (v konsolidovaném znění), konkrétně její ustanovení čl. 22 odst. 1 (zaručující aktivní a pasivní volební právo v komunálních volbách, publ. in. Úřední věstník Evropské unie ze dne 9. 5. 2008, C 115/57); dále srov. i čl. 40 Listiny základních práv Evropské unie. Tato výkladová alternativa se tudíž opírá o skutečnost, že obecní zřízení ve vazbě na mezinárodní smlouvy přiznává právo podílet se na samosprávě i některým cizím státním příslušníkům. Komentářová literatura přitom oprávnění cizinců podle § 17 obecního zřízení vykládá poměrně extenzivně, neboť by bylo "nevyvážené, aby občané, cizí státní příslušníci, měli možnost kandidovat například do zastupitelstva obce, ale neměli by například právo podávat orgánům obce podněty." [Vedral, J., Váňa, L., Břeň, J., Pšenička, S. Zákon o obcích (obecní zřízení), 1. vydání, Praha 2008, str. 138].</p> <p><i>36. There is the possibility of another, broader interpretation of the term citizen in the terms of paragraph 21, article 1 of the Act on Municipalities, which was presented by the plaintiff in front of the regional court (page 3 of the challenged judgement: the plaintiff claimed that by including foreigners with permanent residence the newly established municipality would have 1,000 citizens), and which the Constitutional Court also favours. According to that interpretation the term ‘citizen’ would include also persons mentioned in paragraph 17 of the Act on Municipalities, according to which ‘The rights set out in paragraph 16 concern also a person that is older than 18 years and has permanent residence in the municipality, if these rights are set out by an international treaty that is binding for the Czech Republic and</i></p>

	<p><i>that was has been published.” This international treaty is the Treaty on the Functioning of the European Union (consolidated version), specifically Article 22/1 (granting an active and passive voting right in municipal elections, published in the Official Journal of the European Union from 9 May 2008, C 115/57); also in Article 40 of the Charter. This alternative interpretation is based on the fact that the Act on Municipalities in relation to international treaties grants the right to participate in territorial autonomy to some foreign nationals. Legal literature interprets the rights of foreign nationals in paragraph 17 of the Act on Municipalities broadly, since ‘it would not be consistent if citizens-foreigners had the right to stand as a candidate in the municipal elections but did not have the right to make suggestions to the municipal authorities.” [Vedral, J., Váňa, L., Břeň, J., Pšenička, S. The Act on Municipalities, 1st edition, Prague 2008, page 138].</i></p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>Article 40</p>