

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 Articles 6,7 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	19 April 2016
Deciding body (in original language)	Landessozialgericht Baden-Württemberg (LSG)
Deciding body (in English)	Higher Social Court of Baden-Württemberg
Case number (also European Case Law Identifier (ECLI) where applicable)	L 11 EG 4629/14
Parties	Hungarian national City of Ulm, agency for parental allowance (<i>Elterngeldstelle</i>)
Web link to the decision (if available)	http://lr bw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&nr=20777
Legal basis in national law of the rights under dispute	Section 1 of the Federal Law on Parenthood Leaves and Parental Allowance (<i>Gesetz zum Elterngeld und zur Elternzeit, BEEG</i>), www.gesetze-im-internet.de/beeg/ , Sections 2 and 5 of the German Act on the General Freedom of Movement for EU Citizens (<i>Freizügigkeitsgesetz/EU</i> , <i>FreizügG/EU</i>), www.gesetze-im-internet.de/freiz_gg_eu_2004/ , www.gesetze-im-internet.de/englisch_freiz_gg_eu/index.html .

Key facts of the case (max. 500 chars)	<p>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 month. 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.</p>
Main reasoning / argumentation (max. 500 chars)	<p>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 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>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	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, BFH</i>) has already decided in the same way for child benefits (<i>Kindergeld</i>), BFH, decision of 27 April 2015, III B 127/14. Before the competent authorities had in daily practice often decided in a different way.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	More legal clarity.
Key quotations in original language and translated into English with reference details (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 of 19 April 2016, L 11 EG 4629/14, paragraph 1).</p> <p>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>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.