

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	18 September 2013
Deciding body (in original language)	Verfassungsgerichtshof (VfGH)
Deciding body (in English)	Constitutional Court
Case number (also European Case Law Identifier (ECLI) where applicable)	WIII4/2013 ECLI:AT:VFGH:2013:WIII4.2013
Parties	Vienna City Electoral Commission vs (1) a political party with two mandates in the district representation for the first district of Vienna and (2) a member of the community who is entitled to vote in the referendum and who is a district council member for the first district of Vienna and (3) a French citizen who has had principal residence in Vienna for more than five years and who is also a district council member for the first district in Vienna
Web link to the decision (if available)	https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=ff218212-4348-481e-8bb2-cf3528cf7882&Position=1&Abfrage=Vfgh&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&SucheNachRechtssatz=True&SucheNachText=True&GZ=WIII4%2f2013&VonDatum=&BisDatum=13.06.2017&Norm=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Dokumentnummer=JFT_20130918_13W_III00004_00

Legal basis in national law of the rights under dispute	B-VG Art 117 (2) and (8)¹ B-VG Art 141 (3) Volksbefragungsgesetz 1989 §16² Wr Volksbefragungsgesetz §2 (3) and §18a (5)³ Wr Stadtverfassung §112a⁴ Wr Gemeindewahlo 1996 §16 (1) Z1⁵
Key facts of the case (max. 500 chars)	Note that this executive summary has the purpose to make us understand: the facts of the case (so the “real life story”): On 14 December 2012, the municipal council of the city of Vienna decided to conduct a referendum in Vienna in March 2013, including questions such as, <i>inter alia</i>, “How should the parking situation and quality of life be improved for district residents?”, “Should the city make efforts regarding the Olympic Games in 2028?” or “Municipal enterprises offer important services to the Viennese population, such as water, canal, garbage collection, energy, hospitals, community houses and public transport. Are you in favor of protecting these businesses from privatization?” With reference to this decision of the municipal council, the Mayor of the City of Vienna published the referendum in the Official Gazette of the City of Vienna with notice of 10 January 2013, and set the period for conducting the referendum from 7 to 9 March 2013. After the referendum was conducted, the overall result was determined by the city electoral commission of the City of Vienna

¹ Austria, Federal Constitution (*Bundes-Verfassungsgesetz, B-VG*), StF: BGBl. Nr. 1/1930 (WV) idF BGBl. I Nr. 194/1999 (DFB), available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138.

² Austria, Referendum Act (*Volksbefragungsgesetz 1989, VBefrG*), StF: BGBl. Nr. 356/1989 idF BGBl. I Nr. 106/2016, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001008.

³ Austria, Viennese Referendum Act (*Wiener Volksbefragungsgesetz, WVBefrG*), StF.: LGBl. Nr. 05/1980 idF LGBl. Nr. 20/2016, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000325.

⁴ Austria, Viennese City Constitution (*Wiener Stadtverfassung – WStV*), LGBl. Nr. 50/2013, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000308.

⁵ Austria, Viennese Municipal Election Act (Gesetz über die Gemeindewahlordnung der Stadt Wien - Wiener Gemeindewahlordnung 1996 – GWO 1996), StF.: LGBl. Nr. 16/1996 idF LGBl. Nr. 20/2016, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000320.

	on 21 March 2013 and published in the Official Gazette of the City of Vienna on 28 March 2013 according to §19 Abs2 Wiener Volksbefragungsgesetz - WVBefrG. With their motion, which was put forward on 19 April 2013 and based on Art141 (3) B-VG, the complainants challenged the proceedings and the result of the referendum due to the unlawfulness of the questions and the unrighteous exclusion of Union citizens from voting in the referendum. The complainants demanded that the results of the referendum should be revoked due to unlawfulness (Note: The following information refers to only the exclusion of the Union citizens from the referendum). 2. the legal background against which the case unfolded (what are the relevant legal norms that are applied): The Constitutional Court referred to Wr Stadtverfassung §112a, Wr Volksbefragungsgesetz §2 (3) and §18a (5), Wr GemeindewahlO 1996 §16 (1) Z1, B-VG Art 141 (3), Art22 TFEU, Art40 CFR.
Main reasoning / argumentation (max. 500 chars)	The Constitutional Court found that there is no violation of Union law regarding the restriction of the entitlement to vote in a referendum onto only Austrian citizens. The Constitutional Court found that Art22 TFEU encompasses only the participation in municipal elections and, thus, does not provide for any other direct democratic rights. Also, it found that Art40 CFR does not grant any rights beyond Art22 TFEU.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The key issues is about whether a French citizen, who has had principal residence in Vienna for more than five years and who is also a district council member for the first district in Vienna, is entitled to vote in a referendum in Austria. The Constitutional Court came to the conclusion that Union law does not provide for any provisions which entitle the French citizen to vote in the referendum on the basis of her Union citizenship. This is due to Art22 TFEU and Directive 94/80/EC which grant Union citizens, who are residents in another Member State whose nationality they do not possess, solely active and passive suffrage rights. Those active and passive suffrage rights only refer to municipal elections (Art22 para 1 TFEU) and elections to the European Parliament (Art22 para 2 TFEU). Moreover, the Constitutional Court concluded that Art40 CFR does not grant any rights beyond Art22 TFEU.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	Dismissal of the appeal regarding the Viennese referendum of March 2013 due to the absence of legitimacy of the appellants.

Key quotations in original language and translated into English with reference details
(max. 500 chars)

Art22 Abs1 AEUV, Art1 der Kommunalwahlrichtlinie sowie Art40 GRC sehen vor, dass Unionsbürgern mit Wohnsitz in einem anderen Mitgliedstaat, dessen Staatsangehörigkeit sie nicht besitzen, in diesem Mitgliedstaat das aktive und passive Wahlrecht bei Kommunalwahlen zukommt. Gemäß Art2 Abs1 litb der Kommunalwahlrichtlinie sind unter "Kommunalwahlen" jene allgemeinen, unmittelbaren Wahlen zu verstehen, die darauf abzielen, die Mitglieder der Vertretungsorgane einer lokalen Gebietskörperschaft der Grundstufe zu bestimmen; gemäß dem Anhang zu dieser Richtlinie gelten in Österreich als "lokale Gebietskörperschaften der Grundstufe" die "Gemeinden, Bezirke in der Stadt Wien".

Art22 para 1 TFEU, Art1 of Directive 94/80/EC and art40 CFR provide that citizens of the Union, who reside in another Member State of which they are not a national, are entitled to vote and to stand as a candidate in municipal elections in that Member State. According to Art2 para 1 litb of Directive 94/80/EC, "local elections" refers to those general, direct elections aimed at determining the members of the representative bodies of a local authority of the basic level; in accordance with the Annex to this Directive, "municipalities, districts in the city of Vienna" are defined as "local authorities of the basic level" in Austria.

Auch das Unionsrecht gebietet im vorliegenden Fall nicht, dass der Drittanfechtungswerberin auf Grund ihrer Unionsbürgerschaft eine Stimmberechtigung bei der Volksbefragung zukommt, weil Art22 AEUV und die Kommunalwahlrichtlinie Unionsbürgern mit Wohnsitz in einem anderen Mitgliedstaat, dessen Staatsangehörigkeit sie nicht besitzen, ausschließlich das aktive und passive Wahlrecht bei Kommunalwahlen – dies sind in Wien nach dem Anhang zur Kommunalwahlrichtlinie die Bezirksvertretungen, nicht aber der Gemeinderat (s. auch VfSlg 15.063/1997) – gewähren. Auch Art40 GRC räumt keine über Art22 AEUV hinausgehenden Rechte ein. Die Mitgliedstaaten sind überdies unionsrechtlich nicht verpflichtet, Unionsbürgern über die Teilnahme an den Kommunalwahlen hinaus auch sonstige, insbesondere direktdemokratische Beteiligungsrechte in der Gemeinde einzuräumen (vgl. Oberndorfer, 8. Teil. Einrichtungen der direkten Demokratie in den Gemeinden, in: Klug/Oberndorfer/Wolny [Hrsg.]).

Also, in the present case, Union law does not mandate that the third-party claimant is entitled to vote in the referendum on the basis of her Union citizenship because Art22 TFEU and Directive 94/80/EC grant Union citizens, who are residents in another Member State whose nationality they do not possess, solely active and passive suffrage rights –according to the Annex to Directive 94/80/EC, in Vienna these are the district representatives, but not the municipal council [...]. Art40 CFR does not grant any rights beyond Art22 TFEU as well. In addition, Member States are not obliged to grant any other direct democratic rights, other than the participation in municipal elections, to citizens of the Union (cf Oberndorfer, 8. Teil. Einrichtungen der direkten Demokratie in den Gemeinden, in: Klug/Oberndorfer/Wolny [eds]).

	<i>Auch aus dem Diskriminierungsverbot des Art18 AEUV ergibt sich für den vorliegenden Fall nichts anderes (vgl. Stein, Art18 AEUV, in: Stein [Hrsg.], EUV/AEUV2, 2012, Rz 25).</i> Also, the non-discrimination clause of Article 18 TFEU does not provide anything different for the present case (cf Stein, Art18 TFEU, in: Stein [ed], TEU/TFEU2, 2012, para 25).
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	The Constitutional Court referred to Art40 CFR twice. Concretely, the Constitutional Court states that Art22 para 1 TFEU, Art1 of Directive 94/80/EC and Art40 CFR provide that citizens of the European Union, who reside in another Member State of which they are not a national, are entitled to vote and to stand as a candidate in municipal elections in that Member State. It adds that Art40 CFR does not grant any rights beyond Art22 TFEU.