Subject-matter concerned	☐ 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to which article of the Directive 2004/38 Articles 7 (1), 14 (2), 16 (1) ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	16 July 2015
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 22/14 ECLI:DE:BVerwG:2015:160715U1C22.14.0
Parties	Hungarian national Local aliens' registration office (*Ausländerbehörde*)
Web link to the decision (if available)	www.bverwg.de/entscheidungen/entscheidung.php?ent=160715U1C22.14.0&add_az=1+C+22.14&add_datum=16.07.2015
Legal basis in national law of the rights under dispute	Sections 2,3,4,4a and 6 of the German Act on the General Freedom of Movement for EU Citizens (*Freizügigkeitsgesetz/EU, FreizügG/EU*), 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)	The claimant has lived in Germany since 2004. In March 2006 she was given a residence certificate according to Section 5 FreizügG/EU. In 2010 the claimant had declared to the authorities that she did not want to apply for social benefits since she was supported financially by her children. In March 2010 the claimant applied for and also received social benefits according to SGB XII. In May 2012 the local aliens' registration office declared the loss of the entitlement to residence pursuant to Sections 2 (1) and 5 (4) of the FreizügG/EU, since the claimant did not have a right to permanent residence according to Section 4a of the FreizügG/EU and did not have a right to reside and enter according to Section 2 of the FreizügG/EU According to Section 4a (1) of the FreizügG/EU EU citizens who have resided lawfully and continuously in the federal territory for five years shall be entitled to enter into and stay in the federal territory, irrespective of whether the other requirements stipulated in Section 2 (2) of the FreizügG/EU are fulfilled (right of permanent residence).The claimant did not fulfil any of the prerequisites of Section 2 (2) of the FreizügG/EU and she did not establish that she had resided lawfully and continuously in the federal territory for five years. The Stuttgart Administrative Court (*Verwaltungsgericht, VG*) found that the claimant did have a right to permanent residence according to Section 4a of theFreizügG/EU. The appeal of the aliens' registration office was rejected by the Mannheim Higher Administrative Court (*Verwaltungsgerichtshof, VGH).* The BVerwG has not confirmed the decisions of the lower courts and has referred the case back to the VG for further investigation and clarification.
Main reasoning / argumentation (max. 500 chars)	The claimant, as well as the VG and VGH, had reasoned that a right of permanent residence according to Section 4a of the FreizügG/EU applied in the present case. Section 4a FreizügG/EU provides EU citizens who have resided lawfully and continuously in the federal territory for five years with a right to permanent residence. The claimant had reasoned that she had resided lawfully in the federal territory since the competent foreigner's authority had not declared the loss of a right to residence within five years. The BVerwG has reasoned that it was not sufficient for a right to permanent residence according to Section 4a of the FreizügG/EU that the authorities had not declared the loss in that period of time. "Lawful residence" could only be fulfilled by persons who had lawfully held a right to residence according to Section 2 (2) of the FreizügG/EU for five years. .The court reasoned that Section 4a of the FreizügG/EU referred to Directive 2004/38. Therefore according to Article 16 (1) of Directive 2004/38, lawful residence could only be fulfilled by persons who met the conditions of Article 7 (1) of Directive 2004/38 for five years. The BVerwG in that context explicitly mentioned that sufficient resources had to be established. The BVerwG pointed out that the lower courts, in particular, had to verify whether the claimant met the requirement of Article 7 in terms of "sufficient resources". It said that in the present case the lower court had not investigated sufficiently into the facts so that the question of whether the claimant had proven sufficient resources had to be referred back to the lower court. The Court stated that the lower Court would if necessary also have to address the question of whether maintenance provided by relatives who received unemployment benefits themselves was to be considered as "sufficient resources". The court as concerns the concept of sufficient resources gave some general remarks (see below "key issues") and explicitly referred to the jurisdiction of the CJEU in the Grelczyk, Baumbast and Trojani cases.

Key issues (concepts, interpretations)clarified by the case (max. 500 chars)	The BVerwG has clarified the term "lawful residence" in Section 4a of the FreizügG/EU. This is of practical relevance because the right to permanent residence according to this Section has gained in importance since the certification of the right to residence (*Freizügigkeitsbescheinigung*) was abolished in January 2013. Concerning the notion of "sufficient resources", the court has clarified that the jurisdiction of the CJEU will be followed. It has said that an expulsion measure shall not be the automatic consequence of a Union citizen's recourse to the social assistance system of the host Member State. This could only be the case if the citizen became an unreasonable burden to the social system. On the other hand the fact that a citizen did not claim social benefits was not enough to prove that he or she had sufficient resources. For the question of whether the citizen had become an unreasonable burden on the social assistance system, it had to be examined whether it is a case of temporary difficulties and the duration of residence, the personal circumstances and the amount of aid granted had to be considered. As to the question about whether contributory benefits may be qualified as "sufficient resources", this has been left out of this decision. The Court did not have the decisive facts, for instance if the relatives provided maintenance through receiving unemployment benefits themselves. The administrative guidelines to the FreizügG/EU, however, explicitly exclude non- contributory unemployment benefits under the SGB II from the concept of sufficient resources (see http://dip21.bundestag.de/dip21/brd/2009/0670-09.pdf).
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Court gave some general ideas of how the concept of sufficient resources has and will be interpreted in German jurisdiction. A few interesting points have however been left open since the final decision was referred to the lower court that had not investigated sufficiently into the facts. The VGH did not not make a final decision because the parties agreed on a settlement in December 2015. The right to permanent residence according to Section 4a of the FreizügG/EU will, in practice, be limited to persons entitled to a right to entry and residence according to the FreizügG/EU Both the European and the German jurisdictions on unemployment benefits, via the concept of sufficient resources, therefore have indirect implications regarding the question of permanent residence.
Key quotations in original language and translated into English with reference details (max. 500 chars)	"*Eine Verluststellung nach § 5 Abs.4 FreizügG/EU ist nicht bereits dann ausgeschlossen, wenn ein Unionsbürger sich fünf Jahre ständig im Bundesgebiet aufgehalten hat…Das Entstehen eines Daueraufenthaltsrechts nach § 4 a (1) FreizügG/EU setzt voraus, dass der Betroffene während einer Aufenthaltszeit von mindestens fünf Jahren ununterbrochen die Freizügigkeitsvoraussetzungen des Art. 7 Abs.1 der Richtlinie 2004/38/EG erfüllt hat"* (BVerwG, decision of 16 July 2015, 1 C 22/14, Paragraph 1). A decision according to Section 5 (4) of the FreizügG/EU about the loss of entitlement of residence is not excluded by the fact that an EU national has resided in Germany for five years. An entitlement to permanent residence, according to Section 4a (1) of the FreizügG/EU,

	requires the person concerned to have fulfilled the prerequisites of Article 7 (1) of Directive 2004/38 during a period of five years without interruption.
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.