

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 Article 28 (3) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	11 September 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 B 39/15 ECLI:DE:BVerwG:2015:110915B1B39.15.0
Parties	Italian national Local aliens' registration office (<i>Ausländerbehörde</i>)
Web link to the decision (if available)	www.bverwg.de/entscheidungen/entscheidung.php?ent=110915B1B39.15.0&add_az=1+B+39.15&add_datum=11.09.2015
Legal basis in national law of the rights under dispute	Sections 6 and 7 of the German Act on the General Freedom of Movement for EU Citizens (<i>Freizügigkeitsgesetz/EU, 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 has lived in Germany since 1983. In 2009, he was sentenced to life imprisonment for murder and has been serving the sentence since then. In 2011, the local aliens' registration office determined the loss of the entitlement to entry and residence according to Section 6 of the FreizügG/EU. According to Section 6 (1) of the FreizügG/EU loss of the entitlement pursuant to Section 2 (1) can only be determined and the certificate confirming the right of residence under Community law and the EU residence permit withdrawn for reasons of public order, security or health (Article 45 (3), Article 52 (1) of the Treaty on the Functioning of the European Union). The notice included a deportation warning, according to Section 7 of the FreizügG/EU. According to Section 7 of the FreizügG/EU the notice to leave the federal territory shall include a deportation warning and set a time limit for departure. The claimant brought action before the Saarlouis Administrative Court (<i>Verwaltungsgericht, VG</i>). The VG decided that a reason for loss according to Section 6 (5) of the FreizügG/EU existed but that the decision was taken prematurely. According to Section 6 (5) of the FreizügG/EU in the case of EU citizens who have been resident in the federal territory in the past ten years, a loss of entitlement pursuant to subsection 1 may only be declared on compelling grounds of public security. In the appeal before the Saarlouis Higher Administrative Court (<i>Oberverwaltungsgericht, OVG</i>), the action was however dismissed. The appeal to the BVerwG was rejected. The BVerwG has, in this decision, confirmed the reasoning of the OVG that the decision of loss of entitlement and entry on grounds of public security may be made before a prison sentence has been served.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The claimant had argued that the decision of the aliens' registration office was taken prematurely. The decision concerning the loss of entitlement to entry and residence, according to Section 6 (5) of the FreizügG/EU and Article 28 (3) of Directive 2004/38, on compelling grounds of public security requires a decision about whether the security of the Federal Republic of Germany is affected. The claimant criticized the fact that the decision had only taken into account the claimant's behaviour as established by the criminal sentence. A positive development in prison and especially the positive development that was still to be expected had however not been taken into account.</p> <p>The BVerwG has reasoned that the decision concerning the loss of entitlement to entry and residence according to Section 6 of the FreizügG/EU and Article 28 (3) of Directive 2004/38, could be made long before a prison sentence had been served. Neither national law nor the Directive 2004/38 made any legal specifications as to <u>when</u> the decision concerning the loss of entitlement to entry and residence was to be made. Successful resocialization could be taken into account within the context of the decision, according to Section 7 (2) of the FreizügG/EU, which demands a time limit to be set for the re-entry ban.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>There has been settled case-law of the BVerwG as to the prerequisites for a decision concerning the loss of entitlement to entry and residence. This jurisdiction is in accordance with the jurisdiction of the CJEU. In addition to these decisions, the BVerwG has in the present decision only made clear that neither EU legislation nor German legislation has made any specifications as to when such a decision may be made. The court has found that an early decision is consequently in accordance with Directive 2004/38.</p>
Results (e.g. sanctions) and key consequences or	<p>The BVerwG has decided upon a temporal frame concerning decisions about the loss of entitlement to entry and residence in cases of compelling grounds of public security.</p>

implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>„Weder aus dem nationalen Recht noch aus Unionsrecht ergeben sich Vorgaben für den Zeitpunkt, zu dem die Behörde die Verlustfeststellung nach § 6 FreizügG/EU ausspricht. Diese kann ermessensfehlerfrei auch geraume Zeit vor dem Ende einer zu verbüßenden Strafhaft erfolgen“</i> (BVerwG, decision of 11 September 2015, 1 B 39/15, paragraph 1).</p> <p>Neither national nor EU law sets any binding requirements concerning the time frame in which the aliens’ registration office has to make a decision concerning the loss of entitlement to entry and residence according to Section 6 of the FreizügG/EU. Therefore, this decision may also be made long before a sentence has been fully served.</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>No.</p>