



Citizenship between Federal State and *Länder* - The German Example -

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German Federal Constitution (*Grundgesetz*): Definition of Citizenship

Article 116 GG

(1) Unless otherwise provided by a law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.



Law on Citizenship

- Reichs- und Staatsangehörigkeitsgesetz 1913
- Staatsangehörigkeitsgesetz 2000
- § 3
 - (1) Citizenship shall be attained
 1. by birth,
 2. by declaration (*i.e. German father, foreign mother*)
 3. by adoption
 - (...)
 5. by naturalization



German Federal Constitution (Grundgesetz): Citizenship and the *Länder*

Article 33 GG

(1) Every German shall have in every Land the same rights and duties of citizenship.*

(2) (...)

**[own translation, differing from official translation]*



Bavarian Constitution

Article 6

(1) State citizenship shall be attained
by birth;
by legitimation;
by marriage;
by naturalisation.
(...)

(3) The details of citizenship shall be the subject of a law.*

[* *such law does not exist however; CA*]



Bavarian Constitution

Article 7

- (1) **State citizenship** is held by every citizen over the age of eighteen, irrespective of birth, race, sex, religion and profession.
- (2) The state citizen shall exercise his **rights** through participation in elections, local petitions for referendums (Bürgerbegehren) and local referendums (Bürgerentscheiden) as well as state-wide petitions for referendums (Volksbegehren) and state-wide referendums (Volksentscheiden).
- (3) The exercise of these rights might depend on a minimum period of residency of not less than one year.



Constitution of Berlin

Article 2

Public authority shall be held by all German nationals domiciled in Berlin. They shall exercise their will according to this Constitution directly by electing Parliament and by vote, and indirectly through Parliament. Those provisions of this Constitution which afford to other residents of Berlin the right to participate in the state's formation of will shall remain unaffected.



Verfassung Brandenburg

Artikel 3

(1) Bürger im Sinne dieser Verfassung sind alle Deutschen im Sinne des Artikels 116 Absatz 1 des Grundgesetzes mit ständigem Wohnsitz im Land Brandenburg. Einwohner im Sinne dieser Verfassung sind alle Personen mit ständigem Wohnsitz im Land Brandenburg, unabhängig von der Staatsangehörigkeit.

(2) Deutsche im Sinne des Grundgesetzes haben in Brandenburg **gleiche Rechte und Pflichten, soweit nicht ein gesetzlicher Vorbehalt für die Bürger Brandenburgs besteht. (...).**



Verfassung Rheinland-Pfalz

Artikel 75

Das Volk handelt nach den Bestimmungen dieser Verfassung **durch seine Staatsbürger** und die von ihnen bestellten Organe.

(2) Staatsbürger sind alle Deutschen, die in Rheinland-Pfalz wohnen oder sich sonst gewöhnlich dort aufhalten. Das Nähere regelt ein Gesetz.



Verfassung Sachsen

Artikel 5

(1) Dem **Volk des Freistaates Sachsen gehören Bürger deutscher, sorbischer und anderer Volkszugehörigkeit** an. Das Land erkennt das Recht auf die Heimat an.

(2) Das Land gewährleistet und schützt das Recht nationaler und ethnischer Minderheiten deutscher Staatsangehörigkeit auf Bewahrung ihrer Identität sowie auf Pflege ihrer Sprache, Religion, Kultur und Überlieferung.

(...)



Verfassung Thüringen

Artikel 104

Bürger im Sinne dieser Verfassung ist, **wer die deutsche Staatsangehörigkeit** besitzt oder als Flüchtling oder Vertriebener deutscher Volkszugehörigkeit oder als dessen Ehegatte oder Abkömmling in dem Gebiet der Bundesrepublik Deutschland Aufnahme gefunden hat.



Citizenship in Germany since 1849

- Citizenship of single German States (1849)
- Citizens of each State have to be treated like citizens (*Indigenat*) in all other States (1871)
- Citizenship in the States and the “*Reich*” is regulated by law of the *Reich* (1918); equal rights in every State
- Final point of historical development from “State” citizenship to (factual) “Federal” Citizenship (1949)



Article 33 I German Constitution

- Special implementation of the fundamental principle of equality before the law (*grundrechtsgleiches Recht*)
- Encompasses all rights and duties of citizenship in each of the 16 *Länder*
- Beneficiaries are all “Germans” as defined by Art. 116 I GG (regardless of residency in Germany)
- Legal rules of citizenship laid down in federal law only (*Staatsangehörigkeitsgesetz*)
- Not one single act on citizenship in the 16 *Länder*



Rights granted by Art. 33 I GG

- Art. 33 I GG grants the right of each citizen of “another *Land*” (e.g. *Baviera*) not to be treated differently by the public authorities or laws from citizens of e.g. *Saxonia*
- Art. 33 I GG does not provide for a right to specific entitlements / rights granted in one *Land* but not in another one



Violations of Art. 33 I GG

- Violation of Art 33 I GG requires
 - infringement of **federal** right to equal protection with regards to **state** (*Land*) citizenship/residency
 - on the part of the public authorities (or laws) of a *Land*
 - leading to an disadvantage for non-citizens/residents

- Deviations might be admissible, e.g.,
 - Right to vote in a *Land* only for residents (see Art. 28 I 2 GG)



Case Law

Very few court decisions on Art. 33 I GG:

- **German Constitutional Court 18.07.1997:**
Priority admittance to university for residents of a land constitutes violation of Art. 12 I GG (freedom of occupation) and Art. 3 I GG (equal protection before the law)
- **Higher Administrative Court Hamburg 27.10.2005:**
Possible violation of Art. 33 I GG if tuition fees dependent on residency



Case Law (II)

- **Federal Administrative Court 22.10.1982:**
No violation of Art. 33 I GG: access to university according to residency in case of special admission without high school leaving exam
- **German Constitutional Court 23.11.2004**
No conflict with Art. 33 I in case of governmental funding of private schools depending on residency