30.8.2016 - Pressemitteilungen

Pressemitteilung des Europäischen Gerichtshofes für Menschenrechte vom 30.06.2016

In today's Chamber judgment[1] in the case of Taddeucci and McCall v. Italy (application no. 51362/09) the European Court of Human Rights held, by six votes to one, that there had been a **violation of Article 14 (prohibition of discrimination)** taken **together with Article 8 (right to respect for private and family life)** of the European Convention on Human Rights. The case concerned a refusal by the Italian authorities to grant a residence permit to a gay couple on family grounds.

The Court found in particular that the situation of Mr Taddeucci and Mr McCall, a gay couple, could not be understood as comparable to that of an unmarried heterosexual couple. As they could not marry or, at the relevant time, obtain any other form of legal recognition of their situation in Italy, they could not be classified as "spouses" under national law. The restrictive interpretation of the notion of family member constituted, for homosexual couples, an insuperable obstacle to the granting of a residence permit on family grounds. That restrictive interpretation of the concept of family member, as applied to Mr McCall, **did not take due account of the applicants' personal situation** and in particular their inability to obtain a form of legal recognition of their relationship in Italy.

In deciding to treat homosexual couples in the same way as heterosexual couples without any spousal status, the State had breached the applicants' right **not to be subjected to discrimination based on sexual orientation** in the enjoyment of their rights under Article 8 of the Convention.

Fußnoten:

[1] Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution.
Further information about the execution process can be found here:
www.coe.int/t/dghl/monitoring/execution.

Quelle und Volltext: Pressemitteilung des Europäischen Gerichtshofes für Menschenrechte vom 30.06.2016

Anmerkung d. Red.: In seinem Urteil nahm das Gericht Bezug auf das EuGHMR Urt. v. 24.6.2010 – 30141/04, veröffentlicht in FamRZ 2010, 1525 (Heft 18).

Leitsätze dieses Urteils:

1. Die Regelung des § 44 österr. ABGB, die eine Ehe nur zwischen zwei Personen verschiedenen Geschlechts zulässt, einem gleichgeschlechtlichen Paar somit eine Eheschließung verweigert, verletzt nicht das Diskriminierungsverbot des Art. 14 EMRK *im Zusammenhang mit dem Schutz des Privat- und Familienlebens (Art.* 8 EMRK*).*

2. Art. 12 EMRK *(Recht auf Eheschließung) verpflichtet die Vertragsstaaten nicht, auch gleichgeschlechtlichen Paaren eine Eheschließung zu ermöglichen.*

Anmerkungen von Prof. Dr. Dr.h.c.mult. Dieter Henrich zu diesem Urteil