# German Court refuses Recognition of Same-Sex Marriages

(*VG Karlsruhe, judgment of 9 September 2004 – 2 K 1420/03; (2006) 3 IPRax, 284*)

The *VG Karlsruhe* (Administrative Court) decided in this judgment that a non-resident of the EU who has contracted a same-sex marriage with an EU resident is not a spouse in terms of Art.10 (1) lit. a Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. Therefore the permit of residence was not granted for the length it has been applied for. The court refers in its explanations *inter alia* to a decision of the ECJ from 2001 (joined cases C-122/99 P and C-125/99 P), where the ECJ states that the term "marriage" characterizes – according to the definitions applying in the Member States – only a partnership of two persons of different sexes. Since then, only two Member States had changed their definition of "marriage" and included also partnerships between couples of the same sex, namely Belgium and the Netherlands (remark: after the judgment had been passed,  Spain also began to allow same-sex marriages in July 2005). The court argues now that a different interpretation of the term "spouse" was only justified if there had been already a social change in the whole EU – and not only in a few Member States. According to the *VG,* same-sex marriages can only be recognized if the State of recognition treats them as equivalent to traditional marriages. Since this is not the case in Germany (as only a registered partnership is possible between partners of the same sex), a recognition was not possible.

This decision has been discussed affirmative by *Röthel* (2006) 3 *IPRax*, 250, who argues that there is no obligation of the Member States to recognize the personal status of a person which has been obtained in another Member State which can be derived from the fundamental freedoms.

**Comment:** Another decision of interest in this context is one from the Tribunal administratif du Grand-Duché de Luxembourg of 3 October 2005 (N° 19509). Here the court held – in contrast to the German court – that a same-sex marriage which has been concluded in Belgium between a Belgian and a Madagascarian has to be recognized in Luxembourg according to Art.8 of the European

Convention on Human Rights – despite the fact that same-sex marriages are unknown to Luxembourgian law.