

UPR INTERVENTION FOR AUSTRIA

Tuesday 7 June 2011

ILGA Europe & COC Netherlands

Delivered by Justus Eisfeld

Mr. President,

We commend Austria for accepting recommendation 93.32 to include a gender identity and sexual orientation perspective with regard to measures against incitement to hatred. We also commend Austria for accepting recommendations 92.81 and 93.44 and for its work to combat gender-based discrimination in the workplace, and recommend extending these protections *de jure* and *de facto* to gender identity discrimination, in line with jurisprudence by the European Court of Justice and EU directive 2006/54/EC.

In light of these recommendations we would encourage Austria to uphold its commitment in relation to equal protection against discrimination on the basis of gender identity and celebrate the fifth anniversary by translating court rulings by the Austrian Constitutional Court from June 2006 and December 2009 and the Austrian Administrative High Court from February 2009, September 2009 and February 2010 into national law and thus facilitate the access of trans people to gendered documentation without medical treatment, surgery, sterilization or divorce, as observed by a study on Austria commissioned by the EU Fundamental Rights Agency.

In addition to this, and in line with the accepted recommendations 92.88, 92.94 and 93.51 we would also recommend Austria to consider gender identity as a ground of asylum procedures in those cases where trans persons face or fear violence. Furthermore, we ask Austria to protect transgender asylum seekers from *refoulement*, by not sending them to countries where they have fear for life and limb, especially where regular violations of trans people's rights have been documented by independent, non-governmental observers, such as in the case of Yasar Öztürk, a trans woman from Turkey who fled the country fearing for her life.

We ask whether Austria would consider applying the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist in domestic and foreign policy development?

Finally we encourage Austria to share best practices in this field with other countries, and critically self-examine where further adjustment of policies need to take place.

Thank you Mr President.

