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The Permanent Mission of Bosnia and Herzegovina to the United Nations Office and Other International Organizations at Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights, Special Procedures Branch, and, referring to the Communication from Special Procedures Joint Allegation Letter AL Cultural Rights (2009) G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (89-15) G/SO 214 (107-9), dated February 7th 2014, has the honor to transmit the response of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina.

The Permanent Mission of Bosnia and Herzegovina to the United Nations in Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, April 17th, 2014

OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS
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UNITED NATIONS

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

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Your Excellencies,

Regarding your joint letter in which you seek answers from authorities of Bosnia and Herzegovina in connection with the attack on participants of the Merlinka Queer Festival in Sarajevo organized by the Sarajevo Open Centre, a non-governmental organization which promotes and protects the rights of LGBT persons, we are meeting the 60-day timeline and giving the following answers:

The Ministry of the Interior of Sarajevo Canton is in charge of public meetings in Sarajevo Canton and it is the police within the Ministry that protect life and personal safety of people. According to the information provided by the Ministry of Internal Affairs, on 1 February 2014, during Merlinka International Queer Film Festival, there was a violation of public order and peace by unknown persons who stormed the premises of the Kriterion Art Cinema in Sarajevo where a panel discussion was going on and physically assaulted attendees. During fact-finding actions, it was found that the First Police Administration of Sarajevo had been informed electronically by the Ministry of the Interior of Sarajevo Canton that the Merlinka Queer Festival would be organized by the Sarajevo Open Centre, a non-governmental organization promoting and protecting the rights of LGBT persons, in the period from 31 January 2014 to 2 February 2014 in Kriterion Art Cinema (Municipality of Centar - Sarajevo) with a view to promoting the rights and culture of LGBT community through film art.

While preparing this event there was a meeting of representatives of the Sarajevo Open Centre with police officers of the Police Administration of Sarajevo. They were leading figures in the event and on this occasion they informed the police officers that admission to the festival would be free, that the

organizers provided securities from among security personnel of the Kriterion Art Cinema and, in their assesment, indicated that a festival had been organized last year, 2013, and stated that the festival went smoothly and that so far they had not received any threats related of the festival.

Although, as a rule, cinema performances and similar events do not require additional measures by police, given the sensitivity of these groups, the First Police Administration of Sarajevo paid particular attention on this event and, on the basis of information received from the organizers, planned security measures for for each day of the festival. The planned security measures did not include control of festival goers at the entrance to the Kriterion Art Cinema in Sarajevo or the presence of uniformed police officers in the facility where the festival was held. According to the regulations, the organizer is solely responsible to ensure peace and order on the site of any type of gathering and obliged to employ minitors. The organizer said that in this case they would employ security of the Krtiterion cinema.

In accordance with statutory powers, uniformed police officers, together with a number of specialist police officers were deployed outside with the task of ensuring security outside and provide safe arrival and departure of participants, and to provide assistance to securities if, during the stay of the participants, public peace and order were disturbed.

Immediately after learning of the attack on participants of the festival, in a very short period of time, the police officers came to the site and found out that a group of several unidentified masked person entered undisturbed the room where a panel discussion was held and attacked the participants. The attack lasted about two minutes, after which the attackers left the site, moving away in an unknown direction.

According to the Ministry of the Interior of the Sarajevo Canton, taking into account all the circumstances under which the attack occurred, it is not an insignificant fact that the participants of the festival were not attacked outside the Kriterion Art Cinema when arriving or departing the festival, but in the premises. It was found that at the time of the attack there was no control of entering visitors by the festival securities in the premises, which the organizer were obliged to provide by law. The Ministry of the Interior of Sarajevo Canton conducted an internal investigation to determine any possible responsibility and the failure of on the part of police officers in securing this event.

In order to clarify the events and identify perpetrators of this crime, the police officers, in collaboration with a prosecutor of Sarajevo Cantonal Prosecutor's Office, carried out an investigation at the scene and took other measures. They found and identified two people as perpetrators of the attack on participants of the festival, who were deprived of liberty. The Ministry of the Interior of Sarajevo Canton put together a report on the crime committed that qualifies as an act of violence and gave it to the Cantonal Prosecutor's Office in Sarajevo for action. They continued working to identify all persons suspected of having been a party to this crime. In order to protect and ensure a smooth flow of the investigation and legal proceedings no documents or other information relating to persons associated with this crime are available to us for the time being.

It is essential to note that all governmental and non-governmental organizations in Bosnia and Herzegovina publicly expressed regret and strongly condemned the attack on participants of the

Merlinka Queer Festival, and urged the relevant authorities to immediately take measures to detect and prosecute the perpetrators of this crime.

In your letter to the authorities of Bosnia and Herzegovina, you have also stated that the UN High Commissioner for Human Rights recommends States to, *inter alia*, protect persons from transphobic violence and investigate and prosecute perpetrators of such violence; prevent the torture and cruel, inhuman or degrading treatment of transgender persons in detention; ensure that criminal laws are not used to harass or detain people on the basis of their gender identity and expression; and enact comprehensive laws that include gender identity as prohibited grounds of discrimination. Likewise, the UN High Commissioner calls on Member States to provide training to prevent discrimination and stigmatization of transgender persons; ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety and without discrimination on the basis of gender identity.

Following the recommendations we would like to inform you that in 2009 Bosnia and Herzegovina passed the Law on Prohibition of Discrimination, which protects its citizens against discrimination in any area of life such as work and employment, social security and healthcare, judiciary and administration, housing, public information, education, sport, culture, science and economy. Further, the Law prohibits sexual or any other form of harassment, mobbing, segregation and incitement to discrimination. According to the Anti-Discrimination Law, all public authorities have an obligation and a duty to fight against discrimination, to refrain from it and to actively create conditions for equal treatment. The law provides that any person who believes that he/she was discriminated against may seek protection of their rights in judicial and administrative proceedings. Courts and other bodies conducting proceedings shall take actions promptly. The burden of proof lies on the offender, who is required to prove that he did not violate the principle of equal treatment and non-discrimination. The law guarantees the protection of persons who report discrimination or participate in legal proceedings for protection against discrimination.

Although the Constitution of BiH and international instruments to which Bosnia and Herzegovina is a party prohibit discrimination, the Law on Gender Equality of BiH and the Law on Prohibition of Discrimination in Bosnia and Herzegovina have defined its forms, non-discrimination in all areas of life, as well as mechanisms for protection against discrimination. The Law on Gender Equality in Bosnia and Herzegovina also prohibits discrimination based on gender and sexual orientation.

The passage of the Law on Prohibition of Discrimination established a domestic legal framework for the achievement of equal rights and opportunities for all persons in Bosnia and Herzegovina and regulated a system of protection against discrimination through the responsibility and obligation of the legislative, judicial and executive authorities to ensure protection, promotion and creation of conditions for equal treatment. The central institution for the protection of discrimination is the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, with which the Law on Prohibition of Discrimination vested wide powers in order to protect individuals and groups from statutory discriminatory actions. During the preparation of reports, opinions and recommendations, the Ombudsman for Human Rights of Bosnia and Herzegovina cooperates with civil society organizations dealing with the promotion and protection

of human rights. In accordance with the Law on Prohibition of Discrimination, the institution of Ombudsmen for Human Rights established a special department that deals exclusively with cases of alleged discrimination and has a system of electronic records of discrimination cases (database). The Ministry of Human Rights and Refugees monitors the implementation of the Law on Prohibition of Discrimination, collects data on discrimination cases and reports to the Council of Ministers and the Parliamentary Assembly on discrimination cases, proposing measures for its prevention and suppression. The Minister of Human Rights and Refugees of BiH enacted the Rulebook on the Method of Collecting Data on Discrimination Cases in BiH in order to fulfill the above-mentioned legal obligations.

The Ministry of Human Rights and Refugees, in cooperation with the OSCE Mission to Bosnia and Herzegovina and non-governmental organizations dealing with human rights, continually takes activities to promote the Law on Prohibition of Discrimination and the Rulebook on the Method of Collecting Data on Discrimination Cases in BiH.

According to information available to the Ministry of Human Rights and Refugees, since the entry into force of the Law on Gender Equality of BiH and the Law on Prohibition of Discrimination, only one case was filed with the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, which case involved discrimination against persons on the basis of sexual orientation. In the case, it was an attack on a LGBT person in BiH in 2008, at the time of the Sarajevo Queer Festival. According to the Ministry, the Gender Equality Agency of Bosnia and Herzegovina has no registered complaints of discrimination based on sexual orientation or gender identity. Further, the Ministry of Human Rights and Refugees of Bosnia and Herzegovina has not received any complaints related to discrimination against people based on gender, sexual expression or orientation.

Discrimination is criminalized in the criminal legislation at the level of Bosnia and Herzegovina, the Entities and Brcko District, which clearly confirms the commitment of the authorities in BiH to respect human rights of all people living in it. Thus, the Criminal Code of Bosnia and Herzegovina sanctions discriminatory treatment of citizens of Bosnia and Herzegovina on any grounds, whereby the territorial jurisdiction of the crime is limited to the level of BiH, Entity or Brcko, depending on what law has been violated.

With regard to freedom of association and peaceful assembly, we want to emphasize that the Constitution of Bosnia and Herzegovina, the Entities and the Brcko District of BiH guarantee the right of association and the right to peaceful assembly, so freedom of association and peaceful assembly is a constitutional right of all persons in BiH. The Constitution does not impose restrictions in the exercise of the right to peaceful assembly. The competent authority may limit or prohibit a public assembly only if it is aimed at violent change of the constitutional order, a violation of territorial integrity of Bosnia and Herzegovina, a violation of the constitutionally guaranteed rights and freedoms of man and citizen, provocation and incitement of national, racial and religious intolerance and hatred, obstruction of traffic, endangering public health, morals or safety of persons and property. There is a restriction that a public meeting cannot be convened or addressed by people who have received a security measure prohibiting public appearance.