The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 16(1) and (4)(4),(9) and (14), Article 59(2)(1) and (2), Article 61(1) and (3) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* nos. 60/05, 64/08 and 51/09), in Plenary and composed of the following judges:

Mr. Miodrag Simović, President
Ms. Valerija Galić, Vice-President
Ms. Constance Grewe, Vice-President
Ms. Seada Paravlić, Vice-President
Mr. Tudor Pantiru, Judge
Mr. Mato Tadić, Judge
Mr. Mirsad Ćeman, Judge
Ms. Margarita Tsatsa-Nikolovska, Judge,
Mr. Zlatko M. Knežević

Having deliberated on the appeal of **A. H. I.** in case no. **AP 434/10**, at its session held on 18 January 2012 adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeal of Mr. **A. H. I.** against:

- the judgment of the Court of Bosnia and Herzegovina, no. U-411/09 of 23 December 2009, with regards to the right to respect for private and family life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention for

the Protection of Human Rights and Fundamental Freedoms, with regards to the right not to be subjected to torture or to inhuman and degrading treatment or punishment under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, with regards to the right to life under Article II(3)(a) of the Constitution of Bosnia and Herzegovina and Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, with regards to the right to freedom of thought, conscience and religion under Article II(3)(g) of the Constitution of Bosnia and Herzegovina and Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, with regards to freedom of expression under Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, with regards to the right of freedom of peaceful assembly and freedom of association with others under Article II(3)(i) of the Constitution of Bosnia and Herzegovina and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with regards to the right to non-discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention for the protection of Human Rights and Fundamental Freedoms,

- the judgment of the Court of Bosnia and Herzegovina, no. U-163/10 of 17 December 2010, with regards to the right to respect for private and family life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with regards to the right not to be subjected to torture or to inhuman and degrading treatment or punishment under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

- the judgments of the Court of Bosnia and Herzegovina no. S1 3 U 007375 11 U of 24 November 2011, S1 3 U 007664 11 U of 26 October 2011, S1 3 U 007375 11 U of 23 September 2011, S1 3 U 006983 11 U of 23 August 2011, S1 3 U 006481 11 U of 26 July 2011, S1 3 U 006158 11 U of 28 June 2011, S1 3 U 005945 11 U of 26 May 2011, S1 3 U 004125 11 U of 26 January 2011, S1 3 U 003880 10 U of 29 December 2010, S1 3 U 003593 10 U of 29 November 2010, S1 3 U 003272 10 U of 29 October 2010 and S1 0 002450 10 U of 31 September 2010; rulings of the Ministry of Security of Bosnia and Herzegovina no. UP-2-06-07-2-149/11 of 18 November 2011, UP-2-07-07-2-133/11 of 21 October 2011, UP-2-06-07-2-119/11 of 20 September 2011, UP-2-07-07-2-107/11 of 19 August 2011, UP-2-06-07-2-90/11 of 22 July 2011, UP-2-06-07-2-78/11

of 22 June 2011, UP—2-06-07-2-69/11 of 24 May 2011, UP-2-06-07-2-10/11 of 21 January 2011, no. UP-2-06-07-2-221/10 of 24 December 2010, UP-2-07-07-2-207/10 of 24 November 2010, UP-2-07-07-2-192/10 of 25 October 2010 and UP-2-06-07-2-173/10 of 27 September 2010; ruling of the Ministry of Security of Bosnia and Herzegovina – Department for Foreigners no. UP-1/18.8-07.3-12-39/08 of 16 November 2011, UP-1/18.8-07.3-12-38/08 of 19 October 2011, UP-1/18.8-07.3-12-37/08 of 19 September 2011, UP-1/18.8-07.3-12-36/08 of 18 August 2011, UP-1/18.8-07.3-12-35/08 of 21 July 2011, UP-1/18.8-07.3-12-34/08 of 20 July 2011, UP-1/18.8-07.3-12-33/08 of 20 May 2011, UP-1/19.4.1.-07.3-12-29/08 of 21 January 2011, UP-1/19.4.1.-07.3-12-28/08 of 22 December 2010, UP-1/19.4.1.-07.3-12-27/08 of 23 November 2010, UP-1/19.4.1.-07.3-12-26/08 of 22 October 2010 and UP-1/19.5.-07.3-25/08 of 23 September 2010, with regards to the right to freedom and security of person under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 of European Convention for the Protection of Human Rights and Fundamental Freedoms, with regards to the right to an effective legal remedy under Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the right of person not to be subjected to the right to torture or to inhuman and degrading treatment or punishment under

Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

is dismissed.

The appeal of Mr. **A. H. I.** against the judgments of the Court of Bosnia and Herzegovina, no. U-411/09 of 23 December 2009, S1 3 U 007375 11 U of 24 November 2011, S1 3 U 007664 11 U of 26 October 2011, S1 3 U 007375 11 U of 23 September 2011, S1 3 U 006983 11 U of 23 August 2011, S1 3 U 006481 11 U of 26 July 2011, S1 3 U 006158 11 U of 28 June 2011, S1 3 U 005945 11 U of 26 May 2011, S1 3 U 004125 11 U of 26 January 2011, S1 3 U 003880 10 U do 29 December 2010, S1 3 U 003593 10 U of 29 November 2010, S1 3 U 003272 10 U of 29 October 2010 and S1 0 002450 10 U of 31 September 2010; rulings of the Ministry of Security of Bosnia and Herzegovina, no. UP-2-06-07-2-149/11 of 18 November 2011, UP-2-07-07-2-133/11 of 21 October 2011, UP-2-06-07-2-119/11 of 20 September 2011, UP-2-07-07-2-107/11 of 19 August 2011, UP-2-06-07-2-90/11 of 22 July 2011, UP-2-06-07-2-78/11 of 22 June 2011, UP-2-06-07-2-69/11 of 24 May 2011, UP-2-06-07-2-10/11 of 21 January 2011, UP-2-06-07-2-221/10 of 24 December 2010, UP-2-07-07-2-207/10 of 24 November 2010, UP-2-07-07-2-192/10 of 25 October 2010 and UP-2-06-07-2-173/10 of 27 September 2010; ruling of the

Ministry of Security of Bosnia and Herzegovina – Department for Foreigners no. UP-1/18.8-07.3-12-39/08 of 16 November 2011, UP-1/18.8-07.3-12-38/08 of 19 October 2011, UP-1/18.8-07.3-12-37/08 of 19 September 2011, UP-1/18.8-07.3-12-36/08 of 18 august 2011, UP-1/18.8-07.3-12-35/08 of 21 July 2011, UP-1/18.8-07.3-12-34/08 of 20 June 2011, UP-1/18.8-07.3-12-33/08 of 20 May 2011, UP-1/19.4.1.-07.3-12-29/08 of 21 January 2011, UP-1/19.4.1.-07.3-12-28/08 of 22 December 2010, UP-1/19.4.1.-07.3-12-27/08 of 23 November 2010, UP-1/19.4.1.-07.3-12-26/08 of 22 October 2010 and UP-1/19.5.-07.3-25/08 of 23 September 2010 with regards to the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is rejected as inadmissible for being *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

The appeal of Mr. **A. H. I.** against the ruling of the Ministry of Security of Bosnia and Herzegovina, no. UP-2-06-07-219/11 of 2 March 2011 and ruling of the Ministry of Security of Bosnia and Herzegovina - Department for Foreigners, no. UP-1/18.5.1-07.3-4/11 of 1 February 2011, is rejected as inadmissible for being premature.

The appeal of Mr. **A.H.I.** against the judgment of the Court of Bosnia and Herzegovina no. S1 3 U 005730 11 U

of 27 April 2011, ruling of the Ministry of Security of Bosnia and Herzegovina no. UP-2-06-07-2-58/11 of 22 April 2011 and ruling of the Ministry of Security of Bosnia and Herzegovina – Department for Foreigners no. UP-1/18.8-07.3-12-32/08 of 20 April 2011 is rejected as inadmissible as the time-limit for filing an appeal expired.

Pursuant to Article 77(6) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Decision on Interim Measure, no. *AP 41/09* of 31 January 2009, which, in accordance with the Decision on Admissibility and Merits, no. 41/09 of 28 March 2009, remained in force until the Court of Bosnia and Herzegovina considered evidence and established whether the forcible removal of A.H.I. from the country would be justified within the meaning of requirements under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, shall be rendered ineffective.

This Decision shall be published in the *Official Gazette of Bosnia and Herzegovina*, the *Official Gazette of the Federation of Bosnia and Herzegovina*, the *Official Gazette of the Republika Srpska* and the *Official Gazette of the Brčko District of Bosnia and Herzegovina*.

REASONING

I. Introduction

1. On 29 January 2010, Mr. A. H. I. ("the appellant") from Sarajevo, represented by Mr. Osman Mulahalilović, a lawyer practicing in Brčko and Organisation "Naša prava" from Sarajevo,

submitted to the Constitutional Court of Bosnia and Herzegovina, a supplement to appeal no. *AP 3762/09*, in which he extended the allegations set forth in the appeal dated 4 December 2009 and registered as no. *AP 3762/09* to challenge the judgment of the Court of Bosnia and Herzegovina ("the Court of BiH"), no. U-411/09 of 23 December 2009, ruling the Ministry of Security of Bosnia and Herzegovina ("the Ministry"), no. UP-2-06-07-2-117/09 of 27 July 2007 and ruling of the Ministry of Security of Bosnia and Herzegovina – Department for Foreigners ("the Department"), no. UP-1/19.5.07.3-7/09 of 17 June 2009.

2. Taking into account the fact that in the meantime, i.e. on 17 December 2009, the Constitutional Court rendered Decision no. *AP 1750/09*, wherein it decided on the initially filed appeal in case no. *AP 3762/09*, the aforementioned supplement to the appeal is registered as new appeal no. *AP 434/10*.

3. The appellant then submitted supplements to the appeal on 17 February 2010, 3 December 2010, 26 January 2011, 25 April 2011, 4 July 2011, 12 August 2011, 13 October 2011 and 7 December 2011, whereby he challenged the judgment of the Court of BiH, no. S1 3 U 005324 11 U of 31 March 2011, judgment of the Court of BiH, no. S1 3 U 004840 1 U of 28 February 2011, judgment of the Court of BiH, no. S1 0 002450 10 U of 31 September 2010, ruling of the Ministry, no. UP-2-06-07-2-173/10 of 27 September 2010, ruling of the Department, no. UP-1/19.5.-07.3-25/08 of 23 September 2010, ruling of the Court of BiH, no. S1 3 U 003272 10 U of 29 October 2010, ruling of the Ministry, no. UP-2-07-07-2-192/10 of 25 October 2010 and ruling of the Department, no. UP-1/19.4.1.-07.3-12-26/08 of 22 October 2010, judgment of the Court of BiH, no. S1 3 U 003593 10 U of 29 November 2010, ruling of the Ministry, no. UP-2-07-07-2-207/10 of 24 November 2010, ruling of the Department, no. UP-1/19.4.1.-07.3-12-27/08 of 23 November 2010 and judgment of the Court of BiH, no. S1 3 U 003880 10 U of 29 December 2010, ruling no. UP-2-06-07-2-221/10 of 24 December 2010, ruling of the Department, no. UP-1/19.4.1.-07.3-12-28/08 of 22 December 2010, ruling of the Department, no. UP-1/18.8-07.3-12-30/08 of 21. February 2011, ruling of the Ministry, no. UP-2-06-07-2-26/11 of 23 February 2011, ruling of the Department, no. UP-1/18.8-07.3-12-31/08 of 23 March 2011 and ruling of the Ministry, no. UP-2-06-07-2-37/11 of 25 March 2011, judgment of the Court of BiH, no. S1 3 U 007375 11 U of 24 November 2011, ruling of the Ministry, no. UP-2-06-07-2-149/11 of 18 November 2011, ruling of the Department, no. UP-1/18.8-07.3-12-39/08 of 16 November 2011, judgment of the Court of BiH, no. S1 3 U 007664 11 U of 26 October 2011, ruling of the Ministry, no. UP-2-07-07-2-133/11 of 21 October 2011, ruling of the Department, no.

UP-1/18.8-07.3-12-38/08 of 19 October 2011, judgment of the Court of BiH, no. S1 3 U 007375 11 U of 23 September 2011, ruling of the Ministry, no. UP-2-06-07-2-119/11 of 20 September 2011, ruling of the Department, no. UP-1/18.8-07.3-12-37/08 of 19 September 2011, judgment of the Court of BiH, no. S1 3 U 006983 11 U of 23 August 2011, ruling of the Ministry, no. UP-2-07-07-2-107/11 of 19 August 2011, ruling of the Department, no. UP-1/18.8-07.3-12-36/08 of 18 August 2011, judgment of the Court of BiH, no. S1 3 U 006481 11 U of 26 July 2011, ruling of the Ministry, no. UP-2-06-07-2-90/11 of 22 July 2011, ruling of the Department, no. UP-1/18.8-07.3-12-35/08 of 21 July 2011, judgment of the Court of BiH, no. S1 3 U 006158 11 U of 28 July 2011, ruling of the Ministry, no. UP-2-06-07-2-78/11 of 22 June 2011, ruling of the Department, no. UP-1/18.8-07.3-12-34/08 of 20 June 2011, judgment of the Court of BiH, no. S1 3 U 005945 11 U of 26 May 2011, ruling of the Ministry, no. UP-2-06-07-2-69/11 of 24 May 2011 and ruling of the Department, no. UP-1/18.8-07.3-12-33/08 of 20 May 2011, and judgment of the Court of BiH, no. S1 3 U 005730 11 U of 27 April 2011, ruling of the Ministry, no. UP-2-06-07-2-58/11 of 22 April 2011 and ruling of the Department, no. UP-1/18.8-07.3-12-32/08 of 20 April 2011.

4. As the appeal did not contain all elements prescribed by Article 19(2) of the Rules of the Constitutional Court of Bosnia and Herzegovina, on 26 January 2011 the appellant was requested to submit a supplement to the appeal. On 8 February 2011, the appellant submitted the supplement to the appeal wherein he alleged that he extended the appeal to challenge a new judgment of the Court of BiH, no. S1 3 U 004125 11 U of 26 January 2011, ruling o the Ministry, no. UP-2-06-07-2-10/11of 21 January 2011 and ruling of the Department no. UP-1/19.4.1-07.3-12-29/08 of 21 January 2011. The appellant requested the Constitutional Court of BiH to impose an interim measure whereby it would ordered the authorities of BiH to make it possible for him to immediately inspect all case-files regarding his case, particularly the case-files based on which he was declared a threat to the national security for BiH.

5. On 16 February 2011, the appellant filed an appeal against the judgment of the Court of BiH, no. U-163/10 of 17 December 2010 and ruling of the Ministry of Bosnia and Herzegovina – Sector for Asylum ("the Sector for Asylum"), no. UP-1-08/1-41-1-216-30/07 of 15 January 2010 and ruling of the Department, no. UP-1/18.5.1-07.3-4/11 of 1 of February 2011. The appellant requested the Constitutional Court to impose an interim measure whereby it would forbid his deportation from BiH pending the conclusion of the proceedings upon the appeal. The appeal has been registered as no. *AP 719/11*.

II. Procedure before the Constitutional Court

6. Taking into account the fact that the Constitutional Court received two appeals within its competence concerning the same factual and legal matter, the Constitutional Court, pursuant to Article 31(1) of the Rules of the Constitutional Court, took a decision on the joinder of cases in which it would conduct one set of proceedings and take a single decision no. *AP 434/10*. Appeals no. *AP 434/10* and *AP 719/11* have been joined.

7. Pursuant to Article 22(1) and (2) of the Rules of the Constitutional Court, the Court of BiH, Ministry and Department were respectively requested on 8 October 2010, 18 February 2011, 3 March 2011 and 11 March 2011 to submit replies to the appeal.

8. The Department submitted replies on 20 October 2010 and 28 February 2011. The Ministry submitted replies on 22 October 2010, 3 March 2011 and 10 March 2011 and the Court of BiH submitted its replies on 19 November 2010, 10 March 2011, 15 March 2011 and 24 March 2011.

9. On 24 March 2011, the Court of BiH submitted its judgment no. Uvl.2/11 of 14 February 2011, wherein it dismissed the appellant's request for extraordinary review of the judgment of the Court of BiH, no. U-163/10 of 17 December 2010.

10. On 21 June 2011, the Court of BiH submitted information that the appellant had filed an appeal against the ruling of the Department, no. UP-1/18.5.1-07.3-4/11 of 1 February 2011, with the Ministry which, in ruling no. UP-2-06-07-219/11 of 2 March 2011, had dismissed the appeal, and that it followed from the CMS relating to the administrative disputes cases that the appellant had brought an action before the Ministry, which has not been decided by the date of this decision of the Constitutional Court.

11. Pursuant to Article 26(2) of the Rules of the Constitutional Court of, the replies of the Court of BiH, Ministry and Department were submitted to the appellant on 26 November 2010, 18 March 2011 and 9 May 2011.

III. Facts of the Case

12. The facts of the case, drawn from the appellant's statements and the documents submitted to the Constitutional Court, may be summarized as follows.

As to the temporary stay permit based on the marriage with a BiH citizen

13. As to the appellant's appeals, the Constitutional Court of BiH took decisions, no. *AP 1222/07* of 4 October 2008 and no. *AP 41/09* of 28 March 2009, whereby it granted the appellant's appeals, found the violation of the rights under Articles II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, quashed the judgments of the Court of BiH,

no. U-1172/07 of 21 January 2008, Uvl-03/08 of 14 March 2008 and U-749/08 of 17 November 2008 and the cases were remitted to the Court of BiH for new proceedings, which was ordered to consider all evidence and establish whether the forcible removal of the appellant would be justified within the meaning of the requirements under Article II(3)(f) of the Constitution of BiH and Article 8 of the European Convention. Furthermore, the Constitutional Court, in its decision no. *AP 41/09*, pursuant to Article 77(6) of the Rules of the Constitutional Court, decided that the decision on the temporary measure no. *AP 41/09* of 31 January 2009, wherein it ordered the public authorities of Bosnia and Herzegovina not to take any action with the aim of forcibly removing the appellant from Bosnia and Herzegovina pending the adoption of a final decision on the appeal in question, would remain in force until the Court of BiH acted in compliance with the aforementioned order.

14. In the proceedings which were renewed in compliance with the instructions which the Court of BiH gave in its judgment no. U-176/09 of 22 May 2009, i.e. in the procedure for enforcement of the Decision of the Constitutional Court, no. AP-41/09 of 31 January 2009, the Department, in its ruling no. UP-/19.5.07.3-7/09 of 17 June 2009, dismissed the appellant's application for temporary stay permit in BiH based on a marriage to a BiH citizen and he was given a time limit of 15 days as of the date of delivery of the final ruling to voluntarily leave the BiH territory. The Department stated in the ruling that the appellant was married to a BiH citizen and that they had three children who were also the BiH citizens and that it was established based on a report of the Intelligence-Security Agency of BiH, dated 17 April 2007, that the appellant represented a serious threat to the public order and national security of BiH and that he was registered with the ASF database of the General Secretariat of Interpol and criminal and operative records of the Ministry of the Zenica-Doboj Canton based on the judgment of the Municipal Court of Maglaj, no. K-17/00 of 21 June 2000. It was stated that the Department, having considered the instructions given in the aforementioned judgment of the Court of BiH, dated 22 May 2009, assessed that the interference of the State with the family life of the appellant was not contrary to Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention"). It was stated that the dismissal of the appellant's application for temporary stay permit and his possible removal from BiH within the prescribed time-limit could not be considered a violation of Article 8 of the European Convention as the case relates to the achievement of the legitimate aim, which has priority over the appellant's right to private and family life.

15. The Department stated that the rights of aliens could be partially and fully limited to the extent necessary in a democratic society in the interest of the State or public security and that the appellant was ordered to voluntarily leave Bosnia and Herzegovina within the prescribed limit but he was not ordered to return to a territory on which he would be subjected to torture, inhuman or degrading treatment nor was his use of prescribed legal remedies challenged. In this connection, the Department, pursuant to the provisions of Articles 41 and 42(3) of the Law on Movement and Stay of Aliens and Asylum ("the Law"), and having found that the adoption of such ruling was lawful, proportional to the aim and justified and taking into account the seriousness of the threat which the appellant represents to the national security of BiH, dismissed the application for temporary stay permit.

16. The appellant filed an appeal with the Ministry which, in its ruling no. UP-2-06-07-2-117/09 of 27 July 2009, dismissed the appeal as ill-founded and upheld the first-instance ruling. The Ministry stated in the reasons for its ruling that following the examination of the case-file, allegations and attachments to the appeal, it found that the first-instance authority had fully and correctly established the facts and had correctly applied the substantive law and made a decision based on the law. According to the reasons of the Ministry, the first-instance ruling was passed in accordance with Article 41(1) of the Law which provides that an alien, who fulfils the conditions for granting residence prescribed in the present Law shall have his/her application for a temporary or permanent stay permit refused if he/she has intentionally provided incorrect information or intentionally disguised circumstances of relevance for issuance of the permit or he/she has been registered with the BiH law enforcement authorities, in particular as an international offender or his/her presence, based on the information available to the Ministry, constitutes a threat to public order and national security of BiH. The Ministry stated that Article 39 of the Rulebook on Entry and Stay of Aliens provides that an application for temporary or permanent residence in BiH shall be refused if the applicant is registered with the BiH law enforcement authorities and particularly if he is registered as an international offender with the Office for Cooperation with Interpol of the Ministry of Security. The Ministry stated that the grounds for refusing the application were the facts which followed from the records at the disposal of the aforementioned authorities, made decisions and possible operative information at the disposal of the aforementioned authorities.

17. In this regard, the Ministry alleged that based on the examination of the attachments to the case-files marked as confidential, i.e. evidence submitted by the Intelligence-Security Agency of BiH, dated 17 April 2007, it was indisputably established that the appellant represented a serious

threat to the public order and national security of BiH. Based on an act of the NCB Interpol, dated 17 May 2007, it was established that the appellant was registered in the ASF database of the General Secretariat of Interpol and the BiH law enforcement authorities. According to the reasons of the Ministry, the aforementioned facts constitute the grounds for application of Article 41 of the Law. Taking into account the aforementioned facts, the Ministry found that the appellant unfoundedly complained about the violation of the right to a fair trial. Furthermore, the Ministry alleged that the fact that the appellant was not allowed to examine the aforementioned Report of the Intelligence-Security Agency of BiH was the consequence of the limitation prescribed by Law on Administrative Procedure and the Law on Protection of Secret Data which provide for the requirements for having access to such data and that documents marked as confidential cannot be inspected nor copied if it would defeat the purpose of the procedure or if it is contrary to the public interest.

18. As to the appellant's complaints relating to giving information on his previous criminal records, because the Municipal Court of Zavidovići, in its ruling, ordered deletion of a suspended sentence, the Ministry gave reasons that these allegations were not of decisive relevance to this administrative matter as the challenged ruling of the Department was based on the fact that the appellant represented a serious threat to the public order and national security and that he was registered with the BiH law enforcement authorities and Interpol, which constituted a basis for rejecting the application of the temporary stay permit.

19. Furthermore, the Ministry noted that the appellant's allegations relating to the violation of the right to a private and family life, home and correspondence under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention were unfounded as the decision was made on the basis of the law which was published in the official gazette, which indubitably stipulates when the alien's application for temporary stay permit in BiH may be refused. In the present case, according to the reasoning of the Ministry, the refusal of the application for temporary stay permit was not the consequence of arbitrary conduct of the first-instance authority, since taking into account the presented evidence one might come to the conclusion that the first-instance proceedings were conducted on the basis of the law and that the decision on refusal was made on the basis of the law regulation. "Taking into account the fact that it was established in the first-instance proceedings that the appellant was an alien registered with the ASF database of the General Secretariat of Interpol and that he constituted a serious threat to the pubic order and national security of BiH, the interference of the State with the right under Article II(3)(f) of the

Constitution of BiH and Article 8 of the European Convention, was a necessary measure in a democratic society, i.e. the refusal of the application for temporary stay permit is not disproportional to the legitimate aim sought to be achieved, as the State's interest in protecting the public order prevails over the appellant's interest in leaving with his family in BiH. Accordingly, this Ministry holds that there has been no violation of Article II(3)(f) of the Constitution of BiH and Article 8 of the European Convention." The Ministry dismissed as ill-founded the appellant's allegations relating to the violation of the right to life and right not to be subjected to torture, inhuman or degrading treatment or punishment with the reasoning reading that the violation of these rights may be considered only upon an application for international protection.

20. The appellant initiated an administrative dispute by bringing an action before the Court of BiH which rendered judgment no. U-411/09 of 23 December 2009, whereby it dismissed the action. The Court of BiH noted in the reasons for the judgment that while deciding on the action it took into account the decisions of the Constitutional Court of BiH, no. *AP 1222/07* of 4 October 2008 and no. *AP 41/09* of 28 March 2009, and judgments of the European Court, no. 3727/08, and Administrative Panel of the Court of BiH, no. U-176/09 of 22 May 2009, and decided it was necessary to hold an oral public hearing and to summon the parties to the proceedings to voice their opinion about the presented evidence in the administrative proceedings. The Court of BiH noted that for the sake of assessment of the correctness of the challenged ruling it had obtained the case-file of the Ministry containing the Reports of the State Investigation and Protection Agency of BiH – Crime Investigation Department - Intelligence-Security Agency of BiH, which, under the law carried out the security checks of foreigners with the aim of establishing reasons related to the BiH security, as well as the Notification of NCB Interpol Sarajevo. With the aim of providing the appellant with the best opportunities to face "evidence wherefrom it follows that he is an international criminal and that his presence, as an alien, represents a threat to the public order and national security, the Court of BiH requested the Intelligence and Security Agency of BiH to single out acts which meet legal requirements in terms of revocation of the elements of secrecy, in order for them to be presented to the appellant at the oral hearing and afford him a chance to face evidence and challenge them. In this connection, the Court of BiH noted that the Intelligence and Security Agency of BiH informed the Court of BiH that "despite maximum understanding, it was unable to accommodate the request of this court, as the case-files of Interpol are not the case-files of the Agency, and accordingly the Agency is not in a position to dispose with such case-files. Besides, in its letter the Agency informed the Court that it is unable to disclose without authorization the intelligence sources,

intentions and operations of the person about whom secret data and information are being collected, on the grounds that such an obligation is prescribed by Article 27(1)(9) of the Law on Intelligence and Security Agency of BiH (…)". The Court of BiH gave reasons reading that on the basis of the aforementioned reports which are in the case-file of the Ministry, in the part not falling under the category of "confidential and secret data", it established the relevant facts relating to the arrival of the appellant in BiH, his stay in BiH and his activities (foundation of Association "ENSARIJA", giving an interview to the magazine "SAFF" and other media, which was also found to be a threat to the institutions conducting the procedure of revision of citizenships of naturalized persons, holding lectures at a mosque and attempting to purchase ammunition at a weapons store located in settlement Stup in Sarajevo).

21. The Court of BiH also stated in the reasons that having heard both parties to the proceedings and based on the statements and assessment of the aforementioned documents and content of the challenged ruling, it found that the Ministry's conclusion was correct that the requirements prescribed by Article 41 of the Law were met to dismiss the appellant's application for temporary stay permit. The Court of BiH noted that the Ministry had correctly assessed that while deciding the application of the appellant for temporary stay the State authorities were authorized to assess whether to grant a permit for stay in the state to an alien, as it was a matter falling within the scope of public law of any country, and if a state denied the right of stay to a particular alien, that was considered to be an act of the state falling exclusively within its public and legal domain. "Therefore Article 8 of the European Convention does not impose on the state a general obligation to respect the choice of spouses as to which country they wish to stay in during marriage and to approve undisturbed enjoyment of the right to private and family life in its territory." The Court of BiH stated that the aforementioned findings of the Ministry were lawful and correct and were not doubted, as it followed from the aforementioned report that the appellant represented a serious threat to the public order and national security and "with the interest of the state to protect public order or security being superior to the interest of the appellant to live with his family in Bosnia and Herzegovina, the defendant made a correct decision by dismissing the appellant's application for temporary stay on the grounds of marriage with a BiH citizen".

22. The Court of BiH also noted that the appellant failed to challenge the aforementioned finding of the Ministry during the proceedings by presenting a single fact or legally relevant evidence, except for presenting arbitrary assessment that he is not a threat to public security of BiH, and found as unfounded the appellant's allegations that he has nothing to do with his country of

origin, that he forgot the Arabic language and that upon returning to Syria he would be an alien in his country of origin. According to the reasoning of the Court of BiH, it follows from the data in the case-file, as well as on the basis of attachments that the appellant has duly, every two years, obtained the passport of Syria, and that up until turning 35 he had duly reported to the Ministry of Defense of the State of Syria to postpone military service. The Court of BiH noted that it followed from newspaper articles and letters by way of which the appellant addressed the competent institutions of BiH regarding the founding of the State Commission for the Review of Decisions on Naturalization of Foreign Citizens in BiH that the appellant had appeared on several occasions in the media and gave statements and that he enjoyed the support of a great number of citizens from the Entity of FBiH, which were reflected in protest rallies in front of the institutions of Bosnia and Herzegovina and thus it was not disputed in a sense that such appearances and public protests could provoke disturbance of public order and peace. Furthermore, the Court of BiH noted that during the hearing the appellant did not challenge or attach evidence that he was not entered into the nominal ASF database of the Interpol General Secretariat as an international criminal, "(…) thus, the Court concludes that the challenged decisions are based on relevant provisions of the substantive law, which are clear and unambiguous and which application was not arbitrary (…)".

23. Finally, the Court of BiH noted that given the fact that in this case a decision was taken only on the appellant's application for stay permit in BiH and that in the enacting clause of the challenged decision it was pointed to a legal obligation of a foreigner to voluntarily leave the territory of BiH so that the appellant in these proceedings was not authorized to make an objection stating that the adoption of the mentioned decision violated his right to family life.

As to the order to voluntary leave the territory of BiH

24. According to the ruling of the Sector for Asylum, no. UP-1-08/1-41-1-216-30/07 of 15 January 2010, the appellant was given a time limit of 15 days as of the date of this ruling becoming legally valid to voluntarily leave the territory of Bosnia and Herzegovina if he had no legal permission to stay on the territory of Bosnia and Herzegovina. The reasons of the ruling indicate the chronology of proceedings which the appellant conducted before the authorities of BiH with the aim of obtaining an asylum and temporary stay in BiH, and it is stated, *inter alia*, that acting in accordance with the judgment of the Court of BiH, no. U-730/08, the Ministry issued the ruling no. UP-1-08/1-41-1-216-18/07 of 6 March 2009, establishing that the interference with the appellant's private and family life in the proceedings of removing him from the territory of BiH was justified and proportionate to the seriousness of threat to the national security, and the Supplement Ruling

no. UP-1-08/1-41-1-216-21/07 of 18 March 2009, dismissing the appellant's request not to be removed from the territory of BiH. The aforementioned person duly filed action to initiate administrative dispute against the said rulings. The Court of BiH, in its judgment no. 185/09 of 17 August 2009, granted the appellant's action, quashed the aforementioned ruling of the Ministry and referred the case for repeated proceedings giving reasons reading that the Ministry had not acted either in accordance with the provisions of the Law or pursuant to the instruction of the Constitutional Court and the Court of BiH, not resolving the part of the request which was closely related to the request for granting the asylum which it ought to have examined *ex officio* (the right to subsidiary protection and, related to that, order to leave the territory of BiH). In the repeated proceedings, the Ministry issued a ruling, setting for the time limit to voluntarily leave the territory of BiH within 15 days from the date of this ruling becoming legally valid, against which the appellant initiated administrative dispute before the Court of BiH. By judgment no. U-566/09 of 15 December 2009, the Court of BiH granted the action, quashed the challenged ruling of the Ministry and referred the case back for renewed proceedings. According to the aforementioned judgment, the Ministry was ordered to act in the repeated proceedings pursuant to instructions of the court contained in the aforementioned judgment and the judgment no. U-730/08 of 17 November 2008, also bearing in mind Article 79 of the Law. That Article prescribes that an asylum applicant who has exhausted all available legal remedies and whose request has been rejected with a final and binding decision, but with respect to whom it has been determined that he/she nevertheless cannot be removed from the BiH territory for the reasons prescribed in Article 60 of the Law, shall be issued a temporary residence permit on humanitarian grounds in the sense of Article 35 paragraph 1 item d) of the Law. It is further stated in the judgment that there also has to be taken into account the provision of item e) of the same Article, prescribing that temporary residence on humanitarian grounds shall be exceptionally granted to an alien who does not fulfill the requirements needed for issuance of a temporary residence permit prescribed by this Law, the validity of which shall be assessed by the competent organizational unit of the Ministry in the seat, but the provision of paragraph 2 of the same Article provides the same if so being in the function of enabling the administration of the court proceedings where he/she shall appear as a plaintiff, an injured party or a witness. It is stated that this should be taken into account given the fact that the issue of temporary stay has not been concluded by a final and binding decision, that the proceedings for his forcible removal have not been initiated and the fact that the Constitutional Court has not yet decided on his appeal lodged against the judgment of the Court of BiH no. U-749/08 of 17 November 2008.

25. In this connection, the Sector for Asylum stated it had scheduled and performed an interview with the applicant on 4 January 2010 in the presence of his representative and an UNHCR representative, at which the appellant was given an opportunity to state his position on any conceivable violations of the right to family life in the proceedings relating to asylum. The Sector for Asylum further stated that the appellant stated that he had come to the former Yugoslavia 27 years ago, and spent 17 of them in BiH and that he had been residing in BiH since 1994 continuously, that his father, mother and brother had been killed in a traffic accident in Syria and that in that sense he had no ties with Syria and had forgotten the Arab language. The appellant stated that he got accustomed to the Bosnian way of living, that he had economic stability in BiH and that his children did not know any members of his family in Syria as they only had opportunity to meet his mother, who had come to visit with them, but that she was deceased now. The appellant stated that his wife had no family in BiH as her close family lived in Switzerland, that his wife was diagnosed with cancer that by his leaving for the Immigration Center, the family lost its pillar and bread-winner, that his wife's health deteriorated, that the children were not such good students anymore, while their behavior at school also deteriorated. In this regard, the appellant stated that because of applicant's placing into the Immigration Center, his wife had to find a job, ensure the children and transfer all obligations to herself, all those things that the applicant did before, which is a great physical and psychological burden to her and that by his removal from BiH the right to family life would be violated.

26. As to the appellant's allegations on the violation of the right to a family life, the Sector for Asylum noted that in the proceedings following request for asylum it was not decided about leaving BiH, i.e. the removal of the asylum applicant from BiH as Article 87(6) of the Law provides that the ruling on expulsion of an alien from BiH, including prohibition to enter and stay in BiH for a specified period, shall be issued by the Service for Foreigners Affairs *ex officio* or upon a reasoned proposal of another organizational unit of the Ministry, a law enforcement body or other authority. It follows therefrom that the Sector for Asylum has no subject matter jurisdiction to impose a measure of expulsion, i.e. to order an alien to leave BiH and prohibit entry and stay in BiH for a specified period of time. According to the Sector for Asylum, the ruling on dismissing request for asylum, which is what the present case is about, determines the time limit to voluntarily leave the territory, but such ruling may not be enforced under coercion as only if such a person does not leave the territory of BiH within the set time limit for voluntary leaving the territory of BiH and has not acquired the right to stay in some other way, the measure of expulsion may be imposed, but that

should be decided by another organizational unit of the Ministry - Department in separate proceedings (Article 88 of the Law): "The time limit for voluntarily leaving the territory of BiH is always set when the request for asylum is dismissed without any prior proceedings except determination of the requirements for granting refugee status or temporary residence on humanitarian grounds in accordance with Article 35(1)(d) of the Law. If the request for asylum is dismissed, which is involved in the present case, the Asylum Sector has no other possibility under the law but to set a time limit for the applicant to leave the territory of BiH voluntarily. As stated in the judgment, dismissal of the request for asylum without setting a time limit to leave the territory of BiH voluntarily would be meaningless."

27. The Sector for Asylum gave reasons stating that the appellant's case was specific because several parallel proceedings were being conducted relating to his stay in BiH and that it was stated in the judgment of the Court of BiH that the proceedings related to the request for temporary residence had not been finalized, which gave the appellant the right to stay in BiH, and in that sense the time limit to leave the territory of BiH voluntarily would not start running while the appellant had legal residence in BiH and if the appellant regulated his stay in BiH, he would not be obliged to leave BiH and this time limit would be of no consequence. In this connection, the Sector for Asylum stated that it respected the appellant's right to allege the violation of his right to family life and asserted the right to stay in BiH on those grounds but it could not determine the violation of the applicant's right to family life in case he is expelled from BiH given its competence and also because it would then prejudge the decision of other organizational units, since in the appellant's case the expulsion proceedings have never been initiated and the proceedings related to the request for temporary residence had not been concluded by a final and binding decision.

28. Furthermore, the Sector for Asylum noted in the ruling that the appellant attached newspaper articles with regards to his allegations, which were specified in the ruling, and an excerpt from the Syrian Law on Citizenship, i.e. the provisions relating to the loss of citizenship by renunciation or marriage and reacquisition thereof. In this connection, the Sector for Asylum mentioned that newspaper articles could not be regarded as valid evidence and that it appeared that all of them, except the first mentioned, related to the period prior to the issuance of the decision upon request for asylum and did not present any facts, i.e. they did not change essentially the facts as established in the proceedings prior to the issuance of the decision on refusal of application for asylum. Furthermore, the Sector for Asylum noted that the Law on Citizenship, the excerpt of which the applicant attached, in addition to not representing a new fact, since it was in force at the time the

asylum application was being processed, can also in no way be brought into connection with the present case. The Sector for Asylum gave reasons stating that the appellant noted that he would be threatened by death penalty in Syria in case he was deported as a threat but that this organizational unit did not decide about expulsion and could not venture into the reasons for expulsion, i.e. it could not prejudge the decision on expulsion and the conceivable consequences thereof. The Sector for Asylum also stressed "please note that the Asylum Sector, in processing the present asylum application, did not establish the fact that the applicant was a threat to national security, either had it refused the request for asylum because of that fact. The Law on Movement and Stay of Aliens and Asylum from 2003, under which the request for asylum of A. H. I. has been resolved, did not provide for such possibility."

29. The appellant initiated an administrative dispute by bringing an action against the aforementioned ruling before the Court of BiH, which, in judgment no. U-163/10 of 17 December 2010, dismissed the action. The Court of BiH noted in the reasons for its judgment that pursuant to the data in the case file, the defendant body dismissed the request for asylum and by dismissing the request was obligated to set to the plaintiff the time limit to voluntarily leave the territory of BiH. It further stated that the competent authority, in acting pursuant to the decisions of the Constitutional Court of BiH and the Court of BiH, repeated proceedings, re-evaluated the evidence and heard the appellant in respect of the circumstances relating to the violation of his right to family life, correctly establishing that the dismissal of the request for asylum as well as the issuance of the decision on the time limit for him to voluntarily leave the territory of BiH had not in the present case amount to the violation of the right under Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH. According to the reasons, the defendant has correctly stated that setting a time limit for voluntarily leaving the territory of BiH did not amount to a measure which might be forcibly executed but that in case the plaintiff did not voluntarily leave the country within the set time limit, separate proceedings of expulsion might be initiated and the decision issued by another organizational unit of the Ministry. The circumstance that the time limit has been set for the appellant to voluntarily leave the territory of BiH is not a decision on expulsion, as stated in the judgment, because such decision shall be issued only after the expiry of the time limit set for voluntary enforcement, in separate proceedings, if requirements are met under Article 88(1)(d) of the Law, after his refugee status, subsidiary protection or temporary protection has expired or after the conditions prescribed in Article 117 of this Law have been met and if he has not acquired the right to stay in accordance with this Law. Furthermore, the Court of BiH noted that during the

course of these proceedings, the appellant' request for temporary residence was also dismissed by the judgment of this court no. U-411/09 of 28 December 2009 and the reasoning part contains extensive reasons regarding the circumstance of the possibility of the violation of the appellant's right to private and family life under Article 8 of the European Convention.

30. In this connection, the Court of BiH noted that taking into account the fact that the appellant's application for asylum has been dismissed as well as his request for subsidiary protection and his request for temporary residence based upon his marriage to a BH citizen, including the fact that the direct consequence of such decisions is the possibility of initiating expulsion proceedings to his country of origin, the Court considered with particular attention the findings of the defendant regarding the assessment of proportionality between the need of the state to protect the public interest and providing security by imposing the measure of expulsion and the impact of that measure on the appellant's family life, where, in order to assess the proportionality, it was necessary to consider the issue of the length of the plaintiff's stay in this country, the intensity of his bonds with the country of origin, of the contacts he maintained, economic dependency and also the possibility for him to continue living together with the members of his family. The Court of BiH also reiterated the aforementioned facts established in the proceedings conducted by the appellant and gave reasons reading that "the Court takes by all means seriously the fact that the plaintiff has three children with the citizen of BiH, that those children are the citizens of BiH and that the bonds with this country, we accept, are tighter than the plaintiff's bonds with his country of origin. There is no justification in forcing his wife and children in any way to leave their country, which has no bearing on the fact that this may be a matter of choice. Naturally, any coercion regarding the plaintiff has to reflect on the members of his family. Therefore, it is here that the issue of proportionality is the strongest. The Court finds that, in addition to the fact that the plaintiff has been assessed as dangerous for the public order and national security of BiH, it is important to emphasize that the entire stay of the plaintiff if BiH is permeated with incorrect data, these data are launched in accordance with the plaintiff's current needs, starting from the time of his arrival to BiH, the time when he concluded his marriage, to his participation in various political organizations in Syria and contacts with persons declared to be undesirable in BiH, his membership in associations which declare themselves to be humanitarian but assessed by the public opinion to be quite different. None of the submitted data is absolutely correct. Checking them up in the proceedings before the bodies of the defendant or in the administrative dispute before this court

indicates clever utilization of data for current needs of the plaintiff and disrespect of BiH regulations because the given data show themselves as incorrect".

31. Furthermore, the Court of BiH noted that the appellant did not come to BiH as a child nor with relatives for him to be able to say that he has forgotten the customs of his countrymen and adopted the customs that prevail in BiH. His stay has neither been long nor constant. It can be called constant as of 1994 or from the conclusion of his marriage, i.e. 15-16 years, while the bonds with his own country have not been severed for a much longer period. The Court of BiH noted that the appellant has not come as a refugee nor has he met the requirements for acquiring such status, nor has he met the requirements for acquiring subsidiary protection, i.e. residence, but his entire conduct amounted to fraudulent conduct and violation of the positive regulations of BiH, and the appellant's contacts and personal relationships with persons belonging to the circle of persons recognized as close to security-wise dangerous organizations have placed him on the list of persons who represent a threat to the security in BiH.

32. Taking into account all the aforesaid, the Court of BiH concluded that the aforementioned reasons did not justify the appellant's invocation of the violation of his right under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention and that in the present case, as a matter of fact, the measure of expulsion had not been imposed and no extradition was involved either, but only setting of the time limit for voluntary enforcement of the decision on dismissing his application for asylum and even there, the Court of BiH found that in the present case the interference with the private life of the plaintiff was entirely justified and proportionate to the necessity to protect the public order and security of this country. The Court of BiH concluded that in view of Article II(3)(f) of the Constitution of BiH and Article 8 of the European Convention, setting a time limit for the appellant to voluntarily leave BiH was justified and there has been no violation of the aforementioned right given that the imposed measure was proportionate to the character of the protected asset.

33. The appellant filed a request for extraordinary review of court decision with the Court of BiH which, in judgment no. Uvl-2/11 of 14 February 2011, dismissed the request as ill-founded. In the reasons for the judgment the Court of BiH reiterated the facts set forth in the judgment challenged by the appellant and concluded that the allegations set forth in the case-file did not justify the appellant's invocation of violation of Article II(3)(f) of the Constitution of BiH and Article 8 of the European Convention, "taking particularly into account the fact that the measure of expulsion was not imposed in the present case, nor does the case relate to the extradition but to

setting a time limit for voluntary compliance with the decision following the refusal of the application for asylum, and that the time limit of 15 days set in the challenged ruling does not constitute automatic expulsion nor does it constitute extradition. The subject of this administrative/judicial proceedings is not deportation of the plaintiff, i.e. forcible leaving of the territory of BiH. This is the subject of another proceeding in which the competent authority examines possible violations of Article 8 of the European Convention." Taking into account the aforesaid, the Court of BiH dismissed the appellant's request for extraordinary review of the judgment of that court, no. U-163/10 of 17 December 2010. The appellant did not file appeals to challenge the aforementioned judgment.

Placing the appellant under supervision

34. According to the rulings of the Department, no. UP-1/19.5.-07.3-25/08 of 23 September 2010, no. UP-1/19.4.1.-07.3-12-26/08 of 22 October 2010, no. UP-1/19.4.1.-07.3-12-27/08 of 23 November 2010, no. UP-1/19.4.1.-07.3-12-28/08 of 22 December 2010, no. UP-1/19.4.1.-07.3-12-29/08 of 21 January 2011, no. UP-1/18.8-07.3-12-30/08 of 21 February 2011, no. UP-1/18.8-07.3-12-31/08 of 31 March 2011, no. UP-1/18.8-07.3-12-32/08 of 20 April 2011, no. UP-1/18.8-07.3-12-33/08 of 20 may 2011, no. UP-1/18.8-07.3-12-34/08 of 20 June 2011, no. UP-1/18.8-07.3-12-35/08 of 21 July 2011, no. UP-1/18.8-07.3-12-36/08 of 18 August 2011, no. UP-1/18.8-07.3-12-37/08 of 19 September 2011, no. UP-1/18.8-07.3-12-38/08 of 19 October 2011, no. UP-1/18.8-07.3-12-39/08 of 16 November 2011, the supervision of the appellant was exceptionally extended as well as his placement in the Institution for the Reception of Foreigners of the Department for Foreigners - Immigration Center Istočcno Sarajevo, for the periods mentioned in the rulings, with the reasons reading that the measure of supervision is necessary in order to prevent free and unlimited movement due to the threat to the public order, peace and security of BiH and in order to secure the measure of expulsion while stating the evidence and reasons interpreted in the previous paragraphs of this Decision, and as there were no alterations in the present case as it follows from the reasons given by the Department. All rulings essentially state that the supervision over the appellant was extended in accordance with Article 99(2)(b) and Article 102(5) of the Law, that the measure of supervision was imposed after his application for temporary stay permit had been rejected and that the measure of supervision was extended in compliance with the time-limits prescribed by the Law. The rulings state that the Constitutional Court's Decision on Interim Measure dated 31 January 2009 ordered all public authorities in Bosnia and Herzegovina not to take any action with the aim of removing the appellant from BiH and as all judicial and

administrative proceedings conducted against the appellant have not been concluded yet, there are special circumstances justifying the conclusion that that the legal requirements to extraordinary extension of the supervision over the appellant have been met.

35. The appellant filed appeals against the aforementioned rulings with the Ministry which, in rulings no. UP-2-06-07-2-173/10 of 27 September 2010, no. UP-2-07-07-2-192/10 of 25 October 2010, no. UP-2-07-07-2-207/10 of 24 November 2010, no. UP-2-06-07-2-221/10 of 24 December 2010, no. UP-2-06-07-2-10/11 of 21 January 2011, no. UP-2-06-07-2-26/11 of 23 February 2011, no. UP-2-06-07-2-37/11 of 25 March 2011, UP-2-06-07-2-58/11 of 22 April 2011, no. UP-2-06-07-2-69/11 of 24 May 2011, no. UP-2-06-07-2-78/11 of 22 June 2011, no. UP-2-06-07-2-90/11 of 22 July 2011, no. UP-2-07-07-2-107/11 of 19 August 2011, no. UP-2-06-07-2-119/11 of 20 September 2011, UP-2-07-07-2-133/11 of 21 October 2011, no. UP-2-06-07-2-149/11 of 18 November 2011, dismissed the appeals as ill-founded and fully accepted the reasons of the first-instance authority.

36. The appellant brought an action against the aforementioned rulings before the Court of BiH which rendered the following verdicts: no. S1 0 002450 10 U of 30 September 2010, no. S1 3 U 003272 10 U of 29 October 2010, no. S1 3 U 003593 10 U of 29 November 2010, no. S1 3 U 003880 10 U of 29 December 2010, no. S1 3 U 004125 11 U of 26 January 2011, no. S1 3 U 004840 11 U of 28 February 2011 and no. S1 3 U 005324 11 U of 31 March 2011, S1 3 U 005730 11 U of 27 April 2011, no. S1 3 U 005945 11 U of 26 May 2011, no. S1 3 U 006158 11 U of 28 June 2011, no. S1 3 U 006481 11 U of 26 July 2011, S1 3 U 006983 11 U of 23 August 2011, S1 3 U 007375 11 U of 23 September 2011, S1 3 U 007664 11 U of 26 October 2011, no. S1 3 U 007375 11 U of 24 November 2011, wherein it dismissed the actions by giving the reasoning that it found that the rulings were passed on the basis of the relevant law provisions and correctly and fully established factual state. The Court of BiH essentially noted in its verdicts that it had scheduled a hearing of the appellant (the dates of the hearings are indicated in the verdicts) in accordance with the provisions of Article 101(4) of the Law and that during the hearing the appellant remained supportive of his allegations set forth in the action. As the Court of BiH noted that the subject of the proceedings were the existence of considerably changed circumstances, i.e. reasons for which the appellant was placed under supervision and as it followed from the case-file and reasons for the challenged rulings that the circumstances did not considerably change, the Court of BiH concluded that the reasons for which the appellant had been placed under supervision as provided for by Article 99(2)(b) of the Law, still existed. Furthermore, the verdicts stated, *inter alia,* that the

challenged rulings on extraordinary extension of supervision did not lead to the violation of appellant's rights under Articles 8 and 5 of the European Convention, since the placement of the appellant under supervision violated in no way the rights of the appellant's family and his own rights as the State was entitled to take measures towards the appellant in the manner and in accordance with the procedure determined in the challenged rulings. It was stated that in accordance with the Law, Constitution and European Convention, the imposition of supervision over the appellant had priority over the private life. The Court of BiH gave reasoning stating that the appellant's rights under Article 5(1)(f) of the European Convention were not violated as that Article provides for the lawful deprivation of liberty of persons with the aim of preventing illegal entry into the country or person against whom the procedure for deportation or extradition is pending. In this connection, the Court of BiH referred to the decision of the Constitutional Court, no. AP 1626/09 of 24 June 2009, in which the Constitutional Court concluded *inter alia* that this case related to the lawful deprivation of liberty of an alien within the meaning of Article 5(1)(f) of the European Convention when the alien was deprived of liberty in accordance with the provisions of Article 99(1) and (2)(b) of the Law. In addition to this, it was stated in the verdicts passed after March 2011 that on 16 March 2001 the European Court imposed interim measure wherein it banned the BiH authorities from taking any action relating to the deportation of the appellant and that thus the requirements for extraordinary extension of supervision over the appellant were met, in conjunction with the aforementioned reasons.

As to the deportation

37. The Department, in its ruling no. UP-1/18.5.1-07.3-4/11 of 1 February 2011, found that the appellant would be expelled from the territory of BiH and he was ordered to leave the territory of BiH within a time limit of 15 days as of the date of delivery of the ruling under threat of forcible performance and the appellant was forbidden from entry and stay into the territory of BiH in the period of five years as of the date of leaving BiH. The reasons for the ruling reiterated the whole chronology of the proceedings which the appellant conducted before the authorities of BiH, the established facts and facts relating to the imposed interim measures of the European Court and Constitutional Court and it is concluded in this connection that taking into account all the aforesaid and the fact that the appellant did not voluntarily leave the territory of BiH, it is necessary to impose on the appellant the measure of expulsion and ban on entry into BiH for a period of 5 years as of the date of expulsion. The Department states that the appellant's application for international protection was dismissed as it was established that he did not fulfill the requirements to grant him the status as

refugee or temporary stay on humanitarian grounds and that his application for stay based on his marriage to a BiH citizen was dismissed and "taking into account the fact that the direct consequence of these decisions is the resolution according to the enacting clause, a particular attention was afforded to the consideration of proportionality between the State's need to protect the public interest and security and effect of imposition of this measure and family life of the appellant. The Department further stated that "as to the reasons which the person in question indicated in the proceedings upon the applications for residence and asylum, which relate to the alleged violations of his right to family life, it clearly follows from the reasons for all decisions of the competent administrative and judicial authorities passed on the basis of direct application of the European Convention to the renewed proceedings that such allegations were seriously considered and considered as unjustified, which argues for the justification of interference with the private and family life of the person in question by the State authorities. The interference with the private and family life, in view of the facts presented above, is proportionate to the character of the protected asset." The Ministry noted that "in respecting the interim measure imposed on Mr. A.H.I. by the court, which, pursuant to Article 77(6) of the Rules of the Constitutional Court, has a legal effect pending a final decision on the aforementioned appeal, this authority shall not take further measures and actions with the aim of forcibly removing Mr. A.H.I. from BiH as long as the interim measure is in force, i.e. shall not adopt the conclusion allowing the enforcement of the ruling and expulsion."

38. It follows from Information of the Court of BiH that the appellant filed an appeal against the ruling of the Department, no. UP-1/18.5.1-07.3-4/11 of 1 February 2011, with the Ministry which, in ruling no. UP-2-06-07-219/11 of 2 March 2011, dismissed the appeal and that it follows from the CMS of cases relating to the administrative disputes that the appellant brought an action against the aforementioned ruling before the Court of BiH which has not dealt with it by the date of adoption of the Constitutional Court, while the appellant has not submitted any information thereon.

IV. Appeal

a) Allegations from the appeal

39. The appellant complains that the challenged judgment of the Court of BiH, no. U-411/09 and decisions of the administrative authorities preceding the aforementioned judgment, violated the right safeguarded by Article II(3)(a), (b), (e), (f), (g), (h) and (i) and Article II(4) of the Constitution of Bosnia and Herzegovina and right safeguarded by Articles 2, 3, 6, 8, 9, 10, 11 and 14 of the

European Convention. The appellant sees the violation of the mentioned rights in the fact that the challenged verdict is based on "the reasons" indicating that the appellant represents a threat to the public order and national security, without being given a possibility to voice his opinion about them. As to the violation of the right to family life under Article 8(1) of the European Convention, the appellant stated that during his stay in BiH he entered into marriage with a citizen of Bosnia and Herzegovina, with whom he has three children who are citizens of Bosnia and Herzegovina. The appellant holds that he, his wife and children have the right to a complete family, that is to live together. Further, the appellant concludes that the challenged decision repeatedly violated the right to family life, not only his, but his children's and his wife's, as the appellant's expulsion would indirectly imply the expulsion of his family members, as citizens of BiH. He holds that it is not the intention of the legislator in any case to expel citizens from their own country. Since the administrative procedure conducted upon his application for temporary stay permit in Bosnia and Herzegovina was concluded by the challenged decision, which is a legally binding decision, whereby he was ordered to leave Bosnia and Herzegovina voluntarily, the appellant is of the opinion that there is a risk of his being expelled from Bosnia and Herzegovina. The appellant states that the facts which the authorities stated as the reasons for dismissing the application for temporary stay - such as providing wrong data in relation to criminal record, period of stay in BiH and the participation in the armed forces during the wartime, his role of a founder of the association "ENSARIJA", citizens' rally in front of the BiH institutions, his appearances in the media and lectures he gave at the mosque in Sokolović kolonija – support the appellant's assertion that all his rights, as stated above, were violated. The appellant states that if he were to be expelled to Syria he would be immediately arrested, whereby there is a realistic danger for his right to life to be at risk.

40. In relation to the mentioned decision, the appellant states that the Court of BiH made an incorrect allegation that the date from which he has stayed in BiH was not established with certainty and that it is an incorrect allegation that the correct date from which he was in the Armed forces of RBiH was not established, since he clearly stated in all the hitherto proceedings that he had arrived in BiH for the first time on 15 September 1992 and stayed there until 1 January 1993, when he left BiH as a logistics officer for Croatia, Rijeka, where he used to live before. He went there because of a problem with a ship carrying humanitarian aid and military equipment which stayed longer in Rijeka port, where he stayed and performed logistical duties up until the end of a conflict between the Croatian Defense Council and the Army of BiH. The appellant states that during that period he had entered and exited BiH several times and that he eventually came to BiH in 1995. In the

meantime he got married in Croatia to a citizen of BiH and they verified their marriage at the BiH Embassy in Croatia whereby his wife gave a statement at the Embassy that she married the appellant on 24 May 1993. The appellant states that he submitted all the documents relating to the aforesaid to the Court of BiH.

41. In relation to the conclusions of the Court of BiH regarding the intensity of relations that the appellant still has with the country of origin and contacts he maintains and that he failed to provide any evidence whatsoever in favor of his claims that he had lost those contacts, which he considers to be irregular, the appellant quoted the opinion of a professor of the Faculty of Philosophy in Sarajevo relating to bilingualism and semilingualism, according to which foreigners who come to some country with the intention to stay there gradually neglect their own language and culture and try to learn as soon as possible the language of the country to which they came. The appellant also states that the allegation of the Court of BiH is incorrect that he had never presented evidence related to the death of the parents because he did provide the Court with the complete documentation covering the period from the day of his leaving Syria to the present day, which include evidence of his parents' death. The appellant also states that he challenges all the allegations made by the Court of BiH relating to the inaccurate data he provided in the procedures carried out before the BiH authorities, and states that the Court of BiH made a wrong conclusion in relation to the bonds of his family with BiH because his expulsion from the territory of BiH would force his family to leave BiH and go to the country of which they know neither the language, nor culture nor customs. As to the allegations stated in the challenged decisions ordering him to leave the BiH territory voluntarily, the appellant refers to separate opinions attached to the decision of the Constitutional Court no. *AP 3927/09* as well as to the decision no. *AP 1222/08* holding that those decisions, that is the separate opinions, are still applicable to his case especially when bearing in mind that he has been detained for over two years now at the Immigration Center and that the Court of BiH failed to prove that the appellant represents a potential threat to the BiH national security, instead it draws its conclusion solely on the basis of the fact that the appellant was included on the list of persons who represent a security threat.

42. Furthermore, the appellant considers that the mentioned verdict violated his right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of peaceful assembly and association with others, the right to life and the right to non-discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention in relation to the mentioned articles. The appellant based the allegations about the

violation of these rights on the fact that the reasons for which he was declared a threat to national security were the reasons relating to the holding of rallies in front of the BiH institutions, public appearances via papers and by way of giving lectures at a mosque, the founding of the association of citizens "Ensarija" which, according to the appellant, directly contravenes the mentioned rights as guaranteed by the Constitution and the European Convention, which opens a possibility for his expulsion from the territory of BiH to Syria, which would put his life at risk, and that he is discriminated against on the grounds of religion, political and other opinion, as well as national and social origin, when compared to other citizens.

43. The appellant holds that the decisions related to the voluntary leaving of the BiH territory (verdict of the Court of BiH no. U-163/10), as well as decisions on deportation, violated the right referred to in Article II(3)(f) and (b) of the Constitution of Bosnia and Herzegovina and Articles 8 and 3 of the European Convention, as his expulsion would result in the fulfillment of all requirements for the separation of the family and torture, which he would be subjected to in his country of origin, prohibited by Article 3 of the European Convention and would directly violate the principle of non-refoulement prescribed by law.

44. The appellant holds that the decisions related to the extension of supervision violated the right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, the right under Article 3 of the European Convention, the right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 1 item f and paragraph 4 of the European Convention and the right under Article 13 of the European Convention. The appellant states that in his case the detention is unlawful under the domestic law because there are no justified reasons whatsoever to believe that his stay represents a risk to the public order and peace or national security, that is that the competent authorities failed to present any valid reasons whatsoever to impose detention especially if one bears in mind that he was deprived of freedom for a period exceeding two years. The appellant states that he was neither provided any evidence whatsoever nor were such pieces of evidence stated in the challenged decisions for one to observe the well-foundedness of the conclusion that the appellant poses a threat to BiH, nor was the appellant ever presented with such relevant documentation although "he explicitly stressed before the Court of BiH that it cannot examine efficiently the lawfulness of the detention order, particularly of the allegation related to the security threat, without the knowledge of the contents of evidence. Neither the Ministry of Security nor the Court of BiH have ever explained to the appellant the reasons for which he represents an alleged threat to the national security." According to the

appellant's allegations the appellant is exposed to a rather stressful and physically disturbing situation given that the duration of detention is uncertain and because he has already been separated from his family, wife and children, for a long time without lawful grounds, and his wife is seriously ill, which intensifies his suffering all the more so.

45. In relation to the aforementioned the appellant seeks that the Constitutional Court adopts interim measures ordering the BiH authorities to allow him to view complete documentation related to his case (as well as documentation marked as confidential) and also to ban his deportation pending the completion of the proceedings before the Constitutional Court.

b) Reply to the appeal

46. In the replies to the appeal and supplement to the appeal the Court of BiH stated that the allegations about the violations of the mentioned rights are ill-founded given that the decisions of that court were adopted in a lawful manner and by correctly and completely establishing the facts of the case. The Court of BiH stated that, considering that a number of proceedings are being conducted on the appellant's lawsuits, and that the Constitutional Court considered the appellant's appeal no. *AP 1222/07*, it heard the appellant and made it possible for him to give opinion about all the reasons mentioned as impediments to his stay in BiH, inspected the case file of the intelligence agency and established that the allegations of the appellant do not cast a doubt on the correctness and lawfulness of the challenged decisions of the administrative authorities. Furthermore, the Court of BiH stated that "it was noted that the decision of the Constitutional Court on interim measure of 31 January 2009 ordered all public authorities in BiH not to undertake any action whatsoever aimed at forcible removal of the appellant from BiH pending the final decision of the Constitutional Court on the appeal lodged against the decision of the Court of BiH no. U-749/08 of 17 November 2008. Objections pointing to the violation of Article 2 of the Constitution of BiH and Articles 3 and 6 of the European Convention are unfounded, primarily because of the fact that this decision extended the supervision of the appellant, and that the reasons for the supervision extension lie both in the fact that the circumstances which were the basis for imposing the supervision have not changed, and in the fact that there is an interim measure prohibiting the undertaking of any action aimed at his removal from the country".

47. In the reply to the appeal and the supplement to the appeal the Ministry of Security stated that all the appellant's allegations are unfounded, because it was undisputedly proven that the appellant does not meet conditions to be granted a temporary stay in BiH, and that all the relevant legal grounds exist for the extension of the supervision over the appellant in the continuous time

period beyond 180 days. The Ministry also stated that the failure to provide the appellant with the documents for the viewing thereof, which are marked as secret or confidential, is in compliance with the relevant provisions of the Law on the Protection of Secret Data and that the facts in this case were neither incompletely nor arbitrarily established. The Ministry also informed the Constitutional Court that the European Court issued an interim measure dated 15 March 2011 in the appellant's case, application no. 3728/08, ordering the government authorities in BiH that they may not expel the appellant from the territory of BiH for as long as the proceeding on the mentioned application is ongoing before the European Court.

48. In the reply to the appeal and the supplement to the appeal the Department reiterates the reasons given in the challenged rulings and states that not a single right of the appellant as mentioned has been violated in the proceedings before that department.

V. Relevant Law

49. **In the Law on Movement and Stay of Aliens and Asylum** (*Official Gazette of BiH* nos. 29/03, 4/04 and 53/07), the text which was in effect at the time the application for the issuance of a residence permit was submitted, the relevant provisions read as follows:

Article 34

(General conditions for issuing a residence permit)

1. Temporary residence shall be granted to an alien on the condition that:

a) he/she has evidence justifying the existence of the grounds required for granting temporary residence,

b) he/she has funds to support himself/herself, including the funds for his/her health care,

c) he/she has a medical certificate issued not more than three months following the date of submitting the application, showing that he/she does not suffer from a disease of high risk for the community and/or that he/she is capable for work.

2. Evidence referred to in item a) of paragraph 1 of this Article shall refer to:

a) marriage certificate or other relevant evidence of the marriage concluded,

b) work permit issued by the competent employment agency,

c) registration with the competent Pension and Invalidity Insurance Fund,

d) decision on registration of the legal entity into the court registry, accompanied with the evidence of their solvency,

e) attestation of enrolment into an educational institution for the current year,

f) medical report accompanied with the recommendation of a health institution confirming the necessity of a long-term medical treatment in BiH,

g) documents on completed education and qualifications acquired,

h) other evidence required to support the justified stay of the alien in the country whose validity shall be assessed by the competent organizational unit of the Ministry based on Article 55 of this Law.

Article 35 paragraph 1 items a) and d)

(Temporary residence on humanitarian grounds)

1. Temporary residence on humanitarian grounds shall be exceptionally granted to an alien who does not fulfill the requirements for granting temporary residence prescribed in this Law, as follows:

a) to an alien who has been a victim of an organized crime and/or trafficking of human beings, for the purpose of providing protection and assistance for his/her rehabilitation and repatriation into the country of his/her habitual residence,

d) to an alien with respect to whom it is determined that the requirements referred to in Article 60 of the present Law have been met and to whom asylum has not been granted in accordance with this Law,

Article 41 paragraph 1 items a), d) and f)

(Refusal of the application for a residence permit)

An alien, who fulfils the conditions for granting residence prescribed in the present Law, shall have his/her application for a temporary or permanent residence permit refused if:

a) he/she has entered the BiH territory while not complying with the entry requirements set out in this Law, unless there exist reasons for issuance of a residence permit on humanitarian grounds in the sense of Article 35 of this Law, or

d) he/she has been registered with the BiH law enforcement authorities, in particular as an international offender, or

f) his/her presence, based on the information available to the Ministry, constitutes a threat to public order and national security of BiH.

Article 60

(Principle of non-refoulement)

Aliens shall not be returned or expelled in any manner whatsoever to the frontier of territories where their life or freedom would be threatened on account of their race,

religion, nationality, membership of a particular social group or political opinion, regardless of whether or not they have formally been granted asylum. The prohibition of return or expulsion shall also apply to persons in respect of whom there is a reasonable suspicion for believing that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment. Aliens may not be sent to a country where they are not protected from being sent to such a territory either.

Article 76

(Procedure and competency for issuing decisions)

1. Requests for asylum shall be considered and decisions taken and issued by the basic organisational unit competent for asylum, which is fully qualified in the field of asylum and refugee law, in the Seat Office of the Ministry.

2. The decision shall be taken independently, individually, objectively and impartially after finalisation of a complete interview procedure where all facts, circumstances and evidence relevant for taking the decision have been determined. An applicant must be given the opportunity to present all the circumstances known to him/her, to have access to all available evidence, as well as to suggest presentation of particular evidence.

3. An alien shall be given an opportunity to follow the course of the procedure through an interpreter if he/she does not know the language used during the procedure, as well as to use the services of a legal or another counselor. The obligation of the conductor of the procedure is to inform the applicant about all the rights and obligations stemming from the Law.

4. Recognition of a refugee status is not dependent on the production of any particular formal evidence.

5. Any decision taken upon validity of the request for asylum must be fully reasoned and shall be communicated to the applicant in person.

6. The decision must clearly demonstrate the right of complaint and the deadline.

Article 77

(Protection of data)

Asylum procedures shall be confidential, as well as all data related to that procedure.

Article 78

(Complaint)

1. No appeal is allowed against the decision referred to in Article 76 of this Law.

2. A complaint shall stay the execution of the decision.

Article 79

(Provisions on protection)

An asylum applicant who has exhausted all available legal remedies and whose request has been rejected with a final and binding decision, but with respect to whom it has been determined that he/she nevertheless cannot be removed from the BiH territory for the reasons prescribed in Article 60 of the Law, shall be issued a temporary residence permit reasoned on humanitarian grounds in the sense of Article 35 paragraph 1 item d) of the Law.

50. **In the Law on Movement and Stay of Aliens and Asylum** (*Official Gazette of BiH* no. 36/08) the relevant provisions read as follows:

Article 99 paragraph 2 item b

(2) Supervision shall be imposed against an alien on the following grounds for suspicion that:

b) The free and unrestricted movement of the alien might jeopardize the public order, legal order and security of BiH, or constitute a threat to public health in BiH, i.e. if it has been established that the alien constitutes a threat for public order, legal order and security of BiH;

Article 102

(Execution of the decision placing an alien under supervision and extending supervision)

(1) The measure of placing an alien under supervision shall be carried out by accommodating the alien in an institution specialized for the reception of aliens (immigration center).

(2) The alien shall remain under supervision until the moment of his/her forcible removal from the country or as long as is necessary for execution of the purpose of the supervision, or until the reasons that constituted the grounds for his/her placement under supervision have significantly changed, but not exceeding the deadline set in the decision placing an alien under supervision or decision extending supervision.

(3) The Service shall, as long as detention is in force, undertake all necessary measures in order to reduce the duration of the detention to as short a time as possible.

(4) Upon the expiration of the 30 days deadline referred to in Article 100 (Decision on placing an alien under supervision), paragraph (3) of this Law, the alien may be kept under supervision based upon the decision extending supervision as decided by the Service. The supervision may be extended for up to a further 30 days each time, at most if there exist conditions for imposing the supervision referred to in Article 99 (Imposing supervision) of this Law. Hence, the total period of supervision imposed against an alien may not exceed 180 days. Decision extending supervision may be rendered not later than 7 days prior to expiry of previous decision.

(5) Exceptionally, in case that an alien fails to enable his removal from the country or it is impossible to remove an alien within 180 days for other reasons, the total duration of supervision may be prolonged for period longer than 180 days. Decision on extraordinary extension of supervision shall be rendered by the Service.

(6) Legal remedy prescribed by Article 101 (Legal remedy against the decision on placing alien under supervision) of this Law is allowed against the decision on the extension of supervision of an alien.

51. **The Book of Rules on Conditions and Procedures for Entry of Aliens** (*Official Gazette of BiH n*o. 4/05) as relevant reads:

(2) An application for temporary or permanent residence in Bosnia and Herzegovina shall be refused if the alien is recorded at the BiH authorities competent to implement laws, particularly if the alien has international criminal record at the Office for Cooperation with the Interpol of the Ministry of Security.

(3) The basis for refusing the application referred to in paragraph 2 of this Article are the facts in the records at the disposal of the aforementioned authorities, taken decisions and operative information at the disposal of the aforementioned authorities while dealing with the application for residence in Bosnia and Herzegovina.

52. **In the Law on the Protection of Secret Data** (*Official Gazette of BiH* nos. 54/05 and 12/09) the relevant provisions read as follows:

Article 10

(Conditions for access to secret data)

Access to secret data shall be possible only under the conditions as stipulated by this Law and other bylaws issued on the basis of this Law, and/or international or regional agreements concluded by Bosnia and Herzegovina.

Article 70

(Measures and procedures of secret data protection)

(1) Secret data shall be kept in a manner ensuring the information access is granted only to persons with the secret data access authorization of the appropriate level, who need such information during performance of their duties and tasks.

(2) Secret data may be transferred outside the user's premises only in conformity with the protection measures and under the procedures guaranteeing that only persons holding authorizations of appropriate levels will access the information.

(3) Procedures and decisions related to secret data transfers shall be issued by responsible managers in line with the level of classification, provided that the transfer may not be carried out through unprotected communication systems.

(4) The Council of Ministers of BiH shall stipulate the physical, organisational and technical measures and procedures for the protection of secret data and documents in more detail by a special regulation referred to in Article 24.

53. **In the Law on Administrative Procedure of BiH** (*Official Gazette of BiH* nos. 29/02 12/04, 88/07 and 93/09) the relevant provisions read as follows:

Article 72 paragraph 4

The following may not be inspected or transcribed: a record of consultations and voting, official reports and draft decisions, as well as other files which are kept as confidential, if this could frustrate the purpose of the procedure or if this is contrary to the public interest or justified interest of a party or third persons.

VI. Admissibility

54. In accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, the Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.

55. In accordance with Article 16(1) of the Rules of the Constitutional Court, the Constitutional Court shall examine an appeal only if all effective legal remedies available under the law against a judgment/decision challenged by the appeal are exhausted and if the appeal was lodged within a time-limit of 60 days as from the date on which the decision on the last effective legal remedy used by the appellant was served on him/her.

Admissibility as to the decisions adopted in the procedure of granting temporary stay on the grounds of a marriage with a BiH citizen and the decisions related to the

voluntary leaving of the territory of BiH adopted after the completion of the procedure of granting asylum

a) As to the rights referred to in Articles II(3)(a), II(3)(b), II(3)(f), II(3)(g), II(3)(h) and II(3)(i) of the Constitution of Bosnia and Herzegovina and Articles 2, 3, 8, 9, 10, 11 and 14 of the European Convention

56. In the case at hand the Constitutional Court observes that the subject challenged by the appeal is the verdict of the Court of BiH no. U-411/09 of 23 December 2009 (in relation to all the mentioned rights) and the verdict of the Court of BiH no. U-163/10 of 17 December 2010 (in relation to the rights referred to in Article II(3)(f) and (b) of the Constitution of Bosnia and Herzegovina and Articles 8 and 3 of the European Convention), against which no other effective legal remedies are available under the law. Next, the appellant received the challenged verdict of the Court of BiH no. U-411/09 of 23 December 2009 on 8 January 2010, and the appeal was lodged on 29 January 2010. He received the verdict of the Court of BiH no. U-163/10 of 17 December 2010 on 24 December 2010, and the appeal (AP 719/11), by way of which the appellant challenged that verdict, was lodged on 16 February 2011, i.e. within 60 days as prescribed by Article 16 (1) of the Rules of the Constitutional Court. Finally, the appeal meets the requirements under Article 16 (2) and (4) of the Rules of the Constitutional Court for it is neither manifestly (*prima facie*) ill-founded, nor is there any other formal reason rendering the appeal inadmissible.

57. In view of the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 16(1), (2) and (4) of the Rules of the Constitutional Court, the Constitutional Court established that the appeal, in the mentioned part, meets the admissibility requirements in relation to the rights referred to in Articles II(3)(a), II(3)(b), II(3)(f), II(3)(g), II(3)(h) and II(3)(i) of the Constitution of Bosnia and Herzegovina and Articles 2, 3, 8, 9, 10, 11 and 14 of the European Convention.

b) As to the right referred to in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention with respect to all the decisions covered by the appeal regarding which the appellant stated a violation of this right

58. When examining the admissibility of the appeal in relation to the allegations about a violation of this right, the Constitutional Court considered the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 16(4)(9) of the Rules of the Constitutional Court.

Article 16(4)(9) of the Rules of the Constitutional Court reads as follows:

4) An appeal shall also be inadmissible in any of the following cases:

9. the appeal is ratione materiae incompatible with the Constitution;

59. The appellant states that the challenged decisions related to his being placed under the supervision and his placement in the Immigration Center, as well as the failure to grant him the stay in the territory of BiH, violated his right to a fair trial referred to in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

60. The Constitutional Court recalls the case-law of the European Court of Human Rights which explicitly advocates the view that, in general, the right to entry, stay or the right not to be expelled from a country or its specific area, is not the right guaranteed by the provisions of the European Convention even for the nationals of that country. Such rights are specified by the public law by way of the public administration acts, wherefrom it follows that the term "civil rights" in Article 6(1) of the European Convention does not include any such right whatsoever. Therefore, neither the decision permitting or denying entry, nor the procedure in which that decision was adopted are subsumed in the provisions of Article 6(1) of the European Convention (see Application no. 3325/67, *X, Y, Z, V. and W. vs. the United Kingdom,* Collection 25 (1968)).

61. Likewise, the Decision of the European Commission of Human Rights *V. P. vs. The United Kingdom* reads that "the Commission holds that the procedure carried out by the public authorities with the aim to decide whether an alien should be allowed to stay in a country, or whether that right should be denied, has a discretionary, administrative nature and does not involve the application of civil rights and obligations in terms of Article 6 of the European Convention". Further, the Commission establishes that the applications for stay permit fall in the category of procedures not establishing civil rights and obligations under Article 6 of the European Convention. Therefore, the Commission has to reject this application as *ratione materiae* incompatible with the provisions of the Convention (see decision *V. P. vs. the United Kingdom* of 9 November 1987, Application no. 13162/87, OI 54, page 211, paragraph 2).

62. In view of the aforementioned, it follows that the placement under the supervision and the placement in the Immigration Center of aliens, as part of the procedure on the right to stay, falls within the scope of the public law of any country. It follows therefrom that Article 6(1) of the European Convention is not applicable to the present case. Given that Article II(3)(e) of the Constitution of Bosnia and Herzegovina does not provide a wider scope of protection than does Article 6 of the European Convention, it follows that the allegations stated in the appeal in relation

to the violation of the right to a fair trial are *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

Admissibility as to the decision adopted in the deportation procedure

63. When examining the admissibility in this part of the appeal the Constitutional Court considered the provisions of Article 16(1) and (4)(14) of the Rules of the Constitutional Court which read as follows:

1) The Court shall examine an appeal only if all effective remedies that are available under the law against a judgment or decision challenged by the appeal are exhausted and if the appeal is filed within a time-limit of 60 days as from the date on which the decision on the last effective remedy used by the appellant was served on him/her.

4) An appeal shall also be inadmissible in any of the following cases:

(14) the appeal is premature;

64. According to the mentioned provisions of the Rules of the Constitutional Court, an appeal may be lodged solely against a judgment, or a decision by way of which a procedure in a given case has been completed.

65. In the present case the appellant states that his expulsion from BiH would amount to a violation of his right to family life and that he would be subjected to torture in his country of origin. In this respect, the Constitutional Court observes that the procedure related to forcible expulsion of the appellant has not been instituted yet, because there is an ongoing procedure before the Court of BiH on the appellant's lawsuit against the ruling of the Ministry no. UP-2-06-07-219/11 of 2 March 2011, and that in relation to this procedure it is not possible to consider possible violations of the right to family life and the right for a person not to be subjected to torture or inhuman and degrading treatment or punishment as a result of the expulsion to the country of origin. Hence it follows that the allegations stated in the appeal in relation to the violation of the mentioned rights as to the decisions adopted in the deportation procedure are premature.

Admissibility as to the decisions adopted in the procedure of extraordinary extension of the supervision

a) As to the right referred to in Article II(3)(b) and (d) of the Constitution of Bosnia and Herzegovina and Articles 3, 5 and 13 of the European Convention

66. The subjects challenged in the supplements to the appeal are, also, the Verdicts of the Court of BiH no. S1 0 002450 10 U of 30 September 2010, no. S1 3 U 003272 10 U of 29 October 2010, no. S1 3 U 003593 10 U of 29 November 2010, no. S1 3 U 003880 10 U of 29 December 2010, no.

S1 3 U 004125 11 U of 26 January 2011, S1 3 U 005945 11 U of 26 May 2011, S1 3 U 006158 11 U of 28 June 2011 and S1 3 U 006481 11 U of 26 July 2011, S1 3 U 006983 11 U of 23 August 2011, S1 3 U 007375 11 U of 23 September 201, S1 3 U 007664 11 U of 26 October 2011, S1 3 U 007375 11 U of 24 November 2011, against which there are no other legal remedies available under the law. Given that the appellant received the challenged verdicts in the period from 5 October 2010 to 24 November 2011, and they were challenged in the supplements to the appeal dated 3 December 2010, 26 January 2011, 8 February 2011, 4 July 2011, 12 August 2011, 13 October 2011 and 7 December 2011 respectively, the Constitutional Court concludes that they were lodged within the time-limit of 60 days as prescribed by Article 16(1) of the Rules of the Constitutional Court. Besides, in this part, in relation to the right under Article II(3)(b) and (d) of the Constitution of Bosnia and Herzegovina and Articles 3, 5 and 13 of the European Convention, the appeal meets the requirements referred to in Article 16(2) and (4) of the Rules of the Constitutional Court, as neither being manifestly (*prima facie*) ill-founded, nor is there any other formal reason rendering the appeal inadmissible. Thus, in view of the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 16(1), (2) and (4) of the Rules of the Constitutional Court, the Constitutional Court established that the relevant appeal meets the admissibility requirements in the part relating to the procedure of extraordinary extension of the supervision regarding the mentioned rights.

b) Expiry of the time limit

67. When examining the admissibility in this part of the appeal lodged against the verdict of the Court of BiH no. S1 3 U 005730 11 U of 27 April 2011, the Constitutional Court considered the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 16(1) and (4)(4) of the Rules of the Constitutional Court.

Article VI(3)(b) of the Constitution of Bosnia and Herzegovina reads as follows:

The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.

Article 16(1) and 4(4) of the Rules of the Constitutional Court reads as follows:

1) The Court shall examine an appeal only if all effective remedies that are available under the law against a judgment or decision challenged by the appeal are exhausted and if the appeal is filed within a time-limit of 60 days as from the date on which the decision on the last effective remedy used by the appellant was served on him/her.

4) An appeal shall also be inadmissible in any of the following cases:

(4) the time-limit for the appeal expired;

68. Given that the appellant had received on 28 April 2011 the verdict of the Court of BiH no. S1 3 U 005730 11 U of 27 April 2011, and the supplement to the appeal challenging the mentioned verdict was submitted to the Constitutional Court on 4 July 2011, it follows that it was submitted after the expiry of the time limit prescribed by Article 16(1) of the Rules of the Constitutional Court for lodging an appeal. Accordingly, the Constitutional Court concluded that the appeal was lodged in an untimely fashion, that is after the expiry of the time-limit of 60 days as from the date on which the appellant received the challenged verdict.

69. In view of the provision of Article 16(4)(4) of the Rules of the Constitutional Court, according to which an appeal shall be rejected as inadmissible if an appellant lodges an appeal after the time-limit for lodging an appeal has expired, the Constitutional Court decided as stated in the enacting clause of this decision.

VII. Merits

Procedure of granting temporary stay on the grounds of marriage with a BiH citizen and the order for the appellant to voluntarily leave the territory of BiH

70. The appellant challenges the mentioned verdicts dismissing his application for temporary stay permit in BiH and ordering him to leave the territory of BiH voluntarily within the given time limit, whereby he claims that the verdict no. U-411/09 violated his right referred to in Article II(3)(b), (f), (g), (h) and (i) and Article II(4) of the Constitution of Bosnia and Herzegovina, as well as the rights protected by Articles 3, 8, 9, 10, 11, and 14 of the European Convention, and the verdict no. U-163/10 violated his rights under Article II(3)(f) and (b) of the Constitution of Bosnia and Herzegovina and Articles 8 and 3 of the European Convention.

The right to respect for private and family life

71. Article II(3)(f) of the Constitution of Bosnia and Herzegovina reads as follows:

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

f) The right to private and family life, home, and correspondence.

Article 8 of the European Convention reads as follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the

interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

72. As to the appellant's allegations about a violation of the right to family life referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, the Constitutional Court recalls that the European Court of Human Rights issued an interim measure on 29 January 2008 suggesting to Bosnia and Herzegovina that the appellant should not be expelled from Bosnia and Herzegovina pending the final decision of the Constitutional Court of BiH on the appeal no. *AP 1222/07* or in the period of seven days from the day of informing the appellant of the said decision. After that the European Court issued an interim measure dated 15 March 2011 also suggesting that the appellant should not be expelled from BiH pending the completion of the procedure before the European Court on the appellant's application no. 3727/08. Further, the Constitutional Court recalls that on 4 October 2008 it adopted a decision on the appeal no. *AP 1222/07*, and on 28 March 2009 the decision no. *AP 41/09* establishing a violation of the right referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, whereby it quashed the verdicts of the Court of BiH nos. U-1172/07 of 21 January 2008, Uvl-03/08 of 14 March 2008 and U-749/08 of 17 November 2008. The mentioned cases were referred back to the Court of BiH for renewed proceedings, whereby the court was ordered to consider all evidence and to establish whether the forcible removal of the appellant from the country would be justified in terms of the requirement referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, and that it decided, pursuant to Article 77(6) of the Rules of the Constitutional Court, for the decision on interim measure no. *AP 41/09* of 31 January 2009 to remain in effect until the Court of BiH considered evidence and established whether the forcible removal of the appellant from the country would be justified in terms of the requirement referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

73. In this respect, the Constitutional Court stated in the mentioned decisions that the effect of the challenged decisions is such that it amounts to the interference with the appellant's right to respect for private and family life, and bearing in mind the seriousness of such interference and its effect on both the appellant and his family, the justifications indicated in the proceedings so far do not lead to a conclusion that the interference is proportional to the legitimate aim. Therefore, the challenged decisions violated the appellant's rights referred to in Article II(3)(f) of the Constitution

of Bosnia and Herzegovina and Article 8 of the European Convention, and that the relevant authorities and the Court of BiH failed to provide the reasons for assessing evidence by means of which possible constitutional justification for interference with the exercise of the appellant's rights is established, nor did they conduct an investigation as to the basis for the removal of the appellant from Bosnia and Herzegovina, so that the Constitutional Court was denied a piece of evidence on the basis of which it could establish whether the interference with the appellant's constitutional right was justified.

74. In the context of the aforementioned positions the Constitutional Court observes that it is evident that the Court of BiH, in the decisions challenged by this appeal, considered evidence in the renewed proceedings and the issue whether the failure to grant the asylum and temporary stay in BiH was justified in terms of the requirement referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, that is that, unlike in the mentioned challenged decisions, it provided in the decisions challenged by this appeal, following the assessment of the presented evidence, the reasons for the interference with the exercise of the appellant's constitutional rights. In this respect, the Constitutional Court observes that it follows from the challenged decisions that the appellant was presented with evidence on the basis of which a conclusion was drawn that he represents a threat to the national security (the founding of association Ensarije, speeches at mosques, data from NCB Interpol that the appellant is registered as an international criminal) and that the appellant gave his opinion in the respective proceedings as to the mentioned evidence. Furthermore, the Constitutional Court observes that with respect to the right to family life referred to in Article 8 of the European Convention, the Court of BiH reasoned that the mentioned article of the European Convention does not impose a general obligation on the state to respect the choice of spouses on which country to live in during their marriage and to allow the free enjoyment of that right in its territory as well as that the right referred to in Article 8 of the European Convention is not an absolute right of the appellant and that it has to be harmonized with the broader public interest of the state of BiH. Thus, given that the appellant's presence in BiH represents a social threat, "the right to respect for private and family life of the plaintiff does not fall within the scope of rights protected by Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH." In doing so the Court of BiH, while stating in detail the reasons and facts on which the appellant bases its applications for asylum, temporary stay and stay on humanitarian grounds, argued that during the course of the proceedings conducted before the administrative authorities of BiH and the Court of BiH, the appellant, apart from arbitrary claims that he is not a

threat to the BiH national security, that he does not have any contacts with the country of origin and that the data he offered in relation to the duration of his stay in BiH and concerning which it is apparent from the submitted documentation that they were contradicting one another, failed to offer a single piece of evidence in favor of his claims. Namely, the appellant stated during the proceedings that his stay in the territory of BiH was lawful and that he participated in the defense of BiH during the war, that there is no evidence that he represents a threat to the national security, because he has never been convicted, and that, in this respect, there is no evidence whatsoever showing that he represents a threat to the BiH national security, and that there is no evidence suggesting that he is an internationally registered criminal.

75. The Constitutional Court finds that it was established in the respective proceedings that the Intelligence and Security Agency of BiH, which is, on behalf of the state of BiH, in charge of carrying out security checks for aliens with the aim to identify security-related reasons for BiH, established that the appellant represents a threat to the public order or security of BiH, and that it follows on the basis of the data of the NCB Interpol that the appellant was registered as an international criminal. Although it was not possible to carry out inspection of the part of the case file marked as secret, one may observe that, on the basis of the available part of the case file of the mentioned agencies which were interpreted in the paragraphs of this decision relating to the facts of the case, it follows undoubtedly that the appellant represents a threat to the national security. Besides, the Constitutional Court observes that the administrative authority and the Court of BiH in the present case had considered the appellant's circumstances in relation to his personal situation such as marriage and family, and by linking them with the issues arising from the domain of national security, they established that the denial of the appellant's application for asylum and temporary stay and the order to leave the territory of BiH voluntarily are proportional to the enjoyment of the appellant's right to family life. The Constitutional Court holds that the reasoning provided by the Court of BiH, in respect of the proportion between the national security and the respect for the appellant's right to family life, is in accordance with the standards of the European Convention and does not suggest existence of any arbitrariness whatsoever. The decisions of administrative authorities were the subject of judicial control in terms of the European Convention so that the Court of BiH, within the scope of the mentioned case, examined the appellant's being a threat to the national security, thereby ensuring that the data marked as secret will not be disclosed, which is in compliance with the Law on the Protection of Secret Data. The Constitutional Court holds that the aforesaid meets the principle conveyed by the Constitutional Court in Decisions nos.

AP 1222/07 and AP 41/09, and that is that the competent authorities must assess carefully the basis for denying the application for asylum and temporary stay, as well as a possibility of removal of a person from the territory of BiH within the context of the provisions of Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, and consider whether the interference with a right can be justified by the circumstances of the case. Therefore, the Constitutional Court holds that the challenged decisions constitute a measure necessary in a democratic society with the aim to respect the rule of law, that there is a reasonable proportionality between the protection of a legitimate aim concerning the protection of public order and national security of BiH, on the one hand and, on the other, the protection of the appellant's right to life. Thus, in this respect the appellant's allegations about a violation of the right referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention are ill-founded.

76. In view of the aforementioned the Constitutional Court holds that the challenged decisions did not violate the appellant's right to family life referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

The right to prohibition of torture, inhuman treatment and punishment

77. Article II(3) of the Constitution of Bosnia and Herzegovina as relevant reads as follows:

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

[...]

b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment.

Article 3 of the European Convention reads as follows:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

78. The appellant complains that the challenged decisions violated his right referred to in Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention. The purpose of the protection afforded by the right for a person not to be subjected to torture or inhuman and degrading treatment or punishment is to prevent, thwart and penalize such acts resulting in torture, inhuman or degrading treatment or punishment that are carried out by the state authorities or individuals in their name against some persons. At the same time, the intensity and

duration of such acts is to be such that they essentially lead to a violation of the mentioned constitutional rights.

79. In relation to these appellant's allegations, the Constitutional Court recalls that according to the case-law of the European Court, the state has the right, in accordance with the international law and its contractual obligations, including the European Convention, to control the entry, stay and expulsion of aliens (*Üner vs. The Netherlands* [GC], Application no. 46410/99, § 54, ECHR 2006-....; *Abdulaziz, Cabales and Balkandali vs. The United Kingdom*, judgment of 28 May 1985, Series A no. 94, paragraphs 34 and 67, *Boujlifa vs. France*, judgment of 21 October 1997, *Reports* 1997-VI, p. 2264, § 42). The expulsion may give rise to an issue under Article 3, where substantial grounds have been shown for believing that the person in question would, if expelled, face a real risk of being exposed to treatment contrary to Article 3 of the European Convention, and hence engage the responsibility of that State under the Convention. In such a case, Article 3 imposes an obligation for a person in question not to be deported to such a country (see, European Court, *Saadi vs. Italy* [GC], Application no. 37201/06, paragraph 125, 28 February 2008). The establishment of whether there are substantial grounds for believing that the person in question would face such a real risk inevitably requires that the Court assesses conditions in the receiving country against the standards of Article 3 (see European Court, *Mamatkulov and Askarov vs. Turkey*[GC], Application nos. 46827/99 and 46951/99, paragraph 67, ECHR 2005-I). These standards imply that the prohibited treatment that the person complains of, and which the person would face in the event of return, must contain a minimum degree of cruelty to be included in Article 3 of the Convention, and it is up to the applicant to present evidence which may corroborate the existence of substantial grounds for believing that, in the event of the application of the measures he complains of, he would face a real risk of being subjected to the treatment contrary to Article 3 (see European Court, *N. vs. Finland* Application no. 38885/02, paragraph 167, 26 July 2005).

80. In relation to these allegations of the appellant the Constitutional Court recalls that, in its already mentioned decision no. *AP 1222/07,* it considered the issue of a violation of the mentioned right and concluded on that occasion the following: "In the present case, the Ministry clearly accepted the existence of practices such as torture of suspects and coerced false confessions in the receiving state. The question, therefore, is whether there are serious reasons to believe that the appellant is a member of a group at significant risk of such treatment. It appears from the documents of the case file and particularly from the challenged final Ruling of the Ministry dated 27 July 2007 that the appellant was visiting his country of origin on several occasions upon the end of the war in

Bosnia and Herzegovina. It seems that the appellant had no problems with the authorities of his country of origin during his visits because of his participation in the war in Bosnia and Herzegovina, he was neither persecuted nor arrested, nor was a criminal proceeding initiated against him nor any repressive measure taken against him. Taking all the aforementioned into account, the Constitutional Court is of the opinion that there are not sufficiently serious reasons to believe that in the event of the appellant's deportation to the country of his origin he would be subjected to torture, inhuman or degrading treatment or punishment. Therefore, the Constitutional Court concludes that the adoption of the challenged decisions of the Ministry and the Court of BiH, did not amount to a violation of Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention, and that the appeals on these grounds are ill-founded." As the appellant referred in the present case to the same facts and arguments in his allegations that the mentioned right was violated like he did in the mentioned appeal no. *AP 1222/07*, and as there have been no changes in the meantime concerning the case and as the reasoning provided in the mentioned decision of the Constitutional Court entirely applies to this decision too, instead of providing a special reasoning for this decision, the Constitutional Court refers to the reasoning provided in the decision no. *AP 1222/07* of 4 October 2008. In addition, the Constitutional Court recalls that the European Court adopted a judgment on 15 November 2011 in the case of *Ammar Al Hanchi vs. Bosnia and Herzegovina* (see European Court, *Ammar Al Hanchi vs. Bosnia and Herzegovina*, Application no. 48205/09 of 15 November 2011) which, among other things, dismissed the applicant's application with respect to the violation of Article 3 of the European Convention in the event of the applicant's deportation who, at the time of the adoption of the mentioned judgment, was under exceptional supervision at the Immigration Center on the grounds that it was established that he represented a threat to the BiH national security,, for, on the basis of data that the court had at its disposal, it was not possible to conclude that there was a real risk for the applicant, if deported, to be exposed to torture, inhuman or degrading treatment or punishment.

81. In view of the aforementioned, the Constitutional Court concludes that there was no violation of the appellant's right to prohibition of torture, inhuman treatment and punishment under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention in the present case, in relation to the procedure of granting the temporary stay and in relation to the procedure resulting in the issuance of an order for him to leave the territory of BiH voluntarily within the given time limit.

Other allegations

82. The appellant states that the verdict no. U-411/09 dismissing his application for temporary stay violated his right to life, the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to peaceful assembly and freedom of association with others and the right to non-discrimination on the grounds of religion, national and social origin and opinion. The mentioned rights are guaranteed by Article II(3)(a), (g), (h) and (i) and Article II(4) of the Constitution of Bosnia and Herzegovina, i.e. Articles 2, 9, 10, 11 and 14 of the European Convention.

83. In relation to the allegations about a violation of the mentioned rights, the Constitutional Court observes that the issue of the appellant's enjoyment of these rights was not a subject matter of the challenged decisions, whereby no issue was raised as to the possible violation of these rights. In this respect the Constitutional Court holds that the appellant's allegations as to the violations of the right referred to in Article II(3)(a) of the Constitution of Bosnia and Herzegovina and Article 2 of the European Convention, the right referred to in Article II(3)(g) of the Constitution of Bosnia and Herzegovina and Article 9 of the European Convention, the right referred to in Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention and the right referred to in Article II(3)(i) of the Constitution of Bosnia and Herzegovina and Article 11 of the European Convention are ill-founded.

84. In relation to the allegations as to the violation of the right to non-discrimination the Constitutional Court recalls that Article 14 of the European Convention reads as follows:

> *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

85. Within the context of the appellant's allegations as to the discrimination, the Constitutional Court also recalls the facts that discrimination shall exist if resulting in differential treatment of individuals who are in similar positions and if such a treatment has neither objective nor reasonable justification.

86. In respect of these allegations, the Constitutional Court recalls that the appellant raised the issue of the violation of the right to non-discrimination already in the procedures before the administrative authorities and before the Court of BiH wherein the burden of proof regarding the violation of this right was not placed on the appellant, instead the public authority had to prove that discrimination did not occur, which was done, as already said in the previous paragraphs of this

decision, in accordance with the principles of the European Convention. Therefore, the Constitutional Court concludes that in the present case the appellant's right to non-discrimination referred to in Article 14 of the European Convention, in conjunction with Protocol No. 12 to the European Convention was not violated.

Procedure of placing one under the supervision

87. The appellant states that in the process of extending the ruling on placing him under the supervision by way of the challenged verdicts of the Court of BiH no. S1 3 U 003272 10 U of 29 October 2010, no. S1 3 U 003593 10 U of 29 November 2010, S1 3 U 003880 10 U of 29 December 2010, no. S1 3 U 004125 11 U of 26 January 2011, S1 3 U 005945 11 U of 26 May 2011, no. S1 3 U 006158 11 U of 28 June 2011 and S1 3 U 006481 11 U of 26 July 2011, S1 3 U 006983 11 U of 23 August 2011, S1 3 U 007375 11 U of 23 September 2011, S1 3 U 007664 11 U of 26 October 2011 and S1 3 U 007375 11 U of 24 November 2011, his rights referred to in Article II(3)(b) and (d) of the Constitution of Bosnia and Herzegovina and Article 3, Article 5 paragraph 1(f) and paragraph 4 and Article 13 of the European Convention.

88. The Constitutional Court recalls that the same facts and legal issues had already been considered in the decision no. *AP 3307/08* (see the Constitutional Court, decision no. *AP 3307/08* of 28 March 2009, published on the website of the Constitutional Court www.ustavnisud.ba), thus instead of a separate reasoning for this decision regarding the appellant's allegations, the Constitutional Court refers to the reasoning and reasons stated in that decision. Namely, in the case no. *AP 3307/08* the same appellant lodged an appeal against the Ruling of the Ministry of Security of BiH no. UP-1/19.4.1-07.3-12-1/08 of 6 October 2008 and the Verdict of the Court of BiH no. U-695/08 of 10 October 2008 deciding that the appellant be placed under the supervision, as well as the Verdicts of the Court of BiH no. U-738/08 of 5 November 2008 and no. U-776/08 of 3 December 2008 deciding to extend the supervision over the appellant. By the Decision no. AP-3307/08 the Constitutional Court rejected as inadmissible the appellant's appeal lodged against the mentioned decisions of the Court of BiH and the Ministry of Security of BiH, *inter alia* in relation to Article II(3)(d) and (f) of the Constitution of Bosnia and Herzegovina and Articles 5 and 13 of the European Convention, for being manifestly *(prima facie)* ill-founded. The Constitutional Court, among other things, concluded that the detention of the appellant was not arbitrary, as he was detained pursuant to the provisions of Article 99(1) of the Law on Movement and Stay of Aliens and Asylum, as well as that the present case concerned a lawful detention of an alien, who has been staying in BiH unlawfully, which is in accordance with Article 5(1)(f) of the European Convention.

Also, by the respective decision, the Constitutional Court rejected as inadmissible the appellant's appeal lodged against the mentioned decisions, in relation to Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for being *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

89. In addition, in relation to the allegations as to the violation of the right referred to in Article 5 of the European Convention, the Constitutional Court recalls the already quoted decision of the European Court in the case of *Ammar Al Hanchi vs. Bosnia and Herzegovina* wherein that court established that there was no violation of the applicant's right to liberty and security of person under Article 5 of the European Convention whereby the applicant's exceptional supervision was extended (due to the possibility of deportation) as "there are no indications that the authorities acted in bad faith, that the applicant was kept under supervision in poor conditions or that the supervision over the applicant was determined arbitrarily".

90. The Constitutional Court recalls that the challenged verdicts of the Court of BiH deciding on the extraordinary extension of the supervision did not result in the change of either factual or legal circumstances, given that the Court of BiH had confirmed, by the mentioned decisions, the correctness and lawfulness of the act of the Ministry of Security of BiH which was adopted on the basis of the provision referred to in Article 102(5) of the Law on the Movement and Stay of Aliens and Asylum, which prescribes the following, *Exceptionally, in case that an alien fails to enable his removal from the country or it is impossible to remove an alien within 180 days for other reasons, the total duration of supervision may be prolonged for period longer than 180 days.* On the basis of the aforementioned, it follows that the detention and extraordinary extension of the supervision of the appellant upon the expiry of the time limit of 180 days are not arbitrary, as they are prescribed in the provision referred to in Article 102(5) of the mentioned law, which is in accordance with Article 5(1)(f) of the European Convention. Since there has been no change in the factual or legal circumstances in the meantime, which could bring about a different decision of the Constitutional Court, the Constitutional Court concluded that in the present case the appellant's allegations about the violation of the right referred to Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Articles 5 and 13 of the European Convention are ill-founded.

91. In addition, the appellant complains that the challenged decisions violated the right referred to in Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention. The purpose of the protection afforded by the right for a person not to be subjected to torture or inhuman and degrading treatment or punishment is to prevent, thwart and penalize such

acts resulting in torture, inhuman or degrading treatment or punishment that are carried out by state authorities or individuals in their name against some persons. At the same time, the intensity and duration of such acts is to be such that they essentially lead to a violation of the mentioned constitutional rights.

92. The appellant stated that this right was violated in the procedure of the extension of the supervision. In this respect, the Constitutional Court recalls that in its case-law it had already considered the issue of the violation of this right in the procedures related to the extension of the supervision, thus, in this respect, instead of separate reasoning in this part it refers to its decision no. AP 2608/09 (see Decision of the Constitutional Court no. *AP 2608/09* of 17 September 2009 published on the website of the Constitutional Court www.ustavnisud.ba). In the mentioned decision, the Constitutional Court stated the following: "observes that it is impossible to link the judicial proceeding wherefrom the challenged judgments derived, which upheld the rulings on the extension of the supervision, to the violation of the right for a person not to be subjected to torture or inhuman and degrading treatment, thus the appellant's allegations are in that sense arbitrary and ill-founded, which is why the Constitutional Court holds that the appellant is not "a victim" of a violation of the right protected by the Constitution of Bosnia and Herzegovina".

93. Given that the present case concerns the same factual and legal issues, the Constitutional Court concludes that in the present case the appellant's right to prohibition of torture, inhuman treatment and punishment, referred to in Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention, in relation to the procedure of granting the stay in BiH, was not violated.

VIII. Conclusion

94. The Constitutional Court concludes that there is no violation of the right to respect for the appellant's private and family life where the Court of BiH, in the proceedings concluded by the challenged verdicts adopted in administrative disputes, brought the facts of the present case in the context of the right referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, and where it was established undisputedly that the forcible removal of the appellant from the country would be justified in terms of the requirement under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

95. The Constitutional Court concludes that there is no violation of the right for a person not to be subjected to torture or inhuman or degrading treatment or punishment under Article II(3)(b) of

the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention where there were not sufficiently strong reasons for one to believe that in the event of the deportation of the appellant to the country of his origin the appellant would be subjected to torture, inhuman or degrading treatment or punishment.

96. There is no violation of the right to life under Article II(3)(a) of the Constitution of Bosnia and Herzegovina and Article 2 of the European Convention, the right to freedom of thought, conscience and religion under Article II(3)(g) of the Constitution of Bosnia and Herzegovina and Article 9 of the European Convention, the right to freedom of expression under Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention, the right to freedom of peaceful assembly and freedom of association with others under Article II(3)(i) of the Constitution of Bosnia and Herzegovina and Article 11 of the European Convention where the issue of possible violations of these rights was not the subject matter of the present proceedings and the decisions of the administrative authorities and the Court of BiH which were adopted in those proceedings. Also, there is no violation of the right to non-discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention where the appellant raised the issue of a violation of the alleged right by instituting the administrative procedures and administrative dispute and where the burden of proof was not on the appellant but on the public authorities, which proved in the reasoning of the challenged decisions that there was no violation of the right to non-discrimination.

97. Also the Constitutional Court concludes that there is no violation of the right to liberty and security of person under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 of the European Convention, the right not to be subjected to torture or to inhuman or degrading treatment or punishment under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention and the right to an effective remedy under Article 13 of the European Convention where the competent authorities, in the procedure of extraordinary extension of the supervision over the appellant whose application for temporary stay in the territory of BiH was dismissed, which was not arbitrary, reasoned their respective decisions, in the manner required by the standards of the European Convention, as to the extension of the supervision for a period beyond 180 days and where the allegations as to the violation of the right for a person not to be subjected to torture or inhuman and degrading treatment or punishment cannot be linked to the present proceedings.

98. Given the decision of the Constitutional Court in this case, the legal effect of the decision on the interim measure no. *AP 41/09* of 31 January 2009 ceases, which was left in effect by the decision on admissibility and merits no. *AP 41/09* of 28 March 2009 until the Court of BiH considered evidence and found whether the forcible removal of the appellant from the country would be justified in terms of the requirement referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

99. Pursuant to Article 61(1) and (3) and Article 16 paragraph 4 (4), (9) and (14) of the Rules of the Constitutional Court, the Constitutional Court has decided as stated in the enacting clause of this decision.

100. Given the decision of the Constitutional Court in this case, it is not necessary to consider the appellant's proposals for adoption of interim measures sought by the respective appeal.

101. Pursuant to Article 41 of the Rules of the Constitutional Court, an annex to this decision shall be Separate Dissenting Opinions of Vice-Presidents Ms. Constance Grewe and Ms. Seada Palavrić.

102. Pursuant to Article VI(5) of the Constitution of Bosnia and Herzegovina, the decisions of Constitutional Court shall be final and binding.

SEPERATE DISSENTING OPINION OF VICE-PRESIDENT GREWE JOINED BY VICE-PRESIDENT PALAVRIĆ

1. In this decision, the Constitutional Court finally accepts the reasons given by the different instances and first of all by the Court of BiH to dismiss the claims of the appellant. It is true that the renewed proceedings result in a much more cautious balancing of the concerned interests. Therefore I agree with a large part of the decision (§§ 58-62, §§ 67-73, §§ 82–93, §§ 96-97).

2. However, I respectfully disagree on some points (§§ 63-65, §§ 74-81), which seem to me incoherent or even contradictory. On the one hand indeed, the Court declares admissible the request concerning the rejection of the appellant's asylum and his temporary stay in BiH (§§ 56-57) and takes into account the possible obstacles to his removal from the country. It examines as well the claim relating to the supervision and its continued prolongation (§§87-93). On the other hand however, the Court considers the request with respect to the appellant's expulsion as premature (§§ 63-65) since the appeal against the challenged ruling of the Ministry no. UP-2-06-07-219/11 of 2 March 2011 has not yet been decided by the Court of BiH.

3. In doing so, the Court at the same time accepts and refuses to review the regularity of the appellant's removal from the country. This ambivalence which pointed already in previous decisions (*AP 1222/07*, *AP 3927/09*, *AP 1483/10*) appears clearly in this case. As already stated in the dissenting opinion under *AP 3927/09,* "If the appellant leaves within 15 days the Court considers that it need not result in separation from his family, presumably on the assumption that his family will be willing to accompany him; and the decision is not the final word on the removal of the appellant from the country, because if the appellant fails to leave the country within 15 days, a further decision will need to be taken relating to his forcible removal."

This artificial separation between the "order" to leave the country "voluntarily" and the decision of expulsion firstly prevents the appellant of a thorough examination of his possible expulsion. Secondly, although the request related to the expulsion is held as premature, the Court decides to put an end to the interim measure no. *AP 41/09* of 31 January 2009 so that the applicant's expulsion would be enforceable before his ultimate request against this decision could be reviewed by the Court of BiH and by the Constitutional Court. Yet these two elements are so intensely linked that the refusal of a temporary stay leads in the present case to detain the appellant in order to be able to enforce the decision of expulsion (Article

102-2 of the Law: *The alien shall remain under supervision until the moment of his/her forcible removal from the country*). Examining the refusal of a temporary stay and the "order" to leave "voluntarily" the country, the Court considers that these decisions do not violate the appellant's family life nor do they present a risk of torture, inhuman treatment and punishment in the country of origin. Both of these conclusions would have merited a closer consideration.

4. First, the applicant's family life is balanced with the national security and the fact that the appellant constitutes a threat to public order (§§ 75, 76). This is established in secret data. However, section 5 of the Secret Data Act 2005 provides that the judges of the State Court and the Constitutional Court have access to all levels of secret data without any formalities, if such access is required for exercising their duties (see Case of *Al Hanchi vs. Bosnia and Herzegovina*, ECHR, § 19). Therefore it would have been possible for the State Court and the Constitutional Court to verify more concretely the reality of the danger the applicant represents for the public order and to balance it with its family life.

5. Secondly, concerning Article 3 of the ECHR (§§ 77 - 81), the Court refers first to its decision *AP 1222/07* and then to the case decided by the European Court of Human Rights *Ammar Al Hanchi vs. Bosnia and Herzegovina* (Application no. 48205/09 of 15 November 2011), without taking into account the huge difference between the present situations in Tunisia and in Syria. Given the dramatic events taking place in the former country, I think that the examination under Article 3 should have been conducted much more thoroughly.

Therefore I cannot agree with the conclusions on admissibility nor am I sure to agree with the conclusions on merits.