

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 18(3)(h), Article 57(2)(b) and Article 59 (1) and (3), of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* – Revised text, 94/14), in a Plenary and composed of the following judges:

Ms. Valerija Galić, President

Mr. Mirsad Ćeman, Vice-President

Mr. Zlatko M. Knežević, Vice-President

Ms. Helen Keller, Vice-President

Ms. Seada Palavrić,

Ms. Angelika Nußberger, and

Mr. Ledi Bianku

Having deliberated on the appeal of Mr. **Patras Moin**, in case no. **AP-2264/22**, at its session held on 19 and 20 January 2023, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeal of **Mr. Patras Moin** lodged against the Judgment of the Court of Bosnia and Herzegovina no. S1 3 U 042239 22 Uvp of 10 May 2022, with regard to the allegations of a violation of rights under Article II(3)(a) and (b) of the Constitution of Bosnia and Herzegovina, Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Convention relating to the Status of Refugees is hereby dismissed as ill-founded.

The appeal of **Mr. Patras Moin** lodged against the Judgment of the Court of Bosnia and Herzegovina no. S1 3 U 042239 22 Uvp of 10 May 2022 with regard to the allegations of a violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is hereby rejected as inadmissible for being incompatible *ratione materiae* with the Constitution of Bosnia and Herzegovina.

REASONING

I. Introduction

1. On 17 June 2022, Mr. Patras Moin (“the appellant”), a citizen of Pakistan, with a registered address of residence in Tuzla, represented by Amila - Mimica Kunosić and Sven Selesković, lawyers employed by the law firm "Kunosić&Co d.o.o. - Kunosić&CoLtd“ practicing in Tuzla, submitted an appeal with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court“) against the judgments of the Court of Bosnia and Herzegovina (“the Court of Bosnia and

Herzegovina“) no. S1 3 U 042239 22 Uvp of 10 May 2022 and no. S1 3 U 042239 22 U of 1 April 2022, and the decisions of the Ministry of Security, Asylum Sector (“the Ministry“) no. UP-1-07/1-41-1-391-12/20 of 3 February 2022. The appellant also submitted a request for adoption of an interim measure by which the Constitutional Court would temporarily suspend the extradition of the appellant to the country of origin, pending a final decision of the Constitutional Court on the appeal.

II. Procedure before the Constitutional Court

2. In its Decision on Interim Measure no. *AP-2264/22* of 6 July 2022, the Constitutional Court dismissed the appellant’s request for adoption of an interim measure as ill-founded.

3. Pursuant to Article 23 of the Rules of the Constitutional Court, on 27 June 2022, the Court of Bosnia and Herzegovina and the Ministry were requested to submit their respective responses to the appeal.

4. On 1 and 7 July 2022, the Court of Bosnia and Herzegovina and the Ministry submitted their respective responses to the appeal, which were forwarded to the appellant’s attorney on 8 September 2022, for observations. However, the observations to the responses were not submitted within the prescribed time limit.

III. Facts

5. The facts of the case, as they appear from the appellant’s assertions and the documents submitted to the Constitutional Court, may be summarized as follows.

6. In the decision of the Ministry no. UP-1-07/1-41-1-391-12/20 of 3 February 2022, the appellant’s application for asylum was dismissed, and he was given a time limit of 15 days from the date of the decision’s finality voluntarily to leave the territory of Bosnia and Herzegovina.

7. In the reasoning, the Ministry indicated that the appellant, as a reason for leaving his country of origin, pointed to the issuance of a Fatwa against him in Pakistan, which states that he has no right to stay alive. Namely, the appellant is a Christian, and a priest who was the head of a church in the place where he lived in Pakistan. The appellant pointed out that he gave a Bible to a Muslim woman who came to his church, at her request, so that she can read, because of which he had problems with her brother-in-law, who is a police officer (“the brother-in-law”). The brother-in-law with his friends came to the appellant’s house, accusing him of giving his sister-in-law a Bible because he wanted her to convert to Christianity, and they were banging on the door of the house and arguing. The appellant immediately called the police, and after some time, he opened the door thinking that the police arrived. However, at that moment the brother-in-law and his friends

attacked the appellant, tore his clothes and beat him. In this regard, the appellant emphasized that the police came only after the mentioned event, but that they did not want to file a report. The police officers only said that they had warned the attackers and that such a thing would not happen again. The appellant stated that he tried to report the brother-in-law to the police on several occasions, because of which the brother-in-law attacked the appellant again (but the “people” stopped him). The police did not take any action upon the reports being filed. After that, the brother-in-law accused the appellant and his family members of engaging in prostitution, and he accused his sons of rape, but they were acquitted of those charges in court proceedings. The brother-in-law then searched for the appellant at his house when he was not there, carrying a fatwa bearing the appellant’s name and accusing him of blasphemy. The appellant stated that in such cases Muslims beat the accused and can kill him or charge him based on the rigorous Blasphemy Law. Answering the question whether he could turn to someone for help because of the fatwa, the appellant pointed out that “as soon as people learn about the fatwa, they find that person and want to kill him, and if someone would reach a trial, he would be killed in prison.”

8. The Ministry has asserted that it examined the appellant’s request from the aspect of freedom of religion, which could be the reason based on which it can be determined that the appellant is threatened with persecution in Pakistan. In addition, the Ministry states that, according to various international reports relating to the state of rights and freedoms in Pakistan, religious minorities in Pakistan, including Christians, face violence, discrimination and persecution. Furthermore, the Ministry has also stated that the controversial Blasphemy Law mainly motivated attacks on Christians, and that the number of cases related to the accusations of blasphemy against religious minorities has increased. In addition, the Ministry has stated that reports indicate that the authorities often did not intervene in cases of social violence against religious minorities. However, it has also stated that the competent court acquitted two Christians of accusations of blasphemy and that the “Government” took some measures to protect religious minorities. In connection with the fatwa, the Ministry has pointed out that it follows from international reports that a fatwa is an advisory opinion issued by the mufti in response to a specific question. The government of Pakistan has no control over the issuance of fatwas, there is no law to organize or control fatwas, and that “fatwa is not synonymous for legal judgment”¹. The Ministry has indicated that the fatwa of 20

1 „US Department of State, Report on International Religious Freedom - Pakistan 2020”, “US Department of State, Report on International Religious Freedom - Pakistan, dated 12 May 2021”, “Austrian Red Cross, ACCORD, Pakistan, Religious Minorities, March 2021”, “UCA News: The Decline of Christianity in Pakistan, dated 21 May 2021”, “BBC News: Why Christians are being targeted in Pakistan, dated 30 October 2018” and “Home Office, Pakistan, Data on the country of origin, dated 7 December 2012”.

December 2018 stated that the appellant, a Christian, forced a woman to leave Islam and accept Christianity, and that he should be punished with a very severe punishment.

9. The Ministry has stated that based on the above reports, it could not conclude that the appellant was threatened with persecution in Pakistan for being a Christian. Namely, it follows from the appellant's testimony and relevant international reports that members of religious minorities, including Christians, are sometimes in a discriminatory position in Pakistan compared to Muslims, who are the majority. However, this does not mean that they are immediately in need of international protection. The Ministry states that it was particularly mindful of the fatwa referred to by the appellant, as well as the statement from the report that a fatwa in Pakistan is not binding and is not synonymous with a legal ruling. The government of Pakistan has no control over the issuance of fatwas, it does not publish any fatwas, and there is no official fatwa institution, no official mufti, and no law to organize or control fatwas. A fatwa is an advisory opinion given by a religious scholar. In addition, there is no executive authority to issue a fatwa. Therefore, the Ministry has concluded that in Pakistan the fatwa does not have such an influence that the appellant would be convicted in the proceedings before the relevant court because of it, so there is no risk of state or judicial prosecution or punishment that is disproportionate or discriminatory, within the meaning of Article 20 of the Law on Asylum.

10. The Ministry has clarified that "non-state actors" attacked the appellant, as a Christian, that he was mistreated, and that he and his family members were accused of prostitution and rape. However, regardless of the situation in which they found themselves, as Christians, the protection of the state was not lacking, because they were all acquitted of the aforementioned charges. Therefore, as stated, it is reasonable to assume that state authorities would act fairly even in the case of possibly false accusations of blasphemy. The Ministry has pointed out that there is no basis for concluding that the appellant could be exposed to persecution in the country of origin according to the definition of a refugee within the meaning of Article 19 of the Law on Asylum. In connection with the granting of subsidiary protection pursuant to Article 22 of the Law on Asylum, the Ministry has also underlined that in the particular case there are no indications of a violation of human rights beyond the above-discussed violations from the aspect of religion. Therefore, one cannot say that the death penalty, torture or other violations foreseen by the said legal provision would occur.

11. In the judgment of the Court of Bosnia and Herzegovina no. S1 3 U 042239 22 U of 1 April 2022, the appellant's lawsuit filed against the Ministry's decision of 3 February 2022 was dismissed. In the judgment of the Court of Bosnia and Herzegovina no. S1 3 U 042239 22 Uvp of

10 May 2022, the appellant's request for review of the court's decision was dismissed. In the reasoning, the Court of Bosnia and Herzegovina accepted the determinations and conclusions from lower-level decisions as correct and lawful. In addition, the Court of Bosnia and Herzegovina pointed out that there were no grounds to believe that deportation would expose the appellant to a real risk of being subjected to inhumane or degrading treatment upon his return to Pakistan. This would constitute a violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention"). The Court of Bosnia and Herzegovina pointed out that it was established that the appellant had no problems with the Pakistani authorities until now, that he was acquitted of false accusations, and that he, as a church pastor organized parties for the Christmas and New Year holidays where there were always members of several nations. Therefore, the Court of Bosnia and Herzegovina pointed out that there are no reliable indicators that would confirm the appellant's statement that the State of Pakistan is "especially interested in him", due to his belonging to a certain socially recognizable group.

IV. Appeal

I. Allegations in the appeal

12. The appellant contends that the contested decisions violated his right to life under Article II(3)(a) of the Constitution of Bosnia and Herzegovina and Article 2 of the European Convention in connection with Article 1 of Protocol No. 6 to the European Convention, and the right not to be subjected to torture, 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 a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 (1) of the European Convention. The appellant also points out that his right to asylum, the prohibition of forced removal or return, *i.e.* the right to subsidiary protection was violated. These rights derive from the 1951 Convention relating to the Status of Refugees.

13. In a very extensive appeal, the appellant has repeated the allegations that a fatwa was issued against him due to accusations of blasphemy, that the aforementioned Muslim woman's brother-in-law physically assaulted him and his family, and that they did not receive any protection from the police. The appellant has pointed out that in the contested decisions it was neglected that he was in danger of being accused of blasphemy in accordance with the Law on Blasphemy, for which acts the said law foresees life imprisonment or even the death penalty. He has also elaborated on what emerges from international reports on the situation in Pakistan regarding cases involving blasphemy charges, as well as other irregularities in the Pakistani system. In addition, the appellant has

emphasized that almost all reports warn of the persecution of religious minorities, which takes place based on the Law on Blasphemy, according to which it is sufficient that two Muslims of legal age testify that someone has blasphemed. Furthermore, the appellant has pointed out that in those cases Christians do not have a fair trial and that they face inhumane conditions in prison. The appellant has highlighted that the court failed to assess the possibility of persecution by non-state actors, given that the controversial fatwa calls for the punishment of the appellant by the Muslims of Pakistan and not by the state actors. The appellant has indicated that in Pakistan this situation represents a real danger to his life, especially since the authorities of Pakistan have not taken any action to protect him from such persecution. Therefore, the appellant has pointed out that he would not be safe in other parts of Pakistan, apart from where he lived. Besides, the appellant has referred to the case of the European Court of Human Rights (“the European Court”) in *M.A.M. v. Switzerland*, judgment of 26 April 2022, application no. 29836/20, citing a similar situation, where a person of Pakistani origin was also persecuted by non-state actors in Pakistan for converting from Islam to Christianity.

II. Response to the appeal

14. The Court of Bosnia and Herzegovina pointed out that the allegations in the appeal were not well-founded, and that the challenged decision of that court was adopted in accordance with the relevant provisions of substantive law.

15. The Ministry has reiterated that according to the relevant Report, the Fatwa in Pakistan does not have such an effect that the appellant would be convicted based on it in the proceedings before the relevant court. Regarding the appellant’s allegations that the State does not protect him and his family, the Ministry has pointed out that the State of Pakistan had provided protection to the appellant and his family in the earlier proceedings against them before the court. Therefore, the Ministry has indicated that the State acted in a fair manner. Therefore, there is an assumption that the State would act in such a manner when deciding the case of possible initiation of proceedings due to false accusations of blasphemy.

V. Relevant Law

16. The **Law on Asylum** (*Official Gazette of BiH*, 11/16 and 16/16 – corrigendum), as relevant, reads:

Article 19

(Refugee Status)

Refugee status shall be granted to an alien who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country as well as to a stateless person who is outside the country of his/her former habitual residence and is unable or, owing to such fear, is unwilling to return to it.

Article 20

(Acts of persecution)

- (1) Acts that are considered persecution within the meaning of Article 19 of the Law must be:*
- a) sufficiently serious by their nature or repetition to constitute a severe violation of fundamental human rights, especially the rights that cannot be restricted under Article 15 paragraph (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or*
 - b) set of various measures, including violation of human rights, which, seen as a whole, can affect the individual in the manner as specified in subparagraph a) above.*
- (2) Acts of persecution mentioned in paragraph (1) above, among others, may be as follows:*
- a) physical or psychological violence, including sexual violence;*
 - b) legal, administrative, police and/or judicial measures which are discriminatory per se or are implemented in a discriminatory manner;*
 - c) prosecution or punishment, which is disproportionate or discriminatory;*
 - d) denial of the right to judicial protection, which leads to disproportionate or discriminatory punishment;*
 - e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses contained in Articles 21 (1) a), b) and c) of the Law;*
 - f) acts which are by their nature specifically related to gender or children.*
- (3) Acts of persecution or lack of protection from such acts must be related to race, religion, nationality, membership of a particular social group or political opinion.*
- (4) There must be a connection between the reasons and acts of persecution and/or the lack of protection against such acts.*

(5) *When assessing if the applicant has well-founded fear of persecution, it is not relevant if he/she actually possesses racial, religious, national, social or political characteristics which cause persecution if such characteristics are attributed to him/her by the agent of persecution.*

Article 22

(Subsidiary protection)

(1) *Subsidiary protection is granted to an alien who is not eligible for a refugee status under Article 19 of the Law, when there are serious grounds for believing that, if returned to his/her country of origin or habitual residence, he/she would be exposed to a real risk of severe violation of his/her human rights and fundamental freedoms.*

(2) *Severe violation in terms of paragraph (1) above refers to death penalty or execution, torture, inhuman or degrading treatment or punishment, serious and individual threat to the life or physical integrity of civilians due to indiscriminate violence in situations of international or internal armed conflict.*

Article 30

(Single procedure upon the asylum application)

The Ministry shall assess whether the asylum application is well-founded in a single procedure, by first examining the conditions for granting a refugee status and, if those conditions are not fulfilled, then it shall examine the conditions for granting subsidiary protection.

Article 41(1)(c)

(Decisions on the asylum application)

- (1) *The Ministry shall make a decision on the asylum application:*
- a) *to reject the application and set a deadline for voluntary departure from BIH;*

Article 56

(Application of the law regulating movement and stay of aliens)

In case when the Ministry issues a final decision mentioned in Article 41 (1) e) and f) or a final and binding decision mentioned in Articles 41 (1) c) and d), 43 (6) and 54 (1), the law regulating the movement and stay of aliens shall apply to aliens who do not leave BiH within the deadline set out in the decision.

17. **The Law on Foreigners** (Official Gazette of BiH, 88/15 and 34/21), as relevant reads:

Article 106(1)(b) and (f) and (2),(3) and (4)

(Reasons for imposing the expulsion measure)

(1) Alien may be subject to expulsion measure from BiH if:

a) has entered BiH illegally;

b) remained in BiH after the expiry of the visa or residence permit or after the expiry of the visa-free stay, or if his/her application for residence permit had been rejected, and has not left BiH in the period specified for voluntary departure;

f) has remained in BiH after the cessation of refugee status, subsidiary protection or temporary protection or after the asylum claim was rejected by an executive decision without acquiring a right to residence in accordance with this Law;

(2) In determining whether to impose a measure of expulsion from BiH, as well as deciding on the duration of that measure, the Service is obliged to carefully review all evidence and establish all circumstances and facts relevant for the decision as well as the level of the alien's

integration in BiH under the principles of law governing the administrative procedure in BiH.

(3) In case of a foreigner's stay in BiH longer than the period of validity of his/her travel document, visa, visa-free or approved residence on humanitarian reasons, the Service may issue an order for voluntary leave from the BiH territory instead of pronouncing the

*expulsion
measure.*

(4) Order under paragraph (3) herein shall be issued for the purpose of crossing the state border with prior statement from an alien confirming the intention of voluntary exit from BiH and the evidence supporting the alien's statement.

Section C. Forcible removal of aliens from BiH

Article 112

(Conclusion on authorized enforcement of the decision on expulsion)

(2) Service shall carry out the forcible removal of an alien from BiH ex officio based upon a conclusion on authorized enforcement.

(3) After the decision on expulsion becomes final, the Service shall make a conclusion on authorized enforcement without any delay, and at the latest within 7 days from the date when the requirements for the forcible removal of an alien from BiH were met.

(4) Conclusion on authorized enforcement establishes that the decision on expulsion became enforceable and shall specify the manner and time of execution, and the State to which the alien returns.

(5) Appeal against the conclusion may be filed with the Ministry within 8 days of from the date of its delivery.

VI. International material

18. **US Department of State, Report on International Religious Freedom - Pakistan 2020,** (<https://www.state.gov/reports/2020-report-on-international-religious-freedom/pakistan/>), reads:

Government practice

[...] Human rights groups reported an increase in blasphemy cases and allegations against members of the Shia Muslim community. On September 5, the HRCP expressed concern over the surge in blasphemy cases against religious minorities, particularly the Shia community, and the potential for sectarian violence. The HRCP reported that more than 40 such cases were registered under the blasphemy laws in August alone.

[...]

NGOs, legal observers and religious minority representatives continued to raise concerns regarding the failure of lower courts to adhere to basic evidentiary standards in blasphemy cases, and the slow pace of adjudicating these cases, which led to some suspects remaining in detention for years as they waited their initial trial or appeals, and to some convicted persons spending years in prison before higher courts overturned their convictions and freed them for lack of evidence. According to legal advocacy groups, some lower courts continued to conduct proceedings in an intimidating atmosphere, with members of antiblephemy groups, such as the Tehreek-i-Labbaik Pakistan (TLP), often threatening the defendants' attorneys, family members, and supporters. At other times, advocacy groups reported that blasphemy trials were held inside jails for security reasons, in which case the hearings were not public, resulting in a gain in immediate security but a loss of transparency. These observers said the general refusal of lower courts to hold timely hearings or acquit those accused persisted due to fear of reprisal and vigilantism. Legal observers also reported judges and magistrates often delayed or continued trials indefinitely to avoid confrontation with, or violence from, groups provoking protests.

While the law requires a senior police official to investigate any blasphemy charge before a complaint may be filed, a requirement that NGOs and legal observers stated helped contribute to an objective investigation and the dismissal of many blasphemy cases, some NGOs said police did not uniformly follow this procedure. There were some cases in which police received custody of the accused from a court for 14 days for a senior officer to carry out an investigation. At the same time, NGOs reported that sometimes lower-ranking police would file charges of blasphemy, rather than a senior police superintendent who had more authority to dismiss baseless claims, or that police would not carry out a thorough investigation. NGOs and legal observers also stated police often did not file charges against individuals who made false blasphemy accusations.

During the year, courts overturned some blasphemy convictions upon appeal and acquitted others after the accused had spent years in prison. On October 6, the Lahore High Court

acquitted Sawan Masih, a Christian man sentenced to death for blasphemy in 2014, but Masih continued to face death threats and had to go into hiding with his family. His was the first acquittal for blasphemy since October 2018, when Asia Bibi, a Christian woman sentenced to death in 2010, was acquitted. On December 15, the Lahore High Court acquitted a second Christian man, Imran Ghafur Masih, who had been sentenced to death for blasphemy in 2010. Courts also penalized antiblasphemy groups. In January, an antiterrorism court sentenced 86 members of the TLP to 55-year prison terms each for taking part in violent protests following Bibi's acquittal.

[...]

Authorities provided enhanced security for Shia Muslim, Christian, and Hindu places of worship at various times throughout the year, including around particular religious holidays or in response to specific threats. In August and September, increased security was provided throughout the country for the Shia community's Muharram processions. In Islamabad, the deputy inspector general of police said as many as 15,000 police, Rangers, and Frontier Corps personnel were involved. In Peshawar, security was increased around churches ahead of Christmas after security forces arrested four militants on December 17 who were allegedly planning an attack on Christmas Day, which is also celebrated as Quaid-i-Azam Day, the birthday of Pakistan's founder, Mohammed Ali Jinnah. Ahead of Christmas in Lahore, police deployed some 6,000 officers and officials at 623 churches. Police also deployed snipers and used closed-circuit television cameras and metal detectors to ensure the security of churches and Christmas markets. In Sindh, police provided enhanced security at churches and Hindu temples, especially in Karachi, on eves of festivals such as Christmas and Diwali.

[...]

Section III

The status of social respect for religious freedom

Targeted killings of Shia and Ahmadi Muslims and violence and discrimination against Christians, Hindus, and Ahmadi Muslims continued to occur. Throughout the year, unidentified individuals assaulted and killed Shia and Ahmadis in attacks sources believed to be religiously motivated. The attackers' relationship to organized terrorist groups was often unclear.

[...]

In its 2020 World Watch List report, the international NGO Open Doors listed Pakistan, noting that Christians face “extreme persecution in every area of their lives, with converts from Islam facing the highest levels.” According to Open Doors, all Christians in the country “are considered second-class citizens, inferior to Muslims.” The NGO stated Christians are often given jobs “perceived as low, dirty and dishonourable, and can even be victims of bonded labour.” The NGO also said that Christian girls in the country were increasingly “at risk of abduction and rape, often forced to marry their attackers and coerced into converting to Islam.”

[...]

19. **United Kingdom: Home Office, Country of Origin Information Report - Pakistan** (<https://www.refworld.org/docid/50c1d3a52.html>), as relevant reads:

FATWA

19.83 A Canadian Immigration and Refugee Board (IRB) Response to Information Request (RIR) dated 20 November 2007 provided a definition of a fatwa (plural fatawa) as “...an advisory opinion issued by a mufti in response to a questioner...A mufti is an authority on Islamic law and tradition, who functions independently from the judicial system...Other sources indicate that a mullah [i.e., a religious cleric or a person with religious education]...may also be able to issue fatwa...”. The same source, citing a professor of Islamic Studies at Emory University, Georgia, stated that - a fatwa...is a non-binding interpretation or ruling by a mufti. It is an opinion. A fatwa does not have an executive branch to carry out the rulingl. ‘

19.84 The IRB response added that: “Fatawa address legal and religious issues...as well as matters of everyday life...They can reportedly range in length from single word responses, such as —yesl or —no,l to —book-length treatisesl...According to the Professor of Islamic Studies, fatawa, or rulings on a question, can differ by Muslim schools of law... There are three Shia schools of law and four Sunni schools of law... Although all these schools of law argue from the Quran, each has its own fatwa tradition and historical precedents that can make their rulings different from one other. The Professor of Islamic Studies further stated that the issuance of fatawa is —very dynamicl and that rulings on the same question may differ by individual fatwa requester (i.e., because of different circumstances, etc.)...There are reportedly —hundredsl or even —thousandsl of fatawa issued on a daily basis in Muslim countries... ‘

19.85 *With regard to the impact of fatwa, the IRB report observed:*

The influence of a fatwa reportedly depends on the stature of the person who issues it...It is also said to depend on the popularity and/or the practicality of the fatwa... According to the Professor of Islamic Studies, a person who asks for a fatwa can follow the interpretation or ruling, but is not obligated to do so; he or she may go to another mufti for a different ruling. The University of Toronto Professor of Law similarly indicated that a fatwa is an opinion with no legal standing and that it is up to an individual to decide whether he or she wants to ignore it or take it seriously...According to the Professor of Islamic Studies at Emory University, when a fatwa runs against the interests of government, then it can be declared invalid by the state (e.g., if a fatwa is issued by an —extremist group). He noted that certain fatwas are resisted by the government because they are found to be —unhelpful for political leaders... However, the Professor stated... —generally, a fatwa represents the interest of a specific group (e.g., a moderate or —extremist group). Even though a fatwa may not be recognized by the government, the group that issued it takes it seriously. In such a case, a fatwa issued against an individual can be just as dangerous as if it were government action against the individual.

19.86 *In another RIR dated 11 January 2008, the IRB recorded the following information provided to them by the Chairman of the Government of Pakistan's Council of Islamic Ideology:*

[I]n Pakistan, [the] issuance of fatwa is not organized by the state. It is privately managed by different institutions. As far as religious official institutions are concerned, there are ministries of Religious Affairs in the centre and also in provinces but they are not fatwa organizations. The Council of Islamic Ideology is a constitutional body which advises the government on Islamic legislation but it also does not issue fatwa. There is no official organization for [the] issuance of fatwa in Pakistan nor is there any official format of fatwa. The government does not publicize any fatwa because there is no official fatwa institution or an official Mufti.

19.87 *The same RIR continued:*

Fatwas are issued privately by various scholars in whom the people have trust. The common practice is that a number of religious teaching institutions (Madrasas) have organizations of fatwa under their supervision. There are also individual scholars who issue these fatwas.

However, there is no process of official recognition of any mufti or fatwa. The people consult these institutions and individuals on the basis of their knowledge and reputation.

It is difficult to define the reach of a fatwa because the acceptability of [a] fatwa does not depend on official recognition or organization. The reach of [a] fatwa depends on personal recognition. It also depends on [the] religious group to which the inquirer of the fatwa belongs.

The Government of Pakistan [has] no control over the issuance of fatwa[s]. There [is] no legislation for organizing or controlling the fatwa. According to the theory of fatwa, a fatwa is not binding. It is not synonymous with legal judgment. A person may ask fatwa on the same question from several scholars.

20. Human Rights Committee, Concluding observations on the initial report of Pakistan, U.N. Doc. CCPR/C/PAK/CO/1 (23 August 2017)

33. The Committee is concerned by the blasphemy laws, including sections 295 and 298 of the Pakistan Penal Code, that carry severe penalties, including the mandatory death penalty (sect. 295(C)), and reportedly have a discriminatory effect, particularly on Ahmadi persons (section 298 (B) and (C)); by the very high number of blasphemy cases based on false accusations and by violence against those accused of blasphemy, as illustrated by the case of Mashal Khan; and by repeated reports that judges who hear blasphemy cases are frequently harassed and subjected to intimidation and threats. While noting the judgment of the Supreme Court of 19 June 2014, the Committee regrets the absence of information on the implementation of that judgment, and remains concerned by the continued reports of hate speech and hate crimes against persons belonging to religious minorities and their places of worship and by the religiously biased content of textbooks and curricula in public schools and madrasas (arts. 2, 14, 18 and 19).

34. The State party should:

(a) Repeal all blasphemy laws or amend them in compliance with the strict requirements of the Covenant, including as set forth in the Committee 's general comment No. 34 (2011) on the freedoms of opinion and expression, para. 48;

(b) Ensure that all those who incite or engage in violence against others based on allegations of blasphemy, as well as those who falsely accuse others of blasphemy, are brought to justice and duly punished;

(c) Take all measures necessary to ensure adequate protection of all judges, prosecutors, lawyers and witnesses involved in blasphemy cases;

(d) Ensure that all cases of hate speech and hate crimes are thoroughly and promptly investigated and that perpetrators are prosecuted and, if convicted, punished;

(e) Review school textbooks and curricula with a view to removing all religiously biased content, incorporate human rights education therein and continue to regulate madrasas;

(f) Fully implement the judgment of the Supreme Court of 19 June 2014.

VII. Admissibility

21. 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 court in Bosnia and Herzegovina.

As to the allegation of a violation of the right to a fair trial

22. In examining the admissibility of part of the appeal relating to the allegations of violations of 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, the Constitutional Court invoked provisions of Article 18 (3)(h) Rules of the Constitutional Court.

Article 18, paragraph (3) (h) of the Rules of the Constitutional Court reads:

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

h) the appeal is ratione materiae incompatible with the Constitution

23. With regard to the appellant's allegations of a violation of the right to a fair trial, the Constitutional Court must first determine whether the guarantees provided for in the aforementioned Article are applicable to the case in question.

24. In this regard, the Constitutional Court notes that deciding on status issues (such as granting citizenship, residence, *etc.*) falls within the scope of public law powers of a certain state, which is excluded from the scope of Article 6 of the European Convention. The case law of the European Court explicitly states that, in general, the right to enter and stay in a country is not a right guaranteed by the provisions of the European Convention, not even for citizens of that country. Such rights are determined by public law through acts of public administration, from which it follows that the term “civil right” under Article 6(1) of the European Convention does not include any such right. Therefore, neither the decision granting nor refusing entry, nor the procedure in which that decision is adopted, are subsumed by the provisions of Article 6(1) of the European Convention (see *Maaouia v. France*, judgement of 5 October 2000, application no. 39652/98, paragraph 35 with further references).

25. In view of the above, the Constitutional Court notes that the right to grant refugee status and subsidiary protection falls within the scope of public law of each country and is considered an act of the state falling with its domain of public law and does not enjoy the protection under Article 6 of the European Convention as a “civil right or obligation”. Therefore, the Constitutional Court holds that Article 6(1) of the European Convention is not applicable to the present case (see Constitutional Court, Decision on Admissibility no. *AP-1192/17* of 10 April 2018, available at www.ustavisud.ba).

26. Given that Article II(3)(e) of the Constitution of Bosnia and Herzegovina, in this case, does not provide a wider scope of protection than Article 6 of the European Convention, it follows that the allegations of a violation of the right to a fair trial are incompatible *ratione materiae* with the Constitution of Bosnia and Herzegovina.

As to the allegations of violations of other rights

27. In accordance with Article 18(1) of the Rules of the Constitutional Court, the Constitutional Court may examine an appeal only if all effective legal remedies, available under the law against the judgment or decision challenged by the appeal, have been exhausted and if it is filed within a time limit of 60 days from the date on which the appellant received the decision on the last legal remedy that he/she used.

28. In the present case, the subject matter challenged by the appeal is the Judgment of the County Court no. S1 3 U42239 22 Uvp of 10 May 2022, against which there are no other effective remedies available under the law. In addition, bearing in mind that the contested judgment was adopted on 10 May 2022, and that the appeal was filed on 17 June 2022, the Constitutional Court

notes that it was filed within 60 days, as prescribed by Article 18 (1) Rules of the Constitutional Court. Finally, the appeal also meets the requirements under Article 18 (3) and (4) of the Rules of the Constitutional Court, for there is no other formal reason rendering the appeal inadmissible, nor is it manifestly (*prima facie*) ill-founded.

29. In view of the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 18(1), (3) and (4) of the Rules of the Constitutional Court, the Constitutional Court established that the relevant appeal meets the admissibility requirements.

VIII. Merits

30. The appellant contests the disputed decisions claiming that those decisions violated his rights under Article II(3)(a) and (b) of the Constitution of Bosnia and Herzegovina, as well as his rights under Article 2 of the European Convention, in conjunction with Article 1 of Protocol No. 6 to the European Convention and under Article 3 of the European Convention. In addition, the appellant points out that his rights under the Convention relating to Status of Refugees were violated.

The right to life and the right not to be subjected to torture, inhuman or degrading treatment or punishment

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

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:

[...]

a) The right to life.

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

32. Article 2 of the European Convention, as relevant, reads:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

[...]

33. Article 3 of the European Conventions, as relevant, reads:

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

34. Article 1 of Protocol No. 6 to the European Convention, as relevant, reads:

No one shall be condemned to such penalty or executed.

35. The Constitutional Court recalls that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the European Convention, to control the entry, residence and expulsion of aliens. However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the European Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the destination country (see *F. G. v. Sweden*, judgment of 23 March 2016, application no. 43611/11, paragraph 111). Bearing in mind that in removal cases, the relevant principles are the same for the assessment of Articles 2 and 3 of the European Convention, and that according to the Constitutional Court's assessment, the appellant's objections under Articles 2 and 3 of the European Convention are inseparable, the Constitutional Court will examine them together (see the case cited above, *F.G. v. Sweden*, paragraph 110, as well as *M.A.M. v. Switzerland*, judgment of 26 April 2022, application no. 29836/20, paragraph 62).

36. The Constitutional Court recalls the case law of the European Court according to which it is the duty of the courts to "examine all foreseeable consequences of sending [the appellant] to the receiving country, bearing in mind the general situation and his personal circumstances" (see, *Saadi v. Italy*, judgment of 28 February 2008, application no. 37201/06, paragraphs 130 and 131). Thus, using all reliable evidence, this includes an assessment of the situation in the receiving country and a consideration of the appellant's foreseeable position in those circumstances. In addition, the Constitutional Court recalls the case law of the European Court, that only "in the most extreme cases" would the general situation of violence in the country of origin be of sufficient intensity to create a justified risk that there is a real danger of abuse because the individual will be exposed to such violence upon return (see above cited case, *F. G. v. Sweden*, paragraph 116. and other cited references). In this regard, the Constitutional Court also recalls the European Court's case of *Samina v. Sweden*, wherein, considering the applicant's allegations that, if she were to be deported from Sweden to Pakistan, she would face a real risk of being imprisoned, tortured and perhaps executed on the charge of blasphemy, the European Court assessed, *inter alia*, that there were no indications that the situation in Pakistan was sufficiently serious to conclude that the return of the

applicant thereto would constitute, in itself, a violation of Article 3 of the Convention (see, *Samina v. Sweden*, judgment of 20 October 2011, application no. 55463/09, paragraph 50).

37. The Constitutional Court notes that the personal circumstances, which the appellant pointed out in the appeal, are based on the fatwa issued against the appellant, because of which, as he himself claims, he is in danger in the event of his return to Pakistan. In this regard, the Constitutional Court notes that, in the contested decisions, the Court of Bosnia and Herzegovina and the Ministry particularly analysed the effect of the fatwa in Pakistan, referring to international sources. Namely, it does not appear from the case file that the fatwa in Pakistan has such an effect that the appellant would be accused and convicted in the proceedings before the relevant court just because of the issuance of the fatwa. In addition, it does not appear from the case file that the appellant, as a Christian, had problems with the Pakistani authorities. In other words, it does not appear that because of the issued Fatwa, the State of Pakistan is “particularly interested in him”. In view of the above, the Constitutional Court has no reason not to agree with the conclusion in the disputed decisions, that there is no justified risk that only because of the fatwa an indictment will be brought against the appellant and that the appellant will be convicted in accordance with the Law on Blasphemy before the relevant authorities in Pakistan.

38. Furthermore, contrary to the appellant’s allegations, the Constitutional Court considers that the Ministry and the Court of Bosnia and Herzegovina have also assessed the possibility that the appellant might be persecuted by a non-state actor (in this case, the brother-in-law). Namely, the Constitutional Court considers that this follows from the reasoning of the contested decisions in which both the Ministry and the Court of Bosnia and Herzegovina indicated that the protection of the state was not absent in the case when the brother-in-law falsely accused the appellant and his family members of prostitution and rape. They were acquitted of such false accusations. The Constitutional Court considers that there is no evidence that the state authorities would act unfairly if the appellant were falsely accused of blasphemy, that is, that the state would not provide the appellant with the necessary protection. In addition, the Constitutional Court recalls that in the disputed decisions, after evaluating the presented evidence, the relevant authorities clearly indicated that the appellant, apart from his brother-in-law, had no problem in his life in Pakistan as a Christian. Namely, as it was reasoned, the appellant, as the pastor of the church, worked normally and organized parties for the Christmas and New Year holidays, at which there were always members of several nations.

39. Furthermore, in connection with the appellant’s allegations that the authorities did not provide him with protection due to the issued fatwa, the Constitutional Court considers that there is

no evidence that the authorities of Pakistan knew or should have known about the possible existence of a danger to the appellant's safety due to the criminal acts of a third party, based solely on the information that a fatwa was issued. In addition, the Constitutional Court notes that the appellant's allegation that the police did not protect him from the brother-in-law are based on the allegations that the authorities did not initiate proceedings upon his complaint against his brother-in-law. However, it follows from the appellant's testimony that the police did come at his call, although only after his brother-in-law had physically attacked him, but it also appears that they talked to the brother-in-law and the other attackers, that they warned the attackers and that such a thing would not happen again. Based on the above, the Constitutional Court is not convinced that the police failed to afford the necessary protection to the appellant.

40. In connection with the appellant's reference to the case of the European Court of Human Rights in the judgment *M.A.M. v. Switzerland*, the Constitutional Court points out that the European Court of Human Rights found in that case that there would have been a violation of Articles 2 and 3 of the Convention if the applicant had been removed to Pakistan without an in-depth and thorough assessment by the Swiss authorities of the overall situation of Christian converts in Pakistan and of the applicant's personal situation. In the aforementioned case, the European Court concluded that the Swiss authorities' assessment of the risk that the applicant could face if he were deported to Pakistan due to his conversion to Christianity was not sufficient to support the rejection of his asylum application, especially considering that he did not have a lawyer to represent him at any stage of the proceedings before the domestic authorities (*op. cit.*, judgment of *M.A.M.*, paragraph 65). However, in this case, the Constitutional Court notes that the appellant is not a person who converted from Islam to Christianity, and that the Ministry and the Court of BiH have analysed in detail both the appellant's personal circumstances and the general situation in Pakistan, as well as the actions of the police and other authorities with regard to the attacks and accusations to which the appellant was exposed. In addition, the Constitutional Court notes that the appellant does not complain that he was not adequately represented in the specific case, nor does it appear from the case file that the appellant was not provided with legal assistance (the appellant was represented during the entire proceedings by lawyers employed by the Association "Vaša prava BiH"). Therefore, connecting the case referred to by the appellant with the disputed proceedings, the Constitutional Court considers that it is not the same situation.

41. The Constitutional Court also holds, bearing in mind the mentioned case law of the European Court of Human Rights and reports concerning the appellant's country of origin, that the general situation in Pakistan is not so serious that it would, by itself, be a cause for the violation of

Articles 2 and 3 of the European Convention if the appellant was returned to Pakistan. Finally, the Constitutional Court recalls that according to the disputed decisions, the appellant was not deported to Pakistan, but his application for asylum was rejected and he was ordered to leave Bosnia and Herzegovina voluntarily. Therefore, taking into account all of the above, the Constitutional Court considers that in this particular case there are no sufficiently convincing arguments to believe that the rejection of the appellant's application for asylum and the order to voluntarily leave the territory of BiH would expose the appellant to a real risk of being subjected to inhumane or degrading treatment.

42. Bearing in mind the above, the Constitutional Court concludes that the adoption of contested decisions did not result in a violation of Article II(3)(a) and (b) of the Constitution of Bosnia and Herzegovina and Article 2 of the European Convention, in conjunction with Article 1 of Protocol No. 6 to the European Convention, and Article 3 of the European Convention.

Convention relating to the Status of Refugees

43. As regards the appellant's allegations that his rights under the Convention relating to the Status of Refugees were violated, the Constitutional Court holds that the consideration of these appellant's allegations is pointless. Namely, the Constitutional Court holds that the guarantees of the mentioned Convention are contained in the guarantees of rights under Article II(3)(a) and (b) of the Constitution of Bosnia and Herzegovina and Articles 2 and 3 of the European Convention, as well as that the appellant's allegations of a violation of this Convention are, essentially, based on the same allegations that he pointed out in connection with the violation of Articles 2 and 3 of the European Convention. They were examined by the Constitutional Court in the preceding paragraphs of the present decision (see, Constitutional Court, Decision no. *AP-4391/12* of 10 February 2015, available at www.ustavisud.ba).

IX. Conclusion

44. The Constitutional Court concludes that there has been no violation of the appellant's rights under Article II(3)(a) and (b) of the Constitution of Bosnia and Herzegovina, or under Article 2 of the European Convention, in conjunction with Article 1 of Protocol No. 6 to the European Convention and Article 3 of the European Convention. The Constitutional Court concludes that it has not been established that the rejection of the appellant's asylum application and the order voluntarily to leave the territory of BiH would expose the appellant to a real risk of being subjected to persecution, torture, inhuman or degrading treatment or punishment, and a serious threat to life or physical integrity. The Court and relevant authorities have assessed the appellant's personal

circumstances, the general situation in Pakistan, and the conduct of the police and other authorities with regard to the attacks and accusations to which the appellant was previously exposed.

45. Pursuant to Article 18 (3)(h) and Article 59 (1) and (3) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the enacting clause of this decision.

46. Under Article 43 of the Rules of the Constitutional Court, annexed to this decision is Separate Concurring Opinion of Judge Ledi Bianku. Vice-President Zlatko M. Knežević gave a statement of dissent.

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

Valerija Galić
President
Constitutional Court of Bosnia and Herzegovina
/signature affixed/

SEPARATE CONCURRING OPINION OF JUDGE LEDI BIANKU

I agree with the conclusion in this case. However, I consider important to raise some concerns I have in view of the analysis conducted by the authorities in concluding that the appellant in this case was not in danger if returned to Pakistan. In their analysis the administrative authorities, including the State Court of Bosnia and Hercegovina, seem to conduct an analysis on risk upon return to Pakistan, only in relation to the official state policies and practices in concerning Christians in Pakistan.

In the particular circumstances of the case, where the appellant is a Christian, and a priest who was the head of a church in the place where he lived in Pakistan, it seems to me that the test should have also included the possibility whether the appellant could have been victim of fatwa as a result of the activities of not official organisations, and whether he could have obtained protection by the authorities in such eventuality (See French Conseil d'État, M. A., n° 334040, 1 July 2011, compare *mutatis mutandis* with ECHR, *J.K. and others v. Sweden* [GC], n° 59166/12, and *Sufi and Elmi v. United Kingdom*, nos. 8319/07 et 11449/07, 28.06.2011 and *H. and B. v. United Kingdom*, nos 70073/10 et 44539/11, 9 avril 2013,). As it results from the information in the file, “[I]n Pakistan, [the] issuance of fatwa is not organized by *the state*. *It is privately managed by different institutions.*”²

In these conditions, the test of risk applied by the authorities is not complete, in the sense that the risk upon return of the appellant to Pakistan is excluded. However, I voted in favour of the proposal in view of the fact that the appellant is not being returned to Pakistan, and the risk as such is not materialised, at least for the time being.

² See United Kingdom: Home Office, Country of Origin Information Report – Pakistan, summarised in paragraph 19 of the decision.