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## Parental Right or Segregation? The Doctrine of “Two Schools Under One Roof” Before Two Courts in Two Cantons

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### 1. Introduction

More than three years ago I wrote<sup>1</sup> about the scandalous practice of separating “our” children from “theirs”, still present as late as twenty-one years since the end of the war in Bosnia and Herzegovina. Thus separated, the children are educated according to “our” or “their” curricula, and are taught “our” history or “theirs”, in “our” or “their” language. All against international law and common sense, but in accordance with the local law.

On that occasion, over three years ago, I believe I made some rather convincing arguments to support the thesis that ethnic segregation of children is not only wrong, but also in contravention of the basic rights of the child, the Constitution of Bosnia and Herzegovina and many provisions of international conventions guaranteeing human rights. I like to believe that my arguments found their way to the justice of the Supreme Court of the Federation of BiH, who, in August 2014, took the side of the children, human rights and common sense, confirming that organising instruction based on ethnic segregation of children was discriminatory, and he ordered the Herzegovina-Neretva Canton to stop segregating the pupils and establish joint multicultural and multi-ethnic schools.<sup>2</sup>

However, the second school year after the judgment is in full swing, yet there are no indications that the ruling is being enforced.

If we are to believe the media, the Ministry of Education, Science, Culture and Sport of the Herzegovina-Neretva Canton, which was the defendant in this case, doesn’t know how to enforce the ruling, while the federal ministry appears to know how to solve the problem, yet “lacks the mechanisms and leverage to influence and direct the process.”<sup>3</sup> This claim by those in charge is surprising, seeing that

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<sup>1</sup> See Aleksandra Ivanković-Tamamović, *Continuing Discrimination with Judicial Means: Logical Acrobatics and Absurdities of the Second Instance in the Case of “Two Schools Under One Roof”* (Sarajevo: Analitika – Centre for Social Research, 2013), <http://www.analitika.ba/bs/publikacije/komentar-na-negativno-rjesenje-suda-u-predmetu-dvije-skole-pod-jednim-krovom> (Accessed on January 15, 2017).

<sup>2</sup> Supreme Court of the Federation of Bosnia and Herzegovina, Ruling no. 58 0 Ps 085653 13 Rev, August 29, 2014, [http://www.vasaprava.org/wp-content/uploads/downloads/2014/11/Vrhovni-sud-Federacije-BiH-odluka-po-reviziji-dvije-%C5%A1kole-pod-jednim-krovom\\_01.pdf](http://www.vasaprava.org/wp-content/uploads/downloads/2014/11/Vrhovni-sud-Federacije-BiH-odluka-po-reviziji-dvije-%C5%A1kole-pod-jednim-krovom_01.pdf) (Accessed on 13 January 2017).

<sup>3</sup> Statement by federal minister of science and education, November 2014, “Ukidaju se dvije škole pod jednim krovom?!” [“Two Schools Under One Roof Abolished?!”], November 4, 2014, <http://www.hronika.ba/aktulano/aktualno-bih/ukidaju-se-dvije-%C5%A1kole-pod-jednim-krovom.html#> (Accessed on January 13, 2017).

discriminatory schools in Bosnia and Herzegovina are, after all, the exception rather than the rule. It's hard, therefore, not to ask oneself, how exactly does instruction proceed in other schools, those which do not share a roof with another school?

In this regard, it would be good to remember that line ministries need not reinvent the wheel or cross the seas to acquire the knowledge needed to join together children from divided schools. Namely, as early as 2001, over 15 years ago, previously segregated schools were merged in Brčko. As far as merging schools goes, the experiences from Brčko have been rather positive. Moreover, parents, teachers and children alike seem to prefer inclusion over the segregation which reigns supreme in the rest of the country.<sup>4</sup>

Yet, rather than shut down segregated schools, the authorities strive to spread discrimination onto other schools. And so, step by step, we're getting further and further from equality in education, which can be seen, for instance, from the attempt by the Government of the Central Bosnia Canton to segregate students in Jajce in the summer of 2016.<sup>5</sup>

## 2. One Man's Discrimination, Another Man's Parental Right

However, in spite of the initial courtroom success in the fight against segregation in education, in a case brought by the civic organisation "Vaša prava" in the spring of 2015, identical to the one adjudicated by the Supreme Court but this time directed against the segregation in schools in Travnik, the Municipal Court in Travnik ruled that "the plaintiff has failed to prove discrimination." The question arises, how did the plaintiff manage to fail to prove the discrimination which the UN Committee on the Elimination of Racial Discrimination,<sup>6</sup> UN Committee on the Rights of the Child<sup>7</sup> and the Council of

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<sup>4</sup> See, for instance, Valery Perry, "Školske ograde – Izazovi reforme obrazovanja u Bosni i Hercegovini" [School Fences – the Challenges of the Education Reform in Bosnia and Herzegovina], Puls demokratije, August 24, 2009, <http://pulsdemokratije.org.ba/index.php?id=1699&l=bs> (Accessed on January 13, 2017).

<sup>5</sup> In the summer of 2016, the Government of the Central Bosnia Canton made a decision to build an additional school building in order to create preconditions to segregate secondary education along ethnic lines. Yet, it seems that the students knew better than the elected officials, as they stood up against the Government's decision and for once demonstrated that even in Bosnia and Herzegovina activism pays off at times. See, for instance: "Mladi pobijedili sistem: U Jajcu neće biti odvojenih škola!" [Youngsters Beat the System – No Segregated Schools in Jajce], *Dnevni avaz*, August 14, 2016, <http://www.avaz.ba/clanak/250153/mladi-pobijedili-sistem-u-jajcu-nece-biti-odvojenih-skola?url=clanak/250153/mladi-pobijedili-sistem-u-jajcu-nece-biti-odvojenih-skola#sthash.85N40YCM.dpuf> (Accessed on January 12, 2017).

<sup>6</sup> UN Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination, CERD/C/BIH/CO/7-8 (Committee on the Elimination of Racial Discrimination, September 23, 2010), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fBIH%2fCO%2f7-8&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fBIH%2fCO%2f7-8&Lang=en) (Accessed on January 13, 2017).

<sup>7</sup> UN Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention Concluding Observations: Bosnia and Herzegovina, UN Doc no. CRC/C/15/Add.26021 (Committee on the Rights of the Child, September 2005), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.260&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.260&Lang=en) (Accessed on January 13, 2017).

Europe’s Commissioner for Human Rights<sup>8</sup> spotted from outer space? We should keep in mind that the instruments overseen by these three bodies – the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the European Convention on Human Rights – have not only been ratified by Bosnia and Herzegovina, they have been integrated into the Constitution.

The Municipal Court in Travnik says the difference lies in the defendant. Namely, in Mostar and Čapljina cases were brought against schools, and the schools may have discriminated. However, in Travnik it was the Ministry that was sued, and the Ministry does not discriminate, although children go to separate schools under its scope of authority. Still, it’s not the Ministry, it’s the schools. And the Ministry says the issue of two schools under one roof is to be solved step by step.<sup>9</sup> It would, however, be interesting to see the steps the Ministry plans to take, seeing that even gradual solving of problems demands turning in the right direction, and we’ve seen that the government of the self-same canton has opted to expand the discrimination, not abolish it.

The Municipal Court in Travnik further says that the parents’ right to have their children educated in their mother tongue, as well as the right to choose the curricula under which their children will be educated, form part of the Convention on the Right of the Child, which states that education is to be orientated towards “The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.”<sup>10</sup> In reaching this conclusion, the court was encouraged by the association of parents, which intervened in the proceedings on the side of the defendant, under the conditions reserved for interveners on the side of the plaintiff. This is controversial in and of itself, seeing that the involvement of interveners in anti-discrimination cases was carefully designed to have an impact on the vulnerable position of the plaintiff in such cases, and that careless application of favourable provisions to the defendant may lead to dangerous imbalances in terms of the position of the parties to the proceedings.<sup>11</sup> The controversial proceedings yielded the controversial conclusion that the existing curriculum is not only in accordance with the will of the parents, but also with the Convention.

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<sup>8</sup> Commissioner for Human Rights, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following His Visit to Bosnia and Herzegovina on 27-30 November 2010 (Strasbourg: Commissioner for Human Rights, March 29, 2011), [https://wcd.coe.int/ViewDoc.jsp?p=&id=1766837&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679&direct=true#P141\\_31386](https://wcd.coe.int/ViewDoc.jsp?p=&id=1766837&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679&direct=true#P141_31386) (Accessed on January 13, 2017).

<sup>9</sup> Statement by the minister of education of the Central Bosnia Canton, April 2016. “Katica Čerkez: Problem ‘dvije škole pod jednim krovom’ treba rješavati korak po korak” [The Problem of ‘Two Schools Under One Roof’ Should Be Solved Step by Step], *Faktor.ba*, April 4, 2016, <http://www.faktor.ba/vijest/katica-cerkez-problem-dvije-skole-pod-jednim-krovom-treba-rjesavati-korak-po-korak-foto-192746> (Accessed on January 13, 2017).

<sup>10</sup> “The UN Convention on the Rights of the Child”, Article 29, Paragraph 1(c), [https://www.unicef.org/bih/ba/Konvencija\\_o\\_pravima\\_djeteta.pdf](https://www.unicef.org/bih/ba/Konvencija_o_pravima_djeteta.pdf) (Accessed on January 14, 2017).

<sup>11</sup> For more on the role of parties in anti-discrimination processes see: Mario Reljanović, Dženana Radončić, Aida Malkić, Midhat Izmirlija and Edin Hodžić, *Kvadratura antidiskriminacijskog trougla u BiH: zakonski okvir, politike i prakse 2012–2016* [Squaring the Anti-discrimination Triangle in BiH – Legal Framework, Policies and Practices 2012-2016] (Sarajevo: Analitika – Centre for Social Research, 2016), [http://www.analitika.ba/sites/default/files/publikacije/kvadratura\\_antidiskriminacijskog\\_trougla\\_a4\\_web.pdf](http://www.analitika.ba/sites/default/files/publikacije/kvadratura_antidiskriminacijskog_trougla_a4_web.pdf) (Accessed on January 13, 2017).

I promised myself I wouldn't discuss the differences between the languages of Bosnia and Herzegovina (all three of them, and, collaterally, the Montenegrin) Yet, the differences between them, and the resulting insistence of the parents and others that the children be educated in their mother tongue, are the main argument proffered in favour of keeping the segregated schools in which only the roof is common. Thus the topic of language is the proverbial elephant in the room and it needs to be tackled, if only on the margins, because it seems that the differences between these languages lie at the root of segregation in education and the efforts to justify the perpetuation of discrimination by perverting the protection of human rights from the Convention on the Rights of the Child.

I can't help noticing that I understand, speak and write all these languages without any difficulty, and sometimes they even amuse me and teach me something new (I have recently learnt about the newly-introduced sound and letter *š* in Montenegrin). It would be embarrassing to list them all in my CV, so I don't, just like I don't list English, American, Australian, New Zealandese and South African. Or French, Walloon, Quebecois and Genevese. Now, I'm not a linguist, and I am reluctant to engage in proving or disproving the sameness of the above-mentioned three to thirteen languages, but if the claims of linguists bearing different passports who have gathered to discuss this issue are any indicator, in "our" part of the world we speak one language.<sup>12</sup> But, if we accept that the language is one and the same, then nobody can invoke the right of the child to be educated in his or her own language and create a situation in which it's easier to justify the segregation of children by invoking their ethnic identity.

If we leave the discussion of the sameness of language aside, or even if we accept that adverbial phrases are different in any one of the four languages we have now, nobody can deny that maths or English can be taught and learnt without difficulty in the language of that other people. History should be a discipline, however you call it, and it shouldn't differ across languages much, except in name, just like geography.

If we disregard the discussion of the sameness of language, history and geography, we are still left with the fact that the only body which can authoritatively interpret the Convention on the Rights of the Child – the UN Committee on the Rights of the Child – expressed concern in 2012, when it considered the periodic report of the State party Bosnia and Herzegovina, because "Discrimination in the context of education continues to be prevalent, including with regard to the continued 'two-schools-under-one-roof' and mono-ethnic schools policy in the State party, where classes are separated on the basis of ethnicity." In accordance with this, the Committee urged the State party to "To immediately end the segregation of children in schools on the basis of ethnicity by discontinuing the policy of 'two schools

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<sup>12</sup> In alphabetical order, without prejudice to the significance, first attestation or credibility of any of the languages: for a source in Bosnian see: "Lingvisti iznijeli dokaze da su bosanski, hrvatski i srpski jedan isti jezik" [Linguists Show Evidence that Bosnian, Croatian and Serbian Same Language], *Dnevni avaz*, October 23, 2016, <http://www.avaz.ba/clanak/259102/lingvisti-iznijeli-dokaze-da-su-bosanski-hrvatski-i-srpski-jedan-isti-jezik?url=clanak/259102/lingvisti-iznijeli-dokaze-da-su-bosanski-hrvatski-i-srpski-jedan-isti-jezik#sthash.ah5muCRL.dpuf> (Accessed on January 13, 2017).

For a source in Croatian: "Lingvisti tvrde: Hrvatski, srpski, bosanski i crnogorski su jedan jezik" [Linguists Claim: Croatian, Serbian, Bosnian and Montenegrin Same Language] *Index.hr*, October 9, 2016, <http://www.index.hr/black/clanak/lingvisti-tvrde-hrvatski-srpski-bosanski-i-crnogorski-su-isti-jezik/924570.aspx> (Accessed on January 13, 2017).

For a source in Montenegrin see any of the other sources, as it seems that no Montenegrin media ran this story. For a source in Serbian see: "Lingvisti složni: Srpski, hrvatski, bosanski, crnogorski – to je jedan jezik!" [Linguists Unanimous: Serbian, Croatian, Bosnian, Montenegrin – Same Language], *Alo.rs*, October 9, 2016, <http://www.alo.rs/srpski-hrvatski-bosanski-crnogorski-to-je-jedan-jezik/75374> (Accessed on January 13, 2017).

under one roof’ and mono-ethnic schools, and in doing so ensure adequate support measures and properly trained education personnel to facilitate ethnic diversity and integration in schools.”<sup>13</sup>

So, the body which interprets the provisions of the Convention, and is by extension entrusted with the task of overseeing state parties with regard to compliance, has determined that the practice is contrary to the general principles of the Convention on the Rights of the Child contained in Articles 2<sup>14</sup>, 3<sup>15</sup>, 6<sup>16</sup> and 12<sup>17</sup> of the Convention, and that therefore parents, (and courts, and the ministry) cannot invoke Article 29 of said Convention. Still, the court in Travnik cited Article 29 and found that the parents had the right to decide that their children should go to segregated schools, because parents, as the owners of children, have the right to decide how their children are to be dogmatised. The ruling, following an appeal lodged by “Vaša prava”, is being reviewed by the cantonal court. We’ll see what happens.

### **3. A (New) Perspective on Parental Rights**

The discussion of the sovereignty of parents over their children is neither new nor restricted to segregation in education. We have recently witnessed a global discussion on the right of parents not to vaccinate their children,<sup>18</sup> a regional discussion on the justifiability of the rod and the ill effects of sparing it<sup>19</sup> as well as a lack of interest by the authorities in the phenomenon of violence against

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<sup>13</sup> The UN Committee on the Rights of the Child, Concluding Observations on the Consolidated Second to Fourth Periodic Reports of Bosnia and Herzegovina, Adopted by the Committee at its Sixty-First Session (17 September–5 October 2012), UN Doc CRC/C/BIH/CO/2-4 (Committee on the Rights of the Child, November 29, 2012), p. 29 and 30. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBIH%2fCO%2f2-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBIH%2fCO%2f2-4&Lang=en) (Accessed on January 13, 2017).

<sup>14</sup> Which guarantees prohibition of discrimination.

<sup>15</sup> Which imposes on the state the obligation to consider the child’s best interest, as well as the rights and obligations of the parents, in decision-making.

<sup>16</sup> Which guarantees the child’s right to life and development.

<sup>17</sup> Which introduces the obligation to consider the child’s opinion when making decisions.

<sup>18</sup> The movement even has its own Wikipedia page. See extensive discussion: [https://en.wikipedia.org/wiki/Vaccine\\_controversies](https://en.wikipedia.org/wiki/Vaccine_controversies) (Accessed on January 13, 2017). Also available in Serbo-Croatian: [https://sh.wikipedia.org/wiki/Kontroverze\\_oko\\_vakcinacije](https://sh.wikipedia.org/wiki/Kontroverze_oko_vakcinacije) (Accessed on January 13, 2017). For arguments against vaccination see Vaccine Resistance Movement’s web site: <http://vaccineresistancemovement.org/> (Accessed on January 13, 2017). For arguments in favour of vaccination, see, for instance, Voices for Vaccines at: <http://www.voicesforvaccines.org/leaving-the-anti-vaccine-movement/> and use common sense (Accessed on January 13, 2017).

<sup>19</sup> For arguments in favour of corporal punishment see Zoran Milivojević, “Telesno kažnjavanje kao pravo i dužnost roditelja” [Corporal Punishment as a Parental Right and Duty], *Politika*, January 8, 2011, <http://www.politika.rs/scc/clanak/200636/Telesno-kaznjavanje-ka0-pravo-i-duznost-roditelja> (Accessed on 14 January 2017). For one of the reactions to the controversial article, see: Mile Nenadić, “Batinu u rajski muzej” [Museum of Spared Rods], *Politika*, December 13, 2011, <http://www.politika.rs/scc/clanak/201180> (Accessed on January 14, 2017). For a comparative analysis of the effects of abolishing corporal punishment of children see: Global Initiative to End All Corporal Punishment of Children, “Prohibiting all Corporal Punishment of Children: Learning from States which have Achieved Law Reform” May 2014, <http://endcorporalpunishment.org/assets/pdfs/reports-technical/Learning%20from%20states%20which%20have%20prohibited.pdf> (Accessed on January 14, 2017).

children<sup>20</sup>. Regardless of the arguments put forward in these and other discussions, one thing seems clear enough. However responsible for their children's well-being parents may be, their responsibility doesn't amount to the right to do whatever they please with their children. There is no place anymore in the theory and practice of parenting for the old Bosnian/Croatian/Montenegrin/Serbian saying "I brought you into this world, I'll take you out of it."

In fact, a fresh interpretation of the right to education, as well as the direction in which the interpretation of the ban on discrimination in education will be developing in the theory and practice of human rights can be seen from the recent General Comment no. 4 of the UN Committee on the Rights of Persons with Disabilities. The Comment, adopted in August 2016, posits that

*"Exclusion* occurs when students are directly or indirectly prevented from or denied access to education in any form. *Segregation* occurs when [...] education [...] is provided in separate environments [...], in isolation from [other] students [...]. *Integration* is a process of placing [students] in existing mainstream educational institutions, as long as [they] can adjust to the standardized requirements of such institutions. *Inclusion* involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences. [...] integration does not automatically guarantee the transition from segregation to inclusion."<sup>21</sup>

In connection with this, as the Brčko experience shows, integration as a possible response to segregation, which is maintained by the two-schools-one-roof system, is certainly a step forward and a necessary precondition for inclusion, but inclusion requires more than mere physical merging and using the same school entrance.<sup>22</sup>

Furthermore, the General Comment confirms that responsibilities of the parent regarding education are subordinate to the rights of the child<sup>23</sup> seeing that the right to education is the means to attain all the other human rights<sup>24</sup>. Considering that the child should be fully prepared for independent life in society, and raised in the spirit of the ideals proclaimed by the Charter of the United Nations, in particular the ideals of peace, dignity, tolerance, freedom, equality and solidarity,<sup>25</sup> and considering the importance of traditions and cultural values of every people in the protection and harmonious development of the child,<sup>26</sup> parents can hardly be given free rein when it comes to deciding how their children will grow

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<sup>20</sup> Nidžara Ahmetašević, "Nasilje nad djecom: Ničiji problem" [Violence Against Children – Nobody's Problem], *Diskriminacija.ba*, April 28, 2014, <http://www.diskriminacija.ba/nasilje-nad-djecom-ni%C4%8Diji-problem> (Accessed on January 13, 2017).

<sup>21</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 4, Article 24: Right to Inclusive Education, UN Doc CRPD/C/GC/4 (Committee on the Rights of Persons with Disabilities, September 2, 2016) Paragraph 11, <http://www.ohchr.org/Documents/HRBodies/CRPD/GC/RighttoEducation/CRPD-C-GC-4.doc> (Accessed on January 13, 2017).

<sup>22</sup> See Perry, "School Fences".

<sup>23</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 4, Article 24, Paragraph 10(a).

<sup>24</sup> *Ibid.*, Para 10(c).

<sup>25</sup> "Convention on the Rights of the Child", preamble, Sub-paragraph 7.

<sup>26</sup> *Ibid.*, Sub-paragraph 11.

up. For children who grow in the spirit of peacelessness, indignity, intolerance, restriction, inequality and divisiveness can only grow up into adults who take such values as the norm, thereby perpetuating discrimination and intolerance. Although the General Comment describes a situation that may seem different at first glance, international law tells us that the only proper way to interpret the provisions of the Convention on the Rights of the Child is in accordance with the provisions of the Convention on the Rights of Persons with Disabilities, as the latter instrument directly refers to the former,<sup>27</sup> and the Vienna Convention on the Law of Treaties stipulates that in such cases the two instruments be interpreted together<sup>28</sup>.

The fact is that segregation in education on the basis of ethnicity and segregation on the basis of disability differ only in the basis of discrimination.<sup>29</sup> And we know that discrimination on the basis of ethnicity, disability, or any other basis is prohibited under national and international law. In short, the division into “us” and “them” is just as wrong as the division into “normal people” and others, and the consequences of segregation are equally damaging for children with disabilities, Roma people in Croatia or the Czech Republic<sup>30</sup> or Bosniaks and Croats in Travnik and Mostar.

#### **4. Quo vadis?**

However, as we wait for a thorough educational reform in Bosnia and Herzegovina, which would make the system inclusive and put the student/pupil before the ethnicity, disability, parents, religion teachers, cantons or entities (not necessarily in that particular order), it is necessary to enforce the ruling in the Herzegovina-Neretva Canton. The court of first instance issued an enforcement order long ago, on 1 September 2012. All the messy courtroom business was finished in August 2014. Therefore, on 1 September that year there was but one thing to do – merge the schools.

The children who started Year One in September 2012 will be starting Year Six next year. Children are still divided into “ours” and “theirs”, schools are still divided in every way except they’ve got a common roof. And the federal ministry boast a common library in one school, while in another they managed to establish a common school board.<sup>31</sup>

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<sup>27</sup> “Convention on the Rights of Persons with Disabilities”, preamble, Sub-para d) [http://www.mhrr.gov.ba/pdf/konvencija\\_bos.pdf](http://www.mhrr.gov.ba/pdf/konvencija_bos.pdf) (Accessed on January 13, 2017).

<sup>28</sup> “Vienna Convention on the Law of Treaties”, Article 31, Para 3(c) <http://www.minoritycentre.org/library/be%C4%8Dka-konvencija-o-pravu-me%C4%91unarnodnih-ugovora> (Accessed on January 13, 2017).

<sup>29</sup> In this regard we could perhaps bring up an additional difference, namely that the parents of children with disabilities want integration, whilst the parents of Bosniak and Croat children insist on segregation. Yet, the fact is that few parents of disabled children actually want inclusion; in activist circles the parental right of choice is often cited as an argument, and it has to be countered by invoking the right of the child to inclusion and protection from discrimination through segregation.

<sup>30</sup> See, for instance, the Judgment of the European Court of Human Rights (ECtHR), *Oršuš and Others v. Croatia*, Application no. 15766/03, March 16, 2010, <http://hudoc.echr.coe.int/eng?i=001-97689> (Accessed on January 11, 2017), or *D. H. and Others v. the Czech Republic*, Application no. 57325/00, 13 November 2007. <http://hudoc.echr.coe.int/eng?i=001-83256> (Accessed on January 11, 2017).

<sup>31</sup> Maja Rener-Smajović, “HNK: Ne znaju kako da ukinu dvije škole pod jednim krovom” [They Don’t Know How to Abolish Two Schools Under One Roof], *Nezavisne novine*, January 4, 2016. <http://www.nezavisne.com/novosti/drustvo/HNK-Ne-znaju-kako-da-ukinu-dvije-skole-pod-jednim-krovom/346015> (Accessed on January 11, 2017).

Local and international law is clear: valid judgments must be respected, and non-enforcement is not only unacceptable, but also punishable. The Constitution and the European Convention on Human Rights guarantee the right to the enforcement of judgments in a reasonable time frame. Practice tells us the grace period is a year and a half, whereupon the right is considered infringed.<sup>32</sup> The criminal code defines non-implementation as a felony, punishable by three to five years of imprisonment.<sup>33</sup>

The point of view that the merging of schools should be conducted gradually has no basis in either local or international law, and any lingering in the implementation should be adequately interpreted and punished. The legislative and executive branch need only take their cue from Brčko District, where ethnically segregated schools were successfully merged over a decade and a half ago, to no ill effects (on the contrary).

Once we realise that we can have our cake and eat it, too, we must swiftly end all segregation in education, regardless of its basis, for “we cannot always build the future for our youth, but we can build our youth for the future.”<sup>34</sup>

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<sup>32</sup> Although the European Court of Human Rights avoids defining such timeframes in its rulings, the unwritten rule is that non-implementation counts as ‘punishable’ 15 months from the enforcement order. For instance, in the case of *Bjelajac v. Serbia*, two years’ delay in the enforcement of a judgment by the state led the Court to find Serbia in breach of Article 6 of the European Convention. See European Court of Human Rights (ECtHR), *Bjelajac v. Serbia*, Application no. 6282/06, September 18, 2012, <http://hudoc.echr.coe.int/eng?i=001-113134> (Accessed on January 11, 2017).

<sup>33</sup> Article 351 of the Criminal Code of the Federation of BiH sets down up to three years of imprisonment for non-enforcement, and up to five years of imprisonment for aggravated non-enforcement of a judgment for the responsible officer of a government body or a legal person or some other institution that fails to act upon a valid judgment passed by a court in the Federation of BiH.

<sup>34</sup> Franklin D. Roosevelt, commencement speech at the University of Pennsylvania, September 20, 1940, <http://www.presidency.ucsb.edu/ws/?pid=15860> (Accessed on January 11, 2017).



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