

Externally Imposed Constitution and Its Internal Implications in Post-Dayton Bosnia and Herzegovina: The Problem of Discrimination in Education

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Introduction

The year 2025 marked the thirtieth anniversary of the conclusion of the Dayton Peace Agreement (DPA).¹ The DPA not only ended the devastating war in Bosnia and Herzegovina (BiH), but also established the constitutional structure that continues to govern this Balkan state.² The Constitution of BiH, contained in Annex 4 to the DPA, can be considered an externally imposed constitution, as it was essentially drafted by Western mediators and, although the signatures of the parties – representatives of BiH, Serbia, and Croatia – approved the document, no constitutional assembly, constitutional process, or referendum took place to determine its acceptance.³ In order to maintain peace through power

¹ General Framework Agreement for Peace in Bosnia and Herzegovina, 14 Dec. 1995.

² The terms 'Bosnia and Herzegovina' and 'Bosnia' will appear interchangeably below.

³ E. Hay, *International(ized) Constitutions and Peacebuilding*, 'Leiden Journal of International Law' 2014, vol. 27, no. 1, pp. 141–168; A. Harel, A. Shinar, *Two Concepts of Constitutional Legitimacy*, 'Global Constitutionalism' 2023, vol. 12, no. 1, pp. 80–105; C. D. Bonella, F. Pizzazza, *Framing Dayton Agreements: Introductory Remarks* (in:) L. Benedizione, V. R. Scotti

sharing, the DPA established BiH as a federal state composed of two main autonomous entities: Republika Srpska (RS), with a Serb majority, and the Federation of Bosnia and Herzegovina (FBiH), predominantly inhabited by Bosniaks and Croats and divided into ten cantons.⁴ By formally recognizing the three dominant groups – Bosniaks, Serbs, and Croats – as the ‘constituent peoples’, the Dayton Constitution institutionalized deep ethnic divisions in Bosnia, reflected in the state’s architecture, where key political institutions operate on the principle of ethnic parity rather than civic equality. Three decades on, the state’s functionality remains hindered by these foundational arrangements.⁵

Analyses on how the constitutional framework designed at Dayton shapes contemporary legal and social challenges in BiH often focus on dysfunctions at the highest levels of governance, particularly the enduring tensions between RS and state institutions, most notably under the leadership of Milorad Dodik. At the same time, discourse on structural discrimination in BiH highlights the exclusionary nature of its constitutional system regarding political rights, as exemplified by the *Sejdić and Finci* case, in which the European Court of Human Rights found that the tripartite Presidency, composed of one Bosniak, one Croat, and one Serb, bars others from standing for election.⁶ However, the challenges facing BiH as a result of its complex constitutional design – based on decisions made by foreign powers, not by the people of Bosnia – extend far beyond these issues, affecting the everyday lives of many, including the youngest generations.

(eds.), *Proceedings of the Conference Twenty Years after Dayton: The Constitutional Transition of Bosnia and Herzegovina*, Roma 2016; S. Keil, *Multinational Federalism in Bosnia and Herzegovina*, London 2013; for more on imposed constitutions see R. Albert, X. Contiades, A. Fotiadou (eds.), *The Law and Legitimacy of Imposed Constitutions*, London 2019; N. Feldman, *Imposed Constitutionalism*, ‘Connecticut Law Review’ 2005, vol. 37, pp. 857–889; F. Schauer, *On the Migration of Constitutional Ideas*, ‘Connecticut Law Review’ 2005, vol. 37, pp. 907–920; M. W. Janis, *Human Rights and Imposed Constitutions*, ‘Connecticut Law Review’ 2005, vol. 37, pp. 955–961.

⁴ In the FBiH, some cantons are ethnically dominated by Bosniaks or Croats, while others have a more mixed ethnic composition.

⁵ H. Preljević, M. Mulalić, E. Hadžikadunić, M. Krupalija (eds.), *Shifting Paradigms: Three Decades after the Signing of the Dayton Peace Agreement*, London 2025; F. Fazlić, *Twenty Five Years of the Dayton Agreement: Peace Project or Difficult Journey towards a Functional State*, ‘Journal for Labour and Social Affairs in Eastern Europe’ 2020, vol. 23, no. 2, pp. 165–86; J. Mujanović, *Bosnia and Herzegovina’s Eroding Dayton Constitutional Order*, ‘Journal for Labour and Social Affairs in Eastern Europe’ 2020, vol. 23, no. 2, pp. 145–64.

⁶ European Court of Human Rights (ECtHR), *Sejdić and Finci v. Bosnia and Herzegovina*, Applications no. 27996/06 and 34836/06, Judgment of 22 Dec. 2009. In this regard, it is worth noting the ECtHR case of *Kovačević v. Bosnia and Herzegovina*, Application no. 43651/22, Judgment of 25 Jun. 2025.

This article aims to examine the ways in which the externally imposed Dayton Constitution reinforces or constrains the governance of ethnic relations within BiH's education system.

To this end, the article presents the principal forms of inequality in Bosnia's education and analyses landmark discrimination cases brought before the Constitutional Court of BiH. First, it examines the practice known as 'two schools under one roof', widely seen as the most visible form of segregation in Bosnian education. Second, it discusses the issue of language discrimination faced by Bosniak returnee children in RS, who have been denied access to instruction in Bosnian as a mother tongue. Third, the analysis turns to the most recent concern: a one-sided version of history taught in schools, where curricula elevate convicted war criminals as heroes and omit opposing narratives. Taken together, the case studies demonstrate how the constitutional framework established at Dayton not only created inequalities, but also continues to undermine legislative reform and judicial efforts aimed at overcoming them.

1. Structural Features of the Education System in BiH

As introduced above, BiH has one of the most complex state structures in Europe. In addition to RS and the FBiH as two main autonomous entities, there is the Brčko District: a self-governing administrative unit formally under the joint sovereignty of both entities, yet functioning independently under state-level supervision.⁷ Each BiH entity has its own constitution, government, president, and parliament, operating alongside the institutions of the central state.⁸ Judicial authority in BiH is exercised through multiple court systems: entity-level courts (including constitutional courts in both entities), cantonal courts in the FBiH,

⁷ S. Petrović, *The Political System of Bosnia and Herzegovina and the Fault Lines Set Down in the Dayton Agreement*, 'Journal for Labour and Social Affairs in Eastern Europe' 2021, vol. 24, no. 1, pp. 107–20; K. Krysiński, *Specyfika rozwiązań ustrojowych w Bośni i Hercegowinie*, 'Przegląd Prawa Konstytucyjnego' 2014, no. 1, pp. 35–53; D. Banović, M. Barreiro, S. Gavrić, *The Political System of Bosnia and Herzegovina: Institutions, Actors, Processes*, Sarajevo 2013.

⁸ S. Petrović, *op. cit.*; S. Keil, *op. cit.*; M. Sahadžić, *Priroda političkog sistema u Bosni i Hercegovini* (in:) D. Banović, S. Gavrić (eds.), *Država, politika i društvo u Bosni i Hercegovini. Analiza postdejtonskog političkog sistema*, Sarajevo 2011; T. Gromes, *Federalism as a Means of Peace-Building: The Case of Postwar Bosnia and Herzegovina*, 'Nationalism and Ethnic Politics' 2010, vol. 16, no. 3–4, pp. 354–374; Ch. Jokay, *Local Government in Bosnia and Herzegovina: Stabilization of Local Governments* (in:) E. Kandeve (ed.), *Local Government and Public Service Reform Initiative*, New York 2001.

the Court of BiH at the state level, and the Constitutional Court of BiH,⁹ which serves as the highest authority on constitutional matters.¹⁰

The complicated state structure described above was transferred to the organization of Bosnia's educational system.¹¹ Generally, in BiH there are 13 leading institutions responsible for education. There is no state-level ministry for education; instead, the Ministry of Civil Affairs fulfils only a coordinating function. While RS has a centralized government and one ministry of education, the FBiH has a decentralized government and consists of ten cantons, each having its ministry; there is also an education department in the Brčko District. The Federal Ministry of Education and Science in the FBiH is responsible for coordinating the planning of activities of cantonal ministries.¹² Therefore, in a country of three million people, a good many administrative bodies have the competence to organize schools and adopt curricula, which results in a highly fragmented education system. In fact, one should speak not of one, but of at least three systems, which directly mirror and reinforce the ethnic divisions that dominate the political, economic, and social situation in BiH, favouring the Croat, Serb, and Bosniak ethnicity.¹³

2. Crucial Legal Acts Regarding Discrimination and Education

Discrimination in BiH is prohibited by its Constitution, entity and cantonal constitutions, Statute of Brčko District of BiH, international conventions (including

⁹ The Constitutional Court of BiH consists of nine judges: four elected by the FBiH, two elected by RS, and three foreign judges appointed by the President of the ECtHR. This institutional design reflects both the structure of the state, grounded in ethno-national divisions, and the broader framework of international supervision in BiH, also exemplified by the role of the Office of the High Representative – the international official overseeing the civilian implementation of the DPA.

¹⁰ European Commission for Democracy through Law, *The Judicial Power in Bosnia and Herzegovina (BiH): Background Paper*, Opinion no. 648/2011, 9 Dec. 2011.

¹¹ V. B. Kovač, 'Us' vs. 'Them': *A Systematic Analysis of History Textbooks in Post-War Bosnia and Herzegovina across Three Ethnic Educational Programmes*, 'Journal of Curriculum Studies' 2024, vol. 57, no. 3, pp. 271–286.

¹² M. F. Plasto, *A Divided Past for a Divided Future!? The 1992–1995 War in the Current History Textbooks in Bosnia and Herzegovina*, 'Radovi: Historija, historija umjetnosti, arheologija' 2020, vol. 7, no. 2, pp. 295–321; M. F. Plasto, B. D. Blagojević, *Peace in History Education of Bosnia and Herzegovina* (in:) L. Kasumagić-Kafedžić, S. Clarke-Habibi (eds.), *Peace Pedagogies in Bosnia and Herzegovina*, Cham 2023; Eurydice, *Bosnia and Herzegovina: Overview*, <https://eurydice.eacea.ec.europa.eu/euryperia/bosnia-and-herzegovina/overview>.

¹³ V. B. Kovač, *op. cit.*

the European Convention on Human Rights, ECHR),¹⁴ and domestic legislation.¹⁵ In 2009, the BiH Parliamentary Assembly adopted The Law on Prohibition of Discrimination (LPD).¹⁶ The LPD, in its Article 2, defines discrimination in the following way:

Discrimination, in terms of this Law, shall be any different treatment including any exclusion, limitation or preference based on real or perceived grounds towards any person or group of persons, their relatives, or persons otherwise associated with them, on the grounds of their race, skin colour, language, religion, ethnic affiliation, disability, age, national or social background, connection to a national minority, political or other persuasion, property, membership in trade union or any other association, education, social status and sex, sexual orientation, gender identity, sexual characteristics, as well as any other circumstance serving the purpose of or resulting in prevention or restriction of any individual from enjoyment or realization, on equal footing, of rights and freedoms in all areas of life.

In its Articles 3 and 4, the LPD defines different forms of discrimination, including segregation. Segregation is defined as ‘an act by which a (natural or legal) person separates other persons on the basis of one of the grounds specified in Article 2 of this Law’. This provision is particularly crucial in combating the first issue described in this article: segregation on ethnic grounds under the ‘two schools under one roof’ policy.

Importantly, the LPD establishes a distinct procedural framework designed to ensure that individuals and groups subjected to discrimination have effective legal remedies. Pursuant to Article 11 of the LPD, any person or group of persons who consider having suffered discrimination shall be able to seek protection of their rights through existing judicial and administrative proceedings. Additionally, Article 12 introduces a specialized legal mechanism which allows the initiation of lawsuits with the explicit aim of securing protection from discriminatory treatment. Crucially, Article 15(1) of the LPD introduces a reversal of the burden of proof in such proceedings, which means that once the claimant presents facts indicating a likelihood of discrimination, it is the respondent who must prove that discrimination did not occur.

¹⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, 4 Nov. 1950.

¹⁵ OSCE, *Discrimination in Bosnia and Herzegovina: Public Perceptions, Attitudes, and Experiences*, OSCE Mission to Bosnia and Herzegovina 2020.

¹⁶ Zakon o zabrani diskriminacije, Službeni glasnik BiH br. 59/09; Zakon o izmjenama i dopunama Zakona o zabrani diskriminacije, Službeni glasnik BiH br. 66/16. Unless otherwise indicated, I provided all translations from the official languages of BiH.

Article II(3)(1) of the Constitution of BiH guarantees the right to education. The Constitution also provides that BiH and both entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.¹⁷ The most important national legal act on education is the Framework Law on Primary and Secondary Education in Bosnia and Herzegovina.¹⁸ The Law prescribes the general principles and aims of education deriving from ‘generally accepted, universal values of democratic society and own value systems based on specificities of national, historic and cultural and religious tradition of peoples and national minorities living in Bosnia and Herzegovina’ (Article 3).

Article 4(1) of the Framework Law provides that every child shall have equal right of access to and equal opportunities for participation in appropriate education, without discrimination on any grounds. Article 35(1) further elaborates on the matter, stating that schools must not exert discrimination in children’s access to education or their participation in the education process based on race, colour, sex, language, religion, political or other opinions, national or social origin, special needs, or any other grounds. Another important rule is set out in Article 10, which states that teaching and other activities at schools must not use or present any didactic or other materials, and teachers or other school staff must not utter statements, that one could justifiably consider insulting for the language, culture, or religion of students belonging to any national, ethnic, or religious group. Additionally, Article 36 of the Framework Law reads:

The school promotes equal opportunities for all its students, teachers and other employees, taking into consideration and at the same time promoting the right for differences among them. With this aim, the competent educational authorities and the school shall establish and carry out their own programs that support and nurture different cultures, languages, and religions of their students and staff.

The latter should be read in conjunction with provisions of the Temporary Agreement on Meeting the Special Needs and Rights of Returnee Children.¹⁹ The agreement, concluded between the ministers of education of RS and the FBiH, recognizes the right of returnee families and their children to adequate education. It stipulates that all children must follow the general subjects according to the

¹⁷ Constitution of Bosnia and Herzegovina, Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina, 14 Dec. 1995.

¹⁸ Okvirni zakon o osnovnom i srednjem obrazovanju u Bosni i Hercegovini, Službeni glasnik BiH br. 18/03, as amended by Zakon o Agenciji za predškolsko, osnovno i srednje obrazovanje, Službeni glasnik BiH br. 88/2007.

¹⁹ Privremeni sporazum o zadovoljavanju posebnih potreba i prava djece povratnika, 5 Mar. 2002.

local curriculum of the area in which they live, while parents receive the right to choose the curriculum for the ‘national group of subjects’: language and literature, history, geography, nature and society in lower grades, and religious instruction. In practice, this means that parents can request that a school in RS apply the curriculum used in one of the FBiH’s cantons or vice versa, but only for those specific subjects.²⁰

3. Discrimination in BiH’s Education System(s)

3.1. The ‘Two Schools Under One Roof’ Phenomenon

Although BiH has a solid legal framework guaranteeing equal rights to education and prohibiting discrimination, the implementation of these instruments is often poor. Weak enforcement, lack of real accountability, and political and ethnic divisions undermine these protections, allowing discriminatory practices and unequal opportunities to persist in BiH’s education system (or systems). Among the various manifestations of structural discrimination in Bosnia’s education, none is more emblematic than the phenomenon commonly referred to as ‘two schools under one roof’. The practice refers to the organizational and physical separation of children along ethnic lines, within the same school building but under distinct administrations, curricula, or schedules. The problem has concentrated primarily in the FBiH as the entity predominantly inhabited by Bosniaks and Croats.

The issue of segregated schools in the FBiH has gained wide recognition in academic literature, NGO reports, and international monitoring assessments.²¹ In 2018, the Organization for Security and Co-operation in Europe (OSCE) Mission to BiH published a report titled *Two Schools Under One Roof: The Most Visible*

²⁰ Theoretically, this right applied to ‘returnee children’, yet its implementation was inconsistent across BiH’s entities.

²¹ M. Halilovic-Pastuovic, *Textbook Politics: Education in Post-Conflict Bosnia and Herzegovina* (in:) C. Vanner, S. Akseer, T. Kavinthan Levi (eds.), *Teaching Peace and Conflict*, London 2022; Council of Europe, European Commission against Racism and Intolerance, *ECRI Report on Bosnia and Herzegovina (Sixth Monitoring Cycle)*, 2024; M. Mujagić, E. Dupanović, *Figurative Language of Segregation: The Phenomenon of ‘Two Schools under One Roof’*, ‘Explorations in English Language and Linguistics’ 2024, vol. 12, no. 2, pp. 103–130; European Commission, *Commission Staff Working Document: Bosnia and Herzegovina 2023 Report Accompanying the Communication on EU Enlargement Policy*, SWD(2023) 691 final; A. D. Tveit, D. L. Cameron, V. B. Kovač, ‘Two Schools under One Roof’ in *Bosnia and Herzegovina: Exploring the Challenges of Group Identity and Deliberative Values among Bosniak and Croat Students*, ‘International Journal of Educational Research’ 2014, vol. 66, pp. 103–112.

Example of Discrimination in Education in Bosnia and Herzegovina. The report clearly explains the historical background of the issue at hand:

The 1990s conflict on the territory of BiH resulted in vast displacement and ethnic homogenization in many areas. In an attempt to reverse this process and encourage the return of refugees and displaced persons, many instances of ‘two schools under one roof’ were established as temporary measures to address the post-war ethno-centric education system. What was meant as a temporary solution has unfortunately become permanent, despite the efforts of the international community to ensure its transition.²²

After the 1990s war, many parents refused to enrol their children in local schools, fearing that the environment, shaped by competing narratives of victimhood and latent hostility, would endanger their children’s psychological well-being and cultural identity. To shield them from such tensions while still securing access to education, these families frequently turned to improvised private arrangements in homes, bars, or restaurants, or sent their children to schools in ethnically aligned neighbouring communities.²³ The practice of ‘two schools under one roof’ brought children of different ethnicities, who had previously studied separately, back into a single building. While children may have returned under the same roof, the divide remains to this day.

There is no one precise definition of what constitutes the practice of ‘two schools under one roof’. As summarized by the OSCE:

the visible manifestations of these schools are buildings, or networks of buildings, that in pre-war years housed a single primary or secondary school, but now house two. Bosniak and Croat children of the same age attending the same or similar programs in the same location are divided on the basis of ethnicity. In some cases, children use separate entrances, or attend the school in different shifts, or are divided from each other by physical or non-physical barriers.²⁴

The authorities of schools that operate in the manner described above usually explain that the division exists because every child has the right to receive education in their own language (Bosnian or Croatian). As the OSCE correctly observes, each constituent people in BiH indeed has the right to use its own

²² OSCE, ‘*Two Schools Under One Roof: The Most Visible Example of Discrimination in Education in Bosnia and Herzegovina*’, OSCE Mission to Bosnia and Herzegovina 2018, p. 4.

²³ Ibidem, p. 8.

²⁴ Ibidem, p. 10.

language.²⁵ Moreover, in the light of domestic and international legislation, there is no doubt that children in BiH have the right to learn their mother tongue as a subject in school. However, under the DPA or any other framework, constituent peoples have no right to conduct the entire teaching process exclusively in one of the three official languages. As emphasized by the UN's Special Rapporteur in the field of cultural rights, it is a misinterpretation of these rights to overstate linguistic differences in order to enforce student segregation based on ethno-national affiliation.²⁶

To overcome the problem, in 2011, a legal aid organization named Vaša Prava BiH submitted lawsuits to municipal courts in Mostar and Travnik, claiming discrimination and segregation of schoolchildren on ethnic grounds under the 'two schools under one roof' policy.²⁷ Both cases proceeded through several levels of jurisdiction. In the first case, in 2014, the FBiH Supreme Court upheld the first instance judgment of the Municipal Court in Mostar establishing the existence of discrimination in schools of the Herzegovina-Neretva Canton (HNC). In its ruling, the Supreme Court stated that organizing schools based on the ethnic background and implementing curriculums based on the ethnic principle which divided children was discriminatory.²⁸ The ruling ordered the schools in the HNC to implement 'common integrated multicultural education facilities'.²⁹

Although, as just mentioned, in 2014, the FBiH Supreme Court held that organizing schools along ethnic lines in the HNC amounted to unlawful discrimination,³⁰ in 2017, when confronted with a parallel case concerning the Central

²⁵ While the Constitution of BiH does not expressly designate any official language at the state level, this issue is addressed in detail by the constitutions of the entities. In practice, Bosnian, Croatian, and Serbian serve as official languages in BiH, although their formal recognition and use are mainly regulated at the entity and cantonal levels. Linguistically, these three languages are very similar and mutually intelligible – they all developed from the common Serbo-Croatian standard – differing mainly in script, vocabulary, and symbolic identity. The Declaration on the Common Language, issued in 2017 by a group of intellectuals and NGOs, states that Bosniaks, Croats, Montenegrins, and Serbs have a 'common standard language of the polycentric type'; see Declaration on the Common Language, Apr. 2017.

²⁶ UN General Assembly, *Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed*, Human Rights Council, A/HRC/25/49/Add.1, 3 Mar. 2014; OSCE 2018, *op. cit.*, p. 21.

²⁷ OSCE 2018, *op. cit.*, p. 18.

²⁸ Judgment no. 58 0 Ps 085653 13 Rev of the Supreme Court of the Federation of BiH, 29 Aug. 2014.

²⁹ Ibidem.

³⁰ By Decision on Admissibility and Merits no. AP 4348/14, the Constitutional Court of BiH dismissed as unfounded the HNC's appeal against the Supreme Court's judgment. The Court did not find arbitrariness in the reasoning for the judgment as to the application of the LPD's provisions and the conclusion on the existence of discrimination.

Bosnia Canton (CBC), based on virtually the same legal grounds and factual context, the same court dismissed the claim, denying the existence of segregation.³¹ Hence, a striking inconsistency in the jurisprudence arose. This contradiction led the Constitutional Court of BiH to intervene in 2021, overturning the 2017 decision and finding that the ordinary courts had arbitrarily disregarded clear evidence of discrimination in the CBC and failed to apply appropriate human rights standards.³²

Prior to a more detailed examination of the Constitutional Court's judgment, it is necessary to outline the procedural history and factual background of the case at hand.³³ *Vaša Prava BiH* brought its original claim before the Municipal Court in Travnik requesting an establishment that, by giving consent and organizing schools on the ethnic principle and by issuing and implementing ethnic-based school curricula, the CBC allowed the segregation of students in schools in the CBC territory based on the students' ethnic affiliation. The claimant's lawsuit highlighted that the practice of separating children in schools based on the ethnic principle, named 'two schools under one roof', had existed in the CBC for almost a decade already. It emphasized that in such schools, Bosniak and Croat children were physically separated, as were their teachers, with no shared contact, and that this phenomenon existed in 13 schools across the CBC.

Conversely, the defendant canton denied the allegations about the practice of separation and stated that there was no ethnic separation in the CBC; rather, there were two curricula adopted and implemented in schools, which complied with the provisions of the Constitution of the FBiH, the Framework Law, and international conventions. It claimed that the Framework Law left a possibility for the existence of several curricula, and that no cases of discrimination were reported, nor was the right of parents to choose an educational institution violated. The defendant also referred to the provisions of the Convention on the Rights of the Child, which affirm the right of the child to enjoy his or her own culture, to profess and practice his or her own religion, and to use his or her own language.³⁴ Additionally, the parents of some children indicated that it was contradictory to demand the children's right to receive education in their mother tongue while having a single curriculum.

³¹ Judgment no. 51 0 P 054522 16 Rev of the Supreme Court of the Federation of BiH, 3 Oct. 2017.

³² Judgment AP-166/18 of the Constitutional Court of BiH, 15 Jul. 2021.

³³ I prepared the analyses of the cases discussed in this article based on the official texts of the respective judgments delivered by the Constitutional Court of BiH, in their Bosnian-language versions and, where available, in their official English translations.

³⁴ The Convention on the Rights of the Child appears in Annex I to the Constitution of BiH as one of the 'additional human rights agreements to be applied in BiH'.

The municipal court dismissed Vaša Prava BiH's claim as unfounded. At the subsequent stages of the proceedings, the cantonal court upheld the first-instance judgment unfavourable to the claimant, and the FBiH Supreme Court dismissed the organization's petition for review. In 2021, however, as already mentioned, the Constitutional Court of BiH took a different view, holding that the existing system of education in the CBC constituted discrimination, violating Article II(4) of the Constitution, Article 14 of the ECHR, Article 2 of Protocol No. 1 to the ECHR (right to education), and Article 1 of Protocol No. 12 to the ECHR (general prohibition of discrimination). The Court specifically found that the division of students into separate curricula based on ethnicity amounted to segregation, which was an impermissible form of discrimination.

The Constitutional Court of BiH further held that the reasoning of the ordinary courts in the case at hand was arbitrary. The courts had dismissed Vaša Prava BiH's claim as unfounded, despite the allegations that the defendant discriminated against students. As the Constitutional Court emphasized, evidence concerning the alleged discrimination had been presented during the proceedings.³⁵ Thus, contrary to the position taken by the Supreme Court, Vaša Prava BiH had made the claim of discrimination sufficiently probable, which shifted the burden of proof onto the defendant. The defendant, however, failed to demonstrate that no discrimination had occurred.

Although the Constitutional Court's decision clearly identified the 'two schools under one roof' system as a form of segregation, the practice has not disappeared. On the whole, while there has been modest progress since the initiation of legal actions described above, exemplified by the symbolic act of removing the physical fence that once divided students in the Travnik middle school,³⁶ the infamous policy remains in place, particularly in smaller towns and rural areas.³⁷

³⁵ For example by reading the report of the Human Rights Commissioner, the seventh and eighth periodic reports, the report of the Ministry of Human Rights and Refugees on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the report of the Special Rapporteur to the UN General Assembly, and the Concluding Observations of the Committee on the Elimination of Racial Discrimination.

³⁶ N1 Sarajevo, *Fence Separating 'Two Schools under One Roof' in Travnik Removed*, 6 Jul. 2019, <https://n1info.ba/english/news/a354834-Fence-separating-two-schools-under-one-roof-in-Travnik-removed>.

³⁷ European Commission, *Commission Staff Working Document: Bosnia and Herzegovina 2023 Report*, 8 Nov. 2023; A. Karić, *Dvije škole pod jednim krovom: Nismo drugačiji, imamo zajedničke interese*, 'Balkan Diskurs', 29 Jul. 2025, <https://balkandiskurs.com/2025/07/29/dvije-skole-pod-jednim-krovom-nismo-drugaciji-imamo-zajednicke-interese>; B. Pavelić, *Stolac i njegove škole – polemika koja traje 30 godina*, 'Al Jazeera Balkans', 30 May 2025, <https://balkans.aljazeera.net teme/2025/5/30/stolac-i-njegove-skole-polemika-koja-traje-30>.

3.2. Language Discrimination of Bosniak Returnees in Republika Srpska

While the first issue relates to the FBiH, similar challenges to equal education persist in RS. Predominantly inhabited by ethnic Serbs, RS not only restricts equal access to education for non-Serb students, but also uses education as a tool to promote ethno-nationalist narratives aligned with its authorities' long-standing separatist ambitions. In this context, the exclusion of minority students is not merely a matter of access, but part of a broader political project that seeks to reinforce RS's distinct identity and distance from the multi-ethnic framework of BiH.³⁸

During the war in BiH, many ethnic Bosniaks were expelled from RS-controlled territory through systematic ethnic cleansing, mass killings, and destruction of property.³⁹ The DPA enshrined the right of all displaced persons to return to their pre-war homes, regardless of ethnicity.⁴⁰ In the late 1990s and the early 2000s, significant numbers of Bosniaks returned to their original homes in RS. Despite the DPA's goal of establishing peace and stability, Bosniak returnees in RS faced challenges that hindered their reintegration and reconciliation efforts.⁴¹

At a certain point, it became evident that returnee Bosniak students faced serious barriers in exercising their language rights in RS schools. For several years, parents of Bosniak children in returnee communities throughout RS continued to boycott public schools in favour of sending their children to alternative schools financed and organized by the FBiH Ministry of Education. The boycott was based on the

³⁸ R. Hänel, *Dodik's Defiant Secessionist Constitution: The New Draft Constitution of Republika Srpska Deliberately Undermines BiH's Constitutional Order*, VerfBlog, 8 Apr. 2025, <https://verfassungsblog.de/dodik-secessionist-constitution>; N. Beglerović, *Milorad Dodik's Use of Contentious Rhetoric in (De)constructing Bosnia and Herzegovina's Identity: A Discourse-Historical Analysis*, 'Środkowoeuropejskie Studia Polityczne' 2020, no. 3, pp. 113–132; T. Karić, *Is This My Country? Identification with National Symbols in Serbs and Bosniaks in B&H*, 'Zbornik Instituta za kriminološka i sociološka istraživanja' 2019, vol. 38, no. 3, pp. 57–75; J. Ker-Lindsay, *The Hollow Threat of Secession in Bosnia and Herzegovina: Legal and Political Impediments to a Unilateral Declaration of Independence by Republika Srpska*, 'Research on South Eastern Europe' 2016.

³⁹ Republika Srpska was created at the beginning of the Bosnian War in 1992 as a political body intended to protect the interests of Serbs in Bosnia. Its campaign of persecution also targeted Croats, the Roma, and others who rejected Serbian nationalism; see International Center for Transitional Justice, *Bosnia and Herzegovina: Facing the Future. A Case Study*, ICTJ 2009.

⁴⁰ Agreement on Refugees and Displaced Persons, Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, 14 Dec. 1995.

⁴¹ M. Mulalić, *The Implementation of Annex VII of the Dayton Peace Agreement* (in:) H. Preljević, M. Mulalić, E. Hadžikadunić, M. Krupalija (eds.), *Shifting Paradigms, op. cit.*; H. Preljević, I. Fevzi Güven, *The Continued Challenges of the Bosniak Returnees in Republika Srpska and the Threat of Secessionism*, 'Studia Politica: Romanian Political Science Review' 2024, vol. 24, no. 1, pp. 41–74.

refusal of the RS Ministry of Education to approve a 'national group of subjects'.⁴²

The two most prominent legal battles over the right to equal education for Bosniak returnee children in RS concerned the schools in Vrbanjci ('Sveti Sava') and Kravica ('Petar Kočić'). In both cases, parents demanded the introduction of the national group of subjects taught in the Bosnian language, as guaranteed by law, but their requests were not met. Both disputes proceeded through multiple judicial instances, resulting in unfavourable judgments for the claimants (students and their parents) by the RS Supreme Court, before the final review by the Constitutional Court of BiH.

In a landmark decision, AP-3174/17, the Constitutional Court of BiH ruled in favour of Bosniak parents and children from Vrbanjci.⁴³ The case originated from the parents' request to introduce the Zenica-Doboj Canton (ZDC) curriculum in the Sveti Sava School, which the school authorities refused. In the case at hand, the basic court held it undisputed that, despite the parents' request, the curriculum was not introduced. To justify this, during the proceedings before ordinary courts, the defendant school argued that the parents had failed to show that the requested ZDC curriculum was substantially different from the RS program or that applying the latter was discriminatory. The defendant maintained that the claimants already enjoyed the right to education under equal conditions as all other citizens of RS, since the school aligned the curriculum with constitutional requirements and adapted it to all children regardless of nationality.

In the 'Sveti Sava' case, the basic court noted that the school, seeking to demonstrate the right to use one's language in teaching, presented evidence from students' written tests, which showed that the children wrote in two scripts: Cyrillic and Latin. The court also emphasized that the Serbian language was neither incomprehensible nor essentially different from the claimants' language, meaning that separate instruction in a distinct language was not justified. Consequently, the court dismissed the claim in its entirety, establishing that the claimants did not submit evidence which would indicate that teaching in the defendant school took place in a discriminatory manner. Subsequently, the district court rejected the parents' appeal against the first-instance judgment, accepting the conclusions and assessments of the basic court as correct. The court particularly emphasized that it was clear that the appellants had submitted a request to introduce a national group of subjects, but they did not make it probable that the manner of teaching those subjects in RS or

⁴² Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fifth Opinion on Bosnia and Herzegovina*, 8 Feb. 2024; E. Jukic, *Bosniak Parents in Serb Entity Boycott Schools*, 'Balkan Insight', 6 Sep. 2013, <https://balkaninsight.com/2013/09/06/bosniak-parents-boycott-schools-in-serb-entity>.

⁴³ Judgment AP-3174/17 of the Constitutional Court of BiH, 19 Sep. 2019.

the content of that teaching was discriminatory towards them. Consequently, the RS Supreme Court rejected the appellants' petition for revision.

Finally, as already mentioned, the case proceeded to the Constitutional Court of BiH. The Constitutional Court found that it was not clear why the ordinary courts concluded that, despite the respondents'⁴⁴ admission that the national group of subjects had not been introduced and that all children studied Serbian, the appellants did not make it probable that they suffered discrimination, or why the burden of proof did not shift to the respondents. The Court considered that the reasoning of the RS courts' contested judgments did not meet the standards of the right to a reasoned decision as an integral part of the right to a fair trial. Since the appellants proved that the national group of subjects had not been introduced, and since by making requests for the introduction of that group, they implicitly considered that the existing curriculum did not meet their needs in terms of respecting and nurturing their tradition and culture, the burden of proof shifted to the respondents to prove otherwise. Having regard to all of the above, the Court considered the appellants' rights violated.

Similarly, in AP 1198/19, the Constitutional Court of BiH ruled in favour of a group of Bosniak students and their parents who had appealed against the RS Supreme Court in the 'Petar Kočić' case.⁴⁵ In their original claim brought before the basic court, the parents stated that their children were subject to the primary school curriculum under a timetable which included, inter alia, a subject named Serbian Language. They asserted that all mandatory textbooks for the 2013/2014 school year, approved by the RS Ministry, were written in the Serbian language and in Cyrillic script; that RS lacked a textbook for the Bosnian language and textbooks written in Bosnian; and that the mandatory textbooks were unacceptable in terms of both language and content. The claim also stated that the school had falsified information in student records by entering grades for Bosnian Language, while in practice, under the curriculum of the defendant, the children studied only Serbian Language. The claimants therefore considered that Bosniak children and their parents remained in a less favourable position compared to Serbian children and their parents with respect to the right to education.

Initially, the basic court found that the claimants did not make it probable that the adoption of the curriculum for the 2013/2014 school year had resulted in discrimination in such a way that classes at the Petar Kočić School did not take place in all three official languages of BiH, or that the textbooks which the children had to use in the class were written in only one language and one script. The court stated

⁴⁴ 'The respondents' in the case at hand refers to the school and RS.

⁴⁵ Judgment AP 1198/19 of the Constitutional Court of BiH, 23 Jun. 2021.

that, apart from their 'bare assertion', the claimants produced no evidence based on which the court could identify the language of the classes. Namely, the parents did not substantiate their allegations by producing the curriculum they considered discriminatory, and since this was not a matter of general knowledge, the court had no information on the content of said curriculum.

The district court dismissed the parents' appeal and upheld the first-instance judgment. Next, the judgment of the RS Supreme Court dismissed the appellants' petition for revision as unfounded. According to the Supreme Court, the lower courts had rightly considered that the 'Bosnian language', whose use the appellants insisted upon, was not a constitutional category, given that the Constitution of RS listed the following official languages in RS: the language of the Serbian people, the language of the Croatian people, and the language of the Bosniak people, but not the Bosnian language. The Supreme Court further noted that these were languages with a high degree of mutual similarity, and any minimal differences did not constitute communication barriers between members of the constituent peoples, regardless of the difference in their names.

Finally, the Constitutional Court of BiH considered that the contested judgments were based on arbitrary reasoning in the context of applying Article 15(1) of the LPD. The Court stated that from the notice the school sent regarding the organization of classes with differing content in the subjects Nature and Society and Mother Tongue in primary grades, it followed that there was no possibility to study all the languages of the constituent peoples. The Court observed that during the first-instance proceedings, the parents were heard on these circumstances and, consistent with the material evidence, stated that all textbooks used in that school were in Serbian and written in Cyrillic script, that no other textbooks in other languages or scripts could be purchased anywhere in RS, and that instruction was in Serbian. However, the ordinary courts did not assess the parents' testimonies. As the Constitutional Court pointed out, in proceedings conducted under the provisions of the LPD, one should not have to prove facts to the level of certainty as otherwise required of the party bearing the burden of proof. Accordingly, the RS Supreme Court's reliance on the Civil Procedure Code instead of the LPD should be deemed arbitrary. Thus, the Constitutional Court concluded that the applicants' right to a fair trial had suffered a violation.

3.3. The Pressing Issue of Politically-Biased School Curricula

In BiH, where the legacy of the 1992–1995 war continues to shape political and social life, history education remains a deeply contested space. The politicization of history curricula in both BiH entities has been the subject of academic and

public concern for many years.⁴⁶ Numerous reports on the history teaching materials used in Bosnian schools confirm that the textbooks tend to present narratives that do not merely recount the past but actively participate in the construction of a child's Bosniak, Serbian, or Croatian ethnic identity. For instance, Balkan Investigative Reporting Network's (BIRN's) analysis of history textbooks used for 14- and 15-year-olds in BiH's two entities and in Serbia has shown that they generally take a different approach to the 1990s Bosnian conflict, focusing on war victims from their own ethnic group while playing down or ignoring victims from other ethnic groups.⁴⁷ Rather than offering a shared, fact-based account, for a long time now schools in BiH have been shaping young minds through selective memory and national bias.⁴⁸ As pointed out by Maja Davidović, ethnically segregated history teaching in BiH plays a key role in the maintenance of a post-conflict status quo which has frozen certain anxieties around the uncertain future of peace in the country.⁴⁹

Although concerns have been raised about the one-sided historical narratives presented in BiH's schools for years, it was only in January 2025 that the Constitutional Court of BiH issued a landmark decision regarding a section of the history curriculum for ninth-grade students in RS.⁵⁰ In U-20/24, the Court established that specific provisions of the Rulebook on the Curriculum for Primary Upbringing and Education of the Republika Srpska and Appendix No. 20 containing curriculum for the subject History for the ninth grade of primary school in the part related to 'Topic 11. Republika Srpska and the Homeland Defence War' were not compatible with Articles I(2) and III(3)(b) of the BiH Constitution, which

⁴⁶ H. Karge, *History Teaching Materials on 1992–1995 in Bosnia and Herzegovina: Building Trust or Deepening Divides? The Report on Learning and Teaching on the Period of 1992–1995 in Primary Schools throughout Bosnia and Herzegovina*, OSCE Mission to BiH 2022; T. P. Trošt, J. Mihajlović Trbovc, *Symbolic Nation-Building through Images in Post-Yugoslav History Textbooks*, 'Journal of Educational Media, Memory, and Society' 2023, vol. 15, no. 1, pp. 20–42.

⁴⁷ M. Obrenović, *Bosnian, Serbian Schoolbooks Teach Rival Versions of History*, 'Balkan Insight', 30 Oct. 2020, <https://balkaninsight.com/2020/10/30/bosnian-serbian-school-books-teach-rival-versions-of-history>.

⁴⁸ F. Pingel, *Unity in Diversity or Political Separation Driven by Cultural Difference? Textbook Revision in Bosnia and Herzegovina* (in:) H. M. H. Ting, L. Cajani (eds.), *Negotiating Ethnic Diversity and National Identity in History Education*, London 2023; M. F. Plasto, *op. cit.*

⁴⁹ M. Davidović, *Actively Preparing Children for New Conflicts: Competing Histories and Education for (Non)Recurrence* (in:) *Governing the Past: 'Never Again' and the Transitional Justice Project*, Cambridge 2025.

⁵⁰ Judgment U-20/24 of the Constitutional Court of BiH, 23 Jan. 2025. Thirteen members of the House of Representatives of the Parliamentary Assembly of BiH requested the regulation's review.

set the state's commitment to democratic principles and the responsibility of its entities to comply fully with the Constitution and international law.

Earlier, in October 2024, the Constitutional Court temporarily suspended the controversial act after establishing that it would have serious and irremediable detrimental consequences reflected in a potential risk of further segregation and division among pupils of different ethnic communities and an increased feeling of exclusion and marginalization of pupils from ethnic communities other than the Serbs.⁵¹

The disputed Appendix describes the content of the program relating to the topic 'Republika Srpska and the Homeland Defence War'. The curriculum stipulates that all pupils should cover, among others, the following topics: 'The Inception of the Republika Srpska', 'The Army of the RS and the Homeland Defence War (1992–1995)', 'Ordeals of and Crimes against Serb People' and 'Republika Srpska after the Dayton Agreement'. In addition, from the column related to 'Learning Outcomes', it follows that every pupil in RS should be able to: explain the circumstances and significance of establishing the Army of RS (VRS); cite the causes and consequences of the Homeland Defence War; cite the most important war operations of the VRS; cite the Serbs' sites of suffering during the Homeland Defence War and the Serbs' biggest killing fields in the 20th century; and cite examples of destruction of the Serb people's cultural and historical heritage.

The contested provisions of the Appendix were the basis for writing a textbook approved by the RS Ministry. The textbook consistently presents the war in BiH as a defensive war for the Serbs. Figures such as Radovan Karadžić or Ratko Mladić are described as politicians who 'played an extremely important role in the creation of the Republika Srpska', without mentioning that they were convicted of genocide, war crimes, and crimes against humanity by the International Criminal Tribunal for the former Yugoslavia (ICTY).⁵²

In addition, the textbook states that RS 'maintains close ties with its motherland Serbia', that 'the decision on the status of Brčko, which was part of the Republika Srpska during the war, was to the detriment of the Serb entity', and that 'the activities of the international community, primarily represented by the United States and the European Union, were mainly focused on supporting the Bosniak side'. Even more, the textbook directly attacks the Constitutional Court of BiH, for example in the following statement: 'Decisions by the Office of the

⁵¹ Decision on Interim Measure U-20/24 of the Constitutional Court of BiH, 11 Oct. 2024.

⁵² *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Appeals Chamber Judgment, 20 Mar. 2019; *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Appeals Chamber Judgment, 8 Jun. 2021. As the ICTY closed in 2017, these final appeal judgments were issued by its successor, the International Residual Mechanism for Criminal Tribunals (IRMCT).

High Representative and the Constitutional Court of BiH were often against the interests of Republika Srpska'. The textbook adds:

In the Constitutional Court of Bosnia and Herzegovina, Bosniak and foreign judges outvoted Serbian and Croatian judges in important cases. Thus, the Constitutional Court issued rulings on: the constitutionality of all three constituent peoples throughout the entire territory of Bosnia and Herzegovina, the annulment of Republika Srpska's symbols (coat of arms and anthem), as well as the Republic Day (January 9th).⁵³

In view of the aforementioned content, the Constitutional Court of BiH noted in its judgment that a major part of the primary school curriculum covered the topics related to RS and Serb people. The Court established that such manner of coverage, which excluded the perspectives of other ethnic groups, could not be considered compatible with the Ministry's obligation to support and foster different cultures, languages, and religions of its pupils, and to develop and promote pupils' tolerance and cultural diversity. In a situation where the curriculum's disputed provisions prevented the incorporation of historical views held by members of other social groups into the curriculum's practical implementation, the Court stated that the provisions could not be regarded as compliant with the universal democratic principles prescribed in Article 3 of the Framework Law.

Given the fact that the provisions of the Rulebook and the Appendix mostly refer to RS and Serb people in BiH, the Constitutional Court held that the curriculum in the disputed part did not even meet the requirement of multiple perspectives. The Court pointed out that such an approach was particularly necessary in multi-ethnic states such as BiH. The Court explained that it was necessary to design the history curriculum for the period of 1992–1995 in such a way that it covered several different perspectives in order to obtain the most objective and complete picture of past events, and to take into account the different perspectives and experiences of various ethnic, religious, and cultural groups.

Accordingly, the Court emphasized that educational content, especially that related to history and society, had to be harmonized with legal norms and democratic values, in order to prevent discrimination, revisionism, ideological manipulation, or the indoctrination of children. In this regard, the Court recalled that education played a key role in shaping social awareness and understanding the importance of compliance with the rule of law, which included the obligation to comply with final court decisions. Also, failure to mention the judgments on genocide and war crimes in the appropriate context trivialized these crimes and negatively affected the reconciliation process, contrary to the values set out in

⁵³ Judgment U-20/24, p. 13.

the Preamble to the Constitution of BiH, which emphasized the commitment to peace, justice, tolerance, and reconciliation.

The judges also observed that the textbook's portrayal of the Constitutional Court directly undermined trust in the legal order of BiH, contrary to respect for the principles of democracy and the rule of law. According to the Court, the statement that 'decisions by the Office of the High Representative and the Constitutional Court of BiH were often against the interests of Republika Srpska' and asking pupils in RS the question 'which two institutions served to undermine the competences of Republika Srpska?'⁵⁴ only lead to creating negative attitudes towards state institutions. Finally, although the Court noted that the applicants challenged the constitutionality of the disputed provisions also from the discrimination standpoint, it considered that, given the conclusions already reached, there was no need to examine these allegations separately.

4. Continued Failure to Implement the Constitutional Court's Judgments

Although, as shown above, citizens in BiH have the possibilities to fight discrimination in courts, both through ordinary and special procedures, and the Constitutional Court's rulings often meet their expectations in safeguarding human rights and the principle of equality, the implementation of these decisions tells a different story. The failure to implement judgments applies, to a greater or lesser extent, to all cases discussed in this article. This lack of implementation stems partly, as in many other countries, from the absence of political will to enforce specific decisions. However, in BiH, understanding the problem requires reference to the deeper structural constraints of the constitutional framework imposed by the DPA.

For quite some time, RS has effectively suspended the enforcement of the rulings issued by the Constitutional Court of BiH. In June 2023, the RS National Assembly passed a law declaring the Court's rulings non-applicable in the entity.⁵⁵ The reference to the DPA was clear, as RS had been demanding the removal of international judges from the Court,⁵⁶ that is, changing the structure of this institution

⁵⁴ Judgment U-20/24, p. 39.

⁵⁵ Zakon o neprimjenjivanju odluka Ustavnog suda Bosne i Hercegovine, Službeni glasnik RS, br. 60/23.

⁵⁶ *Okončana Šesta posebna sjednica Narodne skupštine Republike Srpske – Zaključci*, Narodna skupština RS, 26 Apr. 2023, <https://www.narodnaskupstinars.net/la/aktivnosti/sluzba-sjednice/okoncana-sesta-posebna-sjednica-narodne-skupstine-republike-srpske>; see also H. Išerić, M. Sahadžić, *Perils from Within and Without: The Constitutional Court of BiH*

as established by the DPA. Since January 2024, the Constitutional Court of BiH has been operating without any judges from RS, as its government has been blocking the efforts to fill the vacancies. The RS media have been referring to the Court as ‘incomplete’ (‘krnji Ustavni sud’).⁵⁷

Moreover, in February 2025, after the Court of BiH delivered a first-instance verdict in the case against RS President Milorad Dodik, sentencing him to one year in prison for defying the decisions of the High Representative for BiH and issuing a six-year ban on him holding public office,⁵⁸ the RS National Assembly passed a set of laws challenging the authority of Bosnia’s state-level institutions in the entity.⁵⁹ The Constitutional Court of BiH suspended these laws at the end of May.⁶⁰ In August 2025, the Court of BiH’s appeals chamber confirmed the first-instance verdict, but Dodik stated that he would continue performing his duties despite the verdict. His legal team announced it would file an appeal to the Constitutional Court of BiH.⁶¹ Additionally, at the end of August, the RS National Assembly voted in favour of holding a referendum asking people if they accept the state court’s verdict convicting Dodik.⁶² A certain change of course began to take shape only in October 2025. The appointment of a new acting president, together with the repeal of several separatist laws – including the Law on the Non-Implementation of Decisions of the Constitutional Court of BiH – may indicate a potential shift in the entity’s relationship with state institutions.⁶³

under Pressure, Verfassungsblog, 27 Jul. 2023, <https://verfassungsblog.de/perils-from-within-and-without>.

⁵⁷ Srna, *Odluka krnje Ustavnog suda pokušaj revizije istorije*, ‘Novinska Agencija Republike Srpske’, 25 Jan. 2025, <https://www.srna.rs/novost/1270796/odluka-krnjeg-ustavnog-suda-pokusaj-revizije-istorije>.

⁵⁸ M. Davidović, M. Sahadžić, *The Tipping Point in BiH’s Constitutional Struggle: Prohibition from Holding Office for the President of the Republika Srpska*, Verfassungsblog, 8 Apr. 2025, <https://verfassungsblog.de/bih-constitutional-struggle-dodik>.

⁵⁹ UN, *Sixty-Seventh Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina: Letter Dated 1 May 2025 from the Secretary-General Addressed to the President of the Security Council*, S/2025/272, 2 May 2025.

⁶⁰ Judgment U-7/25 of the Constitutional Court of BiH, 29 May 2025.

⁶¹ A. Kurtic, *Bosnia’s Top Court Confirms Serb Leader Dodik’s One-Year Prison Sentence*, ‘Balkan Insight’, 1 Aug. 2025, <https://balkaninsight.com/2025/08/01/bosnias-top-court-confirms-serb-leader-dodiks-one-year-prison-sentence>.

⁶² A. Kurtic, *Bosnian Serb Lawmakers Vote for Referendum in Bid to Keep Dodik in Power*, ‘Balkan Insight’, 23 Aug. 2025, <https://balkaninsight.com/2025/08/23/bosnian-serb-lawmakers-vote-for-referendum-in-bid-to-keep-dodik-in-power>.

⁶³ A. Kurtic, *Bosnian Serb Parliament Appoints Acting President for Republika Srpska*, ‘Balkan Insight’, 19 Oct. 2025, <https://balkaninsight.com/2025/10/19/bosnian-serb-parliament-appoints-acting-president-for-republika-srpska>.

Nevertheless, it is too early to determine whether the changes represent a genuine and lasting transformation or just a temporary adjustment within the existing political dynamics.⁶⁴

Despite the recent developments, it remains unlikely that RS officials will stop perceiving the Constitutional Court's rulings such as the one on the History curriculum as the Court's interference with the entities' exclusive competences.⁶⁵ The ongoing legal confrontation between RS and the state is one thing, but the broader reluctance across BiH to implement the Constitutional Court's decisions on discrimination in education is another. This persistent lack of political will reflects a shared perception of schooling as an instrument of identity preservation rather than a neutral public institution.

Conclusions

The current state structure of BiH established at Dayton, rooted in the preservation of ethno-national divisions rather than the promotion of inclusion and mutual respect, together with the prevailing political climate, make discriminatory practices in schools inevitable, not incidental. Although BiH has undertaken significant legislative efforts to ensure that schools are free from discrimination and function effectively – most notably through the Framework Law and the Law on Prohibition of Discrimination, which is significant in a much broader sense – these efforts have limited results. The reasons lie in the foundations of the Bosnian constitutional system, which institutionalizes ethnic segregation and undermines the consistent application of otherwise progressive laws. The case of BiH illustrates that even the most carefully drafted anti-discrimination legislation remains hollow when implemented in a structurally vulnerable and institutionally fragmented environment.

As rightly claimed by Maja Halilovic-Pastuovic, countries such as BiH, where political parties are based on ethnic interest, and where the ethnic imperative segments state institutions, often fall into an ethnocracy trap where it is impossible

⁶⁴ Dodik stated that despite the parliament's vote, RS would not change its policies, with secession remaining his ultimate goal, but he 'had to make the move in coordination with foreign partners'; see *Bosnia's Serb Republic Appoints Interim President, Seals Dodik's Departure from Post*, Reuters, 19 Oct. 2025, <https://www.reuters.com/world/bosnias-serb-republic-appoints-interim-president-seals-dodiks-departure-post-2025-10-18>.

⁶⁵ *Stanivuković kritikovao odluku Ustavnog suda BiH da van snage stavi nastavni plan koji veliča zločince*, Klix Vijesti, 24 Jan. 2025, <https://www.klix.ba/vijesti/bih/stanivukovic-kritikovao-odluku-ustavnog-suda-bih-da-van-snage-stavi-nastavni-plan-koji-velica-zlocince/250124033>.

to move past ethnic divisions.⁶⁶ Getting out of this trap can be an exceedingly long and arduous process, if it is possible at all. Three decades after signing the internationally brokered DPA, there is little doubt that Bosnia's constitutional system needs reform, but no agreement exists on how to achieve this. The latter undoubtedly extends beyond the present analysis.

Abstract

This article seeks to answer the question of how the externally imposed Dayton Constitution reinforces or constrains the governance of ethnic relations within Bosnia and Herzegovina's education system. To this end, the article presents the principal forms of inequality in Bosnia's education and analyses landmark discrimination cases brought before the Constitutional Court of BiH. Within this context, it first examines the practice known as 'two schools under one roof'. Second, it discusses the issue of language discrimination faced by Bosniak returnee children in Republika Srpska. Third, the analysis addresses a more recent concern – the one-sided portrayal of history in school curricula. Taken together, the case studies demonstrate that the constitutional framework established at Dayton not only created systemic inequalities in education, but also continues to undermine legislative reform and judicial efforts aimed at overcoming them.

Keywords: Bosnia and Herzegovina, Dayton Peace Agreement, imposed constitution, discrimination, education, Constitutional Court of BiH

Zewnętrznie narzucona konstytucja i jej wewnętrzne implikacje w Bośni i Hercegowinie po Dayton – problem dyskryminacji w systemie edukacji

Streszczenie

W artykule podjęto próbę odpowiedzi na pytanie, w jaki sposób narzucona z zewnątrz konstytucja z Dayton wzmacnia lub ogranicza możliwości zarządzania stosunkami etnicznymi w systemie edukacji Bośni i Hercegowiny. W tym celu w artykule omówiono główne formy nierówności w edukacji w Bośni oraz przeanalizowano przełomowe sprawy dotyczące dyskryminacji, które trafiły do Sądu Konstytucyjnego BiH. W pierwszej kolejności zbadano praktykę znaną jako „dwie szkoły pod jednym dachem”. Następnie przedstawiono problem dyskryminacji językowej, z jaką zmagają się dzieci bośniackich repatriantów w Republice Serbskiej. Pochylnono się też nad kwestią jednostronnego przedstawiania historii w szkolnych programach nauczania. Analiza wybranych studiów przypadku prowadzi do wniosku, że ramy konstytucyjne ustanowione w Dayton nie tylko stworzyły systemowe nierówności w edukacji, ale również podważają skuteczność reform legislacyjnych i działań sądowych podejmowanych w celu ich przezwyciężenia.

Słowa kluczowe: Bośnia i Hercegowina, Układ w Dayton, narzucona konstytucja, dyskryminacja, edukacja, Sąd Konstytucyjny BiH

⁶⁶ M. Halilovic-Pastuovic, *op. cit.*, pp. 173–190.