

**Russia – Religious Attire and Religious Instruction in Public Schools.
Freedom to Open Non-State Religious Schools**

*Maria Smirnova*¹

Table of Contents

I. Supreme Court of the Russian Federation [on regional regulations prescribing school uniform for secular state educational institutions without due regard to religious convictions]	277
A. Case Title	277
B. Parties	277
C. Keywords	277
D. Region – country	277
E. Court	277
F. Description	277
1. Application	277
2. Facts	277
3. Parties' observations	278
4. Government's Observations	278
5. Court decision	279
G. Note	280
II. Supreme Court of the Russian Federation [on compulsory subject in public schools curriculum 'Basics of religious culture and secular ethics']	281
A. Case Title	281
B. Parties	281
C. Keywords	281
D. Region – country	281
E. Court	281
F. Description	281
1. Application	281
2. Facts	281
3. Parties, Observations	282
4. Government's Observations	282
5. Court decision	282
G. Note	283
III. Supreme Court of the Russian Federation [on the right to establish private religious schools]	285
A. Case Title	285

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B. Parties	285
C. Keywords	285
D. Region – country	285
E. Court	285
F. Description	285
1. Application	285
2. Facts	285
3. Parties' observations	285
4. Government's Observations	286
5. Court decision	286
G. Note	286
IV. Supreme Court of the Russian Federation [on the right to set up Sunday schools without license]	287
A. Case Title	287
B. Parties	287
C. Keywords	287
D. Region – country	287
E. Court	287
F. Description	287
1. Application	287
2. Facts	287
3. Parties' observations	288
4. Government's Observations	288
5. Court decision	288
G. Note	289

RUSSIA

I. Supreme Court of the Russian Federation [on regional regulations prescribing school uniform for secular state educational institutions without due regard to religious convictions]

A. Case Title

Supreme Court of the Russian Federation [Appellate] Ruling No. 15-APG14-11 of 11 February 2015²

B. Parties

Ms Abubekirova

Ms Badretdinova

Ms Balyaeva

Mr Kadeev

Mr Kuzyaev

Mr Nugaev

Ms Rangunlova

(all acting on behalf and in the interests of their minor daughters)

Government of Republic of Mordovia

Public prosecutor (intervening)

C. Keywords

School uniform; religious dress; ultra vires; proportionality

D. Region – country

Russia

E. Court

Supreme Court of the Russian Federation

F. Description

1. Application

Applicant sought judicial review of the decision of a regional government in Mordovia Republic, Russia, whereby any headwear was prohibited in state and municipal (public) schools.

2. Facts

Government Decree of Mordovia Republic № 208 of 12 May 2014 approved the 'Model requirements for school dress and appearance of students in state educational organizations of Republic of Mordovia and municipal educational organizations of the Republic of Mordovia'. These model requirements included prohibition of headwear for health reasons, without discrimination according to religious beliefs. The court of first instance upheld the legitimacy of this decree.

² Text of the ruling in Russian http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=4854

III. EUROPE

3. *Parties' observations*

The applicants referred to the fact that as a result of the contested decision their daughters are not able to fully practice their religion (Islam), as the ban specified in the Model requirements for school uniform violates the rights of their daughters to freedom of religion, universal access to education and prohibition of discrimination in education.

According to the applicants, the contested regional regulations are contrary to the 1997 Federal Law 'On Freedom of Conscience and Religious Associations'.³ This Federal Law guarantees 'freedom of conscience and freedom of religion, including the right to profess, individually or jointly with others any religion or no religion, to freely choose and change, possess and disseminate religious and other convictions and act in accordance with them'. The applicants further asserted that the contested regulations contradict the 2012 Federal Law 'On Education in the Russian Federation'⁴ which guarantees the right of everyone to education regardless of gender, race, nationality, language, origin, property, social and official status, place of residence, attitude to religion, beliefs, membership of a public associations and other circumstances.

Finally, the applicants referred to the Constitution of the Russian Federation that only allows derogation from human rights established by the Constitution if such limitation is introduced by federal law and only to the extent that is necessary in order to protect the constitutional order, morality, health, rights and lawful interests of other persons, national defence and state security (Article 55(3)). In conclusion, the applicants believed that by introducing the ban on headwear in public schools in the absence of a federal law allowing for such restriction of a constitutional right the Government of Mordovia Republic acted *ultra vires*.

4. *Government's Observations*

While acknowledging the claims as unfounded, the court of first instance reached the conclusion that the contested decree of the Government of the Republic of Mordovia was adopted within the powers granted by the federal legislator to a subject of the Russian Federation (Article 72(1)(e) of the Constitution). Therefore, the decree does not contradict the requirements of the current federal legislation.

Moreover, the contested regional regulation is not discriminative, it was adopted exclusively for public schools in the Republic. It aims at eliminating social and religious differences between students and at creating an effective educational process and the necessary environment in the classroom.

This conclusion was upheld by the Supreme Court.

³ Paragraph 1 of Article 3 of the Federal Law № 125-FZ of 26 September 1997 'On Freedom of Conscience and Religious Associations.

⁴ Parts 1 and 2 of Article 5 of the Federal Law No. 273-FZ of 29 December 2012 'On Education in the Russian Federation' (hereinafter 'Federal Law on Education')

5. Court decision

1. The Decree was adopted within the sphere of competence of the regional government for two reasons. First, according to the Constitution general education belongs to the joint jurisdiction of the Russian Federation and the federal subjects whose normative legal acts cannot conflict with federal law. Second, Federal Law on Education does not contain specific regulations on school uniform. Article 38 establishes the right of each educational institution to introduce requirements for clothing of students, including general appearance, color, style, type, insignia, and the rules of wearing it. Such decision shall be taken with due consideration of the opinion of the student council, parents' council, and a representative body of employees. Public schools set requirements for school uniforms in accordance with model requirements approved by the authorized bodies of state power of subjects of the Russian Federation. Thus, the federal legislator delegated to the regions the power to regulate on school uniforms in public schools.

2. Public education in Russia is secular. Federal Law on Education establishes humanistic nature of education, the priority of human life and health, and secular education in state and municipal organizations.

3. Health considerations of school children require state regulation. School uniform may be considered necessary for formation of the students' sense of belonging to the educational organization, for improving the mental attitude of pupils to study, for eliminating social, property and religious differences among students, for strengthening the cohesion and discipline as well as for providing students with a comfortable and aesthetic clothing, which must comply with both the sanitary and epidemiological rules and norms.

4. The ban on wearing headwear in the premises of educational institutions does not entails restriction of the rights of students in public schools, since the establishment of standard requirements for clothing of students in state and municipal institutions is an essential element of the educational process, including the creation of conditions for the socialization of the student on the basis of socially accepted rules and standards of conduct and ensuring a safe environment training students to ensure their lives and health which is the responsibility of the educational organization.

5. There is no conflict between the contested provisions setting forth the same requirements for school clothes and appearance for all students in secular educational institutions in the country regardless of their religion, and the guarantee to practice any religion or no religion, to freely choose and change, possess and disseminate religious and other convictions and act in accordance with them. Existing federal legislation, consolidating the principle of secular education, does not provide for the right to manifest one's religion in public schools.

III. EUROPE

G. Note

The Supreme Court ruled out the argument of the appeal that the ban on wearing headscarves in public schools is a restriction of the right to act in accordance with religious beliefs as based on an 'erroneous interpretation of the substantive law'. The Court did not exercise the proportionality test that would be appropriate here. Instead, it adhered to a narrow legalistic interpretation of the right to education in secular public schools accessible for all and the right to practice religion in private schools where educational process may well be organized by or with participation of the clergy in accordance the canons of a particular religion.

Formally speaking, the fact that the federal legislator did not set a ban on the wearing of headscarves in educational institutions is not an evidence of the illegality of the contested decision and is not the basis for striking down the regional policy on school uniforms as invalid, since the regions are autonomous, according to the federal law, to adopt their own regulations on public school uniform. Notably, neither the court of first instance, nor the Supreme Court in the appellate ruling described above consulted the relevant sources of international law. In an earlier Ruling of 2013 the Supreme Court came to the same conclusion in respect of a group of female pupils in Stavropol Krai.⁵ This decision was made on the basis of ECtHR cases *Leyla Sahin*⁶, *Kervanci v France*⁷ and other cases, but the conclusion remained the same: the freedom of education of the applicants was interpreted as a right to choose private (religious) education or home schooling if their religious convictions do not let them follow the general rules of public secular education guaranteed by law.

⁵ Supreme Court of the Russian Federation [Appellate] Ruling No. 19-APG13-2 of 10 July 2015, text available from: http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=2448.

⁶ *Leyla Şahin v Turkey* (Application No. 44774/98, Judgment of 10 November 2005).

⁷ *Kervanci v France* (Application No. 31645/04 Judgment of 4 December 2008).

II. Supreme Court of the Russian Federation [on compulsory subject in public schools curriculum 'Basics of religious culture and secular ethics']

A. Case Title

Supreme Court of the Russian Federation Ruling No. AKPI13-810 of 18 October 2013⁸

B. Parties

B. D. (applicant)

Ministry of Education and Science of the Russian Federation

Ministry of Justice (intervening)

C. Keywords

Religious instruction in public schools; compulsory modules of public school core curriculum

D. Region – country

Russia

E. Court

Supreme Court of the Russian Federation

F. Description

1. Application

The applicant sought judicial review of the federal Ministry of Education and Science' policy on making the course compulsory for all public schools in the country.

2. Facts

The course 'Basics of religious cultures and secular ethics' is compulsory in Russian schools since 1 September 2012. It does not imply religious instruction but provides a choice of one of six modules:

- basics of Russian Orthodox culture;
- basics of Islamic culture;
- basics of Buddhist culture;
- basics of Jewish Culture;
- basics of religious cultures of the world;
- basics of secular ethics.

According to the developers of the course, it provides a synthesis of knowledge, concepts, and ideas about the spiritual culture and morality. It is aimed at formation of values and meaningful philosophical foundations that provide complete

⁸ Text of the decision in Russian available from: http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=113

III. EUROPE

perception of national history and culture in the study of the humanities at the stage of basic school. Moreover, through this course the students develop skills to communicate in a multiethnic and multireligious environment based on mutual respect and dialogue in the name of social peace and harmony.⁹

3. *Parties, observations*

The applicant held a view that the contested policy is contrary to the Constitution of the Russian Federation, the Family Code of the Russian Federation, and the Federal Law 'On Freedom of Conscience and Religious Associations' in that it violates the rights of the child to explore other religious cultures or atheism, as well as limits the right of parents to fulfill their responsibilities for care for and upbringing of the child.

4. *Government's Observations*

Both the Ministry of Justice and the Ministry of Education and Science stood at the position that the policy does not contradict the law and is not discriminatory.

5. *Court decision*

1. Compulsory course 'Basics of religious cultures and secular ethics' is not contrary to Article 2 of Protocol № 1 to the ECHR so long as it does not violate the right of students and their parents to family life, the right to practice any religion or no religion, to freely choose and disseminate religious and other convictions and act in accordance with them.

2. With reference to *Kjeldsen, Busk Madsen and Pedersen v Denmark*¹⁰ explaining the nature and extent of the State's obligations under Article 2 Protocol number 1 of ECHR the Court pointed out that this provision does not prohibit a State to disseminate through the system of public education of information or knowledge, either directly or indirectly having a religious or philosophical nature. Neither does it allow the parents to object to the inclusion of such teaching in the school curriculum. This provision does imply, however, that the state, fulfilling the commitments it has undertaken in the field of education and training must ensure that information and knowledge included in the curriculum is presented in an objective, critical, and pluralistic manner. The state does not have the right to seek to instill principles that can be regarded as contempt of religious and philosophical convictions of parents.

In this context, the Court held, the contested course provides fulfills the requirement of providing objective, critical, and pluralistic overview of all main religions and secular ethics. It implements the provision of the Federal Law on

⁹ Publishing house *Prosvetsheniye*, the authors of the course
http://www.prosv.ru/umk/ork/info.aspx?ob_no=20402

¹⁰ *Kjeldsen, Busk Madsen and Pedersen v Denmark* (Applications No. 5095/71; 5920/72; 5926/72 Judgment of 7 December 1976).

Education that allows for creating compulsory school modules aimed at obtaining knowledge of the basics of spiritual and moral culture of the peoples of the Russian Federation, the moral principles, the historical and cultural traditions of world religions or alternative disciplines. The choice of one of the subjects included in the main curriculum is carried out by parents (legal representatives) of children.

3. The applicant's claim that the policy violates his constitutional rights to family life, privacy and freedom of religion is unfounded, because the choice of one of the six modules does not have to be motivated by religious convictions of the student's parents. Therefore, the privacy of religious beliefs is guaranteed.

G. Note

Introduction of this course is a long-lasting issue in Russian education law and policy. This course in its current appearance is a consensus-based result of a very long and hard dispute over both the name and the contents of the course, as well as its obligatory status. The purposes of neutrality constructed the title of the course. It was then approved for testing in 20 out of the then 81 federal subjects as a compulsory part of public school curriculum. Following successful approbation involving more than 10,000 schools the Government adopted an action plan to finalize introduction of this discipline in compulsory education curriculum nationwide.¹¹

Interestingly enough, the choice of modules throughout the country clearly shows the tendency: the overwhelming majority of parents choose secular modules of the course (secular ethics and overview of all world-spread religions, 58.2 % and 21.5 % respectively). Orthodox culture follows with 19 %, while Islam, Buddhism and Judaism are chosen by less than one per cent of parents each.¹²

These are nationwide results. The choice of modules differs from region to region depending on the cultural traditions. For example, in Chechen Republic 99.9 % of parents opted for the Islam module.¹³ This is a long-lasting tradition: in regions of North Caucasus the 'Basics of Islam' have been taught as an elective course in public schools within the framework of the regional component of the basic educational

¹¹ Government Executive Order No. 84-R of January 28, 2012 on Approval of the Action Plan to Introduce from 2012/2013 Academic Year in All Federal Subjects of Russian Federation Complex Discipline for General Education Curriculum 'Basics of Religious Cultures and Secular Ethics', *Rossiiskaya Gazeta* 2012 No. 26.

¹² As reported by the Federal Educational Portal, available at http://www.edu.ru/index.php?page_id=5&topic_id=3&date=&sid=11613&ntype=nuke and http://www.edu.ru/index.php?page_id=5&topic_id=3&date=&sid=13138&ntype=nuke.

¹³ Maria Agranovich, 'Taken at a Bare Word: In September in our Schools the new Discipline "Basics of Religious Cultures and Secular Ethics" Will Appear', *Rossiiskaya Gazeta* (6 February 2012), available at <http://www.rg.ru/2012/02/04/religia-predmet-site.html>.

III EUROPE

program since 2005,¹⁴ i.e. long before the compulsory course on 'Basics of Religious Cultures and Secular Ethics' was introduced.

¹⁴ 'Chechen Children Will Study Islam', *Rossiyskaya Gazeta* (12 January 2005), available at <http://www.rg.ru/2005/01/12/islam-anons.html>.

III. Supreme Court of the Russian Federation [on the right to establish private religious schools]

A. Case Title

Supreme Court of the Russian Federation [Appellate] Ruling No. 78-APG14-2 of 5 March 2014¹⁵

B. Parties

St. Petersburg Local Religious Organization of Evangelical Christian Pentecostal Church 'Harvest' (applicant)
Public Prosecutor of St. Petersburg

C. Keywords

Establishment of religious schools; liquidation of religious organizations; 'established' and 'new' religions

D. Region – country

Russia

E. Court

Supreme Court of the Russian Federation

F. Description

1. Application

The applicant submitted a judicial review claim on the Prosecutor's decision to close down the local church with the justification that its functioning contradicts the objectives of its creation and also violates federal legislation.

2. Facts

The local church was closed down by court decision on the initiative of the Prosecutor after 13 years of functioning. The Charter of the religious organization indicated the aim of its work: 'to implement the right to freedom of profession of faith and spread the teachings of Christians of Evangelical Faith Pentecostals.' One of the activities mentioned in the Charter was cultural, informational, religious and educational work through the establishment by the Church of non-state schools with religious or cultural aim. The evidence submitted in this case and not disputed by the parties demonstrated that the church was running a school for grades 1-11 without license.

3. Parties' observations

The representatives of the church considered closing down illegal and asked the Supreme Court to cancel the decision of St. Petersburg City Court.

¹⁵ Text of the Ruling in Russian is available from http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=1629

III EUROPE

4. Government's Observations

The Prosecutor contended that the church violated the federal educational legislation because it conducted educational activities without fulfilling the legal obligation to obtain a license.

5. Court decision

1. Religious organizations themselves are not allowed to conduct educational activities. However, Federal Law 'On Freedom of Conscience and Religious Associations' allows 'centralized' (or well-established) religious organizations in accordance with their charters to establish religious educational institutions for the training of clergy and religious personnel of religious organizations (not religious schools) upon condition of obtaining a license for educational activity. Educational programs of general education on the basis of license can be implemented in a non-profit private organization for which educational activity is the main activity in accordance with its registered charter.

2. Liquidation for violation of the requirement to obtain a license is not disproportional, because the violations were of obvious and systemic nature.

G. Note

Although the right of religious organizations to establish schools is guaranteed by Article 87(8) of the Federal Law on Education and Article 5(3) of the Federal Law 'On Freedom of Conscience and Religious Associations', they are not exempt from the requirement to obtain a license for educational activities.

Previously, the right to establish educational institutions was guaranteed only to 'well-established' religious organizations whose presence in Russia exceeded 15 years. However, the '15 years rule' was repeatedly criticized by ECtHR and finally, in *Kimlya*¹⁶ the Court recommended to the Russian authorities to take general measures to invalidate this norm. The federal law abolishing the '15 years rule' was adopted in July 2015.¹⁷

¹⁶ *Kimlya and others v Russia* (Applications nos. 76836/01 and 32782/03, Judgment (Final) of 1 March 2010)

¹⁷ Federal Law of 13 July 2015 No. 261-FZ.

IV. Supreme Court of the Russian Federation [on the right to set up Sunday schools without license]

A. Case Title

Supreme Court of the Russian Federation [Cassation] Ruling No. 36-G08-7 of 10 June 2008.

B. Parties

Local religious organization 'The United Methodist Church' of Smolensk city
Prosecutor of Smolensk *Oblast* (Region)
Federal Registration Service (intervening)

C. Keywords

Religious instruction by religious organizations; liquidation of religious organizations; Sunday schools

D. Region – country

Russia

E. Court

Supreme Court of the Russian Federation

F. Description

1. Application

The applicant submitted a judicial review claim on the prosecutor's decision to close down the local church with the justification that it was carrying out educational activities without a license.

2. Facts

Prosecutor of Smolensk *Oblast* appealed to the court in the interests of an indefinite number of persons and with an intent to protect the rights of minors to liquidate the local Methodist Church. The Church was registered as a legal entity in 2002 and was included in the Unified State Register of Legal Entities. The Church, not being an educational institution, and without the necessary license, conducted educational activities in a Sunday school created by the church without registering it as a legal entity. Sunday school was regularly visited by 4 children under the age of 14 years who studied Bible and had singing, drawing, and handicrafts classes. The textbooks for the school were not from the list of approved textbooks. In addition, control checks revealed violations of sanitary legislation requirements: classes were held in a residential house without centralized hot and cold water supply and only an outdoor toilet. The training room was not equipped with a special set of furniture intended for use by children in the learning process.

In 2008 the local court satisfied the prosecutor's indictment and liquidated the church.

3. Parties' observations

The applicants disagree with the prosecutor's decision to liquidate the local church on the basis that it carries out educational activities.

Objecting to the court decision the representative of the local religious organization referred to the fact that the gross violations of the law that could have been the basis for its liquidation have not been committed. In particular, religious instruction in Sunday school cannot be referred to as educational activity in the sense implied by the definition of such activity in the Law 'On Education'. For example, there was neither deliberate process of education and training, nor any statement of achievement by the 'students' of established educational levels. Finally, the classes for these children were led by their parents – parishioners of the church.

From the legal grounding perspective, the Charter of the Church provided that its objectives include teaching of religion to and religious upbringing of its followers 'in the purity of the Gospel teaching and spiritual unity on a voluntary basis through public Sunday Bible classes and creeds'.

4. Government's Observations

The prosecutor contended that the systematic implementation by the Church of educational activity without obtaining the necessary license and in conditions violating sanitary and epidemiological norms was illegal, therefore liquidation is proportional.

The intervening representative of the Federal Registration Service of the Smolensk Oblast confirmed that in 2007 inspection proceedings were carried out by the Service in respect of the Church's activities. The Service confirmed compliance of activities with the aims and objectives of the Church as stated in its Charter.

5. Court decision

1. The local court made a factual and legal error in considering the Sunday school as performing educational activities. In fact, according to the Federal Law 'On Freedom of Conscience and Religious Associations' religious organizations in Russia are established with an aim to share profession and dissemination of faith and with appropriate attributes of their religion, such as worship, religious rites and ceremonies, teaching of and about their religion, and religious upbringing of the followers.
2. Activities of the Sunday school were not aimed at raising educational level of the participants and did not end with certification, therefore, two of the crucial criteria of the legal definition of educational activities were not met. Consequently, the license was not required and this automatically withdraws the allegations in illegal educational activity of the Church.

G. Note

There has been a long debate in Russian court practice as to whether religious upbringing should be qualified as education (with consequent requirement to obtain a license and to comply with sanitary legislation) or as leisure and cultural activities.¹⁸

However, importantly, since very recently Sunday schools, Madrasas and similar entities are not considered educational institutions by federal law, hence, do not require a license. Consequently, religious organizations can carry out religious instruction and upbringing of children in Sunday schools and similar centres on the basis of their mentioning in the Charter.¹⁹

¹⁸ See, among many, Decision of the Supreme Court No. 56-G03-6 of 20 May 2003, available from: http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=978; Decision of the Supreme Court No. 58-G02-38 of 26 November 2002, available from: http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=977.

¹⁹ Article 5(5) of the Federal Law 'On Freedom of Conscience and Religious Associations' as amended by Federal Law of 13 July 2015 No. 261-FZ.