

‘Accessing Classroom through the Courtroom: Contemporary Contours of School Choice in Russian Education Law, Policy and Court Practice’

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How relevant is the phrase ‘school choice’ to the current situation in Russian education system? Is ‘school choice’ a recognized right in Russian legislation and practice? If so, what are the legal, administrative, financial, organizational and other factors that preclude full realization of this right and how these barriers can be overcome? In an attempt to answer these questions and without aiming at providing a comprehensive review of education law and policies in Russia² this paper gives an overview of the legal framework for school choice in Russia, factual barriers to its full realization and relevant recent cases of Russian Constitutional Court, Supreme Court and ordinary courts of Russian regions on the issues of accessibility of schools to every child in Russia in the context of current education policy.

i. Constitutional Framework for the Right to School Choice

Although Russian Constitution of 1993³ does not directly provide for the right to choose schools according to the various criteria having particular significance to the

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² A comprehensive general description of the system of education in Russia and educational legislation is featured in Maria Smirnova, ‘Russian Federation’ in Charles L. Glenn, Jan De Groof (eds.), *Balancing Freedom, Autonomy, and Accountability in Education*, Volume 4 (Wolf Legal Publishers 2012) 199; see also on higher education in Russia, Maria Smirnova, ‘Comparative Legal Analysis of the Legislation on Higher Education in Russian Federation’ in Dr. Charles Russo’s (ed.) *Handbook of Comparative Higher Education Law* (2013) Rowman and Littlefield Publishing Group (R&L) 255-273; on education law and newest benchmarks of education policy, Maria Smirnova, ‘Education Law in Russia’ (2012) *The Yearbook of Education Law*, Dayton University, Ohio, 349-356.

³ Constitution of Russian Federation, as adopted by national referendum on December 12, 1993, *Rossiiskaya Gazeta* 1993, No. 237; as amended by Federal Constitutional Laws on Amendments to the

parents, it contains important guarantees thereof. The most important of them is, undoubtedly, the attribution of the right to education to 'everyone' (Article 43.1.). Not only does the Russian state as a welfare state (Article 7.1.), thus, undertake to provide unrestricted universal access to 'free secondary education' (Article 43.2.) to all children, 'regardless of gender, race, nationality, language, origin, property and official status, place of residence, religion, beliefs, membership of public associations, and other circumstances' (Article 19.2.), but also it commits to providing support to 'various forms of education and self-education' (Article 43.5.).

The latter guarantee, alongside with protected constitutional values of private property (Article 35.1.), freedom of entrepreneurial activity (Article 8.1.), freedom of religion (Article 28.1.) in a secular state (Article 14.1.), freedom of expression (Article 29) and academic and scientific freedom (Article 44.1.) can be viewed as the main constitutional provision catering for establishing schools, schooling patterns or pedagogical concepts in addition to those founded and funded by the state – in order to accommodate the variety of legitimate requests of Russian citizens for distinct schools.

According to the most recent data there are currently around 550 private schools in Russia (less than 1 percent). Two-thirds of them are located in Moscow, one quarter – in Saint Petersburg and the rest are scattered around the country.⁴ Most of them were established as an alternative to traditional pedagogical concepts with a few religious schools functioning as state accredited schools and delivering general education in accordance with the federal state standard with religious component built in on top of the compulsory secular program.

Constitution of Russian Federation No. 6-FKZ and No. 7-FKZ of December 30, 2008, *Rossiiskaya Gazeta* 2009, No. 7.

⁴ 'Private School or a Public One?' *Rosbalt*, August 6, 2013 <www.rosbalt.ru/blogs/2013/08/06/1161112.html> accessed January 10, 2015.

The freedom of school choice in Russia is affected by a very important constitutional provision that has to do with the responsibility of parents to provide compulsory general education to their children until they reach 18 years old. Notably, Article 43.4. of the Constitution does not specify in which form this responsibility is to be performed in order for the respective period of education to be recognized as meeting the requirements of compulsory education. However, the application of this provision in practice implies that only completion of a state accredited program of general education counts towards the obligation to ensure that children receive the education of compulsory level. Thus, technically speaking, school choice for compulsory general education is limited by those schools that have state accreditation.

State accreditation, therefore, acts as an additional constitutional guarantee of quality education for all and a common denominator for different school types and forms of general education: by granting accreditation the state confirms that the curriculum of an educational institution, public or private equally, conforms to the requirements of the federal state educational standard of a relevant level and type (Article 43.5.). This confirmation grants state recognition to the school's certificates, as well as makes the school eligible for state funding in the amount necessary for realization of the core curriculum in accordance with regional funding rates for an institution of this particular type.

This constitutional framework, despite being constructed of rather heterogeneous elements, provides a justiciable foundation for the right to access free public schooling, the right to choose schools according to the parents' views and convictions, to create such schools and, moreover, to have the results of alternative schooling or home schooling to be officially recognized by the state. The question remains, however, whether these constitutional provisions are implemented in

subsequent legislation to the effect of actually providing the school choice for every parent and every child in Russia.

ii. School Choice in the Newest Russian Educational Legislation

The newest Federal Law on Education in Russian Federation (2013)⁵ constitutes the legal core of the right to education based on the Article 43 of Russian Constitution and rights in education – in accordance with the relevant international human rights instruments. Before we examine the guarantees of school choice provided by the law, it is worth explaining why this piece of legislation is particularly important.

Current educational legislation in Russia consists of the main Federal Law on Education aimed at integrating educational legislation at all levels. Prior to its adoption in 2012 educational law in Russia reminded a patchwork of poorly organised norms focused mainly on economics, management and administration of education, rather than on pure educational relationships involving interaction between a school, a teacher and a student in the process of transmitting and acquiring knowledge and skills brought together without any holistic concept, let alone human rights-based approach.

Prior to adoption of this new law many of the important rights and responsibilities of students and teachers used to be regulated by sub-legal normative acts, or by regional or municipal acts, while procedural issues were provided with poor legislative support, if any. As a result, judicial remedies of infringed rights were far from adequate or effective. Claims of alleged violations could not be sustained and were turned down by courts on the basis that the rights were not guaranteed on the legislative level.⁶

⁵ The Federal Law on Education in Russian Federation No. 273-FZ of December 29, 2012, entered into force on September 1, 2013, *Rossiyskaya Gazeta* 2012 No. 303 (hereinafter – ‘Federal Law on Education’).

⁶ See for example Supreme Court of Russian Federation decision No. GKPI2002-1170 of November 26, 2002 <http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=369> accessed January 10, 2015; 17th Arbitrage Court of

Therefore, one of the most remarkable accomplishments of the new Russian Federal Law on Education is rendering legal force to those rights and freedoms of participants of education process that were previously regulated only by sub-legal acts. This transformation secures advanced justiciability under the law and protects from illegal suspension and dismissal, from violations during admission, attestation, licensing, accreditation, and other procedures. The same advanced protection is now attributed by law to the provisions concerning school choice, as follows.

According to Article 3.1.7. of the Federal Law on Education ‘freedom of choice of education according to the inclinations and needs of the person’ constitutes one of the main principles of state education policy, as well as the aim of ‘creating conditions for self-realization of each person, free development of his or her abilities, including the granting of the right to choose the form of education, forms of instruction, educational institution – within the limits provided by education system’. These freedoms of choice, as well as academic freedoms of teaching staff in terms of choosing the forms of learning, methods of training and education became a very elaborate interpretation of the constitutional guarantees outlined above.

The Federal Law on Education continues to promote the values of choice – now in the form of justiciable rights of students and their parents, rather than principles of education system. Article 34.1.1. of the Federal Law guarantees to the students of 18 years and older the right to choose an educational provider, form of education and form of instruction, while the parents are entitled to the same right in the case of younger students. The child’s opinion and recommendations of a commission comprising psychological, medical and pedagogical personnel should be taken into account in the decision-making process (Article 44.3.1.).

It is vital that the right to receive general education at home is guaranteed by the law (Articles 63.2. and 44.3.2.). In practical terms, and for the purpose of official recognition of the period of studies, the child needs to be registered with any state accredited school, which provides methodological and other necessary support for the homeschooling parents and – upon completion of the core curriculum – certifies the child with a state-recognized proof of studies. Not only this document is essential for further studies, but it also confirms that the constitutional obligation to obtain general education of compulsory level (10 years) has been fulfilled.

iii. Financial Guarantees of School Choice in Russia and their Efficiency

Compulsory school education in Russia is declared free for every person: Article 43.2. of the Constitution guarantees accessibility of general education on free-of-charge basis in state and municipal educational institutions. According to Article 5.2. of the Federal Law on Education the right to education is not subject to discrimination on the basis of, inter alia, social position or wealth.

The state undertakes to provide necessary socio-economic conditions for proper realization of this right. More precisely, regional state authorities are responsible for securing the right to receive pre-school and general education in schools by means of subsidizing local budgets in the amount necessary for organizing educational process, paying the staff, buying the textbooks and teaching aids, covering operating costs and purchase of expendable supplies on a fixed normative basis (Article 99 of the Federal Law on Education).

Not only general expenses of running a public school are met by the public funds, but also the state provides assistance to those children who choose to receive pre-school and general education at a state-accredited private school (Article 99.5. of

the Federal Law on Education). The assistance is provided within the same financial normative allowed for public schools, however, the private schools are not allowed to cover the same expenses twice – both from the state budget and from tuition fees. Sometimes, when expenses of running a private school with a particular profile exceed substantially the amount of subsidy that can be granted by the state, the school chooses not to apply for state funding altogether and only survives on tuition fees and donations.

It is important to stress once again that the only criteria for receiving state funding by a private school is its compliance with the basic core curriculum designed in accordance with the federal state standard of general education. Thus, none of the constructions catering for distinctiveness of a private school, be it a religious, pedagogical, philosophical concept or an intensified sport, musical or cultural preparation, really matter for the purposes of obtaining state funding as long as the school keeps up with the minimum core curriculum and bears responsibility for the quality of delivering the content.

IV. Existing Challenges to School Choice in Russia and Perspectives of its Judicial Protection

Both the constitutional basis and the legal framework for school choice create a far too optimistic picture of happy parents throughout the 146 million populated country using appropriate legislative guarantees to send their child to a school of their choice or to create one in case if their needs are not met by existing education system. However, as in any other country of the world, the reality is far less optimistic.

In this part of the paper we will highlight some of the most consequential challenges that Russian reality poses to the realization of the freedom of school choice:

(A) ensuring physical accessibility of schools, especially in rural areas; (B) financial accessibility of public education for low-income families; (C) accommodation of religious rights of pupils in the public sector of education system in a secular country.

IV.A. Physical Accessibility of Schools, Especially in Rural Areas

According to the data provided by the 'Statistics in Education' portal⁷ currently Russian general education system comprises more than 67,000 schools with approximately 20 million children which constitutes 81 % of population aged between 7 and 17. The absolute majority of all schools in Russia (99 %) are public schools, i.e. they are founded and fully funded by the municipalities through a system of subsidies from the regional budget.

These public schools are required by law to enroll all children eligible to receive general education and residing in the territory in which the specified educational organization is located (Article 67.3. of the Federal Law on Education). This provision creates a situation when the schools are to be filled with local children first and only if there are still places available children from other municipalities can apply on first come – first served basis. Arguably, this approach does not guarantee free choice of school according to parents' philosophical convictions or pedagogical preferences, because the most appropriate public school to cater for those preferences may not be the nearest one.

However, in a prominent 2011 decision the Supreme Court of Russia ruled that an analogous clause of a regional statute does not violate constitutional right to

⁷ Statistics of Russian Education, <<http://stat.edu.ru/stat/obsh.shtml>>, accessed January 10, 2015.

education.⁸ The Court stressed that such a provision is nothing but an organizational measure aiming at better territorial accessibility of local schools to all eligible children living nearby and cannot be considered discriminatory or illegitimately limiting the right to education.

Currently, all eligible children in most of the regions can be enrolled to general education online⁹. However, some time ago enrollment was only possible via physical queuing in front of a preferred school on the date – or more often the night before – when registration was due. A similar problem persisted for pre-school education which is considered one of the steps of general education. Lack of places in kindergartens has often led to creation of a virtual ‘queue’ parents had to sign into from the moment their child was born and, effectively, to flourishing of corrupt practices aimed at securing a place in the queue when it appeared to be full.

Understandably, the right to be put in the queue or a right to keep a certain place on the queue was not supported by any legislative provisions, therefore, was not enforceable. By adopting respective legislation the government would have confirmed that the constitutional obligation to ensure availability of pre-school education to all eligible children is not fulfilled: the Constitutional Court would immediately invalidate such a provision. Moreover, in the majority of cases the courts ruled that the existence of the queue *per se* is just an organisational measure and not an indication of failure to provide access to free pre-school education.¹⁰

⁸ Decision of the Supreme Court of Russian Federation No. 5-G11-106 of June 15, 2011 <http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=155> accessed January 10, 2015.

⁹ See, for example this portal for Moscow schools, <<http://pgu.mos.ru/ru/services/link/2154>> accessed January 10, 2015.

¹⁰ On queue-free access to pre-school education see Permsky Krai Court ruling No. 33-9598/2010 of November 2, 2010 <http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=119> accessed January 10, 2015; Moskovskaya Oblast Regional Court ruling No. 33-15552 of August 10, 2010 <http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=134> accessed January 10, 2015.

Thus, without due legislative and judicial support those parents who were not able to secure a place in the kindergarten for their children could only justify their claims by appealing to the obligation of public authorities to provide access to free pre-school education. Some claims were successful and the courts confirmed illegal omission of municipal authorities for not creating enough spaces for all children of relevant age entitled to free pre-school education and residing in the territory governed by these authorities.¹¹ Now in most of the regions transparent online mechanisms of registration for pre-school education as well¹² have been introduced to decrease corruption in this sphere and improve visibility of and access to the right to pre-school education.

In rural areas school choice remains merely an abstraction. 'Rural school' is a type of educational institution with a unique set of characteristics. First, it is ungraded. It serves to meet the needs of some 10-140 children of a small village or a group of settlements located within a radius of up to 30 km. The children are of different ages, the classes are very small, and the teachers do multi-task job to provide their educational needs on a level required to preserve the school's accreditation status. Meanwhile, rural schools make up for 69 percent of all Russian schools with 30 percent of all school children learning there and nearly 40 percent of all school teachers¹³.

Second, the expenses of the state budget on running a rural school are unprecedentedly high in comparison to running a 'standard' municipal school. The normative for a municipal school ranges from 3,000 to 5,000 rubles per pupil annually

¹¹ Cassation Ruling of Perm Krai Court No. 33-6889 of July 11, 2011 <http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=118> accessed January 10, 2015.

¹² See among many others examples from Moscow <http://ec.mosedu.ru/norm_docs/> accessed January 10, 2015; Tatarstan Republic <<https://uslugi.tatar.ru/cei>> accessed January 10, 2015; Bashkortostan Republic <<https://edu-rb.ru>> accessed January 10, 2015; Chelyabinsk <www.sadiki74.ru> accessed January 10, 2015.

¹³ What Should We Do with Rural Schools – Close Down or Bring Closer to the Market? Interview with Tatiana Abankina <<http://hkola.narod.ru/news/indpost179.html>> accessed January 10, 2015.

(approx. 46-77 USD), while in a rural school the figure may reach as high as 45,000 rubles (approx. 692 USD).

Third, pedagogical process in rural schools is characterized by certain methodological peculiarities: non-conventional instruction and organization of educational process, prevalence of individual instruction, consideration of local conditions. Historically, rural schools tend to include into their curricula courses and modules reflecting specific features of their local environment: farming and gardening, agriculture, housekeeping, mechanized works and so forth¹⁴.

Last, but not the least is the unchallenged role of a rural school as a cultural center of the community. School library, school museum, sporting facilities become pulling power for young people of a village, who would otherwise be involved into criminal activity, alcohol and drugs abuse. Rural school is a preserver of local traditions and local culture; it is arguably the only social institution capable of solving the problems of work school¹⁵; it is, literally, a cultural oasis of a village, compensating lack of parental concern and thoughtful upbringing.

Despite their unique characteristics and undisputed solidifying effect on the local communities rural schools are becoming more and more scarce being replaced with transportation schemes that allow to transfer children from remote villages to a local town school. In this case home schooling would have been sometimes a better option, but lack of necessary qualifications of parents in rural areas would make it virtually impossible.

¹⁴ Rural School: Experience, Problems, Prospects. Victor Filimonov. Information and Education Portal of Khanty-Mansy Autonomous District – YUGRA <<http://www.eduhmao.ru/info/1/3754/23544/>> accessed January 10, 2015.

¹⁵ 'Arbeitsschule' in terms of Georg Kerschensteiner: Begriff der Arbeitsschule. 1912; Wissenschaftliche Buchgesellschaft, Darmstadt 2002, ISBN 3-534-15195-X.

IV.B. Financial Accessibility of Public Education for Children from Low-Income Families

Most of the legally enforceable guarantees mentioned above convey the illusion of unconditionally free-of-charge and accessible general education. However, ubiquitous corruption and illegal extortion of money from parents under the guise of ‘voluntary donations’, unregistered and uncontrolled, make ‘free’ education in public schools rather costly.

In spite of using official fundraising methodic involving a transparent account controlled by the school board, some public schools continue to ask parents to bring cash for various purposes, be it planned annual expenses or unexpected and urgent incidents (a broken window or a leaking ceiling). Parents throughout the country constantly report paying ‘recommended’ yet fixed contributions for school security, school meals, school textbooks, school events and sports, and, probably one of the most irritating in this context, for collective Birthday presents for school teachers¹⁶.

For example, a free municipal school in Moscow with advanced study of English in 2012 was allegedly incurring additional expenses up to 90,000 rubles (approx. 1,300 USD) per annum. This amount included special textbooks (2,500 rubles (approx. 38 USD)), ‘voluntary donations’ for the school’s operational needs (10,000 rubles (approx. 160 USD)), collective excursions (1,000 rubles (16 USD)), and, paradoxically, private tutor of English (72,000 rubles (1,107 USD))¹⁷.

Although these expenses may seem ‘appropriate’ or ‘bearable’ to some parents, the consistent practice of ‘voluntary donations’ affects the right to school choice dramatically as it closes the door to quality education to many children from less

¹⁶ How Much is the ‘Free’ Education in Tula? *Komsomolskaya Pravda*, September 1, 2010, <<http://kp.ru/daily/24550/727292/>> accessed January 10, 2015.

¹⁷ What Is the Cost of Free School Education? <<http://www.s-cool.ru/postt1985.html>> accessed January 10, 2015.

financially advanced families throughout the country. The inability of the state to fully resolve the problem of 'voluntary donations' in schools leads to manifest inequality in provision of education that is constitutionally guaranteed on the free-of-charge basis. Thus, both general and higher education in Russia contribute to extending the gap between diverse social groups and to marginalizing the least wealthy. As proved by a series of research, remote locations (countryside, small villages) are the most unfavorable places to be born in: the smaller is the settlement of origin, the greater are the chances to join the ranks of impoverished¹⁸.

This problem has been acknowledged at the highest decision-making level, since 1998 when President Boris Yeltsin stated in his annual Address to the Federal Assembly that 'free services are being spontaneously replaced by charged services; the system of education is becoming more strikingly divided into education for wealthy and the others'¹⁹. Later in 2000²⁰ President Vladimir Putin acknowledged that education is free on paper only, while in reality it is unaffordable to most families living nearly or below minimal subsistence rate. The same sad message is repeated almost every year: in 2004 Vladimir Putin diagnosed one of the most urgent problems of Russian society – limited access to quality education of low-income families. 'Education is accompanied by additional payments that few can afford'²¹.

More recent developments in Russian education policy have been trying to address these issues: in 2009 President Dmitry Medvedev first announced the general

¹⁸ Klucharev G. A., Kofanova E. N. On the Dynamics of Educational Behavior of Wealthy and Disadvantaged Russians. Federal State Budget Scientific Institution 'Institute of Sociology of Russian Academy of Sciences'. <http://www.isras.ru/files/File/Socis/2004-11/klyucharev_kofanova.pdf> accessed January 10, 2015.

¹⁹ Address of the President of Russian Federation to the Federal Assembly of February 17, 1998 'With Joint Efforts – to the Revival of Russia (on the Situation in the Country and Mainstreams of Politics in Russian Federation). *Rossiiskaya Gazeta* 1998 No. 36.

²⁰ Address of the President of Russian Federation to the Federal Assembly of July 8, 2000 'The Kind of Russia We Build'. *Rossiiskaya Gazeta* 2000 No. 133.

²¹ Address of the President of Russian Federation Vladimir Putin to the Federal Assembly of May 26, 2004. *Rossiiskaya Gazeta* 2004 No. 109.

concept of the National Educational Initiative 'Our New School'²². In the core of this concept is a school as a center of creativity and knowledge with vibrant social life and sport activity. Schools of the new model should become centers of interaction between parents and local community. Significantly, the technological developments of this project are aimed at broadening access to education in remote rural areas.

IV.C. Accommodation of Religious Rights of Pupils in the Public Sector of Education System in a Secular Country

Accommodating religious rights of pupils in public schools proves to be another highly sensitive issue in Russian education system. 'Appropriate appearance' of students and teachers has been a matter of concern since abolishment of Soviet school uniform in 1992. The attitudes to wearing religious symbols, e.g. Islamic headscarves in schools varied from absolute prohibition²³ to forced imposition in some regions as a compulsory rule for all regardless religious beliefs.²⁴

Russian education authorities advanced the attempts to introduce requirements to the students' outlook in 2012 when Muslim girls in a rural school in Stavropol region have been banned from attending classes for two weeks for wearing hijabs.²⁵ Government of Stavropol region directly forbids wearing in public schools of 'religious

²² Address of the President of Russian Federation Dmitry Medvedev to the Federal Assembly of November 12, 2009. *Rossiiskaya Gazeta* 2009 No. 214.

²³ In 2010 in Dagestan Republic a high-school girl was not allowed to exams and was expelled from classes for wearing the Islamic headscarf, <http://az-zahra.ru/news/ossijskij_khidzhab_pod_znakom_zhenskoj_solidarnosti/2010-06-19-156> accessed January 10, 2015. The principal who strictly opposed any religious activity in the secular school run by local authorities was murdered by the radical Islamic terrorists. In 2010 in Karabulak, Ingushetia Republic, a 10-year-old girl was not allowed to the classes in the hijab. According to the policy of the public school even common headscarves were forbidden. The girl's mother has filed a petition to the prosecutor, <http://az-zahra.ru/news/v_ingushetii_mat_otstaivaet_pravo_docheri_nosit_khidzhab_v_shkole/2010-09-05-309> accessed January 10, 2015.

²⁴ In 2007 in Chechen Republic wearing Islamic headscarf at school was declared compulsory for everyone, <<http://www.memo.ru/2008/02/22/2202081.htm>> accessed January 10, 2015; <<http://www.kavkaz-uzel.ru/articles/182166/>> accessed January 10, 2015; <<http://www.kavkaz-uzel.ru/articles/174679/>> accessed January 10, 2015.

²⁵ Svetlana Emelyanova, 'Banned to Study in Hijabs', *Rossiiskaya Gazeta* (October 15, 2012), <<http://www.rg.ru/2012/10/15/reg-skfo/hidzhab.html>> accessed January 10, 2015.

attire, garments with religious attributes and (or) religious symbols' as well as any headwear whatsoever while indoors.²⁶ These provisions are common in school rules of conduct nationwide.²⁷ In March 2013 Stavropol Regional Court confirmed the lawfulness of the prohibition to wear hijabs in schools.²⁸ The decision was unsuccessfully appealed to the Supreme Court of Russia on July 10 later that year.²⁹

Official position of the Court comes down to providing wide margin of discretion to regional legislator in terms of setting the requirements for school uniform. This decision is in line with Article 38 of the Federal Law on Education giving priority to federal and regional legislation in establishing such requirements and leaving the school with residual competence in that regard.

According to the National Doctrine of Education in Russian Federation approved by the Government Decree No. 751 of 4 October 2000³⁰ the state is not only obliged to secure secular character of public education, but also has to ensure the 'harmonization of social intercourse' between different nationalities and ethnic groups. Religious tolerance and respectful attitude towards people of different language, traditions and culture are referred to as one of the main aims of the education system in Russia. Same

²⁶ Article 9.2. and 9.3. of Government of Stavropol region Decree of October 31, 2012 No. 422-P on Establishment of Basic Requirements to School Attire and Outlook of Students of State Educational Institutions of General Education of Stavropol Krai and Municipal Educational Institutions of General Education of Municipal Entities of Stavropol Krai.

²⁷ See, for example, Internal Rules of Conduct of State Educational Institution of General Education with in-depth study of mathematics of Kalininsky district of St. Petersburg City, School No. 139, art 4.1.-4.4, <http://school139.ucoz.ru/index/pravila_vnutrennego_rasporjadka_dlja_uchashhiksja/0-36> accessed January 10, 2015; Internal Rules of Conduct of Municipal Educational Institution of General Education Belonosovskaya General School, art 3.15, available at <http://belonosovo.ucoz.ru/index/pravila_vnutrennego_trudovogo_rasporjadka/0-6> accessed January 10, 2015; Internal Rules of Conduct of Municipal Educational Institution of General Education of Mirninskiy district of Republic Sakha (Yakutia) General School No. 20, art 3.3. <http://udach20sch.ucoz.ru/index/polozhenie_o_vnutrennem_rasporjadke/0-75> accessed January 10, 2015.

²⁸ 'The Line is Drawn under the Lawsuits on Hijabs in Stavropol Region Schools', Stavropolye, State Broadcasting Company (March 22, 2013), <<http://www.stavropolye.tv/state/view/55649>> accessed January 10, 2015.

²⁹ Svetlana Emelyanova, 'Supreme Court Against the Hijabs in Schools' *Rossiyskaya Gazeta* (July 10, 2013), <<http://www.rg.ru/2013/07/10/reg-skfo/chidgab.html>> accessed January 10, 2015.

³⁰ National Doctrine of Education in Russian Federation approved by the Government Decree No. 751 of October 4, 2000, *Rossiyskaya Gazeta* 2000 No. 196.

values are declared by the Conception of National Education Policy³¹ which attaches a special importance to, *inter alia*, protection of cultural diversity and regional cultural traditions, prohibition of discrimination on the grounds of religion, elimination of the dominance of a certain religion.

These program documents leave impression of a very balanced approach to establish interdependence of the right to education and the freedom of conscience. However, in practice the situation is dictated by strict interpretation of secularism aiming at 'elimination of signs of differentiation between students', including religious differences,³² rather than promoting active appreciation of diversity.

Regrettably, in practice the principle of secularism is often tweaked in favor of the state, allowing establishment of municipal and state-funded Orthodox public schools in ignorance of the direct prohibition by law, but banning religious organizations that have a documental proof of their existence for at least 15 years from creating their private schools. It also creates a situation when due to unclear definition of educational activities it is possible for courts to arrive at conflicting decisions using exactly the same provisions of the law for reference and, as a result, either close down an 'illegal school' established by a religious organization or fail to find signs of educational activities and permit further operation.

The recent aggravation of the situation with ban of Islamic headscarves is a serious step back in the times when private sphere was highly dominated by state regulation. Moreover, neither outlawing religious symbols of a certain confession to the effect of segregation of a significant part of the citizens nor sacrificing human rights for a pure concept of secularism contribute to creation of peaceful and tolerant cross-cultural communication.

³¹ Conception of National Education Policy in Russian Federation approved by the Ministry of Education and Science Order No. 201 of August 3, 2006.

³² Letter of Federal Service for Supervision in Education No. 01-118/10-01 of May 25, 2009.

Conclusion

Interestingly enough, Russian Constitution was adopted in 1993. Its preparation took place long time after the ratification³³ by the Soviet Union of the ICESCR³⁴ and the distinguished members of the Constitutional Meeting that was called by the President to discuss and edit the project³⁵ should definitely have considered those international standards concerning the right to education that had been already in force.

Therefore, the fact that the Constitution does not guarantee directly neither freedom of education and 'liberty of parents ... to choose for their children schools, other than those established by the public authorities'³⁶ nor the 'liberty of individuals and bodies to establish and direct educational institutions'³⁷ means that these provisions have been deliberately omitted due to particular political, economic and/or social concerns.

Although the relevant provisions were, nevertheless, included in the acts of educational legislation from their very first drafts,³⁸ there is no jurisprudence whatsoever on the issues of parental choice or the right to establish an educational institution (apart from the cases dealing with religious education³⁹ protected by the appropriate

³³ Russia's legal predecessor, the Soviet Union, ratified the Covenant by the Decree of the Presidium of the Supreme Council of the USSR No. 4812-VIII of October 16, 1973, (1973) 40 *Vedomosti VS USSR* 564.

³⁴ International Covenant on Economic, Social and Cultural Rights (adopted by General Assembly Resolution 2200A (XXI) of December 16, 1966 entry into force January 3, 1976).

³⁵ Decree of the President of Russian Federation No. 718 of May 20, 1993 on Convocation of the Constitutional Meeting for the Purpose of Finalising the Project of Constitution of Russian Federation <www.businesspravo.ru/Docum/DocumShow_DocumID_55958.html> accessed January 10, 2015.

³⁶ ICESCR art 13(3).

³⁷ ICESCR art 13(4).

³⁸ The right to choose forms of education and educational institutions was included into the very first Law on Education No. 3266-1 of July 10, 1992 (1992) 172 *Rossiiskaya Gazeta*, art 52(1), as well as the possibility to establish private educational institutions, art 12(3).

³⁹ On Russian case law concerning establishment of religious educational institutions see Maria Smirnova 'Freedom of Conscience and the Right to Education in Russia – a Secular Country of Cultural

legislation⁴⁰ and the Supreme Court case of territorial accessibility of education cited in IV.B.). By this we can conclude that although constitutional recognition is generally connected to guarantees of stronger justiciability,⁴¹ in some cases the lack of relevant constitutional provisions does not necessarily lead to non-justiciability of a certain right or legitimate interest.

As this paper attempted to demonstrate, the values of school choice are well-defined at both constitutional level and in subsequent legislation. However, more often than not recognition of these values is not substantiated by necessary organizational or financial guarantees. For example, although Article 17.1.2. of the Law on Education explicitly provides for family education, no financial support is assigned for parents opting out for this choice, although the financial guarantees of free education of compulsory level should, in theory, follow the child.⁴²

This paper has analyzed three of the most common challenges of school choice in Russia. Physical accessibility of schools, especially in rural areas, sometimes leaves parents with very little or no choice when the nearest school in 30 kilometers distance is a rural school where all classes are combined in one and school transportation may not be reliable.

Although constitutional guarantees of free general education are substantiated by appropriate funding, some schools continue the practice of 'voluntary donations', thus curtailing accessibility of public education for children from low-income families. Finally,

and Religious Diversity' in Dr. Charles Russo's (ed.) *The Law on Religion and Education: International Perspectives* (2013) Routledge / Taylor & Francis Group.

⁴⁰ Federal Law on Freedom of Conscience and Religious Associations No. 125-FZ of September 26, 1997, *Rossiiskaya Gazeta* (1997) 190, as amended by the Federal Law No. 180-FZ of July 2, 2013 *Rossiiskaya Gazeta* (2013) 145.

⁴¹ See, for example, Paul O'Connell, *Vindicating Socio-Economic Rights: International Standards and Comparative Experience* (Abingdon; New York: Routledge, 2012) 7.

⁴² Lack of financial support from state budget for families home-schooling their children has been recently confirmed by Moscow city court in the Decision No. 33-3102 of February 18, 2014, <http://www.lexed.ru/praktika/sudebnaya-praktika/baza/detail.php?ELEMENT_ID=3362> accessed January 10, 2015.

in regions where promotion of religious tolerance is not one of the priorities, difficulties with accommodation of religious rights in a public school may often mean withdrawal of the child from a state-accredited public school and opting for purely religious instruction instead that not only will preclude the child from receiving higher education in the future due to lack of recognized certification, but also may lead to further multiplication of intolerance in the society.