

# Legislation on wearing religious symbols and clothing at Russian public schools: following Europe or keeping its own path

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## ABSTRACT

This paper focuses on international (European Court of Human Rights) and national courts reasoning and decisions in cases concerning students wearing religious symbols and clothes at public schools in Russia and France, as well as the national legislation on the same issue. The major question of this comparative research is whether Russia will follow the French approach of total state secularization in the public education or will leave it for regional governments to decide upon this issue. The methodological approach used for the analysis presents the comparison of the relevant legislation on two levels, formal (legal form and implementation) and content. The chosen method of comparison of the actual cases follows the three-part test used by the ECtHR to establish whether there was a violation of the human right. Considering that Russian and French legislation and case-law regarding the restrictions of the religious manifestation in public schools has very different legal forms (federal law versus regional enactment) and implementation (binding on the whole territory of France versus only the territory of the region where it was issued) and is based on different political and cultural concepts (public order and unified Republican values versus family and children values), I conclude that most probably, the Russian federal government will not follow French model of secularization by introducing a federal ban on wearing religious clothing at school, but will leave the decision to the regional authorities to avoid conflicts with the predominately Muslim regions that are important for Russian state economically and politically.

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## Introduction

Freedoms of thought, conscience and religion are among the fundamental and classic civil liberties. These freedoms are safeguards of pluralism, tolerance and cultural and intellectual diversity. Thus, the “*forum internum*”<sup>1</sup>, or the right to have and hold opinions and beliefs, is non-derogable. Freedom of religion and thought is featured in various national constitutions and human rights documents, as well as in the significant international and European human rights instruments, such as the International Covenant on Civil and Political Rights, the European Convention of Human Rights, the Charter of Fundamental Rights of the European Union, and others. Moreover, in 1981, the General Assembly of the United Nations adopted a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which set major international standards in protection of the freedom of religion or belief. In 1986, the UN Human Rights Commission’s Special Rapporteur on Religious Intolerance has been appointed to review the implementation of this document (in 1998, the title was changed to Special Rapporteur on Freedom of Religion or Belief).

The most widely recognized document containing the legally binding provisions on freedom of religion and belief is the ICCPR (1966). Article 18 states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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<sup>1</sup> W. Cole Durham, Jr., Scharffs, Brett G., *Law and religion: national, international, and comparative perspectives*, New York: Aspen Publishers, 2010, 232.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>2</sup>

This article contains several points significant for constructing the protection of freedom of religion and belief and specifically, for identifying potential challenges in this field. First, the article underlines that the “internal” freedom of thought, conscience and religion is an absolute right and no individual or state may “coerce” a believer to change his or her beliefs or to stop having them. It also includes another core aspect of the freedom of religion: freedom to interpret one’s own religion and religious texts. This principle was further supported by the European Court of Human Rights, which stated that “in principle, the right to freedom of religion for the purposes of the Convention excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed.”<sup>3</sup> Secondly, it “makes clear that the freedom of religion has a community dimension”<sup>4</sup>: *individually or in community with others*<sup>5</sup>. This wording is important for the distinctive network of public and private, which is often defined differently in human rights in comparison with religious interpretation. Human rights are mostly individual rights and the core principle of their creation has been to protect individuals from the state or the majority oppressing the minority. On the contrary, “the idea that religion belongs only to the private sphere is meaningless to the vast bulk of believers of all religions in the world”<sup>6</sup>. This distinction of private and public in relation to religion raises some of the most complex and problematic sets of questions

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<sup>2</sup> International Covenant on Civil and Political Rights, 1966. Accessed at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>3</sup> *Metropolitan Church of Bessarabia and Others v. Moldova*, 2001, application No 45701/99, ECtHR, para 117.

<sup>4</sup> McGoldrick, Dominic, *Human Rights and Religion: The Islamic Headscarf Debate in Europe*, Oxford: Hart Pub., 2006, 27.

<sup>5</sup> “Emphasis mine”

<sup>6</sup> Boyle, K., Sheen J., *Freedom of Religion and Belief, A World Report*, London: Routledge, 1997, 10.

in the legislation and judicial interpretation of the scope of protection for religious manifestation. Finally, paragraph 3 of the Article 18 is the main battlefield in the cases concerning the legislation on wearing religious clothing or religious symbols. It specifies that even though the manifestation of religion or belief is an individual right, this right can be limited when it is necessary for the protection of “public safety, order, health, or morals” or “fundamental rights and freedom of others”. General Comment 22 of the Human Rights Committee on ‘Article 18 (Freedom of Thought, Conscience or Religion)’ expands on what defines the right to manifest one’s beliefs: “the observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings”<sup>7</sup>. Thus, in the international and national jurisprudence, “the focus of adjudication has not been so much the question of internal freedom of religion (i.e. the right to believe or not believe), but rather the freedom of religious expression”<sup>8</sup>.

European human rights treaties, such as ECHR (1950) and Charter of Fundamental Rights of the EU (2000) contain similar provisions providing the protection for freedom of thought, conscience and religion, the right of parents to give their children education in accordance to their religious beliefs, the principle of non-discrimination and protection of religious diversity. It is significant, that these regional human rights instruments also set the required conditions for state limitations on religious manifestation: they have to be “prescribed by law”, limitations must serve one of the listed above legitimate aims, and most importantly, must be “necessary in a democratic society”. On the one hand, religious pluralism is one of the essential principles of democratic societies and it seems that contemporary religions have had a growing effect on international and national politics. On the other hand, “upholding freedom of religion or belief involves the complex task of protecting religion and its impact on public and private life, while establishing certain

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<sup>7</sup> UN Doc CCPR/C/21/Rev 1/Add 4, adopted 29 July 1993. Accessed at <https://www1.umn.edu/humanrts/gencomm/hrcom23.htm>.

<sup>8</sup> Steinbach, Armin, “Burqas and Bans: The Wearing of Religious Symbols under the European Convention of Human Rights”, *Cambridge Journal of International and Comparative Law*, Volume 4, Issue 1, 2015, 2.

restrictions to avoid religion's potential for negative impact"<sup>9</sup>. Thus, the implementation of the freedom of thought, conscience and religion requires a constant balancing between "the universal and the particular, the public and the private"<sup>10</sup> and it is especially challenging in countries where secularism is considered to be as important or even more important than religious freedom (France, Turkey, Azerbaijan, and other countries).

Secularism was one of the significant consequences of enlightenment and modernization in Western countries, but there are deep disagreements about what it means to be a secular state. One possible helpful distinction is the conceptual difference between "secularism" as an ideology that strikes for an absolute absence of religion in public life, and "secularity," which is "an approach to religion-state relations that avoids identification of the state with any particular religion or ideology"<sup>11</sup>. While "secularism" insists that religious manifestations (or even beliefs) pushed into the borders of private life, "secularity" seeks to create a favorable space for pluralism where the state does not single out one religion (or any non-religious belief) over the others. So, the contest between "secularity" and "secularism", the understanding of religion's place in the society, and the form of relationship between church and state, differ from country to country depending on a country's particular history, culture, religions, and politics. Even in the European context, there is no common standard of approaching the limitations on public manifestation of religious beliefs by wearing religious clothes or religious symbols in public. In most countries of Western Europe, restrictions on public wearing of religious symbols concern only state-run educational institutions, and mainly, primary and secondary levels of education.<sup>12</sup> For example, in Belgium, the regulation of wearing religious or philosophical symbols at school depends on the particular school and its administration's approach. Generally, students are allowed to wear religious symbols, but there are

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<sup>9</sup> Elver, Hilal, *The headscarf controversy: secularism and freedom of religion*, New York: Oxford University Press, 2012, 2.

<sup>10</sup> Ibid, 2.

<sup>11</sup> Scharffs, Brett G., "Four Views of the Citadel: The Consequential Distinction between Secularity and Secularism", *Religion & Human Rights*, Vol. 6, 2011, 2.

<sup>12</sup> Semenova, Nataliya S., Kiseleva, Ekaterina V., "Ban on the Hijab at School: Human Rights against Migration Background", *Mediterranean Journal of Social Sciences*, Vol 6, No 451, MCSER Publishing, Rome, Italy, 2015, 510.

different tendencies within the French and Flemish Communities. In Austria, Germany, Spain, Switzerland and the United Kingdom, it is generally permitted for students to wear religious clothing, unless it poses a health or safety threat to pupils. On the other hand, in the Netherlands, Sweden and Finland, “there is no binding directive regarding a ban on wearing the hijab, but a ban on the burka is regarded as justified by the need of identification of and communication with pupils”<sup>13</sup>.

Political principles of state-church relations is not the only issue challenging the implementation of the freedom of religion: this right intersects with a number of other human rights such as equality, freedom of expression, privacy, non-discrimination, minority rights, parents’ rights, and self-identity. Devout Muslim women in Europe sometimes suffer discrimination in employment or when receiving identity cards if they wish to wear a headscarf. The report on the violations of UN Convention on the Elimination of All Forms of Discrimination Against Women in France, issued in 2008 by the Islamic Human Rights Commission, stated that three or four years after the French government banned wearing religious clothes in public schools, some girls were still suffering from different forms of post-traumatic stress disorder because of inability to complete their self-identity.<sup>14</sup>

The most noticeable manifestations of religious beliefs involving clothing are usually gender-specific: Jewish kippas and Sikh turbans are worn by men, while different types of Muslim headscarves are worn by women. Thus, the restrictions on wearing religious clothing often amounts to gender discrimination. Rights of parents and children also cover some aspects of freedom of religion: according to the fourth paragraph of Article 18 of the ICCPR, “States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own

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<sup>13</sup> Ibid, 510.

<sup>14</sup> *For Liberty? The Impact of the French Ban on the Islamic Headscarf and Other Religious Symbols in School*, Islamic Human Rights Commission, 2009, accessed at <http://www.ihrc.org.uk/file/FranceHijabBookv6.pdf>.



convictions"<sup>15</sup>. The 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief supports this right and expands on the principle: "every child [...] shall not be compelled to receive teaching on religion or belief against the wishes of his parents"<sup>16</sup>. Victims of state's restrictions on freedom of religious manifestation regularly claim in the court that abovementioned various right were also violated as a result of the restriction on their freedom of religion.

This paper focuses on international and national courts reasoning and decisions in cases concerning students wearing religious symbols and clothes at public schools. Another dimension of this research is the national legislation on wearing religious symbols and clothes by students at public schools. The geographical focus of this research is the Russian Federation with its unique position on protection of freedom of religion. It is a secular state with a great cultural, ethnic, and religious diversity that, according to the Russian Constitution, should be preserved by the state. Until recently, Russian federal and regional governments did not interfere with specific cultural practices of different religious groups, more specifically with the way people dress in public spaces. However, in October 2012, Russia faced the conflict between religious and cultural practices in certain regions with respect to the regulations of students' clothing in public schools. All the cases concerned Muslim schoolgirls refusing to remove their headscarves (hijabs) at school on the demand of their teacher. These cases resulted in administrative penalties by school authorities and local court applications from girls' parents arguing that their children's right to freedom of religion and right to education were violated. Two of the cases made their way to the Supreme Court of Russia: one from the Stavropol Region (2013) and the other from the Republic of Mordovia (2015), and both cases ruled in favor of the local administration. Simultaneously, the Russian President signed a Federal Law that allows regional administrations to regulate the attire of students at public schools. Following the law, the Russian Ministry of Education created a Model Act introducing the

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<sup>15</sup> International Covenant on Civil and Political Rights, 1966.

<sup>16</sup> Ibid, Article 5 (2).

standards of “appropriate” clothing at public schools that requires student’s dress to be secular and in line with the health standards. Some regional governments based their enactments regarding students dress on that Model Act and, among other provisions, forbade wearing any religious clothing or clothing with religious symbols on it, as well as wearing in the classrooms any types of hats, scarves, or bandanas that cover the head (“unless prescribed by medical conditions”<sup>17</sup>). Such a regulation was not drafted specifically to ban religious symbols at school; however, even just setting the federal standards of mandatory dress code at school may directly affect the freedom of religious manifestation. So, even though Russia still does not ban wearing religious clothing at public schools on the level of federal legislation, there is evidence of a recent tendency of Russian legislation to turn from the policy of freedom to publicly demonstrate one’s religious affiliation (by wearing certain religious symbols or clothing) to the approach that some Western countries adopted in the last two decades: total exclusion of religion from public space.

This approach is most fully implemented in France, the only European country that at the moment has a strict law ban on wearing any religious symbols and clothing not only in public schools, but also in public spaces (if it covers the face). In March 2004, the *French Law on Secularity and Conspicuous Religious Symbols in Schools and Other Public Spaces* (amendment to the Code of Education) was introduced in France after many heated discussion and numerous protests from both the Muslim community and state teachers. The law prohibited wearing any types of religious symbols (including kippahs, big crosses, turbans, etc.) but received a public nickname “headscarf ban” as it was perceived to be directed against Muslim women. Arguments of the “headscarf ban” supporters are based on the fundamental concepts of “liberty” and “laïcité” (“secularism”) as inherent ideals of French state-building since the Third Republic. As France is a European country that has the most “secular” legislation on freedom of religious manifestation in public spaces, it was chosen as a comparative perspective for Russian legislation and adjudications

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<sup>17</sup> Administration of the Republic of Mordovia, *Standard Requirements to the Students’ Dress-code at the State and Municipal Schools of The Republic Of Mordovia* No. 208, 2014, Article 9 (3).

concerning wearing religious symbols or religious clothing in public schools. Thus, the major question of this comparative research is whether Russia will follow the French approach of total state secularization in the public education or will leave it for regional governments to decide upon this issue.

Three chapters of this thesis discuss three dimensions of the comparative research: the cultural and political background of the problem in Russia and France; current legislation on students wearing religious symbols or religious clothing at public schools in Russia and France; and finally, the jurisprudence concerning cases on state restrictions of wearing religious symbols or religious clothing at public schools in Russia and France. The comparison of the cultural and political background of the freedom of religion in Russia and France is very important for understanding the historic roots of policies regarding religion and belief and the social context in each country, which to a great extent defines the development of the specific legal approaches to the freedom of religious manifestation in public spaces and its implementation. There are several aspects that are significant for the comparison and representative of relevant differences and common features between two countries: the political system (federal in Russian versus unitary in France); the ethnicity of those wearing religious symbols or religious clothing (to a great extent “native” Russians and mostly immigrants or from immigrant families in France); the nature of the religion and the type of religious clothing (open-face headscarves in Russia and veils that cover the face in France) among others. A thorough analysis of differences and similarities between Russia and France in all these areas will help to determine the future dynamic of Russian legislation on freedom of religion and religious manifestation.

The second chapter contains an observation on Russia’s state legislation on wearing religious symbols and clothing in public schools that is analyzed not only on both federal and state levels, but also in comparison to French legislation on the same matter and in the light of other human rights intersecting with freedom of religion and belief, such as the right to education. The most important for the analysis of legal documents containing provisions on these rights is the

Russian Constitution, Federal Law N125 *On Freedom of Conscience and Religious Associations* and Federal Law N273 *On Education*, as well as Model Enactment issued by the Ministry of Education and Science on establishment of dress codes for primary, secondary and high schools. Regional legislation concerning specific details of the dress code at public schools is represented by the Mordovia and Stavropol Governments' Directives on *Standards of Students' Clothing at Public Schools*, which reflect the Ministry's recommendations. In the Western context, Russian legislation on wearing religious clothing at public school is compared to the current legislation on the same topic in France: French Constitution (1958), Declaration of the Rights of Man and of the Citizen, Law *Concerning the Separation of the Churches and the State*, and the Code of Education with its 2004 amendment. More specifically, the paper compares the scope of the restrictions in Russia and France, legal authority of the legislative body that introduced them and their legal representation. The legislation from three spheres was used for the research – freedom of religion (and state-religion relations), right to education, and ban on wearing religious clothing by students in state schools *per se*. The methodological approach used for the analysis presents the comparison of the relevant legislation on two levels, formal and content. First, the legal forms of the legislation are analyzed, as well as on what state level it was issued (federal or regional) and to what degree it is binding; secondly, the main points of the legislations are analyzed, how detailed it is, what are the grounds for the possible restrictions on the freedom and how they are reasoned. Since Russian legislation in this field is concerned exclusively with students, this research will not include observations on the attire of school teachers and staff.

The third chapter covers judicial approaches to the restrictions on manifestation of religious belief at public schools in Russia in comparison to the case-law of the French Conseil d'Etat, on the one hand and of the ECtHR on the other. The chosen method of comparison of the actual cases follows the three-part test used by the ECtHR to establish whether there was a violation of the human right: the interference must be prescribed by law, have a legitimate aim, and be necessary in a democratic society (which includes that the means of interference should be proportionate to its

legitimate aim).<sup>18</sup> Especially important for the research is a decision issued by Conseil d'Etat in 1989 as it lays out the basic criteria that define under what conditions wearing religious clothes at public school is permissible and under what conditions it should be banned. Moreover, it is significant to follow the dynamics of the Conseil d'Etat decisions up to the new amendment of French Code of Education in 2004 that used the criteria set in 1989 in its reasoning of banning any visible religious signs worn by students. As for the ECtHR, I have analyzed cases about the prohibition of wearing religious clothing at public school that were cited by the Russian Constitutional Court in its Stavropol and Mordovia decisions, i.e. *Dogru v. France* and *Leyla Şahin v. Turkey* (even though, this case concerns public university, it is being cited as a model ECtHR case on prohibition of religious clothing at school by many other countries). It would be very useful for the research to compare reasoning, argumentation, and decisions in the relevant cases from Russian Regional Courts (Stavropol Region and Republic of Mordovia), Russian Supreme Court and the ECtHR, especially, since the applicants who lost cases in Russian Supreme Court are planning to apply to the ECtHR.

In the conclusion, the factors affecting the development of Russian legislation on wearing religious symbols or religious clothing at public schools, similarities and differences in the cultural background, legal vocabulary, and judicial argumentation between Russia and France (backed by the decisions of the ECtHR) are evaluated to predict the future development of the Russian state's approach to restrictions on the freedom of religious manifestation in public spaces.

The idea to compare Russian and European variations of the "headscarf ban" has been already used in legal research by Natalia Semenova and Ekaterina Kiseleva, in their work "Ban on the Hijab at School: Human Rights Against Migration Background" where they analyze Russian legislation against the European context, as well as compare the Russian Supreme Court's decision on the ban on wearing headscarves at schools in the Stavropol region with the decision of the

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<sup>18</sup> "The Right To Freedom Of Expression: Restrictions On A Foundational Right", *Global Trends In NGO Law* 6 (1), International Center for Not-for-Profit Law, 2015, accessed at <http://www.icnl.org/research/trends/trends6-1.pdf>, 3.

ECtHR in *Leyla Şahin v. Turkey*. Even though Semenova and Kiseleva research provided me with factual information on the relevant provisions of the Russian laws regarding freedom of religion and helped me to define the dimensions of my comparison, their research is more of a descriptive character and does not present an actual comparison of the different contexts and courts' argumentation. Considering that "headscarf ban" in Russia is rather recent event and only locally binding, I could not find academic literature specifically covering this issue. However, I did find many helpful resources that discuss the specificities of the legal relations between state and religion in Russia. For example, a regional analysis of freedom of religion in Russia by Christopher Marsh and Paul Froese contains an interesting observation that it is typical for the Russian government to introduce liberal federal laws on freedom of religion while giving regional administration the opportunity to interpret the federal laws in more restrictive ways if demanded by regional specificities.<sup>19</sup> The peculiarities of the Russian state relations with the Russian Muslim community and the history of Islam in Russia is very well described and analyzed by Shireen Hunter in the book "Islam in Russia: the politics of identity and security" that shows how the history of Slavic "colonization" of the regions with the largest number of Muslims (Volga region and the Northern Caucasus) and a long fight with Tatar-Mongols created a negative discourse on Islam in the Russian history as "an alien hostile force"<sup>20</sup> and determined the future "swinging" approach of the Russian government to Islam. The book "Russia and Islam: State, Society and Radicalism" offers more expanded overview of the semi-authoritarian model of the state-Islam relations in Russia, which is explained by the geographical dispersion of the Muslim community in Russia requiring from the state to differentiate the political approach at the regional level.<sup>21</sup> In contrast with the "headscarf ban" in Russia, there is a lot of academic literature analyzing not only the relations between Islam (and religion in general) and the state in France, but also specifically discussing the roots and the

<sup>19</sup> Marsh, Christopher and Froese, Paul, "The state of freedom in Russia: a regional analysis of freedom of religion, media and markets", *Religion, State and Society*, 32:2, 2004, 141.

<sup>20</sup> Hunter, Shireen, *Islam in Russia: the politics of identity and security*, Armonk, N.Y.: M.E. Sharpe, 2004, 40.

<sup>21</sup> *Russia and Islam: State, Society and Radicalism*, ed. by Roland Dannreuther, Luke March, New York: Routledge, 2010.

legal consequences of the restrictions on wearing Muslim headscarf at public schools. Thus, the book “Integrating Islam: Political and Religious Challenges in Contemporary France” by Jonathan Laurence explains the argument that “public order” was a legitimate aim of the “headscarf ban” in France by comparing France’s approach to immigration with that of Germany, where the state does not demand “a public, cultural sacrifice”<sup>22</sup> from the newcomers, as it is in France. Elver Hilal in the book “The headscarf controversy: secularism and freedom of religion” discusses political and cultural roots of the “headscarf ban” going back to French colonial and post-colonial history when Islam was perceived to be an unfamiliar culture, incompatible with French values. She also analysis two main fears shared by French population: “the fear of ethnic Islam that would import the conflicts of the Middle Eastern region to France” and “the fear of a non-ethnic and supranational Islam” that might become European religion.<sup>23</sup> That book is also very useful for the current research as it contains the overview of the ECtHR cases on the restrictions of the public manifestation of religious beliefs. For the analysis of the relevant French legislation, I heavily relied on the research paper by Sagy Maayan “Islam and the European Legal Systems: The Headscarf Debate in France and Germany as Case Studies” that thoroughly explores French Republican concept of “One nation, one culture, one identity” and overviews the legal development of the “headscarf ban”. As for the analysis of the Conceil d’Etat decisions, the most helpful was the article by Elisa T. Beller “The Headscarf Affair: The Conseil d’État on the Role of Religion and Culture in French Society”, especially, because it explores the idea that in the case of “headscarf ban”, French society is one of the actors in the legal conflict between freedom of religion and the rights of others. Finally, for the philosophical issues of secular state and general overview of the freedom of religion, I used works by Cole Durham and Brett Scharffs (secularism versus secularity), Dominic McGoldrick (community dimension of the freedom of religion and various social meanings of the Muslim headscarf), and Sheen Boyle (public versus private space in the freedom of religion).

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<sup>22</sup> Laurence, Jonathan and Vaisse, Justin, *Integrating Islam: Political and Religious Challenges in Contemporary France*, Brookings Institution, 2006, 168.

<sup>23</sup> *The headscarf controversy: secularism and freedom of religion*, 126.

# Chapter 1

## Part 1. Various meanings of the headscarf.

Article L. 141–51 of the French Education Code, enacted on March 15, 2004, provides: “In state primary and secondary schools, the wearing of signs or dress by which pupils overtly manifest a religious affiliation is prohibited.” Although this ban applies to all religions, it mainly affected women practicing Islam and some men practicing Judaism and Sikhism, because religious clothes affiliated with these confessions are the most visible markers (compared, for example, to a small Catholic cross that can be hidden under the clothes). Considering that in most European countries the number of Jews wearing kippas and Sikhs wearing turbans is not significant in comparison with the number of Muslim women wearing different types of headscarves, it seems evident that the main target of this law was the Muslim veil. In the meantime, Russia’s legislation on wearing religious clothing at public schools also caused conflicts only with Muslim population since it specifically banned any headwear in the class, unless prescribed by doctors. Thus, the Muslim headscarf or veil is the main focus and target of the both French and Russian legislation on wearing religious clothing and religious symbols at public schools. Before reviewing the cultural background of the freedom of religion and social, political and historic conditions around the problem of manifesting one’s religion (especially, Islam) in Russia and France, it is important to summarize different meanings that a headscarf has, as the headscarf is the main target of the legislation prohibiting religious clothing at public schools.

First, it is helpful to clarify the terminology regarding different types of Muslim headscarves or veils. Significant differences between them affect the strength of the arguments underlying the legislation prohibiting their use at public schools in Russia and France. The most commonly used Arabic word *hijab* is literally translated as “curtain” and was borrowed by Western media to refer the headscarves of Muslim women that cover the head and the neck but leave the face open.<sup>24</sup>

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<sup>24</sup> Marrin, M., “Cry Freedom and Accept the Muslim Headscarf”, *The Times*, 1 February 2004.



*Niqab*, *burka* and *chador* are the most covering types of the *veil* (as Muslim headscarf is mostly referred to in France): *chador* is a full-body cloak that has only the face opened; *niqab* leaves opened only the area around the eyes; while *burqa* is the most concealing of all Islamic veils leaving just a mesh screen to see through. The precise type of the Muslim headscarf worn by women depends on the country, its cultural and social practices, the type of Islam, and “can be evidence of social status, class, income, political affiliation, or piety”<sup>25</sup>. In fact, there is no agreement between different Islamic cultures and scholars around the world whether it is a religious obligation for Muslim women to wear a headscarf in their everyday life or whether Qur’an merely prohibits “immodesty”. These different interpretations are based on two verses (24.31 and 33.59) which read: “*And say to believing women That they should lower Their gaze and guard Their modesty; that they Should not display their Beauty and ornaments except What (must) ordinarily appear Thereof; that they should Draw their veils over Their bosoms and not display Their beauty except, To their husbands, their fathers, ... Their sons ... Their brother ... Or their women ...*” and “*O Prophet! Tell thy wives and daughters, And the believing women, that They should cast their outer garments over Their persons (when abroad): That is most convenient, that They should be known (as such) and not molested*”<sup>26</sup>. Such a vague definition of “covering the beauty” leaves a lot of space for many different interpretations and understandings. So, for the purposes of this research, we will focus on three major existing theories about the meaning of Muslim headscarf in the modern world: Western liberal feminist, postmodern feminist and Muslim feminist points of view. Finally, it is important to analyze separately the political dimension of the Muslim headscarf.

“Liberal feminism is based on the fundamental principle that all persons must be treated equally under the law, irrespective of individual and unique characteristics”<sup>27</sup> and focuses on the attempt to overcome gender-based discrimination against women. Liberal feminist scholars

<sup>25</sup> *Human rights and religion: the Islamic headscarf debate in Europe*, 5.

<sup>26</sup> A Yusuf Ali, *The Qur’an – Text, Translation and Commentary*, Maryland: Amana Corporation, 1983, 904-5.

<sup>27</sup> Preston, R. Christopher, Ahrens, Ronald Z., “United Nations Convention Documents in Light of Feminist Theory”, 8 *MICH. J. GENDER & L.* 1, 2001, 7.

associate the headscarf with the oppression of women and the concept of “false consciousness”, meaning that Muslim women only “think” they willingly choose to wear the headscarf while they are pushed to do so by the society, more precisely, by “immediate family, friends, and socio-religious organizations”<sup>28</sup>. Moreover, they demand from Muslim women to identify and fiercely fight against this “marker of patriarchal control, female subordination, and sexual repression”<sup>29</sup>. On this view, women are either forced or coerced to hide their bodies and faces by men who use religion to silence women and oppress their personality, and thus, women who wear headscarves are viewed as being victims of male domination. The headscarf serves as a barrier that excludes women from the public sphere and restrains them from forming relationships with others. This theory is based on the stereotypical image of Oriental woman as passive, fundamentalist and exotic. Most Western liberal feminists cannot imagine how wearing a headscarf can be a rational, free choice. According to Oliver Roy, such an image is especially popular in France because of its colonial past and sexual fantasies of French colonialists who saw veiled women in North Africa for the first time: “The veil was a sexual provocation and a denial of sex, a come-on and refusal”<sup>30</sup>. However, liberal feminists not only neglect to differentiate between countries with Muslim majorities and countries with Muslim minorities, but they even deny the significance of cultural identity for women’s personality. They see “traditional cultural” as being an unreasonably “sentimentalized” concept.<sup>31</sup> Overall, the headscarf as a supposed tool of oppression of women became in liberal feminist theory a symbol of the incompatibility of devout religion with European cultural values.

A competing new generation of so-called “postmodern” or “postcolonial” feminists criticized the liberal feminist approach for not being able to “value, appreciate or justify the non-

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<sup>28</sup> Ziegler, Reuven (Ruvi), “The French “Headscarves Ban”: Intolerance or Necessity?” 40 *J. MARSHALL L. REV.*, 2006, 235.

<sup>29</sup> Haleem, Amina, “Governance: Feminist Theory, the Islamic Veil, and the Strasbourg Court’s Jurisprudence on Religious Dress-Appearance Restrictions”, 5 *DePaul J. Women, Gender & L.*, 2015, 12.

<sup>30</sup> Roy, Oliver, *Secularism Confronts Islam*, New York: Columbia University Press, 2007, 3.

<sup>31</sup> Wiles, Ellen, “Headscarves, Human Rights, and Harmonious Multicultural Society: Implications of the French Ban for Interpretations of Equality”, *Law & Society Review*, Volume 41, Number 3, 2007, 719.

Western woman's experience"<sup>32</sup>. This type of feminism recognizes that the headscarf might be worn by women for numerous subjective reasons that are not subjects for anyone's judgement. They see the victimization of non-Western women as a wrong approach and suggest changing it for a new approach that appreciates women's cultural and religious identity. The headscarf in the postmodern feminist theory is a "manifestation of modesty, privacy and morality"<sup>33</sup>: women wear the headscarf as an everyday reminder of these values that are important for them. Expanding the idea of cultural identity to include social identity, American gender theorist Judith Butler argues that wearing a headscarf is not a barrier in communication between Muslim women and non-Muslim Europeans; it is quite the contrary: for members of minority groups, such symbolic, physical acts are more powerful and easier ways of expressing themselves than means of verbal discourse.<sup>34</sup> Another important postmodern feminist view of the headscarf observes that it might be used as a social statement against the "sexual objectification of modern society"<sup>35</sup>: in Western modern society women are expected to look sexually attractive and many Muslim women believe that they must have a freedom to reject these expectations because they value their personality more than their appearance. Naomi Wolf, author and political activist, describes the Muslim headscarf as "a literal and spiritual shield from the intrusive, commodifying, basely sexualizing Western gaze"<sup>36</sup>. To summarize, a third wave of postmodern Western feminists, seeks to bring a cultural relativist view to the previous Eurocentric approach to the Muslim headscarf and to value cultural and sexual identity of non-Western women.

Throughout all the debates in France about the 2004 law forbidding religious clothing at public schools, voices of the Muslim women were very rarely heard in the media. The Stasi commission whose report was the basic argument of this law interviewed only two Muslim

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<sup>32</sup> Ibid, 713.

<sup>33</sup> Ibid, 717.

<sup>34</sup> *Judith Butler Reader*, ed. Salih, Sara, London: Blackwell Publishing, 2004.

<sup>35</sup> Takolia, Nadiya, "The Hijab has Liberated me from Society's Expectations of Women", *THE GUARDIAN*, May 28, 2012.

<sup>36</sup> Wolf, Naomi, "Behind the veil lives a thriving Muslim sexuality", *THE SYDNEY MORNING HERALD*, Aug. 30, 2008.

women.<sup>37</sup> This lack of attention and the domination of the Western liberal feminist view of the headscarf's meaning gave a birth to a Muslim feminist movement. Interestingly, the younger generation of Muslim women in France, French-born daughters of immigrants who came before the 1980s and 1990s, are more active in defending the headscarf than their mothers. According to a 2004 CSA Poll of Self-Identified Muslims on Conspicuous Religious Symbols in Public Schools, around 65% of girls age 18 to 24 oppose the "headscarf ban" versus 37% of women age 35 to 49.<sup>38</sup> For these girls, "the identification with their culture is a religion in itself, even if they do not live according to religious norms"<sup>39</sup>. Muslim feminists state that women wear headscarves for numerous different reasons, and that the headscarf can be a very attractive and individual part of a woman's personality. There are "passionate believers, whose public veiled selves take over, even when they are in the private quarters of women", there are others, whose "sexuality appears to be more forthcoming, assertive and joyful": they wear creative make up and fashionable clothes under the veil, finally, there are even women who wear the headscarf on some days and take it off on others.<sup>40</sup> Some Muslim women use a headscarf as a way of differentiating themselves from others and as a means of criticizing a society that claims they are "fundamentalist" and "oppressed". They want to assert that a headscarf manifests not passive submission but "an active interest in Islamic scripture, as a gesture to reaffirm a commitment to Islamic morality and identity within a modern social context"<sup>41</sup>. Others find a headscarf to be a perfect way to express their womanhood: they do not understand why they are forced by Western "gender equality" to dress up and behave like men. By listing to various reasons and inspirations for wearing a headscarf, Muslim feminists state that women everywhere are different, they hold different values, beliefs and needs, and for some of

<sup>37</sup> Body-Gendrot, Sophy, "France Upside-Down over a Head Scarf?" *Journal of Sociology of Religion* 68, no. 3, 2007, 300.

<sup>38</sup> "Les musulmans et la laïcité" ["Muslims and secularism"], Poll by CSA/*Le Parisien/Aujourd'hui en France*, January 21, 2004.

<sup>39</sup> *The headscarf controversy: secularism and freedom of religion*, 121.

<sup>40</sup> Abu-Odeh, L., "Post-Colonial Feminism and the Veil: Considering the Differences", 43 *Feminist Review*, 1993, 34-35.

<sup>41</sup> Göle, Nilüfer, *The Forbidden Modern: Civilization and Veiling*, Ann Arbor: Univ. of Michigan Press, 1996, 4.

them a headscarf is an inherent part of their individual personality. They reject liberal feminist's attempts to present women in a uniform way, which they argue, in fact, harms gender freedom.

Finally, thanks to excessive media attention, the headscarf acquired a strong symbolic power with a political dimension. For many Western headscarf opponents, a veiled woman is associated with an Islamist suicide bomber who is hiding explosives under her dress. Unfortunately, there is a link between a "social imaginary" and terrorism: some radical Islamic women, indeed, helped terrorists in "anti-colonial and self-determination conflicts ranging from Algeria, Sri Lanka, Turkey, Afghanistan, and Chechnya to the Middle East"<sup>42</sup>. However, these cases concern women living in non-European countries, while inside the European society, "the presence and in some cases reemergence of the headscarf is viewed by some as evidence of the failed integration and assimilation of immigrants"<sup>43</sup>. Different European countries employ different integration strategies, but the concerns that significant part of Muslim immigrants is not sufficiently integrated are widespread throughout Europe. Muslims are discriminated against on a daily basis; they experience immense socio-economic problems, live in ghettos, and suffer from Islamophobia. In this context, wearing a headscarf is sometimes seen not only as a religious manifestation, but also evidence of reluctance to integrate. On the other hand, both in Europe and in Russia, governments see a headscarf more and more as a sign of foreign influence: radical Islamism is not considered an inherent religion of European and Russian Muslims, fundamentalism is brought from the Middle East and is seen as extremely dangerous influence that needs to be limited at all expenses. Rich Saudi Arabian fundamentalists are among the most active recruiters for Islamist organizations: they build mosques and Islamic schools all around Europe and Russia to influence native Muslim population. Thus, Europe has two main fears: "the fear of ethnic Islam that would import the conflicts of the Middle Eastern region in to France and the fear of a non-ethnic and supranational Islam that becomes specifically European"<sup>44</sup>. Although, the headscarf as a symbol of religious

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<sup>42</sup> *Human rights and religion: the Islamic headscarf debate in Europe*, 20.

<sup>43</sup> *Ibid*, 19.

<sup>44</sup> *The headscarf controversy: secularism and freedom of religion*, 126.

devotion is quite often used by Islamists for political ends, the question is “whether the misuse of that symbol by others can justify restrictions on the genuine use of it by particular individuals?”<sup>45</sup>

Thus, we see, the headscarf has numerous different meanings and dimensions: religious, cultural, social, political, and ethnic. Some see it as a threat; others see it as an individual freedom. No matter what understanding and image this religious symbol has in a particular society, there remains a question whether it is legitimate, from an individual human rights perspective, to push forward one of the views while officially rejecting the others as a matter of state policy.

## **Part 2. Cultural, social and political background of religion and Islam in Russia.**

Despite the vast territory and federal political system, Russia is a state with a strong central power and a history of assimilation of numerous ethnic communities by the dominating Slavic culture. However, the Russian state is still unique in its cultural, ethnic, and religious diversity. There are at least six different confessions (Orthodox Christianity, Islam, Buddhism, Judaism, Catholicism, and Protestantism) widely present on its territory and a large diversity of cultural practices in its many regions. Certain regions are predominantly Muslim (Dagestan, Chechnya, Tatarstan, etc.) or have a large Muslim population (Mordovia, Bashkortostan, etc.); others have a large number of people practicing Buddhism (Kalmykia, Buryatia, etc.) or Judaism (Jewish Autonomous Oblast). Although based on Slavic culture, the Russian state always tried to preserve cultural, linguistic, and religious diversity among numerous ethnicities populating its vast territory. There is no official census statistics on religious affiliations of the Russian population, so numbers come from different sociological polls. According to the 2012 All-Russian Representative Poll, 41% of the population is practicing Orthodoxy, 6,9% are Muslim with the dominance of Sunnis (1,7% over 0,5% of Shiites), Buddhists, Catholics, and Protestants are each around 0,5%, 13% are atheists, and 25% consider themselves believers without specifying their religion.<sup>46</sup> Interestingly,

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<sup>45</sup> Ibid, 12.

<sup>46</sup> Statistics presented at the website of the project: <http://sreda.org/arena>.

1,2% of Russians identify as pagans, as well as around 0,5% of people who are so-called “Old Believers” and practice Orthodoxy in the old way that was changed by Russian Orthodox Church in the 17<sup>th</sup> century.

As the poll shows, the second most popular religion in Russia after Orthodoxy is Islam, the religion that is the focus of this research. The Muslim population in Russia is geographically dispersed, but there are two regions that are historically built on the Islamic culture – the Volga region and the Northern Caucasus. Moreover, these two regions have different versions of Islam and different relations between federal power and religious culture that are seen as the two primary models of integrating Islam into Russian culture and society. The Volga region’s Islam is seen as more liberal and Westernized, ready to coexist with the secular state and being more an ethnic tradition than a pure religion, while the Northern Caucasus variety is the more orthodox form of Islam with strict rules, traditions, and social hierarchy, as well as tendencies towards radicalism.<sup>47</sup> Nonetheless, both models have many common features, cultural roots and modern characteristics of Islam that are specific to Russia.

Historically, starting with the first Russian state (Kiev Russia) until the beginning of the 18<sup>th</sup> century, most aspects of Russian education were managed by the Orthodox Church and had a religious focus. Nonetheless, for over 400 years, Russia maintained active and extensive relations with the Muslim world, both outside and inside its borders. Russia went through a series of Tatar-Mongol invasions from the beginning of the 12<sup>th</sup> century until the end of the 15<sup>th</sup> century and had to incorporate a significant Muslim Tatar population as its indigenous population. On the one hand, Russia’s closest meeting with Islam as a result of foreign invasion created an association of Islam with “hostile alien forces against whom Russians must unite and from whose domination they must free themselves”<sup>48</sup>. Consequently, Tsarist Russia always favored the Orthodox Church and “many leaders of the Church traditionally viewed Islam as a heresy and conversion of Muslims as a noble

<sup>47</sup> Pasandide, S., *Islam in Russia: Reality and Fiction*, Power, 2013 (11) [Пасандиде, С. Ислам в России: реальность и вымысел, *Власть*, 2013 (11)], 187.

<sup>48</sup> *Islam in Russia: the politics of identity and security*, 40.

mission”<sup>49</sup>. On the other hand, the next period of Islam spreading in Russia was connected to Russia conquering Muslim lands. In 1552, Russian tsar Ivan the Terrible seized Kazan, the capital of Kazan Khanate and later on, Khanates of Astrakhan, Nogai and Siberia were also annexed by the Russian state. Russian tsars aimed at destroying the Tatar ruling elite not only by “the confiscation of the most fertile land”<sup>50</sup> but also by the destruction of the Islamic culture. Thus, Russian “Muslims’ collective memory of encounter with Russia is also that of an alien conqueror”<sup>51</sup>, and the historical beginning of relations between the Russian Orthodox community and the Russian Muslim community was rather tense for both sides.

In terms of the state’s approach to Islam in Russia, there has always been a pendulum swing between the forced assimilation and even annihilation of Muslim culture and the policy of protecting and supporting the multi-cultural autonomy of Muslim communities. Ekaterina Braginskaia, who compared state approaches to Muslim integration in Europe and Russia calls the Russian approach *semi-authoritarian*: “short-lived phases of greater cultural autonomy and respect for Muslim religious institutions have been followed by more authoritarian periods of suppression of Muslim practices in line with state security concerns and ideological preoccupations”<sup>52</sup>. It was not until the 18<sup>th</sup> century when the politics of religious tolerance was introduced by Catherine the Great that Russian Muslims were allowed to practice their faith. Catherine created the first secular mechanism of regulating Muslim representation in Russia – the Muslim Spiritual Board established in 1788-1789. Meanwhile, her expansionist politics brought Russia further substantially Muslim communities in the Caucasus and Central Asia. But then again, the nineteenth century tsarist ideology of “Orthodoxy, Autocracy and Nationality” caused many campaigns of Russification and Christianization of Muslim populations in Russia. The Soviet repressive methods of integrating different ethnicities and fostering a new brand of ideological atheism have also significantly

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<sup>49</sup> *Russia and Islam: State, Society and Radicalism*, 11.

<sup>50</sup> *Islam in post-Soviet Russia: public and private faces*, ed. by Hilary Pilkington and Galina Yemelianova, London: Routledge Curzon, 2003, 23.

<sup>51</sup> *Islam in Russia: the politics of identity and security*, 41.

<sup>52</sup> *Russia and Islam: State, Society and Radicalism*, 50.



weakened Muslim institutions”<sup>53</sup>. However, with the collapse of the USSR, a new era of religious revival started in Russia, especially when its president Vladimir Putin called to preserve the “unique”, “synthesized” identity of Russian culture.

One of the political strategies used by the Russian government in recent times, akin to British and French governments efforts to “appropriate” Islam in their countries, is to highlight the distance between tolerant “domestic”, “proper” Islam and “dangerous” “foreign” Islam.<sup>54</sup> Each country is trying to balance its counter-terrorism policies with the promoting and supporting moderate Islam inside the country by building mosques, funding Muslim education at home, including training imams, expanding national Muslim representation, and finally, producing the narrative of nationally specific values of Muslim communities in each country. However, this strategy can be very problematic especially for strictly secular countries like France because it questions the secularism that stipulates that the state should be absolutely separated from religion. Thus, the Russian government officially pursues a policy of non-intervention into religious activities, but unofficially there are significant business bonds with both Muslim and Orthodox leaders, and indirectly the government participates in religious activities. The Russian government counts on the support of its policies by Muslim communities considering that Islam teaches to respect spiritual leaders and follow their lead in everyday life. Another advantage of cultivating “domestic” Islam is a growing birth rate: Muslim communities traditionally highly value family and children, so they secure the birth rate for Russian population that has been declining because of the economic crisis.<sup>55</sup> So, when the president of Chechnya, Ramzan A. Kadyrov made polygamy legal justifying it by the need to “replenish the human losses of two Chechen wars”<sup>56</sup>, the Russian federal government “closed its eyes” to the unconstitutionality of such a directive. In sum, the Russian state’s approach to Muslim issues can be characterized by a clear distinction between “domestic”,

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<sup>53</sup> *Russia and Islam: State, Society and Radicalism*, 50.

<sup>54</sup> *Ibid*, 53.

<sup>55</sup> *Islam in Russia: Reality and Fiction*, 186.

<sup>56</sup> Abdulatagatov, Zaid M., *Gender Distinctions in Islamic Consciousness in the North Caucasus*, *Anthropology & Archeology of Eurasia*, 2014, 53:2, 76.

moderate Islam that is supported and cultivated by the government, and “foreign”, radical Islam that is seen as a threat to national security. Such an approach is common for both Russia and other European countries, including France, but is developed in Russia to a greater degree than in France where it is counter-balanced by the strict principle of doctrinaire secularism.

The Volga region and the Northern Caucasus share similar a history of being colonized by Slavic, Orthodox, Russian culture: the Volga region - in the 17<sup>th</sup>-18<sup>th</sup> centuries, the Northern Caucasus – in the 19<sup>th</sup> century, so for both regions Islam had a special status in political relations between the Russian state and local communities and was seen as the way of acquiring sovereignty. Although, ethnically, religiously, and even linguistically, communities of the Northern Caucasus were very diverse, they all strongly resisted Russia’s efforts to annex their land. The Caucasian resistance movement, led by Sheikh Mansur and Imam Shamil, “demonstrated that Islam could be a factor of unity and an impetus to resistance”<sup>57</sup>, strengthened Sufism<sup>58</sup> as the main branch of Islam in the region, and helped to expand orthodox Islam to the last pagan communities in the mountains. The Volga region, that is situated in central Russia, was conquered much earlier and thus, went through a more thorough assimilation. Islam is not as much a resistance factor there as it is in the Northern Caucasus. Moreover, the Hanafi doctrine of Islam traditionally spread in the Volga region has a high degree of tolerance: it “is distinguished by relative flexibility, lenience, and peacefulness, confirmed by a centuries-old history of the interaction of Muslims with representatives of other confessions on the given territory”<sup>59</sup>. Nonetheless, as Azat Khurmatullin noted in his article about Islam in Tatarstan, in the 1990s, the nationalism in Tatarstan was inseparably connected with Islamization: “the spiritual unity of the Tatar nation based on Islam was considered the only way to

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<sup>57</sup> *Islam in Russia: the politics of identity and security*, 11.

<sup>58</sup> “Sufism can be described broadly as the intensification of Islamic faith and practice, or the tendency among Muslims to strive for a personal engagement with the Divine Reality.” (Voll, John O. and Kazuo Ohtsuka, “Sufism”, in *The Oxford Encyclopedia of the Islamic World*, Oxford Islamic Studies Online, accessed at <http://www.oxfordislamicstudies.com/article/opr/t236/e0759>).

<sup>59</sup> Nurullina, Roza, The Revival of Muslim Communities in Russia's Regions: Based on Sociological Research Materials in the Republic of Tatarstan, *Anthropology & Archeology of Eurasia*, 53:2, 2014, 36.

achieve Tatarstan's sovereignty"<sup>60</sup>. In fact, both Tatarstan and Chechnya displayed inclinations to leave Russia after the Soviet Union's demise in 1990s, but were forced by the Kremlin to stay due to their being among the richest and politically important regions in the country. Even though, the Russian government interpreted independence movements in Tatarstan and Chechnya "almost exclusively in ethnic, national and criminal rather than in religious terms"<sup>61</sup>, Islam in these regions became a way of longing for self-determination. Thus, relations between the Russian state and Muslim communities up to the beginning of the 20<sup>th</sup> century can be characterized as colonial, although, the main focuses of the Russian state in annexing Muslim regions were political and economic expansion, so cultural assimilation was not their priority as long as there were no uprisings in the new "colony". Islam in the Volga region and the Northern Caucasus were seen by local communities as one of the strong factors of their separation from Russia identity.

Another feature of modern Russian Islam, more significant for the Volga region than for the Northern Caucasus, is the perception of Islam as the way of ethnical and personal identification. In January 1996, in Tatarstan, there was adopted *Kanunnama* (the Tatar code of laws) that claimed that the main feature of Tatars was that "they are the community... who speak the official Tatar language and consider... Islam the spiritual and moral, material and social basis of their lives"<sup>62</sup>. For many young Tatar people in the Volga region, reversion to Islam is seen as an ethnic legacy, an attempt to become a part of Tatar culture. Despite the fact that their parents brought up in the Soviet Union often reject and do not understand the growing religiosity of their children, the new generations find Muslim traditions very significant for their ethnic memory: "this reconstructed memory is reproduced as part of the personal and collective 'ethnic' history"<sup>63</sup>. While in the Soviet Union the key component of identity was citizenship, in the modern Russia ethnicity has begun to replace the communist and Soviet identity. In the Northern Caucasus, the ethnic component of the

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<sup>60</sup> *Russia and Islam: State, Society and Radicalism*, 105.

<sup>61</sup> *Ibid*, 14.

<sup>62</sup> *Tatar Kanuni (Kanunname)*, Kazan: 'Millet hem Taraqqiyet' Foundation, 1996, 13.

<sup>63</sup> Sabirova, Guzel, *Young Muslim-Tatar Girls of the Big City: Narrative Identities and Discourses on Islam in Post-Soviet Russia, Religion, State and Society*, 2011, 39:2-3, 342.

religion has become an important factor in fighting radical Islam, Wahhabis, which places religious affiliation higher than ethnic identity. Mufti and then President of Chechnya, Akhmad A. Kadyrov, highlighted that distinction in the Northern Caucasus between traditional “folk” or “ethnic” Islam and “foreign” radicalism: “We are Chechens first, and then Muslims”<sup>64</sup> Further, the fall of the Soviet Union and perestroika gave a birth to several “lost” generations that already did not learn moral and social principles and values of the USSR and still did not find new democratic values of the post-Soviet Russia. Guzel Sabirova, analyzing Tatar women’s revised interest in Islam, emphasizes that “loss of faith in the norms of communist morals in the perestroika period was accompanied by divisions in opinions and reactions, from the complete rejection of morals as such on the one hand to reinforcing new moralizing discourses on the other”<sup>65</sup>. For post-Soviet generations of young Russians, Islam became not only the way of ethnic personalization substituting for Soviet citizenship personalization, but also a new basis for personal values and moral authority.

This brief description of the religious situation in Russia and of the status of Islam in Russian society as the second most popular religion after the Orthodoxy, suggests several important conclusions that help to identify the future of Russian legislation on wearing religious symbols in the public schools. First of all, the Muslim populations of Russia are geographically dispersed, so the Russian federal government has to adopt particular policies for different regions depending not only on whether Muslim population represents the majority in that region, but also based upon economic, social, and the political significance of the region for the country, as well as on the history of state-region relations. Thus, there are two main models of state integration of Islam into Russian society and managing Muslim communities: one used in the Volga region and another one used in the Northern Caucasus. Both regions were historically Muslim and both were conquered by Russia and to certain degree assimilated by Slavic Orthodox culture and both sought for

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<sup>64</sup> Akaev, Vakhit, The History and Specifics of Contemporary Islamic Revival in the Chechen Republic, *Anthropology & Archeology of Eurasia*, 53:2, 2014, 94.

<sup>65</sup> Ibid, 341.

independence from Russia after the demise of Soviet Union. So, for both regions Islam became one of the important factors in the fight for self-determination and potential independence. However, Islam took a form of Wahhabism, a philosophy of aggressive resistance to Russian colonization, only in the Northern Caucasus, while the Volga region succeeded to maintain a more liberal, tolerant, and open attitude towards compromise with secular state power, reformist Hanafi Islam. Secondly, the most common approach that the Russian government has used for several centuries is a semi-authoritarian model of the delicate balance between a top-down strict assimilation and state control of Muslim communities (especially, for national security reasons) and at the same time, preservation of multi-culturalism and religious autonomy of the regions and deliberate cultivation of the moderate “domestic” Islam as the opposition to the radical “foreign” Islam. Finally, Islam in Russia can be characterized as a particular ethnic feature of certain communities that is experiencing a significant revival in the post-Soviet Russia as a moral basis for new “lost” generations and as a way of ethnical personalization for young people seeking the affiliation with certain social group and the reconstruction of their “ethnic memory”.

### **Part 3. Cultural, social and political background of religion and Islam in France.**

Religion, like a language, reflects people’s perception of the world around them and is closely tied to national history, national philosophy, and national identity. So, even though “Russia and France share the constitutional recognition of secularism as the underlying principle of the state”<sup>66</sup>, religion in general and Islam in particular have very different places in the political, social, and cultural systems of these two countries. The most significant differences lie in the philosophical concept of relations between state and religion; ethnic and national identity of the majority of Muslim population; and the nature of social problems that are either tied to Islam or cause the Islamization. Nonetheless, there are some similarities in the “ethnical” character of Islam in both Russia and France, and they also share some common strategies of the state approach to the

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<sup>66</sup> *Russia and Islam: State, Society and Radicalism*, 54.

integration of Islam and a common fear of “foreign” Islamism and international terrorism.

According to the CIA World Factbook, 63-66% of the French population consider themselves to be Christian and 7-9% are Muslim.<sup>67</sup> Both countries have had “a series of pendulum swings between state establishment of and withdrawal from religion”<sup>68</sup> throughout its history and both Russia and France attempt to grow “domestic”, moderate Islam to oppose the influence of “foreign”, radical Islam that is associated with the international terrorism.

The most important national philosophy, which strongly affects all public discussions and state decisions in France, is called Republicanism. It goes back to the ideals of Jean-Jaques Rousseau and the Third Republic of the end of nineteenth century. It has been “a fundamental ideal of French state-building ever since”<sup>69</sup> and it requires that people living together in a society not only must share the same basic values, but should prioritize these shared values over individual interests and differences. To make this philosophy work on the governance level, the state had to create institutions and policies “designed to integrate newborns and newcomers into French society by teaching them certain ways of acting and thinking”<sup>70</sup> so that everyone in France lives together as one nation, with one culture, and most importantly, one identity. Republican France in the twentieth century was one of the most generous countries in welcoming immigrants and its naturalization processes were shorter and simpler than in other states. In return, the French state required the newcomers to become “truly French” by taking on French values and adopting French behavior. Sagy Maayan in his research on Islam in the European Legal Systems point out that “The policy of French governments throughout history, especially since the age of the Third Republic, was tied to various kinds of measures, including erasing local identities and forbidding the use of other languages than French so as to promote cultural and lingual unification, all in the name of

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<sup>67</sup> Cia.gov, *The World Factbook* — Central Intelligence Agency, 2015 [online], accessed at: <https://www.cia.gov/library/publications/the-world-factbook/geos/fr.html>.

<sup>68</sup> Bowen, John Richard, *Why the French don't like headscarves*, Princeton: Princeton University Press, 2007, 22.

<sup>69</sup> Maayan, Sagy, *Islam and the European Legal Systems: The Headscarf Debate in France and Germany as Case Studies*, The Hebrew University of Jerusalem, 2008, 6.

<sup>70</sup> *Why the French don't like headscarves*, 11.

assimilation”<sup>71</sup>. Thus, during the twentieth century, France accepted a great number of immigrants but its Republican naturalization laws required newcomers to sign a symbolic “social contract” with the French state: “to place themselves in the public space, by abstracting from the individual characteristics, from where they came from, their roots.”<sup>72</sup>

The implementation of the philosophical principle “vivre ensemble” had another consequence: to be able to create one social identity, the most basic values had to be the same, so the state had to be neutral regarding any religion. Therefore, in 1905 the principle of the secular state or *laïcité* was put into the French Constitution. The philosophy of the Enlightenment also contributed to the development of the *laïcité* concept by specifying that religion should belong only to the private sphere as opposed to the “public reason”<sup>73</sup>. This ideal came out of the many religious wars experienced by French society in the Middle Centuries: between Catholics and Protestants, and then between the Catholic Church and secularists. The state system of *laïcité* was supposed to prevent the state disorder and to provide the practitioners with the ability to worship without fear. Nonetheless, the actual implementation of the *laïcité* principle in France was rather rigorous and stirred political debates about the nature of the principle: whether it is secularism or secularity that has to be implemented in France. *Secularism* is an ideology of an absolute absence of religion in public life, and *secularity* is “an approach to religion-state relations that avoids identification of the state with any particular religion or ideology.”<sup>74</sup> While *secularism* insists on the religious manifestations (or even beliefs) being pushed into the borders of private life, *secularity* seeks to create a favorable space for pluralism where the state does not single out one religion (or any non-religious belief) over the others. The philosophy of Republicanism in France focuses on the creation of the common identity instead of promoting the diversity of social values, so the *laïcité* is rather a synonym of *secularism* in France than *secularity*, which is very is very significant for the state

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<sup>71</sup> *Islam and the European Legal Systems...*, 17.

<sup>72</sup> *Why the French don't like headscarves*, 14.

<sup>73</sup> Kastoryano, R., Religion and Incorporation: Islam in France and Germany, *International Migration Review*, 38(3), 2004, 1234.

<sup>74</sup> “Four Views of the Citadel...”, 2.

decisions on the public manifestation of religious affiliation. By contrast, Russian federalism and the tradition of multiculturalism create more favorable conditions for the development of *secularity* where the place of religion in the social life and the balance between private and public manifestations of religious affiliation is not set up on the federal level, but depend on the cultural and ethnical roots of the particular region.

Both the Volga-Ural region and the Northern Caucasus in Russia where Islam is the most popular religion, were conquered in the 17<sup>th</sup>-19<sup>th</sup> centuries but became inherent parts, not colonies, of the Russian state already by the 20<sup>th</sup> century. Whereas, originally Christian Europe got its “strong connections with the Muslim world because of the colonial past”<sup>75</sup> and economic migration from Asia and Africa. Moreover, while in Russia the assimilation and integration of the Muslim population took place several centuries ago, the colonial history of Europe and controversies connected with it are rather recent. In France, the first great influx of Muslim immigrants (mostly from the Northern Africa: Algerians, Moroccans, and Tunisians) took place after the World War II: France’s economy was ruined and country needed new workers. Most of these immigrants were “non-religious Muslims”<sup>76</sup> who saw themselves as temporary workers and France as the source of money. However, in the 1960s the war in Algeria ended with the independence of the former French colony and the second wave of immigration, this time for “family reunification”, hit France: women and children were allowed to reunite with their husbands and fathers. However, the 1974 global oil crisis worsened the economic conditions in France and especially the employment rate, so many migrants ended up without a job or with a low income. Meanwhile, their children born in France felt lost because they were “connected neither to the Northern African traditions and landscapes like their parents nor to the French republican values.”<sup>77</sup> The French state required from them a total assimilation to French values and traditions, while their families were bringing them up according to their own traditions and values. Alienated by the society and by their own families,

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<sup>75</sup> *The headscarf controversy: secularism and freedom of religion*, 101.

<sup>76</sup> *Islam and the European Legal Systems...*, 7.

<sup>77</sup> *Islam and the European Legal Systems...*, 8.



many second-generation immigrants turned to Islam to distinguish themselves from both the society and their families, as well as to find a community that would accept them as members. The shift of identity from “immigrant” to “Muslim” is noticeable even in the statistics: in 1994, 27% of French Muslims characterized themselves as “performers of religious commandments” and only 30% favored the construction of mosques in France; by late 2001, 36% of the Muslims characterized themselves as “performers of commandments”, 78% as “believers” and 83% favored the construction of mosques.<sup>78</sup> Meanwhile, France’s worsening economic and social conditions provoked anti-immigrant movement in the late 1980s: extreme right-wing parties, such as The National Front, started creating negative stereotypes directed against Arabs and Muslims. The worldwide rise of terrorism linking Islam to dangerous radicalism and international threat also contributed to the xenophobic attitudes in French society. Moreover, hard economic conditions brought high rates of unemployment to the *banlieues*, French suburbs of metropolitan cities, populated mostly by immigrants and consequently Muslims. Even though most of French Muslims have French citizenship, many young people of North African origin suffer from racial (or religious) discrimination: despite the fact that they were born and have lived their whole life in France, they are still considered migrant workers by French administration.<sup>79</sup> French *banlieues* with high rates of unemployment, police brutality and racism, and youth’s discontent with state policies, became, in fact, criminalized and radicalized ghettos: Farhad Khosrokhavar, a French sociologist, has found that Muslims, who constitute approximately “7 to 8 percent of the total French population, may account for more than 50 percent of the French prisoner population”<sup>80</sup>. That is, of course, not the result of the religion but rather the difficulty for Muslim immigrants to find jobs and to integrate into French society. So, the main problem with religion, in particular, Islam in France is not the religion itself or its public manifestation, but what it symbolizes for believers and the rest of

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<sup>78</sup> Sobier, Martin, France, the First Islamic State in Western Europe? *Native Journal of Politics and the Arts*, 4, June 2004, 33-34.

<sup>79</sup> *The headscarf controversy: secularism and freedom of religion*, 114.

<sup>80</sup> Giry, Stephenie, France and its Muslims, *Foreign Affairs*, 85, n. 5, 2005, 95.

the society, as well as the socioeconomic conditions that are experienced by bearers of Islam: ghettoization, racial and religious discrimination, and poverty. Sagy Maayan considers Islam to be a basis of so-called “imagined communities of ethno-familial culture”<sup>81</sup> created in *banlieues* to protect its members from the discrimination, as well as to get some autonomy from the French state. Whereas, for the state administration, the Islamization and criminalization of the migrants, their anger and autonomy is dangerous in terms of social unrest, serious governance obstacles, and a challenge to the French Republican values of “common identity”.

As we have seen, racial discrimination and ghettoization of migrants (even of the second generation) in France created a new corporate ethnicity – Muslims. This “ethnic” dimension of the religion has something in common with the Russian perception of Islam as a way of ethnical identification for Tatars, Bashkirs, and various ethnicities of the Northern Caucasus. However, while in Russia specific version of Islam (reformism, Wahhabism, etc.) became a distinctive feature for the whole ethnicity, in France, it became one uniting force for “the diversity of the nationalities, sects, and ethnocultural groups.”<sup>82</sup> Nonetheless, both states attempt to build its approach to the issues of Muslim population on national and ethnic grounds: to support the “domestic”, moderate Islam of its own nationals as opposed to the influence of the “foreign”, radical Islam. Both countries found the way to “domesticate” Islam by encouraging the creation of Muslim representative institutions and by providing the financial support for building the mosques. According to Hilal Elver who analyzed the headscarf controversy in Europe, “in France, two different concerns operate: the fear of an ethnic Islam (Arab, Middle Eastern) that would import the conflicts of the Middle Eastern region into France, and the fear of a nonethnic and supranational Islam that becomes specifically European”<sup>83</sup>. So, in 2003, the Ministry of Interior of France supported the creation of the French Council of the Muslim Faith, and the government launched several state programs to train imams. These attempts to make the *laïcité* more comfortable for Muslims pursue

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<sup>81</sup> *Islam and the European Legal Systems...*, 9.

<sup>82</sup> Religion and Incorporation: Islam in France and Germany, 1252.

<sup>83</sup> *The headscarf controversy: secularism and freedom of religion*, 126.

the goal of disengaging French Islam from foreign roots and filling it with the familiar system of national traditional values. The same approach is typical for the Russian state, which not only constantly persuades the international community that Russian Muslims are truly Russian in terms of social and cultural beliefs, but which also “demonstrates to its own Muslim population that Russia should not be associated with the foreign policy mistakes of Western liberal democracies.”<sup>84</sup>

Both Russia and France are proclaimed by their Constitutions to be secular countries where the state is absolutely separated from the church and does not support any particular religion. Nonetheless, their different historical paths and political structure make them understand and implement the principle of the secular state in different ways. While Russia being a federal country with geographically dispersed population that has different religious affiliations does not control the balance between private and public manifestation of any religion on the federal level, leaving it to the regional administration, France has a strong state power that is built on the principles of Republicanism and that restricts religious manifestation to private space. Thus, the philosophical difference between the secular state in Russia and in France is the difference between *secularity* and *secularism*: in Russia, the state simply does not identify itself with any particular religion while in France, the state pushes religion completely out of public space. Moreover, Republicanism in France requires all its citizens, including the newcomers, to share the same values of secularism and to abandon individual, previous identities, including religion, to become “truly French”. The second major difference between historical roots and the current social situation of Islam in Russia and France is the national affiliation of its practitioners: in Russia, it is mostly ethnicities that were assimilated by Slavic culture centuries ago and share the same social and economic conditions with all other Russians, while in France, most of the Muslims are economically disadvantaged and socially discriminated migrants of the Northern African origin. Islam in France is closely connected with political challenges because of the ghettoization of Muslim migrants in the suburbs of big cities, racial discrimination against them and their Islamization, as well as high youth

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<sup>84</sup> *Russia and Islam: State, Society and Radicalism*, 57.

unemployment and bad criminal records of the Muslim population. While in Russia, Islam to some extent goes in hand with the separatism of predominantly Muslim regions (Tatarstan and Northern Caucasus), in France, it goes in hand with social unrest, crime rate, and racial discrimination.

However, both countries share a fear of radicalism of Islam that is linked to the terroristic threat to national security. As a possible response to this threat, both the Russian and French states attempt to limit the influence of the “foreign” Islam (coming from the Middle East) and to promote and to support its own “domestic”, moderate Islam by creating national institutions of Muslim practices, training its own imams, and by supporting building and functioning of mosques and religious centers.

## Chapter 2. Comparative analysis of legislation on wearing religious symbols and religious clothes at public schools in Russia and in France.

As discussed in Chapter One, Russia and France share common principle of the secular state which is secured in their Constitutions: “the Russian Federation is a secular state”<sup>85</sup> and “France shall be an indivisible, secular, democratic and social Republic.”<sup>86</sup> Also, both states claim to respect and protect freedom of conscience and religion, as well as everyone’s right to education that has to be of a secular character. Moreover, currently, both Russian and French law contains restrictions on the public manifestation of the religious beliefs by students of the state schools. However, even though, on the legal surface, both Russia and France promote and realize the same values and principles in regard to freedom of religion, a more detailed analysis of the relevant legislation shows that there are significant differences in all three spheres – secularism and freedom of religion, secular education, and *per se* restrictions on the public manifestation of the religious beliefs at school. The most important differences are connected with the issues of which legislative body (on what governmental level) issued the relevant legislation and to what degree it is binding, as well as the actual phrasing of the law: what are the points in focus and what are the grounds for and limits of the restrictions. Thus, in order to spot these differences, I analyzed each sphere (secularism as a state principle and freedom of religion, secular education, and restrictions on public manifestation of the religious beliefs in school) on two levels: legal one which covers the formal details of which legislative body (and on what state level – national/federal or regional) issued the law or regulation and what is the legal form of it (law, amendment to the law, enactment, ministerial circular, and so on), and content one which analyses the main points of the legislations, how detailed it is, what are the grounds for the possible restrictions on the freedom and how they are reasoned.

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<sup>85</sup> Constitution of the Russian Federation, Article 14, 1993, accessed at <http://www.constitution.ru/en/10003000-01.htm>.

<sup>86</sup> French Constitution, Article 1, 1958, accessed at [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/constiution\\_anglais\\_juillet2008.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/constiution_anglais_juillet2008.pdf).

In Russia and France the highest national law, the Constitution, provides that the state has to be secular and all citizens should be equal “before the law, without distinction of [...] religion”<sup>87</sup> and that “all forms of limitations of human rights on [...] religious grounds shall be banned.”<sup>88</sup> Nonetheless, the way these principles are phrased and where they are placed in the Constitution reflects the differences in the level of their significance for the national system of values in Russia and in France. The French legal system mentions secularism in the very first article as part of the list of the most fundamental principles of the French Republic (“indivisible, secular, democratic and social”), while the Russian constitution comes to that principle only in article 14 and simply states that Russian Federation is a secular state. Moreover, the French Constitution explains secularism as the “respect of all beliefs,”<sup>89</sup> while the Russian Constitution prescribes that “no religion may be established as a state or obligatory one.”<sup>90</sup> These phrasings are rooted in the cultural differences between the Russian and the French secular state: in Russia, the main point is to avoid establishing one of the religions as a state one, while in France, all opinions and beliefs are to be respected but religion should not be present at the state sphere of citizen’s life as it would contradict the very principle of the Republic. This difference is also supported by the relevant provisions on freedom of religion: in Russia, it is contained in the highest national legal document, Constitution (as well as in the constitutions of some Russian regions, for example, in the Constitution of the Republic of Mordovia<sup>91</sup>) and is almost an exact copy of the Article 18 of the ICCPR - “everyone shall be guaranteed the freedom of conscience, the freedom of religion, including the right to profess individually or together with other any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them”<sup>92</sup>; while in the French

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<sup>87</sup> French Constitution, Article 1, 1958.

<sup>88</sup> Constitution of the Russian Federation, Article 19 (2), 1993.

<sup>89</sup> French Constitution, Article 1, 1958.

<sup>90</sup> Constitution of the Russian Federation, Article 14, 1993.

<sup>91</sup> [Каждому гарантируются свобода совести, свобода вероисповедания, включая право исповедовать индивидуально или совместно с другими любую религию или не исповедовать никакой, свободно выбирать, иметь, распространять религиозные и иные убеждения и действовать в соответствии с ними], Article 26, Constitution of the Republic of Mordovia, 1995. This article is an exact copy of the Article 28 of the Constitution of Russian Federation.

<sup>92</sup> Ibid, Article 28.

legislation system, it is specifically covered only by the Section 1 of the Law on the Separation of Church and State (1905) and the right is described together with the conditions of its restrictions - “the Republic shall ensure the freedom of conscience. It shall guarantee free participation in religious worship, subject only to the restrictions laid down hereinafter in the interest of public order.”<sup>93</sup> The idea that specifically freedom of religion (and public manifestation of religious beliefs as part of it) is respected only if it does not challenge “public order” is rather old idea inherent to the values of the French Republic: Declaration of the Rights of Man and of the Citizen adopted as basis of a new France in 1789 provides for the right to manifest one’s religious beliefs, but “provided their manifestation does not disturb the public order established by law.”<sup>94</sup> In contrast, the Russian Constitution does not single out the freedom of religion and states that all human rights and freedoms might be restricted “by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the State.”<sup>95</sup> Moreover, the Russian legal system has a separate federal law, “On Freedom of conscience and religious associations” (1997), that expands on what specifically the freedom of religion implies and how it should be protected, and even states that “the prevention of exercise of rights to the freedom of conscience and faith, including that associated with violence against person, the intentional hurting of feelings of citizens in connection with their attitude to religion”<sup>96</sup> must be punished. To summarize, secularism as a constitutional principle of the state is not only more important for France that historically kept it as the fundamental value of the Republic, but is of a different nature than in Russia: it requires from French citizens to prioritize the “public order” of the Republic over

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<sup>93</sup> [La République assure la liberté de conscience. Elle garantit le libre exercice des cultes sous les seules restrictions édictées ci-après dans l'intérêt de l'ordre public], Article 1, Law on the Separation of the Churches and the State(1905), accessed at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000508749>.

<sup>94</sup> Declaration of the Rights of Man and Citizen, Article 10, 1789, accessed at [http://avalon.law.yale.edu/18th\\_century/rightsof.asp](http://avalon.law.yale.edu/18th_century/rightsof.asp).

<sup>95</sup> Constitution of the Russian Federation, Article 55, 1993.

<sup>96</sup>[Воспрепятствование осуществлению права на свободу совести и свободу вероисповедания, в том числе сопряженное с насилием над личностью, с умышленным оскорблением чувств граждан в связи с их отношением к религии], Federal Law "On Freedom of Conscience and Religious Associations" No. 125-FZ, Article 3(6), 1997, accessed at [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_170122/](http://www.consultant.ru/document/cons_doc_LAW_170122/).

their personal beliefs. On the contrary, the Russian legal system prohibits only the establishment of one religion as the state one, but recognizes that “the Christianity, Islam, Buddhism, Judaism and other religions constitute an integral part of the historical heritage of the peoples of Russia” and particularly, the Orthodox Church has “a special role [...] in the history of Russia, the formation and development of its spirituality and culture.”<sup>97</sup> While France mentions the principle of secularism in the Constitution and many other legal documents, but places freedom of religion only briefly in the Declaration of Rights and the Law on Separation of Church and State, Russia describes that freedom in full detail not only in the federal Constitution and Constitutions of its regions, but also in a separate law specifically devoted to the discussion on the rights involved in the freedom of religion, their protection and possible restrictions. The roots of such differences lie in the history of the state establishment in Russia and France and their cultural contexts: French Republic emerged as a result of the French Revolution (1789) where “the French people sought to overthrow the entire system of hierarchical, undemocratic power that included the Roman Catholic Church,” while in Russia, even after 70 years of the Soviet state ideology of atheism, religion is still an inherent part of the system of social and cultural values. Moreover, as noted by Christopher Marsh and Paul Froese in the results of their regional analysis of the freedom of religion in Russia, “the situation is more complicated in Russia because political actors frequently seek advantage by promoting a Russian national identity with Orthodoxy as one of its primary components.”<sup>98</sup>

In order to understand the legal difference between restrictions on public manifestation of religious beliefs at public schools, it is important to know that Russia has a federal form of state with two levels of governance – federal and regional, while France is a unitary state with a single power of the central government. So, legal relationships in the sphere of education, for example, are regulated not only by the Constitution and relevant federal laws, but also by the laws and enactments of the regional authorities where the education is provided. According to the Russian

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<sup>97</sup> [признавая особую роль православия в истории России, в становлении и развитии ее духовности и культуры], Federal Law "On Freedom of Conscience and Religious Associations", Preamble.

<sup>98</sup> “The state of freedom in Russia...”, 145.



Constitution, “the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation includes general issues of upbringing, education, science, culture, physical culture and sports.”<sup>99</sup> More specifically, the federal government is responsible for the general state policy in the sphere of education, while the regional authorities are responsible for adapting that policy to the regional “socio-economic, ecological, demographic, ethno-cultural and other peculiarities.”<sup>100</sup> Thus, the legal form of the restrictions on wearing religious clothing at public schools in Russia is very different from its equivalent in France: in France, there is a national law N2004-228, which was amended in 2004 with a new article to the Code of Education that forbids “in State primary and secondary schools wearing of signs or dress by which pupils overtly manifest a religious affiliation,”<sup>101</sup> while in Russia there is no federal law or enactment forbidding any religious clothing or symbols at state and municipal schools. The enactments that prescribe student’s dress-code at state school in which any religious clothing or symbols (as well as any headwear inside the school building) are forbidden are issued by regional governments and thus are binding only on the territory of that region.<sup>102</sup> At the federal level, there exists only the 2014 amendment to the Law “On Education” that allows regional authorities and schools themselves to introduce “the requirements to the students’ appearance, including the general look, color, style, types of clothes [...] and the rules of wearing it”<sup>103</sup> and the Model Enactment by the Ministry of Education and Science on the requirements to the students’ dress-code at state and municipal schools of the primary, secondary and high school levels of education that states that the appearance of students should be “of a secular nature.”<sup>104</sup> To summarize, in France, the “headscarf ban” has a national

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<sup>99</sup> Constitution of the Russian Federation, Article 72.

<sup>100</sup> Federal Law "On Education in the Russian Federation" No. 273-FZ, Article 8(1.1), 2012, accessed at <http://www.rg.ru/2012/12/30/obrazovanie-dok.html>.

<sup>101</sup> [Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit], French Code of Education, Article L141-5-1, 2004, accessed at <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071191>.

<sup>102</sup> *Standard Requirements to the Students’ Dress-code at the State and Municipal Schools of The Republic Of Mordovia*, Article 9 (2-3).

<sup>103</sup> Federal Law "On Education in the Russian Federation", Article 38.

<sup>104</sup> Ministry of Education and Science of the Russian Federation, *Model Act for regions of the Russian Federation on establishment of the requirements for the students’ dress-code at primary, secondary and high school levels of education* No. 65/08, Article 7, 2013.

status and is a requirement for all public schools in all French regions, while in Russia, that ban is introduced only in some regions that interpreted the Model Enactment's requirement of "secular" dress-code very literally and banned all religious clothing and symbols worn by students at public schools and this ban has a limited legal authority on in that particular region where the local governance decided to issue such enactment. In fact, the situation where the federal law is very liberal and vague so that regional authorities can decide individually whether to introduce more freedom or to impose local restrictions is typical for the freedom of religion in Russia. The previous Federal Law, "Freedom of Conscience and Religious Belief" (1990), was very liberal, especially, in terms of the freedom that was given to religious associations, and it caused a lot of discontent in the regions where the Orthodox Church was very strong and did not want to welcome competitors. As a result, "before the 1997 law on religion was passed, somewhere between 25 and 30 regions drafted or enacted their own regional laws meant to curtail religious freedom."<sup>105</sup> Thus, it is not unusual that considering the variety of the religious views dominating in different regions (especially, politically sensitive regions with strong Muslim culture, such as Chechnya, for example) Russian federal legislators do not want to introduce a national ban on wearing religious clothing at school, but prefer to leave the decision for the regional authorities.

Restrictions on wearing religious clothing by students at state schools in Russia and France have differences not only in the legal form, but also in terms of content, namely what types of religious clothing they forbid and what reasoning they present. In order to complete this comparison, I needed to analyze French circular of 18 May 2004 issued by the Minister for Education and Russian Model Enactment "On Establishment of the Students' Dress-Code" issued on the 28 March 2013 by the Ministry of Education and Science. The most visible and significance difference is, of course, the general topic of the documents. While the French circular explains the reasons for restrictions of the freedom of religion at state schools, the Russian enactment introduces dress code requirements for state school students and mentions religion only once in the whole

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<sup>105</sup> "The state of freedom in Russia...", 140.

document. Secondly, French Minister argues that the educational mission of a school in France is to “transfer Republican values, including equality of the dignity of all the human beings, equality between men and women, and everyone’s freedom to choose his own way of life.”<sup>106</sup> The most important concept for this system of values, according to the Minister, is “vouloir-vivre-ensemble” (i.e. national unity and the priority of the community interests) and it has to be reconstructed in the school’s community and should not be challenged by “ostentatious” religious signs worn by students that cause ideological pressure on other students. Moreover, the Minister argues that students’ freedom of religion does not mean that they have the right to oppose the teaching they receive at school (for example, when some students refuse to be taught by a man or a woman because of his/her religious beliefs), and it is not permitted to miss the classes because of the religious beliefs (in the case of the Muslim headscarves, girls would miss sport classes because they were required to remove the headscarves there). He points out the duty of assiduity is “a legal obligation” for students and thus, they have to obey school’s internal rules. Thus, the Minister states that freedom of religion does not mean the right to disregard the secular educational values and mission of the school, as well as the duty of assiduity and the public order at school have an upper hand over the individual’s manifestation of the religious beliefs. Arguments presented by Russian Ministry of Education in support of the introduction of the united dress code for students at state and municipal schools are very different. First of all, the Act has an attachment, the letter from The Federal Service for Supervision of Consumer Rights Protection and Human Well-Being, which states that wearing any headwear inside the school building and during classes is very harmful to student’s health. Thus, banning headscarves is done in the name of caring for student’s health. Secondly, the goals of the standardized dress-code are described as “eliminating of the signs of social, economic, and religious differences among students”, “preventing students from having the

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<sup>106</sup> [L’école a pour mission de transmettre les valeurs de la République parmi lesquelles l’égale dignité de tous les êtres humains, l’égalité entre les hommes et les femmes et la liberté de chacun y compris dans le choix de son mode de vie], Circular letter of 18 May 2004 on the implementation of Law No. 2004-228 of 15 March 2004 on the principle of laïcité, the wearing of symbols or clothing denoting religious affiliation in schools, secondary schools and public high schools, accessed at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000252465>.

psychological discomfort in front of his classmates”, and finally, “supporting of the general image of education institution and creating of the school’s identity.”<sup>107</sup> While the main aims justifying the “headscarf ban” for the French minister of education are the upbringing of the students according to the fundamental values of the French Republic and the public order inside and outside of the school, the objective of the introduction of standardized student’s dress code at state schools in Russia is to make students feel more equal and more comfortable by eliminating visible social and religious differences among them.

To summarize, the current legislation on freedom of religion and on wearing religious clothing and symbols by students at public schools in Russia and France is a perfect reflection of the fundamentally different approaches to the principle of state secularism in these two countries, as well as historically different social and political contexts of the freedom of religion and the focus of education. First of all, historically the principle of secularism and total separation of the State and Church was a fundamentally inherent value of the French Republic. This principle is one of the first provisions in the French Constitution and many other national legal documents. In contrast, in Russia, religion (especially, Orthodox Church) has always played very important role not only in the cultural and social spheres, but even in the politics and national ideological propaganda. That explains why Russian federal law on the freedom of religion is rather liberal and flexible, so that different regions might interpret it according to their local culture and social context. That brings the second significant difference between Russian and French legislation on wearing religious clothing at public schools. The French law is binding upon the whole country, while the Russian law is binding only for the region that issued the relevant enactment banning the wearing of religious symbols at school. Finally, the French minister of education explains the “headscarf ban” in his circular by the reasons of fundamental mission of the school that has to prepare a “true French

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<sup>107</sup> [устранения признаков социального, имущественного и религиозного различия между обучающимися; предупреждения возникновения у обучающихся психологического дискомфорта перед сверстниками; укрепления общего имиджа образовательной организации, формирования школьной идентичности], *Model Act for regions of the Russian Federation on establishment of the requirements...*, Preamble.

citizen” who shares common Republican values (one of which is secularism) and on the grounds of the student’s legal obligation to obey the school internal rules regardless of his or her personal beliefs. On the contrary, the main focus of the Russian Ministry of Education in supporting student’s dress-code requirements (while secular nature of the clothing is just one of the many requirements) is the well-being of the child, including his physical and psychological health. He or she should feel not only equal to other students regardless of his social state or religious beliefs, but also as an equal member of the school community with a strong school identity.

### **Chapter 3. Comparative analysis of key cases on wearing religious symbols and religious clothing at public schools from the Russian judicial system, the French judicial system, and European Court of Human Rights**

As discussed in the Chapter Two, in contrast to France, where conditions and requirements regarding restrictions on manifestation of religious belief at public schools are described in details at the level of state law, Russia does not have any federal law specifically regulating religious clothing or symbols worn by students at public schools. Rather, it has a Model Act concerning public school students' dress code requirements issued by Ministry of Education that is of an advisory nature. Consequently, the Russian government's position for banning any religious clothing at public schools (and specifically, any headwear) is presented in the Regional Courts and Supreme Court of Russian Federation decisions concerning Stavropol Region and Republic of Mordovia. Interestingly, argumentation in these Regional Courts cases and in the Supreme Court's cases is rather different: even applicants' claims vary from case to case. For example, in the Supreme Court's case for the Stavropol region, applicants claimed only the violation of Article 3 of the Federal Law N125 (26.09.1997) "Freedom of consciousness and religious associations," according to which the rights and freedoms of Russian citizens can be limited only by a federal law, while in the Stavropol Regional Court, they claimed that there had been a breach of freedom of religion and free access to education. For the purposes of this research, it is necessary to compare the court reasoning in all four cases with the line of reasoning in the French Conseil d'Etat decisions. Restrictions on the manifestation of religious beliefs at public schools in France were also originally defined by the Constitutional Court's (Conseil d'Etat) opinion of 1989 and its subsequent decisions leading to the 2004 amendment of the French Code of Education. The purpose of this research is to discover whether indications of the same development can be found in Russian judicial system. That is why I compare Russian judicial decisions not only with French Constitutional Court's decisions after the 2004 ban, but also with decisions issued before it and most importantly with 1989 Conseil d'Etat decision that lists the conditions which define when

wearing religious clothes at public school is permissible and when not. These conditions were lately used as the grounds for a full ban on wearing “... signs ..., such as the Islamic headscarf, however named, the kippa or a cross that is manifestly oversized, which make the wearer's religious affiliation immediately identifiable.”<sup>108</sup> Overall, I have analyzed ten decisions by Conseil d’Etat. Such a large number of cases was necessary for understanding the development of the “headscarf ban” discourse, especially, because the Conseil d’Etat’s decisions have a very condensed and formal style of argumentation and the same arguments are repeated in different cases with slight modifications. Finally, in order to expand to a broader European prospective on the question of public schools students’ manifestation of religious beliefs, I added a third component of the judicial comparison, two ECtHR cases concerning the expulsion of students from public schools for wearing religious clothing: *Dogru v. France* and *Leyla Şahin v. Turkey*. Both cases have been cited by the Russian Supreme Court in its opinions in the aforementioned Stavropol and Mordovia cases, thus, are of a great value for the research. Even though, *Leyla Şahin v. Turkey* concerns a university student, not a child, it is considered by legal researches (as well as ECtHR itself) as a model case on religious manifestations in public places, and it contains many important “coordinates”<sup>109</sup> for legitimacy of the restrictions on wearing religious clothing at public schools. To summarize, the focus of the research are Russian cases, while French Constitutional Court and ECtHR decisions function as components of the analysis that help to expose the most important arguments for banning religious clothing and symbols at public schools that might affect future judicial and legislative approaches to that issue in Russia.

The method of comparison chosen for these three jurisdictions is similar to the three-part test used by the ECtHR to establish whether the interference with the right amounted to violation: it must be provided by law, have a legitimate aim, and be necessary in a democratic society (which

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<sup>108</sup> Circular letter of 18 May 2004 on the implementation of Law No. 2004-228 of 15 March 2004.

<sup>109</sup> Fraile Ortiz, María, *The Islamic Headscarf: Does Context Matter? Islamic Law and Law of the Muslim World Paper* No. 09-65, *InDret*, Vol. 3, 2008, 9.

includes that the means of interference should be proportionate to its legitimate aim).<sup>110</sup> The way these three criteria are addressed in Russian, French and the ECtHR cases defines both legal and cultural approaches to the restrictions on religious manifestation in public schools in these three jurisdiction, which helps to predict whether Russia will follow European (and especially strong laic approach of France) approaches to banning religious manifestation in public spaces, as well as whether it will adopt a federal law banning religious clothing at state and municipal schools or whether it will stop at the point of dress code recommendations for students issued by Ministry of Education and leave the decision to regional authorities' discretion. In this research, I consider only claims of violations of Article 9 of the Convention (specifically, freedom of religion) and Article 2 of Protocol 1 (right to education) because those are the common claims for analyzed cases from all three jurisdictions. Even before the "three-part test" analysis of the courts' argumentations, there come differences between the legal approach to wearing religious clothing and symbols at public schools in the Russian judicial context and in the European courts: the Russian Supreme Court does not recognize that there has been an interference with applicant's freedom of religion and decides that regional enactment Basic Requirements of the Students' Dress code at State and Municipal Schools N422 (31 October 2012) did not restrict in any way applicant's freedom of religion because "the right of citizens to practice any religion and to act according to their religion in the state and municipal educational institutions is not provided by the Federal Law "On Freedom of Conscience and Religious Associations N125 (26 September 1997)."<sup>111</sup> Even though, French Conseil d'Etat often points out in its decisions that students are being suspended for breaching school's internal rules and not for wearing religious symbols, it still considers that there has been an interference with students' freedom of religion, but it was necessary in the situation where students "exceeded the limits of the right to express their religious beliefs in the educational institutions."<sup>112</sup> Similarly,

<sup>110</sup> "The Right To Freedom Of Expression: Restrictions On A Foundational Right", 3.

<sup>111</sup> Supreme Court of Russian Federation, 10 July 2013, Case No.9-APG13-2, 6.

<sup>112</sup> « Considerant [...] que ces élèves ont ainsi excédé les limites du droit d'exprimer et de manifester leurs croyances religieuses à l'intérieur des établissements scolaires » Conseil d'Etat, SSR., 27 Novembre 1996, application No.170207, 461.



the ECtHR in both the French and Turkish cases recognized that “the restrictions imposed on the applicant regarding wearing the Islamic headscarf at school amounted to an interference with the exercise of her right to manifest her religion.”<sup>113</sup> This original distinction in the courts’ perceptions of what is the nature of the ban on wearing religious clothing and symbols at public schools is very significant for the judicial approach to the issue. Russian courts consider this ban to be one of many elements of the formal dress code for students that disciplines them and eliminates reasons for unnecessary conflicts on the grounds of religion and physical appearance, while for French judicial system it is a fundamental issue of bringing up children in a secular society as citizens of the secular French Republic. This vital distinction results in different lines of the argumentations in Russian and French (as well as ECtHR) cases. In European cases, it is a secular state and secular education that are the cornerstones of argumentation for banning religious symbols at public schools, while for the Russian courts, the best interest of the child is the most important principle that defines the outcome of the case and the requirements of the school dress-code.

Both in France and in Russia, the educational system (especially, elementary, secondary and high schools) is provided mostly by the state and is based on the principle that education is the primary and ultimate responsibility of the state, not the parents. Nonetheless, for the legal and political system of the French Republic, primary and secondary education have even more fundamental importance as they prepare “French citizens” for a life in a French society with its unified culture and values. As noted by Elisa T. Beller, “this is a distinctive feature of French law - the state’s interest in instilling culture in its citizens is considered an ever-present party to any conflict over conduct in the public schools.”<sup>114</sup> This feature is present on every level of the strict legal hierarchy of the education bureaucracy: from the Ministry of Education, to the particular school’s Board of Directors, and to the head teacher. There are unified nation-wide rules and requirements for how the school system should function and these rules are enforced by each

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<sup>113</sup> *Dogru v France*, Application No. 27058/05, ECtHR, 2008, par. 34.

<sup>114</sup> Beller, E. T., *The Headscarf Affair: The Conseil d’État on the Role of Religion and Culture in French Society*, *Texas International Law Journal*, 39, 2004, 612.

school's administration. Such a strict legal hierarchy and unified legal system of the regulations in the sphere of the primary and secondary education helps avoiding conflicts in determining whether the interference with the applicant's freedom of religion was "prescribed by law." Even before 2004 law, the Conseil d'Etat simply listed what laws it has considered (Constitution 1958, Declaration of the Rights of Man and Citizen 1789, Framework Law on Education 1989, and other codes and regulations), which was enough to establish that the school's internal rules regulating religious clothing had legal support. The ECtHR spends more time arguing whether the interference with applicant's freedom of religion in *Dogru v. France* (it considers only the ban to wear a headscarf during sport classes) was prescribed by law: "the duty to attend classes regularly, the requirements of safety and the necessity of dressing appropriately for sports practice [...] were based on statutory and regulatory provisions, internal documents (circulars, memoranda, internal rules) and decisions of the Conseil d'Etat."<sup>115</sup> The Court finds that to be a sufficient legal basis for the measures implied by the school's administration, noting that "however clearly drafted a legal provision may be, its application involves an inevitable element of judicial interpretation, since there will always be a need for clarification of doubtful points."<sup>116</sup> Thus, for the national judicial system of France, the fact that a school's internal rules are written in line with national principles of secularism and national legislation, is beyond the doubt, so the only debates that arise concern the form of the school regulations (whether they are written in very general terms and present a blanket ban) and their actual implementation. Meanwhile, the ECtHR finds it more problematic that there is no direct prohibition on the wearing headscarves during sport classes on the level of national legislation and goes into the details to find out whether principles of secularism and standards of safety and health for the sport classes contained in several national laws, as well as non-binding interpretations of the Conseil d'Etat, can amount to the sufficient legal basis.

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<sup>115</sup> *Dogru v France*, par. 51.

<sup>116</sup> *Ibid*, par. 57.

In contrast, the Russian legal system is more multi-leveled and complicated. Considering its federal political structure with regional authorities having their own competences and legal responsibilities, it can be argued that a regional government exceeds its authority by issuing the regulations of the public school students' dress code when it bans wearing religious clothing at school. In fact, this claim is present in all four Russian cases. Applicants from both the Stavropol region and the Republic of Mordovia argue that regulations issued by their regional governments contradict parts 2 and 3 of the Article 55 of the Russian Constitution that permits restrictions on human rights and freedoms only through a federal law and only if "it is necessary for protection of the constitutional principles, morals, health, rights and legal interests of others, national and state security."<sup>117</sup> In addition, they cite Article 3 Federal Law N125 (26.09.1997), "Freedom of consciousness and religious associations", which specifically says that freedom of religion may not be restricted by any other law but federal law.<sup>118</sup> Consequently, Russian courts have to bring up several important citations from the Constitution of Russian Federation, Law "On Education", National Doctrine on Education N751, and other federal regulations to prove that even though Russian federal authorities have a sole right to establish federal standards of education and to define state strategy in the federal target program of state education, "the main goals and tasks of the program are developed and implemented by regional authorities and are corrected according to the ethno-cultural, socio-economic, ecological, cultural, demographic and other specificities of the particular region."<sup>119</sup> The main issue for claims that regionally issued requirements of the students' dress code contradict the freedom of religion is precisely the lack of the federal regulation in Russia on the wearing religious clothing in public places and state and municipal schools. As discussed in

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<sup>117</sup> [...допускающие возможность ограничения прав и свобод человека и гражданина исключительно федеральным законом и только в той мере, в какой это необходимо в целях защиты основ конституционного строя, нравственности, здоровья, прав и законных интересов других лиц, обеспечения обороны страны и безопасности государства], Supreme Court of the Republic of Mordovia, 24 October 2014, Case No.3-9/2014, 3.

<sup>118</sup> Supreme Court of Russian Federation, 10 July 2013, Case No.9-APG13-2, 2.

<sup>119</sup> [Основные цели и задачи Программы развиваются соответствующими региональными программами, которые учитывают национально-культурные, социально-экономические, экологические, культурные, демографические и другие особенности конкретного региона], Stavropol Regional Court, 22 March 2013, Case No.3-9/13, 6.

the Chapter 1, considering the socio-cultural and political context of some regions with significant Muslim population, such a federal regulation would create a lot of political conflicts. As a result, the Russian Supreme Court cites a broad range of federal legal documents that cover regional administration authority and responsibilities in the educational sphere, including part 1 of Article 72 of the Russian Constitution, which says that common questions in the education are dealt with by both federal and regional powers, Article 29 of the Federal Law N3266-1 (1992) “On Education,” which gives regional authorities the authority to issue laws and regulations in the sphere of education, and Article 4 of the same law, which sets defining rights, responsibilities, and authorities of physical and legal entities in the sphere of education as one of the goals of the laws on education in Russian Federation together with Article 29, which allows regional authorities to create additional regulations in the sphere of health protection of students at schools. Finally, the Russian Supreme Court uses a newly issued Federal Law N273 “On Education in Russian Federation” (2013), that is amended with the point 18 of the part 3 of the Article 28, which specifically places the establishment of the dress code for students at state and municipal schools within the competence of regional authorities and educational institutions. Moreover, both Russian courts and the ECtHR find it necessary to point out that the regulations under examination were thoroughly discussed and judicially reviewed by competent authorities that did not find conflicts either with national legislation and Constitutional principles, or with international human rights law. For example, Russian courts highlight that students’ dress-code regulations were examined by the Ministry of Education and Ministry of Justice<sup>120</sup>, while the ECtHR generally notes that the ban on wearing “ostentatious” religious signs at school has been a “fruit of a broad debate within French society and the teaching profession”<sup>121</sup> (as well as within Turkish society in the case *Leyla Şahin v. Turkey*). These courts also point out that local administrative courts’ decisions were supported by

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<sup>120</sup> Stavropol Regional Court, 22 March 2013, Case No.3-9/13, 11.

<sup>121</sup> *Dogru v. France*, par. 41.

the case-law of several Supreme Courts.<sup>122</sup> In contrast, the French Conseil d'Etat does not consider it necessary to mention whether there was a “pressing social need” or whether the requirements of judicial reviews were fulfilled. Beller in “The Headscarf affair: The Conseil d'État on the Role of Religion and Culture in French Society” notes that “the Conseil’s 1989 decision was based firmly on established legal texts and its 1992 and 1995 decisions were little more than applications of the doctrine set forth In 1989.”<sup>123</sup> Considering this intensive work of the Russian Court regarding the formal question whether the regulations are legal in terms of being “prescribed by law” without regional government exceeding their authority, it can be concluded that Russian Federal government prefers to keep regional authorities responsible for choosing whether to ban religious clothing at public schools or not without imposing the federal ban, as opposed to French law-makers who clearly stated the conditions of the national ban on wearing “visible” religious symbols by the students of public schools and did not have to prove that each school’s internal regulations are legal and “prescribed by law”.

One point upon which Russian, French and ECtHR judicial systems completely agree is the formulation of the legitimate aim for the regulations of the wearing religious clothing at public schools. It is the protection of rights of others and the constitutional principle of pluralism. Nonetheless, Conseil d'Etat and the ECtHR bring forward one more legitimating aim that is not considered by Russian courts – public order. For the European political system, school is a reflection and an important element of the democratic society, so the state should be “the neutral and impartial organizer of the exercise of various religions, faiths and beliefs, and [...] this role is conducive to public order, religious harmony and tolerance in a democratic society”<sup>124</sup> and the threat to the school’s order is also a threat to the normal functioning of the state educational

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<sup>122</sup> “In rejecting the argument that the circular was illegal, the administrative courts relied on the settled case-law of the Supreme Administrative Court and the Constitutional Court”, *Leyla Şahin v. Turkey*, Application no. 44774/98, ECtHR, 2005, par. 87.

<sup>123</sup> *The Headscarf Affair: The Conseil d'État on the Role of Religion and Culture in French Society*, 620.

<sup>124</sup> *Dogru v. France*, par. 62.

service.<sup>125</sup> Moreover, the ECtHR argues that Muslim headscarves are used to put external pressure on young people by extremist movements, which brings the aim of the national security into the picture.<sup>126</sup> Nonetheless, all three jurisdictions agree on the fundamental principles – both Russia and France are secular states that have to provide religiously neutral education. The Russian Supreme Court clearly states that the aim of the regional ban on wearing religious clothing at schools is “to satisfy state law requirements of secularism and religious neutrality in the system of state education in order to avoid conflicts between rights and interests of members of different confessions, as well as to respect pluralism and freedoms of those who don’t practice any religion and atheists.”<sup>127</sup> Conseil d’Etat also notes that the principle of religiously neutral and secular public education is a necessary element of the state’s secularism and the neutrality of all public services.<sup>128</sup> More insight on the state principle of secularism in France is presented in the ECtHR case *Dogru v. France*, where section The Concept of Secularism in France (par. 17-22) covers the cultural context and legal history of the principle.

Even though, state secularism and the protection of the rights of others is a common background of the schools’ regulations on wearing religious signs by students in both Russia and France, the detailed reasoning of the goals these regulations pursue is rather different. In France, the cornerstone of the ban on wearing headscarves at public schools, including the possible suspension of the students, is a “duty of assiduity”. According to Conseil d’Etat, the administration of the school should “prioritize the normal functioning of teaching and school administration over

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<sup>125</sup> [Un refus ne serait justifié que par le risque d’une menace pour l’ordre dans l’établissement ou pour le fonctionnement normal du service de l’enseignement], Conseil d’Etat, Opinion « On wearing Islamic headscarf », No.346893, 1989.

<sup>126</sup> “It also served to protect the individual not only against arbitrary interference by the State but from external pressure from extremist movements”, *Leyla Şahin v. Turkey*, par. 113.

<sup>127</sup> [... оспариваемый нормативный правовой акт был принят органом государственной власти субъекта Российской Федерации во исполнение требований федерального законодательства об обеспечении государством принципа секуляризма и религиозной нейтральности системы государственного образования в целях исключения конфликта прав и интересов представителей различных религиозных конфессий, а также уважения плюрализма и свободы других лиц, не исповедующих никакой религии, или атеистов], Supreme Court of Russian Federation, 10 July 2013, Case No.9-APG13-2, 5.

<sup>128</sup> [le principe de la laïcité de l’enseignement public qui résulte notamment des dispositions précitées et qui est l’un des éléments de la laïcité de l’Etat et de la neutralité de l’ensemble des services publics], Conseil d’Etat, SSR., 2 Novembre 1992, Kherouaa, application No.130394, rec. p. 389.

whatever rights to public education the student may have.”<sup>129</sup> Wearing religious signs of itself does not constitute a legal offence, but refusing to remove it when asked by a teacher or schools administration (especially, repeatedly) amounts to “a disruptive violation of the school’s order”<sup>130</sup>, as well as missing sport classes because students are not allowed to wear headscarves during these classes (for example, Conseil d’Etat case of 27 November 1996 (N170209)). Thus, a student is being suspended not for wearing religious signs but for breaching the school’s internal rules and not complying with her duty of assiduity. The aggravating factors might be protests organized either by students themselves or by their families, like in Conseil d’Etat cases of 10 March 1995 (N159981) and 27 November 1996 (N170207). However, if a student did not cause any troubles for the school’s order and simply wore the religious clothing as an expression of her religious beliefs, the suspension is considered by the Conseil d’Etat illegal (but only before the 2004 ban on wearing visible religious signs), as in the case of 27 November 1996 (N172787). The same approach is supported by the ECtHR case-law. The Court notes that “the right to education does not in principle exclude recourse to disciplinary measures, [...] in order to ensure compliance with its internal rules [...] the imposition of disciplinary penalties is an integral part of the process whereby a school seeks to achieve the object for which it was established.”<sup>131</sup> Thus, student’s non-compliance with not only school’s internal rules, as well as the school’s broader educational mission is considered by both Conseil d’Etat and the ECtHR as a legitimate reason for punishing that student, including in situations of wearing religious clothing.

However, students might breach the duty of assiduity not only by refusing to remove the headscarf or by missing sport classes. If wearing religious clothing has an “ostentatious or protesting character” and “constitutes an act of pressure, provocation, proselytism or

<sup>129</sup> The Headscarf Affair: The Conseil d’État on the Role of Religion and Culture in French Society, 615.

<sup>130</sup> [les enseignements sont très gravement perturbés par l’attitude de ces deux élèves, et [...] les faits qui leur sont reprochés constituent des infractions à l’ordre dans l’établissement], Conseil d’Etat, SSR., 10 March 1995, Aoukili, applicaion No.159981, rec. p. 122.

<sup>131</sup> Leyla Şahin v. Turkey, par. 156.

propaganda”<sup>132</sup>, it goes against the school’s educational mission, because main pillars of secular education in France are the “acquisition of “a culture” (clearly a unifying French culture, though this is not specified) and the preparation for the responsibilities of being a professional and a citizen.”<sup>133</sup> The formulation of these conditions defining when wearing religious signs at schools should be forbidden was rather unclear, and the 2004 amendment to French Code of Education used it to claim that wearing “... signs ..., such as the Islamic headscarf, however named, the kippa or a cross that is manifestly oversized” in any case constitutes an act of pressure or proselytism as they “make the wearer's religious affiliation immediately identifiable”<sup>134</sup>, and thus, must be banned completely. To summarize, the French judicial system does not imply that wearing religious clothing of itself constitutes a threat to the principle of secularism and a breach of law in France, rather, it states that the national law in France (implemented in the schools) punishes only students who do not obey their duty of assiduity either by protesting against removing the religious clothing during classes (especially, during sport classes) or by pressuring other students and propagating their religious beliefs by wearing ostentatious religious signs (which *a priori* includes Muslim headscarves, kippas, and oversized crosses, according to the 2004 amendment to the French Code of Education).

In Russia, the cornerstone of the introducing the students’ dress-code in public schools that does not allow wearing any religious symbols or clothing is the best interest of a child. School dress codes create a serious studying atmosphere and a “businesslike approach”<sup>135</sup> to the education; it disciplines students and helps to “form a sense of belonging to the educational institution”<sup>136</sup>. Moreover, wearing religious clothing (even if it is a free choice of the child) “creates excessive attention” of the other members of school community to the wearer that might be not always kind to

<sup>132</sup> [... par leur caractère ostentatoire ou revendicatif, constitueraient un acte de pression, de provocation, de prosélytisme ou de propagande], Conseil d’Etat, Opinion « On wearing Islamic headscarf », No.346893, 1989.

<sup>133</sup> The Headscarf Affair: The Conseil d’État on the Role of Religion and Culture in French Society, 611.

<sup>134</sup> Dogru v. France, par. 31 (English translation of the Ministerial circular of 18 May 2004).

<sup>135</sup> Stavropol Regional Court, 22 March 2013, Case No.3-9/13, 8.

<sup>136</sup> Supreme Court of Russian Federation, 11 February 2015, Case No. 5-APG14-11, 4.



him/her, makes him/her “unequal with other students” at some classes, provides “conditions for the child’s isolation in the school community”, as well as competitiveness in the physical appearance and in trying “to prove whose religion is better.”<sup>137</sup> On the other hand, a unified dress-code “prepares a child to live according to norms and rules adopted by the society”, helps children to fight with inferiority complex by making them feel more confident as “equal members of the school community”, and eliminates “signs of social, ethnic, and religious differences among students.”<sup>138</sup> To summarize, Russian courts present regulations of the students’ dress-code as a way to make the studying process in state and municipal schools more effective, more business-focused, and even more comfortable for children of different social, ethnic and religious backgrounds, by eliminating any signs of differences between them based upon appearance. Strict state secularism and conformity with rules and regulations at all state levels (starting from the school’s regulations to the national laws) that are the priority in the French judicial view on public manifestation of religious beliefs are not shared to the same degree by Russian judicial system that plays on the social values typical for Russian culture, i.e. family and children values.

For the same reasons, Russian courts go to much more detail than does the French Conseil d’Etat and the ECtHR in arguing that wearing headscarves contravenes health and safety standards for children, not only at sport classes, but throughout the day. While the ECtHR in *Dogru v. France* states that students must comply “with the duty to wear clothes adapted to and compatible with the proper conduct of classes, both for safety reasons and on public-health ground,”<sup>139</sup> and the Conseil d’Etat lists health as one of the grounds that should not be challenged by manifestation of the religious beliefs<sup>140</sup>, the Russian Supreme Court cites a Letter from The Federal Service for Supervision of Consumer Rights Protection and Human Well-Being that claims that “wearing clothes that cover head (and do not functionally reflect the requirements of the climate) by children

<sup>137</sup> Stavropol Regional Court, 22 March 2013, Case No.3-9/13, 10-11.

<sup>138</sup> Supreme Court of Russian Federation, 11 February 2015, Case No. 5-APG14-11, 5.

<sup>139</sup> *Dogru v. France*, par. 36.

<sup>140</sup> Conseil d’Etat, SSR., 2 Novembre 1992, Kherouaa, application No.130394, rec. p. 389.

and teenagers during their classes (especially sport classes) at schools may cause different diseases.”<sup>141</sup> Interestingly, the list of the potential diseases is rather elaborated: it includes negative influence on the brain vessels, problems with the cervical spine and worsening of the vision. The Court also notes that Federal Law N273 “On Education” sets main principles of the educational system in Russia as “humanistic character, priority of the health and human life.”<sup>142</sup> That way the Court justifies the ban on wearing any headwear by students at state and municipal schools. To summarize, Russian courts stress the priority of the child’s psychological and physical health at the school as the reasoning behind forbidding the religious clothing at public schools, while for French Conseil d’Etat national interests of secularism and conformity to the laws on all levels are more important factors in regulating religious symbols at public schools.

The third part of the judicial test that we follow in our analysis is the question of proportionality: the measures used by the regulations to pursue the legitimate aim should be proportional to that aim. At this stage of the analysis, Russian courts justification of the ban on wearing religious clothing at public schools is quite like the ones expressed by Conseil d’Etat and the ECtHR. Russian courts point out that regulations of the students’ dress-code at school are implemented equally for all the students, regardless of their religious beliefs<sup>143</sup>, while Conseil d’Etat notes that the principle of the secularism is also equally applied to every student “without the discrimination based on students’ religious beliefs.”<sup>144</sup> Finally, according to the ECtHR, “the school rules on health, safety and assiduity [...] were applicable to all pupils without distinction”<sup>145</sup> which justifies the ban on wearing headscarves during sport classes in *Dogru v. France*. Another evidence of “headscarf ban” proportionality in all three jurisdictions is the availability of the alternative options to realize applicant’s right to education. According to Russian and French courts, as well as the ECtHR, the restriction of the public manifestation of applicant’s religious beliefs does not

<sup>141</sup> Supreme Court of Russian Federation, 10 July 2013, Case No.9-APG13-2, 3.

<sup>142</sup> Supreme Court of Russian Federation, 11 February 2015, Case No. 5-APG14-11, 4.

<sup>143</sup> Supreme Court of Russian Federation, 10 July 2013, Case No.9-APG13-2, 5.

<sup>144</sup> Conseil d’Etat, SSR., 5 December 2007, application No.295671.

<sup>145</sup> *Dogru v. France*, par. 68.

“impair the very essence of the applicant’s right to education”<sup>146</sup> because there are many alternative options to obtain the education, such as studying at private religious schools or following the individual program at the state school<sup>147</sup>, as offered by Russian courts, as well as being taught by parents or one of the parent (or any person of applicant’s choice) or taking correspondence courses<sup>148</sup>, as suggested by Conseil d’Etat. To summarize, Russian and French courts together with the ECtHR present the same arguments for the support of the claim that restrictions on wearing religious clothing at state schools is proportionate to the legitimate aim of protecting the rights of others: firstly, the regulation of the dress code is applied equally to all students without any discrimination on the ground of religion, and secondly, applicants had various alternative ways to realize their right to education if they did not agree with the regulation.

Content comparison of the relevant case-law on prohibition of wearing religious clothing at public schools from Russian Supreme and Regional Courts, French Conseil d’Etat and the ECtHR shows that even though all the cases consider the same issue and similar situations (wearing headscarves by Muslim students at state and municipal schools), there are many differences in the court’s approach to the issue and argumentation points, even though, all the cases support the restrictions on the public manifestation of the religious beliefs at school. These differences are rooted in the fundamentally different legal and political systems of Russia and France, as well as distinctive systems of national values and cultural context. First of all, Russian courts in principle do not recognize that there has been an interference with applicant’s freedom of religion and considers regional enactment establishing a dress-code for students in state schools as a mere regulation of school’s life in order to discipline students. The biggest issue for Russian courts has been to prove that the requirement “prescribed by law” was fulfilled correctly, even though it was regional administration, not federal law, who issued the enactment. In contrast, in France with its unified strictly hierarchical legal system, the Conseil d’Etat does not concern itself with the

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<sup>146</sup> Ibid, par. 80.

<sup>147</sup> Stavropol Regional Court, 22 March 2013, Case No.3-9/13, 8.

<sup>148</sup> Conseil d’Etat, SSR., 5 December 2007, application No.295671.

question of the legality of the regulations. The school's internal rules always have a legal basis: the only problem with them might be that they are too vague and general in form or there has been a wrongful application of the rule. This fundamental difference in the court's approach can be explained not only by the federal state structure of Russia versus the unitary state structure of France, but also by the social-political and culture context of these two countries (discussed in Chapter One). Principles of secularism and secular education, as well as unified French culture are the foundational principles of French Republic, while the Russian government is very reluctant to issue any "unified" federal laws on restrictions of the freedom of religion applying equally to all regions, preferring to leave such decisions within the regional governments' authority, who are believed to act according to regional social and cultural peculiarities. Secondly, while having the same legitimate aim – protecting the rights of others – French and Russian courts build their detailed explanation of that aim in a very different way. The cornerstone of the Conseil d'Etat and the ECtHR argumentation is student's duty of assiduity, the duty of following the rules, starting from the school's internal rules and extending to the educational mission of the national laws and republican principles. Ostentatious public manifestation of religious beliefs has to be restricted not because of the religion, but because it disturbs the order at school and in the French society and undermines establishment mission of school and fundamental principle of secularism of the French Republic. In contrast, Russian courts assign primary importance to the child's best interests. According to them, having a dress code at school not only disciplines students and makes the educational process more productive, it also eliminates social, ethnic and religious differences among students, which in turn helps to avoid conflicts and to make every student feel as an equal member of the school community. Thus, both French and Russian courts play on the national cultural values and principles to justify the restriction of the religious manifestation: in France, on the notion of assiduity and republican principle of the secularism, and in Russia, on the basis of the best interest of the child and equality.

## Conclusion

The current research represents the comparative analysis of the state restrictions on the public manifestation of religious beliefs by students in state and municipal schools of the primary, secondary and high school levels in Russia and France. As described by many international and European human rights instruments, such as the International Covenant on Civil and Political Rights, the European Convention of Human Rights, the Charter of Fundamental Rights of the EU, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and among others, freedom of religion or belief has two dimensions: the *forum internum*, the right to hold certain opinions and beliefs or to change them, which is a non-derogable right, and the *forum externum*, “the right to practice one’s religion [...] and to profess this faith(religion) or conviction in private or in public,”<sup>149</sup> which can be restricted by the state when necessary and based on the grounds of “public safety, order, health, or morals or the fundamental rights and freedoms of others.”<sup>150</sup> Considering that “wearing distinctive clothing or headcoverings”<sup>151</sup> is a part of the *forum externum* of the freedom of religion, as stated by the General Comment 22 of the Human Rights Committee on ‘Article 18 (Freedom of Thought, Conscience or Religion)’, this research analyzes legislation and cases on wearing religious clothing by students in public schools in the light of the national and international principles and limits of the freedom of religion and state-religion relations in Russia and France. The main geographical focus of the research is Russian Federation because of its unique approach to the protection of the freedom of religion. It is a country with a constitutionally secular state but also with a strong Orthodox Church that is often involved in political questions and with a great cultural, ethnic, and religious diversity that is protected by the Russian Constitution. The Russian state has rather liberal

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<sup>149</sup> Krömer, Peter, "THE FUNDAMENTAL RIGHT TO FREEDOM OF RELIGION (Freedom Of Belief)", in *Conference Of European Churches, Church & Society Commission*, Article 4, accessed at <http://www.cec-kek.org>.

<sup>150</sup> ICCPR, Article 18 (3).

<sup>151</sup> UN Doc CCPR/C/21/Rev 1/Add 4, adopted 29 July 1993, accessed at <https://www1.umn.edu/humanrts/gencomm/hrcom23.htm>.

legislation on the freedom of religion that does not interfere with the public manifestations of religious beliefs. However, four years ago it allowed regional authorities to establish the standardized dress-code for the state school students and to ban wearing religious clothing and headwear at public schools. Thus, the ultimate goal of this research is to establish whether these changes in the state approach to the freedom to manifest one's religious beliefs means that Russian law-makers will follow the Western approach of total state secularization or will leave it for the regional authorities to decide whether to introduce the restrictions on freedom of religion or not. The Western approach of the total secularization of public space is presented to the very high degree by the French state, which now banned wearing religious clothing not only at schools but also in any public places (in this case, only if it covers the face). Thus, the French legal system is an interesting contrast to Russian legislation and adjudication on the freedom to manifest one's religion at state and municipal schools. Russian and French approaches to the restrictions on the freedom of religion were compared in three dimensions: historical, political and cultural contexts relating to religion and specifically, Islam; current legislation on the freedom of religion and religious manifestation by students at public schools; and finally, the case-law of the Russian and French courts, as well as the ECtHR that concerns wearing religious clothing by students at state schools. The ECtHR was added as an additional example of the European approach to the issue and because the applicants who lost cases in Russian Supreme Court are planning to apply to the ECtHR.

Even though Russian legislation prohibiting religious clothes and symbols at state schools does not specifically mention Islamic headscarves and similar French legislation lists it together with Jewish kippa and Sikh turban (and other potentially "ostentatious" religious clothing items), it is rather clear that the Muslim headscarf or veil is the main focus and target of the both French and Russian legislation because the number of people wearing religious clothing in other religions is not as significant as Muslim women and girls, either in France or in Russia. Thus, the religious group most targeted by these regulations is Muslim women, especially, since according to the liberal

feminist theory, the religious devotion demonstrated by wearing Islamic headscarf is incompatible with European cultural values. Similar views have been expressed by Russian President Vladimir Putin in 2013 when he publicly stated: “In our country and in the Muslim regions specifically there is no such tradition.”<sup>152</sup> That phrase also shows that Russian (as well as the French) government considers the Muslim headscarf more and more as a sign of the influence of radical and dangerous Islam coming from the Middle East that is foreign, in contrast with “domestic” Islam and potentially connected with terrorism. These are additional social factors that influence the law-makers in both Russia and France. Nonetheless, the main focus of the research are the state-religion (specifically, state-Islam) relations, as well as legal forms and official state reasoning of the restriction on freedom of religious manifestation by students at public schools.

At the very basic level of the legal principles, legislation regulating public manifestations of religious beliefs by students at state schools in France and Russia is similar: it is based on the constitutional principle of the secular state that has an ultimate responsibility to provide secular primary, secondary and high school education; it has a legitimate aim of protecting the interests of others (particularly, other students); and it is equally applied to all the students without distinction by religion, as well as it has legal safeguards, such as judicial reviews it went through. Nonetheless, the detailed analysis of the cultural and political context of the regulations, as well as its legal forms and the case-law regarding these regulations, shows that the basic principles have different meaning for Russian and French legal and political systems and that Russian political system, the history of the state-religion relations, and fundamental cultural values are so distinctive from the French ones that it can be said with a high degree of probability that Russia would not introduce a federal ban on wearing religious clothing by students at public schools. The most fundamental difference can be found in the philosophical ground of the state-church relations: the secular state in France based on the principle of *laïcité* is in its nature a synonym of secularism, i.e. an ideology of an absolute

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<sup>152</sup>“Hijab? There is nothing good about that!’ – Putin answers the questions of Russians”, 2013, accessed at <http://www.ansar.ru/sobcor/2013/04/25/40180>.

absence of religion in public life, while Russia because of the traditions of multiculturalism is leaning more towards secularity, i.e. the system of state-religion relations where the state does not identify itself with any religion, but allows all beliefs to exist in both private and public spheres. This distinction is very well expressed in the relevant legislation of Russia and France: the French Constitution mentions secularism as one of the founding principles of the Republic in the very first Article and does not have other provisions that would specifically protect freedom of religion, while the Russian Constitution states only in the Article 14 that Russian Federation is a secular state and it does not establish any religion as the state one and has a provision that is the exact copy of the Article 18 of the ICCPR providing the full description of what is protected under the freedom of religion. Moreover, Russia has a separate federal law, specifically devoted to the freedom of conscience and religion, while France mentions freedom of religion only briefly in the Declaration of Rights and the Law on Separation of Church and State and states the limitations of this right. The roots of the differences is in the history of the state-building of France: *laïcité* has been a fundamental ideal for French citizens since the Third Republic as one of the goals of the French Revolution was to overthrow the power of Roman Catholic Church. In contrast, in the Russian historical and political development, religion (especially, Orthodox Church) always played a significant role and that is well reflected in the federal law on “Freedom of Conscience and Religious Associations” that states in its preamble that Orthodox Church and other religions “constitute an integral part of the historical heritage of the peoples of Russia.”<sup>153</sup> Moreover, members of different religions (and especially, Islam) are very geographically dispersed in Russia, so Russian federal government has to find particular approach and policies to each of its many regions, according to not only the religious or ethnical majority in the region, but also the economic, social and political significance of the region for the central government. For example, the highest concentration of Muslims in Russia are in the Volga region and the Northern Caucasus, each of which expressed the desire to become independent from Russian state after the collapse of the

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<sup>153</sup> Federal Law "On Freedom of Conscience and Religious Associations", Preamble.



USSR, but were kept by the Russian government as very rich economically and important politically regions. Nonetheless, for both regions, Islam is still an important cultural and political factor of the ethnic identity and political self-determination, and the Russian federal government has to be very careful with limiting their freedom of religion. This “ethnic” dimension of the “headscarf ban” is common for Russia and France as Islam in France is practiced predominantly by immigrants from Asia and Africa and in Russia, after the collapse of the USSR, it became the way of ethnic personalization substituting for Soviet citizenship personalization for many Tatars and Caucasians. Nonetheless, the hidden political reasons for state’s attempt to limit Muslims’ freedom of religion are different: in France, it is difficult economic and social conditions of immigrants’ life and their marginalization and criminalization, as well as Islamization as a challenge to French Republican values of “common identity”. Meanwhile, in Russia, possible threats for the state presented by Islam are more of a political nature: separatism of Muslim regions and aggressive versions of Islam, such as Wahhabism, popular in some regions of the Northern Caucasus. These problems are less serious than Islamization in France and spread only locally, not on the national level, as the marginalization of immigrants in France. Moreover, the assimilation of the Muslim regions by Slavic culture took place several centuries ago (Volga region – in 17-18<sup>th</sup> centuries, the Northern Caucasus – in the 19<sup>th</sup> century), while the Islam came to France with the residents of its former colonies rather recently, after the World War II. Thus, in the system of state-religion relations Russian and France have different understandings and national meanings of the concept of secular state, as well as different political and social contexts of the state’s relations, specifically with Islam. Nonetheless, a different vision of the state-religion relations in Russia is also possible: on the one hand, Russia has something close to an established church (Slavic Orthodox Church), highly supported by the state, which aspires to monopoly status, and on the other hand, Islam in Russia constitutes a significant religious minority that could become either radicalized or separatist. The state's goal is to try to “domesticate” Islam, and to enter a cooperative relationship with the branch of Islam that will be loyal and moderate.

A second major difference between Russia and France that determines the conditions of the restrictions on the public manifestation of religious beliefs by students at public schools is the state structure: Russia is a federal state with the law-making competence being divided between federal and regional governments, while France is a unitary state with the strong Republican principle of “one identity”, “one nation” and the same regulations for everyone. This difference is reflected the best in the cases argumentation where the main challenge for Russian courts is to prove that the enactment introducing requirements to the students’ dress code at state schools (that forbids wearing religious clothing and symbols) issued by regional administration of Stavropol region and the Republic of Mordovia is legal and “prescribed by law” considering that only federal law may restrict human rights and freedoms, not a regional enactment. That is why the main claim in all Russian cases on “headscarf ban” is regional authorities having gone beyond their political competence. In contrast, the French Conseil d’Etat does not even consider proving the legality of the school’s internal rules in the relevant cases as according to the national judicial system of France. School’s internal rules are always based on the national principles of secularism and national legislation, so the only controversial points might be the form of the school regulations (whether it is written in very general terms and presents a blanket ban) and their actual implementation. The specificities of the federal state structure are used by Russian government to avoid the conflicts with important regions over the restrictions on the religion that is cultural or ethnic feature of their population. It introduces very flexible and vague language in the Model Act on the requirements to the student’s dress-code by Ministry of Education and Science (it only states that student’s appearance should be of a secular nature) that allows various interpretations by regional authorities that can adapt it to the regional cultural and social context. While the French “headscarf ban” is binding on the whole territory of France, the Russian enactment is binding only on the territory of the region where a particular regional administration issued it. Such an approach is rather typical for freedom of religion in Russia as seen from the consequences of the previous federal law on freedom of conscience, when unhappy with its liberal provisions, regional authorities

in 25 to 30 regions issued their own regional laws that were much more restrictive to the freedom of religion.

The protection of the multiculturalism through the federal system of dispersing the power in Russia is the exact opposite of the fundamental concept “vivre ensemble” of the French Republic that requires from French citizens to prioritize community’s interests over individual beliefs. Being guided by this principle, Conseil d’Etat (and the ECtHR after it) offers an additional legitimate aim for the interference with applicant’s freedom of religion – public order. Some researchers even suggest that in the case of “headscarf ban” “there is another actor in this legal and social drama: French society, with its shared culture and values.”<sup>154</sup> The transfer of these unified French Republican values and preparing the child to be a “truly” French citizen is the most important mission of the state education in France, according to French Minister of Education as he states it in his circular of 18 May 2004 explaining the restrictions on wearing “ostentatious” religious signs at public schools. That is why wearing such signs presents the threat not only for the school’s order, but in general, for the normal functioning of the state educational service.<sup>155</sup> It also challenges the “duty of assiduity” which is any student’s legal obligation (according to the French Minister of Education) because it prevents students from participating in the sport classes, they argue with teachers and school administration refusing to remove the headscarf, and they might challenge the teaching process by wearing religious signs that propagate their religion and cause ideological pressure on other students. Thus, the cornerstone of the French restrictions of wearing headscarves and other “ostentatious” religious symbols by students at public schools is the protection of the public order that is implemented in the student’s duty of assiduity.

In contrast, Russian enactment introducing the requirements to the student’s dress code at state schools does not have religion as a target. Russian courts do not even recognize that this

<sup>154</sup> The Headscarf Affair: The Conseil d’État on the Role of Religion and Culture in French Society, 612.

<sup>155</sup> [Un refus ne serait justifié que par le risque d’une menace pour l’ordre dans l’établissement ou pour le fonctionnement normal du service de l’enseignement], Conseil d’Etat, Opinion « On wearing Islamic headscarf », No.346893, 1989.

enactment interferes with applicant's right to manifest her religion. The main focus of this enactment, according to Russian courts, is the best interests of the child, his psychological and physical health. School dress codes discipline students, make them feel an equal member of the school community by eliminating any signs of social, economic and religious differences. As for the physical health, both Russian legislation and adjudication cite the letter from The Federal Service for Supervision of Consumer Rights Protection and Human Well-Being that claims that headwear used by students during classes is harmful to their health. To summarize, the argumentation of the state federal and regional authorities for introducing a "headscarf ban" is based on the values familiar for Russian citizens, such as family and the best interests of the child, while for France, the argumentation is based on the concepts of public order and "one nation, one culture, one identity."<sup>156</sup> Considering that Russian and French legislation and case-law regarding the restrictions of the religious manifestation in public schools has very different legal forms (federal law versus regional enactment) and implementation (binding on the whole territory of France versus only the territory of the region where it was issued) and is based on different political and cultural concepts (secularism versus secularity; public order and unified Republican values versus family and children values), I conclude that most probably, the Russian federal government will not follow French model of secularization by introducing a federal ban on wearing religious clothing at school, but will leave the decision to the regional authorities to avoid conflicts with the predominately Muslim regions that are important for Russian state economically and politically. That conclusion is supported by the recent events. On the March 26, 2015 the Interreligious Council of Russia adopted a Statement saying that "[t]he best response to the emerged uneasy discussion were the solutions found in many regions and institutional settings that allowed ... Muslims, Jews and Orthodox Christians to wear head-dresses, not covering a face... Such practice shows that one can find a way out of the most uneasy situations with dignity."<sup>157</sup>

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<sup>156</sup> *Islam and the European Legal Systems: The Headscarf Debate in France and Germany as Case Studies*, 6.

<sup>157</sup> Statement in respect of discussions around external expressions of piety (2015), adopted by the Interreligious Council of Russia on 26 March, 2015, Par. 6, accessed at <http://interreligious.ru/dokumenty/vyrazhenie-religioznosti/>.

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