

# LEGAL REGULATION OF INTERRELIGIOUS RELATIONS IN THE FIELD OF GENERAL EDUCATION: THE RATIO OF PUBLIC AND PRIVATE INTERESTS

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## Abstract

**Purpose:** In article on the basis of the formal legal analysis of the national legal system and the international jurisprudence the key principles of state legal regulation of the confessional relations in the sphere of the general education are distinguished; the need of their addition and unification at the national level for the purpose of providing the balanced ratio of public and private interests in the context of providing the integrated rights and personal freedoms is demonstrated.

**Methodology:** In work, various general scientific methods, acceptances, and methods of logical knowledge are used: analysis and synthesis, system, formal and logical, formal legalistic.

**Result:** It should be emphasized that the process of legal regulation of the modern secular state is not enough to adhere to the principle of religious neutrality and minimize the amount of religious component in the public spheres of life of the individual and society, including the system of General education. Currently, such a state is designed to ensure a balance between public and private interests in this area.

**Applications:** This research can be used for universities, teachers, and students.

**Novelty/Originality:** In this research, the model of Legal Regulation of Interreligious Relations in the Field of General Education: The Ratio of Public and Private Interests is presented in a comprehensive and complete manner.

**Keywords:** *human capital, methods, and technology for assessment of human capital, regional university, university graduate.*

## INTRODUCTION

The modern states use the different models of regulation of the confessional relations assuming a measure of the legal impact of the state on their participants. The most common is the secular model, which implies lack of ideology, obligatory for all citizens, provides to each person liberty of conscience and religion, separates religious associations from the government, guarantees relative non-interference of the state to affairs of religious associations. At the same time also a variety options of such model realization are offered: from the declaration of the state confession, formalization of the legal status of religious associations depending on their role in the history and values in social life to a complete elimination of the last from public life, expressed distancing of the state, its rigid confessional neutrality. The model of legal regulation of religious relations determines the approach of the state to the question of the need to consolidate and acceptable limits of the religious component in the field of General education. In this regard, it should be emphasized that the basic value in these States is democracy, which implies the establishment of such a process of governance, its forms, mechanisms, procedures, the essence and content of which should be based on the recognition, observance and protection of the individuals` rights and freedoms, subordination of the minority to the majority, protection of minority rights, recognition of the principles of social justice, effective balance of public, social and private interests (Pylin, 2011). It seems that these characteristics apply to the secular model of the state, proving the need for a balanced ratio of public (state, society) goals and objectives of General education and private interests of the individual, including the religious aspect.

## METHODS

In work, various general scientific methods, acceptances, and methods of logical knowledge are used: analysis and synthesis, system, formal and logical, formal legalistic.

## RESULTS AND ITS DISCUSSION

A number of modern secular States, implementing confessional and non-confessional models in the system of General, state-guaranteed education, allow for the law-teaching (catechistic) nature of the religious component; include strengthening of confessional identity in number of educational tasks; postulate education according to the ethical standards accepted in the religious community; fix inclusion in educational process without prejudice to the general education purposes of school of separate elements of a religious cult. At the same time, by establishing a mandatory religious component in the system of General education, the state, in accordance with the chosen model, may also provide for its non-confessional nature: the possibility of choosing the type of such education, sometimes guaranteed by the state, or completely abandoning it, as well as religious ceremonies at school, based on the recognition of the freedom of conscience and religion of the student and the confidentiality of his or her religious beliefs. For example, the consolidation

of the religious values, sometimes – specific confessions, as one of the educational process goals in public educational organizations at the legislative level is fixed in Austria ([SchOG от 25 июля, 1962](#), section. 2(1)), Norway and a number of other Scandinavian countries, Italy. [School Standards and Framework Act \(1998\)](#)

In many modern states realization within the general education program at the public (municipal) schools of the compulsory subjects having in whole or in part, the religious contents are allowed.

For example, within the confessional model of General education implemented in Austria for all students who are members of state-recognized religious communities or churches, religious classes (Religion) on their confessions are obligatory in primary, secondary school, secondary and higher vocational schools. The Italian Republic, in compliance with the Lateran Treaty with the Catholic Church of 1984 and 1985, taking into account that the principles of Catholicism are part of the historical heritage of the Italian people, assumes the obligation (including financial) to ensure the teaching of the Catholic religion in public schools. According to the 1985 Agreement, in primary school, such education is organized in the amount of two hours per week, and then – in accordance with the schedule in the subsequent stages of schooling.

According to not confessional model of the general education, Article 80 of the Education act of 2002 ([Education Act, 2002](#)) realized in Great Britain, Article 69 of School standards and the Frame law of 1998 ([School Standards and Framework Act, 1998](#)) provide that the educational program for each school in England has to include a basic unit which provides among the others requirements religious education for all registered pupils of school according to the so-called "agreed" curriculum in which drawing up regional authorities and representatives of recognized local faiths participate (including Churches of England). At the same time, according to paragraph 3 of article 375 of the education Act 1996, each such "agreed" curriculum should reflect Christian religious traditions as the main ones in the UK, while taking into account the teaching and practice of other major religions represented in the state in the relevant area ([Education Act, 1996](#)). A related trend is also taking place in Norway. According to section. 1-1 Chapter 1 of the Law on primary and secondary education discipline "Christianity, religion, philosophy" is an obligatory component of the primary education program for all students. However, its teaching should be neutral – providing not only knowledge of the religion and the idea of it as a cultural heritage, but also knowledge of other confessions and beliefs ([Education Act, 1996](#)).

An interesting fact is that in many states that include a religious component in the system of General compulsory education in state (municipal) schools (Austria, Italy, Spain, etc.), the teaching of religious disciplines can implement only persons who have received permission (admission) of the relevant religious organization or religious community. [Reid, E. M., & Toffel, M. W. \(2009\)](#)

At the same time, States, in the context of the right to freedom of conscience and religion, as a rule, make attempts to take into account the (private) interests of students and their parents (legal representatives), who adhere to religious and philosophical views, who have not received state support and, accordingly, the necessary reflection in the educational process in comparison with the teaching of the priority (recognized by the state) confession. In this regard, additional legal guarantees are established, in particular: the right to refuse, in whole or in part, to study subjects with religious content, as well as to participate in religious activities at school; the right to choose alternative disciplines of a non-religious nature; the opportunity to exercise one's right to religious education outside school. In addition, the content of training courses, in addition to covering the teachings of the main denomination, usually includes at least a general description of other religious and philosophical systems, including denominations represented in the area.

For example, in Austria, students under the age of 14 can be exempted from compulsory religious classes at school on the written application of their parents (legal representatives), and older than 14 years – on the basis of their own written application, choosing instead of religious discipline course "Ethics" ([Religionsunterrichtsgesetz от 13 июля, 1949](#), section. 1(2), 2, 3, 4, 7b). In Italy, students have the right to attend Catholic classes, and their parents (legal representatives) must annually inform the school administration whether their child will attend such classes (paragraph 9 of the 1984 Agreement). In addition, on the basis of the 1985 Agreement with the Catholic Church and the Presidential Decree of 12.02.1985 № 104 in schools in Italy provided the introduction of specific religious courses (not necessarily Catholic) on the basis of agreements between the state and recognized religious confessions– in accordance with the requests of students and their parents (legal representatives). In turn, Norway actively supports an alternative in the confessional aspect of the education system – private schools created by religious organizations (for example, financed up to 85% of the costs associated with their creation and operation). [Reid, E. M., & Toffel, M. W. \(2009\)](#)

In the context of the considered examples, the non-confessional model of General public education in Russia looks logically more complete, which has an expressed secular nature, but at the same time assumes the consolidation of the religious component in the General education program. It is implemented, in particular, in the framework of such subject area as "the Formation of the initial ideas about secular ethics, about domestic traditional religions, their role in the culture, history and modernity of Russia", where the choice of parents (legal representatives) students can study one of six courses: "Fundamentals of Orthodox culture", "Fundamentals of Jewish culture", "Fundamentals of Buddhist culture", "Fundamentals of Islamic culture", "Fundamentals of world religious cultures", "Fundamentals of secular ethics" ([Prikaz Minobrnauki Rossii от 06 oktyabrya, 2009](#)). However, alternative options for religious education are regulated by the state in a fragmented manner.

In turn the analysis of the specified and other national sources of rules of law in the sphere of the general education allows to conclude that public (state, public) education interests of secular character possess a priority in relation to the private interests of students and, especially, their parents (legal representatives) in the context of freedom of conscience and religion. At the same time, the choice of the state legal regulation model is often dictated by historical, cultural traditions and peculiarities of the state. [Haufler, V. \(2013\)](#)

The practice of legal regulation shows that the more "confessional neutral" the state is in the sphere of General education; the fewer contradictions and conflicts arise. However, it is impossible to completely avoid the latter, since modern society is extremely heterogeneous in its ideological views and preferences, which inevitably affect the views and expectations of the educational process. Accordingly, the insufficiently systematic and balanced regulation of educational and religious relations in the state gives rise to disputes that are the subject of consideration by both national and international courts. At the same time, at the international level, the main actor in this area is the European Court of human rights, whose decisions are of some importance for national law-making practice. [Haufler, V. \(2013\)](#)

In the context of the issues under consideration, the subject of disputes has repeatedly been the limitation of the legal capacity of representatives of non-core or non-recognized confessions in comparison with those recognized in the state. For example, parents of students who belong to an unrecognized state or an insufficiently widespread denomination and are forced to undergo compulsory education in state (municipal) schools in disciplines that reveal the content of mainly one, widespread in the state and having state support for the denomination to which they do not belong, often do not have the legal possibility of complete exemption from such classes or any influence on the content of education. The fact that state (municipal) educational organizations have religious attributes of a particular confession, and the prohibition of wearing religious attributes of clothing in these organizations, and the refusal of the administration to release students (for religious reasons) from compulsory mixed swimming classes in primary school were also subject to appeal. [Haufler, V. \(2013\)](#)

At the same time, the European Court of human rights has repeatedly noted the importance of freedom of thought, conscience, and religion, which should be protected as the basis of a democratic society. Such is recognized by the Court as a vital element that contributes to the formation of the personality of believers and their life concept, as well as being essential for unbelievers, antagonists, skeptics or those who are indifferent to the religion. However, realizing that the relevant individuals rights and freedoms may not be absolute, and regulation in the field of religious relations for objective reasons has a multivariate, the European Court of human rights establishes certain limits of discretion of the state in such regulation, including in the field of education, allows the establishment of restrictions on the rights and freedoms of the individual, based on the following principles: the litigated interference must comply with the law, that is, the measure of intervention must be defined in national law; restrictions should be established to achieve the legitimate goal of protecting the rights and freedoms of others, maintaining public order, etc. [Bartley, T. \(2003\)](#); restrictions should be inherently justified, that is, necessary in a democratic society to achieve the above goals, as well as – proportional to the means used and the goal; restrictions should be predictable, accessible to interested persons, that is, formulated clearly enough to allow them to foresee to a reasonable extent, under appropriate circumstances, the consequences that may result in certain actions of such persons. [Bartley, T. \(2003\)](#)

## CONCLUSION

The considered and other decisions of the European Court of human rights on the stated issues also demonstrate its recognition of the priority of public interest in obtaining basic (public) education over related private interests in the context of freedom of conscience and religion, both with respect to students and their parents (legal representatives). The legal positions of the Court contained in these decisions also make it possible to judge the admissibility of certain priority confessions recognized by the state (religions of the majority and or confessions having special historical or cultural significance), their teachings in the relevant segment of General education, provided that other religious and philosophical views are respected. This approach is essentially aimed at ensuring the priority of the right to education and social adaptation, the goals, and objectives of the educational process in relation to various aspects of the right to freedom of conscience and religion. In General, supporting the stated position of the European Court of human rights, it should be noted that the state in the process of legal regulation of educational and religious relations, which supports the above priority of public interests, should strive for preventive leveling of disputes in this area. It seems that the establishment of additional state guarantees (legal opportunities) designed to at least partially compensate for restrictions on the freedom of conscience and religion of students and (or) their parents (legal representatives) in obtaining compulsory General education should contribute to the solution of this problem. In this regard, in order to systematize the conceptual and legal basis of the state legal regulation of the religious component in the field of General education, we consider it reasonable to supplement the principles declared by the European Court of human rights, which are subject to consolidation (or accounting) in the national legislation on education, as follows. [Bartley, T. \(2003\)](#):

- The compensatory principle assuming contextual state guarantee of realization of freedom of conscience and religion trained, their parents (legal representatives) in the context of restrictive legal regulation of separate segments of the confessional relations in the field of the General education proceeding from the priority of public interest in receiving such education;

- The principle of universality of legal regulation of educational and religious relations at the national level, based on the priority ratio of public and private interests in this area, which determines the obligation of each state to establish minimum (unified) standards of the above guarantees. [Bartley, T. \(2003\)](#)

In summary, it should be emphasized that in the process of legal regulation of the modern secular state is not enough to adhere to the principle of religious neutrality and minimize the amount of religious component in the public spheres of life of the individual and society, including the system of General education. Currently, such a state is designed to ensure a balance between public and private interests in this area. [Reid, E. M., & Toffel, M. W. \(2009\)](#)

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