

# THE OBLIGATION OF THE MINISTER RESPONSIBLE FOR SCHOOL EDUCATION TO COOPERATE WITH RELIGIOUS ASSOCIATIONS IN THE ORGANIZATION OF RELIGIOUS EDUCATION IN PUBLIC SCHOOLS: A COMPARATIVE ANALYSIS OF THE LEGAL SYSTEMS OF POLAND AND HUNGARY

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**Abstract.** The article constitutes an in-depth legal and comparative analysis of the duties and competences of the Minister of Education in Poland and Hungary in the field of religious instruction in public schools. The structure of the article is composed of several key sections: The authors emphasize the importance of cooperation between the state and religious associations in implementing religion-related educational functions. The discuss constitutional frameworks and international agreements, particularly the Concordat between the Holy See and the Republic of Poland, which define and limit the Minister's authority in matters of religious instruction. The authors analyze statutory provisions governing the Minister's responsibilities, including the legal requirement to act "in agreement" with churches and religious associations. Particular attention is given to practical applications of these legal norms and the differences between the Polish and Hungarian legal systems. *De lege ferenda* conclusions present the main findings of the comparative analysis and puts forward *de lege ferenda* recommendations for legislative reforms.

**Keywords:** cooperation between the State and the Church; teaching religion; the minister of education; "in agreement"; the right of parents to bring up.

## INTRODUCTION

On 26 July 2024, the Polish Minister of Education<sup>1</sup> issued a regulation amending the Regulation on the Conditions and Procedures for Organizing Religious Education in Public Kindergartens and Schools.<sup>2</sup> This regulation introduced amendments to the Regulation of the Minister of National Education of 14 April 1992 on the Conditions and Procedures for Organizing Religious Education in Public Kindergartens and Schools.<sup>3</sup> This amendment introduced, among others, a minimum number of students required to establish a religion class group, the possibility of forming interdepartmental and interclass groups, and the inclusion of students with special educational needs statements.

The Regulation of 26 July 2024 was issued pursuant to Article 12(2) of the Act of 7 September 1991 on the Education System.<sup>4</sup> Under this provision, the minister responsible for education and upbringing (i.e. the Minister of Education), in agreement with the authorities of the Roman Catholic Church, the Polish Autocephalous Orthodox Church, and other churches and religious associations, shall issue regulations specifying the conditions and procedures for organizing religious education in schools.

The exercise of the minister's obligation to act "in agreement with" the aforementioned entities in issuing the regulation has been subject to markedly divergent interpretations, not only by political circles but above all by the entities referred to in the cited provision of the Act on the Education System.

The aim of this article is therefore to delineate the scope of competence of the public authority – namely the Minister of Education – in relation to the conditions and procedures for organizing religious education in public kindergartens and schools. Given the value of comparative legal research, this aim will be pursued by two authors specializing in Polish and Hungarian law. Such an approach enables not only an analysis of the legal basis of the

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<sup>1</sup> In the Act of 4 September 1997 on Departments of Government Administration (Journal of Laws of 2024, items 1370 and 1907), one of the departments is "Education and Upbringing." Pursuant to Article 20(1), this department shall be responsible for: 1) the education, instruction, upbringing and physical culture of children and young people, except for matters reserved to the competence of other public-administration bodies; 2) the organisation of children's and youth organisations, including the funding system for State-implemented tasks carried out by such organisations; 3) the provision of material assistance to children and young people; 4) international cooperation in respect of children and young people. The head of this department is the Minister of Education (Barbara Nowacka has held this office since 13 December 2023), and the government administration office servicing the minister responsible for the "Education and Upbringing" department is the Ministry of National Education.

<sup>2</sup> Journal of Laws of 2024, item 1158.

<sup>3</sup> Journal of Laws of 2020, item 983.

<sup>4</sup> Journal of Laws of 2024, item 750.

minister's actions and an assessment of their compliance with the principle of legality, but also the formulation of *de lege ferenda* proposals based on an analysis of the *de lege lata* state of the law in these countries.

The choice of these two countries for comparative legal analysis of the issue in question is deliberate and justified. Both countries share not only common historical experiences but also embarked on systemic transformation in the same year (1989). Of particular interest is the implementation at both the constitutional and sub-constitutional levels of international standards<sup>5</sup> concerning the respect for freedom of conscience and religion (including religious education in public schools, as guaranteed by Article 53 of the Constitution of the Republic of Poland and Article VII of the Fundamental Law of Hungary (which however does not explicitly refer to religious education in public schools) and the rights of parents to raise their children in accordance with their own beliefs (Articles 48 and 53 of the Constitution of the Republic of Poland). Also relevant to the religious education in public schools are the principles governing the relationship between the state and churches and other religious associations as set out in the constitutions of both countries (Article 25 of the Constitution of the Republic of Poland and Article VII (3) of the Fundamental Law of Hungary [Schanda 2011, 515-20],<sup>6</sup> to which paragraph (4) adds that the State and churches can cooperate in order to fulfil community goals, and religious communities that participate in such cooperations are considered to be established churches that benefit from specific privileges in fulfilling these goals) and the principle of legality, according to which public authorities act on the basis of and within the limits of the law (Article 7 of the Constitution of the Republic of Poland), and, in the case of the minister, in particular, Chapter VI of the Constitution of the Republic of Poland. This confirms that the issue addressed in the title, beyond its purely denominational character, also holds significant constitutional importance, which is of considerable relevance especially when assessing provisions of constitutional rank.

It should be noted that the aforementioned Regulation of 26 July 2024 was challenged before the Constitutional Tribunal by an application of the First

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<sup>5</sup> The reference here is primarily to the incorporation into the Hungarian and Polish constitutions of the European Convention on Human Rights, which had been signed and ratified prior to their adoption. Hungary signed the Convention on 6 November 1990 and ratified it on 5 November 1992; its provisions were incorporated into the Hungarian legal order by Act XXXI of 1993, which entered into force on 7 April 1993. Poland signed the European Convention on Human Rights on 26 November 1991 and ratified it on 19 January 1993, the same day on which it entered into force in respect of Poland. As of 1 May 1993, Poland recognised the jurisdiction of the European Court of Human Rights in Strasbourg. The provisions of the Convention have been reflected in the constitutions of both States.

<sup>6</sup> The separation of churches and the State was already prescribed in the Constitution that preceded the 2011 Fundamental Law.

President of the Supreme Court dated 26 August 2024,<sup>7</sup> and has already been adjudicated by the Polish Constitutional Tribunal.<sup>8</sup> The challenge was based,<sup>9</sup> *inter alia*, on the grounds that the provisions of the Regulation interfere with constitutionally protected and socially significant values, as well as the need to ensure that children receive moral and religious education in accordance with the beliefs of their parents, and on the grounds of the protection of the work of religious education teachers.<sup>10</sup>

It goes without saying that “the state is responsible, especially through public education system, to provide objective, full and balanced information on ideological issues” [Schanda 2018, 20]. This condition imposed on public education also implies, by its very nature, the teaching of religious education, as the teaching of the worldview of each denomination. At the same time, states must also take into account the fact that the negative side of freedom of conscience and religion (i.e. the possibility for a person not to belong to any religion) is also protected. Thus, religious education within public schools must be organized in such a way as to provide a coherent curriculum of religious education, but also to guarantee the right of choice as to whether or not a student wishes to receive religious education [ibid., 59].

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<sup>7</sup> Application of the First President of the Supreme Court dated 26 August 2024 concerning the review of the constitutionality of the regulation amending the regulation on the conditions and manner of organising religious education in public preschools and schools, case no. BSA III.4011.1.2024, [https://www.sn.pl/sites/Serwis\\_WWW/SiteAssets/Lists/Wydarzenia/AllItems/Wniosek%20Pierwszego%20Prezesa%20SC4%85du%20Najwy%C5%BCszego%20do%20Trybuna%C5%82u%20Konstytucyjnego%20z%20dnia%2026%20sierpnia%202024%20r.%20BSA%20III.4011.1.2024.pdf](https://www.sn.pl/sites/Serwis_WWW/SiteAssets/Lists/Wydarzenia/AllItems/Wniosek%20Pierwszego%20Prezesa%20SC4%85du%20Najwy%C5%BCszego%20do%20Trybuna%C5%82u%20Konstytucyjnego%20z%20dnia%2026%20sierpnia%202024%20r.%20BSA%20III.4011.1.2024.pdf) [accessed: 22.05.2025].

<sup>8</sup> It should be noted that three regulations issued by the Minister of Education, Barbara Nowacka, concerning religious education have been challenged before the Constitutional Tribunal. In addition to the regulation that forms the basis of the present analysis, the challenges pertain to: (1) the inclusion of grades in religion and ethics in the calculation of students' grade point average; and (2) the organization, as of 1 September 2025, of religion or ethics classes in the amount of one hour per week, scheduled directly before or after a student's compulsory educational activities. As of the time of writing (early May 2025), these matters have not yet been adjudicated by the Constitutional Tribunal.

<sup>9</sup> This refers to the judgment of the Constitutional Tribunal of 27 November 2024. Previously, following the application submitted by the First President of the Supreme Court, the Tribunal issued an interim measure suspending the application of the contested regulation. Consequently, as of 1 September 2024 (the beginning of the school year in Poland), para. 2(1) of the Regulation of the Minister of National Education on the conditions and manner of organising religious education in public preschools and schools (Journal of Laws of 2020, item 983) continues to apply in its previous wording.

<sup>10</sup> Case no. BSA III.4011.1.2024.

# 1. CONSTITUTIONAL AND CONCORDAT-BASED FOUNDATIONS OF THE MINISTER'S COMPETENCE REGARDING RELIGIOUS EDUCATION IN PUBLIC SCHOOLS

As indicated in the introduction, religious education in public schools in both Poland and Hungary is grounded in normative acts occupying the highest position in the hierarchy of legal sources – namely, the constitutions. Poland and Hungary are not exceptions in this regard within Europe: religion is taught in public schools in 23 European countries, and its presence is regarded as a standard feature of European educational systems [Tomasik 2010, 47-57].

The Polish Constitutional Tribunal, in its judgment of 27 November 2024, consistent with its earlier rulings on religious education in public schools, emphasized that a minister authorized to issue regulations on religious education must do so in compliance with constitutional and concordat-based norms governing this matter, and not merely with the provisions of the Act of 7 September 1991 on the Education System – the statutory basis for such delegation. This process of constitutionalization is of paramount importance,<sup>11</sup> *inter alia*, due to the obligation of public authorities to act on the basis of and within the limits of the law, as enshrined in Article 7 of the Constitution of the Republic of Poland, which articulates the principle of legality: “Public authorities shall act on the basis of and within the limits of the law” [Szymanek 2012, 53-84].

Of particular importance in this context is the position adopted by the Constitutional Tribunal in its judgment of 20 April 2020 (case no. K 3/17), in which it stated: “A consequence of the principle of a democratic state governed by the rule of law, as explicitly articulated in the Constitution, is the principle of legality – also referred to as the principle of formal legality – set out in Article 7 of the Constitution (‘Public authorities shall act on the basis of and within the limits of the law’), which the Constitutional Tribunal, in its jurisprudence, has regarded – alongside its material dimension – as the essence of the principle of a democratic state governed by the rule of law.”<sup>12</sup> Furthermore, according to the Tribunal’s position expressed

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<sup>11</sup> The adoption of the Constitution of the Republic of Poland on 2 April 1997 strengthened the position of religion as a subject in public education primarily because, pursuant to Article 8 thereof, “The Constitution shall be the supreme law of the Republic of Poland.”

<sup>12</sup> Judgment of the Constitutional Tribunal of 20 April 2020, case no. U 2/20, OTK ZU A/2020, item 61. In the further reasoning, the Constitutional Tribunal emphasized that “it holds the view that a consequence of formal rule of law is the obligation to define clearly and precisely, in legal provisions, the competences of public authorities, to base the actions of such authorities on the legal grounds set forth therein, and the prohibition of presuming the competences of public authorities in case of interpretative doubts (see the judgment of the Constitutional

in other rulings, “the principle of legality constitutes the core of the principle of the rule of law, whereby the competences of public authorities must be clearly and precisely defined in legal provisions, and any actions taken by such authorities must have a basis in those provisions; in cases of interpretative doubt, the competence of public authorities cannot be presumed.”<sup>13</sup>

As highlighted in the introduction to this analysis, the constitutional principles regulating the relationship between the state and churches are crucial for assessing the competence of the minister responsible for education and upbringing in matters concerning religious education in public schools. Among these principles, particular importance is attached to the principle of cooperation for the good of the individual and the common good [Rodak 2014; Piszko 2018]. Article 25(3) of the Constitution of the Republic of Poland provides that the relationship between the state and churches and other religious associations shall be based on the principles of respecting their autonomy and mutual independence, each in its own sphere, as well as cooperation for the good of the individual and the common good [Borecki 2022, 137-49; Garlicki 2016].

As rightly observed by Marcin Olszówka, “At the constitutional level, the only area of cooperation explicitly indicated by the constitution-maker is the implementation of the right to religious education in public schools, recognized as a human right (thus not merely a programmatic provision). It is worth noting that religious education as such – i.e., in terms of its content, form, and the doctrinal and moral requirements imposed on religious education teachers (catechists) – remains a strictly religious activity (*sensu stricto*), whereas, as an element of public education, it constitutes an area of cooperation between the State and religious associations performing religious functions *sensu largo*. In every instance, a necessary condition for undertaking such cooperation is the consent of both parties – secular and religious – who jointly recognize that a given undertaking serves to achieve constitutionally defined objectives” [Olszówka 2016]. The significance of these provisions can hardly be overstated, as evidenced, *inter alia*, by the application submitted by the First President of the Supreme Court to the Constitutional Tribunal on 26 August 2024.<sup>14</sup>

In this application, the First President of the Supreme Court rightly identified Article 53(3), in conjunction with Article 48(1) of the Constitution

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Tribunal of 14 June 2006, case no. K 53/05, OTK ZU No. 6/A/2006, item 66). There is no doubt that public authorities are to be understood as encompassing all branches of power in the constitutional sense – legislative, executive, and judicial (see the judgment of the Constitutional Tribunal of 4 December 2001, case no. SK 18/00, OTK ZU No. 8/2001, item 256).”

<sup>13</sup> See the judgments of the Constitutional Tribunal: of 24 October 2017, case no. K 3/17, OTK ZU A/2017, item 68, and of 14 June 2006, case no. K 53/05, OTK ZU No. 6/A/2006, item 66.

<sup>14</sup> Case no. BSA III.4011.1.2024.

of the Republic of Poland, as the relevant constitutional review standards in relation to the allegation that the Regulation of the Minister of Education of 26 July 2024, amending the regulation on the conditions and procedures for organizing religious education in public kindergartens and schools, infringes these provisions [Maroń 2024, 21-46; Ożóg 2015, 90; Borecki 2007, 35-42]. The first of these articles confirms that “Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48(1) shall apply as appropriate.” In turn, Article 48 guarantees that “1. Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions. 2. Limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment.” These provisions have been the subject of consistent commentary by the Constitutional Tribunal and extensive discussion in Polish legal scholarship [Bem 2010; Brzozowski 2010; Mączyński 2012; Nowak 2017, 55-83; Łętowska, Grochowski, Namysłowska, et al. 2013, 4-9; Matusiak-Frącczak 2010; Borecki 2018, 33-46; Idem 2010, 33-46; Maroń 2024, 21-46; Więcek 2013, 185-212]. Nevertheless, their implementation continues to encounter difficulties, and the legislative activity of ministers of education often stands in opposition to one of the fundamental rights of parents and children – namely, the right of parents to raise their children and the right of children to be brought up in accordance with the parents’ convictions. This right of parents and children entails a corresponding obligation on the part of the state, particularly since, pursuant to Article 53(4) of the Constitution of the Republic of Poland: “The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples’ freedom of religion and conscience shall not be infringed thereby” [Borecki and Pietrzak 2010, 18-31].<sup>15</sup> The Polish Constitutional Tribunal, in one of its judgments, affirmed that “the State cannot evade the obligation to ensure that religious education is provided in such a manner and place that it corresponds to the will of the parents. The State is not relieved of this obligation even when, as a result of its own negligence, religious education – due to a lack of other options – begins to be organized by a church institution on its own premises.”<sup>16</sup> It was therefore rightly noted by Wojciech Góralski

<sup>15</sup> Therefore, the provisions implementing these constitutional principles regarding religious education in schools should indicate that it is schools – not Churches or other religious associations – that are responsible for organizing religious instruction, and that such instruction is conducted on the premises of public schools and within the framework of the public education system.

<sup>16</sup> Judgment of the Constitutional Tribunal of 30 January 1991, case no. K 11/90.



and Witold Adamczewski that, if the State's support in the realization of parental rights and duties is to be effective, it should be expressed through the organization of religious education in schools under state supervision [Góralski and Adamczewski 1994, 73].

Moreover, it should be emphasized that religious education is the only subject taught in public schools that enjoys constitutional status. Even the teaching of the Polish language or history does not hold such a rank [Janiga and Mezglewski 2001, 131; Mezglewski 2009a, 102-103; Sobczyk 2008, 222; Idem 2010, 207-23; Idem 2013]. It is worth recalling the position of A. Mezglewski, which we share, that "Since religious education is a subject of instruction, it is therefore a subject like any other. Any other interpretation would imply an impermissible discrimination" [Mezglewski 2009b; Zieliński 2009, 504].<sup>17</sup> This means that the Polish constitution-maker adopted the principle of equal treatment of religion as a school subject. *A contrario*, any potential differences in the legal status of religion as a subject in public education must derive solely from its specific character [Mezglewski 2009b]. Sub-constitutional regulations develop and complement these constitutional guarantees, as discussed further below.

The constitutional guarantees regarding the right of parents to raise their children in accordance with their own convictions – as well as the provision of religious education in public schools – were previously affirmed in a ratified international agreement: the Concordat between the Holy See and the Republic of Poland, signed in 1993 and ratified by statute.<sup>18</sup> This is reflected in Article 12 of the Concordat, which provides: "Recognizing the right of parents to the religious upbringing of their children, as well as the principle of tolerance, the State guarantees that public primary and secondary schools and kindergartens administered by state and local government authorities shall, in accordance with the wishes of those concerned, organize religious education within the framework of the regular school and kindergarten schedule" [Borecki 2022, 137-49]. From the provisions of this international agreement thus derive key principles relevant to the subject under analysis: recognition of the right of parents to the religious upbringing of their children; the teaching of religion in schools in accordance with the wishes of those concerned; the inclusion of kindergartens as well as primary and secondary schools administered by state and local government

<sup>17</sup> T.J. Zieliński notes that the religion of a denominational community with a legally regulated status may be present in schools solely in the form of a school subject, which "appears to be an expression of the lawmaker's precise constitutional vision."

<sup>18</sup> Journal of Laws of 1998, No. 51, item 318. Thanks to the 1993 Concordat (ratified in 1998), religious education as a subject within public education was established in the Polish legal system through a bilateral international agreement, constituting a source of universally binding law.



authorities within the guarantee of religious education; and the delineation of competences between state authorities and church authorities in relation to religious education, curricula, and teachers [Sobczyk 2013; Krukowski 1995, 196-97; Góralski and Pieńdyk 2000, 37-41].

It should be noted that these principles, due to the bilateral nature of the agreement, apply specifically to members of the Roman Catholic Church. However, the constitutional principle of equal rights of churches and other religious associations (Article 25(1) of the Constitution of the Republic of Poland) imposes an obligation on public authorities to extend equivalent guarantees to members of other religious denominations who seek religious education in public schools [Krukowski 1996, 40-49]. It is important to emphasize that the provisions of the Concordat contain no quantitative restrictions regarding the organization of religious instruction. This may imply that an educational institution is obligated to organize religious classes regardless of the number of students requesting it [Borecki 2008, 67-78].

Furthermore, apart from the provisions of the Constitution and the Concordat – which directly address the teaching of religion in public schools and the rights of parents and children in this regard – the activity of the Minister of Education in this area is also linked to constitutional guarantees regarding the right to work. This was emphasized by the First President of the Supreme Court in the aforementioned application to the Constitutional Tribunal. Indeed, Article 24 of the Constitution of the Republic of Poland provides that: „Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work,” and Article 65(5) provides that: “Public authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention” [Przeklasa and Przeklasa 2023, 31-46]. Therefore, the implementation of the solutions adopted in the Regulation of the Minister of Education of 26 July 2024 “will lead, due to the mere one-month *vacatio legis*, to an unforeseen reduction in the demand for the work of religious education teachers in educational institutions, which – in light of the lack of opportunities for these teachers to obtain qualifications for teaching other subjects – constitutes a real threat of sudden job loss, thereby violating: the principle of citizens’ trust in the state and its laws, the principle of the protection of work, and the State’s obligation to pursue a policy of full and productive employment.”<sup>19</sup>

Although the Fundamental Law of Hungary does not contain an explicit provision on teaching of religion, Article XVI(2) and (3) emphasise that “(2) Parents shall have the right to choose the upbringing to be given to their

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<sup>19</sup> Case no. BSA.III.4011.1.2024.

children. (3) Parents shall be obliged to take care of their minor children. This obligation shall include the provisions of schooling for their children.”<sup>20</sup> According to some scholars, paragraph (2) of Article XVI also protects the “family’s ideological integrity,” thereby ensuring that parents may raise their children in accordance with their religious beliefs [Schanda 2018, 12]. In addition, the provision protects the religious integrity of the family [Schanda and Krúdy 2023, 92]. It is also crucial to underline that paragraph (1) of the same Article imposes obligations on the State, stating – *inter alia* – that: “Hungary [...] shall ensure an upbringing [...] in accordance with the values based on the constitutional identity and Christian culture of our country” [Schanda 2018, 12].<sup>21</sup> Under this provision, religious education cannot be provided against the wishes of the parent or child, at the same time, the State “must ensure” education based on Christian values if this is in accordance with the will of the parents [Benkő 2022, 221]. However, Gábor Schweitzer argued in a written interview that in paragraph (3) “[t]he framers of the Fundamental Law provided little guidance regarding the constitutional significance of Christian culture” [Rixer, Schanda, Schweitzer, et al. 2021, 314].

More detailed provisions concerning religious education in public schools are found in statutory and lower-level regulations. Most notably, Act No. CXC of 2011 on National Public Education provides, already in Section 3(3), that: “[...] in state and municipal educational institutions, knowledge, religious and philosophical information must be imparted in an objective and multifaceted manner, respecting the religious and philosophical convictions of the child, student, parent and teacher throughout the entire educational process, and allowing the child or student to participate in optional religious education and religious and ethics education.”<sup>22</sup> It must be noted that this provision was introduced in its current form in 2013. Following this amendment, two main models of religious instruction exist in public schools: (i) optional denominational religious education classes, and (ii) religious and ethics education, which may be chosen by parents in place of general ethics classes in grades 1 to 8 (starting from the 2013/14 school year, the core curriculum in state primary schools has included ethics education or, alternatively, religion and ethics classes) [Mitták 2012, 27-29].

Subsequently, Title 23 of the Act regulates in detail both the operation of ecclesiastical and private educational institutions<sup>23</sup> and the specific

<sup>20</sup> Article XVI(2) and (3) of the Fundamental Law of Hungary, <https://njt.hu/jogszabaly/en/2011-4301-02-00> [accessed: 18.06.2025].

<sup>21</sup> Article XVI (1) of the Fundamental Law of Hungary.

<sup>22</sup> Section 3(3) of Act No CXC of 2011 on National Public Education. Published in Hungarian Gazette on 29 December 2011, <https://njt.hu/jogszabaly/2011-190-00-00.82#CI> [accessed: 18.06.2025].

<sup>23</sup> At this point, one has to point out that religious education in ecclesiastical educational

rules governing the religious and ethics education in state educational institutions. Under Section 35, religious education organized at the request of a parent or student – and which is not part of the compulsory curriculum – is to be provided by a legal ecclesiastical person, while ethics classes may be replaced by religious and ethics classes organized by an established church or internal ecclesiastical legal entity.<sup>24</sup> The provision also emphasizes that the educational institution must cooperate closely with the persons providing the optional religious or religious and ethics instruction. The 2013 amendment also introduced Section 35/B, which sets out in detail the obligations related to the provision of optional religious and religious and ethics classes. Specifically, legal ecclesiastical persons, established churches, or internal ecclesiastical legal entities that offer these classes are required to: (i) determine the content (the *curricula*) of the given subject; (ii) organize the enrollment procedure for religious education and – in cooperation with the state educational institution – for religion and ethics education; (iii) hire and supervise the necessary personnel; and (iv) monitor the classes and their delivery.<sup>25</sup>

Finally, a 2019 amendment added Section 35/A, which expressly provides that: “[i]n grades 1 to 8 of public schools, ethics lessons or the religious and ethics lessons organized by an established church or an internal ecclesiastical legal entity form part of the compulsory curricular activities.”<sup>26</sup>

In this context, it is also necessary to mention Government Decree No. 110/2012 (VI.4.) on the issuance, adoption, and implementation of the National Core Curriculum, which in point I.2.1. prescribes that: “the teaching of ethics is compulsory in primary grades 1-8. The content of religious and ethics education is determined by the ecclesiastical legal person.”<sup>27</sup> Furthermore, the Decree sets the minimum numbers of religious and ethics lessons at two for each of the eight grades.

On the basis of the above-mentioned legal provisions, it can be concluded that the teaching of religion in public (state) educational institutions in Hungary takes two main forms: (i) optional denominational religious classes and (ii) religious and ethics education, which may be chosen in place of ethics classes. In both cases, the classes are optional (religious and ethics education may also be considered optional, insofar as it constitutes an

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institutions is subject to somewhat different provisions from those in state educational institutions, which, for reasons of scope and subject of research, we do not wish to examine in more depth in the present paper.

<sup>24</sup> Section 35 of Act No CXC of 2011 on National Public Education.

<sup>25</sup> Section 35/B of Act No CXC of 2011 on National Public Education.

<sup>26</sup> Section 35/A of Act No CXC of 2011 on National Public Education.

<sup>27</sup> Point I.2.1. of Government Decree No 110/2012 (VI.4.) on the issuance, introduction and implementation of the National Core Curriculum, <https://njt.hu/jogszabaly/2012-110-20-22> [accessed: 18.06.2025].

alternative to standard ethics classes) and are conducted by members of a church. It is crucial to emphasize that the right to choose between ethics classes and religious and ethics classes belongs to the parent, and this choice represents a concrete manifestation of the parental right to direct the education and upbringing of their children [Láposy 2022, 7] as it was pointed out by also the Constitutional Court.<sup>28</sup>

In conclusion, this part of the analysis demonstrates that a review of constitutional provisions, constitutional court case law in both Poland and Hungary, and the views of legal scholars leads to the conclusion that constitutional and concordat-based norms – both formal and substantive – play a decisive role in defining the scope of competence of the minister responsible for education and upbringing.

The first group, comprising formal provisions, establishes the legal basis and limits of ministerial authority. Notably, Article 7 of the Constitution of the Republic of Poland, which enshrines the principle of legality governing the actions of public authorities, is of central importance in this regard [Zubik and Sokolewicz 2016; Skrzydło 2013; Borecki 2009, 51-62; Januchowski 2007, 49-67]. The second group consists of substantive constitutional guarantees, including: freedom of conscience and religion, the right of parents to raise their children in accordance with their own convictions, the principles governing state–church relations, and the right to work and its protection. Given the hierarchical structure of the legal system and the supremacy of the Constitution, the importance of these provisions in the legislative and administrative process cannot be overstated. In the Polish legal system, this framework serves to protect freedom of conscience and religion, as well as individual beliefs and their manifestation, against arbitrary interference by the executive branch.

In Hungary the Fundamental Law guarantees the right of the parents *to choose the upbringing to be given to their children*, thereby ensuring that they may raise them in accordance with their religious convictions. According to statutory provisions, religion may appear in public schools in two ways: (i) through optional denominational religious classes, and (ii) through religious and ethics education, offered as an alternative to general ethics classes. While optional denominational religious education lies outside the compulsory curriculum and is delivered by a legal ecclesiastical person, religious and ethics education forms an integral part of the National Core Curriculum and is organized by an established church or internal

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<sup>28</sup> Decision 9/2021. (III.17.) AB of the Constitutional Court of Hungary. Reasoning [67]. Published in Hungarian Gazette on 17 March 2021, [https://public.mkab.hu/dev/dontesek.nsf/0/479d386749f786f1c1258477005b4aa3/\\$FILE/9\\_2021%20AB%20hat%C3%A1rozat.pdf](https://public.mkab.hu/dev/dontesek.nsf/0/479d386749f786f1c1258477005b4aa3/$FILE/9_2021%20AB%20hat%C3%A1rozat.pdf) [accessed: 18.06.2025].

ecclesiastical legal entity. In this context, it is essential to analyse the position and competencies of the minister responsible for public education, particularly in relation to religious and ethics education. Since these classes are incorporated into the National Core Curriculum, it is precisely here that the minister's regulatory and supervisory powers become relevant.

## 2. THE BASIS AND LIMITS OF THE COMPETENCE OF THE MINISTER OF EDUCATION CONCERNING RELIGIOUS EDUCATION

In Poland, although the teaching of religion in public schools is grounded in both constitutional and concordat-based principles, in practice the Minister of Education (i.e. the minister responsible for matters of education and upbringing)<sup>29</sup> plays a key role in shaping the educational environment for children and adolescents, as well as in the operation of public schools. The minister's tasks are precisely defined by statutory acts and implementing regulations, and the competences related to the organization of religious education in public schools generally encompass three fundamental areas.

Firstly, pursuant to statutory delegation (in particular, under the Act on the Education System), the minister responsible for education and upbringing is authorized to issue executive regulations to statutes [Piszko 2018; Pilich 2015]. The key legal act regulating the practical details of religious education is the Regulation of the Minister of National Education of 14 April 1992 on the Conditions and Methods of Organizing the Teaching of Religion in Public Preschools and Schools.<sup>30</sup>

This regulation, amended multiple times, sets out provisions concerning, inter alia: the procedure for declaring participation in religion or ethics classes, the organization of inter-class groups, the number of hours allocated for religious instruction in the weekly schedule, the principles of assessment and the inclusion of religion grades in the overall average, and the funding of religious education from public funds [Maziarz 2011, 128-32]. The minister may amend these provisions to reflect changing social and educational realities, while taking into account both the welfare of students and the constitutional guarantees of freedom of religion [Stanisz and Walencik 2024, 361-79; Zieliński 2023a, 69-90].

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<sup>29</sup> Act of 4 September 1997 on Government Administration Departments, Journal of Laws of 2024, item 1370 as amended.

<sup>30</sup> Regulation of the Minister of National Education of 14 April 1992 on the conditions and manner of organizing religious education in public schools, Journal of Laws No. 36, item 155; Journal of Laws of 1993, No. 83, item 390; Journal of Laws of 1999, No. 67, item 753; Journal of Laws of 2014, item 478; Journal of Laws of 2017, item 1147; Journal of Laws of 2024, item 1158; Journal of Laws of 2025, item 66.

Secondly, the minister responsible for education and upbringing consults with churches and other religious associations regarding the principles of religious education. In the case of the Catholic Church, this obligation arises from the Act of 17 May 1989 on the Relationship between the State and the Catholic Church in the Republic of Poland, as well as the Concordat between the Holy See and the Republic of Poland (signed on 28 July 1993 and ratified on 23 February 1998). Within this framework, the minister consults with the Polish Episcopal Conference on matters such as: the qualifications of religious education teachers, the curricula for religious education, textbooks and other teaching materials. Similar consultations take place with other churches and religious associations possessing a legally regulated status [Goliszek 2020, 177-95].

Thirdly, the minister exercises administrative supervision over the education system. This includes ensuring that religious education classes are organized in accordance with the applicable legal provisions – specifically, that they are conducted at the request of parents or adult students, and in a manner that does not infringe on the rights of non-participants. Furthermore, the minister may: initiate inspections and issue guidelines to regional education authorities (Polish: *kuratoria oświaty*) in cases where irregularities or legal violations are identified [Pilich 2022].

Turning to the key normative acts from the perspective of achieving the objective of this scientific article, Articles 12(2) and 13(3) of the Act of 7 September 1991 on the Education System contain statutory delegations empowering the minister responsible for education and upbringing to issue regulations specifying the conditions and methods by which schools are to fulfil the tasks set forth in the Act [Piszko 2018; Pilich 2015].

Both of these provisions serve as the direct legal basis for the minister's actions regarding the organization of religious education in public schools. Notably, the legislature requires the minister to act “in consultation” with the authorities of churches and other religious associations when adopting a regulation that defines the conditions and methods by which schools fulfill tasks related to religious education [Pilich 2022].

From Article 12(2) of the Act of 7 September 1991 on the Education System, it follows that: “2. The minister responsible for education and upbringing, in consultation with the authorities of the Catholic Church, the Polish Autocephalous Orthodox Church, and other churches and religious associations, shall specify by way of regulation the conditions and methods by which schools perform the tasks referred to in paragraph. 1.” Meanwhile, Article 13(3) provides the following delegation: “The minister responsible for education and upbringing shall specify by way of regulation the conditions and methods by which schools and educational institutions perform the tasks referred to in paragraphs 1 and 2, in particular the minimum number of students required to organize the various forms of education listed



in paragraf. 2.” These provisions thus clearly delineate the scope of the minister’s competence, providing the formal legal foundation for regulatory action concerning the teaching of religion in schools [Piszko 2018; Pilich 2015].

It should be noted – especially for the benefit of non-Polish-speaking readers – that in Poland, regulations (Polish: *rozporządzenia*) are the only type of normative acts issued by executive authorities that constitute a source of universally binding law. Such regulations are strictly linked to statutes, must be issued on the basis of a specific statutory delegation, and are intended to implement the statute.<sup>31</sup> Due to the hierarchical structure of the Polish legal system, regulations must comply with higher-ranking normative acts – namely, the Constitution, ratified international agreements, and statutes. Consequently, reference in this study to the provisions of the Constitution, the Concordat, and the Education Act is not incidental but essential to understanding the legal framework governing religious education [Ochendowski 1993, 137-46; Spryszak 2019, 47-60; Brzozowski 2013, 65-82].

A key aspect of the minister of education’s duties is the obligation to formulate regulations concerning religious education – in accordance with constitutional and concordat standards – “in agreement” with the authorities of the Catholic Church, the Polish Autocephalous Orthodox Church, and other churches and religious associations.

As emphasized by the Constitutional Tribunal in its judgment of 27 November 2024, “churches and religious associations have been recognized by the legislator as special entities actively participating in public life. The rationale behind the requirement that the minister of education act in consultation with the authorities of the Catholic Church, the Polish Autocephalous Orthodox Church, and other churches and religious associations when specifying by regulation the conditions and methods by which schools organize the teaching of religion is to uphold the constitutional principle of cooperation between the state and churches and other religious associations for the good of the individual and the common good (see Article 25(3) of the Constitution)” [Zieliński 2023b, 40-50; Szymanek 2012, 5-32].

The statutory expression “in agreement with,” as used in Article 12 of the Act on the Education System, is not unique in Polish legislative practice. In its judgment of 17 March 1998, the Constitutional Tribunal observed that: “Expressions such as ‘in consultation with,’ ‘in agreement with,’ ‘with the consent of,’ ‘with the participation of,’ or ‘after seeking the opinion of’ appear quite frequently in legal provisions empowering a legislative body to make law. They express interdependencies between different entities, one of which is the lawmaking authority.” Furthermore, the Tribunal emphasized that

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<sup>31</sup> See Article 92 of the Constitution of the Republic of Poland, Journal of Laws No. 78, item 483; of 2001, No. 28, item 319; of 2006, No. 200, item 1471; of 2009, No. 114, item 946.



such phrases may represent a form of democratization of the law-making process, especially where non-state entities, such as religious associations, are involved. Consequently, law-making conducted “in consultation with” or “in agreement with” must entail genuine cooperation beyond the internal mechanisms of public administration.<sup>32</sup>

It is difficult to contest the view that the statutory expression “in agreement with” imposes on the Minister of Education the obligation to engage religious associations in a substantive and participatory rule-making process. This is evidenced by the requirement that representatives of the relevant churches and religious associations co-sign the ministerial regulation, thereby confirming their active involvement in shaping the legal framework governing religious education. This procedural obligation also finds a basis in Article 2(3) of the Act of 8 August 1996 on the Council of Ministers, which stipulates that the Council of Ministers determines the organization and procedure of its work in its rules of procedure.<sup>33</sup> According to para. 145 of Resolution No. 190 of the Council of Ministers of 29 October 2013 (Rules of Procedure of the Council of Ministers), when a regulation is issued jointly or in agreement with another authority, it must be forwarded to the cooperating authority for signature after it is signed by the issuing authority. In this way, Polish sub-statutory law institutionalizes the procedure for regulations that require joint or agreed-upon issuance.<sup>34</sup>

As an aside, it is worth noting that Article 18(1) of the Act of 17 May 1989 on the Relationship between the State and the Catholic Church in the Republic of Poland affirms the state’s recognition of the Church’s role in religious education: “The State recognizes the right of the Church to teach religion and to provide religious upbringing to children and young people, in accordance with the choice made by their parents or legal guardians” [Górowska and Rydlewski 1992, 138-40].<sup>35</sup>

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<sup>32</sup> Judgment of the Constitutional Tribunal of March 17, 1998, case file ref. U 23/97.

<sup>33</sup> Act of August 8, 1996 on the Council of Ministers, Journal of Laws of 2024, item 1050, 1473.

<sup>34</sup> Announcement of the Prime Minister dated September 4, 2024, on the publication of the consolidated text of the resolution of the Council of Ministers – Rules of Procedure of the Council of Ministers, Official Journal of the Republic of Poland (Monitor Polski) 2024, item 806.

<sup>35</sup> This provision is of crucial importance for shaping the status of religion as a subject in public education in Poland. As confirmed by the Constitutional Tribunal (Judgment of the Constitutional Tribunal of January 30, 1991, case no. K 11/90): “It must therefore be stated that the possibility of teaching religion, referred to in the Instruction of August 3, 1990, was established by the Act of May 17, 1989, on the relationship between the State and the Catholic Church, and not only by the aforementioned Instruction of the Ministry of National Education. This refers to the Instruction of the Minister of National Education dated August 3, 1990, regarding the reintroduction of religion to schools in the 1990/1991 school year.”

In Hungary, responsibility for public education rests with the Ministry of the Interior. However, prior to 2022, this competence was held by the Ministry of Human Resources, and the relevant legal acts on educational curricula were issued by the Minister of Human Resources. Of central relevance is Ministry of Human Resources Decree No. 20/2012 (VIII.31.) on the operation of educational institutions and the naming of public educational institutions. The relevant provisions on religious and ethics education are contained in Title 74/A of the Decree. Under these provisions, religious and ethics education is organised essentially at local level, in close cooperation between the education institution and local representatives of the churches. Thus, in organising religious and ethics education the local specificities have to be considered, as well as the material and personal resources of the local representatives of the churches [Mitták 2014, 27]. However, the agreement concluded at local level (between the educational institution and the church providing the education) must comply with national laws governing ecclesiastical matters [Mitták 2012, 27-29; Idem 2014, 27].<sup>36</sup> The literature divides the relevant legislation, that has to be taken into account when concluding an agreement, into two categories: state law on the one hand and agreements between the state and churches on the other [Mitták 2012, 27-29].

The first category includes, among others, Act No CCVI of 2011 on the right to freedom of conscience and religion and on the legal status of churches, religious associations and religious communities,<sup>37</sup> which provides in its Section 19/A (3) that the costs of religious education shall be provided by the state on the basis of an agreement with the church.<sup>38</sup> Among these bilateral agreements (which thus form the second of the above mentioned two categories of legislation), the Concordat between Hungary and the Holy See (that was concluded before the introduction of the above analysed legislation on religious education),<sup>39</sup> the agreement between Hungary and the Hungarian Reformed Church<sup>40</sup> and the agreement between Hungary and the

<sup>36</sup> At the same time, religious and ethics education raises not only questions of ecclesiastical matters; for example, recent Hungarian literature discusses in detail the labor law status of teachers of these subjects [Szlepák 2025, 39].

<sup>37</sup> For an overview of creation of the Act and its future see Zalahegyi 2019, 64-71.

<sup>38</sup> This aspect was highlighted in the case law of the Constitutional Court of Hungary as well in Decision 6/2013. (III.1.) AB of the Constitutional Court. Reasoning [166]. Published in Hungarian Gazette on 1 March 2013, [https://public.mkab.hu/dev/dontesek.nsf/0/e57ce6378e537151c1257ada00524f50/\\$FILE/6\\_2013%20AB\\_ENG\\_v.pdf](https://public.mkab.hu/dev/dontesek.nsf/0/e57ce6378e537151c1257ada00524f50/$FILE/6_2013%20AB_ENG_v.pdf) [accessed: 18.06.2025].

<sup>39</sup> Act No LXX of 1999 on the proclamation of the Agreement between the Holy See and the Republic of Hungary on the financing of public service and other particular religious activities undertaken in Hungary by the Catholic Church and on some issues of property ownership, signed in Vatican City on 20 June 1997. Published in Hungarian Gazette on 5 July 1999, <https://njt.hu/jogszabaly/1999-70-00-00> [accessed: 18.06.2025].

<sup>40</sup> Government Decision 1821/2017 (XI. 9.) on the renewal of the Agreement between the Government of Hungary and the Hungarian Reformed Church and the tasks related

Hungarian Evangelical Church<sup>41</sup> can be mentioned. Whilst the Concordat is an international treaty, other agreements between different churches and Hungary are internal provisions, based on which churches can establish contractual relationship with public administrations [Schanda 2018, 16]. Of particular interest – especially in light of the comparative focus of this study – is the fact that these agreements were not concluded by the minister competent in matters of education, but rather by the Government of Hungary. Nevertheless, the agreements contain substantive provisions concerning the promotion of education and training [Köbel 2021, 247-55].

It is worth noting that both the agreement with the Reformed Church and the agreement with the Evangelical Church include provisions for state support for textbooks used in the teaching of religious and ethics education. Specifically, the state provides funding equivalent to the cost of producing ethics textbooks listed in the national textbook catalogue. As the minister responsible for education oversees the textbook supply system, the allocation of subsidies for religious and ethics textbooks is also subject to indirect ministerial influence.

As evidenced by the legal framework discussed above, the former Ministry of Human Resources – which was at that time responsible for educational affairs – established the legal and administrative conditions for the organization of religious and ethics education by adopting the relevant 2012 Decree. However, the actual implementation of religious education is governed by individual agreements between educational institutions and local representatives of churches. This localized approach allows for the flexible organization of religious education, tailored to the needs of the local population, the material and human resources available at each educational institution, and the structure of the school timetable [Mitták 2012, 27-29].

In summary, in both Poland and Hungary, the minister responsible for education is legally obligated to establish the organizational framework for the provision of religious education. This must be done with respect for freedom of conscience and religion, as well as in accordance with the rights of parents to raise their children in line with their personal convictions.

In Poland, the constitutional and concordatory principle of cooperation between the state and churches is further codified at the statutory level. It requires that, when issuing regulations concerning the conditions and modalities for organizing religious education in public preschools and schools,

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thereto. Published in Hungarian Gazette on 9 November 2017, <https://net.jogtar.hu/jogszabaly?docid=A17H1821.KOR&txtreferer=00000001.txt> [accessed: 18.06.2025].

<sup>41</sup> Government Decision 1212/2020 (V. 12.) on the Agreement between the Government of Hungary and the Hungarian Evangelical Church and the tasks related thereto. Published in Hungarian Gazette on 12 May 2020, <https://njt.hu/jogszabaly/2020-1212-30-22> [accessed: 18.06.2025].

the Minister of Education must act “in agreement” with the authorities of the Roman Catholic Church, the Polish Autocephalous Orthodox Church, and other churches and religious associations. As a result, any regulation issued without the required agreement may be deemed by the Constitutional Tribunal to be inconsistent with the statutory delegation and constitutional provisions that establish and protect this cooperation.

In Hungary, by contrast, the minister responsible for education is primarily tasked with defining the general legal framework for optional religious education and religious and ethics education. However, the minister is not authorized to intervene in the substantive content or implementation of such education. Under the Act on National Public Education, the responsibility for organizing religious instruction – including curriculum development, educational oversight, and the selection of textbooks – rests with legal ecclesiastical persons, recognized churches, or, as applicable, internal ecclesiastical legal entities.

Moreover, religious education in Hungary is conducted on the basis of agreements concluded between educational institutions and the local representatives of the relevant churches. While these agreements must align with the regulatory framework established by the minister, the minister does not possess the authority to intervene in their content or execution.

## CONCLUSION

On the basis of the foregoing analysis and the comparison between two – seemingly similar – legal systems, it becomes evident that Poland and Hungary differ significantly in how the minister responsible for education gives effect to constitutional freedoms, individual rights, and the principles governing relations between the state and religious communities, particularly in the area of religious instruction in public preschools and schools. While both jurisdictions adhere to international standards – notably those articulated at the European level – regarding freedom of conscience and religion, the right of parents to raise their children in accordance with their own convictions, the corresponding rights of children, and the right to work, the practical implementation of these rights diverges. The same is true for their constitutional standards, which – although broadly similar due to shared historical, cultural, religious, and legal traditions – are nonetheless not identical [Wójtowicz 2010, 9-22; Warchałowski 2002, 189; Borecki 2022, 137-49; Tomaszek 2018, 191-93; Pernal 1992, 77-85; Wiśniewski 1991, 15-26; Borecki 2016, 9-24].

It appears that the primary challenge in applying the standards governing the organisation of religious instruction in public preschools and schools

lies in their execution by the executive authorities empowered, under a statutory delegation, to discharge specific tasks in this sphere.

In Poland, frequent political turnover contributes to ideologically driven rather than strictly legalistic approaches to the relationship between the state and religious institutions. A particularly telling example is the Regulation of the Minister of Education of 24 July 2024, which reflects a fulfillment of electoral promises concerning the redefinition of state–church relations. Implementation of constitutional, concordatory, and statutory norms encounters difficulties not only in substantive terms, but also on the formal plane – as evidenced by the statutory obligation for the Polish Minister of Education to act “in agreement” with the authorities of the Roman Catholic Church, the Polish Autocephalous Orthodox Church, and other churches and religious associations when issuing regulations on religious instruction.

This raises the question of whether *de lege ferenda* proposals can be formulated in the Polish context. A case for radical change appears unconvincing, as the model of religious education in Poland’s public schools is systematically coherent and rests upon legal acts drawn from four of the five constitutionally recognized sources of universally binding law: the Constitution, ratified international agreements (particularly the 1993 Concordat), statutes, and executive regulations. Substantial reforms would therefore *de facto* and *de iure* require amendments to the Constitution – Poland’s supreme law (Article 8) – and renegotiation of the 1993 Concordat. Nonetheless, in view of demographic shifts, evolving attitudes of parents and pupils toward religious education, and the need to protect the employment of teachers of religion, it is recommended that any necessary adjustments – also supported by church representatives – be introduced by the Minister of Education, in accordance with the statutory delegation laid down in Articles 12 and 13 of the Act on the Education System, and with full respect for constitutional provisions and concordatory obligations – *in genere*, “in agreement.”

Finally, it should be noted that the latest amendments to the regulation have had a positive impact on the Roman Catholic Church, which has begun offering additional, voluntary catechetical classes in parish facilities. Furthermore, a citizens’ legislative initiative has been launched, seeking to reform the regulation of religious and ethics instruction at the statutory level.<sup>42</sup>

In Hungary, the state’s explicit support for Christian values is reflected in the structure of public education. Here, religious and ethics instruction is based on agreements between individual educational institutions and local representatives of the churches. Thus, the agreement of the minister responsible for education is not determinative in the organization of such classes.

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<sup>42</sup> See <https://www.prawo.pl/oswiata/obowiazkowe-lekcje-religii-projekt,531845.html> [accessed: 22.05.2025].

However, since both individual institutions and public education as a whole fall under the authority of the minister (see Section 77(1) of Act No CXC of 2011 on National Public Education), these agreements necessarily operate within the framework set by the minister. In this way, ministerial–ecclesiastical cooperation is maintained through the decentralized model of local institutional agreements. Taking all this into account, our *de lege ferenda* proposals are primarily procedural in nature. In our view a relaxation of the formality of the procedure of opting for religious and ethics education and for the modification of the choice (at present, if a parent wishes to change his or her choice regarding the religious and ethics education, the parent must notify the school principal and the representative of the church in writing by 20 May of each school year<sup>43</sup>) could be considered.

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<sup>43</sup> Section 182/B (7) of Ministry of Human Resources Decree No 20/2012. (VIII.31.). Published in Official Gazette on 31 August 2012, <https://njt.hu/jogszabaly/2012-20-20-5H.35#CI> [accessed: 18.06.2025].



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