

Decision

dated 20 April 1993 (U. 12/92)

The Constitutional Tribunal sitting with the bench composed of the Chairman and President of the Constitutional Tribunal, Mieczysław Tyczka, and the following Judges: Czesław Bakalarski, Tomasz Dybowski, Kazimierz Działocha, Henryk Groszyk, Maria Łabor-Soroka, Wojciech Łączkowski (Reporting Judge), Leonard Łukaszuk, Remigiusz Orzechowski, Janina Zakrzewska and Andrzej Zoll.

held

1. the manner in which the Minister of National Education issued the Regulation on the Conditions and the Manner of the Organization of Religious Education in Public Schools dated 14 April 1992 (Journal of Laws, Number 36, Item 155) conforms with article 12, section 2 of the Educational System Act dated 7 September 1991 (Journal of Laws, Number 95, Item 425; as amended 1992, Number 26, Item 11 and Number 54, Item 254).

2. paragraph 1, section 1 of the said Regulation issued by the Minister of National Education dated 14 April 1992, understood to mean that each student has the right to be taught religion and ethics, conforms with article 12, section 2 of the Educational System Act dated 7 September 1991.

3. paragraph 3, section 3 of the said Regulation contravenes article 12, section 2 of the Educational System Act and, consequently, article 56, section 3 of the Constitutional Act dated 17 October 1992.

4. paragraph 5, section 1 of the said Regulation conforms with: article 12, section 2 of the Educational System Act dated 7 September 1991; article 10, section 2 of the Act dated 17 May 1989 on Guarantees of Freedom of Conscience and Religion (Journal of Laws, Number 29, Item 155, as amended); and article 81, section 1 of the Constitution upheld by the Constitutional Act dated 17 October 1992.

5. the norm set forth in the third sentence of paragraph 5, section 2 of the said Regulation issued by the Minister of National Education providing that „the withdrawal of a delegation is equivalent to the discontinuation (amendment) of employment with respect to religious education” contravenes: article 27, section 1 of the Teacher’s Charter Act dated 26 January 1982 (Journal of Laws, Number 3; Item 19, as amended); article 32, section 1 and article 42 of the Labor Code; and article 39, section 3, section 1 of the said Educational System Act and, consequently; article 56, section 3 of the Constitutional Act dated 17 October 1992.

6. paragraph 7, sections 1 and 4 of the said Regulation conforms with article 18, section 3 of the Act dated 17 May 1989 on the Relationship of the State and the Catholic Church (Journal of Laws, Number 29, Item 154, as amended) and with article 20, section 2 of the aforementioned Act on Guarantees of Freedom of Conscience and Religion.

7. paragraph 9, sections 1 to 3 of the said Regulation, understood to mean that a student attending classes both in religion and in ethics may receive a joint grade on the school transcript, conforms with article 10, section 1 of the said Act on Guarantees of Freedom of Conscience and Religion and with article 82, section 2 of the Constitution upheld by the Constitutional Act dated 17 October 1992.

Paragraph 9, section 4 of the said Regulation in the part concerning the teaching of religion and ethics outside public schools contravenes article 12, section 2 of the said Educational System Act dated 7 September 1991.

8. paragraph 12 of the said Regulation directly conforms with article 82, section 1 of the Constitution upheld by the Constitutional Act dated 17 October 1992 and article 6, section 2 of the said Act on Guarantees of Freedom of Conscience and Religion. While not supported by article 12, section 2 of the Educational System Act, the basis for the said provision can be found in article 13, sections 1 and 3 of the same Act.

Paragraph 3, section 3; paragraph 5, section 2; and paragraph 9, section 4 of the Regulation issued by the Minister of National Education to the extent deemed to contravene the Constitution or statutes shall be amended or annulled in conformance with this Decision no later than within three months from the submission of the same to the Minister of National Education. Failing that, the provisions covered by this Decision shall expire after the elapse of the three month deadline.

Reasoning

(...)

III

1. [...] an objection as to the binding force of the entire Regulation was raised in the letter written by the Commissioner for Citizens' Rights dated 17 March 1993. The letter challenges the manner in which the Regulation issued by the Minister of National Education dated 14 April 1992 was issued. It was, therefore, necessary to consider the objection first. The Constitutional Tribunal held that the interpretation of article 12, section 2 of the Educational System Act was of decisive importance. It was particularly necessary to establish the meaning of the phrase „in consultation with” as intended by the lawmaker. (The provision reads: „The Minister of National Education in consultation with the authorities of the Catholic Church, the Polish Autocephalous Orthodox Church, as well as other Churches and Religious Organizations shall determine by regulation the conditions and the manner in which schools are to meet the objectives referred to in section 1”).

It is clear that in using the phrase „in consultation with” the lawmaker could not have taken into consideration the guidelines set forth in the Resolution of the Council of Ministers dated 5 November 1991 on the Rules of Legislative Methodology (Monitor Polski, Number 44, Item 310) because at the time when the draft legislation was prepared and then ratified (7 September 1991) the Resolution had not yet been adopted, so the question of the position of resolutions of the Council of Ministers in the hierarchy of the sources of law can be disregarded. Given this fact, in issuing the executive regulation the Minister of National Education had to use as a guideline first of all the objective that the lawmaker had intended and not the wording of section 54, section 2 of the said resolution of the Council of Ministers quoted by the Commissioner for Citizens' Rights (the section concerning the manner in which the government's proposed legislation was drafted, while the Educational System Act was ratified at the initiative of Deputies). Therefore, decisive importance must be ascribed to the meaning attached by the lawmaker to the phrase „in consultation with.”

Under the initial assumption that the lawmaker acts rationally, it must be assumed that the phrase „in consultation with” used in the text of the said Act cannot entail the common consent of all the Churches and Religious Organizations operating in Poland as, given both the number and the variety of these entities, it is hardly likely that they could come to a full and joint acceptance of the matters regulated under the challenged Regulation. It is also impossible because some of the Churches or Religious Organizations have no interest

whatsoever in conducting religious education in public schools or they are against the practice in principle. Thus, they oppose the very principle laid down in the Act and cannot reach agreement on any executive regulation in this matter. It follows from the position presented by the Minister of National Education that some Churches and Religious Organizations either clearly refused to cooperate in drafting the Regulation or failed to respond to the proposal of cooperation. Consequently, more than ten Churches participated in drafting the Regulation, with representatives of twelve of them signing the Regulation dated 14 April 1992 following the words „In consultation with the authorities” (of individual Churches). Next to two signatures objections were recorded with respect to some points of the Regulation, which (with one exception) were not covered by the petition submitted by the Commissioner for Citizens' Rights dated 19 August 1992.

The phrase „in consultation with” used by the lawmaker cannot, therefore, be deemed as equivalent to the consent of all the Churches and Religious Organizations operating in Poland. If the lawmaker had intended the phrase in question to carry such a meaning, it would have clearly stated so in article 12, section 2 of the Educational System Act. It would have had to accept that such a provision would have been inactive and, at the same time, would have been conflicted with the intention of the lawmaker expressed in article 12, section 1 of the said Act, that is with the introduction of voluntary religious education in public schools. This would disagree with the presumption of the lawmaker’s rationality. An additional argument supporting the supposition that the lawmaker had not intended the phrase „in consultation with” to be equivalent to „with the consent of” is the fact that the Educational System Act does not provide for a procedure to settle possible disputes with the entities in consultation with which the Minister of National Education was to issue an executive regulation.

Given the above, the phrase „in consultation with” as used in the Educational System Act with respect to the Minister of National Education means solely an obligation to gather information and exchange opinions on the positions of all the Churches and Religious Organizations interested in providing religious education in public schools in order to fully allow for their expectations in agreement with the provisions of the Constitution and the relevant statutes.

The evidence heard as well as the evidence provided by the witnesses did not corroborate the claim that in issuing the Regulation in question the Minister of National Education had violated the procedure referred to in article 12, section 2 of the Educational System Act. One of the witnesses; Bishop Tranda, testified that in signing the regulation a compromise had been reached. Additionally, the testimony of the witnesses corroborated the following: a) All the parties concerned had been asked well in advance to present their positions (with the first meeting with the Minister of National Education held as early as on 25 February 1992, when the first draft of the regulation was produced); b) There was an opportunity and time for participation in drafting the text of the regulation (with one of the Churches drafting its own version); c) The final version was signed as agreed by representatives of the authorities of individual Churches interested in providing religious education on 9 and 14 April 1992.

The hearing of evidence also led to the clarification of the absence of the Pentecostal Church in drafting the Regulation of the Minister of National Education. In a letter dated 10 May 1991, the Pentecostal Church was asked by the Minister of National Education to present its comments and proposals concerning religious education in public schools. Given no response, the Minister of National Education concluded that the Pentecostal Church was not interested in providing religious education in public schools, and did not send any further invitations to cooperation. This, however, does not mean that this Church is precluded from

providing education in its religion in public schools, subject to general roles specified in the Regulation of the Minister of National Education.

On the basis of the above facts, the Constitutional Tribunal concluded that the manner in which the Minister of – National Education issued the Regulation dated 14 April 1992 conformed with the intention of the lawmaker and did not violate article. 12, section 2 of the Educational System Act dated 7 September 1991.

2. The remaining objections included in the petition submitted by the Commissioner for Citizens' Rights dated 19 August 1992 were considered by the Constitutional Tribunal in the order presented by the Commissioner for Citizens' Rights after considering the problem serving as the grounds for several objections. The problem concerns the fact that the Commissioner for Citizens' Rights assumed that the phrase used in the Act dated 17 May 1989 on the Relationship of the State and the Catholic Church (article 18, section 3) and in the Act on Guarantees of Freedom of Conscience and Religion of the same date stating that religious education is an internal affair of Churches and other Religious Organizations meant that the entire organization of religious education should rest with such Churches and other Religious Organizations.

The position taken by the Commissioner for Citizens' Rights finds support in the text of the first provision mentioned above, reading: „Religious education, as an internal affair of the Church shall be organized by parishes and monastic orders under the authority of the diocesan bishop.” Notwithstanding the doubts arising from the laconic wording of the provision, it should be interpreted in the context of the rules laid down in the Educational System Act dated 7 September 1991, which:

1) in articles 100 and 1 O1 amended the two Acts of 17 May 1989 mentioned above by the addition of the identically-worded provision reading: „Religious education of public school students may also take place in schools subject to the rules specified in a separate statute” (article 19, section 2 of the former Act and article 20, section 3 of the latter Act);

2) in article 12, section 1 laid down, among other things, that public schools were to organize (underlining by the Constitutional Tribunal) religious education upon request of eligible entities (parents or students).

Thus, in two different statutes (the Act on the Relationship of the State and the Catholic Church Act and the Educational System Act) the phrase „organization of religious education” is used with respect to two different entities (parishes and monastic orders under the authority of the diocesan bishop in the case of the former Act and public schools in the case of the latter Act). In order to avoid nonconformity between the two statutes, the Commissioner for Citizens' Rights explains that the word „organization” as used in the Educational System Act means a more intensive form of „facilitation.” In the opinion of the Constitutional Tribunal, an analysis of the text of article 12, section 1 compared with article 13, section 1 of the Educational System Act does not warrant such an interpretation. In the latter provision, the lawmaker use the term „facilitates” in a different context. The provision calls for facilitating the retention of the national, ethnic, linguistic, and religious identity of the students. Article 12, section 1, on the other hand, clearly refers to the organization of religious education, which is a stronger form (According to the PI W Dictionary of Foreign Words, „organize” means arrange or introduce, for example, „organize work”). Apart from that, if the term „organize”, were to mean the same as „facilitate,” article 12, section 1 of the Act would be redundant as it would be entailed in article 13, section 1, which imposes an obligation on schools to „facilitate” the retention of, among other things, the religious identity of students. Given the above, the only possible interpretation which has the effect of avoiding the nonconformity between the two pieces of legislation (which would prevent the Constitutional

Tribunal from deciding on this issue) is to recognize that the phrase „is organized” as used in article 18, section 3 of the Act on the Relationship of the State and the Catholic Church (in the case of religious education taught, in a public school) refers to the content of religious education, which must clearly be treated as an internal affair of the Church as, for obvious reasons, its content cannot be decided by educational authorities (public schools). On the other hand, the phrase „public schools shall organize religious education upon request of parents or the students themselves” as used in article 12, section 1 of the Educational System Act refers to formalities as well as routine, organizational, and administrative matters. This is the only interpretation which based on the rules of system interpretation eliminates the conflict between the different pieces of legislation.

Prior to considering detailed objections, the Constitutional Tribunal notes that some of them are internally inconsistent. This, in particular, applies to the objections presented in Items I.3, I.4 and I.5. In I.3 and I.5, the reasoning employed by the Commissioner for Citizens' Rights is based on the claim that if religious education is an internal affair of Churches and Religious Organizations, public schools are not permitted to employ teachers of religious education, pay their salaries, have them participate in teacher meetings and oblige them to make entries in the class register. In turn in I.4, the Commissioner for Citizens' Rights defends teachers by invoking their employee rights (as school teachers) under the Labor Code and the Teacher's Charter. This is nonconformity following from invoking mutually exclusive reasoning. Since if, in the opinion of the Commissioner for Citizens' Rights, teachers of religious education cannot be employed and remunerated by the school, they cannot be claimed to be subject to regulations applicable to public school teachers.

The principal grounds for the Decision with respect to individual specific objections were as follows:

1. In point 1 of the petition, the Commissioner for Citizens' Rights challenges paragraph 1, section 1 of the Regulation on the grounds that it goes beyond the delegation following from article 12, section 2 of the Educational System Act by introducing an additional subject (ethical education) as an alternative to religious education. Article 12, section 2 of the Educational System Act reads: „The Minister of the National Education in consultation with the authorities of the Catholic Church the Polish Autocephalous Orthodox Church, other Churches and Religious Organizations shall lay down by regulation the conditions and manner in which schools are to perform the objectives referred to in section 1” (section 1 imposes on public schools an obligation to organize religious education at the request of parents or students).

In analyzing this objection, one must note two issues serving as the background for the problem. First, the Preamble of the Educational System Act reads, among other things, that teaching and education „are based on universal principles of ethics...” Second, the Minister of National Education is delegated to regulate various matters not only under article 12, section 2, quoted by the Commissioner for Citizens' Rights, but also under other regulations. For example, article 22, section 2, sub-section 1 thereof obligates the Minister of National Education to establish the framework for school curricula. In this framework, the Minister of National Education first of all specifies mandatory subjects, so it is even more justified for him to introduce electives, including ethical education. Additionally, it is worth noting that ethical education was introduced to schools as an elective as early as in 1990. However, these arguments are not of decisive, but only of auxiliary nature.

The primary question is whether the Minister of National Education was permitted to regulate this issue under the challenged Regulation. Doubts may arise in connection with the title of the Regulation challenged by the Commissioner for Citizens' Rights, which was issued

pursuant to article 12; section 2 of the Educational System Act.. The introduction of ethical education in paragraph 1, section 1 of the challenged Regulation simply follows from the elective nature of religious education, and especially it serves as one of the prerequisites facilitating the observance of the rules under the Act dated 17 May 1989 on Guarantees of Freedom of Conscience and Religion. This specifically applies to article 2, section 7 thereof, which guarantees the right not to disclose one's religious beliefs, a right on which the Commissioner for Citizens' Rights insists. Since if the student's documents (the school transcript) show classes in religion and ethics in the same box, an outside observer will not be able to figure out whether the student attended classes in religion or ethics. Incidentally, even if the transcript were only to show classes in religion, this would not amount to a disclosure of the student's religious preferences. However, by adding classes in ethics, even these potential doubts are dispelled. This is regulated under paragraph 9, section 1 of the challenged Regulation. Given this, ethical education is closely connected with the organization of religious education in public schools. Therefore, it cannot be concluded that on account of this issue the Minister of National Education exceeded his statutory delegation. Furthermore, in Item 2 of the text of the Decision, the Constitutional Tribunal held that paragraph 1, section 1 of the Regulation should be understood to mean that every student has the right to take classes in both religion and ethics. This way the concern expressed by the Commissioner for Citizens' Rights that the interpretation of the said provision as the choice between classes in religion and ethics may lead to recording a breakdown of students into believers and non-believers.

2. In the next point of his petition, the Commissioner for Citizens' Rights claims that paragraph 3, section 3 of the challenged Regulation contradicts article 2, sub-section 5 of the Act on Guarantees of Freedom of Conscience and Religion. The Constitutional Tribunal conceded that the challenged provision of the Regulation was illegal.

In particular, the Constitutional Tribunal took the position that by including regulations going beyond the issue of religious education in public schools (that is by regulating religious education outside the system of education) paragraph 3, section 3 of the Regulation does not find support in article 12, section 2 of the Educational System Act, hence it does not conform with the said article.

Likewise, the fact that the challenged provision of the Regulation raises the issue of consciously giving up religious education exceeds the delegation under article 12, section 2 in connection with section 1 of the Educational System Act. The latter only refers to expressing the wish to attend religious education, not to giving up religious education.

Given this, it is pointless to consider whether paragraph 3, section 3 of the Regulation entails an obligation or merely a right to make statements of will, whether such statements are negative or positive, and whether they concern only the teaching of religious education or the student's beliefs and his/her religion, issues covered by article 2, sub-section 5 of the Act on Guarantees of Freedom of Conscience and Religion, which is invoked by the Commissioner for Citizens' Rights.

3. Next, the Commissioner for Citizens' Rights claims that paragraph 5, section 1 of the Regulation providing for the employment of teachers of religious education by schools was issued without any grounds under article 12, section 2 of the Educational System Act, was in conflict with article 10, section 2 of the Act on Guarantees of Freedom of Conscience and Religion and the general rules of public funds management as well as in violation of article 81, section 1 of the Constitution.

The allegation of nonconformity with article 10, section 2 of the Act on Guarantees of Freedom of Conscience and Religion providing that there should be no subsidies for Churches and other Religious Organizations by the State and state organizational units is unjustified.

The payment of remuneration to teachers of religious education cannot be identified with subsidizing Churches or other Religious Organizations. A teacher of religious education in receipt of remuneration for work performed cannot be treated as a Church or some other Religious Organization, entities which are precisely specified in the two Acts of 17 May 1989 under discussion. However, we are still left with the other arguments put forward by the Commissioner for Citizens' Rights that need to be considered; to begin with, the allegation of exceeding the statutory delegation under article 12, section 2 of the Educational System Act. This provision obligates the Minister of National Education to specify by regulation the conditions and manner in which schools are to perform their objectives connected with the organization (not „facilitation”) of the teaching of religious education. The arguments presented by the Commissioner for Citizens' Rights with reference to the teaching of religious education as an internal affair of Churches and Religious Organizations cannot be treated as valid because the organization of religious education in public schools was specifically imposed on the school under the Educational System Act (article 12, section 1). The Constitutional Tribunal discussed this question in greater detail in III. 2 of the reasoning to the Decision. Regarding the allegation of contravention with rather undefined „principles of public funds management,” judging by the grounds for the petition the Commissioner for Citizens' Rights meant that the State's spending must be authorized by statute. One such authorization is first of all the State budget act. In the case under consideration, we are referring to the part of the State budget at the disposal of the Ministry of National Education, and especially the portions of the budget classifications providing for personnel spending, including salaries paid to teachers of religious education. This statutory basis is sufficient for making such payments. Likewise, one cannot agree with the argument that the payment of salaries from the State budget constitutes a violation of equality referred to in article 81, section 1 of the Constitution. Like in many other detailed legal arrangements (e.g., with respect to tax exemptions or tax breaks in connection with religious worship, in special regulations concerning the acquisition/sale of real estate by foreigners, in customs law, in funding the cultural needs of national minorities, including the payment from the State budget of salaries to teachers of languages spoken by such national minorities); no violation of equality occurs; under either article 81, section 1 or article 67; section 1 of the Constitution. The Regulation issued by the Minister of National Education does not favor any single religion; but clearly creates the same conditions for all. And for non-believers not wishing to participate in religious education, the Regulation introduces ethical education. As far as ethical education is concerned, according to the text of the Decision, it can also be attended by believers who forgo or who do not forgo religious education. Therefore, one cannot speak of inequality.

4. In the next point of his petition, the Commissioner for Citizens' Rights claims that paragraph 5, section 2 of the Regulation introduces without a statutory basis a rule that the withdrawal of mandate to teach religious education is equivalent to the termination of (change to) the employment relationship, contravening the provisions of the Labor Code and the Teacher's Charter on the termination of employment. At the hearing on 30 March 1993, the Commissioner for Citizens' Rights made this objection more specific by pointing out that it concerned the violation of article 32, section 1 and article 42 of the Labor Code as well as article 27, section 1 of the Teacher's Charter. The challenged paragraph 5, section 2 of the Regulation regulates two issues: the right to withdraw the mandate of a teacher of religious education by superiors of relevant Churches or Religious Organizations (referred to in paragraph 5, section 1 of the Regulation) and the consequences of such a withdrawal. The right to withdraw the mandate is obvious. It has not been: questioned by the Constitutional Tribunal as it follows from the fact that the content of religious education and the persons engaged as teachers must be decided by the respective Church, the matter being an „internal

affair” of that Church. On the other hand, the consequences of the withdrawal described in the third sentence of paragraph 5, section 2 of the Regulation („the withdrawal shall be equivalent to the termination of [change to] employment with respect to teaching religious education”) does not conform with the rules of labor law, under which termination of, or change to, a relationship of employment results from actions taken by the parties to such a relationship. On the assumption that teachers of religious education are employed under a contract of employment, the rule included in paragraph 5, section 2 of the Regulation does not conform with article 27, section 1 of the Teacher’s Charter or article 32, section 1 and article 42 of the Labor Code. It follows from these regulations that the termination of, or change to, a relationship of employment rests with the parties to such a relationship. This rule also follows directly from article 39, section 3, sub-section 1 of the Educational System Act, which provides for the engagement and dismissal of teachers by the school’s headmaster.

5. The grounds for the objection presented in point 1.5 of the petition submitted by the Commissioner for Citizens' Rights are based on the reasoning, presented previously, based on the claim that the teaching of religious education (including the terms of its organization) is an internal affair of Churches and Religious Organizations. On this basis, the Commissioner for Citizens' Rights challenges paragraph 7, sections 1 and 4 of the challenged Regulation providing for the participation of teachers of religious education in teacher meetings and the obligation to make entries in the class register.

The arguments for this issue have been presented above in connection with the interpretation of the term „to organize.” Since the school has the obligation to organize the teaching of religion, it is necessary, as a result, to record classes in class registers, and it is likewise necessary for teachers to participate in teacher meetings (article 40, section 3 of the Educational System Act).

1. In point 1.6 of the petition, the Commissioner for Citizens' Rights claims that section 9 of the challenged Regulation was issued without statutory basis in violation of article 10, section 1 of the Act on Guarantees of Freedom of Conscience and Religion and article 82, section 2 of the Constitution. The Commissioner for Citizens' Rights also objects to the placement of the grade for religious education in the second place, following the grade for the student’s conduct.

The challenged paragraph 9, section 1 reads: „The grade for religious education/ethical education on the school transcript shall be placed immediately following the grade for the student’s conduct. In order to avoid the possible demonstration of intolerance, no data shall be shown that might be used to infer classes of what religion (or ethical education) the student attended.” In section 2 of the said provision, one reads that: „the grade for religious education (ethical education) shall have no bearing on the student’s promotion to the next grade.

The Commissioner for Citizens' Rights claims that the placement of the grade for religious education on the school transcript violates the separation of Church and State (article 82, section 2 of the Constitution) and that it contravenes the secular and neutral nature of the State (article 10, section 1 of the Act on Guarantees of Freedom of Conscience and Religion).

The placement of the grade for religious education on the school transcript is a consequence of the organization of religious education by public schools. Article 22, section 2, sub-sections 4 and 5 of the Educational System Act obligates the Minister of National Education, among other things, to determine „the manner in which schools are to maintain records of the teaching process.” The Act does not mention any exceptions. A school transcript covers all the school subjects, both mandatory and elective classes, so there is no basis for obligatorily excluding religious education. Naturally, the Minister of National Education could decide otherwise and waive the requirement to place the grade for religious

education on the school transcript. It follows from the grounds for this objection that the Commissioner for Citizens' Rights has concerns about intolerance. In order to dispel any possible doubts in this respect, in point 7 of the conclusion of the Decision the Constitutional Tribunal notes that the grade on the certificate can refer not just to religious education or ethical education, but if the student attends both subjects, he/she can receive a joint grade for the two subjects. Thus, the challenged provision include double protection. First, the grade shown on the certificate does not point to a specific religion. Second, it is not clear whether the grade refers at all to religious education or whether it refers to ethical education, or jointly to both subjects.

As a result of this Decision of the Constitutional Tribunal (point 6 of the conclusion of the Decision), a third protection is added (see below).

Regarding the objection concerning the violation of the separation of Church and State (article 82, section 2 of the Constitution) and the secular and neutral nature of the State (article 10, section 1 of the Act on Guarantees of Freedom of Conscience and Religion), it should be, as mentioned above, considered in the context of the introduction of religious education into public schools as the problem of the grades on school transcripts is merely a consequence of the teaching of religious education.

The principles mentioned above require that both the State and the Church be autonomous in their actions. This does not, however, mean isolation, let alone, competition. To the contrary, this should mean an opportunity to collaborate in the fields that serve common welfare and the development of the individual. These fields undoubtedly include the ethical education of young people.

The secular and neutral nature of the State mentioned above cannot, therefore, entail a ban on religious education in public schools especially given that under the Educational System Act the teaching of religious education can occur only at the request of the parents or (in specified cases) the students.

The interpretation adopted by the Constitutional Tribunal is in line with a similar understanding of secularity, neutrality, or the separation of Church and State in those democratic European States where religious education is taught in public schools, sometimes even as an obligatory subject. Furthermore, this interpretation conforms with international conventions on human rights (...)

The provisions mentioned above impose on the State the obligation to protect the rights and freedoms of the individual. The State cannot, therefore, evade the obligation to ensure such religious education and in such a place that agrees with the wishes of the parents.

On the other hand, the Constitutional Tribunal conceded that the placement of grades for religious education taught outside the school on a transcript issued by a public school (provided for under paragraph g, section 4) is inconsistent with article 12, section 2 of the Educational System Act: Article 12, section 2 of the Act obligates the Minister of National Education to determine by regulation the conditions and manner in which schools are to perform the objectives following from their obligation to organize the teaching of religious education upon request of the parents or the students. So the Minister of National Education did not receive delegation to record the results of religious education taught outside the school. Therefore, paragraph 9, section 4 goes beyond the regulation in article 12, section 2 of the Educational System Act. In fact, it does not find support in any other rule of law. This decision of the Constitutional Tribunal constitutes the third protection mentioned above against speculations as to the student's religion. The absence of a grade („a dash”) does not necessarily signify that the student did not attend religious education.

2. In his next, final, and precisely worded objection, the Commissioner for Citizens' Rights claims that section 12 of the challenged Regulation omits in an „excessive manner” the display of symbols of worship and the saying of prayers outside the places and time provided for the teaching of religious education, thus contravening articles 6, section 2 of the Act on Guarantees of Freedom of Conscience and Religion and article 82, section 1 of the Constitution.

An analysis of the objection requires the rejection of the view that the display of the Cross and the saying of prayers by students are obligatory. The wording of section 12 of the Regulation does not warrant such an assumption as section 12 provides that: ^K“The Cross may be displayed on school premises. Prayers may also be said in schools before and after classes...” Moreover, the subsequent part of the provision is designed to prevent any possible practices of intolerance if „... The saying of prayers in the school should be an expression of a joint aspiration of the students and tact and consideration on the part of teachers and instructors. There can be no doubt that the quoted text merely points to a possibility, and not an obligation, to display the Cross and to say prayers, which clarifies the legal situation discussed by the Commissioner for Citizens' Rights. This especially concerns the allegation of violating article 6, section 2 of the Act on Guarantees of Freedom of Conscience and Religion, entailing the violation of article 82, section 1 of the Constitution. The said provision of article 6, section 2 of the Act provides that „citizens shall not be forced not to participate or to participate in religious activities and rites.” So, if, against the will of the students, one prevented them from saying prayers, this would amount to a violation of the provision quoted above and to a violation of article 82, section 1 of the Constitution. It would be so as it must be noted that (given section 12 of the challenged Regulation) the saying of prayers can constitute only an expression of a joint aspiration of the students accompanied by an expression of tact and consideration by the teachers and tutors. In light of these conditions, one can hardly speak of legal premises for the use of any pressure on the students who do not wish to participate in saying such prayers. However, even if in practice such pressure were actually used in one of the public schools this would amount not only to a violation of article 6, section 2 of the Act mentioned above and article 82, section 1 of the Constitution, but also section 12 of the challenged Regulation of the Minister of National Education. This would, however, be a result of the violation of the law, and not a result of the observance of the law. As such, the matter would fall under the jurisdiction of a common court, not the Constitutional Tribunal.

A further problem that arises in connection with the discussed charge made by the Commissioner for Citizens' Rights concerns the question whether section 12 of the Regulation exceeds the statutory delegation. The Commissioner for Citizens' Rights does not actually raise this problem in the conclusion of the petition, but he raises it as part of the grounds for the petition. In its conclusions, the Constitutional Tribunal omits the question of a possible connection between the opportunity to display the Cross and to say prayers on the one hand and the teaching of religious education on the other hand, and deals directly with the charge of exceeding statutory delegation in this respect. One can assume that section 12 of the Regulation finds no direct support in the delegation under article 12, section 2 of the Educational System Act, a fact constituting a clear defect in the legal structure of the Regulation. However, the Constitutional Tribunal had difficulty finding grounds that would be solid enough to question the legality of the challenged provision for this reason. The incorporation of the provision in the Regulation issued by the Minister of National Education finds support in the context of the Preamble to the Educational System Act as well as in article 13, which imposes on the school the obligation to enable the students, among other things, the retention of their religious identity. Under section 3 of the said article, the Minister

of National Education is obligated to determine by regulation the conditions and the manner in which schools fulfill the above obligation. The opportunity to display the Cross and for the students who wish to do so to say prayers constitutes one of the ways to retain the said religious identity. Section 12 of the challenged Regulation constitutes the fulfillment of the obligation of the Minister of National Education under the Act. The provision of the challenged section 12 of the Regulation speaking of the opportunity to display the Cross (which is not merely a symbol for Christians) and the opportunity for those who wish to do so to say prayers on the premises of a public school first of all follows from article 82, section 1 of the Constitution, which can be directly applied, and from article 6, section 2 of the Act on Guarantees of Freedom of Conscience and Religion. These provisions introduce, among other things, a ban on forcing citizens not to participate in religious acts and rites. Therefore, it must be conceded that section 12 of the Regulation does not introduce any change in the existing law.