

ÁDÁM RIXER¹

Freedom of Conscience of Teachers in Hungary²

Submitted: 13.03.2024. Accepted: 6.05.2024

Abstract

In my current study, I focus on civil servants, and within that – on the special category of teachers. I will offer a closer look at the freedom of conscience of teachers, to see what are the nodes and areas of particular interest, and what legal conflicts and possible methods of resolution are present in the legal system – within the case law and in the literature. Ultimately, I would like to answer the question of what the new results and emerging institutions of legal development are in the area under study – primarily in Hungary, but also internationally.

Keywords: civil servants, freedom of conscience, teachers, Hungary.

¹ Prof. Ádám Rixer – Károli Gáspár University of the Reformed Church in Hungary – Department of Administration and Infocommunication (Hungary); e-mail: hungaryrixer.adam@kre.hu; ORCID: 0000-0002-6945-0312.

² The research has been supported by Instytut Wymiaru Sprawiedliwości, Warsaw within the framework of the Polish-Hungarian Research Platform 2023 (PHRP3) project.

ÁDÁM RIXER

Wolność sumienia nauczycieli na Węgrzech³

Streszczenie

W moim badaniu skupiam się na urzędnikach państwowych, a w szczególności na nauczycielach, których traktuję jako kategorię o wyjątkowym znaczeniu. Analizuję kwestię wolności sumienia nauczycieli, aby zdobyć wiedzę na temat obszarów szczególnie istotnych w ich profesji, aby dowiedzieć się, z jakimi konfliktami muszą mierzyć się w obecnym systemie prawnym oraz z jakich metod rozwiązywania tych konfliktów mogą korzystać w istniejącym porządku. Zagłębiając się w tym celu zarówno w orzecznictwo, jak i w literaturę przedmiotu. Celem mojego projektu badawczego jest uzyskanie odpowiedzi na pytanie, jakie nowe formy przyjmują instytucje rozwoju prawa w badanym obszarze – przede wszystkim na Węgrzech, ale także w kontekście międzynarodowym.

Słowa kluczowe: urzędnicy państwowi, wolność sumienia, nauczyciele, Węgry.

³ Badania wykorzystane w artykule zostały sfinansowane przez Instytut Wymiaru Sprawiedliwości w Warszawie w ramach projektu Polsko-Węgierska Platforma Badawcza 2023 (PHRP3).

Introduction

In my previous study (*Freedom of conscience and public employees in Hungary*) – in the context of the same research, which is „Freedom of Conscience in the Institutional Aspect”, organised as part of the Polish-Hungarian Research Platform 2023 scientific project – I wrote about the most frequent areas of the freedom of conscience from the perspective of the Hungarian public sphere and especially public administration.

In my current study, I focus on civil servants, and within that – on the special category of teachers. I will have a closer look at the freedom of conscience of teachers, to see what are the nodes and areas of particular interest, and what legal conflicts and possible methods of resolution are present in the legal system – within the case law and in the literature. Ultimately, I would like to answer the question of what the new results and emerging institutions of legal development are in the area under study – primarily in Hungary, but also internationally.

With regard to the methods and possible results of the research, we must clarify two important preliminary questions: on the one hand, the novelty of the study lies not so much in the institutions identified, but in their grouping, and on the other hand, the nature of the current conflicts of conscience cannot be inferred from legal cases alone, because some of them do not reach a legal type of resolution, i.e. they do not go to court, and others only become available after years of long proceedings. How then can this question be examined? In the international literature, there are, for instance, several examples of publicly available termination letters of teachers that have been examined and used to draw conclusions. Those termination or resignation letters show the current situation relatively accurately. Using philosophical inquiry and document analysis, Santoro examined 15 publicly available teacher resignation letters from the United States that were published on the internet between 2012 and 2014 to investigate the pedagogical, professional, and democratic components of craft conscience.⁴

Moreover, I would like to come up with a short survey on the situation in Hungary: I asked 15 Hungarian teachers about the most acute professional-human conscience problems they face in Hungary today. So, document analysis and interviewing must be part of my inquiry and my research project – at least to some

⁴ D.A. Santoro, *Teachers' expressions of craft conscience: upholding the integrity of a profession*, "Teachers and Teaching" 2017, 6, pp. 750–761.

extent. And since these methods are presented in this paper as useful research methods for the future, rather than as the exclusive basis of the current research, one of the main aims of the paper is to develop and offer a complex set of proposals, including methods to address the issues in question.

Therefore, I'm going to refer, as I have already indicated above, to the legislative achievements and I'll also describe the activities of the courts and the efforts of schools and other educational institutions in this area.⁵ Moreover, we must also reflect on the activities of bodies (authorities) responsible for the administration of education. To sum up, I will explore the legal type institutions that make it possible to prevent conflicts of conscience on the side of public administration in Hungary today.

To offer an overall picture of the issue, I also need to address the social situation of teachers – the context in which problems of conscience arise.

In line with the above, I will first clarify the most important international contexts, then I will share basic information on the situation of Hungarian teachers, identifying and categorising their difficulties of conscience (from a partly sociological and partly legal perspective, of course, with reference to legal sources in each group), I'm going to assess the legal institutions that are capable (or at least designed) to deal with the problems that arise, and then, finally, I will formulate my proposals.

The international context of the Hungarian situation

What does conscience mean in teaching? What is the meaning of the expression: *Teaching with conscience*? According to the results of contemporary pedagogy, *social justice* is something that lies at that heart of education in a democracy, within education toward a more vital, more muscular democratic state.⁶ The data from the triennial PISA surveys on Hungary consistently show that the Hungarian school system is too unequal and too segregated. The 2016 and the 2019 PISA data show that among the 35 OECD countries, family background is one of the strongest determinants of student outcomes in Hungary – it means that most schools are unable to compensate for differences brought from home here in Hungary. Some failures of integrated development are also seen in the educational community and within the national literature, supported by research findings. In Hungary,

⁵ For the full picture, we should also mention that in accordance with the relevant international literature, the notion *institutional conscience* also assumes that the conscience of each public institution (in our case school or public authority) is an existing sociological fact and that it also involves moral obligations, responsibilities, and possibilities, which are otherwise not or only to a limited extent regulated by law.

⁶ W. Ayers, *Teaching with conscience in an imperfect world – an invitation*, Teachers College Press 2016, p. XI.

the phenomenon of discrimination against Roma pupils is still very visible,⁷ posing a major moral challenge to the education system as a whole and to teachers as individuals – and this fact is a vital part of a quite negative institutional conscience.

My study of the international literature has also revealed a fundamental contradiction – closely connected with topics such as social justice.

Today, in Western-style or Western type education of teachers, the perception and presentation of diversity is seen as one of the most important goals – the importance of the attitude towards diversity has become a central element of education in Western societies – and this can intensify the tension between the respective official state ideology, religion, and personal beliefs. Also in the case of the teacher. In the West, it is dominant; the further to the East we go, the less relevant the individual approach to teacher training and education becomes. Within current teacher training programmes in Western countries, the main point and goal is the development of consciousness and conscience through critical questioning as the way teacher candidates become aware of diversity and develop a desire to contest injustices.⁸ And it leads to the most important question of our societies: how should we manage moral and religious diversity in a free society?

This approach has also brought with it that teachers maintain a critical distance from their own convictions and values, respect the student's freedom of conscience and religion to avoid any indoctrination, and play the role of a cultural mediator. This new requirement has not gone over without question.⁹

Teachers' conscience is concerned with the moral choice of "doing something and not doing something" and the value judgment of "right and wrong" in educational activities.¹⁰ Teachers' conscience is the manifestation of the unity of the explicitness of selfless altruistic behaviour and the internalisation of professional moral obligations.¹¹ It is embodied in the comprehensive ability of intuition and rational judgment, reflection, and evaluation. It not only obeys the ethical require-

⁷ S. Szemesi, *Az Emberi Jogok Európai Bírósága ítélete a roma gyermekek hátrányos megkülönböztetéséről a magyar speciális iskolákban: az oktatáshoz való jog és a hátrányos megkülönböztetés tilalma kapcsolatáról*, "Jogesetek magyarázata: JeMa 2013, 4, pp. 93–98; L. Balogh, *A contemporary history of exclusion: the Roma issue in Hungary from 1945 to 2015*, "Nationalities Papers" 2018, 5, pp. 944–946; K. Fazekas, M. Csillag, Z. Hermann, Á. Scharle (eds.), *Munkaerőpiaci Tükör 2018*, MTA Közgazdaság- és Regionális Tudományi Kutatóközpontja 2019.

⁸ D.L. Roseboro *et al.*, *The evolution of teacher candidates' thinking: coming to consciousness and developing conscience*, "Teaching and Learning" 2012, 2, p. 58.

⁹ M. Estivalèzes, *The professional stance of ethics and religious culture teachers in Québec*, "British Journal of Religious Education" 2017, 1, pp. 55–74.

¹⁰ J. Xuanmin, *On Teachers Conscience: Essential Connotation, Formation Logic, and Development Path*, "Education Science" 2023, 1, pp. 43–49.

¹¹ *Ibidem*, p. 44.

ments of educational justice, but also has an educational beauty vision.¹² And that last point is really important within our region, but then the classic question evolves: does a teacher still play a teleological surplus function in contemporary *Polish* or *Hungarian* society? Western and Eastern answers are traditionally different: here, in Central and Eastern Europe, the teacher plays traditionally a surplus role to some extent – more than elsewhere, mostly through their political surplus.

We can also observe that in the most developed societies there is a huge amount or high level of legal awareness: publications summarising the rights of students, teachers, and parents are widely available – interestingly, in Hungary this is still scarce. Books like “Teachers and the Law”¹³ do not exist in Hungary. That book is divided into two parts. Part I, “The Legal Aspects of Teaching,” addresses questions related to teacher contracts, dismissals, tenure, collective bargaining, liability, child abuse, defamation, and copyright laws. Part II, “Teachers’ and Students’ Rights,” explores legal issues related to the scope and limits of personal freedom of expression, covering such topics as religion and conscience, personal appearance, due process, privacy, home-schooling, bilingual and multicultural education, student records, sex and racial discrimination, free speech, and academic freedom.

The fundamental question here is where the teacher’s place in this legally complex system actually is.¹⁴

Grouping of conscience issues

The first question is how to group the types of conscience issues that a teacher may face. Conscience-based legal problems can be broadly divided into three groups: *first*, conflicts with students, parents, and other teachers; *second*, status-related issues; and *third*, conflicts over education administration and policy, which go beyond classic labour law issues.

It is also clear that in Western countries, issues such as the religious outfit of teachers, the wearing of religious symbols on clothing or their placement in classrooms, are also coming into sharp focus.¹⁵ Here, both in Poland¹⁶ and Hungary,

¹² Ibidem.

¹³ L. Fischer, D. Schimmel, L. Stellman, *Teachers and the Law*, 6th ed., Allyn & Bacon 2002.

¹⁴ J. Temperman, *State neutrality in public school education: An analysis of the interplay between the neutrality principle, the right to adequate education, children’s right to freedom of religion or belief, parental liberties, and the position of teachers*, “Human Rights Quarterly” 2010, 4, p. 865.

¹⁵ J. Murdoch, *Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights*, Council of Europe Human Rights handbooks, Council of Europe 2012, pp. 49–50.

¹⁶ See e.g.: L.L. Garlicki, *Perspectives on Freedom of Conscience and Religion in the Jurisprudence of Constitutional Courts*, “BYU L. Rev.” 2001, 2, p. 467.

these are not yet issues of substance. It is still not the sharpest question how long secular laws are to be obeyed, and at what point state regulations – which are obviously contrary to divine law – are not to be enforced.

Grouping of institutions for the prevention of conflicts of conscience

The good news is that legal institutions have been invented in the developed world to normatively prevent at least some of the conflicts of conscience – in addition to ensuring general freedoms. These institutions *traditionally* are (at least the most important ones) as follows:

1. school choice by all actors (parents, teachers);
2. granting religious schools additional rights, allowing additional obligations in employment contracts. An exciting new question emerging in the literature is how moral principles can be reflected in the internal documents of various educational institutions, and how the principles and rules of the Bible can be incorporated into these documents of church-run institutions;¹⁷
3. parallel teaching of religious and secular moral knowledge within the schools by persons who volunteer to teach those two subjects and at the same time meet the most basic professional standards. Jocelyn Maclure and Charles Taylor provide a clearly reasoned, articulate account of the two main principles of secularism – equal respect and freedom of conscience – and its two operative modes – separation of Church (or mosque or temple) and State, and State neutrality vis-à-vis religions.¹⁸ The question arises how to manage moral and religious diversity in a free society *and within the education system?*
4. more or less freedom as regards the content of the material taught within the schools;

¹⁷ See e.g.: P.I. Szontagh, *A keresztyén pedagógusokkal szemben támasztott minőségi és etikai elvárások, valamint azok kodifikációs problémái*, Doctoral Thesis, Károli Gáspár Református Egyetem Állam- és Jogtudományi Doktori Iskola 2018; and Á. Rixer, *A Biblia szövegeinek felhasználhatósága az egyházi fenntartású intézmények belső dokumentumaiban*, [in:] N. Birher, Á.O. Homicskó (ed.), *Az egyházi intézmények működtetésének etikai alapjai*, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar 2019, pp. 25–36.

¹⁸ J. Maclure, C. Taylor, *Secularism and Freedom of Conscience*, Harvard 2011, <https://doi.org/10.4159/harvard.9780674062955> (access: 10.14.2023). See also: M. Estivalèzes, op. cit., p. 55; O. Gerstenberg, *Germany: Freedom of conscience in public schools*, "International Journal of Constitutional Law" 2005, 1, pp. 94–106; and S.S. Juss, *Freedom of Conscience Rights: Lessons for Great Britain*, "Journal of Church and State" 1997, 4, pp. 749–768.

5. freedom in the teaching methods used; and
6. a complex, multi-level institutional system of rights protection (at least in Hungary, for example, a Commissioner for Education Rights, conciliation forums, courts, and so on...

These solutions (and some further ones) are all important, because they reduce the number of potential conflicts of conscience.

Institutional aspects of the freedom of conscience of Hungarian teachers

First of all, within this chapter, I will briefly review the situation of teachers in Hungary: as part of this, I will introduce the changing role of teachers and the sociological characteristics of teachers. In addition to the findings from the areas of pedagogy and sociology, I will also draw on my own survey of teachers, in which I asked teachers about, firstly, what the biggest problems of conscience in their profession are in general, and secondly, what causes them personally the greatest conflict of conscience. And finally, I will review the institutional aspect of the freedom of conscience of teachers following two approaches: *on the one hand*, I have collected the new legal instruments through which the state tries to prevent potential conflicts of conscience, and, *on the other hand*, I have reviewed the decisions of the courts and the Hungarian constitutional court that have arisen in connection with the aforementioned (previously mentioned) conflicts of conscience.

The main sociological features of the teaching profession in Hungary

The main sociological features of the teaching profession according to Pinczésné¹⁹ and Kuczi are:

1. Feminisation of the profession;
2. High social expectations, modest material appreciation;²⁰

¹⁹ I. Pinczésné Palásthy, *A pedagógusok hivatásszemélyisége*, p. 24, <https://docplayer.hu/47766168-A-pedagogusok-hivatasszemelyisege.html> (access: 10.14.2023).

²⁰ In the Varkey Foundation's Global Teacher Status Index survey, Hungary is one of the ten countries where the teaching profession is the least valued, according to a composite measure. Hungarian teachers' salaries are well below those of their international peers (60% compared to an EU average of 90%). The

3. Low prestige relative to such an intellectual profession;²¹
4. Ageing;
5. High number of unfilled vacancies;
6. New tasks constantly emerging;²²
7. The well-known phenomenon of burnout is most prevalent here. The phenomenon of occupational burnout among teachers is so pronounced because for a teacher to work effectively, active engagement is necessary on the part of the other person – the pupil, the child. However, this cooperation is often damaged by the active or passive resistance of children.²³

The literature clearly shows that a significant part of the conflicts of conscience of teachers is due to the changing role of the teacher: traditionally, the teacher is a dominant intellectual with stable values, has a transcendent vocation, is an unapproachable person, who sees the transfer of knowledge as their primary task. In contrast, teachers of the present are more open, more emotional, have a variety of values, a functional sense of vocation (*they are more or less administrators*), less dominant, more dependent, and take on a partner role.²⁴ The school and kindergarten have also changed a lot. Children have become more aggressive, parents – more dissatisfied or indifferent. Employees are more tired, managers are frustrated. The school, first and foremost – but also the nursery school – has become an increasingly stressful environment, and the fatigue and burnout affect the best teachers, because they are the ones who really put themselves into their work and give their best. They spend more time on the job and are more engaged than their colleagues.

There are differences, however, not only between the old and the new role conceptions and along the change of social circumstances, but also according to the experience of the teacher.

difficult financial situation of teachers is not significantly affected by the fact that from January 2024, the average salary of teachers is expected to rise by 32.2%, according to a new three-year pay improvement programme implemented by the government.

²¹ The shortage of teachers and the decline in the prestige of the profession is a global phenomenon. More than a third of European schools face a shortage of teachers, and 81% of teachers feel unappreciated in their profession.

²² P. Radó, *A magyar közoktatással szembeni társadalmi kihívások. Javaslat az ELEGY Oktatáspolitikai Szakbizottság számára*, pp. 1–9. Available from: <https://ckpinfo.hu/wp-content/uploads/2023/05/Elegy-tarsadalmi-valtozasok-veglegesített.pdf> (access: 10.14.2023).

²³ http://www.lelkititkaink.hu/pedagogus_burn_out_kieges_elleni_trening.html (access: 10.14.2023).

²⁴ I. Pinczésné Palásthy, op. cit., p. 4.

The main problems of the early career teacher are:

- ❑ planning, methodological difficulties;
- ❑ discipline;
- ❑ challenges of adaptation;
- ❑ overload; and
- ❑ self-evaluation problems.²⁵

The main problems of the experienced teacher are more likely to be:

- ❑ financial;
- ❑ motivational, role conflicts;
- ❑ credibility; and
- ❑ burn-out phenomena.

Conflict of conscience occurs in educational institutions and among teachers when an external or internal expectation conflicts with other expectations or lived realities. In other words, the tension between pedagogical, legal, and other principles formulated at an abstract level and actual practices is one of the main causes of the various conflicts of conscience in education.

Types of conflicts of conscience and types of institutional answers within education

The basic types of conflicts of conscience – in general, according to the literature and the interviews conducted – are as follows:

1. *Material type conflicts:* “I’m unable to make a living, I feel I am stealing from my own children when I work as a teacher...,” etc.
2. *Conflicts of a professional nature:* many feel and say things like “I can’t develop, design, and apply my own method, I am not allowed to do so, and I feel that the pupils, the parents, the school leaders, the educational administration, and even the wider public hinders me...,” “I can’t be myself, I don’t agree with some of the compulsory elements (with the model curriculum, etc).”

²⁵ Zs.H. Biró, *Pályakezdő pedagógusok a 21. század elején*, [in:] T. Majsai, P.T. Nagy (eds.), *Lukács, a mi munkatársunk: a WJLF tisztelgő kötete Lukács Péter 60. születésnapjára*, WJLF 2009, pp. 41–52.

This also includes the lack of professional conditions (lack of tools, textbooks available, etc.). Another problem is the high number of substitutions, and the situation of those teachers who cannot teach what they would like to or are best able to teach because of the large number of teachers missing from the system... This also includes those cases when the teachers have doubts mainly regarding their own abilities: these are questions of competence and also aptitude dilemmas. These are mere internal conflicts, conflicts of conscience, due to a perceived or real lack of professional cooperation skills.

3. *Personal conflicts*: these are quite often *credibility dilemmas*. The most typical, surprisingly, is the feeling of being untrustworthy: "I say with my words, with my very being, that it is worth doing, worth learning, you should be an educated person, while I don't believe it myself, it is not my experience, I don't feel appreciated by the people around me, by the society..." There is also a statement of a conflict of conscience, where the respondent said "I would like to leave, but I don't want to let my students and colleagues down..."
4. *Mixed conflicts*: mixed, complex conflicts arise when several of the above are present simultaneously, and other difficulties in human life may be added to these (daily life management; relational, family, and health problems, etc.). And – as it was previously mentioned – burnout is one of the most common features in this occupational group.

After this general grouping, it is also reasonable to consider the most frequent conflicts of conscience within the educational sphere, as highlighted by court and constitutional court decisions from the past 3 years in Hungary. The following types of conflict seem to be the most common – *beyond the traditional types*:

1. Expressing opinion through social media (mainly through Facebook).²⁶ The Hungarian judiciary has developed a very uniform and consistent practice in relation to the public sector, and the best-known cases are good examples of that: e.g. the case of a teacher who wrote racist posts not directed at the employer, but publicly, on Facebook.²⁷ The existing case law clearly determines where the boundaries of free speech for employees lie, and I have

²⁶ See e.g.: L. Pók, *Lájkolni szabad? Munkavállaló véleménynyilvánítás az új Munka Törvénykönyve tükrében, "Infokommunikáció és Jog"* 2012, 4, pp. 160–163; B. Bitskey, *Nem illeti meg a véleménynyilvánítás szabadságából fakadó alapjogi védelem a munkavállaló által közzétett szakmai jellegű közlést, ha annak nincs közéleti kötődése, "Munkajog"* 2018, 4, pp. 49–51.

²⁷ Decision Mfv.10098/2019/4. of the Curia.

already reported on the practice of the courts, the Constitutional Court, and the ECtHR in my previous paper. Labour law systems create boundaries for the freedom of expression. These restrictions are varied since there are many different kinds of employer actions preventing the harmful exercise of rights and sanctions negatively affecting employees.²⁸ The European Court of Human Rights has a wide range of case law in this sense, focusing primarily on the ways, the necessity, and the proportionality of the limitations of freedom of expression along with the legitimate sanctions the employer can apply.

2. COVID-19 vaccine refusal.²⁹
3. Conflicts related to overtime, not paid additional allowances.³⁰
4. Quality of textbooks.
5. Civil disobedience,³¹ also called passive resistance, the refusal to obey the demands or commands of a government body or other superior authority, without resorting to violence or active measures of opposition; its usual purpose is to force concessions from the government or other authorities.³² Civil disobedience is a symbolic violation of the law rather than a rejection of the system as a whole. The civil disobedient, finding legitimate avenues of change blocked or non-existent, feels obligated by a higher, extra-legal principle to break some specific law.³³

There were several such cases within the educational system in the last few years in Hungary, but there are no judgements issued in the current cases yet. There are also legal theoretical problems, such as the Radbruch formula: where is the borderline between unjust but tolerable and intolerably unjust and thus unlawful acts of state?

For example, the following question related to Hungarian teachers has emerged: does unjust conduct of the State, especially the limited right of teachers to strike, constitute a ground for unlawful civil disobedience of those teachers? What should be the legal consequences of such actions? This issue also has a very strong conscientious connection: the fundamental right to strike is in conflict with the right of

²⁸ M.L. Zaccaria, *Korlátozott szabadság?*, "Jogtudományi Közlöny" 2022, 1, pp. 24–32.

²⁹ <https://infostart.hu/belfold/2023/06/14/per-lett-abbol-hogy-nem-akarta-beoltatni-magat-a-katona> (access: 07.10.2023); see also: Decision Mf.30071/2022/7.

³⁰ Decision Mfv.II.10.595/2017/4. of the Curia. See also: Mf.30005/2023/8, Mf.30005/2023/5.

³¹ D. Chong, *Political Protest and Civil Disobedience*, [in:] D.J. Wright (ed.), *International Encyclopedia of the Social & Behavioral Sciences*, 2nd ed., Elsevier 2015, p. 244.

³² <https://www.britannica.com/topic/civil-disobedience> (access: 5.10.2023).

³³ *Ibidem*.

children to education, and many teachers argue that their aim, whether through strike action or civil disobedience, is precisely to protect the rights and long-term interests of children, i.e. they see their action as a clear duty of conscience.

The explanatory memorandum to Act V of 2022 on regulatory issues related to the end of the emergency (Vtv.) also responds to this: “The question that arises in the context of a walkout is whether it can be considered a strike or civil disobedience. Civil disobedience is not a legal category, it is not regulated by the Hungarian legal system, and due to its nature it is not a legal institution related to the world of work, but a means of political expression. The exercise of the right to strike, which is regulated by law, is a means of expressing workers’ demands in relation to employment, working conditions and pay. Refusal to take up work for any other reason has consequences under labour law. The law therefore also regulates the legal consequences that may be imposed on public servants and employees employed by a public education institution who do not fulfil their employment obligations.”

6. Organising a strike within the existing legal framework and as a kind of *ultima ratio*.³⁴
7. External political pressure, independent of the content of the legislation, as a matter of conscience for the teachers.³⁵
8. Relations with parents.³⁶
9. Termination of the legal relationship (for all the aforementioned reasons).

We must take into account that a significant part of all the conflicts of conscience on the part of teachers is outside the scope of the law, and only a small part of the conflicts covered by the law can be dealt with by the new legislation. When we talk about institutional responses, we must always bear this in mind.

Of course, freedom of conscience cannot only take the form of public expression of a certain opinion. Other typical instances have been the refusal to take an oath, and – more recently – vaccine refusal,³⁷ and also cases of civil disobedience. It should be noted here that the rights of conscience are usually couched as “negative rights”, i.e., the right to refuse a requested treatment (and also the requests, orders

³⁴ S. Hungler, *A pedagógussztrájkok az ILO gyakorlatának tükrében*, “Munkajog” 2023, 1, pp. 16–23; E. Berki, *Sztrájkok és beavatkozások*, “Munkajog” 2022, 4, pp. 40–49.

³⁵ See e.g.: OBH 5664/2004. Decision of the Parliamentary Commissioner for Civil Rights on *Short report on the collection of information and opinions of a political nature in public education institutions*.

³⁶ A. Kathyné Mogyoróssy, B.E. Nagy, *A szülők és pedagógusok kapcsolattartásának mintázatai*, “Educatio” 2017, 4, pp. 657–668. <https://doi.org/10.1556/2063.26.2017.4.12> (access: 7.10.2023).

³⁷ <https://infostart.hu/belfold/2023/06/14/per-lett-abbol-hogy-nem-akarta-beolttatni-magat-a-katona> (access: 7.10.2023); see also: Decision Mf.30071/2022/7.

of the employer, etc.).³⁸ The dilemma of both the civil service oath and mandatory vaccinations is based on a generally binding requirement, compliance with which may lead to a „breach of conscience”. It should be noted here that the restructuring of the whole system of public education may violate the teacher’s conscience for reasons that do not affect the specific rights and obligations of the pupils or teachers directly: for example, the preparation time provided for by the law may be insufficient.

Figure 1. The relationship between conflicts and responses to conflicts in education



Source: author’s own work.

An analysis of the decisions of the Constitutional Court of Hungary and decisions of ordinary courts in this area is beyond the scope of this study, but will be an inescapable task of further research.³⁹

Institutional responses try to reduce the number and intensity of conflicts of conscience in the Hungarian education system in recent years (2021–2023): *those responses focus on the elimination of incidents and prevention of new ones.* Legal-type responses are legislative and partly enforcement-type responses, insofar as, as we shall see, even under the same legal conditions, enforcement practice may change.

³⁸ D.M. Sullivan, *Professionalism, autonomy, and the right of conscience: A call for balance*, “Ethics, Medicine and Public Health” 2019, 1, pp. 11–15.

³⁹ 20/2023. (VIII. 7.) AB Decision; 21/2023. (VIII. 7.) AB Decision; 1/2023. (I. 4.) Decision; 3128/2022. (IV. 1.) AB Decision; 9/2021. (III. 17.) AB Decision; 3195/2020. (VI. 11.) AB Decision; 9/2019. (III. 22.) AB Decision; 3024/2015. (II. 9.) AB Decision; 3191/2014. (VII. 15.) AB Decision and Decision no. P.21421/2021/28; Decision no. Pf.20031/2022/4; and Decision no. Mf.I.40.048/2022/20.

The new institutions are as follows:

1. Increased use of existing enforcement sanctions (in particular for COVID vaccination in 2021–2022).
2. Introduction of a new status law (which contains clarification of certain rules and increased remuneration): Act LII of 2023 on the new career path of teachers. The change of status means that while teachers have been public employees, from 1 January 2024 they will be transferred to so-called public education employees, except for those who declare that they do not wish to do so and thus terminate their employment.
3. Protection of whistleblowers, creating new forums – to facilitate reporting of abuses.
4. Easing of the entry and employment conditions for teachers. The detailed rules in several cases also allow for the possibility of teaching without a proper degree or even a teaching qualification. Government Decree 401/2023 (VIII. 30.) on the implementation of Act LII of 2023 on the new career path of teachers, within Articles 13–23, significantly relax the rules for the entry into the profession and taking of teaching posts.
5. Limitation of the right to strike. Decision no. 1/2023 (I. 4.) of the Constitutional Court of Hungary was to determine whether certain provisions of Act V of 2022 on regulatory issues related to the termination of the state of emergency are unconstitutional or not. In its assessment, the Constitutional Court concluded that the right of children and young people to education takes precedence over all other rights, and therefore did not consider the restrictions to be contrary to the Fundamental Law of Hungary. *In contrast*, Balázs Schanda, judge of the CC, argued in his dissenting opinion that this ignored the essential content of the strike: the element of pressure on the employer. “There is no doubt that the enforcement of the right of children and young people to education, and the safeguarding of their supervision, is of paramount importance, but it is equally important that the representatives of a profession – which is key to the right to education – can express their interests within a legal framework” – Schanda added.
6. Allowing individual pay agreements because of the shortage of staff.
7. Increasing the number of consultations with trade unions, professional associations, and civil interest organisations in the education sector (the quality and results of these are another matter).⁴⁰

⁴⁰ A. Fehérvári (ed.), *Pillanatképek. Társadalmi partnerek az oktatásirányításban*, OFI 2011, p. 8.

8. A complex system of rules on unethical behaviour has been set up (there are several “layers” within the acts, within the collective agreements and Hungary’s National Teachers’ Chamber’s Code of Ethics for the Profession.

The Code is a set of professional rules for the teaching profession and as such, is considered as another professional compilation of rules for work. The Act CXC of 2011 on National Public Education (hereinafter referred to as “the National Public Education Act”) entrusts the Chamber with the task of drafting a Code of Ethics for Teachers (hereinafter referred to as “the Code”), which consists of general ethical principles, detailed ethical and procedural rules. The Code does not prohibit teachers from serving a political role, but states that activities in social organisations and political movements must be clearly separated from activities in the workplace.

“We should behave, speak, and dress in a way that enhances the dignity of our workplace and of public education,” says the code, which can also be used to help colleagues settle conflicts locally, “in-house,” which could otherwise only be resolved through litigation. The Code could also contribute to reducing the number of court cases in the profession.

The fundamental dilemma and conflict is whether the code of ethics merely expands and clarifies the provisions of otherwise applicable laws and collective agreements, or whether it can contain obligations that go beyond them. What is the correct approach to principles that are too general and not spelt out in any way, especially if membership of the National Teaching Staff is based on compulsory membership, i.e. it is not a voluntary renunciation of rights, a kind of self-limitation?

The following two provisions are good examples of overly general provisions: Art. (54) of the Code states that “A teacher shall stand by his colleague until their professional or ethical misconduct or omission has been proved beyond reasonable doubt” and Art. (35) determines that “A teacher shall respect the privacy of their pupils and students.”

Conclusions and implications

Finally, I would like to make some *proposals* on the issue of freedom of conscience and teachers. I will now summarise my conclusions, findings, and recommendations related to that topic.

Although teaching would appear to be an occupation considered central to a country’s development and well-being, international studies point to difficulties recruiting and retaining teachers even in the most developed countries – including Poland and Hungary as well. And I don’t need to prove that the basic problems of

conscience presented earlier are closely linked to employment difficulties, which adds to the relevance of my proposals.

We can see that the cases of conflicts of conscience and legal cases that are present elsewhere, even in Western Europe (dress restrictions, wearing and display of religious symbols in classrooms, conflicts related to the questioning of traditional gender) are few, while collective forms of assertion of interests, even in the form of meaningful support for co-professions, are also close to absent – social solidarity is extremely low.

Basic types of conflicts of conscience according to the literature and the interviews conducted are, first, material type or – in other words – financial conflicts, second, conflicts of professional nature, third, personal conflicts, and, fourth, mixed ones. I have at least one proposal in each of these areas.

So, as I mentioned earlier, issues related to strikes and civil disobedience were among the most frequently mentioned conflicts of conscience among teachers: at the very beginning of this year, the Hungarian Constitutional Court concluded in its decision that the right of children and young people to education takes precedence over all other rights, and therefore did not consider the *serious restrictions of the right to strike* to be contrary to the Fundamental Law of Hungary. In contrast, as I have mentioned, Balázs Schanda, judge of the CC, argued in his dissenting opinion that this ignored the essential idea of the strike: the element of pressure on the employer.

And I have to add that this reasoning, this argument, reflects a flawed attitude based on which the child is the central actor in society today – everything happens around and for the child. A century ago, society was built around the elderly, the heads of families and elder citizens – today this has changed completely and another unhealthy situation has emerged. The constitutional Court of Hungary has also made a miscalculation, because the teacher is as important player in education as the child – even if the immediate aim is to improve the child's well-being. This is also supported by the Public Education Act, Article 3 paragraph (1), which states that "At the centre of public education are the child, the pupil, the teacher and the parent, whose duties and rights form a unit."

It is clear that the distorted view of society is often reflected in the misapplication of the law: misapplication of the law can be the result of a wrong approach to life.

My second proposal is closely connected with the fact that research on conflicts of conscience within the field of public education also shows that the latency – the number of cases that do not turn into legal proceedings – is very high. Accordingly, for further research in this area, it is not enough to examine certain legal cases, but to conduct a documentary analysis (e.g. analysis of resignation declarations)

and interviews with people who have already left the sphere, which could help to get a more accurate picture of the main types of conscientious conflicts.

So, the nature of the current conflicts of conscience cannot be inferred from legal cases alone, because some of them do not reach a legal type of resolution, i.e. they do not go to court, and others only become available after years of long proceedings. How then can this question be examined? In the international literature, there are several examples of publicly available termination letters of teachers, which have been examined and used to draw conclusions.

Those termination or resignation letters show the current situation relatively accurately.

My third proposal seeks to refer to the easing of the criteria and qualification level to become a teacher. The detailed rules in several cases also allow for the possibility of teaching without a proper degree or even a teaching qualification. Government Decree 401/2023 (VIII.30.) on the implementation of Act LII of 2023 on the New Careers of Teachers, within Articles 13–23, significantly relax the rules for the entry into the profession and taking of teaching posts. This is also a dangerous direction from the point of view of conscience issues and their institutional implications, insofar as it could lead to motivational problems for both those already in the profession and those preparing to become teachers.⁴¹

Fourthly, according to the “Act on Complaints and Public Interest Disclosures,” which has been adopted by the Hungarian Parliament on 23 May 2023 (Act XXV), also primary and secondary schools must have established a whistleblowing system until 24 July 2023. There was an obligation to establish an internal procedure for the protection of whistle-blowers by creating new forums – to facilitate reporting of abuse within all these institutions as well. By that regulation, a more complex system of rules on unethical behaviour has been set up, but these institutions still need to be transposed throughout the legal system, not just in a single piece of legislation. On the one hand, these institutions must be included in codes of ethics (for example Hungary’s National Teachers’ Chamber’s Code of Ethics for the Profession), schools’ internal rules, collective agreements, etc., and on the other hand, their practical solutions and possibilities must be taught in attendance training courses, so that they do not become a means of abuse and thus also a problem of conscience. These courses can also be used to build up and fill in the missing culture of conflict management – with an importance that goes beyond themselves.

Fifthly, we can also see that in the most developed societies there is a huge amount or high level of legal awareness: publications summarising the rights of

⁴¹ H.M.G. Watt *et al.*, *Motivations for choosing teaching as a career: An international comparison using the FIT-Choice scale*, “Teaching and Teacher Education” 2012, 6, pp. 791–805.

students, teachers and parents are widely available – interestingly, in Hungary this is still scarce. Books, written in Western countries, like *Teachers and the Law*, address questions related to teacher contracts, dismissals, tenure, collective bargaining, liability, child abuse, defamation, copyright laws, and also explore legal issues related to the scope and limits of personal freedom of expression, covering such topics as religion and conscience, personal appearance, due process, privacy, homeschooling, bilingual and multicultural education, student records, sex and racial discrimination, free speech, and academic freedom. We do not have such compilations, especially in an updated form, and while their availability would not necessarily increase the number of disputes – but rather the awareness of behaviour, they could prevent many uncertainties and conflicts of conscience and depression.

And my last proposal mentioned here is a new challenge that we must meet: in dozens of countries around the world, military education as a new subject has been introduced simultaneously in public education over the past year (quite often as military sciences), and OECD members are among them and among the countries planning to offer similar training or courses.⁴² Public education in both Hungary and Poland should prepare in advance for the teaching of this subject and its consequences and other implications.

Obviously, there are other factors as well, some of which are more political than regulatory – such as the issue of incomes and salaries,⁴³ but I would like to leave them out of the current package of proposals.

References

- Ayers W., *Teaching with conscience in an imperfect world – an invitation*, Teachers College Press 2016.
- Balogh L., *A contemporary history of exclusion: the Roma issue in Hungary from 1945 to 2015*, “Nationalities Papers” 2018, 5, pp. 944–946.
- Berki E., *Sztrájkok és beavatkozások*, “Munkajog” 2022, 4, pp. 40–49.
- Biró Zs.H., *Pályakezdő pedagógusok a 21. század elején*, [in:] T. Majsai, P.T. Nagy (ed.), *Lukács, a mi munkatársunk: a WJLF tisztelgő kötete Lukács Péter 60. születésnapjára*, WJLF 2009, pp. 41–52.
- Bitsky B., *Nem illeti meg a véleménynyilvánítás szabadságából fakadó alapjogi védelem a munkavállaló által közzétett szakmai jellegű közlést, ha annak nincs közéleti kötődése*, “Munkajog” 2018, 4, pp. 49–51.

⁴² I. Seri-Hersch, *Education, Violence, and Transitional Uncertainties: Teaching “Military Sciences” in Sudan, 2005–2011*. Chapter 20, [in:] E. Vezadini, I. Seri-Hersch, L. Revilla, A. Poussier, A.J. Mahassin (ed.), *Ordinary Sudan 1504–2019*, The Gruyter 2023, pp. 589–617.

⁴³ M.V. Ravago, C.D. Mapa, *Awards and recognition: Do they matter in teachers’ income trajectory?*, “Studies in Educational Evaluation” 2020, 7, p. 106.

- Chong D., *Political Protest and Civil Disobedience*, [in:] D.J. Wright (ed.), *International Encyclopedia of the Social & Behavioral Sciences*, 2nd ed., Elsevier 2015, p. 24.
- Estivalèzes M., *The professional stance of ethics and religious culture teachers in Québec*, "British Journal of Religious Education" 2017, 1, pp. 55–74.
- Fazekas K., Csillag M., Hermann Z., Scharle Á. (eds.), *Munkaerőpiaci Tükör 2018*, MTA Közgazdaság- és Regionális Tudományi Kutatóközpontja 2019.
- Fehérvári A. (ed.), *Pillanatképek. Társadalmi partnerek az oktatásirányításban*, OFI 2011.
- Fischer L., Schimmel D., Stellman L., *Teachers and the Law*, 6th ed., Allyn & Bacon 2002.
- Garlicki L.L., *Perspectives on Freedom of Conscience and Religion in the Jurisprudence of Constitutional Courts*, "BYU L. Rev." 2001, 2, pp. 467–509.
- Gerstenberg O., *Germany: Freedom of conscience in public schools*, "International Journal of Constitutional Law" 2005, 1, pp. 94–106.
- http://www.lelkititkaink.hu/pedagogus_burn_out_kieges_elleni_trening.html (access: 10.14.2023).
- <https://infostart.hu/belfold/2023/06/14/per-lett-abbol-hogy-nem-akarta-beoltatni-magat-a-katona> (access: 7.10.2023).
- <https://www.britannica.com/topic/civil-disobedience> (access: 5.10.2023).
- Hungler S., *A pedagógussztrájkok az ILO gyakorlatának tükrében*, "Munkajog" 2023, 1, pp. 16–23.
- Juss S.S., *Freedom of Conscience Rights: Lessons for Great Britain*, "Journal of Church and State" 1997, 4, pp. 749–768.
- Kathyné Mogyoróssy A., Nagy B.E., *A szülők és pedagógusok kapcsolattartásának mintázatai*, "Educatio" 2017, 4, pp. 657–668.
- Maclure J., Taylor C., *Secularism and Freedom of Conscience*, Harvard 2011.
- Murdoch J., *Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights*, Council of Europe Human Rights handbooks, Council of Europe 2012, pp. 49–50.
- Pinczésné Palásthy, I., *A pedagógusok hivatásszemélyisége*, pp. 1–41. <https://docplayer.hu/47766168-A-pedagogusok-hivatasszemelyisege.html> (access: 10.14.2023).
- Pók L., *Lájkolni szabad? Munkavállaló véleménynyilvánítás az új Munka Törvénykönyve tükrében*, "Infokommunikáció és Jog" 2012, 4, pp. 160–163.
- Radó P., *A magyar közoktatással szembeni társadalmi kihívások. Javaslat az ELEGY Oktatáspolitikai Szakbizottság számára*, pp. 1–9. <https://ckpinfo.hu/wp-content/uploads/2023/05/Elegy-tarsadalmi-valtozasok-veglegesített.pdf> (access: 10.14.2023).
- Ravago M.V., Mapa C.D., *Awards and recognition: Do they matter in teachers' income trajectory?*, "Studies in Educational Evaluation" 2020, 7, pp. 106–118.
- Rixer Á., *A Biblia szövegeinek felhasználhatósága az egyházi fenntartású intézmények belső dokumentumaiban*, [in:] N. Birher, Á.O. Homicskó (ed.), *Az egyházi intézmények működtetésének etikai alapjai*, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar 2019, pp. 25–36.
- Roseboro D.L., et al., *The evolution of teacher candidates' thinking: coming to consciousness and developing conscience*, "Teaching and Learning" 2012, 2, pp. 58–69.

- Santoro D.A., *Teachers' expressions of craft conscience: upholding the integrity of a profession*, "Teachers and Teaching" 2017, 6, pp. 750–761.
- Seri-Hersch I., *Education, Violence, and Transitional Uncertainties: Teaching "Military Sciences" in Sudan, 2005–2011. Chapter 20*, [in:] E. Vezzadini, I. Seri-Hersch, L. Revilla, A. Poussier, A.J. Mahassin (ed.), *Ordinary Sudan 1504–2019*, The Gruyter 2023, pp. 589–617.
- Sullivan D.M., *Professionalism, autonomy, and the right of conscience: A call for balance*, "Ethics, Medicine and Public Health" 2019, 1, pp. 11–15.
- Szemesi S., *Az Emberi Jogok Európai Bírósága ítélete a roma gyermekek hátrányos megkülönböztetéséről a magyar speciális iskolákban: az oktatáshoz való jog és a hátrányos megkülönböztetés tilalma kapcsolatáról*, "Jogesetek magyarázata: JeMa" 2013, 4, pp. 93–98.
- Szontagh P. I., *A keresztyén pedagógusokkal szemben támasztott minőségi és etikai elvárások, valamint azok kodifikációs problémái*, Doctoral Thesis, Károli Gáspár Református Egyetem Állam- és Jogtudományi Doktori Iskola 2018.
- Temperman J., *State neutrality in public school education: An analysis of the interplay between the neutrality principle, the right to adequate education, children's right to freedom of religion or belief, parental liberties, and the position of teachers*, "Human Rights Quarterly" 2010, 4, pp. 865–897.
- Watt H.M.G. et al., *Motivations for choosing teaching as a career: An international comparison using the FIT-Choice scale*, "Teaching and Teacher Education" 2012, 6, pp. 791–805.
- Xuanmin J., *On Teachers Conscience: Essential Connotation, Formation Logic, and Development Path*, "Education Science" 2023, 1, pp. 43–49.
- Zaccaria M.L., *Korlátozott szabadság?*, "Jogtudományi Közlöny" 2022, 1, pp. 24–32.