

Decision 3180/2018 (VI. 8.) AB
On the dismissal of a judicial initiative

In the matter of a judicial initiative seeking a finding of unconstitutionality by non-conformity with the Fundamental Law of a legal act, the Constitutional Court, sitting as the full court, adopted the following

decision:

1. The Constitutional Court hereby dismisses the judicial initiative seeking a finding of unconstitutionality by conflict with the Fundamental Law and annulment of Section 99/G (1) and Section 99/H (1) to (4) of Act CXC of 2011 on National Public Education.

2. The Constitutional Court hereby rejects the judicial initiative seeking a finding of unconstitutionality by conflict with the Fundamental Law and annulment of Section 74 (4) Section 99/G (2) and Section 99/H (5) to (7) of Act CXC of 2011 on National Public Education.

Reasoning

I

[1] 1. In the litigious procedure concerning the judicial review of the public administrative decision No. 12.K.31.501/2017 in addition to ordering a stay in proceedings pending before the him, the presiding Judge of Budapest Administrative and Labour Court (hereinafter referred to as the "petitioner") petitioned the Constitutional Court on the basis of Section 25 (1) of Act CLI 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act") seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Section 74 (4), Section 99/G and Section 99/H of Act CXC of 2011 on National Public Education and an order for the prohibition of the application of said legal provisions in a specific individual case. As alleged by the referring judge in his petition, the impugned legal provisions are contrary to Article XIII (1) and Article XV (1) of the Fundamental Law.

[2] 1.1 The facts found by the referring court in the main proceedings show that pursuant to Section 99/G (1) of Act CXC of 2011 on National Public Education

(hereinafter referred to as the "Public Education Act"), which entered into force on 1 July 2016, the rights and obligations arising from the legal relations related to the operation of public education institutions operated by the local government and maintained by the school district centre shall belong to or be borne by the school district centre effective as of 1 January 2017. Pursuant to Section 99/H (3) of the Public Education Act in force from 1 July 2016 until 31 December 2017, the handover (transfer and acceptance) of the public education institution had to be carried out by an agreement to be concluded by 15 December 2016 at the latest between the person authorised to represent the municipality local government operating the public education institution and the school district director acting on behalf of the school district centre competent at the seat of the institution. If no agreement was reached between the parties by that date, then pursuant to Section 99/H (4) of the Public Education Act in force from 1 July 2016 until 31 December 2017, the agreement shall be established by a decision of the Minister responsible for education by 20 December 2016, which decision is subject to judicial review.

[3] 1.2 Considering that the agreement between the Municipality of the Greater Village of Csömör (hereinafter referred to as the "Municipality") and the School District Centre for Dunakeszi had not been concluded by 15 December 2016; therefore, on 19 December 2016, the agreement was established *ex officio* by Decision No. 65107-1/2016/INTIRFO by the State Secretary responsible for education at the Ministry of Human Capacities, pursuant to Section 99/H (4) of the Public Education Act in force at the date of such decision. The decision was received by the Municipality on 29 December 2016.

[4] 1.3 In its action filed on 23 January 2017, the Municipality requested, principally, the annulment of the decision and, in the alternative, its amendment so that the decision would not create an agreement between the parties. The Municipality takes the view that the decision is contrary to the principle of freedom of contract based on Articles M) and XIII (1) of the Fundamental Law, the right to property under Article XIII (1) of the Fundamental Law and Section 5:13 of the Civil Code; also, the decision creates unjustified distinction between the legal persons running the school. In its action, the Municipality requested that the court initiate a constitutional court procedure seeking a finding of unconstitutionality by conflict with the Fundamental Law of Section 74 (4), Section 99/G and Section 99/H of the Public Education Act. In its statement of defence, the defendant Minister for Human Capacities sought the dismissal of the application summarily without service in view of the fact that the Municipality had failed to indicate a specific breach of law in its action, it referred only to the unconstitutionality by non-conformity with the Fundamental Law of the contested provisions.

[5] 1.4 The referring judge shared the position of the Municipality and initiated the procedure of the Constitutional Court pursuant to Section 25 (1) of the Constitutional

Court Act, taking into account the reasons below, which were subsequently supplemented at the request of the Secretary General of the Constitutional Court to rectify certain deficiencies.

[6] Pursuant to Section 2 (3) of the Public Education Act, a public education institution may be established and maintained not only by the State, but also by an ethnic minority self-government, a ecclesiastical legal person, an organisation engaged in religious activities or other person or organisation within the framework of the Public Education Act. In the opinion of the referring judge, the foregoing results in an unjustified distinction and thus infringes Article XV (1) of the Fundamental Law, as the Public Education Act no longer allows local governments to maintain public education institutions, while still providing this to certain legal persons.

[7] As put forth in the petition, the regulation is also contrary to Article XIII (1) of the Fundamental Law, as the provisions of the Public Education Act challenged by the petition restrict and make more difficult the exercise of the partial right of ownership by the local government. Neither the text of the Public Education Act nor its explanatory memorandum can be used to determine the constitutional right or other right enjoying priority for which the new regulation has been introduced. The regulation did not fully fulfil the homogeneous definition of the operation of public education institutions as a public task as a possible objective, because it has resulted in solutions that are everything but reasonable, for example, where the operation of educational premises has become the responsibility of school district centres, whereas school catering remained a municipal task. If the aim of the regulation was to unify funding, it is not possible to determine which fundamental rights were absolutely necessary for the protection of this right; moreover, not to mention that each local government has significantly different financial possibilities. What all the above means is that while it may be beneficial to define the operation of public education institutions as a public task for local governments in a less favourable financial situation, as well as public education institutions, the change is clearly to the detriment of municipalities, local communities and students, who are in a better position than average and thus provide more resources for their own public education institutions, as the State will provide them with less resources than those provided by individual municipalities. The referring judge also pointed out that, in many municipalities, only public education institutions are capable of providing an adequate community space for the local community of citizens, which until now the local government could have authorised in its own competence, and after the decision was made, it is now subject to the permission of the school district centre.

[8] The Constitutional Court has adopted its decision on the basis of the following constitutional and statutory provisions.

[9] 1. The provisions of the Fundamental Law invoked the petition are as follows:

"Article XIII (1) Everyone shall have the right to property and inheritance. Property shall entail social responsibility."

"Article XV (1) Everyone shall be equal before the law. Every human being shall have legal capacity."

"Article 32 (6) The property of local governments shall be public property, which shall serve the performance of their tasks."

"Article 34 (1) Local governments and State bodies shall cooperate to achieve community objectives. An Act may set out mandatory functions and powers for local governments. For the performance of their mandatory functions and powers, local governments shall be entitled to proportionate budgetary and other pecuniary support."

"Article 38 (1) The property of the State and of local governments shall be national assets. The management and protection of national assets shall aim at serving the public interest, meeting common needs and preserving natural resources, as well as at taking into account the needs of future generations. The requirements for preserving and protecting national assets and for the responsible management of national assets shall be laid down in a cardinal Act."

[10] 2. The relevant provision of Act CXC of 2011 on National Public Education, as challenged with the petition, effective as of 1 January 2017 is as follows:

"Section 74 (4) The school district centre and the vocational training centre shall enjoy a free asset management right in respect of real estate and movable property owned by the municipality for the performance of the functions of the public education institution maintained by the school district centre and the vocational training centre until the performance of the public task of public education by the school district centre or the vocational training centre in the given property ceases. During the existence of the free asset management right of the school district centre as well as the vocational training centre, real estate and movable property used for the performance of the tasks of a public education institution shall not be disposed of, encumbered or leased by the local government. The leasing of real estate by the school district centre for the performance of the tasks of a public education institution requires the preliminary opinion of the head of the public education institution concerned."

[11] 3. The relevant provision of Act CXC of 2011 on National Public Education, as challenged with the petition, effective as of 1 July 2016 is as follows:

“Section 99/G (1) The rights and obligations arising from the legal relations related to the operation of the public education institution operated by the local government and maintained by the school district centre, as defined in Section 76, shall belong to or be borne by the school district centre as of 1 January 2017.

(2) As of 1 January 2017, civil servants, public employees and other employees performing the operation of the public education institution maintained by the school district centre and the functional tasks related to its operation shall be included in the staff of the school district centre at the budgetary body managed by the local government operating the public education institution if, with the exception of the persons in an employment relationship with the public education institution, they meet the qualification requirements laid down in the Act on Civil Servants, the Act on the Status of Public Employees and their implementing regulations for their positions held on 31 December 2016.”

[12] 4. The relevant provision of Act CXC of 2011 on National Public Education, as challenged with the petition, effective as of 1 July 2016 until 31 December 2017 is as follows:

“Section 99/H (1) All municipal assets and rights with an asset value (hereinafter referred to as “assets”) used to perform the public education tasks of a public education institution operated by a local government on 31 December 2016, according to the inventory, shall be placed under the free asset management of the territorially competent school district centre on 1 January 2017. Assets providing for the performance of a public education task shall include all rights and obligations related to the performed public education task, as well as movable and immovable assets.

(2) The school district centre and the local government operating the public education institution shall act in mutual cooperation in the implementation of the measures related to the handover.

(3) The handover (transfer and acceptance) of the public education institution shall be carried out by an agreement between the person authorised to represent the municipality local government operating the public education institution (hereinafter referred to as the “transferor”) and the school district director acting on behalf of the school district centre competent at the seat of the institution, which agreement shall be concluded by 15 December 2016 at the latest (hereinafter referred to as the “agreement”).

(4) If the agreement is not concluded or is not fully concluded between the parties by the time limit specified in Subsection (3), the agreement shall be established by a

decision of the Minister responsible for education by 20 December 2016 and/or decide on issues not settled in the agreement. No appeal shall lie from such decision. The decision shall be enforceable notwithstanding judicial review.

(5) Pursuant to Subsection (4), a public administrative decision (hereinafter referred to as an "administrative decision") shall be subject to judicial review. The court shall decide on the application for review in a litigious procedure, subject to the exceptions provided for in Subsections (6) and (7), the provisions of Chapter XX of Act III of 1952 on the Code of Civil Procedure shall apply.

(6) The enforcement of the administrative decision shall not be subject to a stay. The court shall act out of line during the litigious procedure. The court may modify the administrative decision.

(7) If, following an application for review of an administrative decision has been lodged but before the court has ruled, the parties conclude the agreement, the Minister responsible for education shall revoke the administrative decision after the conclusion of the agreement and shall notify the court thereof in writing without delay. If the administrative decision is revoked, the court shall terminate the procedure."

III

[13] The judicial initiative is in part inadmissible and in part unfounded.

[14] 1. The Constitutional Court first of all reviewed whether the judicial initiative met the conditions prescribed by law.

[15] 1.1 Pursuant to Section 25 of the Constitutional Court Act, in addition to ordering a stay in the court proceedings, the judge initiates the establishment of the unconstitutionality by conflict with the Fundamental Law of a legal act or a legal provision with the Constitutional Court or to disapply the legal act found contrary to the Fundamental Law on the basis of Article 24 (2) (b) of the Fundamental Law if, in the course of adjudication of an individual case pending before the judge, a legal act is to be applied, the unconstitutionality by non-conformity with the Fundamental Law of which is detected or such unconstitutionality has already been established by the Constitutional Court. Section 99/G and Section 99/H of the Public Education Act, effective as of 1 July 2016, shall be applied by the trial judge in the proceedings pending before him. However, given that the subject-matter of the proceedings on which the judicial initiative is based is the review of the legality of Decision No 65107-1/2016/INTIRFO of the Minister for Human Capacities of 19 December 2016, Section 74 (4) of the Public Education Act, which was challenged with the petition,

entered into force only after the decision was made, on 1 January 2017; therefore, it obviously does not have to be applied by the court hearing the case. In view of all this, the Constitutional Court found that the judicial initiative in its element contesting Section 74 (4) of the Public Education Act did not meet the requirements set forth in Section 25 (1) of the Constitutional Court Act.

[16] 1.2 The judicial initiative contains a reference to the competence of the Constitutional Court and the right of the referring judge [Section 25 (1) of the Constitutional Court Act] and meets the conditions set out in Section 52 (1) and (1b) (a) to (d) and (f) of the Constitutional Court Act. However, the petition only partially meets the requirement of Section 52 (1b) (e) of the Constitutional Court Act, as follows.

[17] The judicial initiative alleges infringement in part of Article XIII (1) and in part of Article XV (1) of the Fundamental Law in relation to the rights of local authorities to maintain public education institutions. The Constitutional Court has established that Section 99/G (2) and Section 99/H (5) to (7) of the Public Education Act, effective as of 1 July 2016, have no assessable connection with the justification of the judicial initiative; therefore, the petition does not fulfil the obligation to state reasons pursuant to Section 52 (1b) (e) of the Constitutional Court Act in this respect.

[18] 1.3 In view of the fore going, the Constitutional Court has reviewed the judicial initiative in accordance with Section 99/G (1), effective as of 1 July 2016, as well as in respect of Section 99/H (1) to (4) of the Public Education Act in force as of 1 July 2016 until 31 December 2017.

[19] 2. The Fundamental Law, while declaring the right to property in Article XIII (1), contains additional provisions regarding municipal property, which provisions must be taken into account jointly by the Constitutional Court when assessing the judicial initiative and, thus, when assessing the constitutional limitation of the property right of local governments. In the context of Article XIII (1) of the Fundamental Law, the Constitutional Court has repeatedly reaffirmed that the rules of the right to property are contained in essentially the same way as in the previous Constitution and the Fundamental Law; therefore, there is no obstacle to the reliance on previous Decisions in this field {see e.g. Decision 3001/2016 (I. 15.) AB, Reasoning 49}}. In its Decision 26/2013 (X. 4.) AB (Reasoning [161]), following its Decision 64/1993 (XII. 22.) AB, the Constitutional Court summarised its practice regarding the fundamental right to property as follows: “[T]he scope and the method of the constitutional protection of property shall not necessarily follow the concepts of civil law, and it cannot be identified with the protection of the abstract property under civil law. The content of the right to property, protected as a fundamental right, shall be interpreted at all times together with the applicable limitations of public law and the (constitutional) limitations under private law. The extent of the constitutional protection of property is always specific; it

depends upon the subject matter, the object and the function of the property, as well as upon the nature of the restriction as well. Viewed from the other side: The constitutional permissibility of interference by the public authorities into the property varies pursuant to these considerations {ABH 1993, 373, 380, [...]}. See in a similar vein with Decision 3242/2017 (X. 10.) AB of the Constitutional Court, Reasoning [15]}.

[20] Article 12 (2) of the former Constitution expressly stated that the State shall respect the property of local governments, as amended by the constituting power in Act CXLVI of 2011, that "[t]he transfer of municipal property free of charge to the State or a local government may be provided for by in an Act". Pursuant to Article 28 (1) of the Transitional Provisions of the Fundamental Law, Section 12 (2) of the Constitution in force on 31 December 2011 shall apply to the transfer of local government property to the State or other local government until 31 December 2013.

[21] The current Fundamental Law (similarly to the previous Constitution) regulates the ownership of local governments beyond Article XIII (1); thus, when reviewing the compliance of the regulation concerning the property of local governments with the Fundamental Law, all such provisions (and not only one of its elements) are authoritative. Pursuant to Article 32 (6) of the Fundamental Law, the property of local governments constitutes public property, which serves the performance of their duties and, in accordance with Article 38 (1), the State and local governments own national assets, which national assets are managed and protected for the purpose (among other things) of serving the public interest. This also means that as long as the protection of municipal property against third parties can be carried out in accordance with the general rules of the right to property deriving from the Fundamental Law, only on the basis of the provisions of Article XIII thereof, then, in relation to the State and the local government, the property of the local government (and the national assets in general) is also subject to task limitation, which is a public interest restriction on the general right to property under Article XIII (1) of the Fundamental Law. This approach is also in line with the second sentence of Article XIII (1), which states that ownership comes with social responsibility. It follows from the combined interpretation of the cited provisions of the Fundamental Law that the transformation of a previously local government tasks and powers into a public task makes it possible for the State to restrict the right of local governments to own property in relation to the municipal property used for the performance of the given task. However, the restriction can only be enforced to the extent that the given municipal property was mostly and directly used to perform the indicated tasks and powers.

[22] 3. Pursuant to Section 8 (4) of Act LXV of 1990 on Local Governments, which was previously in force, the local government was obliged to provide primary education. Section 13 (1) of Act CLXXXIX of 2011 on the Local Governments of Hungary (hereinafter referred to as the "Local Government Act") specifically mentions the local

government tasks to be performed among local public affairs and public tasks that can be provided locally, which tasks are no longer include primary and secondary education. Similarly, Article 2 (1) of the Public Education Act provides that guaranteeing the right to free and compulsory primary education and free and universal secondary education until graduation from or the completion of the first professional examination ensuring the acquisition of the first vocational qualification as enshrined in the Fundamental Law, shall be the public service remit of the Hungarian State. All this means that the provision of primary education, which was previously among the tasks and powers of the municipality, has become a public (State) task.

[23] In line with the case law of the Constitutional Court, the constitutional standard for restricting the right to property under Article XIII (1) of the Fundamental Law, in examining the basis for the restriction of rights, imposes a lighter requirement than the criterion of necessity of fundamental rights contained in Article I (3) of the Fundamental Law, since in this case it is sufficient to prove the existence of the public interest {Decision 34/2015 (XII. 9.) AB, Reasoning [46]}. In consonance with the explanatory memorandum to the Public Education Act, the change in the tasks and powers related to public education was aimed at creating that the new public education system “provides uniform quality education of high standards for all children, in order to educate them to become persons who respect the common good and the rights of others, who are able to fulfil their abilities and live as fully as possible within their abilities and achieve their goals”. Public education as a public task within an appropriate organisational framework and at an appropriate level constitutes a fundamental public interest acceptable from the point of view of Article XIII of the Fundamental Law.

[24] The current government must demonstrate (where appropriate, after appropriate confrontation of relevant professional views) why and to what extent the proposed changes contribute to the public interest. However, the Constitutional Court should not have the task of reviewing the extent to which the becoming a public task of a formerly local government task and competence facilitates the more efficient performance of the given task and competence than before, as its consideration is a matter within the competence of the current legislator. The competence of the Constitutional Court shall only extend to the review of the conformity of a regulatory model chosen by the legislator with the Fundamental Law.

[25] [25] Due to the task limitation of municipal assets, therefore, the right to property under Article XIII (1) is not infringed by a legal provision which restricts the right of local governments to the benefit of the State to the extent strictly necessary for the performance of the given public education task as the realisation of the public interest, if, on the basis of professional criteria, the legislator considers that the performance of public education tasks by the State is more efficient and results in a system that

enforces professional criteria better than if the performance of these tasks is performed by local governments. The right of local governments to property and its legality of its restriction by the State shares the legal fate of the competence that justifies local government ownership: If the given competence is municipal, the property assigned to the competence is also municipal; however, if the given power *ex lege* becomes State power, the municipal property may be limited in favour of the State, also in accordance with the crucial provisions of Act CXCVI of 2011 on National Assets and the Local Government Act.

[26] 4. The Constitutional Court then reviewed whether the provisions of the Public Education Act challenged by the petition could be classified as a disproportionate restriction on the right to property under Article XIII (1) of the Fundamental Law. In this context, the Constitutional Court also points out that “[i]n assessing public interest and the proportionality of the restriction of property, the Constitutional Court may also generally determine the criteria that determine the constitutionality of the interference. In doing so, it can offset the necessary loss of legal certainty caused by a limited review of the necessity of public interest” {Decision 64/1993 (XII. 22.) AB, ABH 1993, 373, 381-382., reaffirmed in Decision 20/2014 (VII. 3.) AB, Reasoning [154]}

[27] Pursuant to Section 99/H (1) of the Public Education Act, in connection with the State operation of public education institutions, the municipal assets and rights with an asset value may be transferred to the territorially competent school district centre free of charge which are intended to perform a public education task. The definition of such assets and rights with an asset value is entrusted by the Act primarily to the agreement of the parties, in which case the establishment of a asset management right conceptually presupposes the express consent of the relevant local government to the restriction of the right of ownership. Restrictions on the right to property voluntarily and expressly accepted by the owner may not, in general or in respect of municipal property, entail infringement of Article XIII (1) of the Fundamental Law.

[28] Pursuant to the provisions of the Public Education Act as impugned by the petition, in the absence of an agreement between the local government and the territorially competent school district centre, the Minister responsible for education may designate the range of assets and rights with an asset value by decision, which came under the free asset management of the school district centre. Considering that in the case of the establishment of a free asset management right by a decision, one cannot speak of the voluntary and express consent of the owner local government to restrict the right to property; therefore, in this case, it is an important guarantee, not only in terms of form but also in terms of content, that the legislator has provided for the possibility of judicial review of the decision. Creating the possibility of judicial review serves to ensure that the assets and the rights with an asset value of local governments should be limited only to the extent strictly necessary for the performance of the task. Only to this

extent can the establishment of a free asset management right by a decision be considered lawful as a result of the Fundamental Law and the provisions of the Public Education Act and, in particular Section 99/G (1) thereof, as challenged by the petition. However, the review of the above is not the task of the Constitutional Court, but of the courts seised in individual cases. Consequently, in the absence of an agreement between the parties, the court must also rule on the question of how the use of the assets or rights with an asset value for performance of a public education task and other tasks that remain unchangeably a municipal task and competence (such as, where applicable, public catering) can be divided between the school district centre and the local government, since the establishment of a free asset management right shall not make it more difficult for the local government to fulfil its remaining tasks and powers.

[29] The Constitutional Court also recalls that under Section 11 (8) of Act CXCVI of 2011 on National Assets, the territorially competent school district centres acquire not only the right to manage the assets or the right with an asset value, but also its obligations, with the free asset management right, with special attention to the requirements at the basic level for efficient and cost-effective operation, preservation of values and protection of the condition of the property pursuant to Section 7 (1) of the Act. The substance of the free asset management right thus defined in the cardinal Act applies both in the case of the agreement between the local government and the school district centre and in the case of the free asset management right based on the ministerial decision.

[30] When establishing a free asset management right on municipal property, the owner municipality may also rightly expect that the mutual co-operation between the school district centre and the local government should apply not only to the handover procedure pursuant to Section 99/H (2) of the Public Education Act, but also to the period of subsequent free asset management, and the school district centres should manage the property in such a manner as to enable the owner municipalities to use the immovable and movable property for community purposes in all cases where it does not impede the performance of public education tasks (especially during periods such as afternoons, weekends or public holidays, when the given property does not serve the performance of public education tasks), and conditions as if the asset or right with an asset value could be disposed of independently by the owner municipality.

[31] Finally, the Constitutional Court points out that the free asset management right is also limited in time. Pursuant to Section 74 (4) of the Public Education Act, effective as of 1 January 2017, the free asset management right lasts until "the performance of the public task of public education by the school district centre or the vocational training centre in the given property is terminated." Accordingly, the free asset management right ceases if the given public education task is no longer within the task and competence of the school district centre due to the change in the relevant

legislation. The free asset management right is also terminated if the given asset or right with an asset value no longer serves the performance of the public task of public education due to a reason, such as the organisation of education.

[32] In view of the above, the Constitutional Court has concluded that the provisions of the Public Education Act contested by the petition do not result in a disproportionate restriction on the right of local governments to property under Article XIII (1) of the Fundamental Law because the legislator, at the same time as the legal regulation of the establishment of a free asset management right, also established the substantive and procedural guarantee rules, which ensure that the scope, content and duration of the free asset management right do not exceed what is strictly necessary.

[33] 5. The Constitutional Court then examined the petitioner's argument concerning the violation of Article XV (1) of the Fundamental Law and came to the following conclusions. The judicial initiative itself claims that the unjustified distinction between maintaining and operating legal persons under Article XV (1) of the Fundamental Law arises in the light of Section 2 (3) of the Public Education Act and, as stated in the addendum to the petition, "the impugned legal provision defines certain legal persons in addition to the State as the maintaining entity, thus necessarily the operating entity [...], while this right, which is narrower than that of maintenance, that is, the right to operate, is generally deprived of local governments." All the foregoing means that the judicial initiative in fact alleges that Article 2 (3) of the Public Education Act (not challenged with the petition) is unconstitutional being contrary to Article XV (1) of the Fundamental Law, which Section 2 (3) does not, however, constitute a rule applied in the case on which the judicial initiative is based; thus, it cannot be contested with a petition pursuant to Section 25 (1) of the Constitutional Court Act within the framework of this judicial initiative. In line with the consistent case law of the Constitutional Court "the requirement of being explicit must be fulfilled separately in respect of each challenged legal act or legal provision and each invoked provision of the Fundamental Law." {See e.g. Order 3058/2015 (IX. 31.) AB, Reasoning [21]}. In view of all this, the Constitutional Court could not conduct a substantive review of the alleged violation of Article XV (1) of the Fundamental Law.

[34] The element of the judicial initiative that the Public Education Act no longer allows municipality local governments to maintain public education institutions, while continues to provide this for certain legal persons, however, in terms of content, it can also be assessed as a petition element aimed at establishing a legislative omission related to Section 2 (3) of the Public Education Act. Section 46 (1) and (2) of the Constitutional Court Act regulate the establishment of the existence of unconstitutionality caused by the legislator's omission as a possible legal consequence based on the discretion of the Constitutional Court that may be applied by the Constitutional Court in the exercise of its competences. Having regard to the findings

concerning the tasks and powers of public education and the application of Section 2 (3) of the Public Education Act in the main proceedings, the Constitutional Court saw no reason to review the possibility of unconstitutionality caused by omission in the context of the regulation challenged on the initiative of the judge.

[35] 6. In view of the above, the Constitutional Court dismissed the judicial petition seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Section 99/G (1) and Section 99/H (1) to (4) of the Public Education Act.

Budapest, 29 May 2018

Dr. Tamás Sulyok sgd.,
Chief Justice of the Constitutional Court

Dr. István Balsai sgd.,
Justice

Dr. Ágnes Czine sgd.,
Justice

Dr. Egon Dienes-Oehm sgd.,
Justice

Dr. Attila Horváth sgd.,
Justice

*Dr. Ildikó Hörcher-
Marosi* sgd.,
Justice

Dr. Imre Juhász sgd.,
Justice

Dr. Béla Pokol sgd.,
Justice

Dr. László Salamon sgd.,
Justice

Dr. Balázs Schanda sgd.,
Justice

Dr. István Stumpf sgd.,
Justice

Dr. Marcel Szabó sgd.,
Justice delivering the
opinion of the Court

Dr. Mária Szívós sgd.,
Justice

Dr. András Varga Zs. sgd.,
Justice