

10 Institutional structure and funding in education

[Júlia Uarga]

The current institutional structure and funding system leave very little room for provisions to be made for high quality teaching or for complementary education for pupils from disadvantaged backgrounds.

Institutional changes are needed to maintain long-term high standards in education services.

The current institutional structure of education and its system of funding leave very little room for provisions to be made for high quality teaching or for complementary education in support of pupils from disadvantaged backgrounds. In some cases even basic services are barely covered by available resources.¹ The exceedingly fragmented system of school management by local authorities – in combination with the institution of free school choice – constitutes a barrier to enforcing consistent equality of educational opportunity policies, to delivering appropriately oriented quality assurance and accountability programmes and to providing institutional guarantees that schools educating children in greatest need can have access to high quality educational services. A reform of the institutional structure and funding system of public education appears to be a prerequisite to maintaining long-term high standards in education services for pupils from disadvantaged backgrounds, if we are to avoid further heavy burden on the central budget. Also, institutional changes are needed to put an end to negative selection processes observed among teaching staff, to ensure that schools – specifically those attended by a large proportion of disadvantaged pupils – are in a position to employ and retain well-trained teachers. A more general factor unequivocally calling for institutional restructuring is that Hungarian public education is hampered by serious problems of cost efficiency. In the absence of an appropriate general restructuring, direct solutions to these problems – downsizing surplus teacher workforce, merging or closing schools failing to achieve economies of scale – could easily have the effect of increasing disparities in quality, with the result that disadvantaged pupils are offered even less adequate services.

■ DIAGNOSIS

1. *Education expenditure is dependent on the fiscal capacity of local governments.* The Hungarian system of local governments is highly fragmented. 75 per cent of local governments administer settlements with populations of less than

[1] The Education Round Table appealed to the Constitutional Court of Hungary in connection with the issue that in some cases current legislation fails to guarantee adherence to the requirement of compulsory education. See the *Appendix* for the petition submitted to the Court and the correspondence that followed.

As a result of the highly fragmented local government system, the actual users of local services do not correspond to the population under the jurisdiction of a given local government.

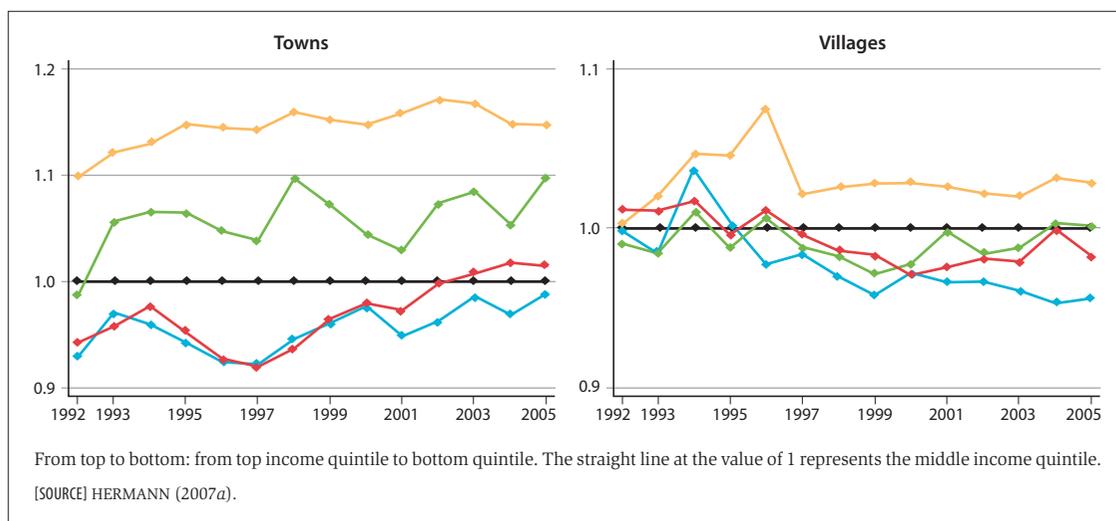
The average per capita income and property wealth of local governments have a strong impact on education expenditure.

two thousand people and 90 per cent provide services for populations of no more than five thousand people. Despite the small size of most municipalities they have a wide range of responsibilities, including the provision of public education. The logic of putting local governments in charge of public education services was that decentralised structure is consistent with the concept of ‘subsidiarity’, which is based on the notion that decisions should be made at the governmental level closest to the decision situation closest to the users, since that is where local needs can be assessed and local cost differences can be dealt with. However, as a result of the highly fragmented local government system, the actual users of local services do not correspond to the population under the jurisdiction of a given local government. In settlements with less than five thousand people, 20–25 per cent of schoolchildren do not attend their local schools – as shown by the data of the National Assessment of Basic Competences of 2006. Since the majority of these settlements maintain only one school, at least every fifth child living in a settlement of fewer than five thousand inhabitants goes to a school run by another local government.² There are large differences between local governments’ fiscal capacity and they also differ greatly in their educational spending per pupil (VARGA, 2000; HERMANN, 2005a). The poorest quintile of towns spend 15–20 per cent less per pupil than the richest quintile of towns (Figure 10.1). For villages, local governments in the lowest income quintile – where, as every survey agrees, children from disadvantaged backgrounds are concentrated as a result of geographical segregation – substantially lag behind the rest of the country and the gap is growing (HERMANN, 2007a).

The average per capita income and property wealth of local governments have a strong impact on education expenditure. The better the fiscal capacity of a local government is, the higher per pupil amount it can spend on education. Since pupils from disadvantaged backgrounds are concentrated in relatively poor settlements or areas, a strong positive correlation can be observed between the wealth of local governments and the proportion of pupils from disadvantaged backgrounds. This means that the observed effects of income differences between local governments have the consequence that areas with a higher share of disadvantaged pupils spend on average less on education. The relationship between expenditure and local government income holds both for purchases and for wages separately: relatively rich local authorities spend more on wages as well as on purchases per pupil than do the administrations of poorer settlements. In villages, population wealth exerts an even greater influence on *kindergarten* spending than it does on primary school expenditure; that is, quality kindergarten education services in villages are even more hampered by the current funding scheme (HERMANN, 2005a).

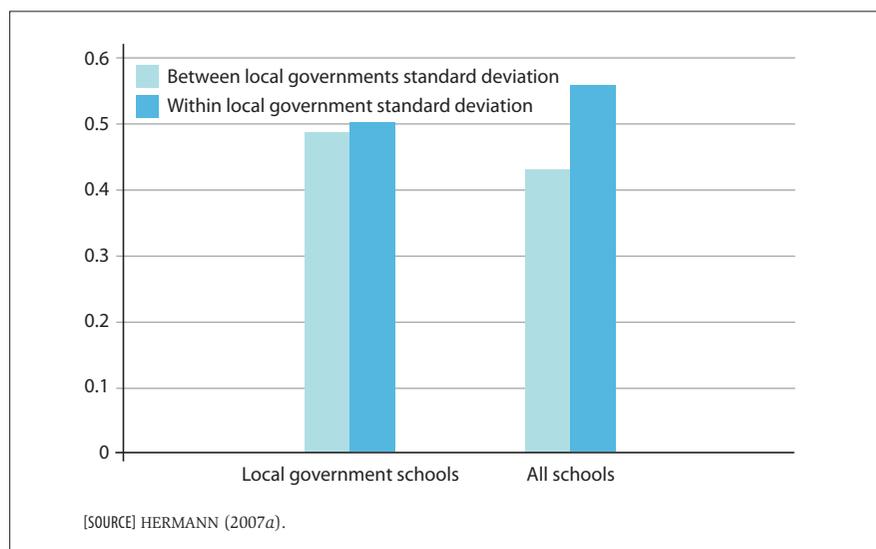
Town administrations and some village administrations maintain more than one school. The allocation of funding across schools is the responsibil-

[2] The effects of non-local school attendance on equity are discussed in Chapter 5 of this volume.



[FIGURE 10.1] Primary school expenditure per pupil and average income per inhabitant for quintiles by average income of villages and towns, as a proportion of the middle quintile, 1992–2005

[FIGURE 10.2] Between and within local governments standard deviation of per pupil primary school expenditures (local governments with more than one school)



ity of local authorities. In settlements with more than one school substantial differences can be observed between schools in terms of expenditure. Looking at schools run by local governments, per-pupil spending varies between schools within settlements as much as it varies between settlements, and with all schools taken into consideration, within settlement variation is greater than between settlement variation (*Figure 10.2*).

Within settlements, higher spending per pupil is observed for schools with a relatively large share of disadvantaged pupils. Higher spending may indicate that these schools receive more support from local authorities but it could also follow from relatively small pupil enrolment, which may be the result of these

schools being less popular with parents, leading to under-utilization of capacity. For the schools of local governments maintaining more than one school, a higher average settlement income (and lower share of disadvantaged pupils in the settlement) goes together with a stronger correlation between the share of disadvantaged pupils and per-pupil spending. That means that relatively poor local governments do not (cannot) redistribute resources within their settlements to allocate additional resources and improve teaching conditions at schools with relatively unfavourable pupil compositions (HERMANN, 2007a).

Local governments receive several types of grants from the central budget, most of which are proportional to the number of students enrolled.³ The funding for public education is built on a basic per-student grant and supplementary formula grants, which local authorities can freely redistribute between education and other services. The per-student grants do not vary between local governments, the system disregards differences in settlement income, in fiscal capacity and any possible differences in costs. The number of various standard and supplementary grants steeply increased from the 1990s onwards: in 1995 there were 16 types of grants for education, which, with some dips and rises, then grew to 60 types by 2004. In addition to these lump-sum grants, some earmarked grants and project funding schemes (granted through a tender procedure) have been introduced from 1997 onwards, which must be used for pre-determined educational purposes.

The introduction of specific non-earmarked and earmarked grants was an attempt to find a solution to the genuine problem that school maintaining local authorities greatly differ in their fiscal capacity and there may be substantial differences in costs between settlements. Costs may vary especially greatly between small settlements. Local governments maintaining just one school have less room for manoeuvre in the influencing of costs and, moreover, they typically have fewer local resources at their disposal to support their schools than does the average local government.

The substantial cost differences come from variation in school size, the condition of school buildings, energy expenses or teachers' experience and qualifications (affecting wage costs), which are not reflected in invariable per-student grant rates. Due to the increase in the number of grant entitlements, as of the late 1990s significant support can be claimed with reference to settlement type and pupils' social circumstances, and there are grants encouraging school maintaining associations of local governments and supporting the commuting of students between settlements. At the beginning of the new millennium the share of these grants exceeded 10 per cent of total central funding. The expansion of the number of grants, however, has not achieved an income redistribution among individual local governments that could cancel out the

[3] In September 2007 a so-called *educational performance indicator* was introduced, which is still based on a single measure, the number of pupils enrolled, but it unequivocally defines preferred and funded numbers of instruction hours per pupil and per teacher as well as class size. (HERMANN, 2007b).

correlation between education expenditure and local governments' fiscal position. Although with the increase in the share of general redistribution income-related disparities in educational spending had been somewhat reduced by the turn of the millennium, it still remains significant (HERMANN, 2005a). The current education funding system does not ensure wealth neutrality.

Grants directly aimed at reducing disadvantages cannot compensate for the gap between the expenditures of local governments.

2. *The inadequacy of special purpose grants.* Grants directly aimed at reducing disadvantages (skills development grant, integration grant) cannot compensate for the settlement income-related gap of over 20 per cent between the expenditures of urban local governments; it has increased per-pupil spending by only a few percentage points. Targeted grants amount to an added expenditure of 1–5 million Hungarian forints per school among urban schools and 0.6–4.5 million forints per school among village schools at most – if the local authorities running the school do not decrease their spending financed from local resources and non-earmarked grants, – an amount which is insufficient for quality education provision (HERMANN, 2006). This sum covered in-service training for a few teachers per year but did not allow schools to raise teachers' pay to a significant extent or to employ support staff or introduce other significant changes aimed at improving teaching quality. Since local governments consider their total budgets in distributing resources, an increase in the amount of ear-marked and other special purpose grants tends to lead to a saving in local resources.

With the current system of funding and allocation of responsibilities, educational conditions for disadvantaged pupils can only be improved if the substantial differences between local governments in their fiscal capacity are mostly equalised. This is, however, a purely theoretical solution since the size of local governments and the great variation in their fiscal capacity mean that equalization could only be realized through redistribution on such a large scale that it would be excessively wasteful and no longer efficient. The persistently low level of central funding, on the other hand, does not make it possible for local governments with relatively poor fiscal capacity to provide high quality services. It is clear that a major revision of the allocation of responsibilities and of the funding system is needed.

Voluntary associations are an inadequate solution to the problem of providing quality education for disadvantaged pupils; they may contribute to the gap between disadvantaged regions and the rest of the country.

3. *Associations.* The central administration seeks to tackle problems of cost efficiency and economy of scale and to equalize differences in educational services by encouraging voluntary associations through a combination of financial and legislative means (a special purpose formula grant for associations and a regulation requiring schools with less than eight grades or with pupils below a specified threshold to join an association). In the wake of changes to the regulations the number of local governments participating in institution maintaining associations significantly increased in 2007 (LANNERT, NÉMETH & SINKA, 2008). Voluntary associations are, however, an inadequate solution to the problem of providing quality education for disadvantaged pupils; they may, in fact, contribute to the gap between disadvantaged regions and the rest of the country.

One reason is that the poorest local governments with no local resources, where disadvantaged pupils are concentrated, are often left out of associations. The story of pupils living in Csörög village⁴ was an extreme manifestation of this problem, where the local government did not have a school and was not in a position to establish one but none of the surrounding settlements admitted the children of Csörög to their schools. This particular case was eventually settled thanks to an *ad hoc* agreement but it has highlighted a general problem: the current fragmented and in some ways dysfunctional network of local administration is required to meet an overly wide range of responsibilities and current regulations cannot even guarantee that all children receive compulsory education. The problem is that the legislation does not specify whose responsibility it is to ensure basic educational services, i.e., the requirement of compulsory education in the event that local governments – through no fault of their own – fail to do so.

Since under current legislation there is no means to create associations covering all local governments in a situation where this would be against their will, the central administration has attempted to encourage associations not to refuse underprivileged settlements by introducing incentives. The Public Education Act as amended in 2007 states that in allocating funding priority must be given to associations which include disadvantaged settlements or where 25 per cent or more of the children of poor and uneducated parents. These incentives may alleviate the problem but fail to provide guarantees that the most disadvantaged settlements will be allowed to join associations.

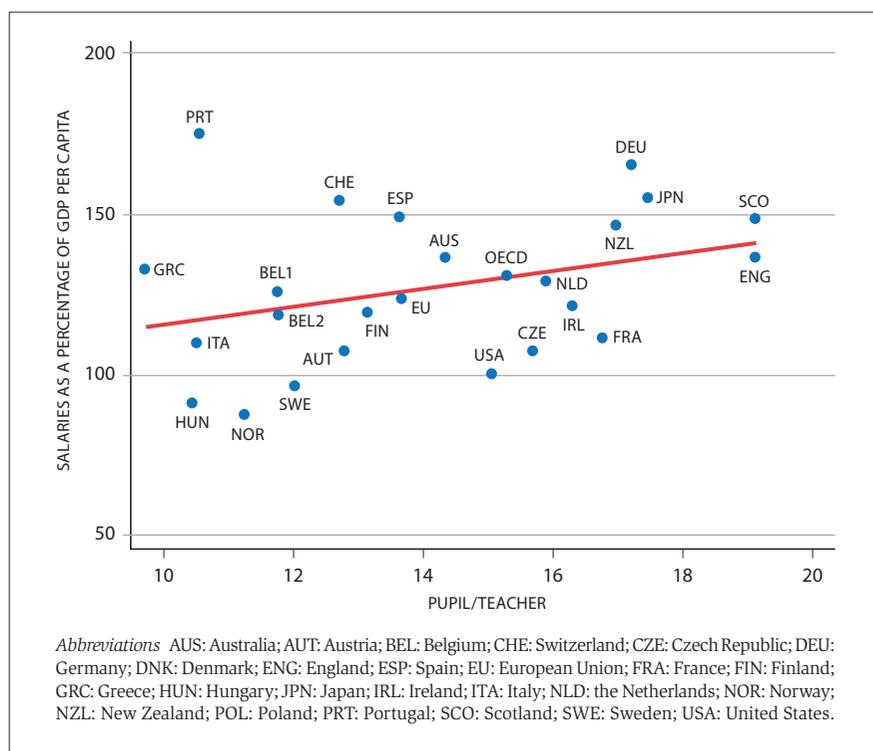
There is another reason why voluntary associations are not an assured solution to the problem of creating the conditions of quality education for disadvantaged pupils: the fiscal capacity of local governments forming an association may be equally poor or equally good. By exploiting the advantages of economies of scale, associations can improve their services but the mere existence of an association does not guarantee that the financial conditions for quality services will be produced. To achieve that goal, the central funding received by the local governments running schools would need to compensate for differences in fiscal capacity. For an association of poor local governments, for instance, the special purpose association grant is insufficient to fund quality services. Studies comparing schools run by associations to schools maintained in small settlements reveal that there are hardly any significant differences between the two groups in terms of learning conditions (HORN, 2005).

[4] Csörög was given municipality status in 2002 but it did not have a school. The local authorities signed an agreement with neighbouring Sződ, which had to be renewed annually, to fulfil the requirement of basic education provision. At the beginning of the school year of 2007/2008, however, Sződ refused to admit the 30 Roma children from Csörög and as associations are formed on a voluntary basis, none of the local governments could be compelled to admit the children.

Employment decisions are separated from funding decisions.

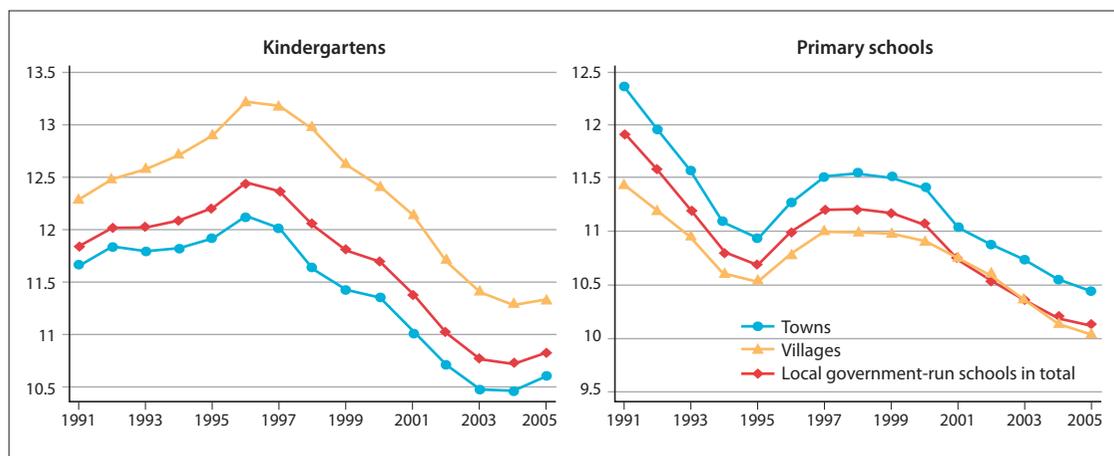
In addition to the inflexible local adjustment to demographic change, the decline in pupil-teacher ratios is also related to various regulations, such as statutory teaching hours, the definition of allowances for teaching hours and the authorization or support of curriculum modifications. A further factor is that employment decisions are separated from funding decisions. Teachers are public sector employees employed by their school and teacher salaries – to

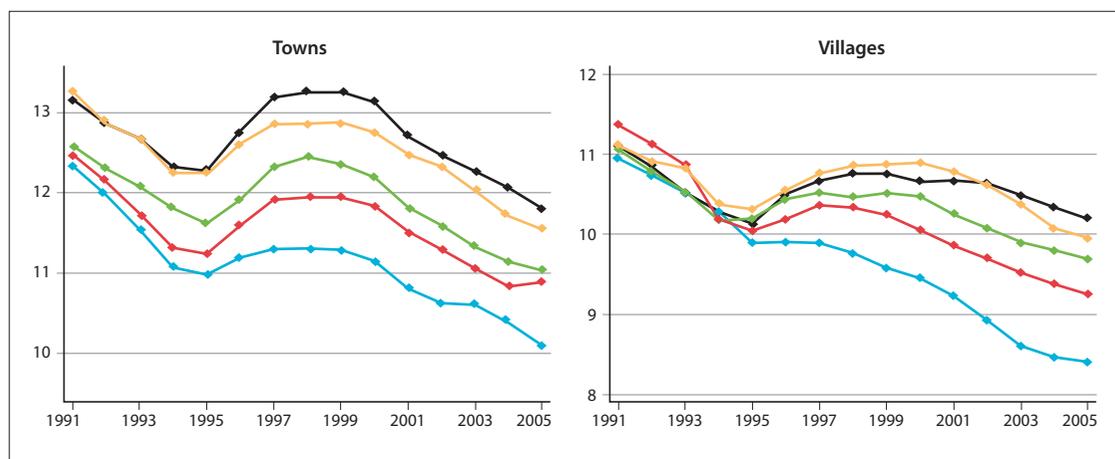
[FIGURE 10.3] Teachers' salaries with 15 years of experience as a percentage of GDP per capita and pupil/teacher ratios in primary and lower secondary education (ISCED1-2) in OECD countries, 2005
[SOURCE] OECD (2007).



[FIGURE 10.4] Pupil/teacher ratios at kindergartens and primary schools by settlement type, 1991–2005

[SOURCE] HERMANN (2007b).





[FIGURE 10.5]
Pupil/teacher ratios
at primary schools by
quintiles with respect
to demographic change
in towns and villages,
1991–2005

[SOURCE] HERMANN (2007b).

gether with other school costs – are supplied by the relevant local government. The size of the teaching workforce is essentially determined by centrally specified statutory teaching hours and minimum and maximum class sizes.

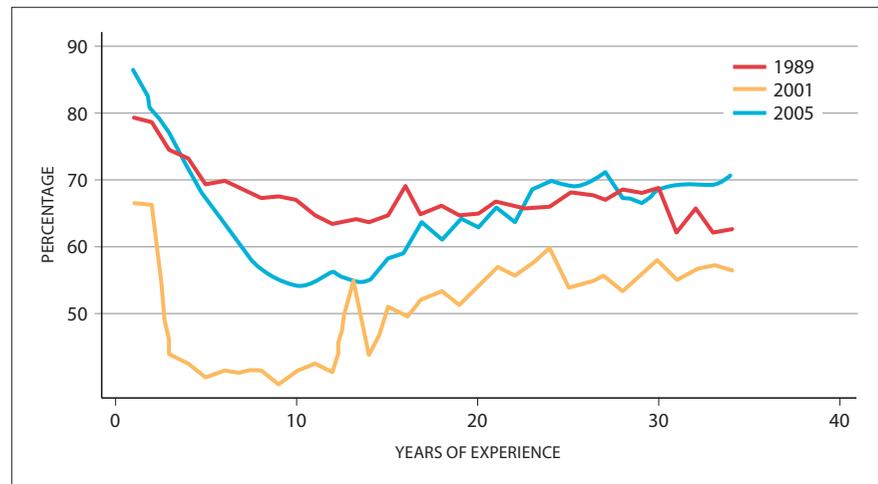
Local authorities typically have to resort to extreme measures – school closure or merger – to reduce the teaching workforce as they have little room for flexible adjustments in either employment or pay policies. Schools are closed to reduce the number of employees if local authorities face a substantial fall in the level of funding from the central budget (HERMANN, 2007b). These budget cuts have a one-off effect: they prompt local governments to cut spending in the short term, which does not necessarily lead to an improvement in efficiency in the long term since the focus is on reducing costs and less or no consideration is given to maintaining or improving the quality of services. In Hungary very few people are employed part-time or on an hourly basis in public education.⁵ Teachers have high job security due to their status as public sector employees and for the past one and a half decades teacher trade unions have focused their activities on preserving teaching jobs. The most recent amendments to the legislation on public sector employment and education – increased statutory teaching hours, the introduction of workforce planning – are aimed at rationalizing workforce size, and the introduction of a three-year trial period for new teachers could be a step towards quality selection.

6. *Problems related to teachers' pay.* The stability in the number of teaching jobs has been accompanied by a steep fall in the relative wages of teachers, which has been only temporarily mitigated by teacher pay rises. Since the size of the

[5] In 2005 non-pensioner part-time teachers accounted for 0.2 per cent and pensioner part-time teachers made up 5.7 per cent of teaching staff in primary education. In secondary education 0.6 per cent of teachers were in part-time non-pensioner employment and 9.8 per cent in part-time pensioner employment, as shown by the Hungarian Public Employment Service payroll survey.

[FIGURE 10.6]
 Qualified teachers' salaries
 as a percentage of all
 graduate salaries by years
 of experience,
 1989, 2001, 2005

[SOURCE]
 Public Employment Service
 payroll surveys.



workforce remained constant, the increase in salary levels lost its value within a few years. The greatest loss in relative wages was experienced by young teachers in the first ten years of their careers. In 1989 new teachers had been in a better position relative to other graduate employees than their older colleagues but over the next few years they experienced the greatest decline in their position relative to other graduate employees with the same years of experience. This trend was a direct consequence of the fact that while the labour market value of young graduates' qualifications had dramatically increased over the years (KERTESI & KÖLLŐ, 2002; KÉZDI & KÖLLŐ, 2000), public sector salaries can increase only as a function of experience and qualifications. Teachers' pay therefore could not follow the rising value of higher education degrees and a career in teaching became an even less attractive option for young graduates than it was for older colleagues (*Figure 10.6*). The relative position of young teachers with university degrees declined even more than that of young teachers with college degrees (*Figure 10.7*).

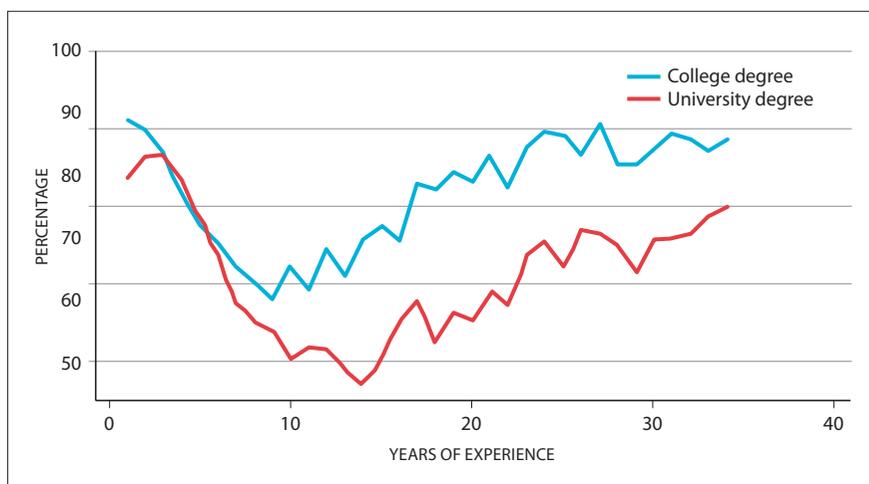
Teacher employment and pay policies have encouraged negative selection processes among people considering a teaching career.

Countries with the most successful public education systems offer starting teacher salaries approaching the level of starting salaries typical in other graduate professions.

Teacher employment and pay policies have encouraged negative selection processes among people considering a teaching career. A teaching major in higher education is chosen by students with relatively poor skills, it is the weakest among them who become teachers following graduation and repeatedly among those it is again the weakest who stay in the profession for longer than a few years (VARGA, 2007) – which constitutes a firm barrier to the renewal of public education. In countries with the most successful public education systems, in addition to selection for teacher training, a career in public education has been made attractive to gifted young people by offering starting teacher salaries approaching the level of starting salaries typical in other graduate professions (McKinsey report: BARBER & MOURSHED, 2007).

Teachers' salary scales, where pay levels are effectively determined by level of education and years of experience, leave very little room for more difficult

[FIGURE 10.7]
 Qualified teachers' salaries as a percentage of equivalent level graduate salaries by years of experience, 2005
 [SOURCE]
 Public Employment Service payroll surveys.



work to be recompensed, which means that disadvantaged children are more likely to be taught by teachers with relatively poor skills and knowledge. Teachers' pay schemes make barely any provision for rewarding quality work. The share of allowances that can be paid to reward quality work or difficult working conditions is so small that it cannot cover the difficulties a teacher has to cope with. The negative selection processes observed among young graduates must be stopped, the extra efforts needed to provide quality education in disadvantaged settlements and/or for disadvantaged pupils must be rewarded and the funding system and teachers' pay scales should be revised. To put a halt to the declining trend in the quality of teaching it is necessary – but not sufficient – to reduce the size of the teacher workforce and to reallocate the resources thus freed to improve the relative income position of teachers, taking differences in responsibilities into account. Better pay conditions will not improve teaching quality unless workforce reduction is accompanied by quality selection and salaries are raised according to merit. Introducing salary supplements for starting teachers can help to make teaching careers more attractive but it is more difficult to sustain the value of supplements and continue their payment indefinitely, compared to having them incorporated in standard pay scales.

Pupils from disadvantaged backgrounds have even less than usual access to quality teacher services.

7. *Teachers of children from disadvantaged background.* The decline in teaching quality has an overall adverse effect on pupil outcomes but pupils from disadvantaged backgrounds, who have even less than usual access to quality teacher services, are especially badly affected. A substantial proportion of local governments do not have other sources to supplement teachers' salaries because of the relationship pertaining between the incomes and the educational expenditures of local governments. As a result of residential segregation, a significant proportion of disadvantaged pupils live in relatively poor settlements where teachers are paid the lowest or close to the lowest salary defined by the pay scale and

where other cost saving measures are also sought. This means that a larger element of teachers working here have no qualifications or lower qualifications than teachers in richer settlements and also tend to be younger, in lower pay grades.

These schools employ a significantly larger proportion of young teachers under the age of 35 and there are more teachers with no teaching qualifications and fewer teachers with university degrees. At small village schools a high share of classes are given by unqualified teachers (13.4 per cent), which is also frequent at large village schools (9.1 per cent) compared to town schools (3.1 per cent) (HORN, 2004; HERMANN, 2005b). Schools attended by a large proportion of Roma pupils operate with a lower share of teachers qualified for the subjects taught compared to the average school and teacher absenteeism is also more common than average (HAVAS & LISKÓ, 2006). Disadvantaged pupils' foreign language classes are also considerably more likely to be taught by unqualified instructors. This is partly the consequence of disadvantaged pupils living in relatively poor settlements where local authorities are not in a position to pay higher wages, but a correlation has also been found between the proportion of at-risk pupils and the likelihood of unqualified teachers *within* settlements as wages do not compensate for the more difficult work of teachers at schools with a large share of disadvantaged pupils (LINDNER, 2007). As a consequence of differences in the difficulty of work, quality teachers can be expected to leave schools with a large share of disadvantaged pupils even if there is no difference in wages (the mechanisms behind this process are discussed in Part 2 of KERTESI & KÉZDI, 2005) and the typically lower wage levels further strengthen this effect. That is, it is the least qualified teachers among the overall declining quality teacher workforce that are found at schools attended by a relatively large proportion of disadvantaged pupils.

The current institutional structure makes it impossible to introduce a quality assurance and accountability system providing appropriate incentives.

8. *The relationship between school effectiveness and the distribution of resources.* The current institutional structure makes it impossible to introduce a quality assurance and accountability system providing appropriate incentives. As specified by the current Public Education Act, schools and the local authorities maintaining them are responsible for sustained school failures as measured by the National Assessment of Basic Competencies programme: they are required to prepare an action plan which clearly defines strategies of enhancing educational services. However, poorly performing village schools which are mostly attended by children with problems and which are likely to be hampered by a lack of resources do not have access either to the funds needed to reform their educational services or to suitable teaching staff and professional competences. If the powers and responsibilities of providing education were allocated in accordance with the reality of the free school choice system, the responsibility of reforming institutional organisation and education services in response to sustained school failures would lie with a broader education providing community, which had the necessary resources, entitlements and professional competences, and could reasonably try to turn around their declining schools.

■ SUGGESTIONS

To moderate the substantial gap between the expenditures of schools, the structure of local administration and the allocation of responsibilities need to be fundamentally revised.

1. To moderate the substantial gap between the expenditures of schools and to achieve lasting improvement in the financial conditions of educational institutions serving underdeveloped regions and/or attended by a large proportion of disadvantaged pupils without significant extra burden on the central budget, the structure of local administration and the allocation of responsibilities need to be fundamentally revised. There are two feasible options for restructuring: 1. the responsibility of public education provision can be transferred from local authorities to a higher level of administration, and 2. public education can be funded directly from central budget sources. As the latter solution was not supported by the Education Round Table, our suggestions are based on the first possible solution, where education provision remains a decentralised task. However, in this case a pre-requisite of efficient locally managed public education services is to create a powerful intermediate level of administration, the level of *micro-regional governments* and to allocate the responsibility for providing public education to this level.⁶ This step (similarly to a decision to introduce centralised education provision) requires qualified majority voting but appears to be unavoidable if the conditions of education are to be balanced across the country.

Once the local administration system has been restructured, public education provision responsibilities should be transferred from the level of local governments to the level of micro-regional governments in the medium term. We propose that micro-regional education districts should be defined.

We propose that once the local administration system has been restructured, public education provision responsibilities should be transferred from the level of local governments to the level of micro-regional governments in the medium term (in four or five years). We propose that micro-regional *education districts* should be defined with the aim to co-ordinate local education, employment and funding policies and thus establish informed regional education policies under the leadership of an elected education official vested with broad powers. Micro-regional school management has the benefit that differences in micro-regional income generating abilities are easier to equalize among larger units of administration while micro-regional school management retains the

[6] The need to maintain a sustainable public education system and to reduce profound inequalities in the conditions of public education is not the only reason why it is vital to restructure the system of local administration and create a firm intermediate level of government. Restructuring is also needed for the efficient delivery of several other tasks since local authorities are currently responsible for the provision of a considerable share of public services. In Hungary it is not only the issue of public education that calls for a reform of local administration although problems of sustaining public education services may constitute a sufficient reason for reforms, as was the case in Scandinavian countries in the 1970s (CALDWELL & HARRIS, 2006). It is a reasonable option for Hungary, as well, to start the implementation of the necessary reform of local administration with consideration to the apparently “particular” problems in public education. Firstly, education services constitute a major element of local government responsibilities, public education expenditure accounts for about 30 per cent of total local government expenditure. Secondly, the concerns of public education and those of some other local government services stem from the same problem, namely that the system of local administration is far too fragmented to meet the broad range of responsibilities assigned to local authorities.

advantages of a decentralised system and can accommodate users' needs and local differences in costs.

2. We propose that micro-regional education districts within each micro-region should be granted independent fund management entitlements and should be authorised to make micro-regional education and funding policies based on their own budgets and fund management entitlements. We propose that all central funding allocated to micro-regions – which is intended to fund running costs – should be directed to education districts. Investment and building maintenance costs should be covered partly by the micro-regions' local resources and partly by special-purpose grants.

We propose that central funding allocated for educational services in micro-regional education districts should be made available to the districts with the restriction that it can only be used for the purposes of education.

3. We propose that central funding allocated for educational services to micro-regional education districts should be made available to the districts with the restriction that it can only be used for the purposes of education. (Similar models can be found in other countries with decentralised, local education management systems, such as the United Kingdom.) We propose that a funding model should be created which allocates two types of funding to micro-regional education districts. One part of the funding should finance school and kindergarten budgets at institutional level while the other should be reserved for education related services at micro-regional level (school bus, basic art instruction, educational counselling services, pedagogical services for schools, etc.). We propose that both types of funding should be allocated using a formula based on the size of school-age *population* (rather than the number of pupils enrolled), various characteristics of local educational service provision, the proportion of pupils from disadvantaged backgrounds and the fiscal capacity of the micro-region. This formula ensures that budget allocations to micro-regions are distributed according to pre-defined and tractable rules while funding rates per pupil can differ between micro-regions with different characteristics.

The total budget should be divided into school budgets and resources covering micro-regional services.

4. We propose that the budgets of micro-regional education districts should be subject to regulations dividing the total budget into *school* budgets and resources covering *micro-regional* services. Micro-regional authorities should be permitted to use central education funding allocated to micro-regions for non-educational purposes by penalising non-educational use (through a repayment requirement). Beyond this restriction, however, the authorities should be free to decide how to spend their delegated funding and should be licensed to transfer local resources to their education budgets. To encourage a predictable and transparent relationship between education districts and individual schools, we propose that micro-regional education districts should be formally required to distribute the micro-region's school budget funding according to a pre-defined formula which takes into account differences between schools in terms of responsibilities and costs. The funding

formula should be defined by the micro-regional education district. Non-governmental education providers should also receive their budget allocations from micro-regional education districts and their funding should also be calculated according to the formula used for schools under the management of micro-regional authorities. This would help local education policies to take into account the activities of schools which are not owned by the state or run by micro-regional authorities.

Employer rights should be divided between micro-regional education districts and schools, and teachers should be employed on a contractual basis.

5. To create the conditions of rational finance and human resource management employer rights should be divided between micro-regional education districts and schools, and teachers should be employed on a contractual basis.

Conditional grants should be allocated in the short term.

6. The implementation of the model outlined in paragraphs 1–5 above is a long-term task. In the short term a considerable proportion of local education authorities will not be able to produce the resources needed for proposed changes involving increased running costs (such as the expansion of kindergarten services for children from disadvantaged backgrounds or the recognition of more difficult work in teachers’ pay) as these plans are most likely to be relevant to local governments in regions with a persistent shortage of resources and/or characterised by social deprivation. This being the case conditional grants should be allocated in the short term for the implementation of these tasks. To moderate the increase in costs, to make funding claims transparent and to reduce the incidence of unauthorised use, we propose that per-pupil public education grants should be claimed and accounted for according to the pupil-level database of KIR (Public Education Information System), which is based on education identification numbers uniquely assigned to each pupil.

Teachers’ pay scale should be revised to effect substantial improvement in the relative salaries of teachers at the initial stage of their careers.

7. In order to enhance service quality and to reverse negative selection processes observed among teachers, the teachers’ pay scale should be revised for the period of time during which teachers are employed as public sector employees. This should involve a revision of career advancement schemes to effect substantial improvement in the relative salaries of teachers at the initial stage of their careers setting the target to match an average graduate salary within about five years. This pay rise applies to teachers employed in public education with less than ten years experience — about 10–12 per cent of the teaching workforce. The extra wage costs could be covered by funds saved by rationalising the teaching workforce and due to the decline in pupil numbers (see Chapter 13).

More difficult working conditions should be taken into account to a far greater extent in determining teachers’ salaries.

8. We propose that more difficult working conditions should be taken into account to a far greater extent in determining teachers’ salaries. Since these work conditions are especially typical of institutions in regions with a persistent shortage of resources and/or characterised by social deprivation, a dedicated source of funding is needed.

A centralised, comprehensive inspection system should be set up. The Educational Agency should issue a comprehensive inspection report on every school.

9. The restructuring of the institutional and funding system is a necessary but not a sufficient condition of reducing the gap between school achievements. We propose that a centralised, comprehensive inspection system should be set up (modelled on the British Ofsted programme). The inspection system should be maintained by the Hungarian Educational Agency – which should be given extended powers – and the new Educational Agency should be accountable to Parliament. The Educational Agency should issue a comprehensive inspection report on every school (including schools that operate within the public education system but are not maintained by the state or micro-regions) every three or four years. Inspection should be carried out according to a standardised methodology taking school specific characteristics into account (site of operation, socio-cultural background, the main objectives and priorities of the institutions) and assessment should cover pupil outcomes (including the results of the National Assessment of Basic Competences), teaching quality (teaching methods and teacher evaluation, the school's relationship with parents and local society) and school management. We further propose that the Educational Agency should regularly review the strategic education policy documents of micro-regions and analyse the causes of achievement differences between individual schools and the causes behind variation in educational conditions across individual schools. Based on the results of assessment, the Educational Agency should make recommendations for intervention and sanctions in specific cases.

Related to the reform of the local administration model, the restructuring of the institutional and funding system is a task that can be completed in the medium term. It needs to be preceded by careful preparations and is contingent on a political consensus needed for the amendment of legislation requiring a two-thirds majority. Preparations should be started without delay and a detailed proposal for the new institutional and funding model should be produced. Several components of our suggestions can be implemented in the short term: the powers and organization of the Educational Authorities can be adjusted and the assessment of schools and local authorities responsible for public education can begin in 1–3 three years. The revision of teacher salary scales can begin in the near future with the objective of closing the gap between new teachers' salaries and average graduate salaries and to allow more difficult work conditions to be recompensed. The reform must be preceded by negotiations and an agreement should be reached with teacher trade unions to establish that the salary model cannot be revised unless the teaching workforce is reduced in proportion with future demographic changes and to define the outcome of the revision, the timing of salary increases and the principles of revising salary scales.

■ COSTS, BENEFITS, LINKS TO OTHER PROGRAMMES

Among the tasks proposed to be implemented in the short term, extra funding is required to set up the inspection system under the supervision of the Educational Agency. This step is related to Objectives 3.3.2 of the Social Renewal Operative Programme (TÁMOP) and can be financed from its resources. Since the inspection programme can be implemented by restructuring current organisations and involving the knowledge centres proposed for the enhancement of assessment and evaluation and accountability, it requires modest extra resources.

The costs of revised salary scales depend on the future size of the teaching workforce, changes in the distribution of teachers according to years of experience and the rate of pay increases. Higher financial rewards for difficult work conditions constitute additional costs in proportion to the rate of salary adjustments and the number of teachers entitled to adjustments.

In the long term the reform of teacher salary schemes – together with the reform of teacher education – can have a significant effect on teaching quality and can bring decisive improvement in the effectiveness of education. To achieve lasting improvement, however, it is essential to reach a consensus even though teacher trade union leaders are expected to show strong resistance since the revision of salary scales is conditional on the continued rationalisation of the teaching workforce.

The extension of the powers of the Educational Agency can have the long-term effect of establishing a feedback-driven education development model. The inspection programme, however, may earn the disapproval of both schools and the authorities maintaining them, which can be allayed by emphasising the supportive character of the system.

References

- BARBER, M. ■ MOURSHED, M. (2007). *How the World's Best Performing School Systems Come Out on Top*. McKinsey & Company.
- CALDWELL, B. J. ■ HARRIS, J. (2006). *Comparative Governance. Administration and Finance for Elementary and Secondary Education in Selected Countries*. Melbourne: National Center on Education and the Economy.
- HAVAS, GÁBOR ■ LISKÓ, ILONA (2006). *Óvodától a szakmáig* [From kindergarten to professional education]. Budapest: Felsőoktatási Kutatóintézet & Új Mandátum Könyvkiadó.
- HERMANN, ZOLTÁN (2005a). Az önkormányzatok közötti kiadási egyenlőtlenségek a közoktatásban [Expenditure inequalities between local authorities in public education]. In *Hatékonysági problémák a közoktatásban* [Problems of efficiency in public education]. Budapest: OKI.
- HERMANN, ZOLTÁN (2005b). A falusi kisiskolák és a méretgazdaságossággal összefüggő hatékonyságveszteségek [Small village schools and efficiency losses related to economies of scale]. In *Hatékonysági problémák a közoktatásban* [Problems of efficiency in public education]. Budapest: OKI.

- HERMANN, ZOLTÁN (2006). *Integráció és az iskolák finanszírozása. Az integrációs és képességkibontakoztató normatíva hatása az iskolákban* [Integration and school funding. The effects of integration and skills development grants]. Manuscript. Budapest: OKI.
- HERMANN, ZOLTÁN (2007a). Iskolai kiadási egyenlőtlenségek, 1992–2005 [Inequalities in school expenditure, 1992–2005]. *MTA KTI Műhelytanulmányok*, 2007 (8).
- HERMANN, ZOLTÁN (2007b). *Demográfiai változás, pedagógusfoglalkoztatás és közoktatási kiadások* [Demographic change, teacher employment and public education costs]. OKA background study.
- HORN, DÁNIEL (2004). Do small settlements provide education of inferior quality? MA-dissertation. Budapest: CEU.
- HORN, DÁNIEL (2005a). *Kistelepülések kisiskolái – társulás* [Small schools in small settlements – association]? Budapest: OKI. <http://www.oki.hu/oldal.php?tipus=cikk&kod=oe2005-Horn>
- HORN, DÁNIEL (2005b). Mennyibe kerül egy gyermek? Az általános iskolák oktatási szolgáltatásainak költségbecslése [How much does a child cost? A cost estimate of education services provided by primary schools]. In *Hatékonyági problémák a közoktatásban* [Problems of efficiency in public education]. Budapest: OKI.
- KERTESI, GÁBOR ■ KÖLLŐ, JÁNOS (2002). Economic Transformation and the Revaluation of Human Capital. Hungary, 1986–1999. In A. DE GRIP, J. VAN LOO & K. MAYHEW (Eds.), *The Economics of Skills Obsolescence* (pp. 235–273). *Research in Labor Economics*, Vol. 21. Oxford: JAI.
- KERTESI, GÁBOR ■ KÉZDI, GÁBOR (2005). Általános iskolai szegregáció. Okok és következmények. I–II. rész [Segregation at primary schools. Causes and consequences. Parts I and II]. *Közgazdasági Szemle*, 2005 (4), 317–355; 2005 (4), 462–479.
- KÉZDI, GÁBOR ■ KÖLLŐ, JÁNOS (2000). Életkor szerinti kereseti különbségek a rendszerváltás előtt és után [Age-related wage differentials before and after the regime change]. In *Racionalitás és méltányosság. Tanulmányok Augusztinovics Máriának* [Rationality and equity. Studies for Mária Augusztinovics]. Budapest: Közgazdasági Szemle Alapítvány.
- LANNERT, JUDIT ■ NÉMETH, SZILVIA ■ SINKA, EDIT (2008). *Ki lesz az általános iskola? Kutatási jelentés a 2007 ősze elején lezajlott közoktatási intézményfenntartási változásokról* [Who will have the primary school? Report on changes in the management of educational institutions in the autumn of 2007]. Budapest: Társi-Tudok.
- LINDNER, ATTILA (2007). *Jobb angol tanára van-e Jászai Oszkárnak, mint Győzikének? Általános iskolai szegregáció az idegennyelv oktatásban* [Does Oszkár Jászai have a better English teacher than Győzike does? Segregation in foreign language teaching at primary schools]. BCE TDK, Budapest, April 3.
- OECD (2007). *Education at a Glance*. Paris: OECD.
- VARGA, JÚLIA (2000). A közoktatás-finanszírozási rendszer hatása az egyenlőségre [The effects of the public education financing on equity]. *Közgazdasági Szemle*, 2000 (7–8), 531–548.
- VARGA, JÚLIA (2005). A közoktatásban foglalkoztatottak összetételének és keresetének változása [Shifts in the composition and salaries of public education employees]. In *Hatékonyági problémák a közoktatásban* [Problems of efficiency in public education]. Budapest: OKI.
- VARGA, JÚLIA (2007). Kiből lesz ma tanár? A tanári pálya választásának empirikus elemzése [Who becomes a teacher? An empirical analysis of teaching career choices]. *Közgazdasági Szemle*, 2007 (7–8), 609–627.

The Constitutional Court of the Republic of Hungary
Budapest

Dear Sirs,

Exercising our right as specified by Paragraph (4) §21 of Act XXXII of 1989 on the Constitutional Court (henceforth the Constitutional Court Act),

WE REQUEST

that based on Paragraph (1), §49 of the Constitutional Court Act the Constitutional Court establish that the legislator neglected legislative duties and created an unconstitutional situation by failing to provide legislative guarantees of free access to primary education for those whose local authorities cannot by any means – by maintaining an institution or by forming an association or making other local arrangements – fulfil their service provision duty. This may lead to a situation where the children concerned cannot continue their – in principle compulsory – primary school studies. This constitutes an infringement of the right to education as set out in §70/F of the Constitution, specifically the right of access to free and compulsory primary school services. It is similarly an infringement of children’s rights as set out in Paragraph (1), §67 of the Constitution and a barrier to the fulfilment of the requirement of compulsory education as specified in §70/F of the Constitution and of parents’ or carers’ duty to have their children educated as specified in §70/J.

The Constitutional Court is hereby requested to call upon the Parliament to fulfil its legislative duty within a specified time limit.

JUSTIFICATION

As stated in Paragraph (1), §70/F of the Constitution the Republic of Hungary accords its citizens the right to education and Paragraph (2) spells out that the Republic of Hungary guarantees this right – among other measures – by providing free and compulsory primary education services. As stated in §70/F of the Constitution the responsibilities of the state to ensure the conditions of exercising the right to education differ according to the level of education. From among the different levels of education (termed primary, secondary and higher education in the Constitution), “primary education is free and compulsory for all” [1310/D/1990. CC Ruling, ABH 1995. 586.]. This aspect of the right to education is therefore an unconditional human right and an obligation, the conditions of which must be created by the state for every single school-age child. If the state fails to fulfil this constitutional duty, it causes an infringement of the human rights of those concerned on the one hand and obstructs the fulfilment of the constitutional requirement to enrol in primary education on the other.

As specified by current regulations the right to primary education is enforced through the obligation of local governments to provide educational services. As set out in Paragraph (3), §3 of Act LXXXIX of 1993 on public education (henceforth the Education Act) the state ensures free and compulsory primary education through the institution maintenance activities of government organisations and local governments and by specifying state and local government obligations of service provision. Paragraph (4), §8 of Act LXV of 1990 on local governments asserts that local governments of settlements are under obligation to make provision for primary education.

The ultimate guarantee of access to primary education for those who are entitled to the right to primary education is provided by the institution of non-selective school admission, which is defined in Paragraph (2), §66 of the Education Act. The provision states that “the primary school – including the designated school – is required to admit primary school-age pupils who permanently or temporarily reside in its catchment area” (henceforth school with non-selective admission).

If, however, a local government which is under obligation of service provision does not make provision for a school with non-selective admission by maintaining an institution, forming an association or making any other arrangements, a situation may arise in which affected parents and primary school-age children do not have access to primary education and cannot fulfil their obligation to enrol in primary education. Current regulations do not offer these citizens any effective means of exercising their rights. As published in Report 3016/2006, the Ombudsman for national and ethnic minority rights investigated specific cases where the right of Roma children to primary education was jeopardised for the reasons explained above, which the Ombudsman found to represent a constitutional anomaly. The case reported by the Ombudsman confirms the claim that current regulations do not offer adequate guarantees for exercising the right to free and compulsory primary education and this deficiency in the regulations endangers the enforcement of this fundamental right.

The absence of appropriate rules further offends children’s right to receive from their families, the state and society the care and protection needed for their due physical, intellectual and moral development, as guaranteed by Paragraph (1), §67 of the Constitution. The internationally recognised catalogue of children’s rights, the Convention on the Rights of the Child adopted on 20th November, 1989 in New York, which was declared in Hungary in Act LXIV of 1991, set out the right to education in Article 28. Section 1.a) of the Article – similarly to the Constitution – states that the signatory parties to the Convention must ensure free and compulsory access to primary education for everyone.

The absence of guarantees of access to primary education does not only obstruct compliance with the requirement of §70/F of the Constitution of compulsory primary education but also thwarts the fulfilment of the constitutional obligation of §70/J of the Constitution which requires parents and carers to provide for the education of their minor children.

It is general practice for the Constitutional Court to make a decision of unconstitutionality caused by omission if no guarantees of the enforcement of fundamental rights are provided and when the defective legislation endangers the enforcement of fundamental rights [22/1990. (16 Oct.) CC Ruling, ABH 1990, 83, 86.; 37/1992. (10 June) CC Ruling, ABH 1992, 227, 232.; 6/2001. (14 March) CC Ruling, ABH 2001, 93, 103.]. [For the most recent case see 46/2007. (27 June) CC Ruling.]

With consideration to the above we respectfully request the Constitutional Court to call upon the Parliament to rectify this situation of unconstitutionality caused by omission and fulfil its legislative duty within a reasonable time limit.

Budapest, 11th December, 2007

(Signed)

2. THE REPLY BY THE
CONSTITUTIONAL COURT

Dear Petitioners,

In response to your – unmodified – petition to the Constitutional Court to make a decision of unconstitutionality caused by omission I once again offer the following information.

As set out in Act XXXII of 1989 on the Constitutional Court (henceforth the Constitutional Court Act) the Constitutional Court is essentially concerned with the investigation of the constitutionality of regulations and other legislative means of state administration. Paragraph (2), §22 of the Constitutional Court Act states that petitions for Constitutional Court proceedings shall include well-defined requests and specify the justification for the requests. As set out in Paragraph (2), §21 of the amended and standardised Decree 3/2001 (3 Dec) on the provisional procedures of the Constitutional Court and their publication (henceforth the Procedures), a request is well-defined provided that in addition to the regulations to be investigated the petition also identifies those provisions of the Constitution which – in the petitioner’s view – are violated by the mentioned regulations. Further, the Constitutional Court is not satisfied with references to individual provisions of the Constitution but requests the petitioner to clarify why and in what way the regulations under discussion violate the given provisions of the Constitution (472/B/200 CC Ruling, ABH 2001, 1655; 494/B/2005 CC Ruling, ABH 2002, 1783, 1784).

The Constitutional Court rules unconstitutionality caused by omission if the legislative body has neglected its legislative duty imposed by regulatory authorisation or omitted to define regulations in an area within its authority and responsibilities and thus given rise to unconstitutionality. The Constitutional Court further rules unconstitutionality caused by omission if as a result of omission by a legislator the guarantees of enforcement of a constitutional fundamental right are absent.

You raise the objection in your petition that the Parliament has “failed to provide legislative guarantees of free access to primary education for those whose local authorities cannot by any means – by maintaining an institution or by forming an association or making other local arrangements – fulfil their service provision duty.” Your petition, however, does not reveal what legislative guarantees you have in mind; nor does it reveal why and in what way the presumed omission violates the – mentioned – provisions of the Constitution.

With consideration to the above, your petition to the Constitutional Court does not contain a well-defined request as specified by §21 of the Procedures. Should you continue to wish the Constitutional Court to take action, kindly amend your petition – within 15 days of receipt of this letter – to include the above information. Please note that in the event that the necessary amendments are not made or the specified deadline is missed, the Constitutional Court cannot take lawful action.

Finally, I would like to inform you that you have previously appealed to the Constitutional Court with regard to this matter but as on that occasion you failed to make the requested amendments, your petition was filed under case number 1493/J/2007. Please find a copy of the proof of delivery of my earlier registered letter requesting the amendments enclosed with the current letter.

Kindly accept the information hereby provided.

Budapest, 17th June, 2008

(Stamped and signed)

3. SECOND EDUCATION
ROUND TABLE PETITION
TO THE CONSTITUTIONAL
COURT

Dear Sirs,

Exercising our right as specified by Paragraph (4), §21 of Act XXXII of 1989 on the Constitutional Court (henceforth the Constitutional Court Act), our petition (Case Number 282/E/2008) requested that based on Paragraph (1), §49 of the Constitutional Court Act the Constitutional Court establish that the legislator neglected legislative duties and created an unconstitutional situation by failing to provide legislative guarantees of free access to primary education for those whose local authorities cannot by any means – by maintaining an institution or by forming an association or making other local arrangements – fulfil their service provision duty. This may lead to a situation where the children concerned cannot continue their – in principle compulsory – primary school studies. This constitutes an infringement of the right to education as set out in §70/F of the Constitution, specifically the right of access to free and compulsory primary school services. It is similarly an infringement of children’s rights as set out in Paragraph (1), §67 of the Constitution and a barrier to the fulfilment of the requirement to enrol in primary education as specified in §70/F of the Constitution and of parents’ or carers’ duty to have their children education as specified in §70/J.

We respectfully requested the Constitutional Court to call upon the Parliament to fulfil its legislative duty within a specified time limit. We uphold our appeal with the following justification.

As stated in Paragraph (1), §70/F of the Constitution the Republic of Hungary accords its citizens the right to education and Paragraph (2) spells out that the Republic of Hungary guarantees this right – among other measures – by providing free and compulsory primary education services. As stated in §70/F of the Constitution the responsibilities of the state to ensure the conditions of exercising the right to education differ according to level of education. From among the different levels of education (termed primary, secondary and higher education in the Constitution), “primary education is free and compulsory for all” [1310/D/1990. CC Ruling, ABH 1995. 586.]. This aspect of the right to education is therefore an unconditional human right and an obligation, the conditions of which must be created by the state for every single school-age child. If the state fails to fulfil this constitutional duty, it causes an infringement of the human rights of those concerned on the one hand and obstructs the fulfilment of the constitutional requirement to enrol in primary education on the other.

As specified by current regulations the right to primary education is enforced through the obligation of local governments to provide educational services. As set out in Paragraph (3), §3 of Act LXXXIX of 1993 on public education (henceforth the Education Act) the state ensures free and compulsory primary education through the institution maintenance activities of government organisations and local governments and by specifying state and local government obligations of service provision. Paragraph (4), §8 of Act LXV of 1990 on local governments asserts that local governments of settlements are under obligation to make provision for primary education.

The ultimate guarantee of access to primary education for those who are entitled to the right to primary education is provided by the institution of non-selective school admission, which is defined in Paragraph (2), §66 of the Education Act. The provision states that “the primary school – including the designated school – is required to admit primary school-age pupils who permanently or temporarily reside in its catchment area” (henceforth school with non-selective admission).

If, however, a local government which is under obligation of service provision does not make provision for a school with non-selective admission by maintaining an institution, forming an association or making any other arrangements, a situation may arise in which affected parents and primary school-age children do not have access to primary education and cannot fulfil their obligation to enrol in primary education. Current regulations do not offer these citizens any effective means of exercising their rights. As published in Report 3016/2006, the Ombudsman for national and ethnic minority rights investigated specific cases where the right of Roma children to primary education was jeopardised for the reasons explained above, which the Ombudsman found to represent a constitutional anomaly. The case reported by the Ombudsman confirms the claim that current regulations do not offer adequate guarantees for exercising the right to free and compulsory primary education and this deficiency in the regulations endangers the enforcement of this fundamental right.

The absence of appropriate rules further offends children's right to receive from their families, the state and society the care and protection needed for their due physical, intellectual and moral development, as guaranteed by Paragraph (1), §67 of the Constitution. The internationally recognised catalogue of children's rights, the Convention on the Rights of the Child adopted on 20th November, 1989 in New York, which was declared in Hungary in Act LXIV of 1991, set out the right to education in Article 28. Section 1.a) of the Article – similarly to the Constitution – states that the signatory parties to the Convention must ensure free and compulsory access to primary education for everyone.

The absence of guarantees of access to primary education does not only obstruct compliance with the requirement of §70/F of the Constitution of compulsory primary education but also thwarts the fulfilment of the constitutional obligation of §70/J of the Constitution which requires parents and carers to provide for the education of their minor children.

It is general practice for the Constitutional Court to make a decision of unconstitutionality caused by omission if no guarantees of the enforcement of fundamental rights are provided and when the defective legislation endangers the enforcement of fundamental rights [22/1990. (16 Oct.) CC Ruling, ABH 1990, 83, 86.; 37/1992. (10 June) CC Ruling, ABH 1992, 227, 232.; 6/2001. (14 March) CC Ruling, ABH 2001, 93, 103.]. [For the most recent case see 46/2007. (27 June) CC Ruling.]

In response to your request of amendment therefore we maintain that the regulations constitute a violation of the Constitution because as a result of a legislative omission no guarantees are provided for the enforcement of a fundamental right and this deficiency endangers the fulfilment of that fundamental right.

The fundamental right primarily affected is the right to education as specified in §70/F of the Constitution, specifically the right of access to free and compulsory primary education. The right to education as set out in §70/F of the Constitution is a second generation cultural right and the state enjoys considerable freedom in its realisation leaving room for considerations of economic means as well. The Constitution, however, contains regulations on sub-rights within the right to education, some of which sub-rights appear as unconditional human rights that the state is under legal obligation to realise. These include the right of access to free and compulsory primary education, which means that in Hungary every school-age child has the enforceable right to have access to free primary education. It follows from the above that the state may be constitutionally required to create the guarantees, including relevant legislative regulations,

needed to ensure that no persons entitled to free primary education are at any time prevented from having access to free primary education.

We believe that these legislative guarantees are currently unavailable. Current legislation [Paragraph (2), §66 of the Education Act] names the institution of non-selective school admission as a guarantee of the above. Practical experiences suggest, however, that this institution cannot fulfil its function of assurance without fail. The cause of failure may be a situation where a local government in principle under obligation of service provision does not provide for non-selective school admission (because it does not maintain an educational institution and does not have a relevant agreement with school maintaining authorities). In this case those concerned have no effective means of enforcing this requirement and at the end of the day, will thus fail to have access to free primary education. The deficiency in the regulations therefore endangers the realisation of a fundamental right and, as the Ombudsman's investigations discussed above demonstrate, it has even led to a violation of this fundamental right in specific cases.

To our knowledge, the legislator has considered a number of regulation options which – provided that they conform to other constitutional requirements – could eliminate the problem of missing guarantees. Possible solutions under consideration have included the options to amend the Local Government Act and the Education Act to vest public administration offices with the power to monitor lawfulness, to make associations obligatory in specific cases and to authorise courts to order the signing of agreements. No genuine progress has been made to date, however, in terms of legislation.

IN SUMMARY:

In your letter requesting the amendment of our petition the objection is raised that our petition does not define the regulatory guarantees that we have in mind. These are legal requirements that guarantee the right to free primary education to all entitled in the event that the local government which is in principle under obligation of service provision fails to arrange for non-selective school admission. We believe that no regulations to this effects – as we have detailed above – are currently available.

You further object that our petition does not specify why and in what way the presumed omission violates the relevant provisions of the Constitution. The omission violates §70/F of the Constitution in that it gives rise to an infringement of that sub-right of the right to education which asserts the right to free and compulsory primary education. It constitutes an infringement of this sub-right because it is an unconditional human right which must be guaranteed by the state in all cases (including cases where a local government fails to fulfil its obligations), and which must be legally enforceable. The current legislation, however, fails to guarantee the enforcement of this right; actual events have provided evidence that the deficiency of the regulations may prevent children entitled to free primary education from having access to it.

If following the First Secretary's preparatory procedure it is upheld that there is no lawful means of continuing Constitutional Court procedures, appealing to Paragraph (2), §23 of the Procedures we request that our petition is presented to the President of the Constitutional Court.

With reference to the above we continue to respectfully request the Constitutional Court to call upon the Parliament to rectify this situation of unconstitutionality caused by omission and fulfil its legislative duty within a reasonable time limit.

Budapest, 9th July 2008

(Signed)