



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO  
GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT

Prishtina on 8 April 2022  
Ref. no.:AGJ 1977/22

*This translation is unofficial and serves for informational purposes only.*

## **JUDGMENT**

in

**Case No. KO145/21**

Applicant

**Municipality of Kamenica**

**Constitutional review of Decision No. 01B/24 of the Ministry of Education,  
Science, Technology and Innovation, of 23 April 2021**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërxhaliu-Krasniqi, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Referral was submitted by the Municipality of Kamenica (hereinafter: the Applicant), and was submitted by the former president of this municipality, Mr. Qëndron Kastrati.

2. In the local elections of 17 October 2021, namely after the second round on 14 November 2021, Mr. Kadri Rahimaj was elected the President of the Municipality of Kamenica.

### **Challenged act**

3. The Applicant challenges Decision No. 01B/24 of the Ministry of Education, Science, Technology and Innovation, of 23 April 2021 (hereinafter: the challenged Decision).

### **Subject matter**

4. The subject matter of this Referral is the constitutional review of the challenged Decision, which has allegedly violated Article 12 [Local Government], Article 123 [General Principles], Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo (hereinafter the Constitution) in conjunction with Article 2 (Constitutional and Legal Foundation of Local Self-Government) and Article 4 (Scope of Local Self-Government) of the European Charter of Local Self-Government.
5. The Applicant also requests the imposition of an interim measure on the grounds of violation of municipal responsibilities and on the grounds of the impact on students, stating that (i) it considers that its Referral is *prima facie* grounded; (ii) has provided sufficient evidence that irreparable damage will be caused; and (iii) the imposition of an interim measure is in the public interest.

### **Legal basis**

6. The Referral is based on paragraph 4 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 27 (Interim Measures), 40 (Accuracy of the Referral) and 41 (Deadlines) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies), 56 (Request for Interim Measures) and Rule 73 (Referral pursuant to Article 113.4 of the Constitution and Articles 40 and 41 of the Law) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

### **Proceedings before the Court**

7. On 12 August 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), through President Mr. Qëndron Kastrati.
8. On 13 August 2021, the President of the Court appointed Judge Nexhmi Rexhepi, as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Remzije Istrefi-Peci.

9. On 16 August 2021, the Court notified the Applicant about the registration of the Referral and requested it to submit to the Court the Memorandum concluded between him and the Ministry of Education, Science, Technology and Innovation (hereinafter: MESTI) of 25 February 2020. On the same date, the Court notified the Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister), the MESTI, and the Ministry of Local Government Administration (hereinafter: the MLGA), about the registration of the Referral and requested them to submit their comments by 31 August 2021.
10. On 20 August 2021, the Applicant submitted the document requested by the Court.
11. On 31 August 2021, MESTI and MLGA respectively submitted their comments to the Court.
12. On 2 September 2021, the Court notified the Applicant about the receipt of comments from MESTI and MLGA and requested the Applicant to submit a response to the comments, if any, by 10 September 2021.
13. On 10 September 2021, the Court received additional comments from the Applicant.
14. On 20 December 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously requested that the case be adjourned for further supplementations.
15. On 5 January 2022, the President of the Municipality of Kamenica, Mr. Kadri Rahimaj, represented by Mr. Alban Hashani from Kamenica, submitted to the Court a submission for withdrawal of Referral KO145/21, stating that the Municipality of Kamenica has no legal interest in assessing the constitutionality of the challenged act.
16. On 18 January 2022, the Court requested the President of Municipality Mr. Kadri Rahimaj, to attach the power of attorney that Mr. Alban Hashani is representing him when submitting a request for withdrawal.
17. On 21 January 2022, the President of Municipality Mr. Kadri Rahimaj attached the power of attorney for Mr. Alban Hashani.
18. On 2 February 2022, the Review Panel considered the report of the Judge Rapporteur, and unanimously requested that the case be adjourned for further supplementations.
19. On 10 March 2022, the Review Panel considered the report of the Judge Rapporteur, and unanimously (i) decided to reject the request for withdrawal of the Referral; and (ii) recommended to the Court the admissibility of the Referral and review of its merits.

20. On the same date, the Court unanimously decided that Decision No. 01B/24 of 23 April 2021 of the Ministry of Education, Science, Technology and Innovation is not in compliance with paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of Article 123 [General Principles] and paragraphs 2 and 3 of Article 124 [Local Self-Government Organization and Operation] of the Constitution.

### **Summary of facts**

21. According to the case file, the Municipality of Kamenica [Applicant] faced challenges in the field of education. This had resulted from the decrease in the number of students in the Municipality of Kamenica, and the fact that in some schools there were less than five (5) students in the whole school. Also, the Municipality of Kamenica faced a lack of proper infrastructure of educational institutions, and a large number of employees as educational workers. Regarding the latter, *“a heavy budget burden has been placed on”* the Municipality of Kamenica. Consequently, in order to improve preschool, primary and secondary education, the Applicant had taken steps to reform this system, by restructuring and reorganization of educational institutions, through the issuance of relevant decisions.

### ***Actions taken by the Applicant and MESTI***

22. On 30 August 2019, the Applicant rendered decision no. 26937 by which:

*“1. Education according to ISCED Levels 0 and 1 (preschool level and primary education 1-5), is REORGANIZED as follows:*

*1.1. In the educational institution “Dëshmoret e Kombit”, the students of “ShFMU” Nuhi Berisha”, ShFMU” 7 Shtatori “and ShFMU” Idriz Seferi “ attend classes.*

*1.2. In the educational institution “Fan S. Noli”, the students of ShFMU “Hasan Prishtina” also attend classes”.*

*2. Level 2 education (lower secondary school level, 6-9) is REORGANIZED as follows:*

*2.1. In the educational institution “Dëshmoret e Kombit”, the students of ShFMU “Nuhi Berisha”, ShFMU “7 Shtatori” and ShFMU “Idriz Seferi” also attend classes*

*2.2. In the educational institution “Fan S. Noli”, the students of ShFMU “Hasan Prishtina” also attend classes.*

*3. The educational, support, administrative and leadership staff of the schools “Dëshmoret e Kombit”, “Nuhi Berisha”, “7 Shtatori”, “Idriz Seferi”, “Fan S. Noli” and “Hasan Prishtina” will be treated equally according to the applicable law and sub-legal acts.*

4. *Reorganization of educational institutions according to paragraphs 1 and 2 of this Decision will start to be implemented at the beginning of the School Year 2019/2020.*
5. *The time of starting the reorganization of other educational institutions in the Municipality of Kamenica will be determined by a new decision.*
6. *Preparatory actions for the implementation of the reorganization of educational institutions in the Municipality of Kamenica, will be undertaken from the entry into force of this Decision.*
7. *The Municipal Directorate of Education is OBLIGED that in order to unite the merged educational institutions, to initiate procedures for the establishment of Educational Institutions according to UA/MAShT 08/2015 for the Establishment of Educational Institutions.*
8. *The educational institutions to which this Decision is addressed are ORDERED to take the necessary actions for the reorganization of the institutions according to this Decision, in consultation with the Directorate of Education of the Municipality of Kamenica.*
9. *Municipality of Kamenica as a basic administrative unit, based on legal competencies on public education, based on factual and organizational needs, based on the need to provide quality education in the Municipality of Kamenica, based on the provisions of Article 4 paragraph 4.1 of Law 03/ L-068 on Education in the Municipalities of the Republic of Kosovo, Article 14, paragraph 9 of Law 04/L-032 on Pre-University Education in the Republic of Kosovo, Article 3, paragraph 1.2. of AI 24/2016 (MESTI) for Quality Assurance in Pre-University Education and AI (MEST) 22/2013 Maximum Number of Students per Class and Student Teacher Ratio, decided according to this Decision.*
10. *The assignment of employees in educational institutions which are involved in the process of restructuring and reorganization according to this Decision, will be treated in accordance with the provisions of the Law on Labor and the Collective Agreement in Education, concluded in 2017 between SBASHK- and MESTI, in terms of technological surplus.*
11. *In case of entering into a Local Collective Agreement, the provisions from paragraph 9 of this Decision shall be applied in accordance with the special provisions of the Collective Agreement concluded at the enterprise level (Municipality of Kamenica).*
12. *The explanatory document for the reorganization of schools is attached to the decision.*

13. *The decision enters into force on the day of signing*".
23. On 10 January 2020, the Applicant issues Decision no. 02/805, by which:
- "1. Education according to ISCED Levels 0 and 1 (preschool level and primary education 1-5) is REORGANIZED as follows:*
- 1.1. In the educational institution "Abdullah Krashnica - Presheva", the students of ShFMU Rexhep Mala"also attend classes "*
- 2. Level 2 education is reorganized (lower secondary school level, 6-9) is REORGANIZED as follows:*
- 2.1. In the educational institution "Rexhep Mala", the students of "Abdullah Krashnica – Presheva also attend classes "*
- 3. Educational, support, administrative and school management staff will be treated equally in accordance with the law and sub-legal acts in force.*
- 4. The reorganization of educational institutions according to paragraph 1 and 2 of this Decision will start to be implemented at the beginning of the Second Period of the School Year 2019/2020.*
- 5. The time of starting the reorganization of other educational institutions in the Municipality of Kamenica will be determined by a new decision.*
- 6. Preparatory actions for the implementation of the reorganization of educational institutions in the Municipality of Kamenica, will be undertaken from the entry into force of this Decision.*
- 7. The Municipal Directorate of Education is OBLIGED to initiate procedures for the establishment of Educational Institutions divided according to cycles, according to AI/MEST 08/2015 on the Establishment of Educational Institutions.*
- 8. The educational institutions to which this Decision is addressed are ORDERED to take the necessary actions for the reorganization of the institutions according to this Decision, in consultation with the Directorate of Education of the Municipality of Kamenica.*
- 9. Municipality of Kamenica as a basic administrative unit, based on legal competencies on public education, based on factual and organizational needs, based on the need to provide quality education in the Municipality of Kamenica, based on the provisions of Article 4 paragraph 4.1 of Law 03/L-068 on Education in the Municipalities of the Republic of Kosovo, Article 14, paragraph 9 of Law 04/L-032 on Pre-University Education in the Republic of Kosovo, Article 3, paragraph 1.2. of AI 24/2016 (MEST) for Quality*

*Assurance in Pre-University Education and AI (MEST) 22/2013 Maximum Number of Students per Class and the Teacher-Student Ratio, decided according to this Decision.*

*10. Assignment of employees in educational institutions which are involved in the process of restructuring and reorganization according to this Decision will be treated in accordance with the provisions of the Law on Labor and the Collective Agreement in Education, concluded in 2017 between SBAShK and MEST, in terms of technological surplus.*

*11. With the entry into force of the Local Collective Agreement, the provisions from paragraph 10 of this Decision shall be implemented in accordance with the special provisions of the Collective Agreement concluded at the enterprise level (Municipality of Kamenica).*

*12. The decision enters into force on the day of signing.”*

24. On 10 September 2020, the Applicant issues a new decision no. 02/19870 through which:

*1. Education according to ISCED Level 0, 1 and 2 (preschool level, primary education 1-5 and lower secondary education 6-9) is REORGANIZED as follows:*

*1.1. In the educational institution "Avni Rrustemi" in Karaçevë të Epërme, the students of ShFMU "Asllan Thaçi" from Karaçeva e Epërme also attend classes.*

*2. Education according to ISCED Levels 0, 1 and 2 (preschool level, primary education 1-5 and lower secondary education 6-9) is REORGANIZED as follows:*

*2.1. In the educational institution "Rexhep Mala" in Topanica, the students of ShFMU "Xhelal Sopi" from Petroci also attend classes.*

*3. ISCED Level 0, 1 and 2 education (preschool level, primary education 1-5 and lower secondary education 6-9) is REORGANIZED as follows:*

*3.1. In the educational institution "Skënderbeu" in Hogosht, the students of the classes divided in Kopernica, Lisockë, Dazhnica and the classes divided in Polickë and Veleglavë of ShFMU "Kadri Zeka" also attend classes".*

*4. Education according to ISCED Levels 0, 1 and 2 (preschool level, primary education 1-5 and lower secondary education 6-9) is REORGANIZED as follows:*

*4.1. In the educational institution "Sadri Misini" in Shipashnicë të Epërme, the students of the divided parallel in të Poshtme, the students of ShFMU "Kadri Zeka" in Desivojce and its separate classes in Lacic, Terstena and Sedllar.*

5. Education according to ISCED Levels 0 and 1 (preschool level, primary education 1-5) is REORGANIZED as follows:

5.1. In the educational institution "17 Shkurti" in Muçiverc, the students of the separate classes in Krenidell and Dajkoc also attend classes.

Educational, support, administrative and school management staff will be treated equally in accordance with the law and sub-legal acts in force.

7. The reorganization of educational institutions according to paragraphs 1 and 2 of this Decision will start to be implemented at the beginning of the School Year 2020/2021.

8. Preparatory actions for the implementation of the reorganization of educational institutions in the Municipality of Kamenica, will be undertaken from the entry into force of this Decision.

9. The Municipal Directorate of Education is OBLIGED that in order to unify the merged educational institutions, to initiate procedures for the establishment of educational institutions according to AI/ MEST 08/2015 for the Establishment of Educational institutions.

10. The educational institutions to which this Decision is addressed are ORDERED to take the necessary actions for the reorganization of the institutions according to this Decision, in consultation with the Directorate of Education of the Municipality of Kamenica.

11. Municipality of Kamenica in a capacity of a basic administrative unit, based on legal competencies on public education, based on factual and organizational needs, based on the need to provide quality education in the Municipality of Kamenica, based on the provisions of Article 4 paragraph 4.1 of Law 03/L-068 on Education in the Municipalities of the Republic of Kosovo, Article 14, paragraph 9 of Law 04/L-032 on Pre-University Education in the Republic of Kosovo, Article 3, paragraph 1.2. of AI 24/2016 (MEST) for Quality Assurance in Pre-University Education and AI (MEST) 22/2013 Maximum Number of Students per Class and the Teacher-Student Ratio, decided according to this Decision.

12. Assignment of employees in educational institutions which are involved in the process of restructuring and reorganization according to this Decision, will be treated in accordance with the provisions of the Law on Labor and the Collective Agreement in Education, concluded in 2017 between SBASHK and MEST and the Collective Agreement concluded at the subdivision level, between SBASHK and the Municipality of Kamenica.

13. The decision enters into force on the day of signing.”

25. On 14 January 2020, the Inspectorate of Education within the MESTI, conducted an inspection in several schools in the Municipality of Kamenica, and found that (i) Sh.f.m.u. "Idriz Seferi" in Strezovc respects the decision of the Applicant; (ii) Sh.f.m.u. "Nuhi Berisha" in Tuxhevc, respects the decision of the Applicant; (iii) whereas, Sh.f.m.u. "7 Shtatori" in Krilevë and Sh.fmu "Hasan Prishtina" in Busavata do not respect the decision of the Applicant. On this occasion, the education inspectors assessed that (i) decision no. 02/26937 of 30 August 2019 by the Applicant for the school "Hasan Prishtina" in Busavata students should attend classes in the same school taking into account the number of 107 students and the construction of a new school building that is nearing completion; (ii) sh.f.m.u."7 Shtatori" in Krilevë and sh.fmu "Idriz Seferi" in Strezovc due to the small number of students and the geographical distance the schools are close to each other, to be merged into a joint school with the number of students in Krilevë 25 students and in Strezovc there are 75 students. Consequently, the Inspectors of Education recommend to: 1. MED in Kamenica to find forms and solutions to stabilize the situation in these schools, and 2. MED in Kamenica to provide these schools with class diaries and textbooks.
26. On 25 February 2020, the Applicant and MESTI signed a Memorandum of Cooperation, through which: (i) Decision no. 26973 of 30 August for the reorganization of the schools "Fan Noli", "Dëshmorët e Kombit", "Hasan Prishtina", "7 Shtatori", "Idriz Seferi" and "Nuhi Berisha"; (ii) postponed to the next phase Decision no. 805 of 10 January 2020, which includes the schools "Abdullah Krashnica Presheva" and "Rexhep Mala" and the time when this decision will be applied will be determined by the competent body; (iii) the two signatory parties engage in the advancement of school infrastructure, the opening of two kindergartens by re-destining existing school facilities, and investing in relevant parts; (iv) MESTI will invest in the reconstruction of the school "Fan S. Noli" '(v) in cooperation with donors, to launch a general and detailed study regarding the reorganization of schools (with insufficient number of students) at the country level, a study that will generate reliable data that will serve in fair decision-making based on accurate data for the whole country; (vi) the results of this study at the national level, studying the policies of the Municipality of Kamenica, to serve for the orientation of educational policies at the national level regarding the reorganization of the school network in order to increase the quality of teaching and learning (vii) the two signatory parties in consultation with the community will engage in the re-evaluation of the proposal for the reorganization of education in the Municipality of Kamenica; (viii) both institutions agree that they will respect the decision of the competent body for the organization of pre-university education, actively assisting in its implementation; (ix) the applicant, namely the Municipal Directorate of Education, prepares and implements the plan for compensation of lost hours; (x) teaching in all schools continues normally.
27. On 22 August 2020, the MLGA issues a Legal Opinion on MESTI *“regarding the own competencies of the Municipalities as well as the municipal bodies regarding the pre-university education, namely the reorganization of the*

*primary and secondary schools - Case of Kamenica*". In this Legal Opinion, it is concluded that (i) Pursuant to Article 17, paragraph 1 subparagraph (h) of Law no. 03/L-040 on Local Self-Government (hereinafter: the Law on Local Self-Government), Municipalities have the right to make decisions regarding public primary and secondary education and within this competence may reorganize public primary and secondary education; (ii) Pursuant to Article 13, and 57, paragraph (c) of the Law on Local Self-Government, the President of the Municipality has the right as an executive body to render legal decisions in the field of public primary and secondary education, as this competence does not expressly belong by law to the Municipal Assembly.

28. On 26 August 2020, the Inspectorate of Education took minutes through which the verification of the second level certificates was done in the school "Hasan Prishtina" in Busavata, in which case it was found that (i) the second level certificates (VI-IX) for some of the students of the elementary school "Hasan Prishtina" in Busavata, were issued by the illegitimate director and (ii) in the sh.f.m.u "Hasan Prishtina" in Busavata, in three subjects were engaged the inhabitants of the village and the same were not in the payroll system in the MED; (iii) the students of the sh.f.m.u "Hasan Prishtina" in Busavata, according to the decision 02/26937 of 30 August 2019, of the Applicant, had to be accommodated in sh.f.m.u "Fan Noli" in Kamenica. Consequently, the Education Inspectors, recommend that 1. cancel the certificates for the 6 (six) respective students; 2. MED to find the form of organization of assessment in relevant subjects; 3. MED to act according to the legislation in force for the issuance of second level certificates; 4. Competent bodies to initiate proceedings against the illegitimate director.
29. On 14 February 2021, early parliamentary elections were held in the Republic of Kosovo.
30. On 29 March 2021, the Education Inspectorate sent information to MESTI, reporting on student attendance in schools, based on the Applicant's Decisions.
31. On 8 April 2021, MESTI issued Decision 01B/14 on the formation of an *ad-hoc* committee to review the problem created by the non-attendance of a number of students in the Municipality of Kamenica, a total of 441 students. The task of this committee is (i) to analyze the existing information on the problem created in the Municipality of Kamenica; (ii) collect, as necessary, additional information through communication with the structures of the Municipality of Kamenica, schools and affected communities, including field visits; (iii) to focus/propose finding ways out of the existing situation given the interest of children and the obligation of state institutions to ensure the regular completion of the 2019/2020 and 2020/2021 school years; (iv) to submit to MESTI a working report with recommendations by 13 April 2021. Members of this committee were education experts, MESTI officials and an official of the Municipal Directorate of Education in the Municipality of Kamenica.

32. On 14 April 2021, the *ad-hoc* Committee compiled a Report, by which it found that the efforts of the Municipality, MESTI and the parent community to find solutions in returning students to school, beyond legal restrictions and decisions to reorganize schools, have been lacking to date and there has been fragmented, bureaucratic and court-oriented approaches and lawsuits between the parties involved, ignoring the damage being done to school children affected by the reorganization. The Committee assessed that the second phase of school reorganization was accelerated and the circumstances created by the pandemic were not taken into account, especially for the three scenarios of teaching organization (Scenarios A, B and C). The Committee had given comments regarding the school sh.f.mu. "Hasan Prishtina" in Busavata, and expressed the opinion that this school should not have been included in the reorganization plan. Due to the educational losses so far, the Committee expressed the opinion that it should be the organization of teaching in school and not online. The Committee finally made recommendations on the necessary actions, dividing them into political and technical levels. Regarding the former, the Committee stressed that (i) MESTI should take harmonized actions with the Municipality of Kamenica, including parents, to enable the immediate return of students to school; (ii) MESTI in agreement with the Municipality of Kamenica to establish a working group, where the situation in schools will be analyzed; (iii) MESTI to authorize the Curriculum Division to begin preparations to support the teachers of these schools; (iv) provide the necessary budget from the MESTI for the Curriculum Division, to provide additional materials; (v) MESTI should engage in immediate action for the purpose of legal and procedural regulation for the reorganization of the school network at the Kosovo level. Regarding the technical aspect, the Committee recommended (i) the preparation of a detailed plan for the organization of compensatory training; (ii) developing a simple and practical guide for teachers regarding teaching planning; (iii) planning and organizing support activities for professional archives through lectures, classes and mentoring; (iv) planning and organizing support inspections by the Education Inspectorate in order to provide data on the quality and progress of the teaching process.
33. On 23 April 2021, MESTI issues Decision 01B/24, on the organization of accelerated alternative education for 441 students of the Municipality of Kamenica, on the grounds that this decision is based on the obligation of MESTI to guarantee the right to education and the recommendations of the *ad-hoc* committee report of 14 April 2021 on the need to compensate for lost hours, and the inspectorate reports. By Decision 01B/24 it is decided to:

*"1. Lost hours are compensated through the organization of accelerated alternative education for students of primary education level (1-V) and students of lower secondary education level (VI-IX);*

*1.1. Physical class students in the village of Shipashnica e Poshtme;*

*1.2. Physical class students in the village of Kopernica;*

*1.3. Students of SHFMU "Hasan Prishtina" in Busavata;*

- 1.4. *Students of SHFMU "Asllan Thaqi" in the village of Karaçevë e Poshtme;*
- 1.5. *Students of SHFMU "Xhelal Sopi" in the village of Petrocë.*

2. *A committee is established within the MESTI for the drafting of teaching content for the organization of accelerated alternative learning for students according to point I of the decision.*
  3. *Accelerated alternative teaching for students according to point 1 of this decision, is developed by teachers of the Municipality of Kamenica.*
  4. *The teaching schedule is prepared so that the teachers who will work with the students according to point 1 of the decision, are not hindered by the teaching schedule that is being developed in other schools designated by the municipality.*
  5. *MED in Kamenica is obliged to provide optimal conditions and supply of teaching materials for the development of the educational process for students according to point I of the decision.*
  6. *The Inspectorate of Education in the Republic of Kosovo is obliged to supervise the implementation of the legal acts in force and this decision, in order to create conditions for the regular and unhindered functioning of the educational process.*
  7. *The teaching process takes place in the nearest school facilities and in accordance with the recommendations of MESTI, MoH and NIPHK.*
  8. *Task force at school level established according to decision no. 01B-1 01 of 11.09.2020, ensure that the educational institutions have created all the conditions for the resumption of the teaching process.*
  9. *Accelerated supplementary classes will begin on 4 May 2021.*
  10. *The decision enters into force upon its signature”.*
34. On 27 April 2021, the Applicant submitted a response to MESTI regarding the implementation of Decision 01B/24, stating that the Municipality undertakes the implementation of Decision 01B/24, despite the fact that it considers to be its exclusive competence. Further, the Applicant states that since Decision 01B/24 creates budget costs for the Municipality, they ask the MESTI to cover them, and these costs are related to the travel/transportation costs of students and the payment of additional hours of teachers. Further, the Applicant refers to the recommendations of the Ombudsperson, stating that it had initially given recommendations to the Municipality, but the recommendations of the Ombudsperson have been addressed by the Applicant. Finally, the Applicant, by this response stated that he expresses readiness to implement this decision,

subject to financial support from the MESTI, for (i) additional salaries for teachers; and (ii) student transportation costs. The Applicant stated that there are no funds available for the implementation of the MESTI Decision [challenged decision], therefore, the support is necessary.

35. On 28 April 2021, MESTI responded by electronic mail to the Applicant, regarding his letter of 27 April 2021. MESTI states that no additional costs are incurred because teaching takes place in school facilities closest to the students' place of residence. MESTI also requires from the Applicant a report on evidence of work under applicable law, regarding teacher salaries "*who are engaged above the norm prescribed by law*".
36. On 9 June 2021, the Human Resources Unit near the Municipality of Kamenica, compiled a report, through which it was stated that MED officials have encountered teachers (a total of five (5) in the village of Busavata who are not part of the education system in the Municipality of Kamenica and who are not on the payroll. These teachers had taught without a contract issued by the Municipality of Kamenica.

***Court proceedings initiated by parents for postponement of the execution of the Applicant's decision for reorganization of schools***

37. From the case file, the Court notes that the parents of some children who attended classes in some of the schools that were reorganized by the Applicant's decisions, refused to send their children to attend classes.
38. Consequently, some of those parents have initiated an administrative conflict through which they have requested the postponement of the execution of the decision and the annulment of the decision of the Applicant 02. no. 019870 of 10 September 2020.
39. In the case file, the Court possesses 2 (two) Judgments of the Supreme Court of Kosovo, namely Judgment ARJ.UZVP. No. 22/2021 of 17 March 2021 and Judgment ARJ. No. 40/2021 of 21 April 2021. By these decisions, it was decided only on the request for postponement of the execution of the Applicant's decision 02. no. 019870 of 10 September 2020.
40. The Supreme Court, by Judgment ARJ. No. 40/2021 rejected the request for extraordinary review of the court decision, reasoning that no convincing evidence has been obtained to prove that the execution of the challenged decision will cause damage, which would be difficult to repair and the postponement would not be contrary to the public interest, nor would the postponement cause irreparable or major damage to the opposing party - interested party. In this case, all legal requirements have not been met cumulatively as provided by Article 22 of the Law on Administrative Conflicts.

41. The Supreme Court, by Judgment ARJ. UZVP. No. 22/2021, also rejected the request for extraordinary review of the court decision, also based on Article 22 of the Law on Administrative Conflicts and determining that the claimants have not proved that with the execution of the decision of the administrative body, would cause damage to them, which would be difficult to repair; that the postponement is not contrary to the public interest; nor will the postponement cause them harm to the opposing party, namely the person concerned.

### ***Holding local elections***

42. On 17 October 2021, the first round of local elections was held in the Republic of Kosovo, while on 14 November 2021, the second round of local elections was held in the Republic of Kosovo. The winner of the latter, for the Municipality of Kamenica was Mr. Kadri Rahimaj.

### **Applicant's allegations**

43. The Applicant alleges that the challenged Decision violated Article 12 [Local Government], Article 123 [General Principles], Article 124 [Local Self-Government Organization and Operation] of the Constitution, in conjunction with Article 2 (Constitutional Basis and Law on Local Self-Government) and Article 4 (Scope of Local Self-Government) of the European Charter of Local Self-Government.
44. The Applicant more precisely alleges that, contrary to the constitutional and legal guarantees set forth in the Constitution, the European Charter of Local Self-Government and the Law on Local Self-Government, the Law on Pre-University Education and the Law on Municipal Education, his own municipal competencies were violated.
45. With regard to the admissibility of the Referral, the Applicant states that the challenged Decision is considered a "Government Act" and meets the requirements to be considered as such, and consequently, the Municipality [Applicant] has the right to file this Referral based on paragraph 4 of Article 113 of the Constitution, because the challenged decision directly violates the competence of the municipality on its own initiative, based on the standards set by the MESTI, to increase the quality of education in the municipality.
46. The Applicant initially states that the challenged Decision was rendered in violation of Article 12 of the Constitution in conjunction with Article 17 paragraph (h) of the Law on Local Self-Government, because based on this provision, the municipality has the right to provide public preschool education, primary and secondary, including registration and licensing of educational institutions. Consequently, the Applicant alleges that MESTI (i) does not have the competence to organize alternative or supplementary education and this may require the municipality to organize in accordance with MESTI requirements; (ii) has no competence to determine the locations of educational institutions nor to oblige the

municipality to hold alternative teaching in unlicensed educational institutions and which for the needs of the law they no longer exist as school facilities.

47. Further, based on Article 17 of the Law on Local Self-Government, the Applicant states that MESTI has not complied with this provision because the employment of teachers is the exclusive competence of the municipality, and MESTI has exceeded its authority and entered the competencies of the municipality. In this line, the Applicant adds that MESTI is not a body that can issue certificates and to students who have attended the educational process, while the municipality can not do so because it is not an organizer.
48. The Applicant states that MESTI has a monitoring role and not a decision-making one, and supports this argument in Article 5 and Article 8 of the Law on Pre-University Education. More specifically, the Applicant states that the MESTI can request but at no time to issue a Decision with the purpose of implementing alternative/additional learning. Furthermore, the Applicant states that the challenged Decision of MESTI violated the provisions of the Law on Education in Municipalities, because Article 3, point I), provided that the responsibility of the Ministry is to inspect the educational process. Whereas in Article 4 it is foreseen that the Municipalities have full and exclusive competencies, insofar as they belong to the local interest. If the Ministry, through the inspection mechanism, considers that there is a need for additional/alternative education, then it can issue a recommendation or submit a request to the municipality.
49. Finally, the Applicant states that the challenged Decision (i) harmed teachers and students; and (ii) a harmful precedent is set because it sends a negative message to municipalities that need to take action to reorganize schools.
50. The Applicant requests the Court to (i) declare the Referral admissible and approve the latter; (ii) find that there has been a violation of Articles 12, 123, 124 of the Constitution and Articles 2, 3, 4 and 9 of the European Charter of Local Self-Government, Article 17 of the Law on Local Self-Government, Article 9 of the Law on Pre-University Education, Article 3 and 4 of the Law on Education in Kosovo Municipalities; and (iii) declare MEST Decision 01/B24 invalid.

### **Request for interim measure**

51. The Applicant requests the imposition of an interim measure on the grounds of violation of municipal responsibilities and due to the impact on students, stating that (i) it considers that its Referral is *prima facie* based; (ii) has provided sufficient evidence that irreparable damage will be caused because the impugned decision has denied it the right to organize pre-school, primary and secondary education even for alternative education, a right that belongs to him exclusively; Holding alternative education in educational institutions that have been reassigned creates irreparable damage for students affected by this decision because they cannot be provided with school documents (certificates), and holding education by unauthorized persons engaged by MEST also represents irreparable

damage because for the latter it is not known what school preparation they have and the Municipality also suffers irreparable damage because some of the teachers who are placed in educational institutions according to the decisions for organization, have failed to hold classes defined by the contract; (iii) the imposition of an interim measure is in the public interest, because the students involved in this case would be offered the opportunity to be educated in licensed schools so that they are provided with relevant documents for the school year 2020/2021, and the Municipality if decided the interim measure would commit students to be recognized through tests and additional classes the right to classes held, providing them with certificates.

### **Comments of interested parties and the applicant**

52. In the following, the Court will present the comments of (i) MESTI; (ii) MGLA; and (iii) the Applicant to the responses of MESTI and MLGA.

#### **(i) MESTI Comments**

53. MESTI in their comment of 31 August 2021, stated that due to Decision No. 02/19870 of 10 September 2021 of the Applicant, 441 students were dissatisfied, in which case they did not attend the teaching process at all, thus opposing the implementation of the reform. MESTI further adds that in addition to boycotting the teaching process, parents of these children have filed lawsuits through administrative conflict and have requested the annulment of Decision no. 02/19870 of the Applicant of 10 September 2021, as unlawful and have requested the postponement of its execution until a decision on merits. According to the information of MESTI, the Basic Court has issued two decisions approving the request for postponement of the Decision, while the Court of Appeals has approved the appeal of the Applicant. As a result, decisions have been appealed to the Supreme Court, and over 250 parents are now acting as interveners in the lawsuit. MESTI claims that the Court of Appeals has rendered a decision without the response of the proposers.
54. MESTI, states that considering that a large number of students in a sign of revolt, were deprived of the right to education, it had to act necessarily. Regarding this point, MESTI emphasizes that the Inspectorate of Education, within the functions defined in Article of the Inspectorate Law no. 06/L -046, ascertains the losses for students in the process and recommends the elimination of losses for students in the reports of 14 August 2020 with ref. 10. No. 239, of 14 January 2020 with no. 10/3 prot. no. 004/20, of 29 March 2021 with ref. 10/233 and 30 March 2020 with ref. 10/237.
55. Based on the above, MESTI declares that it has decided to establish an *ad hoc* committee, in order to coordinate in finding a solution to the case. The relevant committee finds that 441 students or 16% of the total number of students at the municipal level have not attended the teaching process during one school year in

four educational institutions and two years in the educational institution in Busavata.

56. Therefore, MESTI states that it has issued a decision to organize accelerated alternative education for 441 students of the Municipality of Kamenica for primary level (I-V) and students of lower secondary education (VI-IX), pursuant to Article 26 paragraph 1 of the Universal Declaration of Human Rights, Article 28 paragraph I subparagraph (e), Article 3 of the Convention on the Rights of the Child, Article 22 and Article 47 of the Constitution, Article 3, Article 5 and Article 8 paragraph 6.3 of Law no. 04/L-032 on Pre-University Education, Article 3 of the Law on Education in the Municipalities of the Republic of Kosovo, Article 8 paragraph 1 subparagraph 1.4 Annex I paragraph 7 of Regulation (GRK) -no. 02/2021 on Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries of 30 March 2021 and Article 9 paragraph 7 of the Administrative Instruction (MES) no. 85/2020 for the School Year Calendar 2020/2021.
57. According to the MESTI, the challenged decision was intended to compensate for lost hours through the organization of accelerated alternative education for primary (I-V) and lower secondary (VI-IX) students. The decision provides for the organization of the teaching process for 441 students from 5 educational institutions who have refused to attend the teaching process as a result of the refusal to implement the decisions of the President of the Municipality of Kamenica, decisions which have been challenged in the legal process.
58. Regarding the issue of teachers, MESTI states that the curriculum and teaching process is prepared so that the teachers who will work with students according to point I of the decision, are not hindered by the teaching hours that are taking place in other schools designated by the Municipality, and the learning process is organized by the MED in the Municipality of Kamenica, and according to MESTI, this wording in points 3 and 5 of the challenged Decision, guarantees the competence of the Applicant and its obligations, and all communications with the Applicant has been offered support in implementing the decision.
59. MESTI claims that based on Articles 22 and 53 of the Constitution, and emphasizing Article 2 of Protocol no. 1 of the ECHR regarding the right to education, states that it guarantees the right of every individual to education, but this right also implies certain responsibilities for the state, to guarantee such a right. In the present case, MESTI claims that considering the protest of parents and the denial of education to children in a sign of revolt, MESTI has tried to restore the right of children to proper education by the challenged decision.
60. Further, MESTI refers to the cases of the ECtHR (*Golder v. the United Kingdom*); (*Leyla Sahin v. Turkey*, paragraphs 154 and 155), emphasizing that without prejudice to the actions taken by the Applicant, towards the reform of the education system, and starting from the risk of denial of the right to education, considers that by the challenged Decision, acted in accordance with state

obligations and intervened with expected responsibilities in order to prevent loss of education which directly affects the exercise of the right to education under the ECHR. MESTI considers that it is up to the Constitutional Court to decide to what extent the Municipality of Kamenica has respected the principle of proportionality, and considers that it was the responsibility of MESTI to ensure compensation for the lost teaching hours, not to allow the deprivation of the exercise of the right to education.

61. MESTI states that Article 2 of Protocol No. 1 should also be read in the light of Articles 8, 9 and 10 of the ECHR, and hereby cites the cases of the ECtHR (*Folgem and Others v. Norway*, paragraph 84) and (*Catan and others v. the Republic of Moldova and Russia*, para. 143), as well as (*Enver Sahin v. Turkey*, para. 72). In addition, MESTI states that Article 2 of Protocol No. 1 is also related to Article 14 of the ECHR and, consequently, the prohibition of discrimination, and also states that the right to education refers to access to educational institutions, exchange of knowledge and intellectual development (*Campbell and Cosans v. the United Kingdom*, para. 33). Further, MESTI emphasizes that every state is obliged to build educational institutions and provide effective access to these institutions (*Leyla Sahin v. Turkey* [GC], paragraphs 136-137). In other words, access to certain educational institutions is an integral part of the first sentence of Article 2 of Protocol No. 1, which guarantees the right to education (*Morsel Eren v. Turkey*, para. 41; *Irfan Temel et al. v. Turkey*, paragraph 39).
62. MESTI considers that taking into account the above, and without prejudice to the competencies of the Municipality of Kamenica [Applicant] in terms of ensuring the development of education in this Municipality, considers that it is an obligation of the state, in accordance with international principles for the protection of human rights, to ensure the implementation of the guarantee of the right to education, while also offering, as an integral part of this right, access to educational institutions built and authorized for the same purpose.
63. MESTI argues that under the Law on Pre-University Education, it is provided (i) under Article 3 that the obligation to provide pre-university education, expressly prohibiting the denial of the right to education; and (ii) it is stated that *it is the joint responsibility of parents, educational and training institutions, municipalities and the government*" to provide pre-university education. In the current context, MESTI states that it cannot be ignored that the protest of parents and consequently the denial of the right to education for children, as a result of the Applicant's actions could not be tacitly handled by MESTI, consequently by the state.
64. Further, regarding the procedural aspect, MESTI states that based on Article 113 paragraph 4 of the Constitution, in this case the legal basis is missing, because MESTI has in no way violated municipal responsibilities and has not reduced municipal revenues. MESTI considers that these are competencies according to the Constitution and are state responsibilities and not municipal and that with no action of it, MESTI has not interfered in the competencies of the applicant when it

has allowed “*access to schools because the latter is an essential part of the right to education*”.

65. Furthermore, MESTI considers that the challenged decision did not affect the reduction of municipal revenues at all, and this decision is a decision of MESTI and not of the government as a collegial decision. MESTI considers that the decision of the Government constitutes the second instance for the decisions of the Ministry according to the administrative procedure defined by the Law on Administrative Procedure, Law No. 05/L-031, Article 128 which states that “*Unless provided otherwise by law, an administrative appeal against an administrative act may be filed with the public organ that issued or that has the competence to issue the act (hereinafter referred to as “competent organ”), public organ that is superior to the competent organ or to another public organ provided by law (hereinafter referred to as “superior organ”). If the appeal has been filed with the superior organ, the latter shall forward it without delay to the competent organ*”.. Administrative Instruction no. 03/2013 on Standards for Drafting Normative Acts and Regulation no. 13/2013 on the Government Legal Service, clearly define a division between the acts of the Government and line Ministries.
66. In this case, MESTI states that the Applicant has not filed an appeal against the administrative act according to the legal deadline set out in Article 127, paragraph 1, which states that “*An administrative appeal shall be filed within thirty (30) days from the date when the aggrieved party was notified of the administrative act*”. Also, MESTI considers that the preamble of the decision states that the decision is based on its competencies under Government Regulation 02/2021, Article 8 paragraph 1, sub-paragraph 1.4, Annex I. Whereas, Government decisions have another legal basis, namely Article 4 of this Regulation. In this case, MESTI considers that the Applicant has not taken any procedural action in challenging by legal remedies the administrative act. This act is as an administrative act and not as a regulatory act with legal basis in the Administrative Instruction no. 03/2013 on Standards for Drafting Normative Acts and Regulation no. 13/2013 on the Government Legal Service.
67. Further, regarding the financial effect of the act, the decision does not charge any additional costs to the Applicant. At no point in the decision are additional costs incurred by the Applicant. None of the teachers asked for additional compensation in their engagement. Textbooks have been requested by the Municipality for these children according to the division into specific schools. The Ministry has provided hygienic and support material according to the requirements of the pandemic situation. The Ministry in the framework of budget allocation does it per student’s head. The Applicant did not provide any evidence that additional costs were incurred even after the decision was executed. Therefore, based on this, the request is inadmissible. Regarding the request for suspension of the execution of the decision, the decision was issued on 23 April 2021 and started to be executed from 04 May 2021 to 31 July 2021. Therefore, the request for suspension of the executed decision cannot be applied. The suspension applies to decisions which

will be implemented or are in force. Regarding the argumentation on the urgency for action, the Municipality of Kamenica only after five months brings the case to the Court when the decision has been executed and has realized legal consequences.

68. The MESTI finally considers that (i) the arguments concerning the merits of the Referral for the constitutionality of the challenged decision are not *prima facie* grounded; (ii) the Applicant has not filed the *prima facie* case for the merits of the request for interim measure and the claim regarding urgency does not stand because the decision has already been executed and has created legal consequences, and this decision has started to be executed from 23 April 2021 until 31 July 2021; (iii) the Referral filed by the Applicant is considered premature, due to non-exhaustion of legal remedies; (iv) 441 children have attended and completed the learning process and no additional costs have been incurred for the applicant, and states that a similar case is the decision of 20 April 2021 with no. 01/B 603, regarding the organization of supplementary education that had delays in achieving results as a consequence of COVID-19, for which no additional budget has been provided as a result of not creating additional costs.

**(i) MLGA Comments**

69. MLGA in its comments of 31 August 2021, first stated that according to Article 17 of the Law on Local Self-Government, the own competence of municipalities is to provide public preschool, primary and secondary education, including registration and licensing of educational institutions, employment, payment of salaries and training of instructors and education administrators.
70. However, the MLGA further considers that the challenged Decision is in full compliance with the competencies of the MESTI and respecting, among other provisions, the legal basis as provided in the Law on Education, namely Articles 3, 5 and it was further specified that this is a decision based on Article 8 paragraph 6.3, a provision which has to do with the competence of the Ministry to request the implementation of additional or alternative teaching, in cases where shortcomings are observed in the implementation of the curriculum. Precisely, such a situation has been presented in this case in the Municipality of Kamenica.
71. In this regard, we consider that the challenged Decision and its implementation, under no circumstances can be considered an interference in the own competencies of the Municipality of Kamenica [Applicant] for the organization of the teaching process, but it is in full compliance and in function of realization of the constitutional rights of children for education.

**(i) Applicant's comments on the comments of MESTI and MLGA**

72. Based on the Court's letter, on the possibility of providing comments on the comments submitted by the MESTI and the MLGA, the Applicant also submitted his comments.

73. Initially, the Applicant states that he does not challenge the principle deriving from Article 3 of the Law on Pre-University Education, because he himself has taken action towards the reorganization of the education system in order to provide efficient, effective and comprehensive services, to provide children with equal rights to education. In this regard, the Applicant challenges the comment of the MLGA, because it states that this provision does not give competence to the MESTI and that the latter with the challenged Decision has interfered in the competencies of the Applicant.
74. The Applicant further does not contest the competencies of MESTI, in relation to Article 5 of the Law on Pre-University Education, however, the organization of alternative or additional education is not provided by this Article. Regarding Article 8 paragraph 6, sub-paragraph 6.3, of the Law on Pre-University Education, the Applicant considers that MESTI has acted in contradiction with this provision because it could have requested the organization of additional or alternative education from the Applicant, through the request/recommendation, as provided by this provision and not to issue a decision related to it. The Applicant states that MESTI may request the implementation of additional or alternative education but has no decision-making role in the organization of preschool, primary and secondary education.
75. The Applicant also refers to the Legal Opinion of the MLGA, issued on 22 August 2020, through which it is concluded that public pre-school, primary and secondary education is the exclusive competence of the Municipalities under Article 17, paragraph 1, sub-paragraph (h) of the Law on Local Self-Government.
76. The Applicant did not agree with the comments of MESTI by categorizing his arguments into 5 (five) categories: (i) The representative of the Municipality of Kamenica did not agree with the recommendations of the *ad-hoc* Committee established under Decision no. of Protocol 01B/14 that students return for additional education in schools where they have been attending classes before; (ii) Comments regarding open parental court process through administrative conflict; (iii) Comments on the legal basis on which the Challenged Decision was issued and the Financial Effects of the Challenged Decision; not following the proceedings in regular courts; (iv) Comments regarding the assessment that the constitutional review of the Applicant is premature due to non-compliance with the proceedings in the regular courts; (v) Comments on the interim measure.
77. Regarding point (i) the Applicant states that the representative of the Municipality, official of the MED, did not agree with the recommendations of Decision 01/B/14 of the *ad-hoc* Committee, and that the same committee did not recommend MESTI, to organize supplementary education itself but has recommended to take actions harmonized with the authorities of the Municipality. The Applicant states that as a Municipality, they have expressed their readiness to hold additional education, but not in educational institutions that are no longer

functioning and do not even have the basic sanitary conditions for the development of education in them.

78. With regard to point (ii) of the open court proceedings against the Applicant's decisions, it states that it is not disputed that the parents of the children who boycotted the teaching process have initiated an administrative conflict (regarding this, the Applicant has attached two Judgments of the Supreme Court). The Applicant states that based on the Legal Opinion issued by the MLGA of 22 August 2020, the decisions taken by it, have passed the legality assessment procedure.
79. Further, regarding point (iii) the Applicant states that initially there is no argument from MESTI that the challenged Decision constitutes an individual act, and states that based on paragraph 4 of Article 113 of the Constitution, the municipality may file a Referral with the Constitutional Court. Further, regarding the financial effects of the challenged Decision, the Applicant states that there has been a direct reduction of revenues "*because in addition to violating the responsibilities, financial obligations have been added to the latter which, among others, are: Energy Electricity as additional costs for facilities determined by the Ministry itself and not by the Applicant*". According to the allegation, MESTI has hired teachers who are not employed by the Applicant, which according to the Applicant this is confirmed by the report according to evidence no. 12 of the Referral. The Applicant also alleges that in the educational institutions designated by the challenged Decision, the latter are institutions that do not exist practically and legally, and they are reorganized and are not licensed and do not provide conditions for teaching. These educational institutions have "*no license, no teachers, no maintenance and no conditions for the teaching process to take place.*"
80. With respect to point (iv), the Applicant states that the MESTI assertion that the Applicant should have filed an appeal against the challenged Decision is not substantiated and the Applicant's Referral is based on the Constitution and the Law on the Constitutional Court.
81. Finally, with regard to point (v), the Applicant considers that there is irreparable damage, because 441 students will not be provided with relevant diplomas, due to the challenged Decision, and according to it, there is a risk that MESTI will continue to unlawfully interfere with the competencies of the Applicant.

## **Relevant constitutional and legal provisions**

### **THE CONSTITUTION OF THE REPUBLIC OF KOSOVO**

#### **Article 113**

#### **[Jurisdiction and Authorized Parties]**

- 1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

[...]

4. *A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act.*

[...]

**Article 12**  
**[Local Government]**

1. *Municipalities are the basic territorial unit of local self-governance in the Republic of Kosovo.*

2. *The organization and powers of units of local self-government are provided by law.*

**Article 123**  
**[General Principles]**

1. *The right to local self-government is guaranteed and is regulated by law.*

2. *Local self-government is exercised by representative bodies elected through general, equal, free, direct, and secret ballot elections.*

3. *The activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government. The Republic of Kosovo shall observe and implement the European Charter on Local Self Government to the same extent as that required of a signatory state.*

4. *Local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members.*

**Article 124**  
**[Local Self-Government Organization and Operation]**

1. *The basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies.*

2. *Establishment of municipalities, municipal boundaries, competencies and method of organization and operation shall be regulated by law.*

3. *Municipalities have their own, extended and delegated competencies in accordance with the law. The state authority which delegates competencies shall cover the expenditures incurred for the exercise of delegation.*
4. *Municipalities have the right of inter-municipal cooperation and cross-border cooperation in accordance with the law.*
5. *Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law.*
6. *Municipalities are bound to respect the Constitution and laws and to apply court decisions.*
7. *The administrative review of acts of municipalities by the central authorities in the area of their own competencies shall be limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law.*

## **European Charter of Local Self-Government**

### **Article 2**

#### **[Constitutional and legal foundation for local self-government]**

*The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.*

### **Article 3**

#### **[Concept of local self-government]**

1. *Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.*

*[...]*

### **Article 4**

#### **[Scope of local self-government]**

1. *The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.*
2. *Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.*

3. *Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.*
4. *Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.*
5. *Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.*
6. *Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.*

**Article 8**  
**[Administrative supervision of local authorities' activities]**

1. *Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.*
2. *Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.*
3. *Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.*

**LAW No. 03/L-040 ON LOCAL SELF GOVERNMENT**

**CHAPTER III**  
**GENERAL PROVISIONS**

**Article 3**  
**Definitions**

[...]

- "Own competencies"- shall mean competencies vested upon the municipalities by the Constitution or laws for which they are fully responsible in insofar as they concern the local interest and in accordance with the law.

[...]

### **Article 15** **Principle of Subsidiary**

*The municipalities shall exercise its competences in accordance with the principle of subsidiary.*

### **Article 16** **Municipal Competencies**

*Municipalities shall exercise own, delegated and enhanced competencies in accordance with the law.*

### **Article 17** **Own Competencies**

*Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in the applicable legislation in the following areas:*

- a) local economic development;*
- b) urban and rural planning;*
- c) land use and development;*
- d) implementation of building regulations and building control standards;*
- e) local environmental protection;*
- f) provision and maintenance of public services and utilities, including water supply, sewers and drains, sewage treatment, waste management, local roads, local transport, and local heating schemes;*
- g) local emergency response;*
- h) provision of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators;*
- i) promotion and protection of human rights;*
- j) provision of public primary health care;*
- k) provision of family and other social welfare services, such as care for the vulnerable, foster care, child care, elderly care, including registration and licensing of these care centres, recruitment, payment of salaries and training of social welfare professionals;*
- l) public housing;*
- m) public health;*

- n) licensing of local services and facilities, including those related to entertainment, cultural and leisure activities, food, lodging, markets, street vendors, local public transportation and taxis;*
- o) naming of roads, streets and other public places;*
- p) provision and maintenance of public parks and spaces;*
- q) tourism;*
- r) cultural and leisure activities;*
- s) any matter which is not explicitly excluded from their competence nor assigned to any other authority;*

## **LAW NO. 04/L-032 ON PRE-UNIVERSITY EDUCATION IN THE REPUBLIC OF KOSOVO**

### Article 3

#### General principles of Pre-University Education

- 1. No person shall be denied the right to education.*
- 2. Pre-university education is a joint responsibility shared between parents, educational and training institutions, municipalities and government, according to the respective duties and functions set out in this Law.*
- 3. It shall be the general duty of the Ministry, the municipalities, the educational and/or training institutions and all other bodies engaged in the provision of pre-university education, as regulated by this Law and other applicable laws, to plan and deliver an efficient, effective, flexible, inclusive and professional service designed to provide all pupils with equal opportunities in access to education in accordance with their specific abilities and needs and to promote their educational and social development.*
- 4. In planning, managing and delivering the system of pre-university education, the Ministry, municipalities and educational and/or training institutions shall have regard to the internationally accepted norms of Education for All, the rights of the child, the protection of vulnerable groups within society and the promotion of gender equality.*
- 5. Upon discharging their functions and responsibilities within this Law and other applicable laws, Ministry, municipalities and educational and/or training institutions shall:*
  - 5.1. respect and promote community rights and their members as set forth by the Constitution and applicable law;*
  - 5.2. foster knowledge of the culture, history, and language of all communities.*

6. Access to and progression through all levels of pre-university education shall be enabled in compliance with the provisions of this Law without discrimination on any real or presumed ground such as sex, race, sexual orientation, physical, intellectual or other disability, marital status, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a Community, property, birth or other status of the pupil or the pupil's family.

7. Public education institutions shall refrain from teaching religion or other activities that propagate a specific religion.

8. The Ministry, municipalities, educational and training institutions and the community shall make the institutions attractive and safe for pupils, teachers and parents, through their respective responsibilities for the curriculum, standards of construction and maintenance of educational buildings, health and safety, protection of the environment and dealing with behavioral and disciplinary issues.

## **Article 5** **Duties of the Ministry**

1. The Ministry shall have the primary responsibility for planning of, setting standards in, and quality assurance of the pre-university education system, and shall have the following general duties:

1.1. to develop policies, draft and implement legislation for the development of preuniversity education and training;

1.2. to define the outcomes of the different levels of pre-university education and training and to award, or authorise the award of, qualifications at appropriate levels of the National Qualifications Framework to those who successfully complete pre-university programmes;

1.3. to promote a non-discriminatory education system in which each person's right to education and/or training is respected and equal quality learning opportunities are available for all;

1.4. to promote the protection of vulnerable groups within the education and training system, the health and welfare of pupils and employees of educational and/or training institutions, and measures to prevent drop-out;

1.5. to establish criteria and manage a comprehensive system of licensing and certification of all teachers through the State Licensing Council for Teachers established by this Law;

*1.6. to establish and maintain an education and training management information system.*

*1.7. . to provide annually to the Grants Commission sufficient data and formula standards in order to determine the specific grant for education in accordance with applicable law and the provisions of Article 28 of this Law;*

*1.8. to design effective and impartial forms of education administration and management of education and training institutions for implementation by municipalities and to establish criteria and procedures for monitoring the performance of governing boards;*

*1.9. . to promote and improve the quality And efficiency of education and training through the mechanisms provided in Article 8 of this Law for inspection, monitoring and evaluation; to enhance the quality of education; and to ensure compliance with the Constitution and applicable law;*

*1.10. to set the criteria for the evaluation and assessment of pupils in educational and/or training institutions;*

*1.11. to organize and manage external assessment in ISCED levels 1, 2 and 3, in line with the requirements for the award of qualifications in the National Qualifications Framework, and consulting with the National Qualifications Authority as appropriate;*

*1.12. to ensure comprehensive policies for inclusion of persons with special needs;*

*1.13. to promote through the Kosovo Parents' Committee, the governing bodies of educational and training institutions and otherwise, parental and community partnership and participation in educational and training activities;*

*2. . The Ministry shall issue bylaws in relation to:*

*2.1. length and timing of the school year within the Kosovo Curriculum Framework,*

*2.2. teaching hours and breaks, school holidays,*

*2.3. 3. maximum class sizes and pupil-teacher ratios (with threshold for the establishment of classes or schools teaching in non-official languages lower than normally stipulated),*

*2.4. examinations and assessment, in accordance with applicable law.*

*3. The Ministry shall issue bylaws regarding registration, retention and protection of personal data in the education system, taking into account the following criteria:*

*3.1. official documents issued by educational and training institutions should contain personal data, as following: name, name of a parent – legal custodian, surname and date of birth;*

*3.2. official documents shall be issued in all official languages; a pupil educated in a nonofficial language has the right to have his/her official documents kept and issued in his/her language of instruction, in addition to the official languages;*

*3.3. personal data related to ethnicity or religious status may be recorded for statistical monitoring purposes, helping to promote equal opportunities and may not be used for any other purpose: such data may not be recorded in any way that may identify such individuals.*

*4. Within the annual Government Report, the Ministry shall report on pre-university education and the implementation of this Law to the Assembly at the end of the calendar year.*

*5. The Ministry shall name and rename publicly-funded educational and/or training institutions on the recommendation of the relevant Municipal Education Directorate, such recommendation to include up to three proposals made by the relevant governing board.*

*6. The Ministry shall determine for each educational and/or training institution a unique reference code for use in the education information management system.*

*[...]*

*8. The Ministry shall adopt in a bylaw licensing standards for educational and/or training institutions including the standards referred to in paragraph 7 of this Article.*

*9. The Ministry shall license and accredit institutions offering general educational qualifications according to the National Qualifications Framework according to criteria and standards established for this purpose; institutions offering other types of qualifications shall be accredited by the National Qualifications Authority according to criteria and standards established for this purpose, and licensed by the Ministry.*

*10. The Ministry shall act as a second instance body for decisions of other educational and training bodies where the right of appeal is specified in this Law.*

## **Article 7**

### **Competencies of municipalities**

1. *Competencies of the municipalities are regulated through the:*

*1.1. Law for Local Government, no. 03/LO40, of the date 20 February 2008 and Law for Education in the municipality, of the date 03/L-068, May 21, 2008, and*

*1.2. . through any additional competencies assigned by provisions of this Law.*

*2. The exercise by the municipality of their powers and duties in this field shall be monitored by the Ministry in collaboration with the Ministry of Local Government and Administration to ensure compliance with the applicable legislation.*

3. *Municipalities are responsible for the following additional competencies:*

*3.1. . construction of education and training facilities;*

*3.2. maintaining and repairing the premises and equipment of educational and training institutions;*

*3.3. ensuring a healthy environment for pupils and staff, including water, hygienic-sanitary conditions, health service, as well as a safe environment including safe utilities and effective security;*

*3.4. through co-operation with parents, police and other public authorities taking steps to deal effectively with violent or bullying behaviour and substance abuse in or associated with the respective institution.*

## **Article 8**

### **Inspection of education**

1. *Inspection of educational and training institutions for the purposes set out in sub-paragraph 1.9 paragraph 1 of Article 5 of this Law is a function of the Inspectorate Department of the Ministry.*

2. *The authority for inspection derives from the Ministry; directors of educational and training institutions and Municipal Education Authorities shall co-operate with authorised inspectors, provide all necessary documentation and access to the institution, and attend the inspection personally or through an authorised deputy.*

3. *Inspection shall be organised in an annual planning cycle, with the possibility of special inspections in specific circumstances as decided by the Inspectorate Department.*

4. *The purposes of inspection of the operation of educational and training institutions at ISCED Levels 0, 1, 2, 3 and 4 are to check, in co-operation with inspectors from other fields (employment, sanitary, construction, financial, etc) and record::*

*4.1. . compliance with the respective duties and functions of the institution according to this Law, other applicable laws and bylaws;*

*4.2. the functioning of the governing board of the institution, the Parents' and Pupils' Councils, the financial operations, accuracy of records of numbers of pupils by level and grade, accuracy of pedagogical and school documents, organisation of classes and examinations;*

*4.3. the numbers, qualifications and arrangements for professional development of staff; 4.4. the working environment including compliance with standards of health and safety of pupils and staff, records kept of disciplinary action and its outcome;*

*4.5. compliance with the Kosovo Curriculum Framework, including the core, and schoolbased curriculum, assessment and examination procedures, and the use of approved textbooks, educational learning resources and learning materials;*

*4.6. and, where non-compliance in any field is observed, to give the director of the institution concerned specific advice or recommendation for compliance within a specified timescale.*

5. *If adequate measures are not taken by the director of the institution to redress the deficiencies in any area listed in paragraph 4. of this Article, the inspector may institute disciplinary procedures against the director or any member of staff of the institution.*

6. *Following the report of the inspector, signed by the inspector and by the director of the institution concerned:*

*6.1. the Ministry may terminate the work of educational and training institutions which are unlicensed, or are operating in an unsafe or unhealthy environment; 6.2. the Ministry may instruct the municipality to terminate the employment of a teacher appointed contrary to the criteria established in this Law, or who is barred from work due to a medical condition or the order of a court, or who is otherwise disqualified according to the provisions of this Law or other applicable law;*

*6.3. if deficiencies relate to non-observance of the curriculum, the Ministry may require compliance through additional or alternative classes;*

*6.4. the Ministry may annul marks when assessment procedures have not been respected, and annul diplomas and other documents gained in contradiction with this Law or other applicable law.*

7. *The Inspectorate Department shall also have responsibility for monitoring and evaluating the academic work of educational and training*

*institutions, as part of the annual cycle of inspections. The Ministry shall, in consultation with the KCSAA, establish criteria and procedures for national inspection, which may include experts in specific academic or professional fields, in accordance with paragraph 4. of Article 25 of this Law.*

*8. Appeals against any actions or recommendations of an inspector may be made to the Appeals Committee of the Ministry.*

**Article 14**  
**Allocation of pupils to educational institutions**

[...]

*9. Compulsory transfer of school when due consideration for other pupils so indicates shall be governed by the provisions of this Law.*

**LAW NO. 03/L-068 ON EDUCATION IN THE MUNICIPALITIES OF THE  
REPUBLIC OF KOSOVO**

**Article 3**  
**Ministry of Education, Science and Technology**

*The Ministry of Education, Science and Technology of the Republic of Kosovo (MEST) shall have the following responsibilities:*

- a) develop policies, draft and implement legislation for the development of education, including higher education, and science in Kosovo;*
- b) promote a non-discriminatory educational system in which each person's right to education is respected and quality learning opportunities are available to all;*
- c) establish and manage a general system of certification for all teachers in Kosovo;*
- d) extend non-formal education and adult education on all levels, including to remote areas, and promote life-long learning opportunities for all;*
- e) design, implement and supervise equitable and effective forms of educational administration and school management;*
- f) improve the quality, relevance and efficiency of education at all levels;*
- g) facilitate the development and qualitative improvement of the education system and the efficient delivery of educational services;*
- h) promote research related to the social, economic, scientific, technological and cultural development of Kosovo;*
- i) develop a comprehensive library system, which will include University and school libraries;*
- j) promote an inclusive policy for the integration of impaired and disabled persons into the educational system; and*
- k) promote parental and community participation in educational activities and appropriate forms of school community partnerships at the local level;*
- l) education Inspection.*

#### **Article 4**

##### **Competencies and Enhanced Competencies of the Municipalities**

*4.1 Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in applicable legislation with respect to the provisions of public preprimary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators.*

*2. Municipalities may, in addition to the powers referred to in Paragraph 1 of this Article, be vested with enhanced competencies in the field of education as prescribed by this law or other applicable legislation.*

*3. In accordance with the Law on Local Self Government, municipalities shall be entitled to cooperate, within the areas of their own competencies in the field of education, with other municipalities and other authorities. This entitlement includes cooperation with municipalities and institutions, including government agencies, in the Republic of Serbia.*

#### **Article 5**

##### **Competencies of the Municipalities in Public Education Levels 0, 1, 2, and 3 (Pre-Primary, Primary, Lower Secondary and Upper Secondary)**

*Competencies referred to in Article 4 of this law shall include the following specific municipal competencies in public education at levels 0 (pre-primary), 1 (primary), 2 (lower secondary) and 3 (upper secondary), in accordance with general guidelines and/or procedures and standards promulgated by the Ministry of Education, Science and Technology (MEST):*

*a) construction of educational facilities in accordance with Chapter 3 of this law and other applicable legislation;*

*b) registration and admission of students in accordance with due respect for the principles of nondiscrimination under law;*

*c) employment of teachers and other school personnel in accordance with legal procedures for the recruitment, selection and employment of public employees;*

*d) selection of the Director and/or Deputy Director of educational institutions in accordance with legal procedures for the recruitment and legal criteria's determined by MEST from a commission established by the Municipality which two members shall be from the Municipality and one from MEST;*

- e) registration, public health and safety inspection and licensing of pre-primary educational institutions, in accordance with Chapter 4 of this law;;
- f) payment of the managerial staff as well as other employed personnel in accordance with Kosovo legislation;
- g) training educators and other professional staff in accordance with guidelines, principles and standards promulgated by the MEST;
- h) supervision and inspection of the education process in accordance with guidelines established by the MEST; i) development, approval, and implementation of the Rules of Procedure for schools, including the Code of Conduct for managerial staff, teachers, other personnel, and students as well as disciplinary measures;
- j) reporting on pre-primary level education, budgetary and management operations to municipal governments and the MEST in accordance with municipal and central legislation;
- k) application of such delegated functions or competencies as shall be determined by formal agreement between the municipality and the Government of the Republic of Kosovo;
- l) monitoring and reporting on students' educational and social progress to parents and other responsible authorities as determined by legislation; and
- m) determination of the parents' participation fee for the admission of children to nurseries and kindergartens in accordance with the laws of Kosovo.

**REGULATION (GRK) - NO. 02/2021 ON THE AREAS OF ADMINISTRATIVE RESPONSIBILITY OF THE OFFICE OF THE PRIME MINISTER AND MINISTRIES**

**Article 8  
Minister**

1. In accordance with the Constitution, the legislation in force, policies and directives set by the Government or the Prime Minister, the Minister shall:

[...]

1.4. Issue decisions and bylaws and conclude memorandums of understanding/cooperation within the area of administrative responsibility of the ministry; and

1.5. Perform other duties within the area of administrative responsibility of the ministry, as defined by the legislation in force.

[...]

## **Assessment of the admissibility of Referral**

82. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.

83. The Court, in this respect, first refers to paragraphs 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

*“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”*

84. The Court notes that the Referral was submitted in accordance with Article 113, paragraph 4, of the Constitution, which stipulates:

*“A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act”.*

85. The Court also refers to Articles 40 [Accuracy of the Referral] and 41 (Deadlines) of the Law, which stipulate:

### Article 40 (Accuracy of the Referral)

*“In a referral made pursuant to Article 113, Paragraph 4 of the Constitution, a municipality shall submit, inter alia, relevant information in relation to the law or act of the government contested, which provision of the Constitution is allegedly infringed and which municipality responsibilities or revenues are affected by such law or act.”*

### Article 41 (Deadlines)

*“The referral should be submitted within one (1) year following the entry into force of the provision of the law or act of the government being contested by the municipality”*

86. The Court also refers to the Rule 73 (Referral pursuant to Article 113.4 of the Constitution and Articles 40 and 41 of the Law), which specifies:

### *Rule 73* *[Referral pursuant to Article 113.4 of the Constitution]*

*“(1) A referral filed under this Rule must fulfill the criteria established under Article 113.4 of the Constitution and Articles 40 and 41 of the Law.*

*(2) In a referral pursuant to this Rule, a municipality must submit, inter alia, the following information:*

*(a) relevant information in relation to the law or act of the government contested;*

*(b) the specific provision of the Constitution which is allegedly infringed; and*

*(c) the municipality responsibilities or revenues that are affected by such law or act.*

*(3) The referral under this Rule must be filed within one (1) year following the entry into force of the provision of the law or act of the Government being contested”.*

87. However, before assessing the aforementioned requirements, the Court first recalls that on 5 January 2022, the President of the Municipality of Kamenica, Kadri Rahimaj, represented by Alban Hashani from Kamenica, received a request to withdraw Referral KO145/21 from the Court, emphasizing that the Municipality of Kamenica “*has no legal interest*” in assessing the constitutionality of the challenged act. The President of the Municipality is based on paragraph 1 of Article 35 of the Rules of Procedure.

88. Therefore, the Court will initially consider the request for withdrawal of the President of the Municipality of Kamenica.

***(i) Request for withdrawal of the Referral***

89. In this case, the Court recalls paragraphs 1, 2 and 3 of Article 35 of the Rules of Procedure which stipulate:

*Rule 35  
Withdrawal, Dismissal and Rejection of Referrals*

*(1) A party may withdraw a filed referral or a reply at any time before the beginning of a hearing on the referral or at any time before the Court decision is made without a hearing.*

*(2) Notwithstanding a withdrawal of a referral, the Court may determine to decide the referral..*

*(3) If the Court determines to decide such a referral, it shall decide without a hearing and solely on the basis of the referral, any replies, and the documents attached to the filings.*

*[...]*

90. The Court recalls that Referral KO145/21 was submitted by the President of the Municipality of Kamenica, Mr. Qendron Kastrati, whose mandate has ended after the new local elections in Kosovo. Consequently, the new President of the Municipality of Kamenica, has submitted a request to withdraw Referral KO145/21, stating that “*there is no legal interest in assessing the constitutionality*” of the challenged Decision, without further clarifying his request.
91. However, pursuant to paragraph 2 of Rule 35, notwithstanding the request to withdraw the Referral, the Court may decide to decide on the Referral.
92. The Court notes that the challenged Decision was issued for a certain period and it has produced effects in the past, namely according to the explanation of MESTI, from 4 May 2021 to 31 July 2021. The Court recalls the Applicant’s arguments regarding the legal effects of the challenged Decision, considers that apart from the fact that MESTI has violated the competencies that belong to the municipality, there is irreparable damage because 441 students will not be provided with relevant diplomas, due to the challenged Decision, and according to it, there is a risk that the MESTI will continue to unlawfully interfere in the competencies of the Applicant.
93. However, given the nature of the dispute and the importance of respecting the principles of local self-government, as provided for in the Constitution and the European Charter of Local Self-Government, when submitting the Referral to the Court, considers that the statement of the Court is in the public interest: because (i) such a statement has a purpose, and that is to clarify allegations of violations of constitutional principles related to local self-government, in the context of a violation of municipal responsibilities by the central level, and (ii) such a statement would prevent such a situation from occurring in the future.
94. Therefore, the Court decides to reject the request of the President Mr. Kadri Rahimaj, and to continue with the review and decision of the case, based on the referral, the answers submitted, and the documents submitted to the Court.

***(ii) Assessment of the admissibility of Referral***

95. In view of the abovementioned assessment, the Court will proceed, with the assessment of the admissibility criteria, which expressly state that (i) the Municipality must challenge the constitutionality of a law or an act of the Government; and (ii) The municipality should explain that the challenged law or act violates municipal responsibilities or reduces its revenues. Pursuant to the Law and the Rules of Procedure, this law or act must be challenged before the Court within one (1) year from its entry into force.

***(a) Authorized party***

96. Regarding the first requirement, namely the party entitled to file a Referral, the Court notes that the Municipality of Kamenica [Applicant] is authorized to file a constitutional referral with the Court, pursuant to Article 113 paragraph 4 of the Constitution..
97. At this point, the Court recalls that the Referral was filed during the time when Mr. Qendron Kastrati was a president, while the new president, Mr. Kadri Rahimaj, has requested the withdrawal of the case. However, the Court considers that Referral KO145/21 is not related to a public function exercised on behalf of a municipality, in the present case, of the respective presidents of municipality, but is related to the municipality as an authorized party in paragraph 4 of Article 113 of the Constitution. Therefore, the Court finds that such a Referral continues to exist and is attributed to the Municipality, as an authorized party that has submitted it, despite the change of the representative of the Municipality.

*(b) Challenged act*

98. Regarding the second requirement, the Court recalls that the Applicant challenges Decision no. 01B/24, of 23 April 2021 of the MESTI. If the latter can be considered a “*Government Act*”, the Court will assess it in the following.
99. The Court recalls that in its practice, it has dealt with cases in which the constitutional review of various Government acts has been requested. Depending on the specific case, the Court has assessed whether such an act can fall into the category of acts determined by the jurisdiction of the Court under Article 113 of the Constitution. In this context, it recalls that in case KO73/16, it declared admissible the constitutional review of an “*Administrative Circular*”, namely Administrative Circular no. 01/2016 of 21 January 2016, issued by the Ministry of Public Administration, taking into account its effect (see case KO73/16, Applicant the Ombudsperson, Constitutional review of Administrative Circular no. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo, on 21 January 2016, Judgment of 16 November 2016, paragraphs 46, 56 and 58).
100. This case law was confirmed also in Judgment in case KO54/20, through which the Court, by declaring admissible the request for constitutional review of Decision of the Prime Minister No. 01/15 of 23 March 2020, stated that (i) in determining whether a “*decree*” of the Prime Minister is challenged within the meaning of subparagraph 1 of paragraph 2 of Article 113 of the Constitution, “*focus should not be placed only on the name of an act but on its content and effects*” (see Judgment KO54/20, Applicant *President of the Republic of Kosovo*, Constitutional Review of Decision no. 01/15 of the Government of the Republic of Kosovo, of 23 March 2020, Judgment of 31 March 2020, paragraph 161); and (ii) if the Court were to focus solely on the formal name of challenged acts, namely “*decree of the Prime Minister*” or even “*Government regulations*”, Government decision-making would be left out of constitutional control, based solely on the name which they have decided to assign to the relevant act. (See in this context, paragraphs 162-163 of Judgment KO54/20, see also *mutatis mutandis*, case of the

Court, KO 61/20, Applicant *Uran Ismaili and 29 other deputies of the Assembly of the Republic of Kosovo*, Constitutional Review of Decision [no. 214/IV/2020] of 12 April 2020 of the Ministry of Health, for declaring the Municipality of Prizren “quarantine zone”; and Decisions [no. 229/IV/2020], [no. 238/IV/2020], [no. 238/IV/2020] of 14 April 2020 of the Ministry of Health, on the prevention, control and elimination of the contagious disease COVID-19 in the territory of the Municipalities of Prizren, Dragash and Istog, Judgment of 1 May 2020, paragraph 96).

101. In case KO61/21, the Court notes that pursuant to paragraph 1 of Article 92 of the Constitution, the Government is composed of the Prime Minister, the deputy prime minister(s) and ministers. The latter, based on paragraph 2 of the same article, exercise executive power in compliance with the Constitution and the law. In this context, the Court emphasizes that the decisions of the Ministers are subject to the assessment of the constitutionality before the Court insofar as they have been raised before the Court in the manner prescribed by the Constitution and the Law, and based on the Court’s assessment relating to their effect and if they raise “*important constitutional matters*”. (see case KO61/21, Applicant, *Uran Ismaili and 29 other deputies of the Assembly of the Republic of Kosovo*, cited above, paragraph 99; and see the case of Court KO139/18, Applicant *Municipality of Skënderaj*, Constitutional Review of the Collective Sectoral Contract no. 05-3815, Resolution on Inadmissibility of 30 September 2020, paragraph 42 and other references used therein).
102. The Court recalls the arguments of the MESTI, which states that the Government Decision serves as a second instance for the decisions of the Ministry [MESTI] under Article 128 of the Law on General Administrative Procedure and states that the Applicant has not appealed against the administrative act [challenged decision], according to the legal deadline set out in paragraph 1 of Article 127 of the Law on General Administrative Procedure, which sets the deadline of 30 days for filing a complaint by the party. Consequently, MESTI considers that the Applicant has not taken any procedural action to challenge the administrative act by legal remedies.
103. However, the Court recalls that paragraph 4 of Article 113 of the Constitution does not require the exhaustion of legal remedies in relation to the submission of requests for the constitutional review of the relevant acts. The Constitution in paragraph 4 of its Article 113, defines two main, non-cumulative conditions, when it is alleged that the relevant law or act of the Government has violated (i) municipal responsibilities; or (ii) the municipality’s revenues have been reduced. Thus, the jurisdiction established in Article 113 paragraph 4 is an indication that laws or decisions which are subject of review should be subject to assessment of their compliance with the responsibilities, namely the competencies of municipalities or financial revenues of municipalities, by the Constitutional Court, as the final authority for the interpretation of the Constitution.

104. In the present case, the Applicant expressly challenges a Decision issued by a Minister, namely MESTI, claiming that the latter violates the responsibilities of the municipality, namely, the competencies guaranteed by the Constitution.
105. Therefore, the Court finds that Decision No. 01B/21 of 23 April 2021 of the MESTI is considered an “*Act of the Government*”, in accordance with Article 113 paragraph 4 of the Constitution and Article 40 of the Law.

*(c) Submission deadline*

106. Decision No. 01B/24 of 23 April 2021, was challenged by the Applicant before the Court on 12 August 2021, within the period of 1 (one) year as defined by Article 113 paragraph 4 of the Constitution, Article 41 of the Law and paragraph 3 of Article 73 of the Rules of Procedure.

*(d) Fulfillment of other criteria*

107. The Court above found that the Referral (i) was submitted by the authorized party; (ii) the challenged decision is considered a “Government Act”; and the latter (iii) is submitted within the deadline.
108. Therefore, the Court finds that the Applicant has submitted (i) relevant information regarding the challenged decision; (ii) specific provisions of the Constitution which have allegedly been violated; and (iii) the responsibilities of the municipality that are affected by the challenged Decision, pursuant to items (a) (b) and (c) of paragraph 2 of Rule 73 of the Rules of Procedure.

## **Merits of the Referral**

### ***I. Introduction***

109. The Court recalls that the essence of the case relates to the decisions to reorganize the teaching process in some primary schools in the Municipality of Kamenica [Applicant], as part of the education reform of the latter. This reform was implemented by determining the attendance of teaching from some relevant schools, in other locations. Regarding the competence for reorganization, MESTI and the Applicant, received a legal Opinion from the MLGA, which concluded that the municipalities have to right in decision-making regarding public and primary public education and within this competence may reorganize public primary and secondary education.
110. However, the reports of education inspections showed that some children had not attended the educational process, namely “*did not attend the educational process during one (1) school year in four educational institutions and two (2) years in the educational institution in Busavata*”, because their parents did not agree with the reorganization. MESTI formed an *ad-hoc* committee to assess the situation, and the latter recommended taking of actions by MEST, the Applicant

[Municipality of Kamenica] and parents to address losses of classes. Consequently, MESTI issued Decision no. 01B/24 of 23 April 2021 “*On the organization of accelerated alternative education for 441 students of the Municipality of Kamenica*”, by which it had organized accelerated alternative education in five (5) respective schools and classes in the Municipality of Kamenica, which had already been reorganized by the Applicant's decisions.

111. The Applicant, namely the Municipality of Kamenica before the Court challenges the above-mentioned Decision of the MESTI, on the grounds that the latter interfered in the competencies of the Municipality, these competencies which it considers guaranteed by Articles 12 [Local Government], 123 [General Principles], 124 [Local Self-Government Organization and Operation] of the Constitution in conjunction with Articles 2 (Constitutional and Legal Basis of Local Self-Government) and 4 (Scope of Local Self-Government) of the European Charter of Local Self-Government.
112. The Applicant specifically states that the challenged Decision was rendered in violation of Article 12 of the Constitution in conjunction with Article 17 paragraph (h) of the Law on Local Self-Government, because based on this provision, the municipality has the exclusive competence to provide public preschool, primary and secondary education, including registration and licensing of educational institutions. The Applicant considers that MESTI: (i) has no competence to organize alternative or supplementary education and can only request the municipality to organize this type of education; and (ii) has no competence to determine the locations of educational institutions nor to oblige the municipality to hold alternative teaching in unlicensed educational institutions and which for the needs of the law no longer exist as school facilities. Based on Article 17 of the Law on Local Self-Government, the Applicant states that MESTI has not complied with this provision because the employment of teachers is the exclusive competence of the municipality, because with the employment of persons who do not have a contract with the municipality, MESTI has exceeded its authority and has entered into the responsibilities of the municipality. The Applicant states that MESTI has a monitoring role and not a decision-making one and supports this argument in Article 5 and Article 8 of the Law on Pre-University Education. Furthermore, the Applicant states that the challenged Decision violated the provisions of the Law on Education in Municipalities because Article 3, item 1) of the latter, provided that the responsibility of the Ministry is to inspect the educational process.
113. On the other hand, MESTI, in their arguments, state that has not violated in any way the municipal responsibilities and has not reduced the municipal revenues. MESTI considers that these competencies according to the Constitution are state and not municipal responsibilities and that with no of its action MESTI has not interfered in the competencies of the Applicant when allowing access to schools because, according to the allegations, the latter is an essential part of right to education. MESTI also considers that without prejudice to the competencies of the Municipality [Applicant] in terms of ensuring the development of education in

this Municipality, considers that it is the obligation of the state, in accordance with international principles for the protection of human rights, to ensure the implementation of the guarantee of the right to education, while also offering, as an integral part of this right, access to educational institutions built and authorized for the same purpose.

114. The Court also recalls that in connection with this case a dispute of administrative conflict took place, where some parents residing in the Municipality of Kamenica have initiated procedures for the suspension of the respective decision of the Applicant. These proceedings are not challenged and therefore are not subject to review before the Court.
115. Before analyzing the essential issues involved in the Referral of the Applicants, namely whether by the challenged Decision, MESTI has violated the municipal responsibilities and has interfered in the own competencies of the Municipality guaranteed by the Constitution and applicable laws, the Court considers necessary to clarify the following issues: (i) the financial effects of the challenged decision; (ii) the obligation of the state to ensure the development of education, and (iii) the court proceedings conducted by the parents for the suspension of the respective decision of the Applicant.

*(i) regarding the financial effects of the challenged decision*

116. The Court recalls that the Applicant also alleges that the challenged Decision of the MESTI resulted in a reduction of municipal revenues. The Applicant specifically refers to the issue of compensation for teachers engaged by the MESTI, who do not appear on the payroll in the Municipality. Regarding this allegation, MESTI responded by stating that by the challenged Decision no additional costs are charged to the Applicant and he did not provide any evidence that additional costs were incurred even after the decision was implemented. MESTI, reasoned that (i) none of the points of the challenged decision incur additional costs for the Applicant; and (ii) none of the teachers requested additional compensation in their engagement.
117. In this context, the Court notes that the Applicant, in its response to the challenged Decision, to the MEST of 27 April 2021, stated that the challenged Decision creates budgetary costs for the Municipality and requests the MESTI to cover them and cover student travel/ transportation expenses and payment of additional teacher hours.
118. The Court also recalls that MESTI on 28 April 2021, via e-mail responded to the Applicant, regarding his letter of 27 April 2021 requesting the Applicant a report on evidence of work under applicable law, regarding payments of teachers “*who are engaged above the norm set by the law*”. MESTI also pointed out that since students attend classes in the schools closest to them, then no additional costs are incurred in transporting those children, because it is not necessary.

119. The Applicant also stated in its comments sent to the Court that there was a direct reduction in revenues *“because in addition to violating the responsibilities, financial obligations have been added to the latter which, among others, are: Energy Electricity as additional costs for facilities determined by the Ministry itself and not by the Applicant”*.
120. Regarding the financial effects of the challenged Decision, the Applicant states according to the allegation, that MESTI has hired teachers who are not employed by the Applicant, which according to the Applicant, is confirmed by the report according to evidence no. 12 of the request.
121. The Court recalls that the Applicant, despite claiming “additional costs”, and brought a document stating that 5 persons have taught without any contract issued by the MED, in a school in Busavata, however, the Applicant has not argued and substantiated his claims regarding the possible costs incurred by the challenged Decision. Consequently, the Court considers this allegation of the Applicant ungrounded.
- (ii) regarding the argument of MESTI about the obligation of the state to ensure the development of education*
122. MESTI, in its arguments, is based on the assertions that these competencies under the Constitution are state and not municipal responsibilities and it is the obligation of the state, in accordance with international principles for the protection of human rights, to ensure the implementation of the guarantee of the right to education. MESTI, claims that based on Articles 22 and 53 of the Constitution, and placing emphasis on Article 2 of Protocol no. 1 of the ECHR regarding the right to education, states that it guarantees the right of every individual to education, but this right also implies certain responsibilities for the state, to guarantee such a right. MESTI also refers to cases of the ECtHR regarding the right to education. MLGA supports this argument by emphasizing that the challenged decision cannot be considered as interfering with the own competencies of the Municipality of Kamenica [Applicant] to organize the teaching process, but is in full compliance and in the function of exercising constitutional rights of children for education.
123. In the present case, MESTI claims that, taking into account the parents’ protest and the denial of the education given to the children as a sign of revolt, it has tried to restore the children’s right to a proper education by the challenged Decision.
124. In this context, the Court recalls that paragraph 1 of Article 47 [Right to Education] of the Constitution stipulates that every person enjoys the right to free basic education, and that mandatory education is regulated by law and funded by public funds. While paragraph 2 of Article 47 of the Constitution, states that public institutions shall ensure equal opportunities to education for everyone in accordance with their specific abilities and needs. Further, the legal framework, specifically Article 3 of the Law on Pre-University Education sets out the general

principles of pre-university education, emphasizing in paragraph 1 of Article 3 that no person should be denied the right to education, while in paragraph 2 stipulates that “*Pre-university education "is the joint responsibility of parents, educational and training institutions, municipalities and the government,"*” according to the respective functions and duties defined in this law. Furthermore, paragraph 3 of Article 3 of the Law on Pre-University Education stipulates that it is a general obligation of the MESTI, municipalities, the educational institutions and all other bodies engaged in the provision of pre-university education, to plan and deliver an efficient, effective, flexible, inclusive and professional service, designed to provide all children with equal rights to education.

125. However, the Court notes that the Referral before the Court was filed under paragraph 4 of Article 113 of the Constitution, and the jurisdiction set out in the latter indicates that laws or decisions which are subject to review should be subject to review by the Court, whether they have violated municipal responsibilities or financial revenues of municipalities.

126. Therefore, the Court will not enter the assessment of the right to education, as it considers that this issue is not related to the circumstances of the case, but the subject of review is the constitutional relationship between central and local government, namely if by the challenged decision central government has interfered in the own competencies of the respective Municipality, as guaranteed by the Constitution and applicable laws.

*(iii) regarding the procedure initiated by the parents for the suspension of the relevant decision of the Applicant for reorganization of schools and other issues*

127. Dissatisfied with the Applicant’s decision to reorganize schools in the Municipality of Kamenica, some parents, residents of the Municipality of Kamenica, decided to file a lawsuit in the procedure of administrative conflict, requesting the annulment and postponement of the execution of the relevant decision of the Applicant.

128. The Supreme Court, in two decisions considering the grounds of the request for postponement of the execution of the decision, rejected the request for extraordinary review of the court decision, reasoning that no convincing evidence has been obtained to prove that by the execution of the respective decision they would be damaged, which would be difficult to repair and the postponement would not be against the public interest, nor would the postponement cause irreparable or major damage to the opposing party - interested party. Thus, the Supreme Court assessed that in this case all the legal conditions have not been cumulatively met as provided by Article 22 of the Law on Administrative Conflict.

129. Considering that the subject of this Referral is exclusively the assessment of the Decision no. 01/B24 of MESTI, regarding the violation of municipal responsibilities, the referral filed according to Article 113 paragraph 4 of the Constitution, the Court in this case does not enter the court proceedings regarding

the decisions of the Applicant, because the latter have neither been challenged nor are subject to review in the present case.

130. The Court, finally, takes into account the Applicant's arguments regarding the non-provision of relevant diplomas due to the organization of classes for 441 students by MESTI, because based on the Applicant's decisions those five educational institutions provided by the challenged decision no longer exist, and they have "*neither a license, nor a teacher, nor maintenance, and no condition for the teaching process to take place*". However, the Court notes that it is limited to the issue of assessment of the allegation of violation of municipal responsibilities, namely the interference of MESTI in the own competencies of the Applicant.
131. Having said that, the Court will focus only on assessing the constitutionality of the challenged Decision in order to address the Applicant's allegations of violation of the latter's responsibilities by the MESTI, namely interfering with its own competences. in the organization of preschool, primary and secondary education, the allegations that will be addressed by elaborating and analyzing (i) the general principles related to Local Self-Government according to the Constitution; (ii) The status of the European Charter of Local Self-Government, and its general principles; (iii) the legal framework regarding local self-government; (iv) the principles elaborated by the Venice Commission, and finally, the Court (v) will apply them in the circumstances of the present case.

***I. General principles related to Local Self-Government according to the Constitution of the Republic of Kosovo, the European Charter of Local Self-Government and the legal framework***

*(i) General principles according to the Contitution*

132. The Court notes that the Constitution, in the part dealing with the Basic Provisions of the Constitution, has granted a special regulation to the local government. Pursuant to Article 12 [Local Government] of the Constitution, the territorial units of local self-government in the Republic of Kosovo are the municipalities and their organization and competencies are regulated by law.
133. However, the Constitution also provides for a separate chapter, Chapter X [Local Government and Territorial Organization], which contains two articles, namely Article 123 [General Principles] and Article 124 [Local Self-Government Organization and Operation]. In paragraphs 1 and 2 of Article 123, the Constitution stipulates that the right to local self-government is guaranteed and regulated by law and the latter is exercised by representative bodies. Furthermore, paragraph 3 of Article 123 of the Constitution stipulates that the activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and observes the European Charter of Local Self-Government.

134. Finally, paragraph 4 of Article 123 of the Constitution establishes the principles on the basis of which local self-government is exercised, thus defining the principles of good governance, transparency, efficiency and effectiveness in the provision of public services, paying special attention to specific needs and concerns of the non-majority communities and their members.
135. On the other hand, the following article, namely paragraph 1 of Article 124 of the Constitution, stipulates that the basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-government and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies.
136. The Court notes that in this way the Constitution defines the modalities of local government by defining public authorities and their competencies, and emphasizing the provision of public services. The Court notes that the basic principles governing local governance are the principles of good governance, transparency, efficiency and effectiveness in the provision of public services, paying particular attention to the specific needs and concerns of non-majority communities and their members. In this context, the Court notes that the purpose of the principles of efficiency and effectiveness of local government is closely linked to the principle of subsidiarity. This means that local self-government in some sectors of public policy is much more efficient and effective than if the competence for them were entrusted to central bodies.
137. The competencies exercised by the Municipalities are determined by Article 124 of the Constitution, paragraph 2, which stipulates that the law regulates the establishment, boundaries, competencies, manner of organization and functioning of Municipalities. Paragraph 3 of Article 124 of the Constitution further states that Municipalities in accordance with the law have their own, extended and delegated competencies and the state authority which delegates competencies, covers the expenditures incurred for the exercise of delegation. Paragraph 5 of Article 124 of the Constitution further states that Municipalities in accordance with the law have the right to decide, allocate, collect and spend their revenues as well as to receive funds from the central government.
138. Having said that, the Court first recalls that the Constitution in paragraph 3 of Article 123 expressly states that the activity of local self-government bodies respects the European Charter of Local Self-Government. On the other hand, the Constitution stipulates that the Republic of Kosovo takes into account and implements the European Charter of Local Self-Government to the extent required by the signatory state. In the following, the Court will elaborate the status of the latter in the legal order of the Republic of Kosovo.

*(ii) Regarding the status of the European Charter of Local Self-Government, and its general principles*

139. With regard to the status of international instruments, the Court first recalls that in its case KI207/19, it dealt with international instruments provided for in Article 22 of the Constitution and emphasized that they were directly applicable and were part of the legal order of the Republic of Kosovo, and have precedence over the laws and other acts of the institutions of the Republic of Kosovo, (see, *mutatis mutandis*, case of Court KI207/19 Applicant *Social Democratic Initiative, New Kosovo Alliance and the Justice Party*, Judgment of 10 December 2020 paragraphs 105-111).
140. In line with this, the Court recalls that the European Charter of Local Self-Government is not an instrument set out in Article 22 of the Constitution. However, the Constitution in paragraph 3 of Article 123 requires that the activity of local self-government bodies comply with the European Charter of Local Self-Government, while the same paragraph states that the Republic of Kosovo considers and implements the European Charter of Local Self-Government to the extent required by the signatory country.
141. Therefore, in addressing the principles of local self-government, the Court will also focus on key aspects of the European Charter of Local Self-Government, which commits the parties to implementing the basic rules guaranteeing the political, administrative and financial independence of local authorities, as well as key principles for the best functioning of local government. The European Charter of Local Self-Government states in its introduction that “*Considering that the local authorities are one of the main foundations of any democratic regime*” and “*the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared*”. The European Charter of Local Self-Government defines the principle of subsidiarity, a principle that enables the decentralization of power to the level closest to the citizen.
142. The Court, in dealing with and applying the guarantees of the European Charter of Local Self-Government, also refers to its explanatory report, which aims to clarify and facilitate the understanding of its provisions (see, Explanatory Report of the European Charter of Local Self-Government of 15 October 1985).
143. In this regard, the Court recalls that Article 3 of the European Charter of Local Self-Government deals with the concept of local self-government, establishing in paragraph 1 that the local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
144. Furthermore, Article 4 of the European Charter of Local Self-Government, according to the Explanatory Report, sets out the general principles on which the responsibilities of local authorities and the nature of their competences should be based.

145. First, Article 4 of the European Charter of Local Self-Government stipulates in paragraph 1 that the basic powers and responsibilities of local authorities shall be prescribed by the Constitution or by statute, where according to the explanatory report the purpose of this article consists in determining the legal certainty regarding the predictability of the responsibilities of local authorities in law. Paragraph 2 of Article 4 of the European Charter of Local Self-Government states that local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority, and according to the explanatory report, this paragraph contains the purpose that local authorities, in addition to the responsibilities entrusted to them by law, may have other needs or opportunities for action by public bodies and in cases where these areas of action have local implications, the conception of local authorities is important as political entities acting in their right to promote the general welfare of their inhabitants that they have the right to exercise their initiative in these matters. However, according to the explanatory report the general rules according to which local authorities may act may be determined by law.
146. Furthermore, paragraph 3 of Article 4 of the European Charter of Local Self-Government states that public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy, and according to the explanatory report this paragraph contains the general principle that the exercise of public responsibilities should be decentralized. Paragraph 4 of Article 4 of the European Charter of Local Self-Government further states that powers given to local authorities shall normally be full and exclusive, and this according to the explanatory report is done in order to avoid any tendency for continuous reduction of responsibilities. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
147. Paragraph 5 of Article 4 of the European Charter of Local Self-Government further stipulates that where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions, whereas paragraph 6 of Article 4 of the European Charter of Local Self-Government stipulates that local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.
148. On the other hand, Article 8 of the European Charter of Local Self-Government stipulates the administrative control of the actions of local authorities, stipulating in paragraph 1 that this supervision may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute and in paragraph 2 such a control, shall normally aim only at ensuring compliance with the law and with constitutional principles. According to the explanatory report, this article deals with the oversight of the activities of local authorities by

bodies of other governing levels, while paragraph 1 of this article requires that there should be an appropriate legal basis for supervision, while paragraph 2 requires that administrative oversight be limited to the legality of the action of the local authority and not its adequacy, and according to the explanatory report a special exception, but not the only one, is made in the case of delegated tasks, when the body delegating competencies may decide to exercise supervision over the manner how those powers are performed by the local authorities.

149. Paragraph 3 of Article 8 of the European Charter of Local Self-Government provides that administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect, and according to the explanatory report, the principle of proportionality in this case means that the controlling body, in the exercise of its duties, is obliged to use the method that least affects local autonomy, in order to achieve the desired results.

*(iii) Legal framework governing the competencies of Municipalities in the field of education*

150. The Court notes that based on the Constitution, (i) the basic unit of local self-government in the Republic of Kosovo is the municipality; and (ii) the law regulates the issue of local government, namely (a) the establishment, boundaries, competencies, manner of organization and functioning of Municipalities by explicitly defining that municipalities have three types of competencies: a. own, b. extended and c. delegated; and (b) setting, allocating, collecting and spending their revenues.
151. In order for municipalities to exercise their competencies as defined by the Constitution and specified by law, these competencies contain the transfer of competencies in the financial, administrative and technical fields. To implement these, it is necessary to respect the principles that ensure local self-government. In this case, “*local self-government*” actually means, first of all, the autonomous exercise of its own competencies by the units of local self-government. Such autonomy may not be diminished, supervised or disregarded by any central authority. Any interference that is not provided by the Constitution or by law, in such autonomy violates the right of local self-government of municipalities. Although, the Constitution accurately defines the concept of own competencies as an aspect related to the autonomy of municipalities, and it instructs that such competencies will be precisely defined through a relevant law. The instruction in the Constitution, for the issuance of a law regulating the scope of competencies of municipalities, and in particular its own competencies, is an indication that the assessment of whether the responsibility of municipalities has been violated, and the principle of municipalities' own competencies violated through the assessment of competencies specifically in the relevant law or laws.
152. In this line, Local Self-Government, as elaborated above, is guaranteed in the Constitution and the European Charter of Local Self-Government, and it includes

the competence of local units to regulate and manage a part of public services based on the principles of good governance, transparency, efficiency and effectiveness. These competencies provided by the Constitution, on the basis of which the relevant laws were issued, through which those competencies are transferred from the central bodies, are such competencies that determine the best interest of the community. They consist of their own, extended and delegated competencies in accordance with the law.

153. In light of the above, the Court notes that the main law defining the competencies of municipalities is the Law on Local Self-Government. Such a character of this law constitutes an important basis on which the Court must assess the types and nature of competencies that fall into the category of “own” competencies of municipalities within the meaning of paragraph 3 of Article 124 of the Constitution.
154. Therefore, in this regard, the Law on Local Self-Government stipulates that municipalities, among others, are the holders of their own competencies in some of the areas and as such, exercise these competencies “fully and exclusively” in terms of local interest. However, the Court recalls that in the present case, the Law on Education in Municipalities and the Law on Pre-University Education are also laws which further regulate aspects of education and schooling, defining competencies for municipalities and the MESTI. Consequently, and as far as it is not relevant to the circumstances of the present case, the Court will analyze these competencies.
155. As argued by the Applicant, and also as noted by the Court, the Law on Local Self-Government, in Article 17 stipulates “own competencies” of Municipalities. More specifically, and with regard to education issues, paragraph 1 item (h) of Article 17 of the Law on Local Self-Government, as an autonomous competence of municipalities includes “**provision of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators**”.
156. Furthermore, Article 3 of the Law on Local Self-Government provides for “Own competencies”, and defines them as competencies given to municipalities by the Constitution or by law for which they are fully responsible in terms of local interest, or in accordance with law.
157. Whereas, the Law on Local Self-Government itself, in Article 15 defines the principle of subsidiarity and states that “*The municipalities shall exercise its competences in accordance with the principle of subsidiary,*” the principle is also defined by the European Charter of Local Self-Government.
158. On the other hand, the Law on Pre-University Education, in Article 7 defines the competencies of Municipalities, emphasizing that competencies of the municipalities are regulated by the (i) Law on Local Self-Government, No. 03/Lo40, of 20 February 2008 and Law on Education in the Municipalities No.

03/L-068, of 21 May 2008, and (ii) additional competencies assigned by provisions of this Law. Consequently, Article 7 of this law, states that Municipalities, among others, have additional responsibilities as follows:

*“3.1. construction of education and training facilities;  
3.2. maintaining and repairing the premises and equipment of educational and training institutions; [...]”*

159. Furthermore, the Law on Education in the Municipalities, in paragraph 1 of Article 4, stipulates that Municipalities have *“have full and exclusive powers”*, insofar as they concern the local interest, while respecting the standards set forth in applicable legislation with respect to the provisions of public preprimary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators. Further, in paragraph 2 of article 4 of this law, it is stated that in addition to the powers referred to in paragraph 1 of this Article, be vested with enhanced competencies in the field of education as prescribed by this law or other applicable legislation.
160. Article 5 of the Law on Education in the Municipalities further breaks down the competencies of municipalities by stipulating that in addition to the competencies provided in Article 4, are included, among others, *“specific municipal competencies”* such as (i) construction of educational facilities in accordance with Chapter 3 of this law [Law on Education in Municipalities] and other applicable legislation; (ii) registration and admission of students in accordance with due respect for the principles of non-discrimination under law; and (iii) employment of teachers and other school personnel in accordance with legal procedures for the recruitment, selection and employment of public employees.
161. Furthermore, as explained above, the Law on Pre-University Education and the Law on Education in the Municipalities also provide for the competencies of the MESTI. Given that in this case, it is alleged that MESTI has violated the responsibilities of the Municipality of Kamenica in the field of education, namely the organization of preschool, primary and secondary education, the Court will analyze the competencies of MESTI in this context.
162. With regard to the competencies of MESTI, the Court notes that the latter under paragraph 1 of Article 5 of the Law on Pre-University Education stipulate that MESTI shall have the primary responsibility for planning, setting standards, and quality assurance of the pre-university education system, among others, by (i) developing policies, drafting and implementing legislation for the development of pre-university education and training; (ii) to establish criteria and manage a comprehensive system of licensing and certification of teachers; and (iii) to design effective and impartial forms of education administration and management of education and training institutions for implementation by municipalities.

163. Further, paragraph 6 of Article 8 (Inspection of education) of the Law on Pre-University Education, determines the instruction on how to act after the Inspector's report, specifying in sub-paragraph 6.3 that, if deficiencies relate to non-observance of the curriculum, *"the Ministry may require compliance through additional or alternative classes"*.
164. Based on paragraphs 8, 9 and 10 of Article 5 of the Law on Pre-University Education, MESTI, *inter alia* (i) approves relevant standards; (ii) licenses and accredits institutions; and (iii) acts as a second instance body for the decisions of other educational and training bodies.
165. Furthermore, Article 3 of the Law on Education in Municipalities defines the responsibilities of MESTI, *inter alia*, (i) to develop policies and draft and implement legislation for the development of education, including the development of higher education and science in Kosovo; (ii) to establish and manage an overall certification system for all teachers in Kosovo; (iii) to improve the quality, adequacy and efficiency of education at all levels; and (iv) to inspect education.
166. Therefore, from the above, the Court finds that in the sense of the challenged decision, the competence of the municipalities provided in Article 17 (h) of the Law on Local Self-Government for *"provision of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators"*, falls into the category of "own" competencies in which paragraph 3 of Article 124 of the Constitution obligatorily instructs and constitutes an essential element of what Article 12 of the Constitution describes as "local self-government". Therefore, the competence of municipalities to organize preschool, primary and secondary education is one of these competencies that according to the Constitution, fall within the obligations of paragraph 3 of Article 124 of the Constitution, and in this case, is implemented by the Law on Local Self-Government, who applies this constitutional norm correctly. This competence, which the Law on Local Self-Government, calls "own competence", as such in Article 3 of the latter, defines as a competence for which the municipality is fully responsible in terms of local interest, or in accordance with the law. The Court recalls at this point that the Law on Education in the Municipalities, in paragraph 1 of its Article 4, stipulates that Municipalities have *"full and exclusive powers"*, in relation to the provisions of public preschool, primary and secondary education, including registration and licensing of educational institutions, employment, payment of salaries and training of teachers and administrators. Furthermore, Article 5 of the Law on Education in the Municipalities, has further defined the competencies of municipalities by stipulating that in addition to the competencies provided in Article 4 of the Law on Education in the Municipalities, includes *"special municipal competencies"*, which for the purposes of the specific case, are such, but not limited in the construction of school facilities, employment of teachers and other school staff, registration, inspection of public health and safety

and licensing of preschool educational institutions, payment of managerial staff and other staff employed in accordance with the legislation.

167. Whereas, based on the abovementioned laws, MESTI has competencies under paragraph 1 of Article 5 of the Law on Pre-University Education to retain the main responsibility for planning, setting standards and quality assurance of the pre-university education system, a responsibility which is provided by developing policies and legislation and criteria for teacher licensing. MESTI has the inspection of education, as one of the main competencies, where in paragraph 6 of Article 8 of the Law on Pre-University Education, it is determined that MESTI can take appropriate actions, including under sub-paragraph 6.3 of paragraph 6 of Article 8 of the Law on Pre-University Education, the request for the implementation of additional or alternative education. While according to Article 3 of the Law on Education in the Municipalities, the responsibilities of MESTI are defined, in policy development and drafting and implementation of legislation for the development of education, including the development of higher education and science in Kosovo, as well as the establishment and management of an overall certification system for all teachers in Kosovo. Also in this last article, there is the improvement of the quality, adequacy and efficiency of education at all levels as well as the inspection of education.

***(iv) General principles addressed by the Venice Commission***

168. The Venice Commission has dealt with the protection of local self-government. In its Opinions on aspects of local self-government, the Venice Commission has analyzed, *inter alia*, the final draft of the Constitution of the Republic of Tunisia (see Opinion CDL-AD (2013) 032), the Draft Law amending the Constitution of Ukraine (see Opinion CDL-AD (2014) 037), and the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (see Opinion CDL-AD(2010)008).
169. 169. In this regard, the Venice Commission *inter alia* has addressed issues such as (i) constitutional guarantees of local self-government; and (ii) the scope of local self-government and competencies.
170. With regard to point (i) concerning constitutional guarantees of local self-government, the Venice Commission deals with the principle of local self-government (decentralization), based on three main principles: (a) the principle of decentralization; (b) the principle of subsidiarity, and (c) the adequacy of competencies and financial resources.

***i) Regarding the constitutional guarantees for local self-government***

***(a) The principle of decentralization***

171. On this principle, the Venice Commission in its Second Opinion CDL-AD(2013)032, of the final draft of the Constitution of the Republic of Tunisia, among other things stated that:

*“13. The Constitution should cover not only the arrangements of the organization of the central powers of the State and the rights and freedoms of the citizens, but also the existence and the functioning of the local self-government institutions, which display an essential role in spreading freedom and democracy in the society through their intermediate position between the State and the citizens.”*

*[...]*

*“48. While the extent and form of self-government are left by international standards, notably the European Charter on Local Self-government, to the discretion of States, certain principles are essential: that public responsibilities should be exercised, by preference, by those authorities which are the closest to the citizens; that delegation of competences should be accompanied by allocation of sufficient resources; and that administrative supervision of local authorities’ activities should be limited.”*

*(a) The principle of subsidiarity*

172. With regard to the second principle, in its Second Opinion CDL-AD(2014)037, on the Draft Law on Amending the Constitution of Ukraine, the Venice Commission, *inter alia*, stated:

*“180. The amended article 120 (1) draws on the current article 120, which sets out the principles of decentralization, local autonomy and decentralization of public services. It adds that decentralization should be implemented according to the principle of subsidiarity and that the transfer of competence must be accompanied by corresponding financial resources. [...].”*

*(a) Adequacy between powers and financial resources*

173. The third principle of the Venice Commission concerning the adequacy of its competencies and financial resources includes (a) The principle of state financial support for local self-government; and (b) The principle of financial autonomy.
174. In relation to this principle, the Venice Commission in its Opinion on the Draft Constitutional Law on Changes and Amendments to the Constitution of Georgia has emphasized the obligation of the state government for financial coverage towards the functions delegated to the local government bodies. The Venice Commission stated that: *“State powers would be exercised locally by state authorities, while all local self-government powers would be exercised by local self-government bodies, except in the case when specific state duties are delegated to local self-government bodies and exercised on behalf of the state. This provision should stimulate the development of local self-government at all*

levels. It is also stipulated that the costs of delegated functions should be covered by budget transfers or by the transfer of resources or properties. However, this provision does not guarantee that the amount of resources allocated will cover the costs of the delegated functions. Therefore, the recommendation is to modify the provision and provide explicitly for full compensation of the financial burden resulting from delegation, thus avoiding the risk that state tasks are delegated mainly to alleviate the pressure on the state budget.” (see CDL-AD (2010) 008, Opinion on the Draft Constitutional Law on Changes and Amendments to the Constitution of Georgia (Chapter VII - Local Self-Government). Regarding the third principle of local self-government, the Venice Commission had based its position on the same line with other opinions (CDL-AD (2015) 028, Opinion on the Amendments to the Constitution of Ukraine, regarding the Territorial structure and Administration cafeteria).

175. The Court notes that the abovementioned principles are generally described in the nature of the control exercised by the Court pursuant to Article 113 paragraph 4. Consequently, such principles constitute obligations for their observance by the central bodies of the Republic of Kosovo.

***ii) Regarding the scope of local self-government and competencies***

176. The Venice Commission has also addressed the issue of the scope of local self-government and competencies, dividing them into (a) own/delegated competencies; (b) decentralized competencies.

*(a) own / delegated competencies*

177. In this respect, in terms of competencies, the Venice Commission stated in Opinion CDL-AD (2015) 028 concerning the Amendments to the Constitution of Ukraine that an essential feature of the regulation of local self-government is the identification of basic functions (“own” functions) as opposed to delegated powers) and a solution would be to define at the constitutional level the “own competencies” of local self-government units which would prevent governments from removing competencies from local government, in which they do not have a qualified majority. Another improvement according to the Venice Commission is that the Constitution stipulates that “*the basic principles of the competences of local self-government are determined by organic law*”.
178. Further, with regard to the delegation, the Venice Commission in Opinion CDL-AD (2009) 024 on the draft law amending the Constitution of Ukraine states that may mean permanent transfer of a State power or activity to local government in order to become a full “own power” of local government. It is an extension of decentralisation and local self-government powers.

*(b) de-concentrated / decentralized competencies*

179. The Venice Commission in Opinion CDL-AD(2009)024 on the draft law amending the Constitution of Ukraine noted that deconcentration is quite different from decentralisation. “Deconcentration” depends on the existence of territorial districts in which the State is present in the form of its services, whereas decentralisation relies on the presence of territorial communities whose organs are elected and exercise certain powers on their own behalf [...]”

### ***Application of the abovementioned principles in the present case***

180. The Court recalls the substance of the Applicant’s allegations, namely the violation of Article 12 [Local Government], Article 123 [General Principles] and Article 124 [Local Self-Government Organization and Operation] of the Constitution in conjunction with Article 2 (Constitutional and legal foundation for local self-government) and Article 4 (Scope of Local Self-Government) of the European Charter of Local Self-Government. The Applicant states that based on Article 17 of the Law on Local Self-Government, namely own competencies, municipalities have full and exclusive competencies, *inter alia*, regarding the provision of public preschool, primary and secondary education, including registration and licensing of educational institutions, employment, salary payment and training of instructors and education administrators. Further, the Applicant relates its arguments regarding the violation of its responsibilities, namely the interference of MESTI in its competencies, with the fact that MESTI has no competence to organize alternative or supplementary education; and (ii) has no competence to determine the locations of educational institutions nor to oblige the municipality to hold alternative teaching in unlicensed educational institutions and which for the needs of the law no longer exist as school facilities. The Applicant states that MESTI is not a body that can issue certificates to students who have attended the educational process, while the municipality, in the circumstances of the case, cannot do so because it is not an organizer. At this point, the Applicant states that MESTI has a “*monitoring and not decision-making role*” and bases this argument in Article 5 and Article 8 of the Law on Pre-University Education. In this case, the Applicant does not challenge the competencies of MESTI in relation to Article 5 of the Law on Pre-University Education, but considers that this article does not provide for the “organization” of alternative or additional education.
181. MESTI on the other hand, considers that these competencies according to the Constitution are state and not municipal responsibilities and that MESTI with no action has interfered in the competencies of the Applicant “*when it has allowed access to schools*” because the latter is an essential part of the right to education. MESTI also considers that without prejudice to the competencies of the Municipality [Applicant] in terms of ensuring the development of education in this Municipality, considers that it is an obligation of the state, in accordance with international principles for the protection of human rights, to ensure the implementation of the guarantee of the right to education, offering, as an integral part of this right, access to educational institutions built and authorized for the same purpose. MESTI considers that the preamble of the decision states that the challenged decision is based on its competencies according to Government

Regulation 02/2021, Article 8 paragraph 1, sub-paragraph 1.4, annex I, arguing that it has not interfered in the competencies of the Municipality of Kamenica (Applicant).

182. The Court notes that before the challenged Decision was rendered, concrete actions were taken by the Applicant for the reorganization of schools in the Municipality, taking into account the small number of students in some schools and mainly determining that the students of the respective school attend classes at the other relevant school. These decisions were issued by the President of the Municipality of Kamenica [Applicant] based on paragraph 4.1 of Article 4 of the Law on Municipal Education and paragraph 9 of Article 14 of the Law on Pre-University Education, as well as the sub-legal basis Administrative Instruction MEST 08/2015 on the Establishment of Educational Institutions and paragraph 1.2 of Article 3 of Administrative Instruction 24/2016 MEST on quality assurance in Pre-University Education and Administrative Instruction MEST 22/2013 - Maximum number of students per Class and Student-Teacher Report.
183. From the above it is noted that the Applicant issued the following decisions for reorganization of schools, for which the Inspectorate of Education had organized inspections by compiling minutes regarding the observance or not of the Applicant's decisions by students in schools, as well as the assessment of the situation in general. Subsequently, the MESTI and the Applicant signed a memorandum of cooperation, through which they agree that the relevant decision on reorganization of the Applicant be respected while another decision is postponed, and that both parties in consultation with the community will engage in re-evaluation of proposal for reorganization of education in the Municipality of Kamenica. Also, on 22 August 2020, the MLGA issued a Legal Opinion, through which, among other things, stated that pursuant to Article 17, paragraph 1 subparagraph (h) of the Law on Local Self-Government, municipalities have the right to decide regarding public primary and secondary education and within this competence may reorganize public primary and secondary education. However, new inspections follow by the education inspectorate, which report non-attendance of some students in schools. Consequently, MESTI forms an ad-hoc committee for the evaluation of non-attendance by students and this committee compiles the relevant report where it recommends that MESTI and the Applicant should take harmonized actions and establish working groups to analyze situation in schools.
184. However, in the present case, the Court notes that through the challenged Decision, MESTI, issued a Decision by which it organized "*accelerated alternative education for 441 students of the Municipality of Kamenica*". The challenged decision in its points determined that: (i) lost hours be compensated through the organization of accelerated alternative education for students of primary education level (1-V) and students of lower secondary education level (VI-IX), for students in 5 schools; (ii) a committee is established within the MESTI for the drafting of teaching content for the organization of accelerated alternative teaching for students according to point I of the decision; (iii) accelerated

alternative teaching for students according to point 1 of this decision, is developed by teachers of the Municipality of Kamenica; (iv) the teaching schedule is prepared so that the teachers who will work with the students according to point 1 of the decision, are not hindered by the teaching schedule that is being developed in other schools designated by the municipality; (v) MED in Kamenica be obliged to provide optimal conditions and supply of teaching materials for the development of the educational process for students according to point I of the decision; (vi) Inspectorate of Education be obliged to supervise the implementation of the legal acts in force and this decision; and (vii) the teaching process takes place in the nearest school facilities and in accordance with the recommendations of MESTI, MoH and NIPHK.

185. More specifically, and for the purpose of the circumstances of the present case, the Court notes that the MESTI by the challenged Decision determines that the lost hours will be compensated by *“organizing accelerated alternative education for 441 students of the Municipality of Kamenica (VI-IX)”*, namely:

- “1.1. Physical class students in the village of Shipashnica e Poshtme;*
- 1.2. Physical class students in the village of Kopernica;*
- 1.3. Students of SHFMU "Hasan Prishtina" in Busavata;*
- 1.4. Students of SHFMU "Asllan Thaqi" in the village of Karaçevë e Poshtme;*
- 1.5. Students of SHFMU "Xhelal Sopi" in the village of Petrocë.”*

186. The challenged Decision further stipulates in point 3 establishes that: *“Accelerated alternative teaching for students according to point 1 of this decision, is developed by teachers of the Municipality of Kamenica”*, whereas in its point 4 provides that *“The teaching schedule is prepared so that the teachers who will work with the students according to point 1 of the decision, are not hindered by the teaching schedule that is being developed in other schools designated by the municipality.”*

187. Point 7 of the challenged Decision states that: *“The teaching process takes place in the nearest school facilities and in accordance with the recommendations of MESTI, MoH and NIPHK.”*

188. Consequently, in essence, from the aforementioned points, the Court notes three elements that are affected by the challenged Decision: (i) MESTI has organized an accelerated alternative classes for the Municipality of Kamenica [Applicant], determining the organization of those classes in five (5) relevant schools of the Municipality of Kamenica, the schools that the Applicant had previously re-organized by the relevant decisions as part of its reform; (ii) has determined that the accelerated alternative teaching for students according to point (i), is conducted by the teachers of the Municipality of Kamenica and the teaching schedule is prepared so that teachers are not hindered by the teaching hours that are taking place in other schools; and (iii) determined that the teaching process takes place in the nearest school facilities. In this line, the Court will consider the issue of the organization of teaching in the respective schools which is related to

points 1 and 7 of the challenged Decision and the issue of determining the teachers to teach in those schools, as defined in points 3 and 4 of the challenged Decision. The issue of the financial effect of the challenged decision has already been addressed above (see paragraphs 116-122, above)

189. As stated above, MESTI in point 7 of the challenged Decision had explicitly determined that the teaching will take place in school facilities closest to the residence of students, namely the organization of classes for students of the school sh.f.m.u “Hasan Prishtina” in Busavata, the school which by the decision on re-organization of the Applicant of 30 August 2019, should have attended classes in another school, and the organization of teaching for four (4) schools or other classes that were re-organized by Applicant’s decision of 10 January 2020.
190. MESTI also determined in points 3 and 4 of the challenged Decision that the accelerated alternative teaching is conducted by the teachers of the Municipality of Kamenica and the teaching schedule is prepared so that the teachers who will work with the students are not hindered by the teaching schedule, which is being developed it in other schools designated by the municipality.
191. In the context of the above, the Court, and applying the general principles of the Constitution and the European Charter of Local Self-Government, elaborated in this Judgment, will assess the Applicant’s allegations in relation to the circumstances of the present case.
192. In this respect, the Court, having regard to the main issue before it, namely, the fact whether MESTI has violated municipal responsibilities in the case of organizing accelerated alternative education, considers that in the present case, we are dealing with the issue which is regulated by paragraph 2 of Article 12 of the Constitution, an article that states that the competencies of local self-government units are “*regulated by law*” in conjunction with paragraphs 1 and 3 of Article 123 of the Constitution which stipulates that the right to local self-government “*is guaranteed and is regulated by law*” and the activity of local self-government bodies “*is based on [...] Constitution and the laws*” and “*respects the European Charter of Local Self-Government*”. Placing emphasis again on the “*law*”, the Constitution in paragraph 2 of Article 124 specifies that “*competencies*” of municipalities “*shall be regulated by law*”, whereas paragraph 3 of Article 124 lists three types of competencies that Municipalities can exercise, “*in accordance with the law*”, and they are a. own, b. extended and c. delegated competencies.
193. Therefore, the Court notes that despite the fact that the Applicant has generally alleged a violation of Articles 12, 123 and 124 of the Constitution, the Court for the purposes of this case, and based on the concrete circumstances and the above provisions, finds that paragraph 2 of Article 12 of the Constitution applies, in conjunction with paragraphs 1 and 2 of Article 123 of the Constitution, in conjunction with paragraphs 2 and 3 of Article 124 of the Constitution.

194. In this respect, and based on paragraph 3 of Article 123 of the Constitution, namely the reference to the European Charter of Local Self-Government, and having regard to the circumstances of the present case, the Court recalls that the European Charter of Local Self-Government, in paragraph 4 of Article 4 thereof, states that powers given to local authorities shall normally be “*full and exclusive*” and those competencies may not be undermined or limited by another, central or regional, authority “*except as provided for by the law*”. Also, paragraph 1 of Article 8 of the European Charter of Local Self-Government states that any administrative supervision of local authorities may only be exercised “*according to such procedures and in such cases as are provided for by the constitution or by statute*”.
195. The Court also recalls that the Venice Commission, in Opinion CDL-AD (2015)028 concerning the Amendments to the Constitution of Ukraine, determined that (i) an essential feature of the regulation of the local government is the identification of the basic functions (“own” competences, as opposed to “delegated” competences) and one solution would consist in spelling out at the constitutional level the “own competences” of local self-government units which would prevent governments from taking away powers from local governments if they do not dispose of a qualified majority; and (ii) another improvement according to the Venice Commission is in providing in the Constitution that “*the basic principles of the competences of local self-government are determined by organic law*”.
196. The Court further recalls that municipal autonomy is expressed primarily in terms of the availability and exercise of its own competencies by municipalities “*as defined by law*”. These competencies, which within the meaning of paragraph 4 of Article 113 are defined as “municipal responsibilities”, are established in the relevant laws that the legislative body, when exercising discretion in determining the areas of these competencies, is related to the obligation that the competencies provided in the relevant laws, be at least those that are the result of the principles provided in paragraph 3 of Article 124 of the Constitution, namely the a. own, b. extended and c. delegated competencies, the principles that are also defined by the European Charter of Local Self-Government, emphasizing that the powers entrusted to local authorities should normally be full and exclusive. Based on constitutional principles and those deriving from the European Charter of Local Self-Government, these powers may not be undermined or limited by another authority, central or regional “*except as provided by law*” and any administrative control over local authorities may be exercised only “*according to such procedures and in such cases as are provided for by the constitution or by statute*”.
197. As explained above, in the general principles, the Constitution sets out the frameworks regarding the principles of organization and functioning of local self-government, guaranteeing, *inter alia*, the competencies called “own”.
198. In applying this assessment, the Court must determine whether the challenged Decision violated the municipal responsibilities in what is guaranteed as a

constitutional determination on the own competencies of the municipalities, the types of which are enumerated in the relevant laws. Thus, the Court will assess from the reading of the above provisions of the Constitution and the European Charter of Local Self-Government, whether the municipal responsibility has been violated, namely the competence of the Applicant by MESTI, through the challenged Decision, respectively whether the central authority has interfered in the present case in the local authority, in the own competence of the municipality, in a way which is not defined by law. This is because in fact, the law has applied the constitutional norm, and as such will be used by the Court to determine its implementing character.

199. As stated above, the Applicant does not challenge the competencies of MESTI in relation to Article 5 of the Law on Pre-University Education, but states that these competencies do not determine the “organization” of alternative or additional education by MEST .
200. In this regard, the Court above has analyzed the legal basis, noting that in the present case, the main legal basis consists of the Law on Local Self-Government, the Law on Pre-University Education and the Law on Education in the Municipalities. In this context, in the meaning of the challenged Decision, the competence of the municipalities defined in the Law on Local Self-Government determines (i) *provision of public pre-primary, primary and secondary education*; including (ii) *registration and licensing of educational institutions*; and (iii) *recruitment, payment of salaries and training of education instructors and administrators*, as a competence that falls into the category of basic competencies in which paragraph 3 of Article 124 of the Constitution obligatorily instructs and which constitutes an essential element of what Article 12 of the Constitution calls the right to “local self-government”.
201. Also, Municipalities as defined by the Law on Education in the Municipalities, namely paragraph 1 of its Article 4 establishes “*full and exclusive powers*” in relation to the provisions of public preschool, primary and secondary education, including (i) *registration and licensing of educational institutions*; and (ii) *recruitment, payment of salaries and training of education instructors and administrators*, whereas as stipulated by Article 5 of the Law on Education in the Municipalities, the latter, has further defined the competencies of the municipalities by stipulating that in addition to the competencies provided in Article 4 of the Law on Education in the Municipalities, “*specific municipal competencies*”, which for the purposes of the circumstances of the present case, are such, but not limited (i) *construction of educational facilities*; (ii) *employment of teachers and other school personnel*; (iii) *registration, public health and safety inspection* (iv) *payment of the managerial staff as well as other employed personnel in accordance with legislation*.
202. On the other hand, the Court notes that MESTI competencies under paragraphs 1, 8, 9 and 10 of Article 5 of the Law on Pre-University Education, *inter alia*, consist of competencies of the nature of planning, setting standards and ensuring the

- quality of the pre-university education system, among other, by developing policies and drafting legislation, establishing criteria for teacher licensing, and, *inter alia*, (i) adopting relevant standards; and (ii) license and accredit institutions.
203. More specifically, regarding the alternative education, which is also the purpose of the challenged Decision, under paragraph 6.3 of Article 8 (Inspection of Education) of the Law on Pre-University Education, states that if deficiencies relate to non-observance of the curriculum, “*the Ministry may require compliance through additional or alternative classes.*”
  204. MESTI relies on the argument that the challenged Decision is based on its competences under Government Regulation 02/2021, Article 8 paragraph 1, sub-paragraph 1.4, Annex I. However, the Court notes that this provision of the Government Regulation stipulates that the Minister, in accordance with the Constitution, legislation in force, policies and instructions set by the Government or the Prime Minister, issues decisions and sub-legal acts and concludes memoranda of understanding/cooperation within the scope of administrative responsibility of the ministry. In this line, MESTI in essence considers that it has issued a decision [challenged Decision], within the field of administrative responsibility of the ministry, namely the field of education.
  205. Taking into account the above, the Court, first, notes that in the case of organizing the accelerated alternative education, and determining the organization of education in the respective school facilities in the Municipality of Kamenica, the facilities re-organized by the latter, by the challenged Decision, MESTI, has exceeded the competence defined in sub-paragraph 6.3 of paragraph 6 of Article 8 of the Law on Pre-University Education, because MESTI in this case, in its role as education inspector, as defined by Article 8 of the Law on Pre-University Education has the competence “*if deficiencies relate to non-observance of the curriculum, may require compliance through additional or alternative classes*”, and not to “*organize*” additional or alternative classes. Furthermore, MESTI does not have the competence to “organize” school facilities where the respective students will attend classes.
  206. The Court first notes that although the competence of the municipalities for the reorganization of public primary and secondary education is not explicitly defined, the own competence for “*provision of public pre-primary, primary and secondary education,*” means that the competence for organizing additional or alternative education is included, also according to the recommendations of MESTI.
  207. Secondly, with regard to the appointment of teachers, by the challenged Decision, which stipulates that the teaching schedule is prepared so that the teachers who will work with the students are not hindered by the teaching schedule that is being developed in other schools, determined by the municipality, the Court recalls that according to the Applicant’s argument, MESTI hire teachers who are not

employed by the Applicant, which according to the Applicant is confirmed by the report according to evidence no. 12 of the referral. MESTI's counter-arguments on the other hand consist of allegations that (i) none of the teachers requested additional compensation in their engagement; and (ii) the Applicant has not provided any evidence that additional costs have been incurred even after the decision has been executed.

208. The Court considers that it is the Municipality of Kamenica [Applicant] that should decide regarding teachers because according to the Law on Education in the Municipalities, the latter has the competence to employ teachers and other school staff. Consequently, this competence, based on the applicable law, is the own competence of the municipality.
209. The Court recalls that the fact that the right to local self-government, and its constitutional protection, is defined in the part of the basic provisions of the Constitution, namely in its Article 12, is an indicator of the importance, status and fundamental character that the right to local self-government has in the democratic and constitutional system of the Republic of Kosovo. Furthermore, the Court recalls that the right to local self-government is one of the two main channels of popular legitimacy through participation in direct elections; therefore, the autonomy of municipalities must be protected within the meaning of a fundamental constitutional principle.
210. Therefore, taking into account the above, the Court finds that the challenged Decision of MESTI through the organization of accelerated alternative education for students of the Municipality of Kamenica constitutes a violation of the responsibilities of the Municipality of Kamenica for "*provision of public pre-primary, primary and secondary education*" that within the meaning of paragraph 2 of Article 12 of the Constitution, paragraphs 1 and 3 of Article 123 of the Constitution and paragraph 2 of Article 124 of the Constitution, constitutes a competence provided by law, while according to paragraph 3 of Article 124 of the Constitution, constitutes a competence provided by law as "*own competence*". Therefore, the Court finds that the challenged Decision violates the responsibilities of the Municipality of Kamenica [Applicant] established in paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of Article 123 [General Principles] and paragraphs 2 and 3 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo.

### **Request for interim measure**

211. The Court recalls that the Applicant also requests the Court to render a decision on the imposition of the interim measure, on the grounds of interference with its competencies and because of the influence on the students. The latter stated that it had provided sufficient evidence that irreparable damage would be caused and that the imposition of an interim measure is in the public interest, because the students involved in this case would be offered the opportunity to be educated in

the licensed schools, in order they are provided with relevant documents for the school year 2020/2021.

212. The Court has found above that the challenged Decision is not in accordance with paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of Article 123 [General Principles] and paragraphs 2 and 3 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo.
213. Therefore, in accordance with paragraph 1 of Article 27 (Interim Measures) of the Law and Rule 57 (Decision on Interim Measures) of the Rules of Procedure, the request for interim measure is without subject of review and, as such, it is rejected.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Articles 113.4 and 116.2 of the Constitution, Articles 20, 27 and 40 of the Law, and based on Rule 59 (1) of the Rules of Procedure, on 10 March 2022, unanimously:

### **DECIDES**

- I. TO DECLARE, the Referral admissible;
- II. TO HOLD, that Decision No. 01B/24 of 23 April 2021 of the Ministry of Education, Science, Technology and Innovation, is not in compliance with paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of Article 123 [General Principles] and paragraphs 2 and 3 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo;
- III. TO REJECT, the request for interim measure;
- IV. TO REJECT, the request for withdrawal of the Referral;
- V. TO NOTIFY this Judgment to the Applicant, the Government of the Republic of Kosovo, the Ministry of Education, Science, Technology and Innovation and the Ministry of Local Government Administration;
- VI. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20.4 of the Law; and
- VII. TO DECLARE that this Judgment is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Nexhmi Rexhepi

Gresa Caka-Nimani

*This translation is unofficial and serves for informational purposes only.*