REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 3 July 2023
Ref. no.: AGJ 2227/23

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JUDGMENT

in

cases KO159/21 and KO160/21

Applicant

Municipality of Prishtina

In case KO159/21, Constitutional review of the "Report on the review of legality of Municipal act no. 020-558/17 of the Ministry of Local Government Administration of 12 July 2021" regarding the "confirmation of the legality of the act of the Municipality of Prishtina no. 5133 of the Ministry of Industry, Entrepreneurship and Trade of 9 July 2021"

In case KO160/21, Constitutional review of the "Report on the review of legality of Municipal act no. 020-558/10 of the Ministry of Local Government Administration of 8 July 2021" regarding the "confirmation of the legality of the act of the Municipality of Prishtina no. 6077 of the Ministry of Industry, Entrepreneurship and Trade of 7 July 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
Nexhmi Rexhepi, Judge, and
Enver Peci, Judge

Applicant

1. Referrals KO159/21 and KO160/21 are submitted by the Municipality of Prishtina, by Shpend Ahmeti in the capacity of the President of the Municipality of Prishtina, who is represented by the Law Firm "*Avokatura Istrefi*" *L.L.C.* with lawyers Arber Istrefi, Zaim Istrefi, Jeton Idrizi, Liberta Bajrami and Bajram Dili from Prishtina (hereinafter: the Applicant).

Challenged act

2. In Referral KO159/21, the Applicant challenges "*Report on review of legality of Municipal act [no. 020-558/17] of 12 July 2021*", of the Ministry of Local Government Administration (hereinafter: MLGA), regarding the "*confirmation of the legality of the act of the Municipality of Prishtina [no. 5133] of 9 July 2021*", of the Ministry of Industry, Entrepreneurship and Trade hereinafter: MIET);

3. In Referral KO160/21, the Applicant challenges the "*Report on the review of legality of the Municipal act* [no. 020-558/10] of 8 July 2021*,* of the MLGA, regarding *"confirmation of the legality of the act of the Municipality of Prishtina [no. 6077] of 7 July 2021 of MIET"*.

Subject matter

4. The Applicant alleges that by the challenged acts "*The Ministry of Local Government Administration and the line Ministry of Industry, Entrepreneurship and Trade have acted contrary to the Constitution of the Republic of Kosovo and the Applicable Laws in force, seriously violating the responsibilities and competencies defined by law of the Assembly and the President of Municipality […]*". In the following, the Applicant alleges that the challenged acts *"violated the fundamental rights, competences and responsibilities of the President and the Assembly of the Municipality of Prishtina, generally guaranteed by the Constitution of Kosovo*. The Applicant also alleges that the rights guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution have been violated.

Legal basis

5. 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 the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), as well as Rules 32 (Filing of Referrals and Replies) and 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 Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 31 August 2021, the Applicant submitted both referrals to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which are registered by the Court with numbers KO159/21 and KO160/21.

7. On 1 September 2021, the President of the Court, in Referral KO159/21, appointed judge Selvete Gërxaliu-Krasniqi as Judge Rapporteur and the Review Panel, composed of judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Nexhmi Rexhepi (members).

8. On the same date, the President of the Court, in Referral KO160/21, appointed judge Safet Hoxha as Judge Rapporteur and the Review Panel, composed of judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).

9. On 14 September 2021, the Court notified the Applicant's representative that one of the referrals is registered with number KO160/21. By the same letter, the Court requested clarifications from the representatives of the Applicant regarding the following issue:

> *"What are the existing legal possibilities for the municipality to resolve the case in accordance with Article 82 of the Law on Local Self-Government?".*

10. On the same date, the Court notified the Minister of MIET, Mrs. Rozeta Hajdari, and the Minister of MLGA, Mr. Elbert Krasniqi, about the registration of the submitted referral. By the same letter, the Court also requested additional clarifications regarding the following issues:

> *"1) What is the nature of the letter/Decision (No. 6077) of 07.07.2021? What is the authority that issued this Decision/letter and what do you think are the legal effects of this decision on your part?*
>
> *2) Is there a possibility of resolving this conflict of competences in accordance with the Law on Local Self-Government, and what are the obligations of the Ministry of Industry, Entrepreneurship and Trade regarding legality procedures for the decisions or acts of the Municipality?".*

11. On 17 September 2021, the Court notified the Applicant's representative that the referral with the number KO159/21 is also registered.

12. On the same date, the Court notified the Minister of MIET, Mrs. Rozeta Hajdari, and the Minister of MLGA, Mr. Elbert Krasniqi, about the registration of the submitted referral and on that occasion gave them the opportunity to submit their comments regarding the submitted referral to the Court.

13. On 27 September 2021, the Court, via electronic mail, received a response from the Minister of MIET, Mrs. Rozeta Hajdari, regarding referrals KO159/21 and KO160/21.

14. On 29 September 2021, the Court received via electronic mail the response from the Minister of MLGA, regarding Referral KO159/21.

15. On 29 September 2021, the representatives of the Applicant sent to the Court the response to the letter of 14 September 2021.

16. On 30 September 2021, the Minister of Local Government Administration, Mr. Elbert Krasniqi, sent his comments regarding Referral KO160/21.

17. On 4 October 2021, by the Decision of the President of the Court and in accordance with Article 40.1 (Joinder and Severance of Referrals) of the Rules of Procedure: (I) Referral KO160/21 was joined to Referral KO159/21; (II) The decision on the appointment of the Judge Rapporteur and the Review Panel for Referral KO159/21 applies to Referral

KO160/21, joined according to point I. Therefore, the referrals will be examined before the Court as a joined case.

18. On 13 October 2021, the Court also notified the Applicant's representatives about the joinder of referrals. By the same letter, the Court notified the Applicant's representative that it had received the responses sent by the Minister of MLGA, Mr. Elbert Krasniqi, and the Minister of MIET, Mrs. Rozeta Hajdari, providing him the opportunity to present his comments regarding their replies within the deadline.

19. On the same date, the Court notified the Minister of MLGA, Mr. Elbert Krasniqi, and the Minister of MIET, Mrs. Rozeta Hajdari, about the Decision on joinder of the referrals, as well as for receiving their replies regarding the referrals.

20. On 27 October 2021, the Court received the comments of the Applicant's representatives submitted in response to the comments of the Minister of MLGA, Mr. Elbert Krasniqi, and the Minister of MIET, Mrs. Rozeta Hajdari.

21. On 21 February 2022, the Court sent a letter to the elected President of the Municipality of Prishtina, Mr. Përparim Rama, notifying him that there are two registered referrals in the Court, KO159/21 and KO160/21, submitted by the previous President of the Municipality of Prishtina, Mr. Shpend Ahmeti.

22. On 19 July 2022, the Judge Rapporteur presented the preliminary report to the Review Panel. The Review Panel and the Court in full composition reviewed the report of the Judge Rapporteur and unanimously requested that the referral needs further consideration and will be reviewed again in a next session.

23. On 16 December 2022, Judge Enver Peci took the oath before the President of the Republic of Kosovo, in which case began his mandate at the Court.

24. On 23 May 2023, the Court unanimously decided that the challenged Decisions are not in compliance with paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of Article 123 [General Principles] and paragraphs 2, 3 and 7 of Article 124 [Local Self-Government Organization and Operation] of the Constitution.

Summary of facts

25. In the continuation of the report, the Court will present the facts of both referrals as a whole, because the acts challenged in both referrals were issued as a result of decisions [01-463/03-112375/21] and [01 -463/03-112319/21], approved by the Assembly of the Municipality of Prishtina in the session held on 16 June 2021.

26. More specifically, in the session held on 16 June 2021, the Assembly of the Municipality of Prishtina issued two decisions, [463/03-112375/21] and [01-463/03-112319/21] whereby it approved the proposal of to the President of the Municipality for the exchange of the municipal immovable property with immovable property owned by persons Rr.H., Sh K., F.(R)G. and F.G.

27. In the reasoning of Decision [01-463/03-112375/21] of the Assembly of the Municipality of Prishtina it is stated that:

"The reply from the Ministry of Economy and Environment, no. 2678-2/20, of 22.12.2020, gave Consent for the exchange of part of the cadastral parcel no. 466-1, with surface area 57349 m2, C.Z. Prishtina owned by P.Sh. M.A. Prishtina, 459-0, with surface area 4865m2, owned by PSH, MA Prishtina and 616-0, with surface area 4318 m2, owned by PSH, uncategorized public road, destined for construction and a part destined for school, kindergarten and greenery, according to the Regulatory Plan "New Prishtina - East", approved by decision no. 01-350/05-159745/19, of 08.07.2019, and parts of plots with no. 603-2, surface area 7310 m2, 603-3, surface area. 5720 m2, 603-4, surface area 5223 m2, 603-5, surface area 5222 m2, 603-6, surface area 5222 m2, 574-2, surface area 14240 m2, 578-2, surface area 20914 m2, 578-4, surface area 3426 m2, Prishtina cadastral area, owned by Rr.H. and 574-3, surface area 3264 m2, owned by Rr.H. and Sh.K., with green destination […]".

28. In the reasoning of Decision [01-463/03-112319/21] of the Assembly of the Municipality of Prishtina, it is stated that:

"[…] Ministry of Economy and Environment by response no. 2678-2/20, of 22.12.2020, has given consent for the exchange of part of the cadastral plot no. 466-1 with surface area 43505 m2, Cadastral Zone Prishtina, owned by PSH, MA Prishtina (proposed by the geodesist), intended for construction and a part intended for school, kindergarden and greenery, according to the approved Regulatory Plan "New Prishtina - East" by Decision No. 01-350/05-159745/19, of 07.08.2019, and plot No. 54-3, area 70,000 m2, with greenery, owned by F.G. and F.(R)G."

29. On 21 June 2021, the applicant sent both decisions to MLGA for review of their legality, as defined in Article 81 of Law no. 03/L-040 on Local Self-Government.

30. On 30 June 2021, MLGA, in accordance with Article 7 of Regulation (QRK) no. 10/2019 on the Administrative Review of the Municipal Acts, forwarded both decisions of the Applicant to MIET as the institution responsible for reviewing the legality of said decisions.

31. On 7 July 2021 and 9 July 2021, MIET sent two letters to MLGA, namely letters [no. 5133] and [6077] regarding the review of decisions [01-463/03-112375/21] and [01-463/03-112319/21] of the Applicant.

32. In the letter [no. 5133] of MIET, regarding Decision [01-463/03-112375/21] of the Applicant, it is stated that:

"The Ministry of Industry, Entrepreneurship and Trade after reviewing the contents of the municipal act for reviewing the legality of the Decision on the Exchange of Municipal Immovable Property with Immovable Property Owned by Rr.H. and Sh.K., with No. 01-463/03-112375/21 of 16.06.2021, notes: that the Decision in question should be suspended and not produce legal consequences, until this issue is addressed by the Interministerial Commission for Strategic Investments in the Republic of Kosovo."

33. In letter no. 6077 of MIET, regarding the Applicant's Decision [01-463/03-112319/21], it is stated that:

"The Ministry of Industry, Entrepreneurship and Trade after reviewing the content of the municipal act for reviewing the legality of the Decision on the Exchange of

Municipal Immovable Property with Immovable Property Owned by F.G. and F.(R)G. with No. 01-463/03-112319/21 of 16.06.2021, notes: that the Decision in question should be suspended and not produce legal consequences, until this issue is addressed by the Interministerial Commission for Strategic Investments in accordance with the provisions of Law no. 05/L-079 for Strategic Investments in the Republic of Kosovo."

34. On 8 July 2021, MLGA sent to the Applicant the letter [02-558/10] regarding the Decision of the Municipality of Prishtina [01-463/03-112319/21], in which it is stated that:

"The Ministry of Local Government has received Decision No. 01-463/03-112319/21 on the exchange of municipal immovable property with immovable property owned by F.G. and F.(R)G., approved by the Assembly of the Municipality of Prishtina, and signed by the Chairman of the Assembly of the Municipality of Prishtina, for the purpose of mandatory review of legality, as provided by Article 81 of Law No. 03/L-040 on Local Self-Government.

Based on Article 7 of Regulation (GRK) No. 10/2019 on the Administrative Review of Municipal Acts, we have sent the aforementioned act to the Ministry of Industry, Entrepreneurship and Trade, as the institution responsible for the review of legality.

Attached you will find the assessment report of the Ministry of Industry, Entrepreneurship and Trade".

35. On 12 July 2021, MLGA sent to the Applicant the letter [020-558/17] regarding the Decision [01-463/03-112319/21] in which it is stated that:

"The Ministry of Local Government has received Decision No. 01-463/03-112375/21 on the exchange of municipal immovable property with immovable property owned by Rr.H. and Sh.K., approved by the Assembly of the Municipality of Prishtina, and signed by the Chairman of the Assembly of the Municipality of Prishtina, for the purpose of the mandatory review of legality, as provided by Article 81 of Law No. 03/L-040 on Local Self-Government.

Based on Article 7 of Regulation (GRK) No. 10/2019 on the Administrative Review of Municipal Acts, we have sent the aforementioned act to the Ministry of Industry, Entrepreneurship and Trade as the institution responsible for the review of legality.

Attached you will find the assessment report of the Ministry of Industry, Enterpreneurship and Trade."

Applicant's allegations

36. In his referrals KO159/21 and KO160/21, the Applicant considers that "*the challenged decisions violated the basic rights, competences and responsibilities of the President and the Assembly of the Municipality of Pristina, generally guaranteed by the Constitution of Kosovo".* In this regard, the Applicant alleges that*, "The Ministry of Local Government Administration by its Decision No. 02-558/17 of 12.07.2021 and 020-558/10 of 8.07.2021 and that of the line Ministry of Industry, Entrepreneurship and Trade by its Decision no. 5133 and 6044 for the suspension of the Decision of the Municipality of Prishtina No. 01-463/03-112375/21 and 01-463/03-112319/21 of 16.06.2021 on the Exchange of Immovable Property Owned by Rr.H., Sh.K., F.G. and F.(R)G., have acted contrary to Law No. 03/L-*

040 on Local Self-Government, specifically Article 82 – The Procedure for the Review of Legality, paragraph 1 which states: "If the supervisory authority considers a decision or other act of a municipality to be inconsistent with the Constitution and laws, it may request that the municipality reexamine such decision or act. The request shall state the grounds of the alleged violation of the Constitution or law and shall not suspend the execution of the municipal decision or other act at issue".

37. The Applicant adds that, "*The Ministry of Local Government Administration and the line Ministry of Industry, Entrepreneurship and Trade have assessed that the decision of the Municipal Assembly should be suspended until this issue is addressed by the Interministerial Commission for Strategic Investments in the Republic of Kosovo, in accordance with the legal provisions of Law no. 05/L-079 on Strategic Investments in the Republic of Kosovo. In the assessment of these decisions, it is only stated that it should be acted in accordance with Law No. 05/L-07, without specifying what are the legal provisions of this law, on the basis of which the Municipal Assembly of Prishtina should act, or what are the legal provisions that must be fulfilled for the suspension of the decision of the Municipal Assembly*."

38. Therefore, the Applicant considers that, "*The Commission for Strategic Investments does not have the legal authority to review the acts-decisions of the President of the Municipality approved by the Municipal Assembly for the exchange of immovable property and in no way, the exchange of properties is not related to Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo. Therefore, it is unclear, illegal and most importantly, it is against the Constitution of the Republic of Kosovo itself - that is, the decision of the Ministry of Local Government Administration and the Ministry of Industry, Entrepreneurship and Trade, for the suspension of the decision - act of the Municipal Assembly. This is due to the fact that the relevant ministries, in the capacity of the supervisory authority, have not assessed the act of the Municipality as to whether or not it is in accordance with Law No. 03/L-040 on Local Self-Government, specifically Article 81 The Procedure for the Review of Legality, paragraph 1 and the Constitution of the Republic of Kosovo, but were issued in the content of the act that is not within the competence of the supervisory authority".*

39. In support of this, the Applicant adds that, "*The Ministry of Local Government Administration in its decision, but also in the reasoning of this decision, has nowhere stated that: Decisions of the Assembly of the Municipality of Prishtina No. 63/03-112375/21 and 01-463/03-112319/21 of 16.06.2021, are contrary to the Constitution of the Republic of Kosovo and the aforementioned laws. Decisions No. 02-558/17 of 12.07.2021 and 020-558/10 of 8.07.2021, as well as decisions no. 5133 and 6044, challenged by this complaint, "do not contain any of the alleged reasons for violating the constitution or the law and as a result does not suspend the execution of the municipal decision or other acts" (Law No. 03/L-040 on Local Self-Government, article 81 paragraph 1 – The Procedure for the Review of Legality)".*

40. Considering the above, the Applicant concludes that, "*The Ministry of Local Government Administration and the line Ministry of Industry, Entrepreneurship and Trade, by Decision No. 02-558/17 of 12.07.2021 and of 09.07.2021 have acted contrary to the Constitution of the Republic of Kosovo and Applicable Laws in force, seriously infringing the responsibilities and competencies defined by law of the Assembly and the President of the Municipality, therefore we submit this referral based on Article 113 paragraph 4 of CRK."*

41. The Applicant turns to the Court with a request to: (i) declare the referral admissible; (ii) to hold that there has been a violation of the Constitution by the challenged acts: Decision of the Ministry of Local Government Administration No. 020-588/17 of 12.07.2021 and 020-558/10 of 8 July 2021 and the Decision of the Ministry of Trade and Industry No. 5133 and 6044 for the review of legality of the act - Decision of the Municipality of Prishtina No. 01-463/03-112375/21 and 01-463/03-112319/21 of 16 June 2021; (iii) declare invalid the decisions of the Ministry of Local Government Administration No. 020-588/17 of 12 July 2021 and 020-558/10 of 8 July 2021, as well as the decisions of the Ministry of Industry, Entrepreneurship and Trade no. 5133 and 6044.

Comments of interested parties and the Applicant

42. The Court will now present the comments of (i) MIET; (ii) MLGA; and (iii) of the Applicant to the responses of MIET and MLGA.

i) MIET response

43. Regarding the comments of MIET, the Court should emphasize the fact that the document sent to the Court by the MIET consists of two parts. The first part of the letter concerns the response to the questions of the Court of 14 September 2021, while the second part concerns the comments sent by MIET regarding the submitted referrals KO159/21 and KO160/21.

MIET response to the Court's questions of 14 September 2021

"Regarding the first question, letter prot. no. 6077 of 7 July 2021 is an opinion on the legality of the municipal act. The opinion was given by the Legal Department of the Ministry in accordance with Article 81.4 of the LLG and Article 7.4.11 of Regulation (GRK) 10/2019 on the administrative review of municipal acts. The letter assesses that the reviewed act is not in accordance with the law. The letter produces the legal effects defined in Article 82 LLG, which means that the municipality is required to reconsider the act.

As for the second question, the alleged conflict can be resolved within the Law on Local Self-Government, since the municipality can accept or reject the request of the Ministry for the reconsideration of the act, in accordance with Article 82. The Ministry has the duty to review the legality of the municipal acts in accordance with articles 80-82 of LLG and article 7.4.11 of Regulation (GRK) 10/2019".

The comments of MIET regarding the submitted referrals KO159/21 and KO160/21

*"**First,** the referrals are manifestly ill-founded and therefore inadmissible because the Applicant has not sufficiently substantiated the alleged violations. Article 113.4 of the Constitution authorizes the municipality "to 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". But here we are not dealing with a law or an act of the Government that affects the responsibilities or reduce the revenues of the municipality. Letters 5133 and 6077 of the Ministry ask the Municipality of Prishtina to reconsider the decisions of the municipal assembly and have neither the nature nor the effect foreseen by Article 113.4 of the Constitution.*

The Applicant claims that the Ministry has issued decisions that violate the responsibilities of the municipality, illegally suspending acts of the municipal assembly. Letters 5133 and 6077 are not decisions in form or content - they do not have the form of a decision, are not entitled or defined as decisions, and do not contain enacting clause or defining language. The two letters do not suspend the acts of the municipal assembly, but consolidate opinions issued according to Article 81.4 of LLG and article 7.4.11 of Regulation (GRK) 10/2019. It remains for the municipality to decide if it will accept the opinions of the Ministry and if it will suspend the reviewed acts.

The Ministry has not violated the municipality's responsibilities, but has simply limited itself to assessing legality, referring to Law no. 05/L-079 on Strategic Investments in the Republic of Kosovo. Article 22.3 of this law provides that "The Government of the Republic of Kosovo can transfer the right to use a socially owned immovable property for strategic investment under the Law on Expropriation of the Immovable Property, only after the Assembly of Kosovo renders a decision with a simple majority of votës" (emphasis added). The competence therefore remains with the municipality.

Moreover, the Applicant has not specified the constitutional provisions and municipal responsibilities that were violated by the two letters of the Ministry. Referral KO159/21 mentions articles 24 and 25 of the Law on Local Self-Government, which have anything to do with decision-making for immovable property, while referral KO160/21 does not refer to any provision of the law. Neither referral mentions the specific provision of the Constitution that has been violated, as required by Article 40 of Law no. 03/L-131 on the Constitutional Court.

For these reasons, the Court must declare the referrals inadmissible according to Rule 39 (2) of the Rules of Procedure.

***Secondly,** the referrals are premature and therefore inadmissible. The Municipality of Prishtina has not reviewed the acts as provided by Article 82 LLG, which gives it the right to accept or reject the opinion of the Ministry. It also ignored the deadlines and the procedure in the regular judiciary according to Article 82 LLG. Therefore, the Applicant's statement that "there was no legal opportunity to use any other remedies to be used in the present case" (p. 6) is ungrounded; the remedies have not been used. Consequently, the Court must declare the referrals inadmissible under Rule 39 (3) (d) of the Rules of Procedure".*

ii) MLGA responses

44. The MLGA submitted to the Court separate comments for both referrals, but which had the same content. Consequently, the Court will now present the comments of MLGA as a single comment.

"Regarding decisions no. 01-463/03-112375/21 and 01-463/03-112319/21 of the Municipality of Prishtina on the exchange of immovable property, approved by the Assembly of the Municipality of Prishtina, MLGA has received Notification 02-558/21 from the Avokatura Istrefi, by which he informs that the authorized representative of the business entity BH Invest LLC had submitted a proposal to the Basic Court in

Prishtina for the imposition of a security measure against this decision, on the grounds that the municipal property which is the subject of the exchange, which the investor BH Invest LLC had submitted to the Ministry of Industry, Entrepreneurship and Trade, namely KIESA, the request for the status of strategic investor, also informed that this property is in the review procedure by the Interministerial Commission for Strategic Investments based on Law no. 05/L-079 for Strategic Investments.

Therefore, Decisions no. 01-463/03-112375/21 and 01-463/03-112319/21, approved by the Municipal Assembly of Prishtina on the exchange of municipal immovable property that the investor BH Invest LLC had submitted a request to the Ministry of Industry, Enterprise and Trade, namely KIESA, for the benefit of the status of strategic investor, MLGA, by the accompanying letter no. 020-558/6 submitted the act in question to the Ministry of Industry, Entrepreneurship and Trade for review of legality.

In the report on the assessment of legality, the Ministry of Industry, Entrepreneurship and Trade has concluded that the decisions approved by the Municipal Assembly of Pristina should be suspended in order not to produce legal consequences until the issue is resolved by the Interministerial Commission for Strategic Investments in accordance with Law no. 05/L-079 on Strategic Investments in the Republic of Kosovo, MLGA has not assessed the legality of the decision as required by the legislation in force."

iii) Applicant's response and comments

45. The Court will now present the responses that the Applicant submitted to the Court to the questions of 14 September 2021, as well as the responses that the Applicant submitted to the Court on 27 October 2021 to the comments of MIET and MLGA.

Applicant's response to the questions of the Court of 14 September 2021

"Regarding your request regarding the issue of what are the existing legal options for the municipality to handle the case in accordance with Article 82 of the Law on Local Self-Government, we give you the following explanation:

Article 82 paragraph 1 of the Law on Local Self-Government provides: "If the supervisory authority considers a decision or other act of a municipality to be inconsistent with the Constitution and laws, it may request that the municipality reexamine such decision or act. The request shall state the grounds of the alleged violation of the Constitution or law and shall not suspend the execution of the municipal decision or other act at issue".

"As we mentioned in the request of 31.08.2021, the Ministry of Local Government Administration with by decision and the Ministry of Industry, Entrepreneurship and Trade by its decision, requested the suspension of the Decision of the Municipality of Prishtina No. 01-463/03-112375/21 and 01-463/03-112319/21 of 16.06.2021, on the Exchange of Immovable Property in ownership".

The reason why the Municipality of Prishtina in this case cannot deal with the case under Article 82 of the Law on Local Self-Government is the fact that the Ministry of

Finance, Labor and Transfers does not agree to proceed with the assessment of the Municipality's decision on the Exchange of Immovable Property without confirmation was given for the review of the legality of the decision by the Ministry of Administration and Local Government".

Applicant's response regarding the comments of MIET and MLGA to the submitted referrals KO159/21 and KO160/21, of 27 October 2021

Applicant's response to MIET comments

"[...] regarding the allegation given by the Ministry of Industry, Entrepreneurship and Trade that in the present case we are not dealing with Government Acts - Decisions that infringe upon the responsibilities or revenues of the Municipality of Prishtina, this allegation is ungrounded in entirety due to the fact that: by Acts - Decisions No. 020/558/10 of 08.07.2021 and No. 02/558/17 of 12.07.2021, it is requested that the Decisions on the Exchange of Immovable Property with No. 01-463-03-112319/21 of 16.06.2021 and the one with No. 01-463/03-112375 of 16.06.2021 (issued by the Municipal Assembly of the Municipality of Prishtina) should be suspended and not produce legal consequences. This proves that we are dealing with Decisions - Acts which in themselves constitute an obligation in relation to the Applicant and as such are contrary to Article 113.4 of the Constitution of the Republic of Kosovo and in full accordance with Article 40 of Law No. 03/L-121 on the Constitutional Court.

II. The Ministry of Industry, Entrepreneurship and Trade claims that the responsibilities of the Municipality have not been violated, but as stated in the answer dated 24.09.2021, this ministry has only limited itself to the assessment of legality, so (as can be understood from this finding) the Ministry of Industry, Entrepreneurship and Trade, has not assessed the legality of the applicant's Decisions at all, as provided by Law No. 03/L-040 on Local Self-Government, specifically Article 82 – The Procedure for the Review of Legality, paragraph 1 which states: "If the supervisory authority considers a decision or other act of a municipality to be inconsistent with the Constitution and laws, it may request that the municipality reexamine such decision or act. The request shall state the grounds of the alleged violation of the Constitution or law and shall not suspend the execution of the municipal decision or other act at issue." From these findings, it results that the Ministry of Industry, Entrepreneurship and Trade has not assessed the legality of the decisions of the Municipality of Prishtina, whether or not they are in accordance with the constitution and laws.

III. As we mentioned in the letter of 31.08.2021, the Ministry of Local Government Administration in its decision No. 020/558/10 of 08.07.2021 and that of the Ministry of Industry, Entrepreneurship and Trade by its decision No. 6077 of 07.07.2021 and No. 5133 of 09.07.2021 have requested the suspension of the Decision of the Municipality of Prishtina No. 01-463/03-11231/21 of 16.06.2021 and the one with No. 01-463/03-112375 of 16.06.2021 on the Exchange of Immovable Property. The reason why the Municipality of Prishtina in this case cannot deal with the case under Article 82 of the Law on Local Self-Government is the fact that the Ministry of Finance, Labor and Transfers does not agree to proceed with the assessment of the Municipality's decision on the Exchange of Immovable Property without confirmation was given for the review of the legality of the decision by the Ministry of Local Government

Administration. As in the previous letter, you will find attached the answer proving the reason why article 82 of the Law on Local Self-Government cannot be applied as claimed by the Ministry of Industry, Entrepreneurship and Trade.

Applicant's response to MLGA comments

"As for the comments given by the Ministry of Local Government Administration, where it is claimed that this Ministry did not "assess the legality of the decisions of the Municipality as required by the legislation in force", this is due to the fact that the Ministry of Industry, Entrepreneurship and Trade has asked to suspend the Decisions of the Municipality of Prishtina on the exchange of immovable properties and based on this fact this ministry has not given any assessment for the legality of the decisions, while we emphasize that the rest of the reasoning given by the Ministry of Local Government Administration is in full contradiction with the reasoning given by the Ministry of Industry, Entrepreneurship and Trade (for the same issue)".

Relevant constitutional and legal provisions

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

2. *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.

3. *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".*

LAW NO. 03/L-040 ON LOCAL SELF-GOVERMENT

Article 81
Mandatory Review of Legality

81.1 The following acts shall be subject to the procedure of mandatory review of legality:

a) general acts adopted by the municipal assemblies;
b) decisions related to the joining and activities of the cooperative partnerships;
c) acts approved within the framework of the implementation of delegated powers.

81.2 All municipalities are obliged to submit to the supervisory body all aforementioned acts within 7 days from the day of issuance.

81.3 The acknowledgement of receipt by the supervisory body on the submitted act of the local government body is certified through its registration in the protocol office of the supervisory body.

81.4 Supervisory body is obliged to give its opinion on the legality of any registered act within 15 days from its receipt in accordance with the aforementioned procedures.

Article 82
The Procedure for the Review of Legality

82. If the supervisory authority considers a decision or other act of a municipality to be inconsistent with the Constitution and laws, it may request that the municipality reexamine such decision or act. The request shall state the grounds of the alleged violation of the Constitution or law and shall not suspend the execution of the municipal decision or other act at issue.

82.2 The municipal body shall respond to request for re-examination within 30 days of notification of receipt of such request.

82.3 If the municipal body accepts the request for re-examination, it may suspend the execution of the contested decision or act pending the deliberation by the municipal authorities.

82.4 If the municipal body fails to respond within the deadline or rejects the request or upholds the contested decision or act, the supervisory authority may challenge the act in question in the District Court competent for the territory of the municipality within 30 days following the failure to respond, notification of the rejection or the upholding of the contested decision or act.

82.5 trict Court may order, by interim measure the suspension of the application of the contested decision or act or other temporary acts in accordance with the applicable law.

REGULATION (GRK) No. 10/2019 ON THE ADMINISTRATIVE REVIEW OF THE MUNICIPAL ACTS

Article 7
General rules of review of the legality of municipal acts

1. The Ministry is responsible to review the legality of municipal acts issued for the areas for which it serves as a supervisory body as well as to coordinate the process of reviewing the legality of municipal acts.

2. The line ministries and other central institutions and agencies, which serve as supervisory bodies shall be responsible for carrying out the review of the legality of municipal acts, which are approved for the areas on supervision of which the Ministry is not competent.

3. The Ministry, after receiving the acts from municipality, defines the competent body and sends the act for review of legality.

4. Line ministries, institutions and other agencies are responsible for the review of the legality of municipal acts, as follows:

4.11. Acts in the field of trade and local tourism: the relevant ministry of trade and industry;

Admissibility of the Referral

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

47. In this respect, the Court 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".*

48. The Court notes that the referral was submitted in accordance with Article 113 paragraph 4 of the Constitution, which establishes:

"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".

49. The Court takes into account articles 40 [Accuracy of the Referral] and 41 [Deadlines] of the Law, which provide:

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".

50. The Court also refers to Rule 73 [Referral pursuant to Article 113.4 of the Constitution and Articles 40 and 41 of the Law] of the Rules of Procedure, which establishes:

Rule 73
[Referral pursuant to Article 113.4 of the Constitution and Articles 40 and 41 of the Law]

"(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".

51. Based on the abovementioned provisions of the Constitution, the Court notes that the referrals submitted to the Court pursuant to paragraph 4 of Article 113 of the Constitution must meet the following constitutional criteria: (i) The municipality must challenge the constitutionality of a law of the Assembly or of an act of the Government; and (ii) The municipality must substantiate that the challenged law or act violates municipal responsibilities or reduces its revenues. In this respect, th Court emphasizes that these two conditions are cumulative, namely, the respective Municipality must challenge the law of the Assembly or the act of the Government and argue that they have violated or reduced the municipal responsibilities or its revenues (see Court case KO139/18, Applicant, *Municipality of Skenderaj*, Constitutional review of the Collective Sectoral Contract, No. 05-3815, of 12 June 2018, Resolution on Inadmissibility, of 12 November 2020, paragraph 39).

(i) Regarding the Authorized Party

52. Based on paragraph 4 of Article 113 of the Constitution, the Municipality is authorized to challenge before the Court the constitutionality of laws or acts of the government, which violate municipal responsibilities or reduce the revenues of the municipality, in case the respective municipality is affected by it law or act.

53. In the circumstances of the present case, the Court notes that from the moment of the submission of the referral until the moment of the decision on the submitted referrals, the mandate of the President Shpend Ahmeti has ended and the current President Përparim Rama has been elected to this position. The Court emphasizes that such functional change does not affect the issue of the authorized party before the Court. Accordingly, even though the Applicant in referrals KO 159/21 and KO 160/21 was Mr. Shpend Ahmeti, as the President of the Municipality, with the end of his mandate, the legitimacy of the submitted referrals, which were submitted in accordance with paragraph 4 of Article 113 of the Constitution, is not questioned. Consequently, the President of the Municipality does not act before the Court in the capacity of a private person, but in the capacity of the function he exercises and therefore, the end of the mandate does not affect the nature of the submitted referrals. Therefore, the Court finds that such a referral continues to exist and is attributed to the Municipality, as the authorized party that submitted it, despite the change of the representative of the municipality.

(ii) Regarding the challenged act

54. With regard to the second condition, the Court recalls that the Applicant challenges: (i) *The report on the review of the legality of the Municipal act* [no. 020-558/17] of 12 July 2021,

of MLGA; regarding: (ii) *confirmation of the legality of the act of the Municipality of Prishtina* [no. 5133] of 9 July 2021, of MIET; as well as (iii) *The report on the review of the legality of the Municipal act* [no. 020-558/10] of 8 July 2021, of the MLGA; related to (iv) *confirmation of the legality of the act of the Municipality of Prishtina* [no. 6077] of 7 July 2021, of MIET. In the following, the Court will assess whether the latter can be considered as "*Act of the Government"*.

55. In support of this, the Court recalls that in its case law it dealt with cases that required the constitutional review of various acts of the Government. Depending on the present case, the Court assessed whether such an act could enter the category of the acts determined by the jurisdiction of the Court according to Article 113 of the Constitution. In this context, the Court recalls that in the 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 the Public Administration of the Republic of Kosovo, Judgment of 16 November 2016, paragraphs 46, 56 and 58).

56. This case law has also been confirmed in Judgment KO54/20, by which the Court, declaring admissible the request for the constitutional review of Decision no. 01/15 of 23 March 2020 of the Prime Minister, had emphasized that (i) in determining whether a "decree" of the Prime Minister is challenged, in the sense of subparagraph 1 of paragraph 2 of Article 113 of the Constitution, "*it should not focus only on the name of an act but on its content and effects"* (see Judgment KO54/20, Applicant *the 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 March 31, 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*, Court case KO61/20, 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, on declaration of the Municipality of Prizren "quarantine zone"; and Decisions [No. 229/IV/2020], [No. 238/IV/2020], [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipalities of Prizren, Dragash and Istog, Judgment of 1 May 2020, paragraph 96).

57. In case KO61/21, the Court emphasized that based on 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).

58. Regarding the circumstances of the present case, the Court recalls the arguments of MIET presented in relation to the referral of the Applicant, where it is stated that: "*the referrals*

are manifestly ill-founded and therefore inadmissible because the Applicant has not sufficiently substantiated the alleged violations. Article 113.4 of the Constitution authorizes the municipality "to 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". But here we are not dealing with a law or an act of the Government that affects the responsibilities or reduce the revenues of the municipality. Letters 5133 and 6077 of the Ministry ask the Municipality of Prishtina to reconsider the decisions of the municipal assembly and have neither the nature nor the effect foreseen by Article 113.4 of the Constitution".

59. The Court also recalls the arguments of MLGA, where they emphasize that: "*In the report on the assessment of legality, the Ministry of Industry, Entrepreneurship and Trade has concluded that the decisions approved by the Municipal Assembly of Pristina should be suspended in order not to produce legal consequences until the issue is resolved by the Interministerial Commission for Strategic Investments in accordance with Law no. 05/L-079 on Strategic Investments in the Republic of Kosovo, MLGA has not assessed the legality of the decision as required by the legislation in force".*

60. The Court also recalls that the Applicant responded to the arguments of MIET and MLGA and in this case highlighted the fact that: "*the Ministry of Local Government Administration in its decision No. 020/558/10 of 08.07.2021 and that of the Ministry of Industry, Entrepreneurship and Trade by its decision No. 6077 of 07.07.2021 and No. 5133 of 09.07.2021 have requested the suspension of the Decision of the Municipality of Prishtina No. 01-463/03-11231/21 of 16.06.2021 and the one with No. 01-463/03-112375 of 16.06.2021 on the Exchange of Immovable Property. The reason why the Municipality of Prishtina in this case cannot deal with the case under Article 82 of the Law on Local Self-Government is the fact that the Ministry of Finance, Labor and Transfers does not agree to proceed with the assessment of the Municipality's decision on the Exchange of Immovable Property without confirmation was given for the review of the legality of the decision by the Ministry of Local Government Administration".*

61. By relating the allegations filed by the Applicant as well as the case file with the established case law, it results that the reports and confirmations of the legality of MIET and MLGA which are challenged, make it impossible for "*the Ministry of Finance, Labor and Transfers to process the municipal decisions on the exchange of immovable property under review, because MLGA has not examined their legality, thus creating a direct effect which causes consequences for the applicant".*

62. Therefore, considering that: (i) *"Report on the review of legality of the municipal act [no. 020-558/17] of 12 July 2021 of MLGA"* related to (ii) *"confirmation of the legality of the act of the Municipality of Prishtina [no. 5133] of 9 July 2021 of MIET"*; as well as (iii) *"Report on the review of legality of the municipal act [no. 020-558/10] of 8 July 2021 of MLGA"*, related (iv) *"confirmation of the legality of the act of the Municipality of Prishtina [no. 6077] of 7 July 2021 of MIET"*, produce effects and create direct consequences for the applicant making it impossible to continue the procedure, the Court is of the opinion that in the given circumstances these acts can be considered as "*act of the Government*", in accordance with Article 113 paragraph 4 of the Constitution and Article 40 of the Law.

(c) Deadline for submission

63. The Court holds that (i) *"Report on the review of legality of the municipal act [no. 020-558/17] of 12 July 2021 of MLGA"* related to (ii) *"confirmation of the legality of the act of the Municipality of Prishtina [no. 5133] of 9 July 2021 of MIET"*; as well as (iii) *"Report on the review of legality of the municipal act [no. 020-558/10] of 8 July 2021 of MLGA"*, related (iv) *"confirmation of the legality of the act of the Municipality of Prishtina [no. 6077] of 7 July 2021 of MIET"*, were challenged by the Applicant before the Court on 31 August 2021, within the 1 (one) year deadline as foreseen 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

64. The Court above found that the referral (i) was submitted by the authorized party; (ii) the challenged acts are considered "*Acts of the Government"*; and that the latter (iii) were submitted within the deadline.

65. Therefore, the Court finds that the Applicant submitted: (i) relevant information regarding the challenged decisions; (ii) the specific provisions of the Constitution which have allegedly been violated; and (iii) the responsibilities of the municipality that are affected by the challenged Decision, in accordance with point (a) (b) and (c) of paragraph 2 of Rule 73 of the Rules of Procedure.

Merits of the Referral

I. Introduction

66. The Court recalls that the essence of the case is related to the decisions of the Assembly of the Municipality of Prishtina which approved the proposal of the President of the Municipality for the exchange of municipal immovable property with immovable property owned by private persons, in order to implement the regulatory plan "New Prishtina – East", intended for the construction of a school, garden and green spaces, namely of (i) Decision [01-463/03-112375/21] of 16 June 2021; and (ii) Decision [01-463/03-112319/21] of 16 June 2021.

67. Therefore, in terms of procedure, the following actions are decisive for the analysis of the case before the Court:

(i) The decisions of the Municipal Assembly [01-463/03-112375/21] and [01-463/03-112319/21] of 16 June 2021, were submitted to the MLGA in the procedure of *the administrative review of municipal acts by central authorities in the field of their competences, in order to ensure that they are in accordance with the constitution and the respective laws*;

(ii) MLGA forwarded the review off the legality of municipal acts to MIET based on Article 7 of Regulation (GRK) No. 10/2019 on the Administrative Review of Municipal Acts;

(iii) MIET by letters [no. 5133] and [no. 6077] had emphasized that the acts of the Municipality had to be suspended, not to produce legal consequences until this issue is dealt with by the Interministerial Commission for Strategic Investments, defined in the Law on Strategic Investments;

(iv) MLGA, in its response of 16 September 2021, emphasized that: "*MLGA did not review the legality of the decision as required by the legislation in force*."

(v) The Municipality had proceeded with a request to the Ministry of Finance, Labor and Transfers regarding the financial assessment of the Municipality's decision on the exchange of immovable property;

(vi) MFLT had rejected the request on the grounds that: "[...] *there is no confirmation of the legality of MLGA"*.

68. The Applicant, namely the Municipality of Prishtina challenges before the Court (i) *"Report on the review of legality of the municipal act [no. 020-558/17] of 12 July 2021 of MLGA"* related to (ii) *"confirmation of the legality of the act of the Municipality of Prishtina [no. 5133] of 9 July 2021 of MIET"*; as well as (iii) *"Report on the review of legality of the municipal act [no. 020-558/10] of 8 July 2021 of MLGA"*, related (iv) *"confirmation of the legality of the act of the Municipality of Prishtina [no. 6077] of 7 July 2021 of MIETi MINT"*, on the grounds that the latter interfere with the competences of the President and the Municipal Assembly, therefore they are contrary to the Constitution, within the procedure of the administrative review of the acts of the Municipality.

69. Following this, the Court emphasizing that *the right of local self-government as well as the rights of municipalities as basic units of local self-government are guaranteed by the Constitution and regulated by law*, assesses that by the administrative review of the acts of the Municipality, if the municipal responsibilities foreseen by Chapter X [Local Government and Territorial Organization] of the Constitution have been violated, namely its articles 123 and 124, which determine that these responsibilities or powers are regulated by the legislation in force. More specifically, in the implementation of this assessment, the Court, within the framework of the assessment of the procedure for the administrative review of municipal acts, must determine whether the challenged acts have violated the constitutional definition of the competences of the Municipal Assembly, specified in the relevant legislation in force.

70. In the following, the Court, in terms of addressing and assessing the constitutionality of the subject matter as specified above, will elaborate: (I) The general principles related to Local Self-Government according to: (a) The Constitution of the Republic of Kosovo; (b) European Charter of Local Self-Government; (c) general principles elaborated by the Venice Commission; to continue with: (II) the application of these principles in the constitutional review of the provisions of the challenged acts, namely if in the framework of the administrative review of the municipal acts, the central bodies have violated the municipal responsibilities provided by the Constitution.

I. General principles regarding the Local Self-Government according to the Constitution, the European Charter of Local Self-Government, the Venice Commission and the laws in force in the Republic of Kosovo

(a) General principles under the Constitution

71. The Court first notes that the Constitution, in its Chapter I [Basic Provisions], has granted special regulation to the local government. More specifically, Article 12 [Local Government] of the Constitution stipulates that:

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.

72. The Court further points out that Chapter X [Local Government and Territorial Organization] of the Constitution, namely paragraphs 1 and 3 of Article 123 [General Principles] determine that:

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

[...]

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.

73. Finally, paragraph 4 of Article 123 of the Constitution defines the principles on the basis of which local self-government is exercised, namely on the basis of the principle of: (i) good governance; (ii) transparency; (iii) efficiency; and (iv) effectiveness in providing public services, having due regard for the specific needs and interests of non-majority communities and their members.

74. Regarding the latter, the Court emphasizes that the purpose of the principles of efficiency and effectiveness of local government is closely linked to the principle of subsidiarity, which principle means that local self-government in some sectors of public policies is much more efficient and effective than if the competence for them were entrusted to central bodies (see case KO145/21, Applicant *Municipality of Kamenica*, cited above, paragraph 136).

75. Thirdly, paragraphs 1, 3 and 7 of Article 124 [Local Self-Government Organization and Operation] of the Constitution establish that:

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.

[...]

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.

76. The administrative review of the acts issued by the municipalities, according to paragraph 7 in article 124 of the Constitution, is limited to ensuring the assessment of the compatibility of the municipal acts with the Constitution and the laws in force. Consequently, the administrative review is carried out through the bodies of the central administration, being limited to the assessment of the compatibility of municipal acts with the laws in force.

(b) General principles according to the European Charter of Local Self-Government

77. The Court first notes that the Constitution in paragraph 3 of its article 123 has defined that: "*the activity of local self-government bodies [...] respects the European Charter of Local Self-Government.*" In the following, in paragraph 3 of Article 123 of the Constitution it is determined that: *"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".*

78. In relation to the latter, based also on the case law of the Court, namely the aforementioned case KO145/21, in addressing the principles of local self-government, the Court will also focus: (i) 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 (ii) 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 (see Court case KO145/21, Applicant *Municipality of Kamenica*, cited above, paragraph 141).

79. In this line, the Court recalls that Article 3 (Concept of local self-government) of the European Charter of Local Self-Government deals with the concept of local self-government, defining in paragraph 1 of this article that:

> *"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."*

80. Further, Article 4 [Scope of local self-government] of the European Charter of Local Self-Government defines the general principles on which the responsibilities of local authorities and the nature of their competencies should be based.

81. Initially, paragraph 1 of Article 4 of the European Charter of Local Self-Government establishes that the basic powers and responsibilities of local authorities shall be described by the Constitution or by law.

82. In the elaboration of Article 4 of the European Charter of Local Self-Government, the Explanatory Report of the Charter first points out that it is not possible, nor would it be appropriate to attempt, to enumerate exhaustively the powers and responsibilities which should appertain to local government. According to the Explanatory Report, Article 4 of this Charter provides the general principles on which the responsibilities of local

authorities and the nature of their power should be based. In the following, the Explanatory Report clarifies that: "*Since the nature of local authorities' responsibilities is fundamental to the reality of local self-government, it is in the interests of both clarity and legal certainty that basic responsibilities should not be assigned to them on an ad hoc basis but should be sufficiently rooted in legislation*".

83. Further, paragraph 2 of Article 4 of the European Charter of Local Self-Government establishes 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"*.

84. Further, paragraph 4 of Article 4 of the European Charter of Local Self-Government stipulates that: *"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."*

85. In relation to paragraph 4 of Article 4, the Explanatory Report clarifies that the determination by law of any limitation of the powers of local authorities by another authority is intended to avoid any tendency for continuous reduction of responsibilities.

86. Finally, the Court refers to Article 8 (Administrative supervision of local authorities' activities) of the European Charter of Local Self-Government which stipulates that:

> *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.*

87. In relation to the latter, the Court places emphasis on paragraph 1 of Article 8 of the European Charter of Local Self-Government, which defines the administrative review of municipal acts, which requires that any supervision of the activities of local authorities by the central authority must be defined by the Constitution or by law. According to the Explanatory Report, the exception is, but not the only one, in the case of delegated tasks, when the body that delegates the competencies can decide to exercise supervision over the manner those powers are carried out by the local authorities.

88. In the following, in relation to paragraph 3 of Article 8 of the Charter, which refers to respecting the proportionality between the importance of the supervisory authority's intervention and the importance of the interests it intends to protect, the Explanatory Report clarifies that the principle of proportionality in this case means that the supervisory authority, in exercising its prerogatives, is obliged to use the method which affects local autonomy the least whilst at the same time achieving the desired result.

(a) General principles addressed by the Venice Commission

89. In terms of elaborating the principles regarding local self-government, the Court, as in its case KO145/21, also refers to the principles developed by the opinions of the Venice Commission. In this context, the Court refers to the summary of the opinions of the Venice Commission [CDL-PI(2016)002] entitled: "*Summary of the opinions of the Venice Commission regarding the constitutional and legal provisions for the protection of local self-government*". Based on the latter, the Court notes that the Venice Commission, *inter alia*, addressed issues such as: (i) constitutional guarantees for local self-government; and (ii) the scope of local self-government and competencies (see case KO145/21, Applicant *Municipality of Kamenica*, cited above, paragraphs 169-170).

90. Regarding the point related to the constitutional guarantees for local self-government, the Venice Commission deals with the principle of local self-government (decentralization), treating it based on three main principles as follows: a) the principle of decentralization; b) the principle of subsidiarity; and c) the adequacy of competences and financial resources.

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

a. The principle of decentralization

91. 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:

> *"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."*

b. The principle of subsidiarity

92. 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 […]."*

c. Adequacy between powers and financial resources

93. 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.

94. 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 56 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 Local Administration).

Application of the aforementioned principles in the assessment of the Applicant's allegations

95. The Court recalls that municipal autonomy is expressed primarily in terms of the availability and exercise of its own competencies by municipalities originating directly from the principles established in paragraph 3 of Article 124 of the Constitution, namely the competencies that are subject to the principle of subsidiarity, a principle that is also defined by the European Charter for Local Self-Government, as well as the principle of efficiency and effectiveness of powers in terms of its proximity with the needs of the inhabitants of the municipality. In this regard, the Court assesses that these competencies defined by the Constitution should not be infringed in the framework of the administrative revision of the acts of the Municipality, in this case by MLGA and line ministries. (see Court case KO145/21, Applicant *Municipality of Kamenica*, cited above, paragraph 196).

96. In this case, the Court recalls that based on the European Charter for Local Self-Government, and the Opinions of the Venice Commission, the principle of subsidiarity means that public responsibilities should generally be entrusted to the level of government that is closest to the citizens. This principle is also affirmed through the Law on Local Self-Government. While in the area of competences in terms of the use of municipal property, more specifically the area related to the procedures of exchange of municipal property with private property, is defined in Law no. 06/L-092 for the use and exchange of the immovable property of the Municipality.

97. Therefore, in the framework of the procedure for the administrative review of municipal acts by the central administration bodies, the Court will assess and examine the Applicant's allegations regarding the violation of the municipal responsibilities of the Municipality in the field of the use of municipal property, which originate from the principles defined by Articles 123 and 124 of the Constitution and Article 8 of the European Charter of Local Self-Government.

98. The Court recalls that in the circumstances of the present case, the Assembly of the Municipality of Prishtina by (i) Decision [01-463/03-112375/21] of 16 June 2021; and (ii) Decision [01-463/03-112319/21] of 16 June 2021; had approved the proposal of the

President of the Municipality for the exchange of municipal immovable property with immovable property owned by private persons, in order to implement the regulatory plan "New Prishtina – East", with the purpose of building a school, garden and green spaces. Such decisions were submitted to the MLGA for the procedure of controlling the legality of the acts in question, in accordance with Article 81 of the Law on Local Self-Government in Kosovo; (ii) On 21 June 2021, MLGA forwarded it to MIET for the assessment of the legality of municipal acts; (iii) MIET through legality confirmations [no. 5133] of 9 July 2021 and [no. 6077] of 7 July 2021, had emphasized that the acts of the Municipality should be suspended, not produce legal consequences until this issue is addressed by the Inter-ministerial Commission for Strategic Investments, defined in the Law on Strategic Investments; (iv) On the other hand, MLGA, in its response of 29 September 2021, emphasized that: "MLGA did not make the legality assessment of the decision as required by the legislation in force"; (vi) after the response received from MLGA and MIET, the Municipality had proceeded with a request to the Ministry of Finance, Labor and Transfers regarding the assessment of the decision of the Municipality on the exchange of immovable property, a request of the Law on the granting of use and exchange of immovable property of the Municipality; (vii) On 13 August 2021, MFLT rejected this request on the grounds that *"[...] for the Municipal property subject to exchange, there is a discrepancy in the surface area subject to exchange; Decision of the Municipality (part of the property); In the attached table, the surface area of the property subject of exchange is determined [...]; The graphic part and coordinates also determine the area of the property subject to exchange; there is no confirmation of the legality of MLGA".*

99. The Applicant, namely the Municipality of Prishtina before the challenges before the Court: (i) *The report on the review of the legality of the Municipal act* [no. 020-558/17] of 12 July 2021, of MLGA; regarding: (ii) *confirmation of the legality of the act of the Municipality of Prishtina* [no. 5133] of 9 July 2021, of MIET; as well as (iii) *The report on the review of the legality of the Municipal act* [no. 020-558/10] of 8 July 2021, of the MLGA; related to (iv) *confirmation of the legality of the act of the Municipality of Prishtina* [no. 6077] of 7 July 2021, of MIET"; on the grounds that the latter interfere with the competences of the President and the Municipal Assembly, therefore, they are contrary to the Constitution, within the procedure of the administrative review of the acts of the Municipality.

100. In the context of the above, the Court, applying the general principles of the Constitution and the European Charter for Local Self-Government, elaborated in this Judgment, will assess the Applicant's allegations in relation to the circumstances of the present case.

101. In this regard, the Court, bearing in mind the main issue that has been presented before it, namely, the fact that MLGA and MIET violated the municipal responsibilities in the case of the recommendation that the municipal decisions be suspended and not produce legal consequences, considers that in the present case, we are dealing with the issue which is regulated by paragraph 2 of Article 12 of the Constitution, which states that the competencies of local self-government units are "*regulated by law*" in connection with paragraph 1 and 3 of Article 123 of the Constitution, where it is provided that the right to local self-government is "*guaranteed and regulated by law*" and the activity of local self-government bodies "*is based on [...] the Constitution and laws*" and "*respects the European Charter of Local Self-Government*". Emphasizing again the "*law*", the Constitution in paragraph 2 of Article 124 specifies that the "*competencies*" of the municipalities are "*regulated by law*", while paragraph 3 of Article 124 lists three types of competences that the municipalities can exercise, "*in accordance with the law*", and those include: a. own, b. extended and c. delegated competencies.

102. The Court, for the purposes of this case, and based on the concrete circumstances and the above-mentioned provisions, notes that paragraph 2 of Article 12 of the Constitution, in conjunction with paragraph 1 and 3 of Article 123 of the Constitution, in conjunction with paragraph 2, 3 and 7 of Article 124 of the Constitution, apply.

103. In this regard, based on paragraph 3 of Article 123 of the Constitution, namely the reference to the European Charter of Local Self-Government, and considering the circumstances of the present case, the Court recalls that the European Charter of Local Self-Government, in paragraph 4 of the Article 4, states that the powers given to local authorities should normally be "*full and exclusive*" and those powers cannot be undermined or limited by another, central or regional authority "*except as provided for by the law*".

104. Also, with regard to the issue of the administrative review of municipal acts by the central administration bodies, which in fact entails the essence of the case before the Court, paragraph 1 of Article 8 of the European Charter of Local Self-Government states that any control administrative authority over local authorities can only be exercised "*according to such procedures and in such cases as are provided for by the constitution or by statute."*

105. The Court also recalls that the Venice Commission, in its Opinion CDL-AD (2015) 028 concerning the Amendments to the Constitution of Ukraine established that (i) 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; and (ii) 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*".

106. The Court furthermore recalls that municipal autonomy is expressed, first, in the sense of the availability and realization of own competencies by the municipalities "*as provided for by the law*". These competencies, which in terms of paragraph 4 of Article 113 are defined as "*municipal responsibility*", are established in relevant laws that the legislative body, when exercising discretion in defining the areas of these powers, is bound by the obligation that the powers provided for in relevant laws, are at least those that are the result of the principles provided for in paragraph 3 of Article 124 of the Constitution, namely a. independent, b. extended and c. delegated competence, the principles that are defined by the European Charter of Local Self-Government, emphasizing that the competencies given to local authorities must normally be full and exclusive. Based on the constitutional principles and those stemming from the European Charter of Local Self-Government, these powers cannot be limited by another central or regional authority "*except as provided for by the law*" and any administrative control over local authorities can only be exercised "*according to such procedures and in such cases as are provided for by the constitution or by statute*".

107. As explained above, in the general principles, the Constitution establishes the frameworks related to the principles of organization and operation of local self-government, guaranteeing, among other things, competencies called "*own*". In this regard, the Court recalls that paragraph c of Article 17 (Individual Powers) of the Law on Local Self-Government stipulates that: Municipalities have full and exclusive powers, in terms of local

interest, respecting the standards set forth in the applicable legislation, where also includes "*land use and development*."

108. Therefore, the Municipality, exercising this responsibility, had decided to exchange municipal property with immovable property of private persons to achieve a public interest, in accordance with the Law on the transfer and exchange of immovable property of the Municipality. Consequently, for obvious reasons, the degree to which municipalities are subject to the supervision of central authorities affects the autonomy of local government, therefore the administrative review of municipal acts by central administration bodies *"[...] is limited to ensuring compatibility with the Constitution and the law"* (see Article 124 paragraph 7 of the Constitution).

109. On the other hand, MLGA and MIET by their acts, in principle requested the Municipality to suspend its decisions without producing legal consequences, without giving any reasoning as to why the decisions of the Municipality are not in compliance with the applicable legal framework. In this regard, the Municipality's request to the MFLT for the assessment of immovable property in the context of the implementation of the Law on the use and exchange of municipal immovable property was rejected citing as one of the shortcomings of the file also the lack of confirmation of legality. from MLGA. Therefore, in practice it results that the decisions of the Municipal Assembly, namely: (i) Decision [01-463/03-112375/21] of 16 June2021; and (ii) Decision [01-463/03-112319/21] of 16 June 2021; are not producing legal consequences in the context of their implementation.

110. The Court emphasizes that the administrative review of municipal acts according to the constitutional definitions as well as the European Charter of Local Self-Government should be limited to ensuring the assessment of the compatibility of the municipal acts in question by the central administration bodies with the Constitution and the laws in force. Accordingly, the Constitution limits the authority of the central bodies to assess the acts of the municipal bodies only against their compatibility with the Constitution and the laws.

111. Moreover, the administrative review must be implemented based on the principle of proportionality, which requires the central bodies that carry the role of the body responsible for checking the legality of the administrative act, to apply methods of checking the legality which affect the autonomy of local authorities the least, thus enabling the achievement of the necessary result without affecting local autonomy issues.

112. The Court also brings to attention that the procedure of administrative review of municipal acts by the central administration bodies, in addition to the aforementioned specifics, takes place within the legal terms defined in the Law on Local Self-Government, which coincides with the fact that the central administration bodies are obliged to give their opinion on the legality of the municipal act, within 15 days of its acceptance (see Article 81.1 (a) and 81.4 of the Law on Local Self-Government).

113. The Court also recalls that in cases where the central level considers that the decisions of the Municipal Assembly are not in accordance with the Constitution and Laws, the latter in the circumstances of the present case, *they could request the Municipality of Prishtina to reconsider its decisions, emphasizing "the alleged reasons for violating the constitution or the law*" and bearing in mind that it cannot suspend the execution of municipal decisions. (see Article 82.1 of the Law on Local Self-Government). If the Municipality agrees with the request for reconsideration, it may suspend the execution of the challenged decision until

it is reviewed by the local authorities (see Article 82.3 of the Law on Local Self-Government).

114. The constitutional provisions and the European Charter of Local Self-Government also require that the administrative review of acts of municipal bodies be based on a regular administrative procedure, within the deadlines provided by law and in no way be transformed into a temporary and random procedure of the administrative review.

115. In the circumstances of the present case, this form of administrative review of the decisions of the Municipal Assembly of Prishtina, by the MLGA and MIET, according to the Court assessment, does not complete the circuit of administrative supervision in the framework of the interaction of local and central government. The supervision procedure in the circumstances of the present case practically suspended the effect of the decisions of the Municipal Assembly of Prishtina, violating the independence of local self-government. The non-response of the central level, in the request of the Municipality, whether the decisions of the Municipal Assembly are lawful or unlawful, according to the Court, is considered that the circuit of administrative review foreseen by the Constitution and the law has remained suspended, therefore it has not been completed by the MLGA.

116. On this basis, MLGA and MIET have not acted within the scope of administrative control of municipal acts established in the Constitution and the Law on Local Self-Government. This is because, as it was emphasized above, based on article 81 and 82 of the Law on Local Self-Government, MLGA, within fifteen (15) days, had the obligation to present the opinion regarding the legality of the municipal act. The Court recalls that the central institutions, if they have disagreements about the legality of the decisions of the Municipal Assembly, they can oppose the decisions in question within the regular judiciary. It is worth noting that even in these cases, the *burden of proof* of the legality of the decisions in question falls on the central government bodies, namely the MLGA and MIET (see Article 82.4 of the Law on Local Self-Government).

117. Therefore, the central level institutions MIET and MLGA during their work in the framework of the administrative review of municipal acts, in case they have specific requests regarding the legality of the decisions of the Municipal Assembly, including the request for an interim measure for the suspension of effect of these decisions, they can challenge such decisions in regular courts (see also Article 82.4 of the Law on Local Self-Government).

118. In this regard, the Court brings to attention that only the regular courts have the constitutional and legal right to order the suspension of the implementation of the decision of the Municipal Assembly in accordance with the applicable legislation (see Article 82.5 of the Law on Local Self-Government). Therefore, the central level institutions are not authorized by the law and the Constitution to suspend the decisions of the Municipal Assembly of Prishtina, as MIET and MLGA have done, making it impossible for the Municipality of Prishtina to continue the legal procedures in accordance with the obligations of the Law on Allocation for Use and Exchange of Municipal Immovable Property.

119. On this basis, the Court finds that the acts of MIET and MLGA violated the constitutional right of local government by interfering with the responsibilities of the Municipality of Prishtina defined by paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of

Article 123 [General Principles] and paragraphs 2, 3 and 7 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo.

120. Finally, while in the context of the administrative review procedure of municipal acts, the Court declared that the decisions of MLGA and MIET violate the responsibilities of the Municipality of Prishtina, the MFLT must handle the case of the Municipality in accordance with the legislation in force, without having an additional request for lack of legality check. If the MLGA and MIET have objections to the decisions of the Municipal Assembly of Prishtina, they must address them in the regular judicial system, in which case they also bear the burden of proof (see Article 82 of the Law on Local Self-Government).

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 113.4 of the Constitution, Articles 40 and 41 of the Law, and based on Rule 59 (1) of the Rules of Procedure, on 23 May 2023, unanimously:

DECIDES

I. TO DECLARE, the Referral admissible;

II. TO HOLD that in case KO159/21: (i) *"The report on the review of the legality of the municipal act [no. 020-558/17]* of 12 July 2021, of the Ministry of Local Government Administration; regarding: (ii) *confirmation of the legality of the act of the Municipality of Prishtina [no. 5133]* of 9 July 2021" of the Ministry of Industry, Enterpreneurship and Trade; is not compatible with paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of Article 123 [General Principles] and paragraphs 2, 3 and 7 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo, and as such are declared invalid;

III. TO HOLD that in case KO160/21: (i) *"The report on the review of the legality of the municipal act [no. 020-558/10] of 8 July 2021"* of the Ministry of Local Government Administration, regarding (ii) *confirmation of the legality of the act of the Municipality of Prishtina [no. 6077] of 7 July 2021"*, of the Ministry of Industry, Enterpreneurship and Trade; are not compatible with paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of Article 123 [General Principles] and paragraphs 2, 3 and 7 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo, and as such are declared invalid;

IV. TO ORDER the Ministry of Local Government Administration, to notify the Court by 23 November 2023, in accordance with Rule 66 (5) of the Rules of Procedure, about the measures taken to implement the Judgment of the Court;

V. TO NOTIFY this Judgment to the Applicant, the Government of the Republic of Kosovo, the Ministry of Local Government Administration, the Ministry of Industry, Entrepreneurship and Trade, as well as the Ministry of Finance, Labor and Transfers;

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 on the day of publication in the Official Gazette, in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur	**President of the Constitutional Court**
Selvete Gërxhaliu Krasniqi	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.