



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

Prishtina, on 3 July 2023
Ref. no.: AGJ 2230/23

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KO164/21

Applicant

Municipality of Prishtina

**Constitutional review of Article 6, paragraph 3, points 3.1 and 3.2
of Administrative Instruction (MEST) no. 151/2020 of the Ministry of
Education, Science, Technology and Innovation of 22 December 2020**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by the Mayor of Prishtina, Mr. Shpend Ahmeti (hereinafter: the Applicant) represented by the Law Firm "Avokatura Istrefi" sh.p.k., with its seat in Prishtina.

Challenged act

2. The Applicant challenges Article 6, paragraph 3, points 3.1 and 3.2 of Administrative Instruction 151/2020 of the Ministry of Education, Science, Technology and Innovation of 22 December 2020 (hereinafter: the challenged AI). The challenged AI was published in the Official Gazette on 18 March 2021 and entered into force seven (7) days later, namely on 25 March 2021.

Subject matter

3. The subject matter of this Referral is the constitutional review of Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI, which is alleged to violate the competencies, rights and responsibilities of the Applicant guaranteed by Articles 12 [Local Government], 123 [General Principles] and 124 [Local Self-Government Organization and Operation] of the Constitution.

Legal basis

4. The Referral is based on Articles 113.4 [Jurisdiction and Authorized Parties] and 21.4 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 40 and 41 of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 8 September 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 15 September 2021, the President of the Court by Decision no. GJR. KO164/21 appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of judges: Selvete Gërxhaliu-Krasniqi (presiding), Radomir Laban and Remzije Istrefi-Peci.
7. On 21 September 2021, the Court notified the Applicant of the registration of the Referral.
8. On 21 September 2021, the Court notified the Ministry of Science, Technology, and Innovation (hereinafter: MEST) and the Ministry of Local Government Administration (hereinafter: MLGA) of the registration of the Referral and requested them to present their comments, if they have any, related to the Referral under review by 4 October 2021.
9. On 4 October 2021, MEST submitted its comments regarding Referral no. KO164/21. MLGA did not submit comments regarding Referral no. KO164/21.
10. On 6 October 2021, the Court notified the Applicant's representative of the receipt of comments from MEST and requested them to submit responses to the comments, if any, by 21 October 2021.
11. The Applicant's representative has not submitted any comments regarding the comments submitted by MEST.

12. On 24 February 2022, the Court notified the current Mayor of the Municipality of Prishtina, Mr. Përparim Rama regarding Referral no. KO164/21.
13. On 20 September 2022, the Court reviewed the preliminary report proposed by Judge Rapporteur and unanimously decided that the review of the Referral be postponed for additional supplementations.
14. On 16 December 2022, Judge Enver Peci took the oath in front of the President of the Republic of Kosovo, upon which his mandate at the Court commenced.
15. On 18 January 2023, MEST submitted a letter stipulating under a relevant part as follows: *“The Mayor of the Municipality has exercised his function in accordance with the applicable legislation. He has implemented the obligations of the special law on education in municipalities, namely Law no. 03/L-068 on Education in the Municipalities of the Republic of Kosovo and the special law on general education, Law no. 04/L-032 on Pre-University Education in the Republic of Kosovo which specify that the Municipal Assembly votes on the composition of the selection commission for directors and AI which specifies this composition in detail. Therefore, we inform you that the Municipality, de facto and de jure, Article 6 of Administrative Instruction no. 151/2020 on the Duties and Responsibilities of the Director and Deputy Director of the Public Educational and Pre-University Training Institution in the Republic of Kosovo, is in accordance with the special education laws and the basic law on local self-government and has implemented the decision of the Education Inspectorate as a supervising body with competencies defined by the Law on Education Inspectorate.”*
16. On 17 January 2023, the Court reviewed the preliminary report proposed by Judge Rapporteur and unanimously decided that the review of the referral be postponed for additional supplementations.
17. On 22 May 2023, the Review Panel reviewed the report of Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same day, the Court voted and unanimously decided that Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI issued by MEST is not contrary to Articles 12 [Local Government], 123 [General Principles] and 124 [Local Self-Government Organization and Operation] of the Constitution.

Summary of facts

Procedure for issuing the challenged AI

18. On 22 December 2020, MEST issued the challenged AI based on the relevant provisions of the Law no. 03/L-068 on Education in the Municipalities of the Republic of Kosovo (hereinafter: Law on Education), Law No. 04/L-032 on Pre-University Education in the Republic of Kosovo (hereinafter: Law on Pre-University Education), and Regulation 06/2020 and Annex 11 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.
19. The challenged AI was published in the Official Gazette on 18 March 2021, while it entered into force after (7) seven days, namely on 25 March 2021.
20. Article 1 [The purpose] of the challenged AI stipulates: *“This Administrative Instruction aims to define the duties and responsibilities of the principal and deputy principal of the public educational institution and pre-university training in the Republic of*

Kosovo, criteria and procedures for selection, appointment, conclusion of the contract and temporary appointment.”

21. Article 6, paragraph 3, points 3.1 and 3.2 [The selection commission] of the challenged AI stipulates: “3. *The selection commission for educational institutions that are subordinated to the municipality has this composition: 3.1. Two members of the municipality who are proposed by the MED and approved by the Municipal Assembly. The first member is employed by the MED, while the second member proposed by the MED is one of these three: independent education experts, principal of the educational institution with high performance, representative from the parents’ council at the municipal level with qualification and expertise in the field of education. The member of the commission employed in MED is also the chairman of the commission; 3.2. A member from MES, who is appointed by MES, after receiving official notification, official email from MED.*”

Procedure regarding the cancellation of the Applicant’s vacancy by MEST

22. On 1 April 2021, the Municipal Education Directorate of Prishtina (hereinafter: MED-Prishtina) announced a vacancy (ref. no. 14-111/01-0060433/21) to fill the following positions: Director of the upper secondary school (USS), eight (8) positions; Director of lower secondary primary school (LSPS), thirteen (13) positions; Deputy Director of lower secondary primary school, five (5) positions; Director of the Preschool Institution, eight (8) positions. The deadline to apply for the positions concerned was 16 April 2021.
23. On 14 June 2021, the Education Inspector within MEST by Decision no. 105: (1) ordered the cancellation of the public vacancy ref. no 14-111/01-0060433/21 of MED-Prishtina of 1 April 2021; (2) The Education Inspector ordered that all vacant positions of directors and deputy directors of MED-Prishtina be immediately processed with the procedures of announcing the vacancy, in compliance with the applicable legislation; (3) The Decision of the SEI Inspector, Prishtina, is based on the findings in the minutes drawn up on 11.06.2021, Prot. 104/06; (4) The decision enters into force after its signing.
24. The abovementioned MEST decision had provided legal advice that a complaint may be filed against this decision before the Commission for Review of Complaints and Requests of the Education Inspectorate within thirty (30) days.
25. On 14 July 2021, the Applicant submitted a complaint against the Decision of the Education Inspectorate, case Ref. no. 10/1, no. 105, of 14 June 2021 alleging erroneous and incomplete determination of the factual situation, erroneous implementation of the substantive legal provisions as well as violation of the procedural provisions.
26. On 13 August 2021, the Commission for Review of Complaints and Requests of the Education Inspectorate-MEST by Decision No. 10/703 stipulated: (1) Complaint no. 10/632 of 14.07.2021, submitted by the Municipality of Prishtina - Human Resources Sector is rejected; (2) Decision under Reference 10/1, prot. no. 105, of 14.06.2021, issued by the Education Inspector within the Education Inspectorate Sector in Prishtina, remains in force; (3) The supervision of the implementation of the decision in the legal procedure and the continuation in other bodies in case of non-implementation is carried out by the Education Inspectorate Sector in Prishtina, keeping the General Director of the Education Inspectorate informed at the same time; (4) The decision enters into force upon its signing.

27. The Commission for the Review of Complaints and Requests - MEST also stipulated under the legal advice that a lawsuit may be filed against this decision before the Basic Court of Prishtina within thirty (30) days.

The matter that is the subject of constitutional review for Referral KO164/21

28. The Court notes that in relation to the Decision of the Education Inspectorate-MEST (case Ref. no. 10/1, no. 105) of 14 June 2021 and the Decision of the Commission for Review of Complaints and Requests of the Education Inspectorate-MEST (no. 10 /703) of 13 August 2021, the Applicant has received legal advice that he may challenge the same in administrative proceedings before the regular courts.
29. The Court also notes that the present Referral was submitted pursuant to paragraph 4 of Article 113 of the Constitution and not pursuant to paragraph 7 of Article 113 of the Constitution. Consequently, the allegation for violation of Article 54 [Judicial Protection of Rights] may be raised by the Applicant in the proceedings before the regular courts.
30. In the light of the foregoing, the Court reiterates that the subject of constitutional review based on Article 113.4 of the Constitution is only Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI, respectively, whether the same is in accordance with Articles 12, [Local Government], 123 [General Principles] and 124 [Local Self-Government Organization and Operation] of the Constitution.

Applicant's allegations

31. The Applicant alleges a violation of paragraph 4 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution regarding the violation of municipal responsibilities, Article 54 [Judicial Protection of Rights] of the Constitution.
32. Regarding the above allegation, the Applicant specifies: *“The Referral of the Applicant for the alleged violations is a constitutional right guaranteed by Article 54 and Article 113, paragraph 4 of the Constitution of the Republic of Kosovo.”*
33. The Applicant alleges that MESTI, with the approval of the challenged AI (Administrative Instruction No. 151/2020 of 22.12.2020) has acted contrary to the Constitution of the Republic of Kosovo, the European Charter of Local Self-Government as well as Law no. 03/L-040 on Local Self-Government (as a special law), Article 17, point h) “Own Competencies” of Municipalities, Article 18 “Delegated Competencies” of Municipalities, Article 19 “Extended Municipal Competencies”, as well as Article 58, point a) and b) “Responsibilities of the Mayor” of the Municipality, directly interfering with the responsibilities, competencies and rights of the Mayor of the Municipality-MED Prishtina for the appointment of the commission as well as the approval of the members of the commission when announcing the public vacancy for all vacant positions of directors and deputy directors.
34. The Applicant alleges that the own competencies, delegated competencies, and extended municipal competencies as well as the responsibilities of the Mayor are clearly defined by Law no. 03/L-040 on Local Self-Government, which is a *“Special Law”* and any other bylaws or instructions must be in full compliance with this law. In this case, Administrative Instruction No. 151/2020 of 22.12.2020 in Article 6, paragraph 3, points 3.1 and 3.2 is in complete contradiction with this Law and as such is in contradiction with the Constitution of the Republic of Kosovo.

35. The Applicant alleges that Article 6, paragraph 3, point 3.1 of Administrative Instruction No. 151/2020 of 22.12.2020 is in complete contradiction with the Law on Local Self-Government, Article 58 “Responsibilities of the Mayor” of the Municipality where it is stated: point a) *“The Mayor represents and acts on behalf of the Municipality”* while in point b) it is said: *“The Mayor leads the municipal government and its administration and conducts the financial administration of the municipality.”* Therefore, as seen, the law has clearly defined the responsibilities and competencies of the Mayor, which means that it is the responsibility of the Mayor as the executive leader of the municipality and its administration to approve the members of the commission proposed by MED.
36. The Applicant alleges: *“Also, Article 6, paragraph 3, point 3.2 of MESTT’s Administrative Instruction, is in complete contradiction with the Law on Local Self-Government, Article 17 “Own Competencies”, which stipulates: “Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in the applicable legislation”, while point h) of the same Article states: “Municipalities have full and exclusive competencies in the provision of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators”. Therefore, the aforementioned Administrative Instruction directly and arbitrarily interferes with the independent competencies of the Municipality of Prishtina and the Mayor of the Municipality, and it is hereby confirmed that Administrative Instruction No. 151/2020 of 22.12.2020 is contrary to Law no. 03/L-040 on Local Self-Government, which, as mentioned above, is a “Special Law, as well as contrary to the Constitution of the Republic of Kosovo. It is important to emphasize that like every other institution in the Republic of Kosovo, the Municipality of Prishtina has separate competencies and in this case, based on Law no. 03/L-040 on Local Self-Government, for the approval of the members of the selection commission which is under the full competency and responsibility of the Mayor of the Municipality.”*
37. The Applicant alleges that MEST-Education Inspectorate ordered Decision Ref. 10/1, no. 105 of 14.06.2021 the cancellation of the public vacancy of 01.04.2021 Ref no. 14-111/01-0060433/21, announced by MED Prishtina (Municipal Education Directorate). The MEST-Education Inspectorate issued this Decision as stated *“based on the Law on Pre-University Education in the Republic of Kosovo (Law No. 04/L-032, of 29 August 2011), Article 20, Law on Education in the Municipalities of Kosovo, no. 03/L-068 Article 5, point d), and AI MES No. 151/2020, of 22.12.2021, Article 6, paragraph 3, points 3.1 and 3.2 (challenged AI).”*
38. The Applicant alleges: *“Therefore, we consider that the Applicant’s rights are grounded and it is confirmed that Administrative Instruction (MES) No. 151/2020 of 22.12.2020 is contrary to the Constitution of the Republic of Kosovo, the European Charter of Local Self-Government as well as Law no. 03/L-040 on Local Self-Government (as “Special Law”), Article 17 point h) and Article 58 point a) and b) thus seriously violating the responsibilities of the Mayor of the Municipality and the Institution of the Municipality.”*
39. The Applicant alleges: *“Therefore, we are aware that the Constitutional Court of the Republic of Kosovo, by admitting the Referral, shall hold that the Mayor of the Municipality of Prishtina had his responsibilities and competencies directly violated as they were affected by the aforementioned challenged act, because the Municipality of Prishtina - Municipal Education Directorate (MED), Human Resources Sector, in compliance with the applicable law, has announced public vacancy No. 14-111/01-0060433/21 of 01.04.2021 for the filling of positions pursuant to Law no. 04/1-032 on*

Pre-University Education in the Republic of Kosovo, Law No. 03/L-068 and pursuant to Article 4, paragraph 1 of MESTI's Administrative Instruction no. 151/2020 on the Duties and Responsibilities of the Director and Deputy Director in the Republic of Kosovo, Procedures for Selection and Appointment, Conclusion of the Contract and Temporary Appointment, but the Ministry of Education, Science and Technology and Innovation - Education Inspectorate by Decision Ref. 1011, no. 105 of 14.06.2021 ordered the cancellation of the public vacancy of 01.04.2021 ref. no. 14-111/01-0060433/21 announced by MED Prishtina as stated: "pursuant to Article 6 paragraph 3, points 3.1 and 3.2 of Administrative Instruction (MES) No. 151/2020 of 22.12.2020".

Comments of interested parties

Comments of the Ministry of Education, Science, Technology, and Innovation (MEST)

40. MEST asserts that the challenged AI originates from a specific legal basis in the Law on Education in Municipalities and the Law on Pre-University Education as vital laws. The challenged AI regulates the procedures for the selection, appointment and termination of the mandate of directors and deputy directors of educational institutions in the Republic of Kosovo.
41. MEST alleges that the Mayor arbitrarily and illegally appointed a commission for selection of directors, without voting it in the Municipal Assembly. This marks interference in the competencies of the Municipal Assembly. The reasoning on Article 58 is not a sufficient legal basis, because the Mayor according to Article 58 "c) exercises all competencies not explicitly assigned to the Municipal Assembly or its committees". MEST asserts that the Mayor had to implement the act of the Municipal Assembly as required in point d) of Article 58 of the Law on Local Self-Government, where it is emphasized that "executes the Municipal Assembly acts".
42. MEST alleges that their decision is an individual act and not of the Government as a panel act. MEST alleges that the Applicant has not filed any complaint against the administrative act according to the legal deadline defined by Article 127 of Law No. 05/L-031 on Administrative Procedure. MEST asserts that the challenged AI does not interfere with the municipal responsibilities of the Applicant, but only regulates the procedure for the selection, appointment and termination of the mandate of directors and deputy directors.
43. MEST alleges: *"In accordance with the Law on the Inspectorate and Administrative Instruction 151/2020, the Education Inspectorate in the Republic of Kosovo is committed to supervising the implementation of applicable legal acts in order to establish conditions for the regular and unhindered operation of the educational process. According to the Law on the Inspectorate, this institution must ensure that the applicable legal acts in the area of education are implemented through inspection and counselling. In this regard, it has inspected the Vacancy under ref. no. 14-111101-0060433/21 by MED through HR: for 13 LSPS directors; 5 LSPS deputy directors and 8 PI directors. On 28.04.2021, the decision on the commission composed of Dh.B., A.L., and F.K., for the directors of LSPS. Commission for USS composed of A.L., Dh.B., and L.N., Commission for PI composed of A.L., Dh.B., and L.L."*
44. MEST alleges: (i) the commissions were not voted in the Municipal Assembly according to the legal requirement and this constitutes an essential procedural violation; (ii) MEST representatives had withdrawn from the commission as a result of the commission not being voted in the Municipal Assembly; (iii) MEST representative is indispensable in the Commission and his or her absence constitutes an essential

violation; (iv) according to the challenged AI, the chairman of the commissions should be the MED representative and this did not happen, which constitutes an essential violation; (v) in this case, the challenged AI (Article 6) and Law no. 03/L-68 (Article 5) on Education in the Municipalities of the Republic of Kosovo were violated; and (v) also, the legal deadline for selection within 45 days provided by the challenged AI has been exceeded (Article 4).

45. MEST further adds: (i) Law on Education in the Municipalities of the Republic of Kosovo, Article 5, on the Competencies of the Municipalities in Public Education Levels 0, 1, 2, and 3 (Pre-Primary, Primary, Lower Secondary and Upper Secondary) stipulates that Municipalities have competency in “c) employment of teachers and other school personnel in accordance with legal procedures for the recruitment, selection and employment of public employees”; (ii) Whereas in point d) of this Article it is determined that “selection of the Director and/or Deputy Director of educational institutions in accordance with legal procedures for the recruitment and legal criteria’s determined by MEST from a commission established by the Municipality which two members shall be from the Municipality and one from MEST”; (iii) This legal basis clearly defines that the commission has the same composition as defined by the AI challenged by the Applicant; (iv) moreover, this law is a special and vital law that regulates the competencies of municipalities in the area of education and is in full compliance with the Law on Local Self-Government; (v) Applicant’s allegation that the Law on Local Self-Government is a separate law on the area of education does not hold; (vi) The regulation provided by the Law on Local Self-Government for the areas it includes has the character of the basic law on local self-government.
46. MEST states: “*Law no. 04/L-032 on Pre-University Education in the Republic of Kosovo, Article 20 on the management staff, paragraph 1 stipulates that “1. The director and deputy director of an educational or training institution shall be appointed based on the provisions of the Law no. 03/L-068 on Education in Municipalities of Republic of Kosovo of 21 May 2008, based on the criteria set by MEST with a bylaw, with the addition of two (2) representatives of the governing board as observers in the joint committee of appointment.”* MEST alleges that this constitutes a legal basis which authorizes it to issue a bylaw for the regulation of this matter.

Relevant constitutional and legal provisions

CONSTITUTION OF THE REPUBLIC OF KOSOVO

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 113 [Jurisdiction and Authorized Parties]

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 123
[General Principles]

- 1. The right to local self-government is guaranteed and is regulated by law.*
- 2. Local self-government is exercised by representative bodies elected through general, equal, free, direct, and secret ballot elections.*
- 3. The activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government. The Republic of Kosovo shall observe and implement the European Charter on Local Self Government to the same extent as that required of a signatory state.*
- 4. Local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members.*

Article 124
[Local Self-Government Organization and Operation]

- 1. The basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies.*
- 2. Establishment of municipalities, municipal boundaries, competencies and method of organization and operation shall be regulated by law.*
- 3. Municipalities have their own, extended and delegated competencies in accordance with the law. The state authority which delegates competencies shall cover the expenditures incurred for the exercise of delegation.*
- 4. Municipalities have the right of inter-municipal cooperation and cross-border cooperation in accordance with the law.*
- 5. Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law.*
- 6. Municipalities are bound to respect the Constitution and laws and to apply court decisions.*

7. *The administrative review of acts of municipalities by the central authorities in the area of their own competencies shall be limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law.*

EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

Article 2

[Constitutional and legal foundation for local self-government]

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

Article 3

[Concept of local self-government]

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

[...]

Article 4

[Scope of local self-government]

1. *The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.*

2. *Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.*

3. *Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.*

4. *Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.*

5. *Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.*

6. *Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.*

Article 8

[Administrative supervision of local authorities' activities]

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

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

CHAPTER III MUNICIPAL COMPETENCES

Article 15 Principle of subsidiarity

Municipalities exercise their powers according to the principle of subsidiarity.

Article 16 Municipal Competencies

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

Article 17 Own Competencies

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

h) provision of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators;

Article 18 Delegated Competencies

18.1 Central authorities in Republic of Kosova shall delegate responsibility over the following competencies to municipalities, in accordance with the law:

- a) cadastral records;*
- b) civil registries;*
- c) voter registration;*

d) business registration and licensing;

e) distribution of social assistance payments (excluding pensions);

f) forestry protection on the municipal territory within the authority delegated by the central authority, including the granting of licenses for the felling of trees on the basis of rules adopted by the Government;

18.2 Central authorities in Republic of Kosova may delegate other competencies to municipalities, as appropriate, in accordance with the law.

18.3 Delegated competencies must in all cases be accompanied by the necessary funding in compliance with objectives, standards and requests determined by the Government of Kosova.

Article 19 **Enhanced Municipal Competencies**

19.1. Certain municipalities explained below shall have their own competencies enhanced in the areas of health, education and cultural affairs and shall have participatory right in selecting local station police commanders as set forth in the subsequent articles.

19.2 Central authorities of Republic of Kosova shall monitor the exercise of enhanced competencies, in accordance with the central legislation providing for equal access to public services; minimum quality and quantity standards in the provision of public services; minimum qualifications of personnel and training facilities; general principles on licensing and accreditation of public service providers.

19.3 Municipalities exercising enhanced municipal competencies may cooperate with any other municipality in providing services.

Article 21 **Enhanced Competencies in the University Education**

The municipality of Mitrovicë/ Mitrovica North shall have competence for the provision of higher education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators.

Article 58 **Responsibilities of the Mayor**

The Mayor shall execute the following responsibilities:

a) represents and acts on behalf of the Municipality;

b) leads the municipal government and its administration and conducts the financial administration of the municipality;

c) exercises all competencies not explicitly assigned to the Municipal Assembly or its committees.

- d) executes the Municipal Assembly acts;*
- e) appoints and dismisses his deputies;*
- f) appoints and dismiss his advisors who assist him in discharging his duties;*
- g) organizes the work and directs the policy of the municipality;*
- h) proposes municipal regulations and other acts for the approval of Municipal Assembly;*
- i) proposes municipal development, regulatory and investments plans; proposes the annual budget for the approval of the Municipal Assembly and executes the budget adopted;*
- j) reports before the Municipal Assembly on the economic-financial situation and the implementation of the investment plans of the Municipality at least once every six months or as often as required by the Municipal Assembly; and*
- k) may request the Municipal Assembly only once to review a municipal act when he deems the act to violate the applicable legislation and/or the interests of communities.*
- l) shall consult the Deputy Mayor for Communities about the matters related to non-majority communities; and*
- m) other activities assigned to him/her by the statute.*

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

Article 3
General principles of pre-university education

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

5. Upon discharging their functions and responsibilities within this Law and other applicable laws, Ministry, municipalities and educational and/or training institutions shall:

5.1. respect and promote community rights and their members as set forth by the Constitution and applicable law.

5.2. foster knowledge of the culture, history, and language of all communities

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

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

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

Article 5 Duties of the Ministry

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The Ministry shall issue bylaws in relation to:

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

2.2. teaching hours and breaks, school holidays

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

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

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

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

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

3.3. personal data related to ethnicity or religious status may be recorded for statistical monitoring purposes, helping to promote equal opportunities and may

not be used for any other purpose: such data may not be recorded in any way that may identify such individuals.

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

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

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

7. Competencies of the Ministry, as complementary to the competencies granted under the Law on Education in Municipalities of Republic of Kosovo, no. 03/L-068, 21 May 2008 in educational and training facility infrastructure shall include:

7.1. drafting and monitoring the implementation of policies, standards and norms on education space;

7.2. providing technical assistance for municipalities in planning and designing training and education facilities;

7.3. drafting policies for school space management and maintenance;

7.4. providing technical assistance for municipalities in ensuring the adequacy of school buildings and equipment in accordance with international standard on health and safety and protection of the environment, accessibility for pupils and staff with physical disabilities, and assistive equipment to support inclusive education.

7.5. approving capital investments for construction and renovation of facilities financed by the Kosovo budget and donors

7.6. develops and maintains the school space program, which is interrelated with the Education Management Information System, and designs the national plan for capital investments in education.

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

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

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

11. *The Ministry may by bylaw, and for such period as it determines, at the request of a municipality or municipalities, confer exemption or relaxation from any requirement imposed by this Law on any municipality or institutional governing board, to facilitate the implementation by the municipalities or by educational and/or training institutions, of innovative projects that may contribute to the raising of the educational standards achieved by pupils. In exercising this power, the Ministry shall have regard to the effect of the project on the curriculum and assessment and the likely effect of the project on all the pupils who may be affected by it, including pupils with learning difficulties or disabilities, and members of different communities.*

12. *The Ministry, through this law and other laws in effect, and in agreement with the relevant municipality, shall promote public–private partnerships to improve provision of education and/or training services.*

13. *The Ministry shall issue a bylaw on the distribution and maintenance of free of charge textbooks authorised under the provisions of Articles 26 and 27 of this Law*

14. *The Ministry, through a bylaw, shall determine the financial participation by pupils for ISCED Level 4.*

15. *The Ministry, in cooperation with relevant ministries, shall undertake special measures for the education of individuals in prisons or in young offenders' institutions, as well as for those confined in psychiatric institutions, or are subject to long-term hospitalization, and for those released from institutions or discharged from hospitals and continuing their education.*

16. *The Ministry shall issue sub-legal acts in any area of its responsibility under this Law or other applicable laws.*

Article 7 Competencies of municipalities

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

*1.1. Law for Local Government, no. 03/LO40, of the date 20 February 2008 and Law for Education in the municipality, of the date 03/L-068, May 21, 2008, and
1.2. through any additional competencies assigned by provisions of this Law*

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

3. Municipalities are responsible for the following additional competencies:

3.1. construction of education and training facilities;

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

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

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

Article 8 **Inspection of education**

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

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

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

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

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

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

4.3. the numbers, qualifications and arrangements for professional development of staff;

4.4. the working environment including compliance with standards of health and safety of pupils and staff, records kept of disciplinary action and its outcome;

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

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

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

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

6.1. the Ministry may terminate the work of educational and training institutions which are unlicensed, or are operating in an unsafe or unhealthy environment;

6.2. the Ministry may instruct the municipality to terminate the employment of a teacher appointed contrary to the criteria established in this Law, or who is barred from work due to a medical condition or the order of a court, or who is otherwise disqualified according to the provisions of this Law or other applicable law;

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

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

7. The Inspectorate Department shall also have responsibility for monitoring and evaluating the academic work of educational and training institutions, as part of the annual cycle of inspections. The Ministry shall, in consultation with the KCSAA, establish criteria and procedures for national inspection, which may include experts in specific academic or professional fields, in accordance with paragraph 4. of Article 25 of this Law.

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

Article 20

The management staff

1. The director and deputy director of an educational or training institution shall be appointed based on the provisions of the Law on Education in Municipalities of Republic of Kosovo, no. 03/L-068, 21 May 2008, based on the criteria set by MEST with a by-law, with the addition of two (2) representatives of the governing board as observers in the joint committee of appointment.

2. The director of an educational institution shall have executive responsibility for the management and general administration of the institution including:

2.1 disciplinary powers over pupils;

2.2. specific duties in relation to the appointment, management, evaluation, discipline and other issues concerning teaching and other staff;

2.3. the efficient and effective usage of the educational management information system and compliance with any associated code of practice;

2.4. maintaining documents and records as required by the municipality or the Ministry;

2.5. duties in relation to the curriculum;

2.6. other matters regulated by this Law.

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

Article 3

Ministry of Education, Science and Technology

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

a) develop policies, draft and implement legislation for the development of education, including higher education, and science in Kosovo;

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

Article 4

Competencies and Enhanced Competencies of the Municipalities

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

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

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

Article 5

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

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

- d) *selection of the Director and/or Deputy Director of educational institutions in accordance with legal procedures for the recruitment and legal criteria's*

determined by MEST from a commission established by the Municipality which two members shall be from the Municipality and one from MEST;

LAW No. 06/L-046 ON EDUCATION INSPECTORATE IN THE REPUBLIC OF KOSOVA

Article 1 [Purpose of the Law]

“This Law determines competences, responsibilities and organization of the Education Inspectorate in the Republic of Kosovo.”

Article 2 [Scope of the Law]

“This Law deals with the supervision of the implementation of the applicable legislation in all institutions providing educational and training services.”

Article 5 [Education Inspectorate functions]

“1. Education Inspectorate conducts the following functions:

1.1. the evaluation/assessment function – evaluates the quality of educational institution service;

1.2. monitoring function – controls the compliance of the educational institutions activity with the legal and sub-legal acts in force;

1.3. advisory function – advises the leaders and employees of educational institutions;

1.4. informing/reporting function – informs the Minister, MED and educational institutions about findings of inspection and publishes them annually;

1.5. supporting function in promoting the successful practices of educational institutions and development of educational policies.

2. Tasks for performing these functions shall be defined by sub-legal act.”

Article 6 [Organization of the Education Inspectorate]

“Internal organization and function of the Education Inspectorate is regulated with sub-legal act according to the duties and functions of these bodies.”

Article 8 [Types of Inspection]

“1. There are six (6) types of education inspection:

- 1.1. *general inspection;*
- 1.2. *thematic inspection;*
- 1.3. *emergent inspection;*
- 1.4. *re-inspection*
- 1.5. *inspection of the quality of work and teacher performance assessment for the licensing process;*
- 1.6. *inspection of the quality of the work and director`s and deputy director`s performance assessment.*

Article 10
[Duties of the Administrative Inspector]

- “1. Administrative inspector is responsible for supervising and assessing if the education institutions implement the legislation in force.*
- 2. General tasks of the administrative inspector related to all educational institutions are:*
- 2.1 checks whether pupils and students admitted to education institutions meet entry requirements as foreseen by legal acts;*
 - 2.2. checks if registers, certificates and other documentation of the educational institution on pupils and students are in compliance with legislation;*
 - 2.3. reviews complaints related to disciplinary measures against pupils and students, following exhaustion of all legal instruments for appeal within the education institution and, in case of pre-university institutions, at the level of MED;*
 - 2.4. reviews complaints of pupils, parents and students regarding all types of discrimination;*
 - 2.5. conducts other aspects of administrative inspection as prescribed by legislation.*

Article 13
[Decisions of the education inspector]

- “1. Administrative inspector can reach the following decisions:*
- 1.1. to cancel enrolment of pupils and students in case they do not meet entry requirements prescribed by the applicable law;*
 - 1.2. to order correction, amendment or replacement of registers, certificates and other documentation of the educational institution on pupils and students because of non-compliance with legislation;*

- 1.3. to cancel certificates on grade completion, education level completion certificates and diplomas gained in contradiction with the applicable law;
- 1.4. to confirm, annul or change disciplinary measures against pupils and students;
- 1.5. to initiate disciplinary and legal measures against school directors, deputy directors, their professional staff and teachers, in cases of misuse of official duty of violation of the applicable laws;
- 1.6. to order further qualification or initiate the procedure for dismissal or re-appointment of directors, deputy directors, professional staff and teachers not possessing necessary qualifications for employment in current positions as well as those who haven't demonstrated proper performance while respecting other legal acts in force;
- 1.7. to propose measures to be taken based on the results of the teacher performance assessment, as defined in the relevant sub-legal acts;
- 1.8. to order re-assessment of pupils in cases of legal violations related to the final assessment having led to repetition of grade at the educational institutions of ISCED level 2-4;
- 1.9. to terminate the work of educational institutions which are unlicensed, institutions that don't meet the standards and criteria foreseen by the law;
- 1.10. to order the school to issue or enforce regulations from the scope of its authority;
- 1.11. to order the termination of the use of materials and concretization tools for teaching and learning, if they are not suitable for the age of children, for social context or for the curriculum implementation;
- 1.12. to take other decisions in the cases prescribed by law and with administrative instructions.

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

**Article 8
Minister**

1. In accordance with the Constitution, the legislation in force, policies and directives set by the Government or the Prime Minister, the Minister shall:
[...]
- 1.4. Issue decisions and bylaws and conclude memorandums of understanding/cooperation within the area of administrative responsibility of the ministry; and
- 1.5. Perform other duties within the area of administrative responsibility of the ministry, as defined by the legislation in force.
[...]

ADMINISTRATIVE INSTRUCTION NO. 151/2020 ON THE DUTIES AND RESPONSIBILITIES OF THE PRINCIPAL AND DEPUTY PRINCIPAL OF THE PUBLIC EDUCATIONAL INSTITUTION AND PRE-UNIVERSITY TRAINING IN THE REPUBLIC OF KOSOVA, SELECTION AND APPOINTMENT PROCEDURES, CONTRACT TERMINATION AND TEMPORARY APPOINTMENT

**Article 1
Purpose**

This Administrative Instruction aims to define the duties and responsibilities of the principal and deputy principal of the public educational institution and pre-university training in the Republic of Kosovo, criteria and procedures for selection, appointment, conclusion of the contract and temporary appointment.

[...]

**Article 6
The selection commission**

3. The selection commission for educational institutions that are subordinated to the municipality has this composition.

3.1. Two members of the municipality who are proposed by the MED and approved by the Municipal Assembly. The first member is employed by the MED, while the second member proposed by the MED is one of these three: independent education experts, principal of the educational institution with high performance, representative from the parents' council at the municipal level with qualification and expertise in the field of education. The member of the commission employed in MED, is also the chairman of the commission;

3.2. A member from MES, who is appointed by MES, after receiving official notification, official email from MED;

Assessment of the admissibility of the referral

47. The Court initially examines whether the Applicant has met the admissibility criteria set out in the Constitution and further provided in the Law and the Rules of Procedure.

48. The Court refers to Article 113.1 [Jurisdiction and Authorized Parties] of the Constitution, which defines:

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

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

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

50. The Court refers to Article 21 (4) [General Principles] of the Constitution, which defines:

“Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”

51. The Court notes that the Applicant has submitted the referral in accordance with the criteria of Article 113.4 of the Constitution, which means that it has met the criteria to be recognized as an authorized party.
52. The court takes into account articles 40 [Accuracy of the Referral] and 41 [Deadlines] of the Law, which stipulate:

*Article 40
[Accuracy of the Referral]*

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

*Article 41
[Deadlines]*

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

53. 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 specifies:

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

“(1) A referral filed under this Rule must fulfil 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.”

54. Based on the aforementioned provisions, the Court notes that the same expressly stipulate that (i) the municipality must contest the constitutionality of a law or an act of the Government; and (ii) the municipality must explain that the challenged law or act violates municipal responsibilities or reduces its revenues. Based on the Law and the

Rules of Procedure, this law or act must be challenged before the Court within one (1) year from its entry into force.

(a) Authorized party

55. Regarding the first condition, namely for the party that has the right to submit the Referral, the Court notes that the Applicant is authorized to submit a constitutional Referral to the Court pursuant to Article 113, paragraph 4 of the Constitution.
56. The Court also assesses that the current Mayor of the Municipality of Prishtina, Mr. Përparim Rama is aware of this Referral and has not requested its withdrawal. In addition, the Court assesses that in Article 23 [Withdrawal of a party] of the Law, it is stipulated that the Court decides in a legal manner on the matters referred to it regardless of the withdrawal of the party from the proceedings.
57. In addition, the Court reiterates that in its jurisprudence it has defined that the referrals submitted by the municipalities are not related to any public function exercised on behalf of a municipality, in the specific case, the respective mayors, but are related to the municipality as an authorized party under paragraph 4 of Article 113 of the Constitution. Therefore, the Court assesses that such referral continues to exist and is attributed to the Municipality, as the party that submitted the Referral, despite the change of the representative of the Municipality (see, Court case [KO145/21](#), Applicant *Municipality of Kamenica*, constitutional review of the Decision no. 01B/24 of the Ministry of Education, Science, Technology and Innovation of 23 April 2021, Judgment of 10 March 2022, paragraph 97).

(b) Challenged act

58. Regarding the second condition, the Court recalls that the Applicant challenges MEST Administrative Instruction no. 151/2020 of 22 December 2020, namely Article 6, paragraph 3, points 3.1 and 3.2. The Court will assess below whether the same may be considered an “Act of the Government”.
59. The Court recalls that in its case law, it has dealt with cases in which a constitutional review of various acts of the Government was requested. Depending on the specific case, the Court has assessed whether such an act may enter the category of acts defined by the jurisdiction of the Court according to Article 113 of the Constitution. In this context, it 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 cases [KO73/16](#), Applicant *Ombudsperson*, constitutional review of Administrative Circular no. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo on 21 January 2016, Judgment of 16 November 2016, paragraphs 46, 56 and 58; and [KO173/21](#) Applicant, *Municipality of Kamenica*, Judgment of 7 December 2022, paragraph 102; and, [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 99).
60. The Court emphasizes that based on paragraph 1 of Article 92 of the Constitution, the Government consists of the Prime Minister, Deputy Prime Ministers and Ministers. The same, based on paragraph 2 of the same Article, exercise executive power in accordance with the Constitution and the law. In this context, the Court emphasizes that even the decisions of the Ministers are subject to the constitutional review of the Court as long as they have been raised before the Court in the manner defined by the Constitution and the Law, and based on the Court’s assessment regarding their effect and if the same raise “important constitutional matters”. (See Court cases [KO173/21](#) Applicant

Municipality of Kamenica, cited above, paragraph 99; and [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 101).

61. The Court recalls the arguments of MEST, which emphasizes that their decision is an own act and not of the Government as a panel act and that the Applicant has not filed any complaint against the administrative act according to the legal deadline defined by paragraph 1 of Article 127 of Law No. 05/L-031 on the Administrative Procedure which defines the deadline of 30 days for the submission of the complaint by the party. Consequently, MEST considers that the Applicant has not undertaken any procedural action to challenge the administrative act by legal remedies.
62. The Court notes that the Applicant (i) challenges the constitutionality of Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI issued by MEST, pursuant to paragraph 4 of Article 113 of the Constitution and that (ii) the challenged AI issued by MEST is subject to constitutional review regarding its effect and whether it raises “*important constitutional matters*”. (See Court case KO173/21, Applicant *Municipality of Kamenica*, cited above, paragraph 101).
63. Consequently, the Court recalls that the Constitution, in paragraph 4 of its Article 113, defines two key non-cumulative conditions, when it is alleged that the relevant law or act of the Government has violated (i) municipal responsibilities; or (ii) the revenues of the municipality have decreased. The jurisdiction defined in Article 113, paragraph 4 is therefore an indicator that the laws or acts which are the subject of review must be subject to the assessment of their compliance with the competencies of the municipalities or the financial revenues of the municipalities, by the Constitutional Court, as the final authority for the interpretation of the Constitution.
64. In the present case, the Applicant expressly challenges an Administrative Instruction issued by a Ministry, namely MESTI, alleging that Article 6, paragraph 3, points 3.1 and 3.2 of the same violate the responsibilities of the Municipality, namely, the competencies guaranteed by the Constitution.
65. Consequently, the Court holds that the challenged AI is considered a “*Government Act*” according to Article 113, paragraph 4 of the Constitution and Article 40 of the Law.

(c) Deadline for submission

66. The Court notes that MEST Administrative Instruction no. 151/2020 of 22 December 2020 in Article 18 [Entry into force] defines that the same shall enter into force (7) seven days after its publication in the Official Gazette.
67. The Court notes that MEST Administrative Instruction no. 151/2020 of 22 December 2020 was published in the Official Gazette on 18 March 2021, while it entered into force after (7) seven days, namely on 25 March 2021.
68. The Court notes that Administrative Instruction no. 151/2020 of 22 December 2020, entered into force on 28 March 2021 while it was challenged by the Applicant on 8 September 2021, within the 1 (one) year deadline as defined by Article 113, paragraph 4 of the Constitution, Article 41 of the Law and paragraph 3 of Article 73 of the Rules of Procedure.

(ç) Meeting other criteria

69. The Court holds above that the Referral (i) was submitted by the authorized party; (ii) The challenged AI is considered a “Government Act”; and the latter (iii) was submitted within the deadline.
70. Consequently, the Court holds that the Applicant submitted (i) the relevant information regarding the challenged AI; (ii) the specific provisions of the Constitution which are alleged to have been violated; and (iii) the responsibilities of the Municipality that are affected by the challenged AI, in accordance with Rule 73, paragraph 2, points (a), (b) and (c) of the Rules of Procedure.

(d) Regarding the Decisions of the Education Inspectorate-MEST and the Decision of the Commission for Review of Complaints and Requests of the Education Inspectorate-MEST

71. The Court points out again that the Education Inspectorate-MEST, based, among other things, on Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI ordered the cancellation of the vacancy announced by MED-Prishtina, to fill the jobs for the positions of directors and deputy directors of lower secondary primary schools and preschool institutions. The Decision of the Education Inspectorate-MEST eventually and after the Applicant’s complaint was confirmed by the Commission for Review of Complaints and Requests of the Education Inspectorate-MEST.
72. The Court notes that regarding the Decision of the Education Inspectorate-MEST (case Ref. no. 10/1, no. 105) of 14 June 2021 and the Decision of the Commission for Review of Complaints and Requests of the Education Inspectorate-MEST (no. 10/703) on 13 August 2021, the Applicant received legal advice that the same may be challenged in administrative proceedings before the regular courts, i.e. the decisions concerned may not be subject to constitutional review before this Court.
73. Therefore, the Court reiterates that the subject of constitutional review based on Article 113.4 of the Constitution is only Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI.

Merits of the Referral

74. The Court recalls that the essence of the case is related to the constitutional review of Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI, namely whether the same violates the municipal responsibilities as guaranteed by Articles 12 [Local Government], 123 [General Principles] and 124 [Local Self-Government Organization and Operation] of the Constitution.
75. In this regard, the Court reiterates that the Applicant in the proceedings before this Court expressly challenges Article 6, paragraph 3, points 3.1 and 3.2 of MEST Administrative Instruction no. 151/2020 of 22 December 2020 (challenged AI) based on which the Education Inspectorate within MEST issued a decision to cancel the public vacancy for vacant positions for directors and deputy directors for USS and LSPS.
76. Given that the Applicant has met all eligibility criteria based on Article 113.4 of the Constitution, the Court reiterates that only Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI will be subject to constitutional review.
77. The Court notes that the Applicant alleges a violation of Articles 54 [Judicial Protection of Rights] and 113, paragraph 4 [Jurisdiction and Authorized Parties] of the Constitution, the European Charter of Local Self-Government as well as the Law on Local Self-Government no. 03/L-040 (as a special law), Article 17 point h) “Own

Competencies” of Municipalities, Article 18 “Delegated Competencies” of Municipalities, Article 19 “Extended Municipal Competencies”, as well as Article 58 points a) and b) “Responsibilities of the Mayor” of the Municipality, directly interfering with the responsibilities, competencies, and rights of the Mayor of the Municipality-MED Prishtina for the appointment of the commission as well as the approval of the members of the commission in case of the announcement of the public vacancy for all vacant positions of directors and deputy directors for USS and LSPS.

78. In this context, the Court assesses that Article 113.4 of the Constitution serves as a basis for municipalities as applicants to contest the constitutionality of laws or acts of the Government but alleging violations of other constitutional provisions related to local self-government matters such as Articles 12 [Local Government], 123 [General Principles] and 124 [Local Self-Government Organization and Operation] of the Constitution.
79. To address the allegations of the Applicant in the context of Articles 12, 123 and 124 of the Constitution, the Court will address (i) General principles related to Local Self-Government according to the Constitution of the Republic of Kosovo; (ii) General principles of the European Charter of Local Self-Government; (iii) The legal framework, and finally, the Court (v) will assess how the same apply in the circumstances of the present case.

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

(i) General principles according to the Constitution

80. The Court notes that the Constitution, in the part referring to the Basic Provisions of the Constitution, has granted a special regulation to the local government. Pursuant to Article 12 [Local Government] of the Constitution, the territorial units of local self-government in the Republic of Kosovo are the municipalities and their organization and competencies are regulated by law (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 132).
81. However, the Constitution also provides for a separate chapter, Chapter X [Local Government and Territorial Organization], which contains two articles, namely Article 123 [General Principles] and Article 124 [Local Self-Government Organization and Operation]. In paragraphs 1 and 2 of Article 123, the Constitution stipulates that the right to local self-government is guaranteed and regulated by law and the latter is exercised by representative bodies. Furthermore, paragraph 3 of Article 123 of the Constitution stipulates that the activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and observes the European Charter of Local Self-Government (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 133).
82. Finally, paragraph 4 of Article 123 of the Constitution establishes the principles based on which local self-government is exercised, thus defining the principles of good governance, transparency, efficiency and effectiveness in the provision of public services, paying special attention to specific needs and concerns of the non-majority communities and their members (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 134).
83. On the other hand, the following article, namely paragraph 1 of Article 124 of the Constitution, stipulates that the basic unit of local government in the Republic of

Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 135)

84. The Court notes that in this way the Constitution defines the modalities of local governance by defining public authorities and their competencies and emphasizing the provision of public services. The Court notes that the basic principles governing local governance are the principles of good governance, transparency, efficiency and effectiveness in the provision of public services, paying particular attention to the specific needs and concerns of non-majority communities and their members. In this context, the Court notes that the purpose of the principles of efficiency and effectiveness of local government is closely linked to the principle of subsidiarity (see Court cases [KO173/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 131; and [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 136).
85. The competencies exercised by the Municipalities are determined by Article 124 of the Constitution, paragraph 2, which stipulates that the law regulates the establishment, boundaries, competencies, manner of organization and functioning of Municipalities. Paragraph 3 of Article 124 of the Constitution further stipulates that Municipalities in accordance with the law have their own, extended and delegated competencies and the state authority which delegate competencies, covers the expenditures incurred for the exercise of delegation. Paragraph 5 of Article 124 of the Constitution further states that Municipalities in accordance with the law have the right to decide, allocate, collect and spend their revenues as well as to receive funds from the central government (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 137).
86. Having said that, the Court recalls that the Constitution in paragraph 3 of Article 123 expressly states that the activity of local self-government bodies complies with the European Charter of Local Self-Government. On the other hand, the Constitution stipulates that the Republic of Kosovo takes into account and implements the European Charter of Local Self-Government to the extent required by the signatory state. In the following, the Court will elaborate on the status of the latter in the legal order of the Republic of Kosovo (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 138).
 - (ii) *Regarding the status of the European Charter of Local Self-Government and its general principles*
87. Regarding the status of international instruments, the Court recalls that in its case [KI207/19](#), it only dealt with the international instruments provided for in Article 22 of the Constitution and emphasized that even though they are not signed, they are directly applicable and are part of the legal order of the Republic of Kosovo, and those eight (8) instruments prevail over other laws and acts of the institutions of the Republic of Kosovo, (see Court case [KI207/19](#) Applicant *The Social Democratic Initiative, New Kosovo Alliance and the Justice Party*, Judgment of 10 December 2020, paragraphs 105-111; and [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 139). In line with this, the Court recalls that the European Charter of Local Self-Government is not an instrument set out in Article 22 of the Constitution. However, the Constitution in paragraph 3 of Article 123 requires that the activity of local self-government bodies comply with the European Charter of Local Self-Government, while the same paragraph states that the Republic of Kosovo considers and implements the European Charter of Local Self-Government to the extent required by the signatory country. (See Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 140).

88. Consequently, in addressing the principles of local self-government, the Court will also focus on key aspects of the European Charter of Local Self-Government, which commits the parties to implement the basic rules guaranteeing the political, administrative and financial independence of local authorities, as well as key principles for the best functioning of local government. The European Charter of Local Self-Government stipulates 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 cases KO173/21 Applicant *Municipality of Kamenica*, cited above, paragraph 133; and, [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 141).
89. The Court, in dealing with and applying the guarantees of the European Charter of Local Self-Government, also refers to its explanatory report, which aims to clarify and facilitate the understanding of its provisions (see, Explanatory Report of the European Charter of Local Self-Government of 15 October 1985; and also see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above paragraph 142).
90. In this regard, the Court recalls that Article 3 of the European Charter of Local Self-Government deals with the concept of local self-government, establishing in paragraph 2 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 (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 143).
91. Furthermore, Article 4 of the European Charter of Local Self-Government, according to the Explanatory Report, sets out the general principles on which the responsibilities of local authorities and the nature of their competencies should be based (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 144).
92. Article 4 of the European Charter of Local Self-Government stipulates in paragraph 1 that the basic powers and responsibilities of local authorities shall be prescribed by the Constitution or law, where according to the explanatory report the purpose of this article consists in determining the legal certainty regarding the predictability of the responsibilities of local authorities under law. Paragraph 2 of Article 4 of the European Charter of Local Self-Government stipulates that local authorities shall, within the limits of the law, have full discretion to exercise their initiative concerning any matter which is not excluded from their competency or assigned to any other authority, and according to the explanatory report, this paragraph contains the purpose that local authorities, in addition to the responsibilities entrusted to them by law, and according to the explanatory report, this paragraph captures the intention that local authorities, in addition to the responsibilities entrusted to them by legislation, there may be other needs or opportunities for action by public bodies and in cases where these areas of action have local implications, the conception of local authorities is important as political entities acting in their right to promote the general welfare of their inhabitants that they have the right to exercise their initiative in these matters. However, according to the explanatory report, the general rules according to which local authorities may act can be determined by law (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 145).
93. Furthermore, paragraph 3 of Article 4 of the European Charter of Local Self-Government stipulates that public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task

and requirements of efficiency and cost-effectiveness, and according to the explanatory report, this paragraph contains the general principle that the exercise of public responsibilities should be decentralized. Paragraph 4 of Article 4 of the European Charter of Local Self-Government further stipulates that powers vested in local authorities shall normally be full and exclusive, and this according to the explanatory report is done in order to avoid any tendency for continuous reduction of responsibilities. They may not be undermined or limited by another, central or regional, authority except as provided for by the law (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 146).

94. Paragraph 5 of Article 4 of the European Charter of Local Self-Government further stipulates that where powers are delegated to them by a central or regional authority, local authorities shall, as appropriate, be granted discretion in adapting their exercise to local conditions, whereas paragraph 6 of Article 4 of the European Charter of Local Self-Government stipulates that local authorities shall be consulted, as appropriate, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 147).
95. On the other hand, Article 8 of the European Charter of Local Self-Government stipulates the administrative control of the actions of local authorities, stipulating in paragraph 1 that this supervision may only be exercised according to such procedures and in such cases as provided for by the Constitution or by statute and in paragraph 2 such a control, shall normally aim only at ensuring compliance with the law and constitutional principles. According to the explanatory report, this article deals with the oversight of the activities of local authorities by bodies of other governing levels, while paragraph 1 of this Article requires that there should be an appropriate legal basis for supervision, while paragraph 2 requires that administrative oversight be limited to the legality of the action of the local authority and not its adequacy, and according to the explanatory report a special exception, but not the only one, is made in the case of delegated tasks, when the body delegating competencies may decide to supervise the manner how those powers are performed by the local authorities (see Court cases [KO173/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 145; and, [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 148).
96. Paragraph 3 of Article 8 of the European Charter of Local Self-Government provides that administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is proportionate to the importance of the interests which it is intended to protect, and according to the explanatory report, the principle of proportionality, in this case, means that the controlling body, in the exercise of its duties, is obliged to use the method that least affects local autonomy to achieve the desired results (see court cases [KO173/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 146; and, [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 149).

(iii) *The legal framework governing the competencies of Municipalities in the area of education*

97. The Court notes that based on the Constitution, (i) the basic unit of local self-government in the Republic of Kosovo is the Municipality; and (ii) the law regulates the issue of local government, namely (a) the establishment, boundaries, competencies, manner of organization and functioning of Municipalities by explicitly defining that Municipalities have three types of competencies: **a.** own, **b.** extended and **c.** delegated; and (b) setting, allocating, collecting and spending their revenues. (See Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 150).

98. For municipalities to exercise their competencies as defined by the Constitution and specified by law, these competencies contain the transfer of competencies in the financial, administrative and technical areas. To implement these, it is necessary to comply with the principles that ensure local self-government. In this case, “*local self-government*” actually means, first of all, the autonomous exercise of its own competencies by the units of local self-government. Such autonomy may not be diminished, supervised or disregarded by any central authority. Any interference that is not provided by the Constitution or law in such autonomy violates the right of local self-government of municipalities. Although the Constitution accurately defines the concept of own competencies as an aspect related to the autonomy of municipalities, it instructs that such competencies will be precisely defined through a relevant law. The instruction in the Constitution for the issuance of a law regulating the scope of competencies of Municipalities, and in particular their own competencies, is an indication that the assessment of whether the responsibility of municipalities has been violated, and the principle of Municipalities’ own competencies violated through the assessment of competencies specifically in the relevant law or laws (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 151).
99. In this line, local self-government, as elaborated above, is guaranteed in the Constitution and the European Charter on Local Self-Government, and it includes the competency of local units to regulate and manage a part of public services based on the principles of good governance, transparency, efficiency and effectiveness. These competencies provided by the Constitution, based on which the relevant laws were issued, through which those competencies are transferred from the central bodies, are such competencies that determine the best interest of the community. They consist of their own, extended, and delegated competencies in accordance with the law (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 152).
100. In light of the above, the Court notes that the main law defining the competencies of municipalities is the Law on Local Self-Government. Such a character of this law constitutes an important basis on which the Court must assess the types and nature of competencies that fall into the category of “own” competencies of Municipalities pursuant to paragraph 3 of Article 124 of the Constitution (see Court case [KO145 /21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 153). Therefore, in this regard, the Law on Local Self-Government stipulates that Municipalities, among others, are the holders of their own competencies in some of the areas and as such, exercise these competencies “fully and exclusively” in terms of local interest. However, the Court recalls that in the present case, the Law on Education in Municipalities and the Law on Pre-University Education are also laws which further regulate aspects of education and schooling, defining competencies for municipalities and MESTI. Consequently, and as far as it is not relevant to the circumstances of the present case, the Court will analyse these competencies (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 154).
101. As argued by the Applicant, and also as noted by the Court, the Law on Local Self-Government, in Article 17 stipulates “own competencies” of Municipalities. More specifically, and with regard to education issues, paragraph 1 item (h) of Article 17 of the Law on Local Self-Government, as an autonomous competence of municipalities includes “*provision of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators*” (see Court cases [KO173/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 152; and, [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 155).

102. Furthermore, Article 3 of the Law on Local Self-Government provides for “Own competencies”, and defines them as competencies given to municipalities by the Constitution or law for which they are fully responsible in terms of local interest, or in accordance with law (see Court case [KO145/21](#), Applicant *Municipality of Kamenica*, cited above, paragraph 156).
103. Whereas, the Law on Local Self-Government itself, in Article 15 defines the principle of subsidiarity and states that “*The municipalities shall exercise its competences in accordance with the principle of subsidiarity,*” the principle is also defined by the European Charter of Local Self-Government (see Court cases KO173/21 Applicant *Municipality of Kamenica*, cited above, paragraph 151; and, [KO145/21](#), Applicant *Municipality of Kamenica*, cited above, paragraph 157).
104. Furthermore, the Law on Education in the Municipalities, in paragraph 1 of Article 4, stipulates that Municipalities “*have full and exclusive powers*”, as far as the local interest is concerned while complying with the standards outlined in applicable legislation with respect to the provisions of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators. Paragraph 2 of Article 4 of this law further stipulates that in addition to the powers referred to in paragraph 1 of this Article of the Law on Education in Municipalities, Municipalities may be vested with extended competencies in the area of education as prescribed by this law or other applicable legislation (see Court cases KO173/21 Applicant *Municipality of Kamenica*, cited above, paragraph 153; and, [KO145/21](#), Applicant *Municipality of Kamenica*, cited above, paragraph 159).
105. Article 5 of the Law on Education in the Municipalities further breaks down the competencies of Municipalities by stipulating that in addition to the competencies provided in Article 4, are included, among others, “*specific municipal competencies*” such as (i) construction of educational facilities in accordance with Chapter 3 of this law [Law on Education in Municipalities] and other applicable legislation; (ii) registration and admission of students following due respect for the principles of non-discrimination under the law; and (iii) employment of teachers and other school personnel in accordance with legal procedures for the recruitment, selection and employment of public employees (see Court case [KO145/21](#), Applicant *Municipality of Kamenica*, cited above, paragraph 160).
106. The Law on Pre-University Education and the Law on Education in the Municipalities also provide for the competencies of the MESTI. Given that in this case, it is alleged that MESTI, through the challenged AI, has violated the responsibilities of the Municipality of Prishtina in the area of education, namely the filling of vacancies for the positions of directors and deputy directors in USS and LSPS, the Court will also analyse the competencies of MESTI in this context (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 161).
107. Regarding competencies of MESTI, the Court notes that the latter under paragraph 1 of Article 5 of the Law on Pre-University Education stipulate that MESTI shall have the primary responsibility for planning, setting standards, and quality assurance of the pre-university education system, among others, by (i) developing policies, drafting and implementing legislation on conducting pre-university education and training; (ii) establishing criteria and managing a comprehensive system of licensing and certification of teachers; and (iii) designing effective and impartial forms of education administration and management of education and training institutions for implementation by municipalities (see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 162).

108. Paragraph 6 of Article 8 (Inspection of education) of the Law on Pre-University Education further determines the instruction on how to act after Inspector's report, specifying in sub-paragraph 6.2 that: *"The Ministry may instruct the Municipality to terminate the employment of a teacher appointed contrary to the criteria established in this Law, or who is dismissed due to a medical condition or a court order, or who is otherwise disqualified according to the provisions of this Law or other applicable laws"*. (See Court case [KO145/21](#) Applicant Municipality of Kamenica, cited above, paragraph 163). Based on paragraphs 8, 9 and 10 of Article 5 of the Law on Pre-University Education, MESTI, *inter alia* (i) approves relevant standards; (ii) licenses and accredits institutions; and (iii) acts as a second instance body for the decisions of other educational and training bodies (see Court case [KO145/21](#) Applicant Municipality of Kamenica, cited above, paragraph 164).
109. Therefore, in the light of the foregoing, the Court finds that in the sense of the challenged act, the competency of the Municipalities provided in Article 17 (h) of the Law on Local Self-Government for *"provision of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators"*, falls into the category of "own" competencies in which paragraph 3 of Article 124 of the Constitution mandatorily instructs and constitutes an essential element of what Article 12 of the Constitution describes as "local self-government". Therefore, the competency of Municipalities to organize preschool, primary and secondary education is one of such competencies that according to the Constitution falls within the obligations of paragraph 3 of Article 124 of the Constitution, and in this case, is implemented by the Law on Local Self-Government, applying this constitutional norm correctly. This competency, which the Law on Local Self-Government, calls "own competency", as such in Article 3 of the latter is defined as a competency for which the Municipality is fully responsible in terms of local interest, or in accordance with the law. The Court recalls at this point that the Law on Education in the Municipalities, in paragraph 1 of its Article 4, stipulates that Municipalities have *"full and exclusive powers"*, in relation to the provisions of public preschool, primary and secondary education, including registration and licensing of educational institutions, employment, payment of salaries and training of teachers and administrators. Furthermore, Article 5 of the Law on Education in the Municipalities, has further defined the competencies of Municipalities by stipulating that in addition to the competencies provided in Article 4 of the Law on Education in the Municipalities, includes "special municipal competencies", which for the purposes of the specific case, are such, but not limited in the construction of school facilities, employment of teachers and other school staff, registration, inspection of public health and safety and licensing of preschool educational institutions, payment of managerial staff and other staff employed in accordance with the legislation (see Court case [KO145/21](#) Applicant Municipality of Kamenica, cited above, paragraph 166).
110. Whereas, based on the abovementioned laws, MESTI has competencies under paragraph 1 of Article 5 of the Law on Pre-University Education to retain the main responsibility for planning, setting standards and quality assurance of the pre-university education system, a responsibility which is provided by developing policies and legislation and criteria for teacher licensing. While according to Article 3 of the Law on Education in the Municipalities, the responsibilities of MESTI are defined in policy development and drafting and implementation of legislation for the development of education, including the development of higher education and science in Kosovo, as well as the establishment and management of an overall certification system for all teachers in Kosovo. Also in this last article, there is the improvement of the quality, adequacy and efficiency of education at all levels as well as the inspection of education

(see Court case [KO145/21](#) Applicant *Municipality of Kamenica*, cited above, paragraph 167).

II. Application of the abovementioned principles in the present case

111. The Court recalls that the Applicant's allegations will be assessed pursuant to Articles 12 [Local Government], 123 [General Principles] and 124 [Local Self-Government Organization and Operation] of the Constitution regarding the violation of municipal competencies in the area of public education as provided by Article 5 point d) [Competencies of the Municipalities in Public Education Levels 0, 1, 2, and 3 (Pre-Primary, Primary, Lower Secondary and Upper Secondary)] of the Law on Education in Municipalities, of municipal responsibilities, Article 17 point h) [Own Competencies] of Municipalities, Article 18 [Delegated Competencies] of Municipalities, Article 19 [Extended Municipal Competencies], as well as Article 58 points a) and b) [Responsibilities of the Mayor] of the Municipality of the Law on Local Self-Government, which according to Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI has directly interfered with the responsibilities, competencies, and rights of the Mayor of the Municipality, namely the MED of Prishtina for the appointment of the commission and the approval of the members of the commission when announcing the public vacancy for all vacant positions of directors and deputy directors in USS and LSPS.
112. The subject matter of the constitutional review of the Applicant's Referral is whether Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI violate municipal responsibilities, which responsibilities or competencies are based on the implementation of the principles defined by Articles 12, 123 and 124 of the Constitution and those defined by law. Specifically, the subject matter of the constitutional review of this Referral is whether the specified provisions of the challenged AI are in compliance with the competencies of the municipalities in the area of public education as provided by Article 5 point d) [Competencies of the Municipalities in Public Education Levels 0, 1, 2, and 3 (Pre-Primary, Primary, Lower Secondary and Upper Secondary)] of the Law on Education in Municipalities, the manner of selection of directors and deputy directors of educational institutions as provided by Article 20 of the Law on Pre-University Education and the responsibility of the Mayor of the Municipality as provided by Article 58 point c) of the Law on Local Self-Government and which provisions are in the application of Articles 12, 123 and 124 of the Constitution (see Court case [KO173/21](#), Applicant *Municipality of Kamenica*, cited above, paragraph 221).
113. The Court notes that the Applicant relates his allegations to the relevant provisions of the Law on Local Self-Government that provide for "delegated municipal competencies", "extended municipal competencies" and "responsibilities of the Mayor" - and based on them - the same considers that municipal responsibilities have been violated.
114. Regardless of the Applicant's allegations, the Court in the text below will assess whether Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI comply with Articles 12, 123 and 124 of the Constitution.
115. The Court once again points out Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI, which provides: "*3. The selection commission for educational institutions that are subordinated to the municipality has this composition: 3.1. Two members of the municipality who are proposed by the MED and approved by the Municipal Assembly. The first member is employed by the MED, while the second member proposed by the MED is one of these three: independent education experts, principal of the educational institution with high performance, representative from*

the parents' council at the municipal level with qualification and expertise in the field of education. The member of the commission employed in MED is also the chairman of the commission; 3.2. A member from MES, who is appointed by MES, after receiving official notification, official email from MED."

116. The Court assesses that Article 5, point d) [Competencies of the Municipalities in Public Education Levels 0, 1, 2, and 3 (Pre-Primary, Primary, Lower Secondary and Upper Secondary)] of the Law on Education in Municipalities and Article 20 [The management staff] of the Law on Pre-University Education constitute the legal basis for the issuance of the challenged AI by MEST.
117. The Court points out Article 5 point d) [Competencies of the Municipalities in Public Education Levels 0, 1, 2, and 3 (Pre-Primary, Primary, Lower Secondary and Upper Secondary)] of the Law on Education in Municipalities, provides: "*d) selection of the Director and/or Deputy Director of educational institutions in accordance with legal procedures for the recruitment and legal criteria's determined by MEST from a commission established by the Municipality which two members shall be from the Municipality and one from MEST.*"
118. The Court also points out that Article 20.1 [The management staff] of the Law on Pre-University Education provides: "*The director and deputy director of an educational or training institution shall be appointed based on the provisions of the Law no. 03/L-068 on Education in Municipalities of Republic of Kosovo, of 21 May 2008, based on the criteria set by MEST with a bylaw, with the addition of two (2) representatives of the governing board as observers in the joint committee of appointment*".
119. In the light of the foregoing, the Court assesses that the abovementioned legal provisions of the Law on Education in Municipalities and the Law on Pre-University Education provide: (i) MEST has the right to issue a bylaw on the selection of the director and deputy director of educational institutions in compliance with legal procedures; (ii) MEST, by a bylaw, assigns two representatives of the Governing Council as observers to the joint appointment commission with the Municipality; (iii) A member proposed by MEST is part of the selection commission for educational institutions.
120. In the joint and harmonious reading of the aforementioned provisions, namely Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI, Article 5 point d) of the Law on Education in Municipalities and Article 20.1 of the Law on Pre-University Education, the Court assesses that their content is similar because they both stipulate that directors and deputy directors of educational institutions are selected by a Commission appointed by the Municipal Assembly, which means that Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI do not prescribe something that has not been prescribed before and do not exceed the limits stipulated by Article 5 d) of the Law on Education in Municipalities and Article 20.1 of the Law on Pre-University Education.
121. The Court also assesses that from a harmonious reading of Article 58 point c) [Responsibilities of the Mayor] of the Law on Local Self-Government in conjunction with Article 5 point d) [Competencies of the Municipalities in Public Education Levels 0, 1, 2, and 3 (Pre-Primary, Primary, Lower Secondary and Upper Secondary)] of the Law on Education in Municipalities, it results that the Commission that selects directors and deputy directors of educational institutions should be appointed by the Municipal Assembly in which two members shall be from the Municipality and one from MEST.
122. In addition, in the context of the legal competencies of the Education Inspectorate, the Court notes that based on Law No. 06/L-046 on Education Inspectorate in the Republic of Kosovo, the Education Inspectorate: (i) deals with the supervision of the

implementation of applicable legislation in all institutions that provide education and training services; (ii) performs a control function - controls the compliance of the activity of educational institutions with the applicable legal acts and bylaws; (iii) performs the thematic inspection; (iv) is responsible for supervising and assessing whether educational institutions implement the applicable legislation; and (v) takes other decisions in the cases stipulated by law and administrative instructions (see provisions of Articles 1, 2, 5, 6, 8, 10 and 13 of Law No. 06/L-046 on Education Inspectorate in the Republic of Kosovo).

123. In the light of the foregoing, the Court finds that Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI neither violate the responsibilities of the Mayor of the Municipality of Prishtina nor the responsibilities of the Municipality of Prishtina, because the content of the relevant provision of the challenged AI does not go beyond the legal regulation for the selection of directors and deputy directors in educational institutions.
124. Also in terms of Articles 12, 123 and 124 of the Constitution, the Court finds that Article 6, paragraph 3, points 3.1 and 3.2 of the challenged AI do not violate: (i) the organization and competencies of the basic local self-government of the Applicant; (ii) the right and activity of local self-government of the Applicant guaranteed by the Constitution, law and in compliance with the European Charter of Local Self-Government; (iii) the high degree of local self-government of the Applicant guaranteed by the Constitution and the law; and (iv) own and extended competencies delegated in accordance with the law.
125. In the light of the foregoing, the Court assesses that the relevant provisions (Article 6, paragraph 3, points 3.1 and 3.2) of the challenged AI have not been extended beyond the normative regulation defined by the relevant provisions of the Law on Local Self-Government, the Law on Education in Municipalities, the Law on Pre-University Education, and the Law on Education Inspectorate and they therefore do not affect municipal responsibilities, as guaranteed by Articles 12 [Local Government] 123 [General Principles] and 124 [Local Self-Government Organization and Operation] of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.4 of the Constitution, Articles 20, 40 and 41 of the Law and pursuant to Rule 59 (1) of the Rules of Procedure, on 22 May 2023, unanimously

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that Article 6, paragraph 3, points 3.1 and 3.2 of Administrative Instruction no. 151/2020 of the Ministry of Education, Science, Technology, and Innovation of 22 December 2020, is not in contradiction with paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of Article 123 [General Principles] and paragraphs 2 and 3 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo;
- III. TO NOTIFY this Judgment to the Applicant, the Government of Kosovo, the Ministry of Education, Science, Technology and Innovation, and the Ministry of Local Government Administration;

- IV. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20.4 of the Law; and
- V. TO HOLD that this Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bajram Ljatifi

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.