



European Union  
Election Expert Mission

# **Kosovo 2021**

**Final Report**



## **Early Legislative Elections**

**14 February 2021**

*The Election Expert Missions are independent from the institutions of the European Union. The views and opinions expressed in this report are those of the authors and do not necessarily reflect the official policy and position of the European Union.*



## Final report

### I. SUMMARY

Elections were held for the 120-member unicameral Kosovo Assembly on 14<sup>th</sup> February 2021. As with the four previous legislative elections since Kosovo's 2008 declaration of independence, these were early elections provoked by a political crisis.

The elections were competitive, and campaign freedoms were generally respected. There was a vibrant campaign, except in the Kosovo Serb areas. Despite a very short timeframe and challenges caused by the COVID-19 pandemic, the Central Election Commission (CEC) administered the elections well and in a transparent manner, although problems with Out of Kosovo voting reduced confidence in that part of the process. Election day was assessed by local observers as orderly, with voters participating in high numbers. However, as with previous elections, the process deteriorated during the vote count and a large number of recounts were ordered due to discrepancies in the results protocols. Such long-standing systemic problems, which have been identified in previous EU EOMs, should be addressed to enable Kosovo to fully meet international standards for democratic elections.

These elections were held in an increasingly polarised atmosphere, influenced by the turbulent political developments since the last legislative elections. The main Kosovo Albanian parties, including Lëvizja Vetëvendosje (LVV), the winner of the 2019 elections and frontrunner in the public opinion polls in the run-up to the elections, declared that they would not form pre-election alliances with other Kosovo Albanian parliamentary parties, while some high-profile political figures switched allegiance.

Contestants launched campaign-like activities well before the start of the official campaign on 3<sup>rd</sup> February 2021, at times involving relatively sizable gatherings of supporters and flouting the COVID-19-related public safety regulations in place. In general, contestants were able to campaign freely. The political parties focused their messages on economic and social matters as well as on anticorruption measures and the rule of law. The campaign in the ten Kosovo Serb majority areas was more subdued and the campaign activities of opposition parties to the dominant Kosovo Serb political party, Srpska Lista (SL), were barely visible. Representatives of these parties claimed that their candidates and supporters were fearful due to pressure and intimidation experienced during the previous elections. The campaign in other non-majority communities focused on local issues including the official use of languages and economic development.

The electoral legal framework remains essentially unchanged since the 2014 early legislative elections, despite the recommendations of multiple EU Election observation missions. It maintains significant shortcomings, such as gaps, ambiguities and inconsistencies which allow for inconsistent and selective implementation and circumvention, by the CEC and the courts among others. This unduly impacts on important aspects of the election process, such as candidate certification, voter registration and the election results.

*\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.*

Almost all prior EU recommendations remain unaddressed, including introducing clear provisions on challenging election results at all levels, extending the timeframe of the process in the case of early elections, prescribing reporting of the incomes and expenditures of contestants both prior to and within 30 days of election day, and further regulating the purchasing of airtime by contestants to ensure non-discriminatory conditions.

All 28 political entities applying were certified. However, a total of 47 candidates of six political entities, including the carrier of the LVV list Albin Kurti, were denied certification due to criminal convictions during the past three years, in line with a binding Constitutional Court judgement. Of the 47 decertified candidates, three were eventually certified, following a Supreme Court decision, 20 were replaced by their nominating political entities, while 24 were deleted from the lists without replacement. The Law on General Elections (LGE) disqualifies individuals from the right to stand, following a final conviction for any criminal offence over the past three years. This is disproportionate and at odds with international standards.

Despite the very short timeframe for the early legislative elections, the CEC electoral preparations were completed on time and the elections were technically well prepared. The election process prior to election day was well administered and transparent with the noticeable exception of the Out of Kosovo (OoK) registration and voting. The more polarised political atmosphere had an impact on the CEC's decision-making as the Commission is formed by representatives of political parties and at times simple majority voting had to be applied as it was not always possible to make decisions in a consensual manner. There were significant disagreements within the CEC between the representatives of the LVV and the other parties. In addition, the acting president Vjosa Osmani, who was at the top of the LVV list, also publicly criticised the CEC chair in the run-up to election day, accusing her of bias and unprofessional conduct.

The CEC certified the final voter list (FVL) of 1,794,862 voters on 2<sup>nd</sup> February 2021. The CEC made several decisions to enhance the accuracy of the FVL, including clearing the list of persons with UNMIK documents only, and deleting the names of 11,000 deceased people. Nevertheless, the FVL still contains a high number of deceased persons, and the large number of people on the list who permanently reside abroad (who have a legal right to be included) leaves the voting process vulnerable to potential abuse due to shortcomings in the way this part of the process is administered.

The Out of Kosovo voter registration and voting period were negatively affected by the short time frame and at the same time there were approximately three times more applicants in comparison to previous elections. The CEC was unable to review all 130,168 applications in a timely manner mainly due to the newly introduced verification of applicants through phone calls. Therefore, unlike the regular voter list, the OoK voter list was unavailable for public scrutiny during the confirmation and challenge period from 25<sup>th</sup> to 27<sup>th</sup> January 2021. The OoK final voter list, which contained 102,100 voters, was not compiled and certified by the CEC until 2<sup>nd</sup> February 2021. The rejected applicants had just one day to appeal against the results of the OoK registration process, which limited their right to effective remedy.

Overall, some 56,600 postal votes were included in the results, representing more than six per cent of all votes cast. The CEC accepted only the postal items that arrived in Kosovo within the deadline of 12<sup>th</sup> February 2021; some 9,000 mail packages arrived to the CEC after the deadline. The main reason given for rejecting OoK votes was the fact that potential voters were not successfully registered, while group voting was also a significant problem. Out of the 79,201 votes sent from outside Kosovo, 56,600 were approved and counted. The process of verification of OoK votes was more difficult to observe, and the process was criticised by the representatives of the LVV for not being orderly and transparent.

The campaign finance regulatory framework contains limits on donations and expenditure, reporting, disclosure, oversight and sanctions. The law prescribes reporting of campaign incomes and expenditures for a period of 90 days prior to election day. However, in line with past practice, the CEC limited the reporting requirement to only the incomes and expenditures incurred during the 10 days of the official campaign, which significantly reduced transparency and accountability.

Kosovo's vibrant media offered contestants ample opportunities to present their campaign messages and provided voters with access to diverse political views. While the public broadcaster complied with its legal obligations and granted contestants fair and equitable coverage in its broadcasts, it failed to be impartial in its online posts. In a positive development, the Independent Media Commission (IMC), the broadcast media regulatory body, actively addressed media violations during the short campaign period, which were related mainly to the media's lack of respect of the rules on paid/sponsored airtime, a long-standing issue in election campaigns in Kosovo.

The Internet is a key platform for Kosovars to access information with around 60 per cent of the population using social media, primarily Facebook. Many contestants used paid advertising on social platforms, but its costs were unknown due to a lack of transparency and the lack of regulations in place. The LVV was able to benefit from its strong online presence and well-developed abilities to appeal to voters via social media. At times, clearly misleading election-related stories were published in the online media, and the personal data and privacy of citizens were not sufficiently protected in several stages of the process.

Election day was observed by a high number of political party observers (some 29,600) and civil society observers. In addition, a high number of diplomats from the EU diplomatic watch, US and UK embassies observed the election day process, contributing to the scrutiny of the election. Voting was conducted in 2,382 polling stations located in 888 polling centres throughout Kosovo. Based on reports from domestic observer groups and media, the voting was orderly and calm. The main procedural problems reported were similar to previous elections, such as a high number of assisted voters, numerous instances of family voting, and voting with invalid documents including UNMIK IDs and foreign IDs.

The CEC decided to recount the votes from 564 polling stations (almost 24 per cent) after their internal audit and check of all polling station results. Such a high number of recounts shows a lack of professionalism of polling station committees and/or attempts to commit election fraud. The process of recounting ballots and verification and counting of conditional and OoK ballots lasted

until 18 days after the election day. The recounts revealed some significant discrepancies regarding the number of preferential votes cast for independent candidates; however, the discrepancies in the number of votes for individual political entities were insignificant.

The Election Complaints and Appeals Panel (ECAP) is the main forum for dispute resolution. Some 30,000 unsuccessful applicants for OoK voter registration were denied effective remedy. Initially the ECAP announced that it would not accept complaints filed by e-mail, which was against the law and the only feasible means due to time constraints; after receiving over 1,000 complaints by email, the ECAP dismissed some 750 for not containing the complaint as an attachment, which is not a legal requirement.

Based on the final (uncertified) results, the LVV won the elections with 49.95 per cent of the votes, which translates into 58 of the 120 seats in the Kosovo Assembly, followed by the Democratic Party of Kosovo (PDK), the Democratic League of Kosovo (LDK) and the Alliance for the Future of Kosovo (AAK). Altogether, the Kosovo Albanian parties received 86.6 per cent of total votes casts. The three Kosovo Serb parties received less than 5.3 per cent of votes, of which Srpska Lista (SL) won 5 per cent, securing all 10 guaranteed seats for the Kosovo Serb community. Following the counting of some 56,600 votes from OoK, the LVV secured two more seats in the final results, as 78.5 per cent of votes from the diaspora were in support of the LVV.

One development threatened to upset Kosovo's delicate Constitutional settlement that guarantees representation to the various non-majority communities: the results, giving several of the seats reserved for the non-majority communities to two new political entities, were not accepted by competing non-majority parties who alleged that support for those entities had been orchestrated by the SL among Kosovo Serb voters. The recently formed Roma Initiative (RI) and Ujedinjena Zajednica-Adriana Hodzic (UZ – AH) received an extremely high number of votes in some Kosovo Serb majority municipalities in comparison to the number of votes for Kosovo's Roma or Bosniak political entities, cast during the previous parliamentary elections, while votes for Kosovo Serb entities fell. The RI initially won one seat for the Kosovo Roma community as well as the extra seat guaranteed for the most successful party within Kosovo's Roma, Ashkali and Egyptian communities. Following an appeal against the final results, ECAP cancelled a number of votes from Serb-majority areas, which resulted in the UZ-AH losing its seat and the RI losing one seat.

## **II. INTRODUCTION**

Following the ruling of the Constitutional Court of 21<sup>st</sup> December 2020, the acting president dissolved the parliament and announced that snap legislative elections would be held on 14<sup>th</sup> February 2021. The EU deployed an EEM composed of three experts who arrived in Kosovo on 21<sup>st</sup> January 2021. The purpose of the EEM was to collect and analyse factual information, assess and report on the electoral process against international commitments, standards and good practice for democratic elections. The mission also formulated recommendations to improve future electoral processes and assessed to what extent the state of implementation of recommendations made by previous missions have been implemented. Prior to this election, the EU deployed EOMs to elections in Kosovo in 2013 (municipal), 2014 (legislative), 2017 (municipal and early legislative) and 2019 (early legislative).

### III. POLITICAL CONTEXT

Kosovo held its last legislative elections in October 2019; the LVV won the elections with 26.27 per cent of the votes and the LDK came second with 24.55 per cent. Following a prolonged vote counting and appeals process as well as lengthy coalition negotiations, the government headed by Albin Kurti from the LVV took office on 3<sup>rd</sup> February 2020.

However, coalition partners faced disagreements, and the Kurti government was dismissed through a no confidence vote on 25<sup>th</sup> March 2020, after less than two months in office. On 30<sup>th</sup> April 2020, the president gave Avdullah Hoti a mandate to form a government as prime minister by decree. The decree was contested by the LVV MPs in the Constitutional Court on the very same day. On 1<sup>st</sup> May 2020, the Constitutional Court suspended the decree until a final decision could be taken and on 28<sup>th</sup> May 2020, reached the decision that the decree was constitutional, and the President could give a candidate from the second party a mandate as Prime Minister of Kosovo.

A new government led by Prime Minister Hoti assumed office on 3<sup>rd</sup> June 2020. The parliament voted in Hoti's government in a coalition of LDK, SL, AAK, NISMA and non-Serb non-majority MPs. With only 61 votes out of 120 in the Kosovo Assembly, this government was unable to rely on this majority for most of its mandate.

On 21<sup>st</sup> December 2020, the Constitutional Court pronounced its verdict on the referral of the LVV, which had contested the decisive vote of MP Etem Arifi for the Hoti government in June. Although he had been ordered to serve a prison sentence for fraud at that time, Mr. Arifi had participated in the Assembly session and had cast his vote in favour of the government, helping to reach the minimum majority of 61 votes. His vote was declared invalid by the Constitutional Court, resulting in the dissolution of the parliament and early elections within 40 days of their announcement.

Meanwhile, on 5<sup>th</sup> November 2020, President Hashim Thaçi stepped down to face war crimes charges before the Specialist Chambers. The indictments also included several other high-ranking politicians, including Kadri Veseli, the leader of the PDK, one of the main opposition parties. After the resignation of President Thaci, Assembly Speaker, Vjosa Osmani, assumed the post of Acting President. Against the background of the fragile political situation and the strong polarisation across the political spectrum, Acting President Osmani called for early general elections to be held on 14<sup>th</sup> February 2021, while also running for election herself on the LVV list.

The elections took place in a highly polarized atmosphere where the winning party of the 2019 elections and the leader in all pre-election public opinion polls, the LVV, was in opposition to other Kosovo Albanian parties. Former Prime Minister and the leader of the LVV, Albin Kurti, was among a number of prospective candidates who were not eligible to run for parliament based on the recent Constitutional Court decision. Notwithstanding, individuals with a criminal conviction, including Mr Kurti, are not disqualified from holding any public office, including the offices of Prime Minister and Ministers.

#### **Main Political Actors**

In these elections, 28 political entities (political parties, coalitions, initiatives) were certified to participate by the CEC. The numbers of entities registered by community were 7 Kosovo Albanian, 3

Kosovo Serb, 5 Kosovo Bosniak, 2 Kosovo Gorani, 3 Kosovo Ashkali, 4 Kosovo Roma, 2 Kosovo Egyptian and 2 Kosovo Turkish. Ten new political entities ran in these elections.

The three largest parties, the LVV, LDK and PDK, ran in these elections on their own. Vjosa Osmani, with her list of candidates called “Guxo”, joined the LVV before the elections. Similarly, the LDK included the list of the AKR party within its own list. The prime ministerial candidates for the main parties were the leader of the LVV, Albin Kurti, the current prime minister and the LDK list leader, Avdullah Hoti, the leader of the PDK, Enver Hoxhaj, and the leader of the NISMA, Fatmir Limaj. In addition to the candidate for Prime Minister, VV also ran with a candidate for President, Ms. Vjosa Osmani-Sadriu. For the first time, the AAK did declare that they were running in the elections with leader Ramush Haradinaj for the post of President of Kosovo.

The Kosovo Serb community was represented in the outgoing Assembly by ten SL members. The other two Kosovo Serb parties which took part in these elections were the newly registered GI za Slobodu Pravdu i Opstanak (GI SPO) and Srpski Demokratski Savez (SDS).

#### **IV. IMPLEMENTATION OF PREVIOUS EU EOM/EEM RECOMMENDATIONS**

##### **Almost all recommendations issued after the 2017 and 2019 legislative elections remain unaddressed**

Prior to the 2019 early legislative elections, in May 2019, an ad hoc parliamentary Committee for the Improvement and Strengthening of the Electoral Process was established. It functioned for a few months, but it did not produce any draft legal amendments. Following the 2019 elections, no initiative was taken whatsoever on electoral reform. None of the 23 recommendations made by the EU EOM for the 2019 early legislative elections was implemented.

Subsequently, almost all prior recommendations remain unaddressed, including introducing clear provisions on challenging election results at all levels, calling early elections with a minimum of two months’ notice, prescribing reporting of incomes and expenditures of contestants during the campaign period as well as within 30 days of election day, further regulating the purchasing by contestants of airtime to ensure non-discriminatory conditions, improving the design of the ballot, enhancing voter education, and introducing a non-partisan position of the Polling Station Committees (PSCs). Some ad hoc action was taken by the CEC to improve the accuracy of the VR but this was not prescribed by law and does not address the recommendation in a sustainable manner.

#### **V. LEGAL FRAMEWORK AND ELECTORAL SYSTEM**

##### **The legal framework, as it is currently implemented, does not ensure the integrity and accountability of voter and candidate registration**

The 120 members of the Assembly are elected for a four-year term in a single nationwide constituency under a proportional representation system with preferential voting for up to five candidates. One hundred seats are allocated to the parties, coalitions, citizens’ initiatives and independent candidates proportionally to the number of valid votes obtained. The political entities representing the Kosovo majority community are eligible for seats if they obtain at least five per cent of the valid votes cast.



Twenty seats are reserved for non-majority communities, including ten for the Kosovo Serb community, three for the Kosovo Bosniak, two for the Kosovo Turkish and one each for the Kosovo Gorani, Kosovo Roma, Kosovo Ashkali and Kosovo Egyptian communities as well as an additional seat for the community with the highest number of votes among the latter three.

The Constitution states that international human rights agreements and instruments are directly applicable and supersede Kosovo laws and other acts of public institutions.<sup>1</sup> The legislative elections are primarily regulated by the 2008 Constitution and the 2008 Law on General Elections (the LGE, last amended in 2010) and supplemented by CEC regulations.<sup>2</sup> The electoral legal framework remains essentially unchanged since the 2014 early legislative elections, with the exception of campaign finance.

Overall, the legal framework maintains key shortcomings, including gaps, ambiguities and inconsistencies which allow for uneven and selective implementation and circumvention, by the CEC and the courts among others, on significant issues such as candidate certification, voter registration and the election results. Namely, the LGE, CEC regulations and ECAP rules of procedures contain ambiguous and conflicting legal provisions, including on candidacy eligibility, certification of non-majority political entities, dispute resolution, challenges of election results and ordering recounts and repeat elections.<sup>3</sup> In addition, important aspects of the electoral process including political party registration and operation, counting and tabulation, ballot recounts, invalidation of results, and campaign rules are contained in the CEC regulations rather than in the primary law;<sup>4</sup> this does not safeguard against frequent, last minute changes, contrary to good practice.<sup>5</sup>

Furthermore, the Constitution fails to regulate some issues sufficiently which may trigger early legislative elections.<sup>6</sup> Namely, after a successful vote of no confidence against the government, the President has the discretionary power to dissolve the Assembly, but the Constitution does not explicitly provide for alternative attempts to form a government, should the President decide not to dissolve the Assembly. Moreover, after legislative elections, or when the Prime Minister resigns or the government falls, the President is required to nominate a PM after consultation with the majority party or coalition that won the majority of seats in the Assembly. This has been subject to inconsistent interpretation to exclude or include coalitions formed in the Assembly after the elections. However, the Constitution

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<sup>1</sup> Kosovo is not a signatory state of any international treaties. While the European Court of Human Rights (ECtHR) has no jurisdiction over Kosovo, article 53 of the Constitution obliges the authorities to interpret the human rights and fundamental freedoms in accordance with the judgments of the ECtHR. Since Kosovo joined the Venice Commission on 11<sup>th</sup> June 2014, the 2002 Code of Good Practice in Electoral Matters of the Venice Commission is applicable.

<sup>2</sup> Other applicable legislation includes the laws on Financing of Political Entities and Election Campaigns (2019), on Political Parties (2004), the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo (LPPRC), the Law on Languages, relevant provisions of the Criminal Code and the Law on Administrative Proceedings, the ECAP and the CEC rules of procedure.

<sup>3</sup> For instance, on candidate certification, articles 122.1b and 26.6 of the LGE, articles 10.4 and 10.5 of the ECAP Rules of Procedure (Rule No.2/2015) and article 6.8 of CEC Regulation No. 8/2013.

<sup>4</sup> Including CEC Regulations No.1/2013, N.6/2013, No.11/2013 and No.13/2013.

<sup>5</sup> Section II.2.a. of the Venice Commission Code of Good Practice in Electoral Matters states: “Apart from rules on technical matters and detail, which may be included in regulations of the executive, rules of electoral law must have at least the rank of a statute”; See also paragraphs 35, 63, 65 and 67.

<sup>6</sup> In addition, there are no *Travaux Préparatoires* of the Constitution, which could clarify some issues.

requires consultations rather than agreement and it does not set any deadline for this process to be concluded. Some Constitutional Court judgments on issues emerging from these gaps raised concerns among EU EEM interlocutors about the court possibly exceeding its competence or using wide discretionary powers to interpret the law.<sup>7</sup>

## VI. ELECTION ADMINISTRATION

### **The election process was well administered and transparent with the noticeable exception of the Out of Kosovo voting**

The Kosovo election administration consists of the CEC, 38 Municipal Election Commissions (MECs) and 2,382 Polling Station Committees (PSCs). The CEC is composed of 11 members, including the Chair, who is appointed by the President of Kosovo from among the judges in the Supreme Court and the appellate courts. The current Chair, Valdete Daka, was appointed in 2010 and her second mandate was approved by President Hashim Thaci in 2017. In addition to the non-partisan chairperson, there are two appointees from the LVV, and one each from the LDK, PDK, AAK, Nisma, SL, VAKAT (Kosovo Bosniak), KDTP (Kosovo Turkish) and Kosovo's Roma, Ashkali, and Egyptian communities.

In contrast to previous elections, the CEC had to make several important decisions using a simple majority vote rather than by the usual consensus, as there were significant disagreements among the representatives of the leading the LVV party and other majority Kosovo Albanian parties. Both LVV CEC representatives criticised the CEC Chair for being against LVV proposals related to OoK voting and the certification of candidates. Significantly, the Acting President, Vjosa Osmani, who was at the top of the LVV list for the Kosovo Assembly, made public statements accusing the CEC Chair of bias and unprofessional conduct in leading the CEC.

Generally, the CEC operated in a transparent manner. The meetings where decisions were taken were open to the public and the decisions were generally published on the CEC website, although some decisions were occasionally updated later. Despite the very short time frame of 39 days, and challenges posed by the COVID-19 pandemic, the electoral preparations were completed on time and the elections were technically well prepared. The election process prior to election day was well administered and transparent with the noticeable exception of the registration and voting of Out of Kosovo voters.

Ahead of the election, the CEC prepared a report based on evidence gathered during the recount of some 80 per cent of polling stations in 2019 and identified 346 polling stations where the conduct of polling stations staff had been reported to office of the prosecutor. This was attributed to some extent, to a lack of proper training, especially for Chairpersons of PSs, as well as to intentional incorrect decisions by PS staff. However, no new measures nor extra training activities were taken by the CEC to tackle this recurring shortcoming in the election process prior to these elections.

These were the first legislative elections in Kosovo where the OSCE did not provide any technical assistance to the CEC. In previous elections, the OSCE deployed staff in an advisory role to the

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<sup>7</sup> Constitutional Court judgments on [Competences of the President \(01.07.2014\)](#), [nomination of Hoti as PM \(01.06.2020\)](#), [vote of confidence to MP Hoti's government-MP Arifi's ineligibility \(21.12.2020\)](#)

Municipal Election Commissions (MECs) and all Polling Stations Committees in the four Kosovo Serb municipalities in northern Kosovo.

## VII. VOTER REGISTRATION

### **Despite some improvements the voter register still lacks accuracy**

Every citizen who has reached the age of 18 has a right to vote guaranteed by the Constitution.<sup>8</sup> Voter eligibility is even more inclusive, with Kosovo legislation granting the right to vote also to non-citizens who would be eligible for Kosovo citizenship.

Kosovo has a passive voter registration system whereby the preliminary and final voter lists are compiled by the CEC, based on the extracted records provided by the Kosovo Registration Agency (CRA) of the Ministry of Internal Affairs. The final voter list (FVL) was certified by the CEC on 2<sup>nd</sup> February 2021 and it includes 1,794,862 voters. This figure does not include some 102,100 voters who registered for OoK voting as most of them were excluded from the FVL and added to the special voter list for OoK voting.<sup>9</sup>

The CEC made several decisions to enhance the accuracy of the FVL but no system is in place to ensure that all deceased people on the voter list are removed. On a positive note, the CEC deleted some 11,000 deceased people from the FVL in advance of the elections; it also removed 122,421 persons in possession of UNMIK cards, those who never obtained any of the Kosovo documents necessary to identify voters in the polling stations. According to the CRA, there were 1,682,187 valid Kosovo ID cards in circulation issued by December 2020.<sup>10</sup> An unknown but assumed to be smaller percentage of Kosovo Serb residents in northern Kosovo still do not have Kosovo ID cards and were therefore unable to participate in these elections. The Kosovo voter list contains a high number of people who permanently reside abroad as the vast majority of diaspora Kosovars remain lawfully registered in the civil registry, which serves as a basis for the voter list. The high number of diaspora residing permanently abroad and deceased voters on the voter list makes the voting process vulnerable to potential abuse, negatively affecting confidence in the process. However, in the absence of any credible data on the diaspora population nor on the number of deceased people, it is not possible to make a full assessment of the scale of the shortcomings in the voter list and its overall accuracy.

The number of registered voters had previously been continuously growing between elections as the number of new voters who turned 18 and the number of newly registered citizens always outnumbered the total number of voters removed from the voter list due to death or renounced citizenship. However, because the CEC decided to clear the list of persons in possession of only UNMIK documents, the Final Voter List for the 2021 elections contains fewer voters than the 2019 voter list.

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<sup>8</sup> Voters who are incapacitated to act/vote by a decision of the courts are excluded from the voter list.

<sup>9</sup> Based on the law, voters who are in the CRA and registered to vote OoK are excluded from the FVL compiled by the CEC. There are two different categories of voters with regards to voter registration: OoK voters who are in the CRA database and included on the provisional voter list, and those OoK voters who are not in the Kosovo voter list but who are entitled to vote after being successfully registered in the OoK voter list.

<sup>10</sup> As per the rules of the CEC, the voters list must be cleaned of voters who “are incapacitated to act/vote” by a decision of the courts. This requires the Kosovo Judicial Council (KJC) to communicate to the CEC the identity of these persons. Based on the KJC list, the CEC has cleaned some 150 voters from the voter list.

## Out of Kosovo voting

The Out of Kosovo voter registration and voting period was negatively affected by the short time frame and at the same time there were approximately three times more applicants in comparison to previous elections, widely thought to be a result of a campaign by the LVV who are by far the largest beneficiaries of OoK voting.<sup>11</sup> Voters had only 12 days to apply for registration in the OoK voter list and the CEC was unable to review all 130,168 applications in a timely manner. Therefore, unlike the regular voter list, the OoK voter list was unavailable for public scrutiny during the confirmation and challenge period, from 25<sup>th</sup> to 27<sup>th</sup> January 2021. The OoK final voter list was not compiled until 2<sup>nd</sup> February 2021 and subsequently certified by the CEC. The rejected applicants had only one day to appeal against results of the OoK registration process which significantly limited their right to effective remedy.<sup>12</sup>

The CEC introduced a somewhat arbitrary requirement - phone call verification of applicants/voters. The CEC recruited a high number of personnel working in shifts to call/verify all applicants. Despite a significant effort, some 37,896 applicants were not verified by phone call but were nevertheless confirmed, illustrating the inadequacy of this measure as a safeguard against fraud. Out of all those who were called, only some 290 applications were not approved by the CEC, as the persons contacted during the verification confirmed that they had not applied. The initial CEC decision not to register applications in the case of applicants who did not answer the CEC calls, would not have been based on the law and would have led to the disenfranchisement of many voters.

After evaluating 130,168 applications for registration as voters outside Kosovo that the CEC received between 13<sup>th</sup> and 21<sup>st</sup> January 2021, 102,100 were approved. The main reasons for the rejection of the remaining applications, were that applicants were not able to prove their identity, did not meet the criteria of legal capacity, or did not sign their applications.

The number of voters who were registered for OoK voting was significantly higher compared to previous elections.<sup>13</sup> OoK voting started on the same day as the voting in Kosovo (one day later than originally foreseen) but only after the approved ballot paper and booklet with candidate lists were published on the CEC website.<sup>14</sup> The vast majority of applicants (almost 70 per cent) were from Germany and Switzerland.<sup>15</sup> There was a significant decrease in applications from Serbia (only 160 applications were approved out of less than 300). This decrease can be partially explained by the issue of non-recognition of the respective postal services and a previous decision of the courts not to count ballots from Serbia that were delivered and posted inside of Kosovo.<sup>16</sup>

The ten day voting period (2<sup>nd</sup> -12<sup>th</sup> February 2021) for Out of Kosovo is extremely short *and leads to*

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<sup>11</sup> The number of applicants for OoK voting increased from 20,354 for the 2017 legislative elections to 40,313 in 2019 and to 131,500 for the 2021 legislative elections.

<sup>12</sup> Only some 100 applicants successfully appealed against rejections of their applications to the ECAP.

<sup>13</sup> 102,100 approved OoK voters in 2021 compared to 35,087 approved voters in 2019.

<sup>14</sup> The OoK started on the same day, but the ballot paper was certified at around 6 pm, so the voters could only download it and start voting after that time.

<sup>15</sup> These are the seven countries with the higher number of registered OoK voters: Germany 43,049, Switzerland 26,686, Austria 4,758, France 4,164, Sweden 4,069, Italy 3,487, UK 2,448 and others.

<sup>16</sup> The CEC representative of Srpska Lista did not provide any explanation for such a significant decrease in the number of applications from Serbia. In 2019, the OoK votes from Serbia were delivered to Kosovo and posted at a Kosovo post office.

*disenfranchisement of voters.* The CEC decided to set the deadline for receiving OoK envelopes/ballots for 12<sup>th</sup> February 2021 based on the Constitutional Court decision of 2<sup>nd</sup> February 2021 to accept votes from Out of Kosovo only if these were received one day prior to election day. The CEC representatives of the LVV criticised the decision as the deadline could have been set for 13<sup>th</sup> February 2021, as votes would only be counted from 7pm on election day.<sup>17</sup> A Constitutional Court decision, which overrules the Supreme Court decision of 2019, refers to the LGE as a basis for its decision; however, during the previous elections, the Supreme Court ruled that OoK votes should be accepted and counted if they were posted prior to election day, despite arriving at the post office several days afterwards, during the recounting and counting process at the Counting and Results Centre. More than 9,000 mail packages were received by the CEC after the deadline.

In addition, there was a controversy related to the acceptance of the fast delivery courier services (such as DHL, UPS, TNT) which do not deliver their mail to a CEC post box but rather to a specific office or person. The CEC Secretariat reasonably decided that the express shipments should be kept until authorized CEC officials picked them up and transported them to the premises where the OoK mail was stored until one day before the election.

## VIII. REGISTRATION OF CANDIDATES

### **Controversies over the decertification of convicted candidates and the allegations about non-genuine non-majority candidate lists**

The right to stand for election is granted to all eligible voters. Certain public office holders, including judges, military and law enforcement officers, diplomats and heads of independent agencies, are required to resign in order to stand. The LGE disqualifies those convicted for any offence for three years after the final court decision.<sup>18</sup> While exclusion of offenders from parliament serves a legitimate aim, disqualification regardless of the gravity of the crime is disproportionate and at odds with international standards.<sup>19</sup> What is more, the LGE is not in line with the Constitution, which requires a court decision explicitly depriving suffrage rights, nor with the Criminal Code which disqualifies only those convicted for electoral offences or offences punishable by imprisonment for over two years. The Constitution also provides that fundamental rights and freedoms guaranteed may only be limited by law.

***Recommendation: To prescribe candidate ineligibility only for a final criminal conviction for serious criminal offences and pursuant to a court decision explicitly depriving the convicted individual of the right to stand. To harmonize the applicable provisions in the election law and the criminal code.***

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<sup>17</sup> The majority of the OoK voters voted LVV in the previous legislative elections.

<sup>18</sup> See article 45.1 of the Constitution, article 29 of the LGE and article 60 of the Criminal Code.

<sup>19</sup> Section I.1.1.d of the Venice Commission Code of Good Practice in Electoral Matters states that: “i. provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions: ii. it must be provided for by law; iii. the proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them; iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence; v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.” See also paragraphs 137-139, 150-151 of the Venice Commission Report Exclusion of Offenders from Parliament.

To contest the elections, political parties, coalitions, citizens' initiatives and independent candidates have to be certified by the CEC as political entities. While registered political parties are certified automatically, non-registered ones are required to apply at the latest 60 days prior to elections, thus rendering impossible the certification of new parties, in case of early elections. Non-parliamentary parties, including those representing non-majority communities, are required to pay a certification fee of EUR 2,000 and submit 1,000 signatures of voters. Contrary to international good practice, a voter may sign in support of only one list.<sup>20</sup> Certified political entities are required to submit their candidate lists for certification. A 30 per cent gender quota is applicable both to candidate lists and the allocation of seats in the Assembly, supplemented by a placement requirement for candidate lists.

The CEC is mandated with political party registration and certification of political entities and candidate lists for elections. A total of 28 applying political entities and 1,052 candidates were certified. The CEC managed the candidate registration well, in spite of a compressed timeframe and disputes against the decertification of convicted candidates. Of these, seven represent the Kosovo Albanian community, three the Kosovo Serb community, five Kosovo Bosniak, four Kosovo Roma, two Kosovo Egyptian, three Kosovo Ashkali, two Kosovo Turkish and two Kosovo Gorani.

Prospective candidates are required to sign a certification form confirming that they meet all eligibility criteria but no sanctions were imposed for false declarations by candidates not meeting the legal requirements. The CEC is required to verify the eligibility of candidates, including by requesting information from relevant state institutions.<sup>21</sup> Following a CEC inquiry, the Kosovo Judicial Council (KJC) submitted a list of 47 convicted candidates in nine lists.<sup>22</sup> Pursuant to a CEC request, three lists replaced 20 convicted candidates.<sup>23</sup> Subsequently, the CEC voted to de-certify the six lists which did not comply, including the LVV list and its carrier, former PM Albin Kurti.<sup>24</sup> Following complaints, the six lists were certified without their 24 convicted candidates but they refused to re-order the remaining candidates, in practice allowing voters to vote for the decertified candidates.<sup>25</sup> In line with

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<sup>20</sup> Paragraph 77 of the 2010 ODIHR and Venice Commission Guidelines on Political Party Regulation: “in order to enhance pluralism and freedom of association, legislation should not limit a citizen to signing a supporting list of only one party. Such a limitation is too easily abused and can lead to the disqualification of parties who in good faith believed they had fulfilled the requirements for registration.”

<sup>21</sup> Including the MFA, Police, Customs Office, Kosovo Judicial Council and other public institutions.

<sup>22</sup> In the 2017 municipal elections, the Supreme Court ruled that convicted individuals are not deprived of the right to stand, unless the court imposes disqualification as a supplementary sentence, as required by the Constitution. While the Court ordered the CEC to certify three candidates who filed appeals, the CEC certified all 87 initially decertified nominees. For the 2019 legislative elections, the CEC did not inquire whether nominees had criminal convictions and no candidates were decertified on such grounds.

<sup>23</sup> The PDK, the LDK and the SL complied while the LVV, the AAK, the Social Democratic Initiative-NISMA, the Democratic Party of Ashkali of Kosovo (PDAK), the Ashkali Party for Integration (PAI) and the United Roma Party of Kosovo (PREBK) did not replace their candidates.

<sup>24</sup> In 2018, Kurti received a suspended sentence of 15 months imprisonment for throwing tear gas in the Assembly, in protest against border demarcation with Montenegro which the LVV claimed deprived Kosovo of territory. The LVV protested in the same way against the establishment of the Association/Community of Serb-majority Municipalities.

<sup>25</sup> The ballot contains a list of the political entities on the left-hand side and boxes numbered from 1-110 on the right-hand side. Voters are provided with a brochure with the 28 numbered candidate lists in order to identify their preferred candidates and mark the corresponding numbers on the ballot. Following de-certification of the convicted candidates, the LVV and AAK lists are missing three names each, the NISMA 12 and the PDAK

the law, the CEC announced that ballots with preferential votes cast for de-certified candidates would count only for the political entity.

A candidate of a political entity representing the Kosovo Bosniak community was decertified by the ECAP on the grounds that he was ethnic Albanian rather than Bosniak.<sup>26</sup> This decision was not in line with the law, which neither requires that candidates of a non-majority political entity belong to the specific community nor that they submit any formal ethnic self-declaration.<sup>27</sup> Moreover, EU EEM interlocutors alleged that some political entities registered as representing non-majority communities did not genuinely represent that community but aimed to take undue advantage of the guaranteed seats in the Assembly in order to bolster the political support of a different community.<sup>28</sup> Nevertheless, there are no clear and objective criteria in the law to determine whether a political entity represents a non-majority community. Also, voters belonging to a certain non-majority community are not limited to voting for a political entity representing their community.

## IX. CAMPAIGN ENVIRONMENT

### **Competitive and vibrant campaign in most of Kosovo; there was a lack of competition in the Kosovo Serb community**

A 10-day campaign period for early elections (compared to 30 days in the case of regular elections) began on 3<sup>rd</sup> February 2021 and lasted until 12<sup>th</sup> February 2021, followed by one day of campaign silence prior to election day on 14<sup>th</sup> February 2021. Contestants launched campaign-like activities well before 3<sup>rd</sup> February 2021. All major contesting entities ran *de facto* campaigns, including relatively sizable gatherings of supporters as of the second half of January, following a partial lifting of the COVID-19 pandemic-related ban on public meetings.<sup>29</sup> Some entities launched such activities even before 15<sup>th</sup> January 2021, as seen on the social media posting of parties, at times disregarding the public safety regulations in place.

These were competitive elections and the campaign was vibrant, consisting of a high number of rallies and door to door meetings, despite some restrictions related to the pandemic. Contestants' campaign activities at times involved relatively sizable gatherings of supporters, flouting the COVID-19 related

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and the NDS one name each. For instance, LVV voters could still mark box number one for the de-certified candidate Kurti.

<sup>26</sup> Namely, Emin Neziraj of Nova Demokratska Stranka (NDS) (*See dispute resolution*).

<sup>27</sup> See section 2.2.4.c [Venice Commission Code of Good Practice](#): “Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority.”

<sup>28</sup> The allegedly non-genuine non-majority entities were the Kosovo Bosniak United Community - Civic Initiative (UZ - AH) led by Adriana Hodžić and the Roma initiative (RI) led by Gazmend Salijević.

<sup>29</sup> Prior to 15<sup>th</sup> January 2021, meetings in closed spaces were prohibited, as were meetings of more than 4 persons outside, as a measure aimed at containing the spread of COVID-19; as of 15<sup>th</sup> January 2021, meetings of up to 30 people in closed spaces and gatherings of up to 50 people in public places outdoors were allowed. Measures aimed at containing the spread of the virus included wearing masks in private and public institutions, social distancing, etc. There was also a curfew from 21:30 to 05:00 and a ban on entry/exit into/from high-risk municipalities (i.e. with over 150 infected persons per 100,000 inhabitants per week).

public safety regulations in place.<sup>30</sup> A lot was at stake for many parties, leading to a strained pre-election environment among Kosovo Albanian parties and harsh rhetoric.

Contrary to previous elections, the main parties did not form pre-election coalitions. Kosovo Albanian contestants were able to campaign freely, within the limits imposed by public health limitations, with the exception of two small incidents related to the visits of Albin Kurti in Skenderaj/Srbica and Mitrovica North (together with Vjosa Osmani) a few days prior to the start of the campaign period. In the Kosovo Serb majority municipalities the campaign was more subdued and opposition parties to Srpska Lista were barely visible and alleged that their supporters were afraid to participate in their campaign events stating instances of pressure and intimidation against non-SL candidates and their supporters during the previous elections. The Srpska Lista in its campaign activities mainly focused on small scale activities and door-to-door campaigning, respecting pandemic rules.

Economic recovery was at the centre of the campaign platforms of practically all parties, including apparently unrealistic promises to substantially raise the minimum wage, pensions, etc. The fight against corruption was also a central theme in contestants' programmes along with the rule of law, including in the platforms of the AAK, PDK and the LVV. The LDK prioritised health and education. The Dialogue with Serbia was mentioned in the electoral programmes, but only in a general way and without concrete proposals.

Contesting entities informed the EEM that they had adjusted their campaign strategies to the COVID-19 pandemic, as large rallies could not take place. Along with smaller sized meetings conducted throughout Kosovo by all major parties and candidates, contesting entities utilised online platforms much more and social media in particular played a key role in reaching out to potential voters. Some parties also started placing paid ads in traditional media broadcasts, but seemingly less in comparison to previous elections.

### **Election Campaign in Social Media**

All contesting parties had party follower groups on social media, mainly concerned with party activities. All the main parties also had pages of their branches in different municipalities which had a small to medium following (on average 1,000-2,000 followers). The LVV's official Facebook page has a significantly larger following compared to other parties.<sup>31</sup>

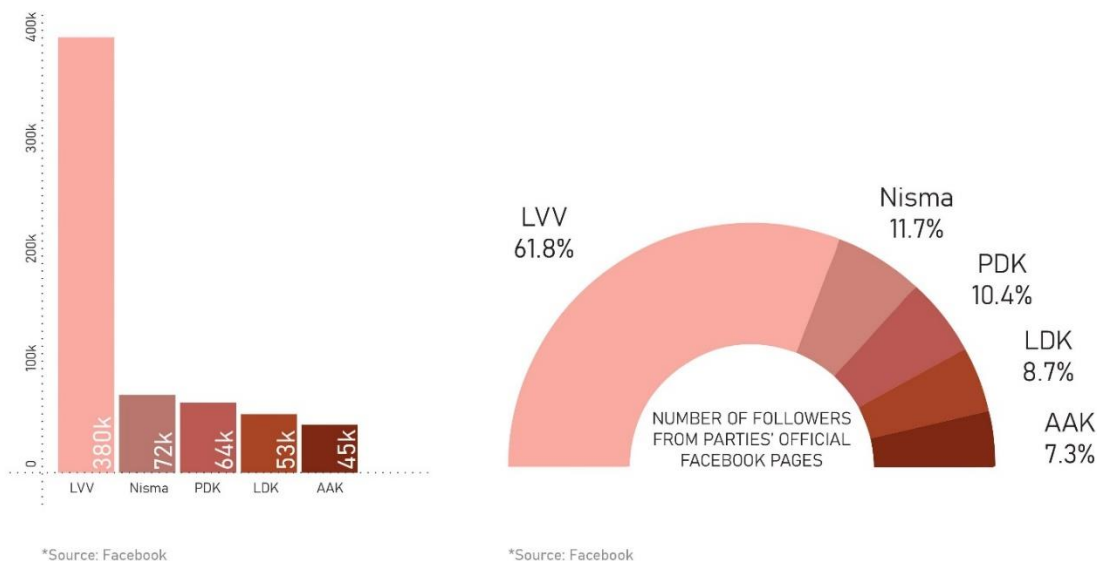
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<sup>30</sup> All Kosovo Albanian parties represented in the Assembly acknowledged that they were breaking the COVID-19 rules. The municipality of Pristina issued several fines (minimum EUR 2,000) for non-compliance with anti-COVID-19 measures.

<sup>31</sup> Apart from regular profiles of candidates and parties on social media, the more relevant and seemingly powerful groups and pages (fan pages) are ones that include general party followers from all over Kosovo like "LDK per Kosoven" which has a following of around 27,500, "#PDKperKOSOVEN" with around 5,700, and "meKryeministrin" (alluding to Albin Kurti). The LVV follower group has significantly higher numbers, amounting to around 326,000. This influential fan group seems to include a large number of diaspora voters, as many posts in the pre-election period were dealing with issues related to OoK voting.

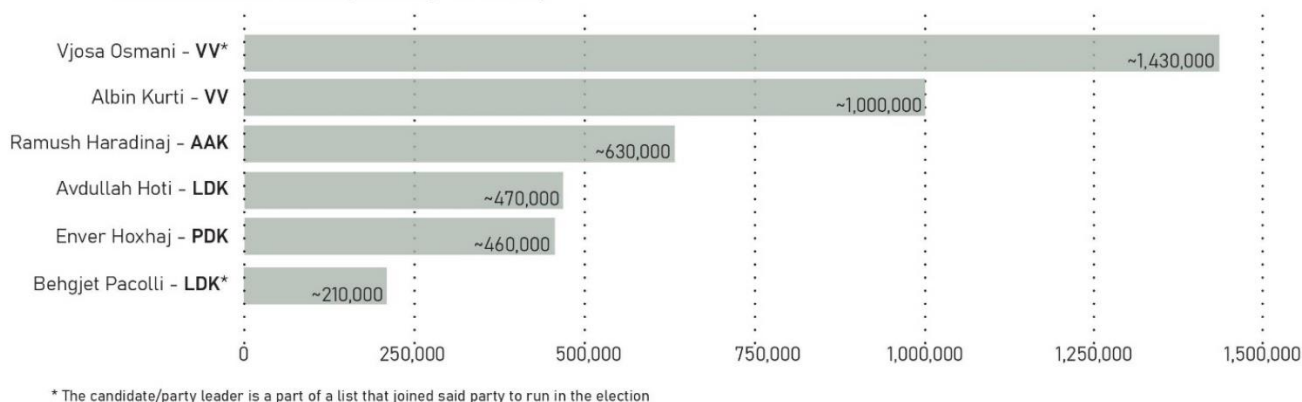


NUMBER OF FOLLOWERS FROM PARTIES' OFFICIAL FACEBOOK PAGES



While the LVV clearly dominated the online space with by far the largest number of followers and of users' engagements/interactions, this party and its candidates were less active in terms of the quantity of postings compared to other political entities. Nevertheless, in the 30 days preceding election day, the largest number of interactions on Facebook was recorded by the LVV leading candidate, Vjosa Osmani, (1.43M.) and LVV leader, Albin Kurti, (1M.). They were followed by Ramush Haradinaj – AAK (630K), Avdullah Hoti – LDK (470K), Enver Hoxhaj - PDK (450K) and Behgjet Pacolli – LDK (210K).<sup>32</sup>

CANDIDATES/PARTY LEADERS FACEBOOK PAGES INTERACTION:  
for one month before elections, 16 January - 15 February

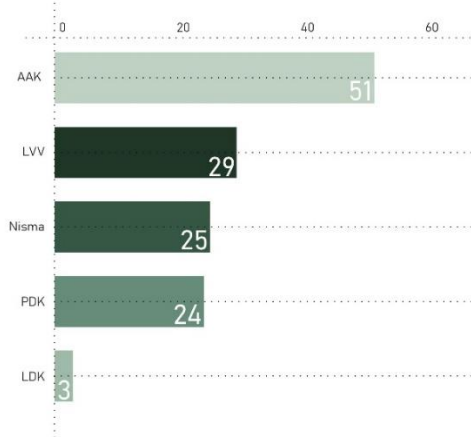


<sup>32</sup> Behgjet Pacolli is the Kosovo politician with the largest following on Facebook (524K.), followed by Albin Kurti (474K.) and Hashim *Thaçi* (360K) (data from February 2021).

The dominant online presence of LVV actors was also reflected in the overall interaction rate of particular posts. When analysing the 30 days prior to election day, out of the most popular 50 posts by key candidates or party leaders, Albin Kurti and Vjosa Osmani were featured in 90 per cent of them, including in the first 27 most popular posts, which were in general not boosted via paid advertising.

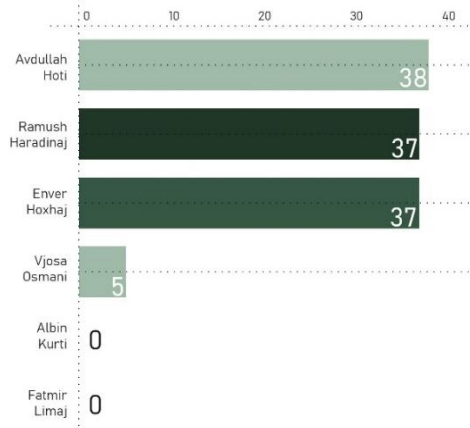
As in the pre-campaign period, in the official campaign, the party with the most ads was also the AAK (from the party's Facebook page), whereas candidates of other key parties had a roughly similar number of sponsored ads.<sup>33</sup> The exception was the LVV, whose main candidates posted very few paid ads. Candidates began sponsoring ads long before the official start of the campaign on 3<sup>rd</sup> February 2021.

NUMBER OF ADS FROM  
PARTIES' OFFICIAL FACEBOOK PAGE  
TOTAL: 132 ads



\*Source: Facebook Ad Library

NUMBER OF ADS FROM  
CANDIDATES'/PARTY LEADERS  
OFFICIAL FACEBOOK PAGE  
TOTAL: 117 ads



\*Source: Facebook Ad Library

## Party and Campaign Finance

Party and campaign finances are regulated by the 2010 Law on Financing Political Entities (LFPP), the 2008 Law on General Elections (LGE) as well as CEC Regulations.<sup>34</sup> The current regulatory framework, as it is currently implemented, does not ensure transparency of campaign finances. Notably, the law requires campaign finance reporting for a period starting 90 days prior to election day but the CEC limited reporting only to the 10 days of the “regulated” campaign, which detracted from

<sup>33</sup> The EU EEM manually tracked contestants' paid advertising on Facebook, which has not yet implemented the full set of tools facilitating transparency and accountability of political advertising for Kosovo; it was therefore only possible to see the quantity of ads by key political actors (whose Facebook pages were monitored by the mission) but not the amount of funds spent.

<sup>34</sup> Namely, the CEC Regulations No. 12/2013 on Campaign Spending Limit and Financial Disclosure and No. 14/2015 on Financing Political Entities and Sanctions.

transparency.<sup>35</sup> A draft law on political finances, which was assessed as “an important step in the right direction”, pending since 2019, passed the first reading in the Assembly in October 2020.<sup>36</sup>

A political entity may spend up to EUR 0.5 per registered voter, which amounts to EUR 897,431 Kosovo-wide. Political entities in the Assembly receive public funding, allocated annually, proportionally to the number of their seats.<sup>37</sup> Public funding for the campaign is not mandatory, and it was not allocated for these or any previous elections. Political entities may also be financed from their non-profitable activities, party membership fees and private donations. An individual may donate up to EUR 2,000 to a political entity annually whereas a legal entity can donate up to EUR 10,000 but there is no mechanism for identifying multiple donations exceeding the permissible limit. Donations may also be in-kind but there is no methodology for their evaluation. The law bans certain sources of donations, including foreign and anonymous sources, non-governmental, charitable and religious organisations, public enterprises and private companies with public procurement contracts. However, again there is no mechanism for verifying compliance with these bans. Although each political entity is required to receive all incomes and incur all expenditures by bank transfer through a single party bank account, cash transactions are common.

Political entities are required to submit campaign finance reports to the CEC within 45 days of election day, which does not provide for transparency and oversight prior to election day. The reports are submitted using a standardized CEC template, which does not require disaggregated information, and they are not published in an easily accessible manner.<sup>38</sup> While political entities are required to publish their annual reports and campaign finance reports on their websites, several parties failed to do so and yet no sanctions were imposed.

The Committee for the Oversight of Public Finances of the Assembly (hereafter the Committee) is required to outsource the auditing of financial reports to external certified auditors. Many EU EOM interlocutors raised concerns about a possible conflict of interest and the lack of capacity of the Committee to perform its oversight role.<sup>39</sup> The law requires that the auditing be completed within 75 days of the submission of financial reports. However, in case of early elections, the auditors may be appointed only in the year following the elections and thus the auditing for these

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<sup>35</sup> Articles 44-53 of the LGE (Chapter VII and VIII) contain rules for political entities and media applicable during the election campaign, aiming to ensure a level playing field for contestants. The campaign finance reporting period starts 90 days prior to election day, as stipulated by article 40.1 of the LGE (Chapter V).

<sup>36</sup> See [the Venice Commission Opinion 922/2018 on the Draft Law on Amending and Supplementing the Law No.03/L-174 on the Financing of Political Entities](#). This draft law has already passed the first reading twice, due to the dissolution of the Assembly twice, and will have to pass it for a third time in the new Assembly.

<sup>37</sup> By CEC Decision 174/2021 of 19.01.2021, EUR 630,000 were allocated to 14 political entities, for January and February 2021 as follows: EUR 152,250 to LVV; EUR 147,000 to LDK; EUR 126,000 to PDK; EUR 68,250 to AAK-PSD; EUR 31,500 to NISMA; EUR 52,500 to SL; EUR 10,500 to KDTP; EUR 10,500 to VAKAT; EUR 5,250 each to six other non-majority parties (NDS, PLE, IRDK, JGP, PAI, PREBK). The remaining EUR 3.57 million will be allocated based on the number of seats in the new Assembly.

<sup>38</sup> Both the CEC and the parties publish scanned copies of the financial reports.

<sup>39</sup> The Committee failed to appoint auditors due to unsuccessful public tenders. Subsequently, the reports from 2013 until 2016 were audited in 2017. The 2018 and 2019 reports have not been audited yet.

elections cannot be completed before June 2022.<sup>40</sup> In addition to late auditing, the auditors are required to verify the content of the financial reports but not to identify unreported incomes and expenditures.

The CEC is required to receive and publish the annual and campaign finance reports of political entities on its website.<sup>41</sup> In the past, in a narrow interpretation of the law, the CEC published these reports only after the auditing, which significantly delayed disclosure.<sup>42</sup> In a positive step, in 2020, the CEC published both the 2019 annual and campaign finance reports, even though they had not been audited. However, the reports were published as scanned images which is not user friendly, as they are not searchable. The CEC is also required to publish a register of donors, with information on all donations made to political entities, but there are no deadlines for doing so and such a register has never been published. By law, the CEC may impose sanctions for irregularities, including for failure to submit a financial report and misuse of state resources for a campaign. However, the CEC is insufficiently resourced and is not granted by law any investigative powers to identify irregularities. Moreover, several EU EOM interlocutors opined that the existing sanctions (mostly fines ranging from EUR 1,000 to 5,000) are neither dissuasive nor effective compared to the amounts at stake in the field of party finances.<sup>43</sup>

## X. MEDIA

### **Vibrant traditional and online media provided voters with access to diverse political views; more accountability and transparency online is needed**

#### **Media Landscape**

The media sector in Kosovo is diverse with a relatively high number of broadcast media.<sup>44</sup> The public broadcaster Radio Television of Kosovo (RTK), operating four TV channels and two radio stations, vies for the audience with many private TV channels accessible via cable operators throughout Kosovo.<sup>45</sup> TV remains the main source of news about politics, followed

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<sup>40</sup> The law prescribes that the call for the appointment of auditors both for the annual and the campaign finances in a regular election-year be published in January and completed in March.

<sup>41</sup> Article 19 of the LFFP requires the CEC to publish the annual financial reports together with the final audit reports by 30<sup>th</sup> June every year. Article 43 of the LGE requires the CEC to publish the campaign finance reports, without mentioning auditing conclusions, and does not prescribe any deadline.

<sup>42</sup> The CEC published the financial reports from 2013 until 2017, with the auditing reports, in June 2019. It also published the 2019 annual and campaign finance reports unaudited in 2020.

<sup>43</sup> Paragraph 215 of the ODIHR and Venice Commission Guidelines on Political Party Regulation states that “Irregularities in financial reporting [...] should result in the loss of all or part of such funds for the party. Other available sanctions may include the payment of administrative fines by the party.” Article 16 of Committee of Ministers of the Council of Europe Rec (2003)4 On common rules against corruption in the funding of political parties and electoral campaigns stipulates that “States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.”

<sup>44</sup> According to the Independent Media Commission (IMC), the regulatory body for broadcast media, there are 111 TV channels and 89 Radio stations.

<sup>45</sup> Key private TV channels in Kosovo are Kohavision (KTV), RTV21 (both TV channels with license for national broadcasting), Channel 10, Klan Kosova, T7 and TV Dukagjini. A new private TV channel, ATV, started

by online portals and social media; the latter also serve as platforms for TV channels to stream the content and widen the audience. Arguably, the Internet is a key platform for Kosovars to access information nowadays.<sup>46</sup>

Systematic market or audience research (of a relatively small Kosovo media market) that would facilitate more sustainable media development based on market indicators is absent. The EU Commission 2020 annual report highlighted that: “*the lack of financial self-sustainability leaves media vulnerable towards political and business interests. This is further amplified by the lack of information and data on the final beneficiary of media ownership ...*”<sup>47</sup> In addition, the RTK remains susceptible to political influence due to the lack of both editorial and financial independence from the authorities;<sup>48</sup> The 2019 EU EOM recommended that this issue be addressed.<sup>49</sup>

Overall, in comparison to its neighbours in the region, in Kosovo the media enjoy a somewhat higher degree of freedom; EU EEM interlocutors from the media sector informed the mission that they were able to exercise their profession freely in the pre-election period. However, according to the Association of Journalists of Kosovo that has been mapping threats and attacks on journalists and media outlets for several years, some 20 or more such cases happen annually in Kosovo.<sup>50</sup>

## Legal and Regulatory Framework

Freedom of expression as well as freedom and pluralism of the media is enshrined in the Constitution. Censorship is banned, and libel is not a criminal offence. The legal framework governing the media coverage of elections, primarily regulated by the LGE, has remained principally unchanged since the 2017 legislative elections.<sup>51</sup> The broadcast media must ensure fair and equitable news coverage (as well as fair and equitable access to political discussion shows and debates) to all certified political entities. If they offer paid-for airtime to contestants, they are obliged to also provide a minimum amount of free airtime to all contesting entities. Paid-for content is only allowed during a campaign period. While the

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operating on the already well-saturated Kosovo TV market on the eve of the campaign. Several Serbian-language media outlets operate in Kosovo including the public TV channel RTK2.

<sup>46</sup> The number of views of TV programmes streamed on social media is an indicator of the popularity of TV channels in Kosovo, as there is a lack of systematic audience research.

<sup>47</sup> For more details see the EU Commission 2020 annual [report](#).

<sup>48</sup> The RTK budget is currently determined annually by the Kosovo Assembly; The RTK Director informed the EU EEM that the funds allocated to public broadcasters are insufficient to cover regular RTK activities. The sustainable and independent financing system is not in place, and appointment procedures of members of RTK’s governing bodies are not transparent. A review of the Law on RTK started in 2019 but no changes were adopted so far.

<sup>49</sup> EU EOM Kosovo 2019 final [report](#): recommendation no. 22: ‘*Consideration to be given to strengthen the independence of the public broadcaster from possible political interference, by revising the election process of its board as well as its financing system.*’

<sup>50</sup> The most serious case reported in 2021 so far, appeared shortly after the elections: on 24<sup>th</sup> February 2021, three persons in masks attacked and injured Visar Duriqi, an investigative journalist from the online newspaper Insjaderi, in front of his apartment. The police started an investigation, but the perpetrators remain unidentified. The Association of Journalists of Serbia (UNS) reported that the media team of Serbian Regional Television Kraljevo (RTV KV) was not allowed to enter Kosovo on 14<sup>th</sup> February 2021, election day.

<sup>51</sup> The most recent additions to the media legislation/regulation framework include the 2016 Code of Ethics and the 2017 Regulation for Audio and Audiovisual Media Service Providers approved by the IMC.

media legislation sets limits on the total amount of paid ads per hour/day, there is de facto no limit on the amount of paid (sponsored) airtime (which is a separate category of paid content). The EOMs deployed by the EU for previous elections recommended regulating the purchasing of airtime on broadcast media by political entities and introducing limits to the amount of paid airtime the media can sell during an election campaign.<sup>52</sup>

The Independent Media Commission (IMC), the broadcast media regulatory body, supervises broadcasters' compliance with the legal framework. The IMC informed the EU EEM that during the 2021 elections, despite the unchanged legal framework, it attempted to accommodate some recommendations of previous EU EOMs. Firstly, the IMC already launched its media monitoring of key broadcast media five days prior to the official campaign period (in previous elections IMC media monitoring was conducted only during the official campaign period); secondly, the IMC attempted to address the potential irregularities in a swifter manner, so that if violations were identified, the IMC would review and analyse such cases and subsequently impose sanctions during the short campaign period already.<sup>53</sup>

The IMC identified several violations based on the findings of its media monitoring exercise and five days prior to election day held a public session to decide those cases; this resulted in several fines (ranging between EUR 1,000 and EUR 7,500) imposed on all major TV channels. Violations were related to sponsored programmes that were at times not clearly marked as paid-for (and by which political contestant) and for split-screen ads (merging the regular programmes with paid political ads as an on-screen banner) during current affairs programmes. These types of violations were also found by the IMC during the previous legislative elections.<sup>54</sup> Following the imposing of sanctions, the IMC informed the mission that a few broadcasters had started to comply with regulations and begun to mark paid ads as required. The IMC maintained that because of the nature of violations related to paid/sponsored airtime, which is quickly identifiable, it was possible to deliver the sanctions within a few days of the cases being identified, but more complex issues would require more thorough analyses, as well as increased capacity and time.

## Media Coverage of Elections

During the official campaign period, the media provided the coverage of the parties' campaign activities (primarily rallies with voters) in special inserts in the evening news programmes and organised numerous debates. The RTK offered a substantial amount of free airtime and appeared to provide

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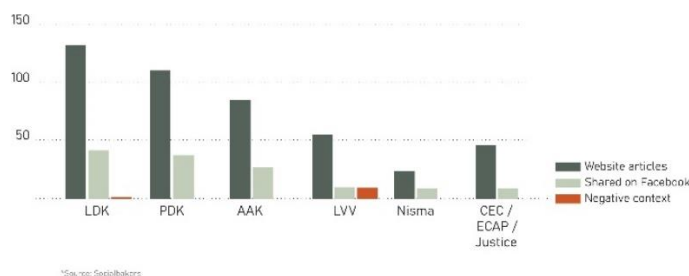
<sup>52</sup> EU EOM Kosovo 2019 final [report](#): recommendation no. 20 (priority recommendation): *'Consideration to be given to further regulate the purchasing by political entities of airtime on broadcast media. This should aim to ensure equal and non-discriminatory conditions to access it, public disclosure of price lists, as well as to set a limit on the amount of airtime that a broadcaster can sell to each political entity during the election campaign.'*

<sup>53</sup> EU EOM Kosovo 2019 final [report](#): recommendation no. 21: *'The decision-making process of IMC to be revised in order to address violations and complaints in a timely manner, particularly during the election campaign, and enforce dissuasive sanctions'* and recommendation no. 23: *'The IMC to strengthen the oversight of existing media by-laws to ensure that broadcasters provide balanced coverage and do not air political paid-for content outside the election campaign period.'*

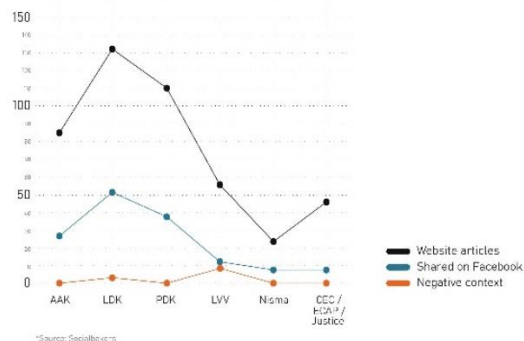
<sup>54</sup> In 2021, the IMC imposed a total amount of fines of EUR 36,500. In comparison, in 2019, the total amount of fines was EUR 24,000.

coverage of contestants in an equitable manner (as required by law) in various programmes, including debates and interviews with key candidates. However, the EU EEM analyses of RTK articles posted on their website (and shared on their Facebook page) indicated RTK's bias towards some contesting entities.<sup>55</sup>

RTK ARTICLES: WEBSITE, FACEBOOK, NEGATIVE CONTEXT



RTK ARTICLES: WEBSITE, FACEBOOK, NEGATIVE CONTEXT



One distinct feature of the broadcast media content is an influx of TV discussions or debates aired by all key TV channels on a daily basis. While they increase the diversity of views available to voters via media, many EU EEM interlocutors were critical of the quality of the programmes and lamented the lack of discussions about substantial 'bread-and-butter' issues. The topics discussed in the pre-campaign period included the prospects of political contestants with a focus on the opinion polls (with the LVV being in the lead), the potential impact of OoK votes and COVID-19-related measures. During the campaign period, the main TV Channels organised debates as the most prominent programmes of evening prime time, along with the main news programmes. Most debates and discussions hosted contestants, usually representatives of 2-3 different parties, or a representative of one contesting entity in the studio with various analysts. There was no debate between the main leaders of the key parties, nor their candidates for PM, despite some attempts by the media to organise one.<sup>56</sup>

The civil society conducted a media monitoring exercise, focusing on the discussions on seven major TV channels during the pre-campaign period and during the official campaign, where election-related programmes were also analysed.<sup>57</sup>

<sup>55</sup> RTK's website posted the largest number of articles dedicated to the LDK and the PDK. LVV-related posts were fewer, and in comparison with other parties whose portrayal was largely neutral, at times LVV's portrayal was negative.

<sup>56</sup> On 14<sup>th</sup> January 2021, Albin Kurti responded to a journalist when questioned about participating in debates with other leaders: "It is true that in Kosovo there is a fierce competition between the two old parties. This race is for second place. In that race, neither I nor the President have anything to do or have anything to ask for".

<sup>57</sup> Primetime TV debates were monitored by Democracy in Action (DiA) on the following TV channels: RTK, KTV, RTV21, KLAN Kosova, T7, TV Dukagjini, Kanal 10. A total of 226 debates were monitored from 13<sup>th</sup> January – 4<sup>th</sup> February 2021, including representatives of political entities as follows: 83 were from PDK, 89 were from LDK, 62 from AAK, 55 from LVV, 35 from NISMA and 11 from non-majority parties. No candidate from the SL participated in these shows.

## Social Media and Digital Rights

Internet penetration in Kosovo is high; Internet users make up around 90 per cent of the population.<sup>58</sup> Around 60 per cent of Kosovars use social media, primarily Facebook.<sup>59</sup> While Instagram is also popular, Facebook is by far the most important vehicle used by political entities to communicate online with their supporters or potential voters, and it is also used by institutions, including the government, as a main platform to share information. Twitter is used by political elites mainly to communicate messages to an international audience.

There are no provisions pertaining to the conduct of the campaign in online media or on social networks; Kosovo does not have any specific legislation or regulations targeting disinformation, beyond standard libel laws. As the election legislation has remained principally unchanged for over a decade, it does not address issues related to relevant developments such as the increased importance of digital communication in election campaigns or the need for more solid protection of personal data and privacy of citizens.

The protection of personal data is guaranteed in the Constitution, and it is regulated primarily by the Law on Protection of Personal Data (LPPD) that was passed in 2010 and substantially amended in 2019 to be aligned with the General Data Protection Regulation (GDPR) adopted in 2016 in the EU. The body responsible for data privacy after the 2019 amendments is the Personal Data Information and Privacy Agency (the Agency), which was given a stronger mandate and competencies in 2019. However, due to the failure of the Assembly to appoint the Agency's Commissioner, the main authority of the Agency, the body is only semi-functional, lacking by-laws and failing to conduct its tasks as foreseen by the law, including regular inspections of state institutions on their compliance with LPPD. This phase has already lasted for four years as the predecessor of the Agency was not fully functional during the last years of its existence. Given these circumstances, the LPPD, since it came into force in 2019, has not been fully tested in practice yet.

In several stages of the process, the personal data and privacy of citizens were not sufficiently protected. The cases noted by the mission included the publication of lists of voters (including OoK) by the CEC with personal details (name, surname, date of birth),<sup>60</sup> and instances of unsolicited SMSs urging citizens to vote for a political party that were sent to voters on election day without prior consent and in violation of the campaign silence. The LGE and CEC regulations are not aligned with the LPPD; representatives of the Agency informed the mission that they sent advice to both the CEC and to political parties, on how to comply with the LPPD when dealing with citizens' private data. However, their more direct interventions

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<sup>58</sup> [Internet worlds stats](#) recorded the total number of Internet users in Kosovo in 2019 as 1,693,942 users. Other sources estimate a total of 1,600,000 users at the end of 2020, suggesting a slight decrease probably due to migration of the young population of Kosovars.

<sup>59</sup> 2020 DataReportal [report](#) for Kosovo.

<sup>60</sup> LGE art. 7.2: *All eligible voters listed in the manner required by the CEC. The personal information provided for each voter shall be: name, surname, date of birth, address, and the Polling Center where he/she is assigned to vote. 7.4 The Voters List shall be accessible as set out by CEC rules.* The CEC regulation No. 02/2013, art 3.7 specifies that the set of data published for both the Kosovo final voter list and OoK voter list contains the name, last name, and date of birth.



were not possible due to the vacancy of the post of Agency Commissioner. Shortly before election day, the LVV alleged to the EU EEM that it had some evidence suggesting that the personal data of voters residing in Austria who applied for OoK voting at the CEC (including copies of their ID documents) were leaked and might be misused for impersonation and illegal proxy OoK voting from Austria. The party informed the EU EEM that they had already presented information and evidence to the prosecutor.

***Recommendation: To align the election legislation and the CEC regulations with the LPPD to provide for protection of citizens' rights to privacy of their personal data used in the electoral process.***

### **Misleading Online Content**

In March 2020, Facebook removed 212 pages, groups and accounts from Facebook and Instagram for engaging in coordinated inauthentic behaviour that originated in North Macedonia and Kosovo, sharing general non-Kosovo related content.<sup>61</sup> A recent study by the European Parliament assessing disinformation in the Western Balkans, found that politics in Kosovo are unusually susceptible to news and disinformation from abroad.<sup>62</sup> A massive amount of disinformation was spreading in Kosovo (as well as in the region) in 2020, in the context of the COVID-19 pandemic, as reported by several fact-checking groups in Kosovo met by the EU EEM.<sup>63</sup> Local experts suggested that political actors often utilize news portals as disinformation sites and often generate disinformation in an attempt to achieve short-term political gains and to sway the electorate.<sup>64</sup>

Some political parties complained to the EU EEM about a variety of false news spreading in the digital space and a few actors alleged that in the past they had been targeted on social media by the supporters of political opponents. The EU EEM analysed comments related to the most popular posts of key political parties and comments during TV discussions shared via Facebook during the campaign period.<sup>65</sup> The mission found a relatively small number of negative comments and only very few suspicious (inauthentic) accounts involved in the

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<sup>61</sup> 'The individuals behind this activity operated fake accounts to administer pages sharing general, non-country specific content like astrology, celebrities and beauty tips.' About 685,000 accounts followed one or more of these pages according to a Facebook [report](#).

<sup>62</sup> [Mapping Fake News and Disinformation in the Western Balkans and Identifying Ways to Effectively Counter Them](#).

<sup>63</sup> In the pre-election period, active fact-checking initiatives were few. Facebook does not have an official trusted partner organisation to assist in verifying hate content.

<sup>64</sup> NDI's DISICON 2019, Kosovo disinformation [findings](#).

<sup>65</sup> The analysis carried out on social media and communication within Facebook, included official party pages, official PM candidates and party leaders, media outlets, as well as a few individuals who were deemed more influential in the political scene. The monitored pages consisted of a total of 6 official party pages, 24 official candidate pages (PM and MP candidates), 6 pages of election-related organisations, 6 political analysts, 8 TV stations, and around 20 online portals and media outlets. There were also around 5 news portals that were checked periodically for the presence of misleading news according to the presence of election-related content, as well as 5 groups with varying levels of activity that were monitored both before and during the campaign.

conversations.<sup>66</sup> There were a few cases of possibly orchestrated negative campaigns that targeted some critical voices.<sup>67</sup>

Pages in Kosovo spread news from different websites with clickbait titles to attract the webpage visitor or Facebook user to click on the links. The content of articles is usually genuine and often published by reliable media in Kosovo, but often presented with clickbait taglines and titles; in some cases, articles are misleading, like in the case of an online opinion poll allegedly organised by the CEC.<sup>68</sup> Cases of clearly fake news sometimes end up on popular news sources.<sup>69</sup> Misleading stories circulating online related to the campaign, noted by the EU EEM in the pre-election period, included a fake opinion poll suggesting the PDK was leading in the polls,<sup>70</sup> false claims suggesting vote buying,<sup>71</sup> or comments falsely attributed to a US diplomat.<sup>72</sup> During the campaign period, false stories circulated on social media and posted on online media most often targeted by the LVV.<sup>73</sup> The mission noted paid ads

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<sup>66</sup> A total of 10 out of the 25 posts with most interactions in political parties and candidates' pages were analysed, where the comment sections were given a thorough check for negative comments, anti-campaign messages, potential debates and discussions between people, as well as for fake accounts. The number of comments in these posts varied between 200 and 10,000, where of the roughly 20 per cent sample of comments checked (which included comments that were most liked, and replied to, among others) there was a small number of fake accounts, and a small number of shady accounts that could not be fully identified as fake, but nevertheless were often seen commenting. The content of the monitored comments was mostly in support of the party or candidate where it appeared, with only a small number of negative comments that garnered very few replies. Therefore, no significant discussion or debate was present in the official pages.

<sup>67</sup> There was one specific case of a political analyst/influencer who mainly posts content critical towards the LVV, which often seems to be the victim of dislikes from seemingly fake accounts mainly originating from foreign countries (accounts with foreign names that have little to no content on their pages suggested the likelihood of an orchestrated negative campaign.), which he alleged on LVV and their followers.

<sup>68</sup> The opinion poll allegedly organised by the CEC was a clickbait article shared by a few websites and recently created pages whose primary country location of page managers is North Macedonia. It was posted by Lajme Online with over 40,000 followers.

<sup>69</sup> False news posted on Publikos' Facebook page (with some 200,000 followers) on 5<sup>th</sup> February 2021, featured a false story stating that Avdullah Hoti's government is going to give 100 euros to every citizen if the LDK wins. The story attracted over 260 comments on the Publikos Facebook page; it was posted here and here.

<sup>70</sup> An untrue post featuring an opinion poll suggesting the PDK was leading, had a large reach through a Facebook page called Universal, which proclaimed that an unbiased American company (FiveThirtyEight Polls) had released the results of a survey "not manipulated by any of the Kosovo media".

<sup>71</sup> A few seemingly shady pages have posted a screenshot of an alleged conversation between two anonymous people, where one is trying to convince the other to vote for the LVV and send a photo as proof in exchange for 100 euros. The piece was posted by Gazeta Prishtina.

<sup>72</sup> A portal called MitrovicaPress and a few others, posted an article alleging that US Ambassador William Walker said that "Kurti and Osmani put shame on the country of Kosovo by visiting Mitrovica".

<sup>73</sup> The case of blatantly manipulated video appeared one day after Albin Kurti's campaign visit in a village populated by Kosovo Bosniaks near Prizren on 6<sup>th</sup> February 2021. A video with a sound-over from a different event, was sent to Kosovo media, showing Kurti addressing a crowd which was shouting 'Serbia, Serbia'. In the original video, the crowd was cheering: 'Kurti, Kurti'. The video was edited with the logo of Serbia Public Broadcaster (RTS), with misleading commentary indicating that Albin Kurti visited Štrpce/Shterpce populated mainly by the Kosovo Serb community. The video was allegedly sent to various media in Kosovo by a person affiliated with the PDK. Several news portals posted it, and later took it down, while it remained posted on some less reputable online portals.

about the political actors,<sup>74</sup> which were sponsored by pages/portals that presented themselves as news or information portals.<sup>75</sup>

***Recommendation: To review the election legislation in order to reflect the increased importance of digital communication aspects in the election campaign and in the electoral process in general. Transparency and accountability of online campaigns could be fostered by introducing mandatory archives of online advertising, providing for detailed reporting requirements for those who paid for sponsored materials, as well as for those who received payments.***

## **XI. PARTICIPATION OF WOMEN**

***Increased visibility of some female candidates, despite the overall limited political participation of women due to embedded patriarchal attitudes***

Gender equality is enshrined in various provisions of the Constitution.<sup>76</sup> In line with international standards, the LGE contains provisions ensuring a minimum guaranteed representation of women in the Assembly.<sup>77</sup> Namely, it prescribes a 30 per cent gender quota in candidate lists supplemented by a placement requirement.<sup>78</sup> Additionally, a 30 per cent quota is also applicable to the allocation of seats in the Assembly.<sup>79</sup> However, the 2015 Law on Gender Equality provides for absolute equality (50 per cent) including in the legislative and the executive bodies and other public institutions.<sup>80</sup> Women's rights' organisations opined that the 50 per cent quota should be applicable to candidate

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<sup>74</sup> Facebook has not prioritised Kosovo in terms of increasing transparency and accountability in political advertising or fighting disinformation. Facebook Ad library works in a limited way without tracking the details of political advertising, lacking its 'Ad Library Report' feature. Facebook does not have an official trusted partner organisation to assist in verifying hate content either.

<sup>75</sup> The Portal 'Gazeta Prishtinaa' (that also featured a false poll allegedly made by a US company which put the PDK in the lead), ran an ad on 6<sup>th</sup> February 2021, using a screenshot of a post by Albin Kurti, and alleging misconduct by the LVV, with a caption saying "See for yourselves how Vetevendosje admit to theft." Other paid ads were posted on a Facebook page called: 'Like nese je shqiptar' (Like this page if you are Albanian) - with ads launched in late January of Albin Kurti, Ibrahim Rugova (former president, founder of the LDK), as well as the LDK, and LVV logos in separate ads. In February, they sponsored ads with Albin Kurti and Vjosa Osmani together, one of the PDK logo, and another showing Hashim Thaci and Kadri Veseli with the UÇK (KLA) logo.

<sup>76</sup> See articles 71.2, 101.1, 104.2, 108.2, 110.1 and 114.1 of the Constitution.

<sup>77</sup> See article 4.1, CEDAW and paragraph 20 of General recommendation No. 25 on article 4.1 of CEDAW. Section 2.5 of the Venice Commission Code of Good Practice states: "Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis."

<sup>78</sup> There must be at least one candidate from each gender among every three candidates on a list.

<sup>79</sup> In practical terms, if female candidates of a political entity obtain less than 30 per cent of the seats allocated to that entity, the last -in number of votes- male candidate is replaced by the next -in number of votes- female candidate until the total number of seats allocated to female candidates is 30 per cent.

<sup>80</sup> Article 6.7 and 8 of the 2015 Law on Gender Equality stipulates: "Legislative, executive, judicial bodies at all levels and other public institutions shall be obliged to adopt and implement special measures to increase the representation of the underrepresented gender, until equal representation of women and men according to this Law is achieved. Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when representation of 50 percent for each gender is ensured, including their governing and decision-making bodies."

lists and the allocation of seats in the Assembly.<sup>81</sup> At odds with international standards, neither the political entities nor the election administration adopted any voluntary affirmative measures to increase the numbers of women candidates and the numbers of women as members of election commissions.

Of the 1,052 certified candidates, 364 were women, representing 34.60 per cent of all candidates, in line with the legal quota. Positively, female candidates on the LVV list amounted to 37.38 per cent, including five women among the first ten candidates on the list. In total, two political parties and two citizens' initiatives were led by women who were at the same time carriers of three candidate lists.<sup>82</sup> Ms Osmani (from the LVV) was the only woman candidate nominated for president.

According to EU EEM interlocutors, compared to past elections, there was increased visibility of some women candidates in the campaign, notably the LVV candidate, Ms Osmani, who was also the acting President of Kosovo during the campaign period. The NGO Kosovo Women's Network conducted an online campaign to encourage voters to vote for female candidates, irrespective of political views. Several EU EEM interlocutors stated that women face social and family barriers in getting nominated for elected office or conducting successful campaigns and thus are not serving as leaders and decision-makers, as a result of embedded patriarchal models.

There are no gender quotas for the composition of election commissions. In line with past practice, the CEC did not publish any information on the composition of the Municipal Election Commissions (MECs) and Polling Station Commissions (PSCs), including gender statistics. Citizen observers reported that women made up some 30 per cent of PSC members with a lower percentage being PSC chairpersons. The CEC Chair and one of the ten members are women.

## **XII. PARTICIPATION OF PERSONS WITH DISABILITIES AND OTHER VULNERABLE GROUPS**

### **Lack of measures to enable inclusion of persons with disabilities in political and public life as well as independent (not assisted) voting**

The CEC is required by law to ensure that persons with special needs and circumstances (SNC), including those with disabilities (PWD), are able to participate in the electoral process.<sup>83</sup> A total of 2,785 persons were registered for SNC voting; 1,348 at home and 1,511 confined in institutions. As

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<sup>81</sup> Prior to the 2019 elections, the then Ombudsperson had stated that the Law on Gender Equality as *lex posterioris* and *lex specialis* superseded the Law on General Elections. He had also filed a complaint with the Basic Court in Pristina against the CEC for gender discrimination in the candidate lists and requested interim measures requiring the CEC to implement a 50 per cent quota on candidate lists. The Court rejected the request for interim measures, on the grounds that such an order would prejudice the judgment on the main claim, which was identical. The main claim is still pending with the court.

<sup>82</sup> Namely, the SDU led by Duda Balje, the NDS led by Emilija Redžepi, the UZ-AH United Community led by Adrijana Hodžić, "Dare" led by Vjosa Osmani and Alternativa led by Mimoza Kusari (the latter two on the LVV list).

<sup>83</sup> Art. 99.1 of the LGE requires the CEC to establish "special needs voting rules" for voters who cannot vote in polling stations due to physical, medical or other disabilities, those confined in health care, social and correctional institutions, and those who cannot vote at their assigned PS, due to relocation or security concerns.

required by law, the MECs established some 183 PSC Mobile Teams and Institutional Voting Teams to conduct voting on election day.

According to citizen observers, some 40 per cent of the polling stations did not provide for voting for persons with disabilities without assistance, including independent access by persons with physical disabilities and tactile ballot guides for visually impaired voters, who rather depended on assisted voting. The OSCE provided some special training to address the relatively low literacy of Braille. Nevertheless, voters who could not vote in a polling station, due to a physical, medical or any other kind of disability could request homebound voting. The CEC deployed 183 mobile PSC teams to conduct homebound voting. Half of them were teams with special protective equipment to conduct homebound voting of individuals infected with COVID-19 or self-isolating. Overall, the measures in place do not provide for the effective integration and independent voting by PWD, as required by international standards.

The law requires that voter education campaigns be inclusive and also target illiterate voters. Whereas the CEC is required by law to produce voter information in sign language,<sup>84</sup> voter information on the CEC website was not tailored to persons with disabilities, compromising their opportunity to receive election-related information on an equal basis.<sup>85</sup> There are no legal requirements for public or private media to adapt any election-related programming for PWD.<sup>86</sup>

### **XIII. CIVIL SOCIETY OBSERVATION**

A well-established network of civil society organisations was involved in domestic observation activities, co-ordinated by the Kosovo Democratic Institute (KDI), a branch of Transparency International, under the banner of Democracy in Action (DiA). The network deployed around 500 observers to observe the conduct of election day. They also engaged 16 long-term observers to monitor the election campaign, including in some Kosovo Serb-majority municipalities during the 10-day campaign period. The DiA also analysed traditional and social media and monitored compliance of the contesting entities with the campaign finance regulations in place.

### **XIV. ELECTORAL DISPUTES**

#### **Shortcomings in the legislation and its implementation by the ECAP and the courts often left stakeholders without effective legal redress**

The main forum for dispute resolution is the Election Complaints and Appeal Panel (ECAP).<sup>87</sup> Political entities and candidates may file complaints on irregularities and some types of CEC

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<sup>84</sup> A disability-friendly website may use assistive technology, such as alt tags read aloud for users with visual impairment, enlarged clickable range for users with mobility problems, or reader guides for elderly audiences.

<sup>85</sup> Article 21 of the CRPD calls for providing “information intended for the general public to persons with disabilities in accessible formats [...] appropriate to different kinds of disabilities” and for encouraging “the mass media [...] make their services accessible to persons with disabilities.

<sup>86</sup> Articles 1.11 and 1.12 of the Law on Radio Television only prescribe that “particular attention shall be paid to the persons with disabilities in terms of programs and information delivery”.

<sup>87</sup> The ECAP is a permanent independent body, composed of ten judges appointed by the President of the Supreme Court for a renewable four-year term.

decisions listed exhaustively in the law. Voters may file complaints if they have a legal interest or if their rights were violated, but this is narrowly interpreted, thus depriving them of a possibility, *inter alia*, to challenge candidate certification and the election results, which is at odds with international good practice.<sup>88</sup> ECAP decisions may only be appealed at the Supreme Court if the imposed fine exceeds EUR 5,000 or fundamental rights are affected, excluding other decisions from a judicial review, which is at odds with good practice.

Complaints and appeals must be filed to ECAP and the Supreme Court within 24 hours of the CEC or ECAP decision or since the violation occurred or became known. The ECAP and the Supreme Court must decide within 72 hours. By law, complaints by voters in Kosovo who were denied registration have to be filed with the Administrative Unit of the Basic Court in Pristina, at the latest 40 days prior to elections, which is not feasible in case of snap elections.<sup>89</sup> Unsuccessful applicants for OoK voter registration are also granted 24 hours to complain. In several instances, the 24-hour deadline did not allow sufficient time for the preparation and filing of complaints, which again is at odds with international good practice.<sup>90</sup>

While public hearings are optional both for the ECAP and the Supreme Court, the review is based on written submissions by the parties and the ECAP may decide to order an investigation, if it deems it necessary.<sup>91</sup> In line with international good practice, the ECAP has provided a form to facilitate the filing of complaints, and maintains a complaints register which is publicly available. While the law requires the CEC, ECAP and the courts to publish their decisions, including on complaints, it does not prescribe a short deadline, which does not guarantee timely publication.

The ECAP may impose sanctions on a political entity for violations committed by candidates, members or supporters of that entity. Sanctions include fines of up to EUR 50,000, losing the right to be a member of an election commission for up to six years, and revoking the accreditation of an observer organisation or an observer. Contrary to international standards and the Constitution, the ECAP, which is an administrative body rather than a court, may deprive an individual of the right to stand and may de-certify a political entity.

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<sup>88</sup> Paragraph 92 of the Venice Commission Code of Good Practice states that: “[...] This applies in particular to the election results: individual citizens may challenge them on the grounds of irregularities in the voting procedures. It also applies to decisions taken before the elections, especially in connection with the right to vote, electoral registers and standing for election, the validity of candidatures, compliance with the rules governing the electoral campaign and access to the media or to party funding.” Paragraph 99: “all candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections”. In *Davydov and others v. Russia*, the ECtHR stated that “serious irregularities in the process of counting and tabulation of votes can constitute a breach of the individual right to free elections guaranteed under Article 3 of Protocol No. 1 to the Convention, in both its active and its passive aspects.”

<sup>89</sup> A total of 131,230 voters registered with UNMIK IDs were removed from the voter list. The EU EEM has not been made aware of any complaints filed by these individuals.

<sup>90</sup> See paragraph 95 of the Venice Commission Code of Good Practice: “[...] Time limits must, however, be long enough to make an appeal possible, to guarantee the exercise of rights of defence and a reflected decision. A time limit of three to five days at first instance (both for lodging appeals and making rulings) seems reasonable for decisions to be taken before the elections.”

<sup>91</sup> The law on administrative proceedings and the ECAP rules of procedure are applicable.

## Pre-election day disputes

A total of eight complaints were filed with the ECAP by six political entities against CEC decisions which had denied certification of their full lists containing convicted candidates;<sup>92</sup> these appeals were partially granted by the ECAP which certified the lists without the convicted candidates.<sup>93</sup> Subsequently, five political entities filed appeals to the Supreme Court which upheld the ECAP and CEC de-certification of the convicted candidates but ordered the certification of three candidates whose three year period after final conviction would be completed by election day.<sup>94</sup> The Supreme Court disagreed with the de-certification of the convicted candidates by the CEC and the ECAP but stated that it could not overturn these decisions due to a binding Constitutional Court decision.<sup>95</sup> An additional complaint was filed against the certification of a candidate of a non-majority (Kosovo Bosniak) entity; the candidate was subsequently de-certified by the ECAP and the Supreme Court on the grounds that he was ethnic Albanian rather than Bosniak, although there is no such legal requirement and such a decision is not legally sound.<sup>96</sup> Another similar complaint was dismissed due to late submission.<sup>97</sup>

The ECAP denied admissibility to some complaints on the grounds that the challenged CEC decisions are not appealable by law, denying effective remedy on significant aspects of the electoral process.<sup>98</sup> In particular, the ECAP dismissed complaints filed by political entities against the CEC decisions, denying the appointment of their nominees as MEC members. It also dismissed two complaints filed by the LVV and NGO Germin challenging the legality and constitutionality of the CEC decision to verify the eligibility of OoK applicant voters by means of phone calls.<sup>99</sup>

***Recommendation: To prescribe that all CEC decisions may be challenged with the ECAP and all ECAP decisions may be appealed in court, regardless of the amount of the fine or whether a fundamental right is affected.***

<sup>92</sup> Complaints were filed by LVV, AAK, NISMA, PDAK, PAI, PREBK.

<sup>93</sup> Article 122.3 requires the ECAP to direct the CEC to reconsider its decision or take remedial action but not to modify the CEC decision. Subsequently, the CEC should vote again to certify the lists without the convicted candidates. Therefore, by modifying the CEC decision, the ECAP exceeded its competences. Prior to the ECAP decision, the CEC Chairperson had advised the ECAP to partially grant the complaints.

<sup>94</sup> Namely, Liburn Aliu and Labinote Demi Murtezi from the LVV and Semsedin Dresaj from AAK.

<sup>95</sup> The Supreme Court judgment of 29<sup>th</sup> January 2021 stated that the Constitution and the Criminal Code require a court decision depriving the convicted individual of the right to stand, and that LGE is unconstitutional and not a *lex specialis* on the issue. In 2017, the Supreme Court had ruled article 29 of the LGE unconstitutional but its decision was not binding on future cases, unlike a Constitutional Court judgement.

<sup>96</sup> The Kosovo Bosniak party SDU requested the de-certification of Emin Neziraj, a candidate with the Kosovo Bosniak party Nova Demokratska Stranka (NDS), on the grounds that he was ethnic Albanian. The ECAP's decision granting the complaint was appealed by the NDS at the Supreme Court, which ruled that the candidate had self-declared as ethnic Albanian on Facebook and academia.com and dismissed evidence based on a document issued by the Office for Communities and Returnees stating that Neziraj is ethnic Bosniak.

<sup>97</sup> A complaint filed by the Liberal Egyptian Party (PLE) against the certification of candidate Sabina Berisha of the Egyptian New Democratic Initiative (IRDK), citing that she self-declared as Roma on Facebook.

<sup>98</sup> Based on article 63.6 of the LGE, the ECAP considers that article 122.1 of the LGE contains an exhaustive list of appealable types of CEC decisions.

<sup>99</sup> The complainants, the LVV and the NGO Germin, alleged that verifying the eligibility by means of phone calls is at odds with article 5 of the LGE (voter eligibility) and 22, 45, 53, 55 of the Constitution (disenfranchising voters contrary to the Constitution and international obligations).

Unsuccessful applicants for OoK voter registration were denied effective legal remedy, which potentially resulted in disenfranchising eligible voters.<sup>100</sup> Namely, the ECAP requested unsuccessful OoK applicants to file their complaints in-person or by post and not by email,<sup>101</sup> which is contrary to the law;<sup>102</sup> and not feasible due to time constraints.<sup>103</sup> EU EEM interlocutors alleged that these announcements discouraged OoK applicants from filing complaints. Notwithstanding, on 2<sup>nd</sup> February 2021, within the 24 hour deadline, over 1,000 complaints were filed by email to the ECAP by unsuccessful OoK applicants. The ECAP reviewed only 320, deeming some 750 inadmissible, on the grounds that they did not have the complaint as an attachment, although this is not a legal requirement. Contrary to the law, the ECAP did not ask the 750 complainants to rectify the alleged shortcomings of their complaints.<sup>104</sup> Of the 320 reviewed complaints, 146 were upheld and voters were registered while the remaining were rejected for missing information, without asking the applicants to rectify their applications, as required by law.<sup>105</sup>

The ECAP received some 30 complaints on alleged campaign violations and granted more than half of them. Most complaints were filed by civil society observer organisations, while others by political entities. For these violations, six political entities were fined in total: namely, AAK-EUR 34,900; NISMA-EUR 20,000, LDK-EUR 6,000; PDK-EUR 23,000, LVV-EUR 7,200, and SL-EUR 1,200.<sup>106</sup> In four cases, ECAP imposed fines on the NISMA, the AAK and the PDK for inciting hatred.<sup>107</sup> While the NISMA and the AAK were fined EUR 20,000 each, the PDK was fined only EUR 2,000 and EUR 8,000. Instead of the law, the ECAP rules of procedure prescribe sanctions, including fines, and grants the ECAP wide discretionary power to determine the

<sup>100</sup> A total of 29,100 OoK applicants were denied registration on the grounds that they did not prove their identity, did not meet the legal capacity criteria, or did not sign the application for registration.

<sup>101</sup> The ECAP stated on its website that complaints by OoK voters should be submitted only in-person or by post, either on the template found on the website or a blank paper.

<sup>102</sup> Article 74.5 of the law on Administrative Proceedings states: “A written request may be submitted also by mail or electronically, directly to the official address of the organ to which is addressed. If the sent document is not readable, the public organ shall inform the sender without delay and shall require him to submit the request in another suitable form.” Article 77 states: “Provisions of this Law on the form, content and the submission of an initial request shall apply mutatis mutandis to any other application, petition, proposal, appeal, complaint, statement, or any other kind of submission the parties address to the public organ.”

<sup>103</sup> Compared to 17 days for the 2019 elections, in 2021, OoK applicants had only 10 days (2<sup>nd</sup> -12<sup>th</sup> February 2021) to submit complaints, receive a response and send their ballots.

<sup>104</sup> See article 74.5 of the Law on Administrative Proceedings above.

<sup>105</sup> Paragraph 96 of the Code of Good Practice: “It is necessary to eliminate formalism, and so avoid decisions of inadmissibility, especially in politically sensitive cases.”

<sup>106</sup> LDK -EUR 4,000 for campaigning in the Ministry of Agriculture and EUR 2,000 for obstruction of campaigning of another political entity; PDK -EUR 2,000 for campaigning in a public school, EUR 12,000 for posters on public spaces, EUR 1,000 and EUR 8,000 for inciting hatred; LVV-EUR 1,200 for posters on electric poles and EUR 6,000 for a public gathering without prior notice; SL -EUR 1,200 for graffiti in public buildings; AAK-EUR 1,200 for posters on public streets, EUR 4,000 for campaigning at the Ministry of Justice, EUR 2,500 for exposing minors in the campaign, EUR 3,000 for campaigning in public health institutions, EUR 1,300 and EUR 1,500 for posters on public buildings, EUR 1,400 for posters on electric poles and EUR 20,000 for inciting hatred.

<sup>107</sup> The AAK had a video stating that the President of Serbia Vucic would vote for the weak candidate Ms. Vjosa Osmani; NISMA had a video stating that the Mr Hoxhaj, the PDK candidate for PM, in his book published in 2017, denied that genocide happened in Kosovo; a PDK supporter on a Facebook post called Albin Kurti a traitor.



amounts of the fines imposed.<sup>108</sup> The NISMA and the AAK were ordered to immediately withdraw the video against Ms Osmani (LVV) and Mr Hoxhaj (PDK) from the media whereas no such order was given to the PDK. Pursuant to appeals, the Supreme court upheld the fines imposed by ECAP. Moreover, the LGE provision on incitement of hatred is overly broad and has been broadly interpreted and implemented to sanction negative rhetoric against individual candidates.<sup>109</sup>

### Post-election day disputes

The ECAP granted some 117 of the 148 complaints on election day violations and fined political entities with EUR 120,000. Of these, some EUR 50,000 were for breaches of the campaign silence, including by means of SMS messages urging recipients to vote for some parties and posts on social networks. The PDK was fined EUR 42,500, LVV EUR 37,500, LDK EUR 22,000, AAK 60,250, NISMA EUR 2,000 and SL EUR 1,000.

Following a request by the LVV prior to election day, the Prosecutor launched an investigation, after election day, to identify possible impersonation and illegal proxy voting. The LVV allegedly presented a video to the Prosecutor, featuring some 4,700 ID copies of OoK voters stolen from the CEC and transported by bus to Vienna.<sup>110</sup> Allegedly, these misappropriated IDs were used to send postal ballots in the name of OoK voters in Austria which would result in multiple voting and inadmissibility of ballots, potentially at the expense of the LVV that enjoys most support among diaspora voters.

Due to significant inconsistencies identified in the result protocols (CRFs), the CEC ordered recounts for over 500 polling stations. EU EEM interlocutors noted that PSC members often interfere with the results for the candidates, under pressure by influential candidates.<sup>111</sup> Although there are indications of falsification of the PSC results by PSC members and some candidates, no criminal investigation was launched.<sup>112</sup>

The law provides for complaints about irregularities during voting and counting, and polling station results as well as against the counting at the CRC.<sup>113</sup> The right to file complaints against PS results is granted only to PSC members who have recorded an objection in the PS poll book. Despite a 24-hour deadline for filing such complaints, the ECAP deems inadmissible (“premature”) any challenges of polling station results before the process at the CRC is concluded. While ECAP explains that the process at the CRC may address the concerns of the complainants, this practice is not prescribed by law. The law contains some ambiguous and conflicting provisions

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<sup>108</sup> Article 2.5 of the ECAP Rules of Procedure requires the ECAP to take into account aggravating and mitigating circumstances, the nature and severity of the violation and its possible impact on the electoral process, the repetition of the violation and the amount of public funding received by the political entity.

<sup>109</sup> See article 141 of the Criminal Code, article 33.1.1 of the LGE and 4.1.k of the CEC Regulation 11/2013.

<sup>110</sup> For OoK voter registration, the CEC hired some 300 temporary staff to print the copies of IDs sent by email by OoK applicants and to verify their eligibility by means of phone calls to the applicants. This process raises concerns about the personal data protection of the applicants.

<sup>111</sup> In the polling stations, each PSC member counts the preferential votes cast for candidates of his/her nominating party, which does not ensure the accountability and integrity of the process.

<sup>112</sup> Article 216 of the criminal code does not even require proven intention for falsification of results.

<sup>113</sup> See article 102 of the LGE and article 25.1 of the CEC Regulation 9/2013.

on recounts and annulment of results;<sup>114</sup> this does not safeguard against inconsistent or arbitrary decisions by the CEC and the ECAP.<sup>115</sup> In line with international good practice, in the case of annulment of results in one or more polling stations, a repeat vote must be held. Despite this legal requirement, the CEC did not order repeat voting, thus disenfranchising eligible voters.<sup>116</sup>

## XV. POLLING, COUNTING AND TABULATION OF RESULTS

### **Orderly and well-organised voting; however, the counting process resulted in a high number of incorrect polling station results**

#### **Polling and Counting**

In accordance with standard practice for EU EEMs, no observers were deployed to observe election day proceedings in a systematic and comprehensive manner, but members of the EU EEM visited a limited number of polling stations in Pristina. The EU Office deployed some 30 teams of “Diplomatic Watch” participants to 188 polling centres in all 38 Municipalities.<sup>117</sup> The political entities deployed around 26,600 observers while citizen observer organisations sent around 2,600, the latter significantly fewer than in 2019.<sup>118</sup>

Voting was conducted in 2,382 polling stations located in 888 polling centres, which opened at 07.00 and closed at 19.00. The voting process was administered by approx. 16,276 Polling Station Committee Members (PSCs).<sup>119</sup> While the CEC does not publish any statistics on the composition of election commissions, citizen observers estimate that some 31 per cent of the PSC members were women, 4 per cent less than in 2019.

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<sup>114</sup> Article 26.1 of the CEC Regulation 9/2013 provides for annulment if case there is an impact on the final results in accordance with article 21.123.b, 28 120.1.b of the LGE, and for a recount in case of discrepancies in the number of ballots cast and signatures in the VL vs. article 5.1 level of tolerance

<sup>115</sup> See article 106.2 of the LGE. Paragraph II.3.3.e of the Venice Commission Code of Good Practice states that “[t]he appeal body must have authority to annul elections, where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station.” In Riza and Others v. Bulgaria (applications nos. 48555/10 and 48377/10; 13/01/2016), the ECtHR reiterated that “the decision-making process on ineligibility or contestation of election results is accompanied by criteria framed to prevent arbitrary decisions. In particular, such a finding must be reached by a body which can provide a minimum of guarantees of its impartiality. Similarly, the discretion enjoyed by the body concerned must not be exorbitantly wide; it must be circumscribed, with sufficient precision, by the provisions of domestic law.”

<sup>116</sup> Paragraph 101 of the Venice Commission Code of Good Practice: “The powers of appeal bodies are important too. They should have authority to annul elections, if irregularities may have influenced the outcome, i.e. affected the distribution of seats. This is the general principle, but it should be open to adjustment, i.e. annulment should not necessarily affect the whole country or constituency – indeed, it should be possible to annul the results of just one polling station. This makes it possible to avoid the two extremes – annulling an entire election, although irregularities affect a small area only, and refusing to annul, because the area affected is too small. In zones where the results have been annulled, the elections must be repeated.”

<sup>117</sup> The Diplowatch teams were composed of EU MS Embassies, EUSR, EUO and EULEX staff.

<sup>118</sup> In 2019, the political entities had 29,339 observers with the main political parties having some 5,000 each while there were some 4,154 civil society observers.

<sup>119</sup> In addition to the 2,383 Chairpersons, PSCs were composed of 11,828 members and 2,066 reserve ones.

According to the Diplowatch participants and citizen observers, the overall election day process was orderly and calm and procedures were generally followed. The reduction in the number of registered voters and the subsequent reduction in the number of polling stations, resulted in some difficulties for voters in identifying their polling station. The most common irregularities reported by citizen observers during the voting process included voting with invalid documents such as UNMIK IDs, foreign IDs or expired Kosovo documents. Moreover, a number of voters justified presenting expired IDs by explaining that they had not been issued new ones due to the COVID-19 restrictions. In response, the CEC allowed such voters to cast their ballots.

Instances of family and group voting were noted. In addition, similar to 2019, there was a high number of assisted voting.<sup>120</sup> Some additional procedural shortcomings were noticed, namely, that voters did not always temporarily remove their face masks in order to be identified by the PSC, contrary to the CEC administrative instruction. COVID-19 health protocols were often not fully respected, including the wearing of face masks and gloves, using hand sanitizer and maintaining a distance of two meters, particularly in the afternoon when polling stations were often crowded.

For the first time, the number of the PSC was printed on the ballots, which is a safeguard against ballots being used in other polling stations. The PSC was still required to stamp each ballot upon delivery to the voter, which is at odds with international good practice.<sup>121</sup> According to media reports, in four polling stations the number of envelopes for conditional ballots was not sufficient to accommodate the high turnout of voters who were not registered in the specific polling stations. The CEC provided additional envelopes and the voting hours in these polling stations were extended until 20.00, to enable voters to cast their conditional ballots.<sup>122</sup>

Reportedly, a large number of Kosovo Albanian diaspora voters visited Kosovo to vote in-person. On 11<sup>th</sup> February 2021, the government issued a decision stating that all citizens of Kosovo, including OoK residents, were required to present a negative PCR COVID-19 test made 72 hours before entering Kosovo or to self-isolate for seven days. The PCR requirement was introduced at a time when other anti-COVID-19 measures were relaxed and while buses of OoK voters were already on the way to Kosovo. Thus, some EU EEM interlocutors alleged that this decision was aimed at preventing diaspora voters from entering Kosovo to cast a ballot in-person.

OoK voters residing in Serbia visited Kosovo to vote in-person on election day in higher numbers than during the previous elections, partly because postal ballots from Serbia were not

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<sup>120</sup> By law, disabled and illiterate voters can be assisted by a person of their choice who is not a PSC member or observer and has not assisted other voters.

<sup>121</sup> Paragraph 34 of the VC Code of Good Practices: “The signing and stamping of ballot papers should not take place at the point when the paper is presented to the voter, because the signatory or the person affixing the stamp might mark the paper so that the voter could be identified when it came to counting the votes, which would violate the secrecy of the ballot.”

<sup>122</sup> While the total number of registered voters was 1,794,862, the number of ballots printed was 1,617,200.

accepted in 2019 following a court decision. This explains the very low number (some 160) of applications from Serbia to register for OoK voting. As allowed by law, they cast conditional ballots in the Kosovo Serb-majority municipalities, instead of the polling stations where they are registered elsewhere in Kosovo. The approximately 30 buses which arrived via the Jarinje administrative crossing did not encounter obstacles.

The CEC provided regular updates on voter turnout and results per municipality. By 10:00 on 15<sup>th</sup> February 2021, the CEC had processed the data from 98 per cent of polling stations. The total number of voters who cast their ballots on election day was some 845,000 (45.6 per cent) compared to approx. 853,700 voters in 2019.<sup>123</sup> Turnout in the four Kosovo Serb-majority municipalities was reported at 77.47 per cent, significantly higher than the Kosovo-wide average.<sup>124</sup> This can be explained by the deregistration of voters with UNMIK IDs and the in-person conditional voting of the OoK Serbs.

### **Tabulation of Results**

The Counting and Results Centre (CRC) is mandated with the tabulation of votes of regular PSs, the verification and counting of conditional and OoK postal ballots as well as recounts of individual PSs.

Following the internal audit of all 2,382 PSs, the CEC decided to recount ballots from 564 PSs. Twelve ballot boxes were recounted after being in quarantine, as some sensitive materials were missing such as result forms, poll book, PS original seals, etc. The vast majority of the remaining 552 ballot boxes were recounted mainly due to discrepancies between the number of preferential votes for individual candidates and the number of votes cast for their political entity (511 PSs). Some 370 PSs were recounted because individual candidates received more preferential votes than the total number of votes obtained by their political entity. Two PSs results were cancelled due to the fact that there was a discrepancy of more than five votes between the number of votes cast and the number of signatures on the PS voter list.<sup>125</sup> The result of recounts revealed some significant discrepancies regarding the number of preferential votes counted for independent candidates; however, the discrepancies in the number of votes for individual political entities were insignificant.

***Recommendation: To consider introducing the tabulation of polling station results at municipal level. An additional layer of the tabulation process could increase the transparency and speed of the tabulation process. Tabulation of polling station results and the receipt of sensitive materials by the polling station committee Chair/members would increase their accountability as any inconsistencies would be determined in their presence.***

The process of the recounting of ballots and the verification and counting of conditional and OoK ballots lasted 18 days, similarly to the 2017 early legislative elections. The same process lasted 53 days during the previous legislative elections, mainly due to technical errors in printing the results form. The process

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<sup>123</sup> Following the deregistration of some 122,421 voters registered with expired UNMIK IDs, for these elections, 1,794,862 voters were registered, compared to 1,961,216 in 2019.

<sup>124</sup> For these elections, 32,716 voters voted in the four Serb-majority municipalities, as opposed to 26,442 in 2019. In 2019, a total of 3,782 postal ballots was sent from Serbia.

<sup>125</sup> The CEC set a threshold of a maximum of three votes discrepancy between number of ballots cast and number of voters signatures in the PSs voter list. Cancelled PSs: one PS in Vushtri municipality and one PS in North Mitrovica municipality.

is very lengthy, partly due to the fact that all recounts are done in one national centre rather than at municipal level. Also, the need to check conditional ballots and OoK ballots against PSs voter lists to avoid possible multiple voting, prolongs the process.

Initially, the process of PSs recounts was conducted in the CRC by 28 teams. After a few days of recounts, the number of teams was increased to 40 to speed up the process. The recount process was observed by a high number of party and civil society observers. Party observers from the LVV were more numerous and active than observers from other Kosovo Albanian parties.

The CEC regularly published the new results forms of recounted PSs together with the initial result forms on its webpage. However, the CEC did not publish any new provisional results prior to the announcement of final results on 4<sup>th</sup> March 2021 to increase the transparency of the result process. Neither did the CEC publish an analysis of the recount process to identify the number of technical/numerical errors vis à vis attempts to manipulate the election results by PSs committees.

### **Verification and Counting of Conditional Ballots**

The process of verification and counting of conditional ballots including the special needs votes (SNV) was concluded on 1<sup>st</sup> March 2021.<sup>126</sup> Out of some 34,000 conditional ballots cast, 32,290 votes were verified and counted by the CEC. During the verification process, all names of the conditional voters were entered manually into the computerised system and cross-checked against the scanned voter list from regular PSs to identify possible multiple voting. The results of counting of conditional ballots cast in Kosovo on election day followed the results of the regular voting in the PSs to a large extent.

### **Verification and Counting of the OoK ballots**

The verification and counting of the OoK ballots were finalised on 3<sup>rd</sup> March 2021. The process of verification was accompanied by errors and was seen as controversial by representatives of the LVV, who criticised the CEC/CRC personnel for not having an approved official procedure for the verification of OoK ballots, and accused CRC staff of not being properly trained to conduct this activity. There were also a number of complaints about the transparency of the verification of OoK votes and the lack of possibility for party observers to observe the computer verification of the OoK envelopes/ballots when conducted by individual clerks. The CRC staff conducted the additional check of the verification process once all OoK votes were verified, and some 2,000 votes that had been initially rejected were reinstated.

The CEC received 43,477 mail items/packages within the 12<sup>th</sup> February 2021 deadline for acceptance of OoK votes. In these mail items, there were more than 79,000 ballots. Of those, the largest number of rejected voters were those who had not applied for registration within the prescribed time or whose registration application had been rejected during the registration process. Based on the CEC decision, more than 1,600 voters were rejected for sending their votes in the same package as those with different family names; Overall, some 58,000 OoK postal votes were approved during the verification process and included in the results, representing 6.4 per cent of all votes cast and some 57 per cent of all registered voters for OoK voting.

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<sup>126</sup> SNV are cast by voters on election day outside the polling stations (home bound voters, hospitalised voters, etc)

| CATEGORY | REASONING FOR REJECTION  | No. OF POSTAL BALLOTS |
|----------|--|-----------------------|
| D1       | Persons who have not applied to be registered as OoK voters  | 9,199                 |
| D2       | Applicants who were rejected during the OoK registration period  | 6,665                 |
| D4       | Persons who sent ballot papers more than once  | 1,325                 |
| D5       | Unidentified voters (who sent only the ballot paper with no ID) or persons who sent more ballot papers than the number of approved voters (e.g 5 approved voters, 7 ballot papers) | 2,451                 |
| D6       | Persons who sent copies of expired IDs   | 910                   |
| D7       | Group voting (the ballot papers inside the same package are from different families and last names; e.g 1 package has 84 postal ballots inside)                                    | 1,656                 |
| D8       | Packages who were personally sent to the Post office no.6 in Prishtina   | 385                   |

## XVI. RESULTS AND POST-ELECTION ENVIRONMENT

### The final uncertified results were changed after successful appeals by non-majority parties

The CEC published the online preliminary results (the CEC K-vote system) for political entities broken down by the PSs within several hours of the completion of the regular votes count at PSs. However, the noticeable flaw was the fact that there were no Kosovo-wide progressive results published during the tabulation and counting of conditional and OoK ballots.

*Comparison of K-vote preliminary results and the announced final results and certified final results.*

| POLITICAL ENTITY**     | K-VOTE PRELIMINARY RESULTS |        | FINAL RESULTS (uncertified) |       | FINAL RESULTS (certified) |       |
|------------------------|----------------------------|--------|-----------------------------|-------|---------------------------|-------|
|                        | %                          | Seats* | %                           | Seats | %                         | Seats |
| LVV                    | 47.85                      | 56     | 49.952                      | 58    | 50.28                     | 58    |
| PDK                    | 17.41                      | 20     | 16.9                        | 19    | 17.009                    | 19    |
| LDK                    | 13.08                      | 15     | 12.647                      | 15    | 12.731                    | 15    |
| AAK                    | 7.43                       | 9      | 7.078                       | 8     | 7.124                     | 8     |
| Srpska Lista (Serbian) | 5.54                       | 10     | 5.06                        | 10    | 5.094                     | 10    |
| KDTP (Turkish)         | 0.78                       | 2      | 0.74                        | 2     | 0.745                     | 2     |
| UZ-AH (Bosniak)***     | 0.81                       | 1      | 0.732                       | 1     | -                         | -     |
| VAKAT (Bosniak)        | 0.72                       | 1      | 0.678                       | 1     | 0.616                     | 1     |
| IRDK (Egyptian)        | 0.35                       | 1      | 0.377                       | 1     | 0.379                     | 1     |
| RI (Roma)              | 0.48                       | 2      | 0.461                       | 2     | 0.364                     | 1     |
| NDS (Bosniak)          | 0.35                       | 1      | 0.33                        | 1     | 0.331                     | 1     |
| SDU (Bosniak)***       | -                          | -      | -                           | -     | 0.292                     | 1     |
| JGP (Gorani)           | 0.27                       | 1      | 0.246                       | 1     | 0.246                     | 1     |
| PAI (Egyptian)         | 0.23                       | 1      | 0.244                       | 1     | 0.244                     | 1     |
| LPRK (Roma)            | -                          | -      | -                           | -     | 0.139                     | 1     |

\* Unofficial calculation

\*\* Table includes only the parties that have won seats in the Assembly

\*\*\* Results and seats for this party changed after ECAP and Supreme Court decisions

On 4<sup>th</sup> March 2021, i.e. 18 days after election day, the CEC announced and published the final election results on the website, which were still subject to challenges and, eventually, certification. The results announced included both results for political entities and results for individual candidates within each political entity, broken down by PS. In terms of the percentage of total valid votes received by political entities, there were some differences between the final results announced and the K-vote preliminary results which were published shortly after election day.<sup>127</sup> Following the counting of approx. 56,000 votes from OoK, the LVV secured two more seats in the final results at the expense of the PDK and the AAK as 78.5 per cent of votes from the diaspora were in support of the LVV.

The 2021 early legislative elections were won by the LVV with 49.95 per cent of votes, securing 58 seats in the next Assembly. The three other well-established Kosovo Albanian parties followed, with the PDK winning 16.9 per cent, the LDK got 12.6 per cent votes, and the AAK won 7 per cent of votes.

### Acceptance of the results

Twenty of the 120 seats in the Assembly are reserved for non-majority communities and distributed in the following way: ten for the Kosovo Serb, three for the Kosovo Bosniak, two for the Kosovo Turkish and one each for the Kosovo Gorani, Kosovo Roma, Kosovo Ashkali and Kosovo Egyptian communities, with an additional seat allocated to the community with the highest number of votes among the latter three.

Prior to the elections, some political actors alleged that the SL, the dominant political force within Kosovo Serb politics (practically unchallenged by other Kosovo Serb political entities running in the 2021 elections) was attempting to indirectly increase its 'weight' in the Assembly by strategically 'allocating' part of its support to new initiatives among the Kosovo Bosniak and Kosovo Roma communities.<sup>128</sup> The final (uncertified) election results announced on 4<sup>th</sup> March 2021 fuelled these allegations: firstly, there was a substantial increase in the overall number of total votes for both communities compared to the previous elections; secondly, the vast majority of votes for the two new political entities - UZ – AH, led by Adriana Hodžić (Kosovo Bosniak) and the Roma initiative (RI) led by Gazmend Salijević - came from municipalities with a large Kosovo Serb population. There was also a notable increase of votes for the VAKAT coalition (Kosovo Bosniaks community). In previous elections, votes for other non-majority communities from these municipalities were minimal.<sup>129</sup>

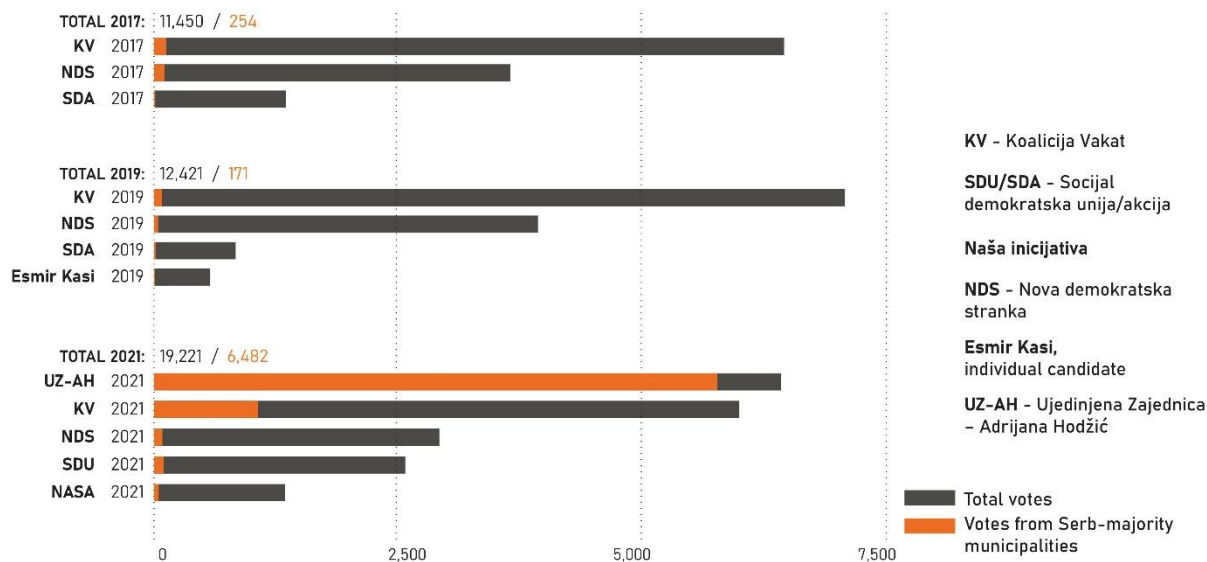
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<sup>127</sup> K-vote preliminary results do not include conditional and OoK postal votes.

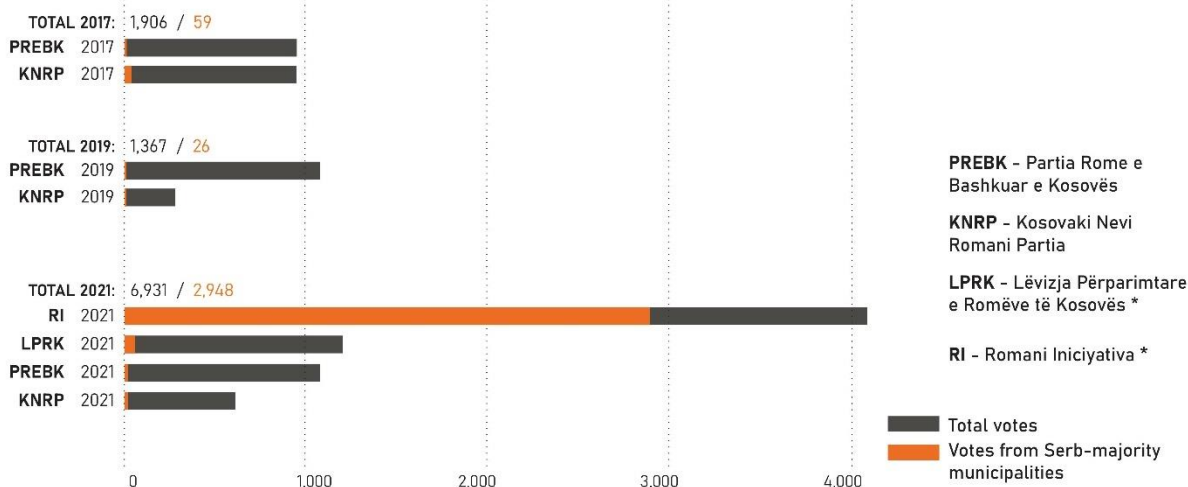
<sup>128</sup> Prior to the elections (on 27<sup>th</sup> January 2021), Ms Duda Balje from the Social Democratic Union (SDU) representing the Kosovo Bosniak community alleged that the SL was attempting to distribute part of its votes to other communities, candidates or lists that are in line with SL interests. She pointed to the UZ - AH, led by Adriana Hodžić (Bosniak) from North Mitrovica (one of the four Kosovo Serb-majority municipalities in northern Kosovo) and RI led by Gazmend Salijević from Gračanica (also a Kosovo Serb-majority municipality) as the two entities benefiting from this support. These two civic initiatives emerged after the 2021 elections were called in early January. *"They (the SL) correctly calculated that they can give 3 to 4 thousand votes to that Bosniak option and one or two thousand to Roma. The Gorani have been with them for some time. I think that the goal is to get 2/3 of the votes of minorities, that is a great force within the Parliament"*, said Balje.

<sup>129</sup> The SL received 44,404 votes (5.06 per cent) altogether. This result was enough to secure all 10 seats reserved for Kosovo Serbs for the SL (the SL won 10 seats in the 2019 elections as well). At the same time, the total number of votes for the SL significantly decreased compared to a total of 57,015 votes (6.4 per cent) received in the 2019 elections and 44,499 votes (6.11 per cent) received in the 2017 elections.

KOSOVO BOSNIAK COMMUNITY VOTES



KOSOVO ROMA COMMUNITY VOTES



The three seats reserved for Kosovo Bosniaks entities were won (based on the 4<sup>th</sup> March 2021 final uncertified results) by the UZ-AH, Nova Demokratska Stranka (NDS), and the VAKAT coalition. Adrijana Hodžić (UZ-AH), the deputy president of the municipality of North Mitrovica, argued that her election success was a result of her long-term work for non-majority communities in Kosovo. However, she also informed the EU EEM about an informal agreement with SL representatives, including a mutual non-confrontational approach during the campaign and non-interference in their campaigns.



As for the four seats reserved for Kosovo's Roma, Ashkali and Egyptian communities, the election (uncertified) results announced by the CEC on 4<sup>th</sup> March 2021 were as follows: the Ashkali Party for Integration (Kosovo Ashkali community) and the New Democratic Initiative (Kosovo Egyptian community) each won one seat. Two seats were won by the RI representing the Kosovo Roma community, as it also got the additional seat allocated to the entity that received the highest number of votes among the three communities. Mr Artan Asllani, CEC member (representative of Kosovo Ashkali community) informed the EU EEM that this result would have a significant impact on these communities as in the past four legislative elections, this additional seat has been won by the Kosovo Ashkali community, the largest among the three (according to the 2011 census it has some 15,500 members) whereas this time has been won by the RI, representing the smallest community of the three (population of some 9,000).

### **Recounts ordered by the ECAP following the announcement of final (uncertified) results**

Following the 4<sup>th</sup> March 2021 announcement of election results by the CEC, a total of 210 complaints against the PEC result protocols were filed to the ECAP. These complaints were mainly filed by candidates, alleging irregularities in the counting and recording of the preferential votes in the PEC result protocols. Some complaints were also filed by political entities alleging irregularities in the counting and recording of the results for the entities. The complainants requested recounts in a varying number of polling stations.

On 8<sup>th</sup> March 2021, the ECAP granted 30 requests and ordered partial recounts of 134 polling stations. Some 180 requests were rejected on the grounds that there was no clear and convincing evidence. Most of the complaints granted by the ECAP, requested a recount for a single or a limited number of polling stations, while complaints requesting recounts for numerous polling stations were largely rejected. The ECAP decisions were not always consistent. For instance, statements by observers present in the polling stations in question were not always accepted as sufficient evidence.

An AAK candidate (F. Gjergjaj) requested a recount of all the conditional and OoK ballots cast for the AAK, alleging that there was interference with the counting and recording of results in the protocols at his expense, which benefitted the AAK candidate and former Minister for Foreign Affairs, Meliza Haradinaj. The complaint was granted by the ECAP which ordered a recount, as requested.

In addition, the LVV filed a complaint requesting the verification and counting of some 9,748 parcels (only a small amount of these parcels arrived on 13<sup>th</sup> February 2021) containing an unknown number of OoK ballots, which arrived in Kosovo on the 13<sup>th</sup> February 2021, i.e., a day after the deadline set by the CEC.<sup>130</sup> The complainants cited the short timeframes and other obstacles to the effective implementation of OoK voting. The complaint was rejected on the basis of the Constitutional Court judgment acknowledging 12<sup>th</sup> February 2021 as the legal deadline for admission of OoK complaints. In a separate complaint, the LVV also requested the counting of 20,550 OoK ballots which were received within the set deadline, but failed the verification control at the Counting and Results Centre (CRC). The complaint was denied

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<sup>130</sup> These ballots were sent by DHL from Germany and did not arrive in Kosovo on 12<sup>th</sup> February 2021, due to logistical problems at the airport in Germany.

admissibility on the grounds that it should have been filed within 24 hours of the alleged violation.<sup>131</sup>

On 3<sup>rd</sup> March 2021, three political entities, Nasa Inicijativa (NI), Socijal-demokratska Unija (SDU) and Nova Demokratska Stranka (NDS) requested that the votes for two political entities representing the Bosniak community (UZ- Hodzic, VAKAT) be annulled.<sup>132</sup> The ECAP partially granted the complaints and annulled all the votes for all five Kosovo Bosniak political entities (including the votes of the complainants) in seven municipalities and some of their votes in three additional municipalities.<sup>133</sup> The ECAP noted that the number of votes obtained by these parties in these polling stations exceeded the number of the Kosovo Bosniak inhabitants.<sup>134</sup> It appears that the ECAP decision is based on an assumption that not all the votes for the Kosovo Bosniak and Roma political entities were cast by Bosniak and Roma voters respectively. The ECAP noted that the voters of one community, in this case the Serb community, cannot ensure the representation of another, namely the Bosniak, community. It explained that this runs contrary to the Constitution and the law, which provide guaranteed seats for the representation of each non-majority community.<sup>135</sup> However, the law does not explicitly require that a political entity representing a non-majority community obtain votes only from members of the respective non-majority community, and there are no such legal grounds for invalidation of votes. Reversely, by law, voters belonging to a non-majority community may vote for any political entity and not only for those which represent their community. The SDU appealed the ECAP decision, which was upheld by the Supreme Administrative Court (SAC). The SAC noted that the courts should apply the Constitution directly when necessary.<sup>136</sup>

Similarly, a number of Roma, Ashkali and Egyptian (RAE) political entities requested the annulment of the votes obtained by the Roma Initiative (RI).<sup>137</sup> The request was also partially granted and the votes for the RI were annulled in a number of polling stations in five municipalities.<sup>138</sup> The reasoning of the ECAP decision is the same as in the decision on the Bosniak political entities.

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<sup>131</sup> Article 105.1 of the LGE stipulates that complaints concerning the conduct of the CRC shall be submitted in writing to the ECAP within 24 hours of the occurrence of the alleged violation.

<sup>132</sup> During the counting and tabulation process at the CRC, SDU-Duda Balje had filed two similar complaints requesting invalidation of the votes cast for Hodzic and the Coalition Vakat. The ECAP had denied admissibility to these complaints as “premature”, as the CRC process was still pending.

<sup>133</sup> Namely, in Zubin Potok, Strpce, Ranillug, Gracanica, Partesh, Killokot and Novo Brdo, Zvecan, Laposavic and Mitrovica.

<sup>134</sup> The ECAP decision was based on a 2018 OSCE report which contained the number of Bosniak population in each municipality.

<sup>135</sup> Namely, article 58.4 of the Constitution and article 111.1 of the LGE.

<sup>136</sup> Based on the Constitutional Court judgment in case no. KI207/ 19.

<sup>137</sup> Namely, the Liberal Party (PLE), the Ashkali Party for Integration (PAI), the Roma Party of Kosovo (PREBK) and the Democratic Party of Kosovo (PDAK) and the Progressive Roma Movement in Kosovo (LPRK).

<sup>138</sup> Namely, in Ranillug, Partesh, Killokot and Novo Brdo, Laposavic and Mitrovica.

## XVII. RECOMMENDATIONS

| NO.                               | CONTEXT<br>(including reference to the relevant page of the FR)  | RECOMMENDATION  | CHANGE IN<br>LEGAL<br>FRAMEWORK<br>REQUIRED* | RESPONSIBLE<br>INSTITUTION | RELEVANT<br>INTERNATIONAL – REGIONAL<br>PRINCIPLE – COMMITMENT – NATIONAL<br>LEGISLATION<br>(including text of the relevant document quoted)  |
|-----------------------------------|--|---|--|----------------------------|---|
| <b>REGISTRATION OF CANDIDATES</b> |  |   |  |                            |   |
| 1                                 | <p>The LGE disqualifies those convicted for any offence for three years after the final court decision. While exclusion of offenders from parliament serves a legitimate aim, disqualification regardless of the gravity of the crime is disproportionate and at odds with international standards. What is more, the LGE is not in line with the Constitution, which requires a court decision explicitly depriving suffrage rights and the Criminal Code which disqualifies only those convicted for electoral offences or offences punishable by imprisonment for over two years.</p> <p><i>Pages 11-12</i></p> | <p><b>To prescribe candidate ineligibility only for a final criminal conviction for serious criminal offences and pursuant to a court decision explicitly depriving the convicted individual of the right to stand. To harmonize the applicable provisions in the election law and the criminal code.</b></p> | <p>Article 29 of the LGE</p>                 | <p>Assembly</p>            | <p><b>Article 3 of Protocol No. 1 to the European Convention of Human Rights– Right to free elections</b> “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”</p> <p><b>ICCPR, article 25</b> “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”.</p> <p><b>ICCPR, article 25, HRC GC 25</b> “1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.”</p> <p>Section I.1.1.d of the <a href="#">Venice Commission Code of Good Practice in Electoral Matters</a> states that: “i. provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following</p> |

\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

| NO.          | CONTEXT<br>(including reference to the relevant page of the FR)   | RECOMMENDATION  | CHANGE IN LEGAL FRAMEWORK REQUIRED*             | RESPONSIBLE INSTITUTION                   | RELEVANT INTERNATIONAL – REGIONAL PRINCIPLE – COMMITMENT – NATIONAL LEGISLATION<br>(including text of the relevant document quoted)  |
|--------------|---|---|---|---|--|
|              |   |   |   |   | cumulative conditions: ii. it must be provided for by law; iii. the proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them; iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence; v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.” See also paragraphs 137-139, 150-151 of the <a href="#">Venice Commission Report Exclusion of Offenders from Parliament</a> . |
| <b>MEDIA</b> |   |   |   |   |  |
| 2            | In several stages of the process, the personal data and privacy of citizens were not sufficiently protected. The cases noted by the mission included the publication of lists of voters (including OoK) by the CEC with personal details (name, surname, date of birth), and instances of unsolicited SMSs urging citizens to vote for a political party that were sent to voters on election day without prior consent and in violation of the campaign silence. The LGE and CEC | <b>To align the election legislation and the CEC regulations with the LPPD to provide for protection of citizens’ rights to privacy of their personal data used in the electoral process.</b> | Law on General Elections<br><br>CEC Regulations | Kosovo Assembly<br><br>and<br><br>the CEC | <b>Right to privacy</b><br><br><b>ICCPR, article 17:</b> “No one shall be subjected to arbitrary or unlawful interference with his privacy... Everyone has the right to the protection of the law against such interference or attacks.”   |

| NO.                       | CONTEXT<br>(including reference to the relevant page of the FR)  | RECOMMENDATION  | CHANGE IN<br>LEGAL<br>FRAMEWORK<br>REQUIRED*                | RESPONSIBLE<br>INSTITUTION                   | RELEVANT<br>INTERNATIONAL – REGIONAL<br>PRINCIPLE – COMMITMENT – NATIONAL<br>LEGISLATION<br>(including text of the relevant document quoted)  |
|---------------------------|--|---|---|--|---|
|                           | regulation are not aligned with LPPD.<br><i>Pages 22-23</i>  |   |   |  |   |
| 3                         | <p>As the election legislation has remained principally unchanged for over a decade, it does not address issues related to relevant developments such as the increased importance of digital communication in the election campaign or the need for more solid protection of personal data and privacy of citizens.</p> <p>Facebook has not yet implemented for Kosovo the tools facilitating transparency and accountability of political advertising; it was therefore only possible to see the quantity of ads by key political actors (whose Facebook pages were followed) but not the amount of funds spent.<br/><i>Pages 24-25</i></p> | <p><b>To review the election legislation in order to reflect the increased importance of digital communication aspects in the election campaign and in the electoral process in general. Transparency and accountability of online campaigns could be fostered by introducing mandatory archives of online advertising, providing for detailed reporting requirements for those who paid for sponsored materials, as well as for those who received payments.</b></p> | <p>PL – Law on General Elections</p> <p>CEC Regulations</p> | <p>Kosovo Assembly</p> <p>and</p> <p>CEC</p> | <p><b>Transparency and access to information / Fairness in the election campaign</b><br/> <b>UN CAC, article 7.4:</b> “Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.”<br/> <b>UN CAC, article 7.3:</b> “Each State Party shall also consider taking appropriate legislative and administrative measures, ... to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”<br/> <b>UN CAC, article 13(b)</b> “Each State Party shall... ensure that the public has effective access to information.”<br/> <b>Right to information ICCPR, HRC GC 25, para. 19:</b> “Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”</p> |
| <b>ELECTORAL DISPUTES</b> |  |   |   |  |   |
| 4                         | The law prescribes an exhaustive list of CEC decisions that may be appealed  | <b>To prescribe that all CEC decisions may be challenged with the</b>   | LGE   | Assembly                                     | <b>Right to effective remedy, Rule of law</b>   |

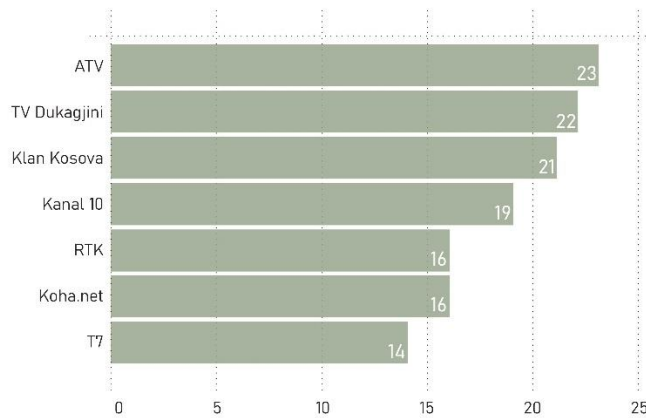
| NO. | CONTEXT<br>(including reference to the relevant page of the FR)   | RECOMMENDATION   | CHANGE IN<br>LEGAL<br>FRAMEWORK<br>REQUIRED* | RESPONSIBLE<br>INSTITUTION | RELEVANT<br>INTERNATIONAL – REGIONAL<br>PRINCIPLE – COMMITMENT – NATIONAL<br>LEGISLATION<br>(including text of the relevant document quoted)   |
|-----|---|--|--|----------------------------|--|
|     | <p>to the ECAP, excluding other decisions on very significant aspects of the election process such as the composition of election commissions and OoC voter registration. ECAP decisions are only subject to a judicial review if they impose fines exceeding a certain amount.</p> <p><i>Pages 29-30</i></p> | <p><b>ECAP and all ECAP decisions may be appealed in court, regardless of the amount of the fine or whether a fundamental right is affected.</b></p> |  |                            | <p><b>ICCPR, GC 25, para. 20:</b> “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant (...)</p> <p><b>ICCPR, article 2.3</b> “(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.”</p> <p><b>UDHR, article 8</b> “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.</p> <p><b>ICCPR, CG 25, para. 20:</b> “The security of ballot boxes must be guaranteed, and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.”</p> |

| NO.  | CONTEXT<br>(including reference to the relevant page of the FR)   | RECOMMENDATION   | CHANGE IN<br>LEGAL<br>FRAMEWORK<br>REQUIRED* | RESPONSIBLE<br>INSTITUTION | RELEVANT<br>INTERNATIONAL – REGIONAL<br>PRINCIPLE – COMMITMENT – NATIONAL<br>LEGISLATION<br>(including text of the relevant document quoted)   |
|--|---|--|--|----------------------------|--|
| <b>POLLING, COUNTING AND TABULATION OF RESULTS</b> |   |  |  |                            |  |
| 5  | <p>Following the internal audit of all 2,382 PSs, the CEC decided to recount ballots from 564 PSs. Twelve ballot boxes were recounted after being in quarantine as some sensitive materials were missing, such as result forms, poll book, PS original seals, etc. The vast majority of the remaining 552 ballot boxes were recounted mainly due to a discrepancy between the number of preferential votes for individual candidates and the number of votes cast for their political entity (511 PSs). The process of the recounting of ballots lasted 18 days, similarly to the 2017 early legislative elections. The process is very lengthy partly due to the fact that all recounts are done in one national centre rather than at the municipal level immediately after the election day.</p> <p><i>Pages 34-35</i></p> | <p><b>To consider introducing the tabulation of polling station results at municipal level. An additional layer of the tabulation process could increase the transparency and speed of the tabulation process. Tabulation of polling station results and the receipt of sensitive materials by the polling station committee Chair/members would increase their accountability as any inconsistencies would be determined in their presence.</b></p> | <p>Law on General Elections (LGE)</p>        | <p>Assembly</p>            | <p>Genuine elections that reflect the free expression of the will of voters</p> <p><b>ICCPR, GC 25, Paragraph. 20:</b> “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant (...)</p> <p>“The security of ballot boxes must be guaranteed, and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.”</p> |

## XVIII. ANNEXES

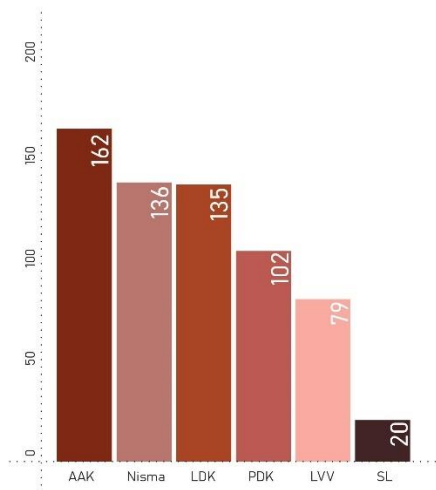
### Online campaigns

NUMBER OF DEBATES/INTERVIEWS STREAMED ONLINE BY BROADCAST MEDIA DURING ELECTION CAMPAIGN



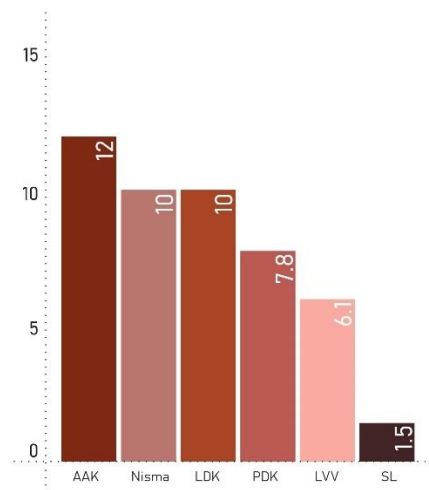
\*Source: Socialbakers

NUMBER OF FACEBOOK PAGE POSTS FROM THE CAMPAIGN PERIOD FOR PARTY PAGES



\*Source: Fanpagekarma

AVERAGE NUMBER OF FACEBOOK PAGE POSTS/DAY DURING THE CAMPAIGN PERIOD FOR PARTY PAGES

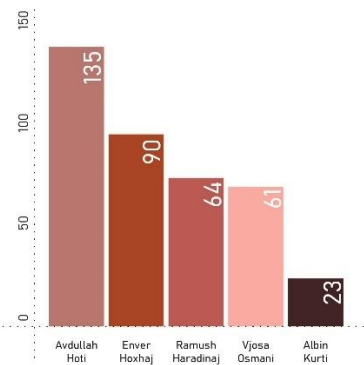


\*Source: Fanpagekarma

\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

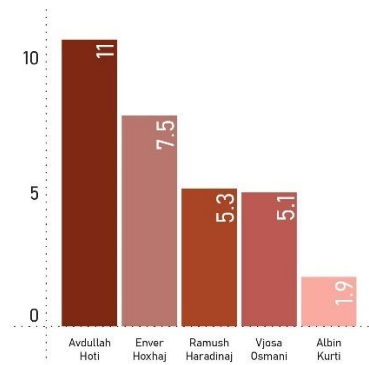


NUMBER OF FACEBOOK PAGE POSTS FROM THE CAMPAIGN PERIOD FOR CANDIDATE/PARTY LEADER PAGES



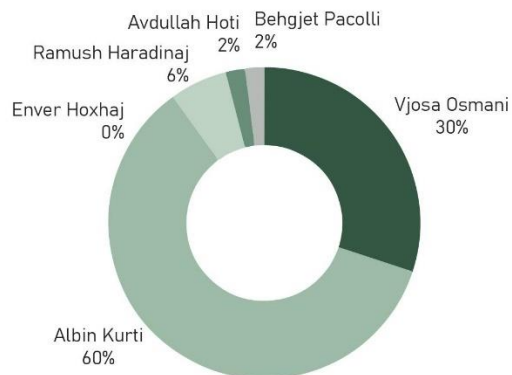
\*Source: Fanpagekarma

AVERAGE NUMBER OF FACEBOOK PAGE POSTS PER DAY DURING THE CAMPAIGN FOR CANDIDATE/PARTY LEADER PAGES

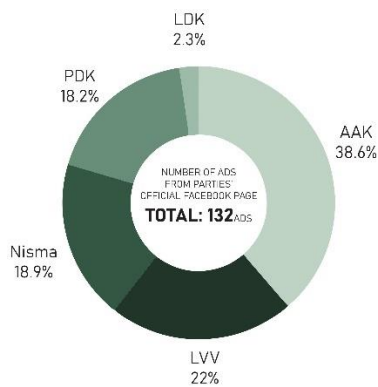


\*Source: Fanpagekarma

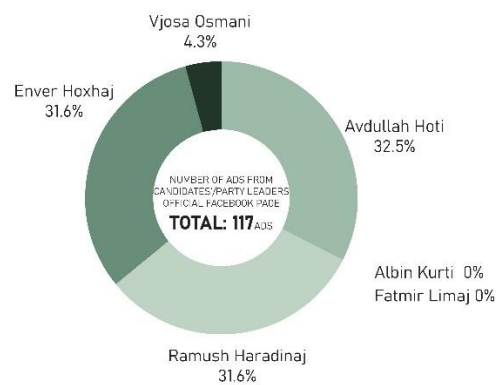
TOP 50 FACEBOOK POSTS WITH MOST INTERACTION



\* the first 27 were exclusively Albin Kurti and Vjosa Osmani from LVV



\*Source: Facebook Ad Library



\*Source: Facebook Ad Library

