



On the Legislation and Integrity of the Electoral Management Bodies in Western Balkans Countries

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Abstract

The comparative analysis of national legislation related to EMBs (Electoral Management Bodies) in Western Balkan countries shows that in the process of drafting this legislation, all these countries had as a roadmap the recommendations given by international institutions and CoE for countries that have insufficient experience in the exercise of democracy and the rule of law. These countries have used the independent EMBs model. Political representation is the basic principle implemented in these countries for establishing the EMBs. Efforts for political balancing of EMBs are not identified in all countries and for all levels of EMBs. In the Albanian legislation, this issue is treated in a more complete way than in other countries. In multi-ethnic countries, such as North Macedonia, Kosovo, Montenegro and BiH, the legislation guarantees the representation in EMBs of ethnic minorities. Referring to the integrity of the EMB, the countries of the Western Balkans are classified in the group of countries with a "moderate" level. To increase the Electoral Integrity Index, these countries must make changes in the legislation related to EMBs and its operation in accordance with the recommendations of international institutions, such as OSCE/ODIHR, CoE, Venice Commission.

Keywords: Electoral Management bodies, Legislation, WesternBalkans countries

1. Introduction

The role of the EMB in the electoral processes, the way this institution organizes and administers the elections, and its integrity in fulfilling its duties and in implementing the law, are very important factors for the conduct of elections in accordance with the standards that characterize democratic elections. EMBs are part of the institutions that generate important and determining effects on the credibility of citizens in the electoral process and the legitimacy of its result. EMBs possess these qualities regardless of the country's level of democratic development. Having as its object the organization and administration of the electoral contest, the contest for power, central or local, the integrity of the EMB in the implementation of the law is always threatened by the influence and negative interference from electoral subjects, the political party and the candidates. Thus, the commitment and the continuous investment of the society necessary to create conditions and legislative and institutional instruments for the development of the capacities of EMBs, is always required. An important part of this commitment is the determination of legislative solutions which, referring to the concrete conditions of the country and its stage of democratic development, can make possible the operation of the EMB in

accordance with the principle of independence from the government and from other influences¹. Such a request, as pointed out by Shuaibi, 2011² "It is particularly important in emerging democracies that may have histories of partisan influence or authoritarianism that the EMB function independently from the existing government and political parties, in order to increase voter confidence and dispel any fears of bias or interference"

Referring to the experiences of different countries, different ways of building EMBs can be identified - Garber³; López-Pintor⁴. According to³among these ways, which differ according to the criteria and principles used for the construction of EMBs, the following models can be listed:

1. The government model, is one where elections are organized by the executive branch of a country's government, typically the Ministry of Interior or local authorities, and run primarily by Ministers or civil servants. Other tasks may be assigned to other appropriate bodies (e.g. the judiciary would be responsible for adjudicating election related complaints). Polling officials generally would be designated from the ranks of the civil service, thus avoiding the difficulties involved in selecting individuals from the population at large who may not have the requisite skills for the various jobs. This approach works well where the civil service is respected as professional and neutral, but is more problematic in countries where the partisanship of the civil service is in question. The United States and much of western Europe, utilize this model.
2. The party-based model, may be structurally independent from the government. All registered political parties designate representatives to the National Election Commission. This assures that various interests are represented on the commission and that each party can exercise some form of oversight concerning the operation of the commission. But it should be noted that there are two problems with this model:

First, in a transition situation, the number of parties often proliferates. If all parties are allowed to designate members to the commission, the size of the commission may be unwieldy and hence prove ineffective. Such a situation was encountered in Albania. Referring to the recommendation given by OSCE/ODIHR⁵, with the Law No. 9371, dated 14.4.2005 "For some additions and changes in the Law No. 9087, dated 19.6.2003 "Electoral Code of the Republic of Albania", amended, the number of members in the electoral commissions increased from 7 to 13 members. In this way, the level of representation of political parties in EMBs increased, but the administration of the electoral process became significantly more difficult⁶.

Second, the commission may be comprised of individuals who lack the requisite skills and/or experience to ensure the effective operation of the commission.

This model is implemented in many countries of South America and in all the countries of the Western Balkans.

3. Judicial model when judges are selected for administering elections. In Romania, for example, seven Supreme Court judges are selected by lottery to serve on the Central Election Commission. Again, this works well if the judiciary is respected for its independence, but is problematic if the electoral contestants view the judiciary as partisan.
4. The independent expert model, when political parties designate by consensus a group of experienced individuals renowned for their independence. They also should have a reputation for independence and integrity. The obvious problem is developing a consensus on the identity of the appropriate individuals. Generally, such independent commissions range in size from 3 to 11 members. The idea is to avoid commissions that are unwieldy, but which are large enough to ensure for an effective division of

¹International Institute for Democracy and Electoral Assistance (IDEA). (2006). "Guiding Principles of Electoral Management" in *The International IDEA Handbook on Electoral Management Design*. Stockholm. <http://aceproject.org/ace-en/topics/em/em20>

²Shuaibi, A. *The Benefits of an Independent Election Management Body: A Case Study of the Central Elections Commission of Palestine*. https://aceeeo.org/sites/default/files/PDF/presentation_of_conference/2011/Ashraf_Shuaibi_presentations.pdf

³Garber, Larry. (1994). "Election Commissions: Responsibilities and Composition". Paper presented at the NDI-sponsored African Election Colloquium. Victoria Falls, Zimbabwe. November p.317-326https://pdf.usaid.gov/pdf_docs/pnabr461.pdf

⁴López-Pintor, Rafael. (2000). "Electoral Management Bodies as Institutions of Governance. UNDP Bureau for Development Policy. <https://www.eods.eu/library/UNDP.Electoral%20Management%20Bodies%20as%20Institutions%20of%20Governance.pdf>

⁵Republic of Albania. *Local Government Elections 12 October 2003 - 25 January 2004 OSCE/ODIHR Election Observation Mission Report* p.24 "Political representation on all election commissions should be wider to ensure that more parties are represented on election commissions";

<https://www.osce.org/files/f/documents/7/c/24480.pdf>

⁶Republic of Albania. *Local Elections 18 February 2007 OSCE/ODIHR Election Observation Mission Report*, p.27 "Consideration should be given to reducing the membership of mid-level and lower-level election commissions in order to improve the operations of these commissions. This also applies to counting teams".

<https://www.osce.org/files/f/documents/b/5/25469.pdf>

responsibilities. The members of such an independent commission should be afforded various privileges and immunities. Often the status of commission members is the same as judges and, to ensure their independence, they can be removed only for gross dereliction of duty and for financial improprieties.

According to Garber⁷; Bitsoev⁸ although there are sensitive differences among the models used in different countries of the world for the construction of EMBs, in practice they can be reduced to three, based on structural characteristics which combine recruitment methods with functions performed. The three broad models are independent, governmental and mixed. Lekorwen, 2006⁹ points out that the nature and character of EMBs are also influenced by the political and cultural traditions and the democratic evolution of a particular country. Despite this, he claimed that:

"The majority of countries use what is commonly known as the independent election management body"⁹.

In any case, the decision on how EMBs should be built, is the right and the responsibility of the legislative body of each country. Experiences of countries with developed democracies and international documents dealing with this issue emphasize that, such a decision should be made referring to the cultural, socio-economic characteristics, experiences, traditions and level of democratic development of the country. Public consultation is evaluated as an important associative process. In particular, such an approach to this decision-making is necessary for countries with little experience in the exercise of democracy.

Sustainability of electoral administration is an issue that should be given special attention in the national legislation. It is recommended that the main structure of the EMB, such as the CEC, be a permanent institution. Support for the development of the professional capacities of EMBs, especially in countries that implement the party-based model, is considered important¹⁰

In this paper, the legislative solutions for the establishment of the EMB in the countries of the Western Balkans are analyzed, aiming to identify the challenges and weak points against the background of international standards and good practices in electoral matters. The assessment of integrity in the implementation of legislation by the EMB is the object of study of this paper.

2. Methodology and Data

The analysis of legislative solutions for the establishment of the EMBs in the countries of the Western Balkans was carried out as a desk study. References to international documents published by CoE, Venice Commission, ACE-The Electoral Knowledge Network, International Institute for Democracy and Electoral Assistance (IDEA), were used in this analysis.

The methodology designed by Pippa¹¹, was used to evaluate, quantitatively, the role and effect of the EMB in the integrity of the elections.

The legislation drawn up in the various countries of the Western Balkans, which deals with issues related to the organization and development of electoral processes, is the basic information that was used to carry out this study. In order to judge the challenges and weak points of the national legislation, the international standards and good practices in electoral matters were taken into consideration.

The Electoral Integrity Index and their indicator – Electoral authority (EMBs) evaluated for different countries of Western Balkans:

<https://dataverse.harvard.edu/dataverse/PEI> and the results published Kume, 2021¹², were used for the purpose of this study.

⁷Garber, Larry. (1994). "Election Commissions: Responsibilities and Composition". Paper presented at the NDI-sponsored African Election Colloquium. Victoria Falls, Zimbabwe. November p.317-326 https://pdf.usaid.gov/pdf_docs/pnabr461.pdf

⁸ Bitsoev G.T. (2017) *Typology of Systems of Election Authorities. Electoral legislation and practice. No. 1, p.25-30.* https://www.academia.edu/35046393/Typology_of_Systems_of_Election_Authorities

⁹Lekorwe, M. (2006) *The Role and Status of the Independent Electoral Commission. Journal of African Elections. Vol. 5 No. 2, p.62-80.* DOI:10.20940/JAE/2006/v5i2a5

¹⁰International IDEA (2002): *International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections*, p. 43 <https://eos.cartercenter.org/quotes/1500#>

¹¹Pippa, N., Grömping, M. (2019), *Perceptions of Electoral Integrity, (PEI-7.0)*, <https://doi.org/10.7910/DVN/PDYRWL>

¹²Kume, A. (2022) *Analysis of the Integrity Index for Parliamentary Elections (PEI) in Albania - a country in the process of development of representative democracy. Journal of Liberty and International Affairs. Vol. 8 No. 2 (2022) pp. 75-86* <https://doi.org/10.47305/JLIA2282>

2.1 International standards and good practices in EMBs

European Commission for Democracy through Law (Venice commission) in their report "On electoral law and electoral administration in Europe" (2006) emphasizes that:

"The democratic character of elections depends largely on the responsibility of the authorities to properly implement the electoral law, and the commitment of all other election stakeholders (voters, candidates, parties, media etc.) to conduct democratic elections. Thus, the extent to which possible improvements in the law can have a positive impact on the election process will mainly be determined by both the will and the capacity of the electoral authorities and other election stakeholders to respect and implement the law in an effective and non-partisan manner".

Impartiality in law enforcement is considered one of the essential performances that EMBs must possess. Kucsko-Stadlmayer, 2011¹³, referring to the Code of Good Practice In Electoral Matters¹⁴ asserts that although there is no comprehensive solution for how the EMBs should be established to guarantee impartiality in its activity, but different mechanisms can be built in the legislation, that serve to achieve this goal. In states with little experience of organizing democratic elections the Code of Good Practice In Electoral Matters makes a strong demand for independent electoral commissions. The electoral commissions which are independent from other government institutions are increasingly viewed as the basis of impartial electoral management in developing or new democracies. According to Carter Centre:

"The composition of the election commission can vary, but the principles of independence and impartiality should be upheld. The bodies responsible for organizing the elections shall be independent or neutral and shall have the confidence of all the political actors".¹⁵

The drafting of legislation that creates the necessary conditions to establish such an EMB is especially necessary for the countries of the Western Balkans.

Established as permanent acting bodies is one of the legislative solutions with a significant effect on the impartiality of EMBs. In Code of Good Practice In Electoral Matters is recommended:

"The central electoral commission must be permanent in nature".

Venice Commission recommends that:

"..the Political parties must be equally represented on electoral commissions or must be able to observe the work of the impartial body" and

"..the bodies appointing members of electoral commissions must not be free to dismiss them at will"¹⁶.

The composition of electoral commissions is a key moment with significant effects on the work of EMBs. In report "On electoral law and electoral administration in Europe" Venice Commission is emphasized that:

"Even with formally independent electoral commissions the method of the commissions' composition may strongly favor the government or pro-governmental forces. Not surprisingly the composition of election commissions is one of the most controversial aspects of the legal framework for the election in many emerging or new democracies"¹⁷

In countries that do not have sufficient experience in the exercise of democracy, EMBs will be more realistic to

¹³Kucsko-Stadlmayer, G (2011). Independence of Election Commissions: An Essential Feature of Democratic Elections The doctrine of the Venice Commission. https://aceeeo.org/sites/default/files/PDF/presentation_of_conference/2011/IndependenceElectoralBodies_Kucsko-Stadlmayer.pdf

¹⁴CoE, Venice Commission (2002) "Code of Good Practice In Electoral Matters" https://venice.coe.int/images/SITE%20IMAG/ES/Publications/Code_conduite_PREMS%20026115.pdf

¹⁵The Carter Center (2021) EOS Election Obligations & Standards Database <https://eos.cartercenter.org/summaries/182>

¹⁶Electoral Commissions Forum of SADC countries. (2007) "Principles and Guidelines on the Independence of Elections Management Bodies in the SADC region" Adopted by the Annual General Conference in Luanda, Angola. <http://aceproject.org/ero-en/regions/africa/BW/principles-and-guidelines-of-the-independence-of>

¹⁷CoE, European commission for democracy through law (Venice Commission) (2020). Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues". CDL-AD (2020)023 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)023-e)

established on the principle of representation and political balancing¹⁸. In this case the EMBs are more effective and has the greatest chance to be impartial. Such a consideration is based on the fact that, in this way, political parties have greater opportunities to control each other. This ensures better checks and balances in the electoral process. However, it should be noted that the nomination of party representatives to electoral commissions, is the risk of the over-politicization of the commission's work. In such cases, the commission's members act in the interest of their parties rather than in the interest of the electorate¹⁹.

According to the Code of Good Practice In Electoral Matters the commission's independence can be strengthened by appointing commission members for a fixed (and sufficiently long) time period and by prohibiting their dismissal without reasonable grounds. The bodies that appoint members to electoral commissions should not be free to recall them, as it could cast doubt on their independence²⁰.

The implementation of legislation by EMBs for the organization and administration of the electoral process has a significant effect on the Elections Integrity Index (PEI)²¹. Electoral commissions' activities and decisions must be transparent, inclusive and consensus-oriented. It is important to emphasize that in the national legislation it has to be found to combine the best possible transparency, inclusiveness and effectiveness of the electoral administration at the same time²².

To increase the integrity of EMBs it is important that members of election commissions (at all levels) have the necessary skills to organize and administer elections. In order to address this problem, Venice Commission recommended:

*"Members of electoral commissions have to receive standardized training at all levels of the election administration."*²³

2.2 EMBs in Western Balkan countries

The countries of the Western Balkans in the efforts to develop capacities for the implementation of electoral processes in accordance with the principles of the European electoral inheritance, the commitments of the OSCE and the standards defined in international documents such as the Charter of Helsinki, the Declaration of Universal Human Rights, the Declaration of Rights political, etc.. face common challenges that are a consequence of their historical development. The nearly 50-year rule in the communist system resulted in the lack of experiences, culture, social and political behavior, which are necessary for the functioning of the state of law and democracy. The effects of these absences are felt in the efforts and in the ways in which issues related to the drafting and implementation of the legal framework for the construction and operation of EMBs have been handled and resolved.

In all the countries of the Western Balkans, the effort to build an impartial and independent EMBs from the executive and political parties is easily identifiable. As a consequence of the changes related to the socio-economic, political, culture, tradition and capacities in the exercise of democracy, the level of achievement of the objectives in these efforts is different in the countries of the Western Balkans.

In Albania, the Constitution approved by referendum on November 28, 1998, created the supporting conditions for the construction of an impartial and independent EMB. In the Electoral Code approved by Law 8609, dated 8.5.2000, it is determined that the construction of the EMB must be done in accordance with the principle of political representation. This rule did not apply to the Central Election Commission. In the Constitution, CEC is defined as a constitutional institution, whose members are not proposed by political parties. In accordance with the recommendation given by the

¹⁸International Institute for Democracy and Electoral Assistance (IDEA). (2006). "Guiding Principles of Electoral Management" in The International IDEA Handbook on Electoral Management Design. Stockholm. <http://aceproject.org/ace-en/topics/em/em20>

¹⁹Birch, S. (2007). "Electoral Management Bodies and the Conduct of Elections: Evidence from Eastern Europe and the Former Soviet Union" Annual meeting of the American Political Science Association, Hyatt Regency Chicago and the Sheraton Chicago Hotel and Towers, Chicago. http://www.allacademic.com/meta/p212031_index.html

²⁰CoE, Venice Commission (2002) Code of Good Practice In Electoral Matters. CDL-AD (2002)023rev, para. 77. "Discretionary recall is unacceptable, but recall for disciplinary reasons is permissible – provided that the grounds for this are clearly and restrictively specified in law" https://venice.coe.int/images/SITE%20IMAGES/Publications/Code_conduite_PREMS%20026115%20GBR.pdf

²¹Pippa, N., Grömping, M. (2019), Perceptions of Electoral Integrity, (PEI-7.0)". <https://doi.org/10.7910/DVN/PDYRWL>

²²CoE, European commission for democracy through law (Venice Commission) (2020). Report on electoral law and electoral administration in Europe. Synthesis study on recurrent challenges and problematic issues". CDL-AD (2020)023 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)023-e)

²³ (CDL-AD(2002)023rev2-cor, Expl. Report, para 84).

EOM, OSCE/ODIHR²⁴, the Electoral Code added the principle of political balancing of the second and third level commissions. The result of this change was the increase in the number of members in these commissions, which generated difficulties in the administration of the election process. The construction of the EMB according to the principle of representation and political balancing was in accordance with the standards and recommendations of the Code of Good Practices for Electoral Matters. Their practical implementation influenced the growth of bipartisan character in the decision-making of EMBs.

Political parties in Albania operate in a climate of distrust. The consequence of this climate are the frequent changes in the electoral legislation that deals with issues related to the construction of EMBs. The changes in the Constitution in 2001, 2003, 2005 significantly increased the role of political parties in the election and appointment of CEC members. The 2008 Constitutional amendments, abrogated the provisions that treated the CEC as a constitutional institution. The electoral code, approved by Law No. 10019, dated 29.12.2008, provides for the construction of the CEC based on the principle of representation and political balance. This decision-making of the main Albanian political parties is considered as a regression in the process of partisanship of the electoral administration.

International observers of OSCE/ODIHR and local observers have identified EMBs, built according to this principle, as one of the factors with negative effects on the integrity of the elections and on public confidence in the electoral processes. In the final reports for the elections, in particular for the elections held in 2011²⁵ and 2013²⁶ and following, the international missions and the Venice Commission recommended the construction of the electoral administration according to the principles and rules of the public administration. Albanian political parties have not responded to these recommendations. The efforts in the period February-June 2020 to amend the Electoral Code, in order to achieve an electoral administration according to the principles and rules that apply to the public administration, did not reach the consensus of the main political parties. The transitional provisions for the election of CEC members, approved by Law no. 101/2020, dated 13.07.2020²⁷ significantly reduced the effects of the provisions according to which the CEC is envisioned as an institution with a monocratic component and two collegial commissions, whose members must be elected through the competition, among citizens who are self-candidates and are not proposed by political parties.

According to legislative framework²⁸, the EMBs in **Serbia** shall be autonomous and independent in their work and operate in compliance with laws and regulations adopted on the basis of the law. Partisanship and expertise are used as criteria for the selection of EMB members. Parliamentary elections shall be conducted by the Republic Electoral Commission, local electoral commissions and polling boards. Local electoral commissions shall be municipal electoral commissions, city electoral commissions and electoral commissions of city municipalities of the City of Belgrade. Local elections shall be conducted by the electoral commission and polling boards. In Serbia, the Republic Electoral Commission (REC) it is a permanent institution elected by the Parliament²⁹. The members of this Commission have a 4-year mandate. The Commission consists of the President and sixteen members. Administrative and technical support to the REC is provided by personnel assigned by the National Assembly Service and the Republic Statistical Office. As a result, this staff is exposed to the pressure of the party that has the majority in the parliament. According to OSCE/ODIHR for increasing professional capacities and the level of independence in EMB decision-making is necessary to establishing all levels of the election administration by law, and clearly define their role and responsibilities³⁰.

Until 2001, the electoral processes in **Bosnia-Herzegovina** were administered by a transitional electoral administration, created by the international community. The Electoral Law adopted in 2001, as amended, provides for a complex electoral management, with administrative structures that change depending on the type of elections. The Central Electoral Commission consists of seven members. The duty of the Chairman of the commission is carried out, by

²⁴Albania, *Parliamentary Elections, 25 April 2021: Final Report*. <https://www.osce.org/files/f/documents/5/1/493687.pdf>

²⁵Albania, *Local Elections, 8 May 2011: Final Report*. <https://www.osce.org/files/f/documents/5/0/81649.pdf>

²⁶Albania, *Parliamentary Elections, 23 June 2013* <https://www.osce.org/files/f/documents/e/2/106963.pdf>

²⁷Electoral Code, Republic of Albania <https://www.osce.org/files/f/documents/5/7/477547.pdf>

²⁸<https://aceproject.org/ero-en/regions/europe/RS/serbia-law-on-the-election-of-the-president-of-the-view>

²⁹Only a person with a BA degree in law may be appointed a member or deputy member of the Republic Electoral Commission. Members and deputy members of the Republic Electoral Commission in the standing composition shall be appointed at the proposal of parliamentary groups proportionately to their representation in the total number of MPs belonging to parliamentary groups. No parliamentary group may nominate more than half of the members of the Republic Electoral Commission in the standing composition. Law on the Election of Councillors and Representatives www.legislationline.org/download/id/7743/file/Montenegro_Law_elections_councillors_members_of_parliament_1998_am2016_en.pdf

³⁰ Republic of Serbia. *Parliamentary elections, 21 June 2020*.

<https://www.osce.org/files/f/documents/a/3/466026.pdf>

rotation, by a Croat, a Bosniak, a Serb and a representative of the others, once every seven years, for a period of twenty-one months. Electoral administration in BiH reflects the post-conflict social complexity, the multi-ethnic structure of the society and the complicated constitutional architecture of the country and its entities. According to OSCE/ODIHR in BiH "Serious efforts should be made to ensure the impartiality of election administration. Consideration could be given to revising the method of formation of the PSCs, for example, by limiting eligibility to nominate PSC members only to the parties represented in the state and entity parliaments"³¹. To increase the political independence in the decision-making of the EMB in BiH the alternative mechanisms for the appointment of Polling Station Commissions members could also be implemented, such as open calls, when political parties fail to make timely nominations. The Albanian legislative solution related to this issue can be used.

The elections in **Montenegro** were administered by a three-tiered election administration comprising the State Election Commission (SEC), 24 Municipal Election Commissions (MECs) and 1,217 Polling Boards (PBs). SEC and MECs are permanent bodies; PBs are appointed for each election. The SEC is composed of a chairperson and 10 members³²; 24 MECs of a chairperson and four members. While the appointment method provides for a balanced political representation in the SEC, a lack of pluralism can arise in the permanent composition of MECs³³. Each PB comprises a presiding officer and four members. Authorized representatives of the contestants could join all election bodies 20 days prior to election day, with full voting rights. Although EMBs establish on the basis of the principle of political representation, the legislation emphasizes the need that EMBs must be independent in their work. To ensure these features the mission of OSCE/ODIHR emphasis that an efficient, comprehensive and continuous training for all members of EMBs, including authorized representatives of contestants, should be carried out³⁴.

Until 2006, the State Electoral Commission in **North Macedonia** was an ad hoc body without full-time personnel. They were effectively political representatives. The Electoral Code approved in 2006 defines the State Electoral Commission (SEC) as a permanent body. It consists of a chairman, vice-chairman and five members. The member's mandate used to be 4 years, but with the changes made in 2018, it was shortened to 6 months. The Parliamentary Committee on Election and Appointment Affairs prepares a draft-list of the applicants and submits it to the Parliament. From the candidates on the draft list for members of the State Election Commission, the opposition political parties have the right to propose the President and two members of the State Election Commission, whereas the ruling political parties have the right to propose the Vice President and three members of the State Election Commission. The President, the Vice President and the members of the State Election Commission are elected by the Parliament, with a two-thirds majority of the votes of the total number of parliamentary members. The members of the SEC and the employees must act independently of any center of power, they are to decide impartially and in accordance with the established facts and must responsibly carry out all activities necessary for the conduct of the election procedure. To ensure the stability and professionalism of the election administration the observation mission of OSCE/ODIHR recommend that the tenure of the State Election Commissioners' mandate should be clearly stipulated by the Electoral Code. The Code should also provide for a clear and transparent procedure of nomination and appointment of electoral commissioners. According to OSCE/ODIHR "Essential personnel should be employed in the State Election Commission's secretariat on a permanent basis. The capacity of the secretariat's human resources should match the powers vested to the Commission pursuant to the Electoral Code"³⁵.

The Constitution of the Republic of **Kosovo** defines the CEC as a permanent body, which prepares, supervises, directs and verifies all activities related to the process of elections and referendums and announces their results. The commission consists of eleven members with a chairman appointed by the President of Kosovo from among the judges of the Supreme Court and the courts exercising appellate jurisdiction. Six members are appointed by the six largest parliamentary groups represented in the Assembly, which are not entitled to reserved mandates. One member is

³¹ Bosnia and Herzegovina. General elections, 7 October 2018 <https://www.osce.org/odihr/elections/bih/409905>

³² Four SEC members are nominated by the parliamentary majority, four by the opposition, one by the civil society and one by the national minority party that won the highest number of votes in previous elections. Law on Election of President of Montenegro adopted on 27 December 2007, <http://www.legislationline.org/documents/id/4185>

³³ MECs chairpersons are nominated by the party that won most mandates in the given municipality in the previous municipal elections; two members by the majority in the municipal council and two by the opposition, if any. In Gusiñje, Nikšić, Petrijica, Plav, Rožaje, Ulcinj and Tuzi all MEC members were nominated by the ruling coalition. Law on Election of President of Montenegro adopted on 27 December 2007. <http://www.legislationline.org/documents/id/4185>

³⁴ Montenegro. Parliamentary Elections 30 August 2020 <https://www.osce.org/odihr/elections/montenegro/473532>

³⁵ Republic of North Macedonia. Early parliamentary elections, 15 July 2020. <https://www.osce.org/odihr/elections/north-macedonia/455125>.

appointed by the deputies of the Assembly who have reserved or guaranteed mandates for the Kosovo Serb community and three members are appointed by the deputies of the Assembly who have reserved or guaranteed mandates for other ethnic communities that are not the majority.

The national legislations that deal with issues related to EMBs in the countries of the Western Balkans have in common, the construction based on the principle of political representation. The application of this principle, as a rule, is done in accordance with the requirement for proportional representation of political parties. In some countries, such as in Kosovo, BiH, North Macedonia, attention is also paid to the representation of national minorities in EMBs. In countries such as Albania, Montenegro, North Macedonia, in addition to proportional representation for the construction of EMBs, the principle of political balancing is also applied.

In all countries of the Western Balkans, EMBs are defined as an autonomous and independent institution that operates in compliance with laws and regulations. A special attention is paid to the way in which the technical body is built and how it should function, in support of the EMB, in particular the main governing institution, CEC. Budget problems for EMBs are among the issues that are addressed in the legislation of the countries of the Western Balkans, aiming to use it as an important factor and support for independence and autonomy in the work of EMBs.

2.3 Assessment of EMBs integrity in the implementation of legislation

According to Methodology composed by Pippa, N et al. (2014)³⁶, Electoral authority (EMBs) is one of the indicators used to evaluate the Percetion Electoral Integrity Index (PEI). For its quantitative evaluation the average evaluation for different items of its components: (i) EMBs have been independent of party preference in their decision-making; (ii) The work of EMBs was transparent; (iii) Decisions in election commissions have been consensual; (iv) CEC has conducted an intensive training process for commissioners; (v) CEC has fulfilled the requirements of the law related to the monitor, in real time, and audit the campaign expense done by politic party and their candidates; (vi) According to the requirements of the law, CEC implemented the obligation to prevent the use of public assets for election campaigns; (vii) CEC has conducted an effective campaign for informing and educating voters (viii) EMBs have been cooperating with the media; (ix) The election commissions administered the election process well. Each item is evaluated with 1 to 5 points.

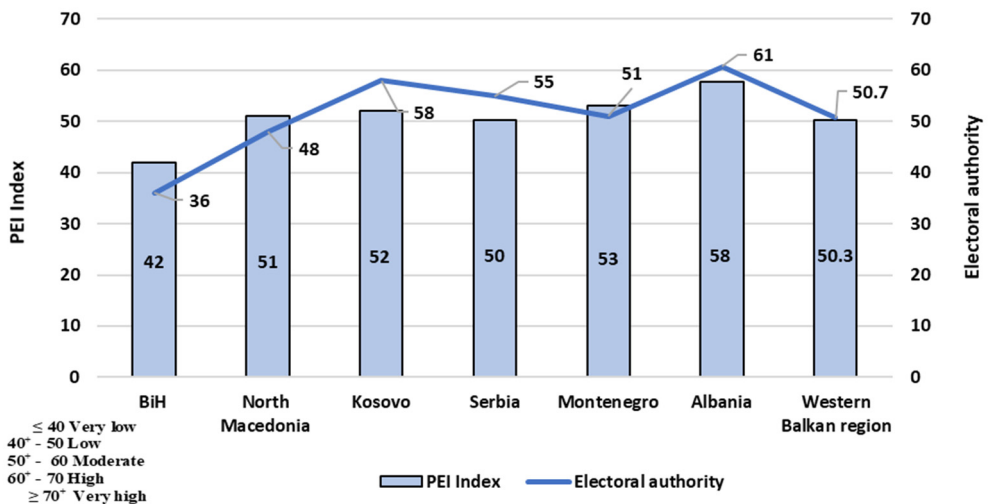


Figure 1: EMBs indicator and PEI index

³⁶Pippa Norris, Richard W. Frank and Ferran Martinez i Coma. 2014. 'Measuring electoral integrity around the world: a new dataset.' *PS: Political Science & Politics* 47(4): 789-798. <https://wcfia.harvard.edu/publications/measuring-electoral-integrity-around-world-new-dataset>

Referring to the data presented in Figure 1, the region of the Western Balkans is classified in the group of countries in which the integrity in the implementation of the legislative framework of EMBs is evaluated at the "Moderate" level, but with a small difference from the "Low" level. Among the Balkan Western countries, BiH is classified at the "Low" level. Albania achieved the highest level, "High", for this indicator.

Between the values of the PEI and the "Electoral authority" indicator, the tendency of the existence of a linear relationship is identified. The increase in the value of the "Electoral authority" indicator has a tendency to influence the increase in the value of the PEI. Therefore, for the countries of the Western Balkans, we can affirm that one of the effective ways to increase the integrity of the electoral processes is their commitment to increase the integrity of the EMB in the implementation of the law. In addition, referring to the analysis of legislative solutions for the construction of the EMB and the recommendations of international institutions on how this issue should be handled in the national legislation of countries that have insufficient experience in the exercise of democracy, to increase the level of integrity of elections in the countries of the Western Balkans, it is necessary to carry out legislative reforms that serve to increase the independence and non-partisanship of EMBs.

3. Conclusions

For the drafting of legislation related to EMBs, the countries of the Western Balkans have used as a roadmap the recommendations given by international institutions and CoE for countries that have insufficient experience in the exercise of democracy and the rule of law.

EMBs in the countries of the Western Balkans are built according to the model – Independent institution

The principle of proportional representation of the main political parties in EMBs is applied in all the countries of the Western Balkans.

In countries with a multi-ethnic structure, the legislation guarantees the representation in EMBs for representatives of ethnic minorities.

The integrity of the EMB for the implementation of legislation in the countries of the Western Balkans, with the exception of BiH, is assessed at the "Moderate" level. In Albania it is rated at "High" level

The implementation of the recommendations of international institutions for changes in the legislation that deals with the construction and operation of EMBs is the secure way to increase the Election Integrity Index (PEI) in the countries of the Western Balkans.

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