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Marko Milenković\*  
Institute of Social Sciences, Belgrade

## Electoral Management in the Western Balkans – Overview of Institutional Setting\*\*

### Abstract

Countries of the Western Balkans (WB) – former federal units of Socialist Federal Republic of Yugoslavia and Albania have undergone a lengthy and complex process of democratisation from late 1980s. Free and fair elections are among the cornerstones of democratic consolidation. Even though the institutional setting for electoral management differs greatly across the globe, during the Europeanisation process it was widely recommended to transitional societies to set up independent electoral management bodies in order to guarantee fair electoral conditions, with standards mostly promoted by the Venice Commission of the Council of Europe (VC) and International Institute for Democracy and Electoral Assistance (IDEA). Based on this influence, all the countries of the WB have established electoral commissions that are to great extent formally independent from the executive, with the intention of being less prone to electoral meddling. This is enhanced by regular election

\* Research Associate, [mmilenkovic@idn.org.rs](mailto:mmilenkovic@idn.org.rs)

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monitoring in the region by the Organisation for Security and Cooperation in Europe (OSCE) and the process being followed and evaluated by both the European Union institutions and member states as part of fulfilment of the Copenhagen criteria to join the EU. This paper gives an overview of the institutional setting of electoral management in the WB that was created following the model of independent bodies and outlines main features of their design.

**Key words:** Western Balkans, electoral management bodies, electoral process, electoral integrity, independent bodies.

## Introduction

Free and fair elections are generally considered the cornerstone of modern democracy. One of the preconditions for smooth functioning of the electoral process and its integrity<sup>1</sup> are well functioning and impartial electoral management bodies (EMB).<sup>2</sup> This article, the first in a series, reports and explores the main features of the institutional setup of EMB in the Western Balkans and their role in the electoral process. The main goal of this analysis is to map these features.<sup>3</sup> There are basically three models for EMB - Independent, Governmental and Mixed Models. (Catt *et al.* 2014: 5-6)<sup>4</sup> In a transitional context, it is traditionally advised by international

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- 1) For a definition of electoral integrity see: Jeffrey. (2017).
  - 2) As it was pointed by Mozaffar and Schedler: “This role is obviously important, although not well examined nor understood, in established democracies. But it has a special resonance in emerging democracies, where deliberate electoral manipulation and systematic fraud by recalcitrant authoritarian rulers unwilling to give up power have often blocked, derailed or truncated transitions to democracy. ... Effective electoral governance alone does not guarantee good elections, of course, because a complex variety of social, economic and political variables affect the process, integrity, and outcome of democratic elections. But good elections are impossible without effective electoral governance.” (Mozaffar, Schedler 2002:6)
  - 3) The role and concrete examples of the EU Institutions and other international factors involved in the legal, political and cultural transformation of the Western Balkan societies in terms of developing institutional pre-conditions for free and fair political game will be examined in the next article in the series.
  - 4) See annex of this publication for the comprehensive list of the EMBs throughout the World.

actors that political elites follow an independent model and set up an EMB accordingly. As the following analysis will demonstrate, this model has been followed by all countries of the region. A recent comparative analysis of democratic consolidation in Central and Eastern European post-communist states, namely Serbia Macedonia, Albania, Montenegro, and Bosnia and Herzegovina, still positions them within the group of “unconsolidated electoral democracies” (Merkel 2010: 20). One of the crucial questions for this kind of analysis is whether institutional setup really matters. Does it guarantee anything in terms of the quality of the electoral process? If it does, what are these contributions? As Mozaffar and Schedler put it: “To what extent, if any, does electoral governance determine the democratic quality of elections?” (Mozaffar, Schedler 2002: 12) Even if not crucial, we still think examining the role and position of EMBs is needed for understanding the democratic processes in the societies and legal orders under observation.

In this paper we are concentrating on central electoral management bodies that are generally in charge of overall organisation of elections and the calling of official results of parliamentary elections, and in some cases presidential elections. In this analysis, we exclude bodies in charge of organising local and regional elections. The article gives an overview of the legal position of the electoral management bodies, their composition and the modes of appointment of their members, and the role of EMBs in electoral governance. We are doing that by looking into relevant constitutional provisions, electoral laws regulating EMBs at the central level of the state, data provided by EMBs themselves, scarce literature and limited international accounts of electoral governance related to these very bodies (as opposed to wider monitoring of the electoral process).<sup>5</sup> “As a new field of study and practice, election management has emerged from the areas of democracy-building and democratic consolidation” (Lopez-Pintor 2000:15), and even though the literature has grown significantly over the past two

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5) Neglected nature of study of EMBs are commonly mentioned by authors working in the field. Anne van Aaken also stresses that beside EMBs, electoral observer missions also remain under researched. See further: (Aaken 2009) As it was stressed by Mozaffar and Schedler - Electoral governance is a crucial variable in securing the credibility of elections in emerging democracies, but remains largely ignored in the comparative study of democratization (Mozaffar, Schedler 2002:1).

decades, scholarship is still limited for many regions of the World<sup>6</sup> and specifically legal scholarship in the area remains scarce.

### **Setting the scene – do independent electoral bodies guarantee free and fair electoral processes?**

Elections are complex political and legal processes. Electoral management bodies may be classified as only one of thirteen elements of electoral management.<sup>7</sup> Other aspects, even though partially covered by this paper, remain outside the scope of the analysis. The term *election management body (EMB)* “has been coined to refer to the body responsible for electoral management whatever wider institutional framework is applied.” (Al-Musbeh 2011:3) In a transitional context, electoral management design does have importance. As argued by Catt: “Electoral frameworks, including the choice of electoral system and the design of electoral administration, determine both the outcomes and the credibility of electoral processes and thereby trust in democracy.”<sup>8</sup> The essential roles assumed by EMBs include: determining who is eligible to vote, receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates), conducting polling, counting the votes, and tabulating the votes.<sup>9</sup> Back in 2000, Lopez Pintor observed a worldwide trend of commissions developing as permanent and independent of the executive. He also stressed that electoral administration that relies on permanent and professional staff is more cost-effective than *ad hoc* electoral bodies based on empirical evidence (Lopez-Pintor 2000:11). As defined by

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- 6) Probably the first analysis of the implications of the electoral management design on the legitimacy of democratic processes in consolidating democracies (in African context) was done by Elklit and Reynolds. See further: (Elklit, Reynolds 2002).
  - 7) ACE. Topic areas. The Electoral Knowledge Network. Available at: <http://aceproject.org/ace-en/topics> [10.3.2019]
  - 8) “The development of professional electoral administration is not merely a technical and managerial issue, but a process that crucially engages political stakeholders who have their own interests and objectives. Its role in the overall development and strengthening of democracy cannot be overstated.” (Catt *et al.* 2014: V).
  - 9) “In addition to these essential elements, an EMB may undertake other tasks that assist in the conduct of elections and direct democracy instruments, such as voter registration, boundary delimitation, voter education and information, media monitoring and electoral dispute resolution.” (Catt *et al.* 2014: 5-6)

IDEA – “The *Independent Model* of electoral management is used in countries where elections are organized and managed by an EMB that is institutionally independent and autonomous from the executive branch of government; its members are outside the executive. Under the Independent Model, the EMB has and manages its own budget, and is not accountable to a government ministry or department. It may be accountable to the legislature, the judiciary or the head of state. EMBs under this model may enjoy varying degrees of financial autonomy and accountability, as well as varying levels of performance accountability.” (Catt *et al.* 2014: 7) In their study of EMBs from five regions of the World, Trebilcock and Chitalkar associate successful electoral experiences with independent and impartial EMBs vested with broad mandates (Trebilcock, Chitalkar 2009). This model is widely used in emerging democracies and has been a policy fashion in the Western Balkans as well.<sup>10</sup>

To study the institutional setting of EMBs, it is essential to observe the work of the International Institute for Democracy and Electoral Assistance (IDEA)<sup>11</sup> and the Council of Europe’s Venice Commission.<sup>12</sup> This is coupled with regular monitoring of elections in the region by the Organisation for Security and Cooperation in Europe (OSCE)<sup>13</sup> and the process being followed and evaluated by both the European Union institutions and its member states as part of the fulfilment of the Copenhagen criteria to join the EU. IDEA defines the following guiding principles for EMBs: independence, impartiality, integrity, transparency, efficiency, professionalism and service-mindedness.<sup>14</sup> Aspect of the institutional model that the International IDEA is pointing to are: institutional arrangement,

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10) International IDEA’s 2014 survey of electoral management in 217 countries and territories worldwide showed that 63 per cent followed the Independent Model, 23 per cent the Governmental Model and 12 per cent the Mixed Model (the remaining 2 per cent corresponds to countries that do not hold national-level elections). (Catt *et al.* 2014: 8)

11) The International Institute for Democracy and Electoral Assistance (International IDEA). See further: <https://www.idea.int/> [10.3.2019]

12) The European Commission for Democracy through Law, see further: <http://www.venice.coe.int/webforms/events/>

13) OSCE Office for Democratic Institutions and Human Rights (ODIHR) regularly observe elections in many countries with well documented accounts on electoral process. See further: <https://www.osce.org/odihr/elections> [10.3.2019]

14) See further for detailed description of these principles: (Catt *et al.*, 2014: 21-24)

implementation, formal accountability, powers, composition, term of office and budget.<sup>15</sup> These components are useful for the comparative study of EMBs, including those in the observed region. The role and powers of the EMBs depend on the legal system and the extent to which electoral laws prescribe for EMBs to be involved in regulating the electoral process. Although some EMBs have executive, legislative and judicial powers, the majority primarily exercise executive powers relating to electoral implementation activities (Catt *et al.* 2014: 74).

As a (normative) basis for the institutional design of electoral management bodies in the Western Balkans region, we can use Venice Commission Explanatory Report adopted at its 52nd Plenary Session (Venice, 18-19 October 2002). This document outlines conditions/criteria that need to be met by electoral management bodies. This is a result of electoral observation experiences and reports prepared by the Bureau of the Parliamentary Assembly of the Council of Europe observing “shortcomings concerning the electoral commissions”.<sup>16</sup> This lengthy citation we find as crucial for determining why (potential) candidates in the European East were required to set up independent institutions: “In states where the administrative authorities have a long-standing tradition of independence from the political authorities, the civil service applies electoral law without being subjected to political pressures. It is therefore both normal and acceptable for elections to be organised by administrative authorities, and supervised by the Ministry of the Interior. However, in states with little experience of organising pluralist elections, there is too great a risk of government’s pushing the administrative authorities to do what it wants. This applies both to central and local government - even when the latter is controlled by the national opposition.” (Venice Commission 2002: 26-27). This normative stance clearly points to mistrust in consolidating democracies vis-à-vis the existence of proper public administra-

15) See further: (Catt *et al.* 2014: 9) For advantages and disadvantages of three models see (Catt *et al.* 2014: 20).

16) These included: lack of transparency in the activity of the central electoral commission; variations in the interpretation of counting procedure; politically polarised election administration; controversies in appointing members of the Central Electoral Commission; commission members nominated by a state institution; the dominant position of the ruling party in the election administration. (Venice Commission 2002: 27)

tion with the ability to undertake the complex task of organising elections, suggesting that “new democracies” are not ready for the governmental type of electoral management. Therefore, according to the document, in countries with limited experience of organising pluralist elections (where “there is too great a risk of government’s pushing the administrative authorities to do what it wants”) it is needed to set - *independent, impartial electoral commissions* from the national (central) level to polling station level to ensure that elections are properly conducted.<sup>17</sup> This can be considered the *first criterion*.

According to VC opinion, we can distinguish a *second criterion* - *Any central electoral commission must be permanent, as an administrative institution* responsible for liaising with local authorities and the other lower-level commissions (Venice Commission 2002: 27). It is further stipulated: “As a general rule, the commission should consist of: - a judge or law officer: where a judicial body is responsible for administering the elections, its independence must be ensured through transparent proceedings. Judicial appointees should not come under the authority of those standing for office; - representatives of parties already represented in parliament or which have won more than a certain percentage of the vote. Political parties should be represented equally in the central electoral commission; “equally” may be interpreted strictly or proportionally, that is to say, taking or not taking account of the parties’ relative electoral strengths.... Moreover, party delegates should be qualified in electoral matters and should be prohibited from campaigning.”<sup>18</sup> The International IDEA Manual from 2014 also stresses that organising/placing a secretariat of the EMB within the government, or as independent, comes with a number of advantages and disadvantages. As our previous research on Serbia has demonstrated, albeit in a different field of public affairs, having an independent body without a separate professional secretariat puts

17) In more detail: “68. Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results. (Venice Commission 2002: 26-27).

18) Report additionally advises for the inclusion of the representatives of national minorities and a representative of the Ministry of the Interior, if the given historical context of the country does not preclude from the second option. (Venice Commission, 2002: 27).



members of the commission at risk of being completely dependent on the work of government employees who might, in turn, influence the decisions of the members of the commission and undermine the very independence they ought to enjoy.<sup>19</sup>

The Venice Commission has also considered electoral observation experiences regarding transfers of responsibilities from a fully-fledged multi-party electoral commission to an institution subordinate to the executive. Therefore, the *third criterion* is that - *co-operation between the central electoral commission and the Ministry of the Interior is possible only for practical reasons*, e.g. transporting and storing ballot papers and other equipment (Venice Commission 2002: 27).

A *fourth criterion* we can extract from the Commission Report opinion is that bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on the independence of appointees.<sup>20</sup> As a *fifth criterion* we can distinguish adoption of decisions by high majority (2/3) and preferably by consensus of members (Venice Commission 2002: 28). As the *sixth criterion* we distinguish having Commission members with specialised skills to organise elections and preferably composed of legal experts, political scientists, mathematicians or “other people with a good understanding of electoral issues” (Venice Commission 2002: 28). The document also contains recommendations for inclusion of party members, right of members to speak in the sessions, openness of commissions’ meetings to the public and especially media including access to all documents, creation of lower level (regional commissions) in similar fashion, training of electoral staff and obligation to provide technical aid to central commission by executive branch (Venice Commission 2002: 28-29). None less important feature of the independence of any (regulatory) body is its financing. In the case of EMBs, this is a hugely variable given the fact that elections are generally run every four to five years and expenses will vary accordingly.<sup>21</sup>

19) We have already studied this phenomenon in the case of state aid reforms in the country. See further: (Milenković, 2018 a,b).

20) It is further stressed that discretionary recall is unacceptable, but recall for disciplinary reasons is permissible - provided that the grounds for this are clearly and restrictively specified in law. (Venice Commission, 2002: 27).

21) For a detailed overview of comparative examples and most pressing issues see:



Here we point again to a basic distinction between electoral management as practiced in developed/old/established democracies and states on the path to consolidation of democratic structures. Van Ham and Lindberg have examined the influence of institutional design (Ham, Lindberg 2015) on electoral integrity by employing data obtained thorough the V-DEM project.<sup>22</sup> They point to the fact that the model of independent institution have been “championed” in the previous period<sup>23</sup> but also find that global comparative studies appear to show that EMB institutional design is either negatively, or only very weakly related to election integrity. They propose that in contexts of high quality of government (QoG) and higher levels of democracy, “EMB institutional design is inconsequential for election integrity, because the bureaucracy already operates professionally and other partial regimes of democracy are well established.” For that type they point to systems like Sweden and Norway. On the other hand, “In countries with low QoG and sturdy electoral autocracy ... EMB institutional design may not affect election integrity either. If the bureaucracy and other political institutions are captured and controlled by authoritarian incumbents, the particular institutional design of EMBs should make little difference.” For this second type they give examples of Congo and Russia. Finally, in contexts of medium QoG and medium levels of democracy they argue that “EMB institutional design should be expected to strengthen election integrity, as in these cases, formally independent EMBs should have both stronger *de facto* autonomy and greater capacity to administer and monitor elections.” (Ham, Lindberg 2015: 455-456). This is especially relevant for the study of the Western Balkans given the varied democratic development and rising tendencies towards authoritarianism and stabilocracy.<sup>24</sup> With this analytical framework in mind, we will proceed to study the features of electoral management bodies in the Western Balkans.

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(Catt *et al.* (2014: 207-220)..

- 22) For more details on V-DEM see: <https://www.v-dem.net/en/> [10.3.2019]
- 23) Explicitly pointing to widely referenced works by Lopez Pintor for UNDP and works by International IDEA 2006 (updated in 2014) – both cited multiply in this paper.
- 24) BiEPAG. The Crisis of Democracy in the Western Balkans. Authoritarianism and EU Stabilitocracy. Balkans in Europe Policy Advisory Group. Available at: <https://biepag.eu/wp-content/uploads/2017/03/BIEPAG-The-Crisis-of-Democracy-in-the-Western-Balkans.-Authoritarianism-and-EU-Stabilitocracy-web.pdf> [10.3.2019]

## **Main features of Electoral management systems in the countries of the Western Balkans**

In the previous two decades, all the countries of the Western Balkans have opted for some kind of independent institution following the widely promoted institutional design for consolidating democracies. There could be two explanations for this. The first, and less likely, is that this trend can be compared to a great extent with the “fashionable” diffusion of public agencies as a way of organizing administration across the jurisdictions in 1990s and early 2000s.<sup>25</sup> The second, and more plausible one, would be acceptance of this form of electoral management as explicitly and/or implicitly required to be considered a democratic regime.

In *Serbia*, the Republic Electoral Commission (REC)<sup>26</sup> is established through Law on the election of members of the Parliament.<sup>27</sup> Members of the Republic Electoral Commission and their deputies are appointed for a period of four years, while members of polling boards and their deputies are appointed for each election (article 30). The standing composition of the Republic Electoral Commission consists of the Chairperson and sixteen members appointed by the National Assembly of the Republic of Serbia, while the enlarged composition also includes one representative of each submitter of the electoral list.<sup>28</sup> The Republic Electoral Commission has a Secretary, appointed by the National Assembly of the Republic of Serbia from among the experts in its services, who participates in the work of the Commission without the right to make decisions. According to the Law, the National Assembly of the Republic of Serbia ensures the conditions necessary for the work of the Republic Electoral Commission (article 35) which in practice means that the administrative staff is recruited from the

25) See further: Pollitt, *et.al.* (2001).

26) <http://www.rik.parlament.gov.rs/english/index.php>

27) Law on the election of members of the Parliament “Official Gazette of the RS” No. 35/00, 57/03 – Decision of the Constitutional Court, 72/03 – other law, 18/04, 85/05 – other law, 101/05 – other law, 104/09 – other law, 28/11 – Decision of the Constitutional Court 36/11.

28) The Republic Electoral Commission also has one member, a representative of a state organization responsible for statistics, who shall participate in work of the Commission without the right to make decisions. For inclusion of representatives of electoral lists see article 39.

poll of Parliament secretariat employees. Therefore, the Secretary, along with the other administrative/secretarial staff of the ERC, is not completely independent from the Parliament; indeed, as Parliamentary employees, they are susceptible to pressure from the parties in control of Parliament. The Republic Electoral Commission has a number of competences, and also adopts its Rules of Procedure. The Chairperson, members of the Republic Electoral Commission and their deputies must hold a BA degree in law, closing the composition professionally which is one of the known policy options recognized comparatively with set of advantages and disadvantages.<sup>29</sup> To sum up, although the Commission is *de lege* independent, it is potentially susceptible to significant influence by the parties forming a majority in the National Assembly; furthermore, the budget is appropriated from the central budget of the State with no separation and the secretariat is effectively within the Parliament. This approach is cost-effective on the one hand, but creates a situation where the work of the electoral commission could come under the undue influence of the parliamentary majority on the other. Therefore, it could be advisable to establish a separate, permanent secretariat, in spite of higher operating costs.<sup>30</sup>

Next in our analysis is *Bosnia and Herzegovina*, which is specific for many reasons. First, for existence of a transitional EMB set up by the international community in the aftermath of the war that raged between 1992 – 1995.<sup>31</sup> After this transitional post war period, the Electoral Law was adopted in 2001, and as noted by Hadžiabdić: “It represented a great success and was the result of efforts of the international community, negotiations among the political parties, and the patience of BiH citizens.” (Hadžiabdić 2014: 329). The transitional nature of the electoral commission continued up until 2006, some ten years after the war, as some of the members of the commission were foreign. The current system

29) See further: Catt, *et al.* (2014)

30) However, there have been no objections and recommendations from international actors to this regard, probably in line of allowing countries to keep things organised according to their respective constitutional and administrative traditions.

31) Mostly, international EMBs are an outcome of international, regional and national efforts to manage conflicts and/or post conflict environments, and they are normally sponsored and set up by international or regional organizations such as the United Nations (UN) and it consist of, or include, international experts as members. (Kumar 1998)

of electoral rules in BiH is reflective of its complex constitutional structure consisting of federal entities, special district, cantons and municipalities (Hadžiabdi, 2014: 329). Therefore, the electoral management system of the country is very multifaceted, with different elections organized by different bodies at various levels of governance. The main electoral body in the country is the Central Electoral Commission of Bosnia and Hercegovina<sup>32</sup> which is comprised of seven members in accordance with the Election Law of BiH.<sup>33</sup> The Secretariat of the BiH Election Commission is established by the decision of the Commission and it is in charge of “professional and administrative-technical duties” for the BiH Election Commission (article 2.11). Pursuant to article 2.6 of the BiH Election Law, the President of the BiH Election Commission is appointed amongst its members. Each member of the BiH Election Commission, a Croat, a Bosniak, a Serb and a representative of the Others<sup>34</sup>, according to the Law perform the duty of the president of the BiH Election Commission according to the rotation principle, once in seven years for the period of twenty-one months. There is also complex system of financing the electoral process in place (article 1.2a) which is in line with the multilayer structure of atypical federation created by the Dayton agreement. It can be concluded that the complexity of the Bosnian electoral system is the result of the post-conflict societal context, multi-ethnic setup of the society, and the complicated constitutional architecture of the country and its entities.

The only country of the Western Balkans that has become an EU member state is *Croatia*, whose specific institutional design allows for the independence of the electoral governance. The State Election Commission of the Republic of Croatia was established in 2006 and is a permanent and independent state body according to

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32) <http://www.izbori.ba/> [10.3.2019]

33) The Law has been subject to numerous changes since 2001. Available at: [http://www.izbori.ba/Documents/documents/ZAKONI/BiH\\_Election\\_Law\\_last\\_consolidated\\_version\\_2018.pdf](http://www.izbori.ba/Documents/documents/ZAKONI/BiH_Election_Law_last_consolidated_version_2018.pdf) [10.3.2019]

34) Others - Citizens not belonging to any of three constitutive ethnic groups. This omnipresent ethnic concept in Bosnia and Hercegovina has led to numerous constitutional and human rights challenges leading to landmark Judgement of European Court of Human Rights in case *Sejdic and Finci vs. Bosnia and Hercegovina*. See inter alia: Bardutzky (2010).

the Law on State Electoral Commission of the Republic of Croatia<sup>35</sup> (article 2). The Commission is comprised of nine members - the Chairperson, four Vice-Chairpersons and four members, elected according to the procedure stipulated by the Law (article 3). The Chairperson of the Commission is the President of the Supreme Court of the Republic of Croatia (article 4), two Vice-Chairpersons are elected by Supreme Courts' General Assembly among judges of that Court, based on the proposal of the Croatian Supreme Courts' President (article 5), with further two Vice-Chairpersons and remaining four members of the State Electoral Commission are elected by the majority vote of all representatives of the Croatian Parliament (article 7). According to the Law, one Vice-Chairperson and two members are nominated by the majority political party or coalition, and the other Vice-Chairperson and two members are nominated by the opposition political parties or coalitions (Article 7), in accordance with the party structure of the Croatian Parliament at the time of the election. The Law also envisages for a relatively long mandate of eight years, a characteristic which contributes to the permanence of the Commission and its stability irrespective of electoral cycles. The competences of the SEC are stipulated by article 11 of the Act and include, among others, presenting opinions on additions and improvements to the electoral and referenda legislation. The Croatian SEC has a dual role as it also oversees the annual financial performance and annual financial reports of political parties, independent MPs, and members of representative body of local and territorial (regional) government elected from the list of a group of voters.<sup>36</sup> The Commission also has permanent Secretariat/Expert service. Within the Expert Service, there is a Financial Department that is in charge of supervising political activities and electoral campaign financing. However, despite good formal setup, in Croatian case we can also observe a classical problem of lack of resources on disposal to the electoral Commission in order to conduct its functions. The Commission became an independent (and permanent) state body back in 2007 but did not have its offices until the end of 2010.<sup>37</sup> However, overall

35) Official Journal of the Republic Croatia, No. 44/06 and 19/07.

36) See further: <https://www.izbori.hr/site/en/about-the-commission/competence/competences-of-the-state-electoral-commission-relating-to-the-political-activities-and-election-campaign-financing-supervision/1748> [10.3.2019]

37) <http://www.izbori.hr/ws/index.html?documentId=039CA1E2CE93551AC->

it is possible to conclude that the complex system of electing the Commission members, together with the professional and separate existence of the secretariat, establish a foundation on which a sound electoral process can take place.

*Montenegro*, with just over 650.000 inhabitants, is one of the smallest countries in Europe. Although it has progressed further in the EU integration process than other current candidates for EU membership, it has experienced continued rule by the same party—a successor of the Communist party<sup>38</sup>—since first democratic/multiparty elections held in 1990. Montenegro has an independent State Election Commission (SEC).<sup>39</sup> The body has legal capacity and a Secretariat. It is comprised of eleven permanent members and is being extended by one more authorized representative of each of the submitters of electoral lists thus making this a combined body. The permanent members are appointed for the period of four years by the Parliament, while the head of the Commission is elected by the SEC itself. Among permanent members, four are appointed on proposal of majority in the Parliament and four on proposal of the opposition. Specific solution is envisaged for the Secretary of the Commission as one of the SEC members appointed on the proposal of the opposition is acting as Secretary.<sup>40</sup>

*Northern Macedonia* was a prime example of EU conditionality being put into practice in the context of the integration process, as attested by Giandomenico (Giandomenico 2013). Before 2006, the Macedonian Commission was an *ad hoc* body without any full-time staff; while a secretariat had been provided for by the law, it was not set up. The members, including judges, were effectively political representatives. Since 2006, the State Election Commission (SEC) has been a full-time body and the secretariat has been inaugurated.<sup>41</sup>

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38) See further: Vuković (2015).

39) See further: <http://dik.co.me/en/> [10.3.2019]

40) See further: Law on Election of Councilors and Members of Parliament, Official Journal no. 4/98 and subsequent amendments.

41) See further: (Giandomenico 2013:76).

The Electoral Code in Northern Macedonia has been subject to numerous amendments since 2006.<sup>42</sup> According to article 26, the SEC is composed of a president, vice-president and five members. The member's term in office used to be 4 years, but with recent amendments from 2018 was shortened to 6 months, which is highly dubious solution in terms of meeting the criterion of EMB being permanent.<sup>43</sup> The Parliament announces the election of the president, vice-president and the members of the SEC in the "Official Gazette of the Republic of Macedonia" and in daily newspapers. The Law prescribes for a peculiar appointment procedure for the Commission members. The vacancy remains open for 8 days from the day of its publication, which is rather short period of time for a public call. The Parliamentary Committee on Election and Appointment Affairs prepares a draft list from the candidates who have applied and submits it to the Parliament. From the candidates on that draft list, the political parties in opposition nominate the president of the State Election Commission and two members of the SEC and the ruling parties nominate the vice-president and three members of the SEC. The president, vice-president and the members of SEC are elected by the Parliament with a two-third majority of the Members of Parliament, which in practice means that a wide multi-party agreement needs to be reached in order to have the Commission elected. (article 28) The State Election Commission is a separate legal entity and has a Secretariat comprised of a Secretary General appointed for a five-year period and his or her deputy. A support service (professional service as defined by the Code) is also established for the State Election Commission. It is charged with executing the professional/administrative and organizational/technical responsibilities of the State Election Commission and is headed by the Secretary General. The resources for the work of the State Election Commission are provided from the state budget. In spite of numerous international engagements with the electoral process and design in the country numerous problems remain.

*Albania* is an interesting study case for at least two reasons. First, for prolonged international involvement in the oversight of

42) Electoral Code, Official Gazette of the Republic of Macedonia No. 40/06 and subsequent amendments.

43) Compare article 27 of the Electoral Code.



legislative drafts, thus establishing direct influence on the creation of electoral management in the country. The second is the setting up of the Central Electoral Commission (CEC) in articles 153 and 154 of Albania's Constitution. The Commission is a permanent body made up of seven members. The Assembly of Albania adopted The Electoral Code in 2008 but has amended it (with external consultancy) several times.<sup>44</sup> Albania is a specific case among Western Balkan States as its legislators have opted for one comprehensive Electoral code, as opposed to having electoral process regulated by several different acts. It contains detailed provisions on the CEC. Members must fulfill a complicated set of conditions guaranteeing their impartiality.<sup>45</sup> Furthermore, according to article 12, the member must fulfil following criteria: not be convicted of a crime; *has not been a member of any political party in the last 5 years; has not been elected a deputy of the Assembly in the last 5 years*; that he or she was not a member of the State Police, Armed Forces and State Intelligence Service in the last 5 years; and that has not been dismissed from the public administration or any other public function due to a violation. This is by far the most elaborate list of conditions EMB membership of any state in the region. According to the Law, members of the CEC have a 6-year mandate with the right to be reelected. The Chair of the CEC has a 4-year mandate with the right to be reelected. A member of the CEC exercises this duty full time and his/her function is incompatible with any other political, public or private duty or function, with the exception of teaching (article 13). This way Albania has opted for professional independent members. Finally, the Law also provides for a secretariat which is managed in the same manner as other independent institutions in the country (article 25). Interestingly, the CEC itself is not defined by the Electoral code as an independent institution but rather that "CEC member shall exercise his/her function in an independent manner" (article 17). It was assessed that the Alba-

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44) Law no. 10 019, dated 29 December 2008, amended by Law no. 74/2012, dated 19 July 2012 and Law no. 31/2015, dated 2 April 2015.

45) With requirements for a member to be: older than 35 years; hold a higher education degree; has a professional experience of no less than 10 years of work, in at least one of the following fields: i. law; ii. public administration; iii. administration of elections; and interestingly - iv. a director of non-profit organizations that have as their object the protection and promotion of human rights and freedoms, the conduct of democratic elections or public policy. (article 12)

nia's Electoral Code provides a thorough technical foundation for democratic elections, according to a Joint Opinion by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Venice Commission,<sup>46</sup> as both institutions have been very involved in helping the country develop its electoral rules. However, as in other countries of the region, many challenges still prevail.

*Kosovo(\*)*<sup>47</sup> is the last in this analysis. Kosovo occupies a unique space as its sovereignty is not recognized by approximately half of UN members, including five EU member states, following its 2008 declaration of independence from Serbia. As in 2008, it still is, partially under international governance. Various human rights problems remain. There is a Central Election Commission (CEC)<sup>48</sup> in place, but the OSCE remains involved in the process.<sup>49</sup> According to article 139 of the Constitution of Kosovo, the CEC is a permanent body, which prepares, supervises, directs, and verifies all activities related to the process of elections and referenda and announces their results. The Commission is composed of eleven members with a chair appointed by the President of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction. Six members are appointed by the six largest parliamentary groups represented in the Assembly, which are not entitled to reserved seats. One member is appointed by the Assembly deputies holding seats reserved or guaranteed for the Kosovo Serb Community, and three members are appointed by the Assembly deputies holding seats reserved or guaranteed for other Communities that are not in majority.

## Concluding remarks

Western Balkan societies have gone a long way since the dissolution of Yugoslavia and Albania's split with communism.

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46) <http://www.osce.org/odihr/86441> [10.3.2019.]

47) Kosovo(\*), Republic of Kosovo is in many international forums and by the European Union referred to with Asterisk which reads: "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".

48) For further info see: <http://www.kqz-ks.org/an/> [10.3.2019.]

49) <https://www.osce.org/mission-in-kosovo/elections> [10.3.2019.]

However, numerous transitional challenges remain. All countries of the region have decided to establish some sort of the independent electoral commissions, as it was advocated by leading international initiatives in the field to be a right model for consolidating democracies. However, many features across the region point to semi-dependent nature such as the absence of a secretariat, involvement of high number of representatives of political parties, or lack of financial and other resources. Out of six criteria based on the Explanatory Opinion of the Venice Commission defined in part two, analysis indicates that many national institutions are missing some. However, institutional design alone is not a guarantee of the quality and integrity of the electoral process, and the wider societal and political context should be taken into account. As outlined above, models of independent institution have been “championed” in the previous period, but findings of global comparative studies appear to show that EMB institutional design is either negatively, or only very weakly related to election integrity, even though there are indications that independent EMBs should be able to contribute to electoral integrity in countries with medium “quality of government,” a conclusion bearing relevance for the Western Balkans region. Finally, it should be noted that further analysis of various influences on electoral process and management design are needed, especially in the context of European Union conditionality and accession process for the region.

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