

Dr Fernando Ojesto Martínez Porcayo (*President, Mexican Electoral Federal Tribunal of the Judicial Branch*):

"The Mexican Regulation for Media in the Electoral Process"

Please allow me to start by expressing my gratitude for the distinction granted to the Electoral Tribunal of the Judicial Branch of the Mexican Federation, for allowing us the opportunity of participating today before such a qualified audience, here present, because of the XII Annual Conference of the Association of Electoral Authorities of Central and Eastern Europe.

We specially appreciate the space open to us in order to share information and learning in the subject of "Elections and Means", due to the fact that it is a subject matter of great actuality and special relevance for nations, such as Mexico, which are submerged in democratic consolidation processes.

My exposé is divided into three parts: in the first one, I will offer some general data about Mexico, its way of State and government. Next, I will explain the most general aspects of the process of the political Mexican change during the last decades, stressing the role of the electoral bodies in this process. And finally, I will refer myself to the rules regulating, in Mexico, the relationship between mass media and elections.

The Mexican population is of more than 100 million inhabitants and is characterised by its pluri-ethnic composition due to the fact that the national territory is populated by 56 different ethnic groups in co-existence with the "mestizo" majority group. I should state that approximately 10% of the population, this is to say, 10 million inhabitants belong to one of these groups, many of which have their own language and are ruled by the uses and customs inherited since ancestral times, plus the fact that more than 10 million Mexican citizens are migrants living abroad, mainly in the United States of America.

According to the Political Constitution, in force since 1917, the Mexican Republic is a Federal State having 31 Federal Entities and a Federal District, seat of the Federal Powers and consequently the capital city of the country.

For its due exercise, the Public Power of the Federation, and that of each one of the 32 federal entities is divided into the executive, legislative and judicial branches. In all cases, the renewal of the legislative and executive bodies is done, because of constitutional mandate, through free, authentic and periodical elections by means of free, secret and direct universal suffrage of the citizens.

In the federal environment, the Executive Branch is unipersonal, and its holding and exercise belongs to the President of the Republic, who is directly elected every six years, without the possibility of being re-elected.

The Federal Legislative Branch is made up by two chambers for a three year term. The Low Chamber is integrated by 500 members, of which, 300 are elected by the principle of relative majority in a number equivalent to the uninominal districts and 200 by the principle

of proportional representation through a system of regional lists voted for in the 5 plurinominal circumscriptions into which the country is divided.

The High Chamber is integrated by 128 members for a six year term. Three senators are elected for each federal entity by the majority principle, giving a total amount of 96 senators, while the other 32 are assigned by the principle of proportional representation. The members of both chambers can only be re-elected whenever an intermediate term has expired.

Regarding the Federal Entities, each one has a six year term directly elected governor, without re-election possibilities. Legislations of the different States are integrated by members of the Low Chamber elected according to the principle of relative majority and proportional representation and can only be re-elected after and intermediate term expires.

Likewise, the basis for the territorial division and for the political administrative organisation of each State is that of a Free Municipality, ruled by a Mayorship of direct popular election, to be renewed every three years in accordance with the principles of relative majority and proportional representation, without re-election possibilities for the immediate terms.

In Mexico, the main electoral authorities within the federal ambience are: the Federal Electoral Institute in charge of organizing federal elections and the Electoral Tribunal of the Judicial Branch of the Federation, being in charge of the jurisdictional resolution of electoral disputes and of assuring that the acts and resolutions of the authorities are in compliance with the principles of constitutionality and legality.

The Federal Electoral Institute, is an autonomous public body, having the participation of the Legislative Branch of the Union, the national political parties and that of the citizens; it was created in 1990 and is ruled according to the constitutional principles of certainty, legality, independence, impartiality and objectivity.

The IFE is composed by a General Counsel, headed by a Counselor President and eight electoral counselors, having Delegations in each one of the federal entities of the country. Likewise, the IFE has Executive District Boards, an Executive Member at Large and a District Counsel in each one of the 300 Electoral Districts of the country.

According to the constitutional reforms of 1996, and after ten years of evolution, the Electoral Tribunal of the Judicial Branch of the Federation, tribunal specialised in electoral matters, became the maximum jurisdictional authority entrusted with solving electoral challenges, in a definitive and unattackable manner including the qualification of the presidential election. The Electoral Tribunal is conformed by a High Court and five regional courts. The High Court is ruled by seven Chief Justices proposed by the Supreme Court of the Nation and approved by a qualified majority of the High Chamber for ten year terms. The regional courts have three Chief Justices, each one for a seven year term.

According to the federal nature of the Mexican State, when matter of local elections, each Federal Entity has their own electoral authorities in charge of organising electoral processes

and of solving their own disputes. Nonetheless, The High Court of the Electoral Tribunal, I have the honour to preside resolves, in the last instance, the constitutionality of those local elections if demanded by the political parties

The second item of my exposé: In Mexico there is a prevailing consensus regarding the fact that democratic transition within the federal electoral environment has ended and that we are now in the consolidation and normalisation stage. We have arrived at this stage after a long process of institutional political change. Such change took place in six fundamental aspects:

FIRST. Within the environment of the system of the political parties, due to the fact that we passed from a system dominated by an hegemonic and predominant party, in which, for example, the opposition parties had no constitutional acknowledgement, to another one in which such a judicial status was granted to them, being able of participating, since 1977, with further and more equivalent resources in a more plural and competitive environment. At present, Mexico has six political parties, having due register and representation at Congress and in through out the country at its different levels and environments of the federal and local governments, reflecting political pluralism, even though, one should acknowledge that the political parties are still in a moment of adjustment and perfecting of their structures and rules for their internal life, as well as of their accountability.

SECOND. Within the environment of the electoral system. in its strict sense because, for example, we had the assignment of 300 chairs by means of the principle of relative majority in order to integrate the Low Chamber. In 1977 and by the principle of proportional representation 100 new members were added and 100 more in 1986. Because of such an action, the Institutional Revolutionary Party yielded spaces to the representation of other political forces. These, in turn, obliged the change of the electoral rules to strengthen their participation in the decision making process, even though, in 1977, the PRI had been the only party nominating a candidate for the Presidency of the Republic and practically won all charges of popular election in the country. As a result, in 1991, the PRI lost, for the first time, the simple majority of the Low Chamber, even though it has retained a slight majority in the High Chamber.

THIRD. Within the environment of the electoral system, in its broad sense, due to the fact that, on one hand, and in 1990, the Federal Electoral Institute is created, progressively achieving further autonomy from the Federal Executive Branch, until 1996, date, in which it becomes a fully autonomous constitutional body. And, on the other, in 1987, the Tribunal of the Electoral Contentious is created, whose resolutions regarding the annulment of elections were not mandatory. In 1993, after an additional reform, this Tribunal becomes an autonomous constitutional body, called Federal Electoral Tribunal. In 1996, as we have already stated it forms part of the Judicial Branch of the Federation with the attribution of controlling, not only the legality, but also the constitutionality of elections. Exceptions to this are the challenges to electoral law, which are reserved to the Supreme Court of the Nation, and the establishment of judicial precedents belonging to the Electoral Law. At present, this body is called Electoral Tribunal of the Judicial Branch of the Federation. It takes care of six types of challenging means, most of them presented by the citizens and the

political parties against the decisions of the Federal Electoral Institute and of the electoral institutes and tribunals of the 32 federal entities.

As it can be observed, it is a system of equilibrium between two electoral bodies, only prevailing in Peru and Chile, and which has proven successful because it allows to prevent and solve in a much better manner electoral disputes. With such changes, multiple technical safeguards and guarantees were established for the electoral registry and the different states of its process, in such a way that nowadays, citizens have full trust in elections.

FOURTH. Within the government system, because, as the process for the electoral change advanced, the Federal Executive Branch not only ceased participating in the organisation of elections, and indirectly in the resolution of electoral disputes, but rather the qualification of elections and the electoral justice went from the sphere of the political parties and that of the Congress to the Judicial Branch of the Federation. Even more, the Federal Executive Branch was also stripped of diverse powers, such as the control of the monetary policy, the resolution of disputes between federal powers and the federal powers and the local powers, as well as between parliamentarian fractions regarding laws considered as unconstitutional, all of which went to the domain of the Judicial Branch, without losing sight that such privatisation stopped the Presidency of the Republic of appointing a high number of high public officials, reducing and limiting its power vis a vis the other two powers.

FIFTH. Within the purely constitutional environment, due to the fact that the political transition was accompanied by a constant institutional change through the different electoral reforms, until consecrating and applying a set of principles, such as those of free and authentic elections, constitutionality, legality, impartiality, transparency, objectivity and professionalism in the organisation of elections and of access to justice, due legal process and effective judicial tutorship in what has to do with electoral justice. All the above mentioned, together with an important advancement in the culture of judicial argumentation and interpretation, has fostered all the judicial framework to answer to those constitutional principals and that these should be safeguarded by the Electoral Tribunal of the Judicial Branch of the Federation, and in the case of the electoral law, by the Supreme Court of Justice of the Nation, delving deeply into a conception of an anti-formalistic justice and guarantor of the fundamental rights.

SIXTH. AND perhaps, the most important, because the prolonged Mexican transition is characterized by a change in size, complexity and dynamics of a growing society which became more demanding, informed and critical, with more willingness to participate in the integration and political decisions of the governmental bodies as of multiple party options and of the constitutional guarantees of their political rights. This is to say, the Mexican transition represents a cultural change in the broadest sense of the word.

It is true that us, Mexicans, have solved a first generation of problems and challenges within the milieu of electoral democracy, but now we are facing other much more sophisticated and complex. Among the new pending subjects, I can quote, in full agreement with Mr. José Woldenberg, President Counsellor of the Federal Electoral Institute, the importance of a better distribution of wealth, the strengthening of law enforcement and the Rule of Law, enrichment of the political culture in order to intensify citizenship, a party

system of a much better quality and a further governmental efficacy, as well as – and the following deserves a special emphasis due to the subject matter of this Conference – the relationship of the parties and the elections with mass media

Thus, entering into the third part of my presentation, I should reiterate that the subject matter of elections and mass media is of fundamental importance in contemporary democracies, specially because mass media are, or can be an information liaison between the society, the government and the political actors; source of transparency, objectivity and legitimacy of the public life; promoters of political culture; crucial variable in the observance of the Rule of Law, and, of course, they are also, or can be the political actor, per se, provoking distortions in the perception and action of electoral processes.

Regarding this point, I should stress that even though Daniel Zovatto has found that, in a compared perspective and considering television, radio and press, one can observe six modalities of the relationship between elections and mass media, it is possible to speak about three general models: the state model, the market model and the mixed model, and that these models can be combined in a broad method, or in a restricted method of distribution and selection conditions for media access.

In the state model, the electoral authority is in charge of directly administering access and distribution, according to legally established rules of equity and proportionality, thus, political parties can not hire mass media in a direct manner. Of course that in the market model, it is the other way around, even though certain ceilings or limits to access may be set in order to guarantee the proportionality between the electoral force of the parties and the equity in the race and not granting total freedom in the hiring process. In the mixed model, both types of accesses are combined and ceilings or limits may be set, or not in order to avoid unevenness.

Regarding distribution, Zovatto has found that only political parties, or organisations and formal political movements, not belonging to a party may receive time slots in mass media. In general, Zovatto finds that the most equitable modalities are given when there is a combination of State controlled accesses with a broad eligibility. One should add that one or the other models and modalities depend up on a definition of the objectives of the electoral policy, as, for example, to strengthen political parties in front of other electoral subjects, or, to extend such force to other electoral subjects

In the Mexican case, during the last thirty years, we have been cruising from a state model to a mixed model, maintaining at the same time a restricted modality of access eligibility; this is to say, only to political parties.

Thus, the electoral law of 1973 establishes free party access to radio and television, up to 10 minutes every fifteen days in order to broadcast their programs and electoral programs during electoral campaign periods; in 1977, an outstanding year for the electoral reform, permanent access is provided and that during the campaign periods, the time slots assigned should be increased; as of 1987, the free monthly time slots are increased to 15 permanent monthly minutes and the increase during electoral periods is ratified; in 1990, and in accordance with the law which is still in force, the principle of proportional access to the

electoral force of parties during the electoral periods is established, making it mandatory to dedicate half of the time slots assigned to the broadcasting of electoral programs.

In 1993, and to improve the equity of the contest, private or direct hiring between the political parties and mass media to broadcast messages oriented to the procurement of the vote during electoral campaigns is regulated for the first time. Candidates can not hire such time slots on their own account. Likewise, the electoral authority is empowered to meet with the National Chamber of the Industry of Radio and Television in order to suggest general outlines applicable to news programs regarding the broadcasting of the campaigns. For example, for the presidential campaign of 1994, and with a previous agreement with the different political parties, the Federal Electoral Institute hired additional time slots, which were distributed among them according to their political strength; mass media was urged to inform in a truthful, objective, balanced, plural and equitable manner; monitoring and fortnightly reports were performed in order to make pertinent recommendations to mass media; it was agreed that paid party propaganda in radio and television should stop 10 days before elections day, with the exception of the closing of the campaign; the same is applicable to publicity programs regarding the governmental actions up to 20 days before elections day.

With the electoral reform of 1996, the mixed model is much more defined in the electoral law, through free access and direct hiring, plus additional institutional supports.

Free access is divided into monthly regular time slots and additional broadcastings during electoral campaigns. The first one includes 15 permanent monthly minutes in each radio frequency (more than one thousand) and television (two main national open television chains and several others via cable television), these should be used by the political parties in two weekly programs, asides from a special monthly program of one hour length broadcasted twice a month in which all parties participate in a joint manner. The second one, and independent from the previous one, includes 250 hours of radio broadcasting and 200 hours in television for presidential elections, while when legislative elections are to be concurrently held, there is a 50% increase, depending on the available time schedules. During campaigns, the IFE also acquires 10 thousand 20 seconds radio spots and 400 in television putting them at the disposal of the different political parties, with the understanding that there are ceilings in as to the total cost of such spots in relation to the financing granted to the parties. Time schedules, radio stations, TV channels and time slots provided by mass media, for the broadcasting of such spots are allotted through a raffle and in accordance to the time slots provided by the means, with the understanding that these additional time slots are granted in a 4% to the new parties not having Congress representation and the other 96% to parties having Congress representation in a 30% representation in an even manner and 70% according to their electoral strength.

In general terms, direct hiring is exclusive for the parties and not for the candidates, in order to obtain votes during electoral campaigns. For such a purpose, the IFE requests information from mass media regarding costs and available broadcasting times, the political parties present to the IFE their access plans and the IFE is in charge of processing them, notifying both, mass media, as well as the political parties so that they can proceed to hiring arrangements. Time periods in which this operation is to take place are also ruled. Third

parties are forbidden to hire propaganda in radio or television in favour of, or against any political party or candidate.

Besides the above mentioned, it should be noticed that within the milieu of the IFE, and separate from the Executive Direction for Prerogatives and Political Parties, in charge of all of these operations, there is a specialised support body called Broadcasting Commission, chaired by the holder of such a Direction but having representation in each one of the national political parties. Parties are required to present their scripts for their approval and the Commission decides upon the programs and their further diffusion.

In synthesis, these are the principles and rules regarding the relationship between mass media and the Mexican elections.

In order to conclude, it is important to stress that, as well stated by Daniel Zovatto, that in many countries it is not easy to guarantee equitable access to mass media because it is necessary to carefully balance the principals of equity and the right to information. It is clear that inequities are present because of the difficulty of surveying the hiring of private means, on behalf, mainly of the candidates of the 7 parties with further resources; the low rating state or governmental means often have; the existence of new technologies such as satellite television, or Internet, which hinders control; the non existence, or scarce support to direct production of programs and propaganda; the lack of ruling on the difference between editorials, commentaries, special features, documentaries and general information regarding political parties, nominees and politics in general, as well as of other non regulated, or weakly regulated instruments governments use in order to promote their actions.

In the case of Mexico, as political transition advances, unevenness in the mass media coverage provided to the opposition in comparison to the incumbent party reversed. Today we have a very well balanced scheme, nonetheless, it can still be perfectionned, but this is something I will not be dealing with during this presentation I am about to finish, remaining at your disposal for any question, or comment regarding this, or any other of the items here treated.

Thank you.