

THE MEXICAN RESOLUTION SYSTEM FOR ELECTORAL DISPUTES FROM A COMPARATIVE POINT OF VIEW

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This speech aims at explaining the main features distinguishing the resolution system for electoral disputes which is in force in Mexico, from a comparative point of view.

According to the world-wide contemporary trend favoring a full judicial review of electoral procedures, and taking into account the specific authority empowered to issue a final resolution in each country, it is possible to classify the resolution systems for electoral disputes existent in the world within three different categories as follows: first, those countries in which ordinary Judges –within the Judicial Branch of Government and usually organized under a Supreme Court — who don't have an exclusive electoral jurisdiction solve electoral disputes; second, those countries in which Constitutional Courts, which are separated from the Judicial Branch of Government, solve the electoral disputes; finally, those countries in which electoral courts which are either organized within the Judicial Branch of Government or independent from the traditional powers, solve the aforementioned disputes.

The resolution systems established in those three countries which have been already brilliantly explained (Hungary, Ukraine and the United States) as well as in Australia, Canada, India and England can be all located within the first category. Such a resolution model, which is the oldest one, was created in 1868 (and modified in 1879) in England where it was used for the first time by a couple of ordinary judges of the Queen's Bench Division at the High Court of Justice in order to resolve an electoral dispute. By providing the judiciary with the power to solve such kind of disputes, the traditional resolution model which authorized the Parliament to sort out all the disputes derived from the election of its members in a political way, was modified. As a matter of fact, as we have witnessed recently, a kind of political resolution system for federal electoral disputes is in force in the United States (where the Houses of

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Congress are empowered to solve electoral disputes derived from congressional elections and the United States Electoral College is empowered to solve electoral disputes derived from the presidential race) along with a judicial resolution system established to solve electoral disputes derived from local elections which can be appealed before the Supreme Court.

The Austrian Constitution of 1920 established the resolution model which I have identified within the second category. First, the Austrian Constitution authorized the Constitutional Court to solve the electoral appeals derived from federal presidential elections and federal congressional elections. From 1929 onwards the Austrian Constitution also authorized the aforementioned Court to solve electoral disputes derived from local elections held in each single *Lander*. The cases within the second category sometimes authorizes the contesting parties in a electoral dispute to submit legal appeals to administrative courts which can be organized either under the Judicial Branch of Government (as the Spanish case since 1978) or as independent agencies (as it is the case for the French State Council since 1958, and the Indonesian experience since 2003). The German system is also an instance of a mixed political-judicial one, which since 1949 authorizes contesting parties to appeal congressional elections before the Bundestag, whose resolution can be appealed in its turn before the Constitutional Court.

I consider the third model under my classification to be not only the more recent one but also the one which has been basically developed in Latin America. The third model was legally created in Uruguay in 1924 when the Electoral Court was established. Furthermore, the model was constitutionally recognized in Chile in 1925 when the Evaluating Court for Elections was created. Although in Latin America some electoral courts are organized under the Judicial Branch of Government (as it is the case for Argentina, Brazil, Mexico, Paraguay and Venezuela), the majority of such courts are autonomous (as it is the case for Bolivia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Panama, Peru and Uruguay). Besides, the unique case prevailing in Nicaragua must be mentioned: Nicaraguans have established the electoral court as a Fourth Branch of Government. The rulings issued by such electoral courts are usually both definitive and unchallengeable (as it is the case for Costa Rica, Chile, Mexico, Nicaragua, Peru, Venezuela and Uruguay). However, in some cases the electoral courts'

rulings can be appealed before the Supreme Court (as it is the case for Honduras), before the administrative courts (Colombia) or even before the Constitucional Court (which is the case in Guatemala once a previous trial has been undertaken before the Supreme Court). The Argentinean case can also be considered as a mixed political-judicial system. In Argentina the powers of the National Electoral Chamber, which is organized under the Judicial Branch of Government, exist along with those provided for both Houses of Congress as final juries with respect to the election of their members, as well as along with those provided for the congressional General Assembly to validate the presidential election in a definitive way. Most of such electoral courts do perform not only judicial activities but also managerial ones because they have powers both to solve electoral appeals and to organize the elections from a logistic point of view (Brazil, Costa Rica, Panama and Uruguay are the countries in which electoral courts play such a double role). Sometimes, when electoral courts are also empowered to organize the elections, representatives of the political parties work permanently within such courts, whether as a majority of members (Honduras) or not (Uruguay).

It can be said that the existence of electoral courts is a Latin American contribution to political science and electoral law as well. The Latin American electoral courts have played a fundamental role within both the democratization processes and the democratic consolidation of the countries throughout the region, especially those which started such processes in the 80's.

It must be noticed, nonetheless, that sometimes, in spite of the judicial resolution systems established under each one of the aforementioned categories (supreme courts, constitutional courts or electoral courts), contesting parties to an electoral trial are authorized to submit, in certain cases, administrative appeals to those agencies in charge of organizing the elections from a logistic point of view. Such agencies can be independent from traditional branches of government (as it is the case of Elections Canada, the Chilean Electoral Service, the Federal Electoral Institute in Mexico and the agency in charge of organizing electoral processes in Peru). It must be also mentioned that such electoral institutions can also be organized as congressional agencies partially independent (as it is the case for Hungary, the partially independent Argentinean electoral boards (*juntas*) and the Spanish Central Electoral Board

(*Junta*)). It can also be the case that such agencies are organized under the Executive Branch of Government, usually within the Ministry or Department of the Interior (as are the German and the American cases, as well as, partially, the Argentinean and the Spanish ones).

The current Mexican Resolution System for Electoral Disputes was established in 1996, when both the Constitution and the electoral legislation were amended in order to provide for an Electoral Court of the Federal Judicial Power (to which I will refer simply as the electoral court in what follows) which is empowered to resolve not only every dispute arisen from federal elections (whether presidential or congressional), but also those derived from state elections (affecting the election of governors, state congressmen and city councils (*ayuntamientos municipales*)).

Due to the 1996 reform, the electoral system in force since the nineteenth century was modified. Such a system authorized political institutions (the congressional electoral colleges), to resolve disputes derived from both presidential and congressional elections in a final way. It must be said, however, that such final resolutions were not always made according to the law but following political criteria on behalf of the political party in control of each electoral college. As a matter of fact, even though the first electoral court which was created in 1987 had a partial autonomy, its rulings were reviewed and even modified by the congressional electoral colleges. As a result Mexico had a mixed political-judicial resolution system from 1987 to 1996.

Today, there are two federal electoral authorities in Mexico. On the one hand, the Federal Electoral Institute, which is an independent and permanent public agency in charge of organizing the federal elections as well as in charge of resolving some administrative appeals; on the other hand, the Electoral Court of the Federal Judicial Power, which is in charge of resolving judicially the appeals submitted to it and derived from the elections, in order to review the compliance of electoral authorities' orders and resolutions with the principles of constitutionality and legality, as well as to protect the electoral-political rights of every citizen to vote, to be voted and to associate with others to achieve political objectives.

The Electoral Court is the specialized court within the Federal Judicial Power as well as the top electoral authority of the country, except in those cases involving lawsuits challenging the constitutionality of electoral legislation, which are under the Supreme Court's jurisdiction.

The Electoral Court is divided into a Higher Court and five Regional Courts. The Higher

Court, which is permanently open for business, has seven judges who have been appointed for a period of ten years. They cannot be reappointed to a second term. The Higher Court is located in Mexico City. The Regional Courts, on the other hand, have three judges appointed for a period of eight years. They cannot be reappointed to a second term unless they are promoted to a higher post. Such courts are only open for business during the federal electoral process.

There are many constitutional and legal provisions (both institutional and procedural) aimed at ensuring the Electoral Court's autonomy, an independent and impartial behaviour from the electoral judges and an effective and efficient case adjudication.

The Electoral Court's rulings are unchallengeable. Therefore, they cannot be further reviewed nor modified by any other agency or court.

Likewise, a kind of "normative autonomy" is constitutionally vested in the Electoral Court. As a result, the Electoral Court is entitled to pass an internal regulation on its own. Besides, the Electoral Court is entitled to a sort of "managerial autonomy" which derives from its constitutional powers. The Electoral Court's Management Commission (which is integrated by a chairman who is the President of the Electoral Court along with members of the Federal Judiciary Council) is authorized to design a budgetary project on its own as well as to direct its managerial and financial activities within a considerable range of freedom. The Electoral court is also entitled to manage labour relations on its own.

The Electoral Judges' independence, impartiality and professionalism are ensured by requiring from them the fulfilment of very high professional and technical standards. The electoral judges also have to demonstrate a complete independence with respect all political parties. Besides, each single judge to the Electoral Court is appointed by a two-thirds majority of senators out of a shortlist of three candidates submitted by the Supreme Court after a public summon has been issued to fill-up the vacancies in the Court. I would like to mention that in 1996, we were appointed to the Electoral Court unanimously. Such an appointment was a result of a great consensus reached by the political parties which were represented in the Senate at the time. I should add that the electoral judges' wages, which cannot be diminished during their time in Office, are determined in order to pay for the performance of a very professional and committed job.

According to the Federal Judiciary Act (*Ley Orgánica del Poder Judicial Federal*), there are

seventeen cases in which an electoral judge's approach to a case could be biased. In such cases (family or friendship ties or public enmity with one of the contesting parties) the electoral judge involved cannot take part in solving disputes. Furthermore, electoral judges are not allowed either to accept or to perform any other job or employment, except unpaid ones at scientific, teaching, literary or philanthropic associations. Besides, during a period of time of two years after their last day in Office, electoral judges are forbidden to take any kind of job under an administration derived from an electoral dispute sorted out by them. According to the Mexican Constitution, electoral judges can be accountable politically, criminally and administratively. Every Mexican citizen is empowered to fill in a report about any electoral judge's wrongdoings. The electoral judges have to turnout an annual report on their wealth.

Now, I think it could be interesting to mention some of relevant rulings which have been issued by the electoral court, as well as some relevant cases brought before it. Doing so may provide you with a clearer and wider picture of the important work which we are committed to:

- a) The Higher Court upheld the 2000 presidential election and as a result of such a ruling a candidate from an opposition party was proclaimed as Elected President for the first time in seventy years;
- b) The Higher Court is empowered to annul federal, state or municipal elections whenever serious and proved irregularities can be considered to play a significant role in determining the election's result. The Electoral Court has used such a constitutional power to annul a couple of congressional elections in 2003 (affecting the election of the Federal Representatives of the electoral districts of Torreón, Coahuila, y Zamora, Michoacán), as well as a couple of governorships (affecting the election of the governor of Tabasco in 2000 and Colima in 2002);
- c) The Electoral Court has the constitutional power to either uphold or impose severe fines to political parties which have had financed their electoral campaigns irregularly. The Court imposed such kind of fines after the 2000 federal election took place (around US\$100,000,000.00 to the political party holding the majority of the Congress and US\$50,000,000.00 to the coalition of political parties which won the Presidency);
- d) The Electoral Court has also revoked illegal and unduly congressional

appointments of local electoral authorities (as it did in resolving the lawsuits submitted by political parties with respect to the electoral authorities of Guerrero, Nuevo León, Yucatán and Zacatecas);

- e) The Electoral Court has upheld the right of every indigenous citizen to appeal an electoral system based on indigenous customs and communal procedures (Tlacolulita, Oaxaca). It's worth mentioning that the Electoral Court annulled an election organized under an indigenous electoral system which infringed the principle according to which to vote must be considered as a universal right (Santiago Yhaveo, Oaxaca), and
- f) In many of its rulings, the Electoral Court has upheld a number of measures aimed at ensuring that political parties organize themselves in a democratic way (some of the examples of such kind of rulings can be listed as follows: the unconstitutionality declaration over the internal regulation of a political party which did not reach the minimum democratic threshold established by the law; the obligation of achieving a balanced relation between the political parties' right to self determination and the militants' rights to a democratic participation in deciding on the party's objectives; the declaration of a candidate's registration whose name is different to the winner's of the primary election as null and void; the declaration of internal elections of both directive members and candidates as null and void; the revocation of penalties unduly imposed upon affiliates; the revocation of penalties imposed upon affiliates which can be considered as violating fundamental rights such as freedom of speech).

Finally, it is worth mentioning the transparent way in which the Electoral Court performs its duties. Every single resolution session is public and all of them can be followed through internet. Furthermore, within the twenty four hours following the resolution session all our rulings and resolutions can be accessed freely in our web page. Likewise, any individual is allowed to review all concluded cases stored in the judicial archive.

Summing up, the Mexican Resolution System for Electoral Disputes, which is operated by the Federal Electoral Institute along with the Electoral Court, has played a significant role within the transition from a regime dominated by a hegemonic political party to a pluralistic regime where political parties compete against each other in a democratic way. Such a Resolution

System upholds a democratic rule of law which is aimed at protecting fundamental voting rights as well as at strengthening a political system in which elections are free, periodic and authentic under both the Constitution and the law.