



Electoral Integrity and its Regulatory Framework

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Academic Coordinators: Marisol Peña Torres & Felipe Bravo Alliende

The opinions expressed in this publication are those of the authors and do not necessarily reflect the views of the members of the Board of the Observatory on Judicial Independence and Electoral Integrity, nor of the Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF).

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1. Context and Purpose of This Document

The Observatory on Judicial Independence of the Global Network on Electoral Justice aims to promote the independence of electoral judges and guarantor bodies, as a manifestation of the principle of the rule of law, through the exchange and analysis among GNEJ participants, accompanied by other international and academic actors. The Observatory analyzes current internal factors that threaten judicial independence in the electoral field, issues periodic reports with best practices and recommendations, and calculates the impact of the Observatory's actions with tailor-made indicators.

Between 2021 and 2023, the Observatory published several studies related to electoral justice and judicial independence, analyzing the international normative sources on the subject and their relationship with the domestic law of the member countries of the GNEJ. For 2024, the Observatory has focused its work on studying the legal framework for electoral integrity to have a basic theoretical document for the subsequent development of more specialized materials.

2. The Concept of Electoral Integrity

2.1 The Concept of Electoral Integrity for Political Science

In political science, electoral integrity is the adherence to principles that ensure free, fair, and transparent elections. Within this framework, electoral integrity seeks to implement processes and practices that protect the fairness, transparency, and credibility of the electoral system as a whole and ensure that results reflect the free and genuine will of the electorate.

The concept of electoral integrity was popularized by Harvard University professor Pippa Norris.¹ Norris defines electoral integrity as agreements on "international conventions and universal standards for elections that reflect global norms applicable to all countries throughout the electoral cycle, including the pre-election period, the campaign, election day, and its outcome."²

Authors such as Garnett and James have criticized Norris's definition for being overly normative, making it less compatible with a substantive conception of democratic theory.³ Indeed, a purely normative view of electoral integrity may lead to a positive assessment of elections that strictly comply with a country's laws, but which rules may violate basic democratic principles. For this reason, the ACE Project has specified that "issues such as transparency, accountability, and

¹ ZAVADSKAYA, Margarita and GARNETT, Holly Ann (2018): "Introduction," in GARNETT, Holly Ann, and ZAVADSKAYA, Margarita (eds.): and *Electoral Integrity and Political Regimes: actors, strategies and consequences* (New York, Routledge), pages 1-17.

² NORRIS, Pippa (2014): *Why Electoral Integrity Matters* (Cambridge, Cambridge University Press), p. 21.

³ GARNETT, Holly Ann, and JAMES, Toby S. (2020): "Measuring electoral integrity: using practitioner knowledge to assess elections," in *Journal of Elections, Public Opinion and Parties*, pages 3-4.

accuracy in the election administration process are considered in conjunction with ethical electoral behavior and integrity monitoring systems."⁴

Similarly, for James and Alihodzic, electoral integrity is "the implementation of principles in the conduct of elections, which are essential to promote the broader fulfillment of democratic ideals."

⁵ According to these authors, such principles would include, but are not limited to: opportunities for deliberation, equality of participation, equality of competition, quality of election administration, and institutionalization of rules.

From this perspective, electoral integrity is conceived as an integral principle that encompasses all the necessary guarantees to ensure democratic electoral processes. Thus, the protection of electoral integrity is not limited to formal compliance with the law but also implies the creation of conditions that guarantee authentic democratic representation. According to the ACE Project, the specific criteria associated with electoral integrity are:

- (i) Respect for the principles of electoral democracy, in which equality of suffrage and secrecy of the ballot are fundamental;
- (ii) The ethical conduct of those who administer and manage the electoral process and of the voters themselves;
- (iii) Institutional safeguards, stressing the importance of the autonomy of the bodies in charge of the electoral process from the other branches of government;
- (iv) Accuracy in the process of disseminating candidacies as well as in the vote counting and scrutiny processes;
- (v) Ongoing compliance with established rules and procedures; and
- (vi) Transparency at the different stages of the electoral process (before, during, and after the elections).⁶

2.2 Election Integrity from a Constitutional Perspective

This interpretation of electoral integrity is very broad from a constitutional perspective. Identifying electoral integrity as a principle that encompasses all safeguards of democratic electoral processes risks diluting its conceptual utility. Rather than providing a precise tool for protecting specific aspects of the electoral process, this approach turns electoral integrity into a concept almost indistinguishable from the democratic principle itself. This broadness prevents us from discerning whether the concept of "integrity" can be useful in addressing specific problems within the electoral cycle. If these distinctions are not made, speaking of electoral integrity becomes a reiteration of the democratic principle in general, without adding any interpretive or practical value for the protection of specific elements that may require priority or more specialized attention in the electoral process.

⁴ <https://aceproject.org/main/espanol/ei/ei.htm>

⁵ JAMES, Toby S. and ALIHODZIC, Sead (2020): "When Is It Democratic to Postpone an Election? Elections During Natural Disasters, Covid-19, and Emergency Situations," in *Election Law Journal*, volume 19, issue 3, page 7.

⁶ <https://aceproject.org/main/espanol/ei/ei.htm>

In our view, the concept of electoral integrity should focus primarily on the protection of the institutions responsible for ensuring free, fair, and transparent elections through their ongoing involvement in the electoral process. This institutional approach is fundamental because it is the electoral institutions that design, implement, and monitor the rules and procedures that ensure equality of political competition, citizen participation, and transparency of results.

The emphasis on the permanent involvement of the institutions in the electoral process seeks to overcome the temporal reduction of electoral integrity to the "electoral cycle," i.e., including the pre-election period, the campaign, the election day, and its outcome. The institutional design, the adoption of electoral regulations, and the functioning of electoral bodies is an ongoing process in which electoral integrity is also relevant.

Electoral integrity in this regard does not mean a broad embrace of all aspects of democratic ideals. Rather, it is about ensuring that the bodies responsible for organizing, supervising, and validating electoral processes —such as electoral tribunals, electoral commissions, and voter registration bodies— meet standards of independence, impartiality, and effectiveness. Accordingly, electoral integrity becomes a concrete tool for ensuring that electoral institutions are strong, reliable, and able to withstand external or internal pressures that could undermine their functioning.

Focusing on the protection of electoral institutions gives the concept of integrity a more precise focus, making it possible to clearly identify and address the areas where improvements or reforms are needed to strengthen democracy. This includes ensuring that institutions have the necessary resources, training, and autonomy to carry out their work without undue interference, as well as oversight and accountability mechanisms that maintain their legitimacy in the eyes of society.

The key to preserving electoral integrity therefore lies not only in the existence of abstract norms and principles but also in the capacity of institutions to apply them effectively. A robust and well-protected institutional framework allows elections to take place in an atmosphere of trust and transparency and ensures that the electoral system faithfully reflects the will of the people.

3. Electoral Integrity and its Regulatory Sources

The concept of electoral integrity is not explicitly used in international electoral instruments. However, it is undeniable that its understanding is derived from different standards, which allows it to be distinguished as a principle applicable to electoral processes in general.

The 1948 Universal Declaration of Human Rights states in Article 21.3 that "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." The need to respect electoral integrity can be based on the elements of the *authenticity* of the electoral process and the right to *vote freely*.

In turn, Article 25 of the International Covenant on Civil and Political Rights of 1966 also guarantees the right and opportunity of all citizens "[t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors". General Comment No. 25 of the United Nations Human Rights Committee, which develops this article, reinforces the idea that this right must be protected by law. Furthermore, an independent electoral commission should be established to oversee the electoral process and ensure that it is conducted fairly and impartially and following legal provisions consistent with the Covenant.⁷

In the American context, Article 23 of the 1969 American Convention on Human Rights recognizes that all citizens must have the right "to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors".

In Europe, Article 3 of Protocol No. 1 to the 1952 European Convention on Human Rights commits States to "hold free elections at reasonable intervals by secret ballot,

under conditions which will ensure the free expression of the opinion of the people in the choice of the

legislature".

Other relevant soft law instruments are those related to the organization of electoral processes, as they give content to the concept of electoral integrity and contribute to its interpretation and application.

Consequently, the 2005 Declaration of Principles for International Election Observation makes several references to electoral integrity, noting, for example, that "[i]nternational election observation has the potential to enhance the integrity of election processes,

by deterring and exposing irregularities and fraud and by providing recommendations for improving

electoral processes." Furthermore, that "International election observation should, when possible, offer recommendations

for improving the integrity and effectiveness of electoral and related processes, while not

interfering in and thus hindering such processes."⁸

⁷ UNITED NATIONS HUMAN RIGHTS COMMITTEE (1996): *General observation No. 25. Participation in public affairs and voting rights*, items 10 and 20.

⁸ UNITED NATIONS (2005): *Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers*, October 27, 2005, New York, pages 2 and 3.

Although focused on judicial conduct, the Bangalore Principles of Judicial Conduct are also relevant to electoral integrity, as value number 3 emphasizes that "[i]ntegrity is essential to the proper discharge of the judicial office", which is fundamental to ensuring an independent and impartial judiciary for the resolution of electoral disputes.

Finally, the European Commission for Democracy through Law – known as the Venice Commission– understands that, in addition to the normative sources above, the components of "electoral integrity" are addressed in several of its documents, including the Commission's 2002 Code of Good Practice in Electoral Matters and the 2010 Report on Figure Based Management of Possible Election Fraud. From this perspective, electoral integrity includes the conditions for the implementation of the principles of respect for fundamental rights in electoral matters, the stability of the electoral system, the organization of elections by an impartial body, the observation of elections, and an effective appeals system.⁹ In its opinions and reports, the Venice Commission has explicitly used the concept of electoral integrity, generally in the context of institutional safeguards of the electoral process. For this reason, we will refer to these opinions when relevant to highlight certain essential elements of the principle of electoral integrity.

4. Elements of Electoral Integrity

A fundamental element of electoral integrity is citizen confidence in electoral institutions. For the results of an election to be accepted as legitimate, the institutions must function in a way that inspires confidence in both the electorate and the political actors involved in the electoral process. Public perception of the autonomy, impartiality, efficiency, and transparency of these institutions strengthens democratic stability and avoids post-election disputes. In such cases, some segments of the population may feel excluded from the political system and therefore distrust elections or even institutions in general.¹⁰ From an institutional point of view, if electoral integrity should focus on the protection of the institutions that are part of the electoral cycle, its elements can be grouped around the factors that ensure the effectiveness, independence, and transparency of those responsible for the electoral process. *Inter alia*: (i) institutional autonomy, (ii) transparency and accountability, (iii) institutional and judicial control mechanisms, (iv) control of electoral financing, (v) voters' right to vote, and (vi) stability of electoral regulations.

i. Institutional Autonomy

The institutions responsible for administering elections, such as electoral commissions, electoral tribunals, and monitoring bodies, shall be independent of political, economic, or governmental influence. Institutional autonomy is fundamental to their impartial duty, as is the existence of legal

⁹ VENICE COMMISSION (2018): *Report on the identification of electoral irregularities by statistical methods*. CDL-AD(2018)009, March 19, 2018, paragraph 6.

¹⁰ GARNETT, Holly Ann, and JAMES, Toby S. (2020): "Measuring electoral integrity: using practitioner knowledge to assess elections," in *Journal of Elections, Public Opinion and Parties*, p.4.

frameworks and safeguards that protect this autonomy. The credibility of the process depends on the rules and their application being the same for all actors involved, and on there being no bias at any stage of the electoral process.

In this regard, it is worth noting the constitutional reform passed in Chile in 2015¹¹, which granted constitutional status to the Electoral Service (SERVEL), in addition to that already approved by the Election Qualification Tribunal (TRICEL), entrusting it with the administration, supervision and control of the electoral and plebiscite processes; compliance with the rules of transparency, limitation and control of electoral expenditures; the rules of political parties; and other powers entrusted to it by a constitutional organic law passed by qualified majority.

In turn, internal mechanisms to ensure impartiality, such as oversight of election administration and transparency in decision-making, are essential to maintaining public confidence. As the Venice Commission has also pointed out, the fairness - and the perception of fairness - of electoral processes, as well as the fairness of the elections themselves, depend to a large extent on the electoral management bodies and the confidence they inspire in the public.¹²

The decision-making processes of electoral institutions are also essential to ensuring electoral integrity. Thus, the fact that electoral bodies can make decisions by a majority of their members, without requiring a qualified majority or unanimity of their members, may jeopardize electoral integrity.¹³ In the same way, the verification procedures they carry out cannot be limited to the formal examination but must promote a substantive verification of the candidacies as well as of the origin of the electoral expenses that involve public funds.

To maintain their autonomy, electoral institutions, whether they have administrative, judicial, or both types of powers, must have the necessary resources and infrastructure to manage the electoral process efficiently. This includes everything from organizing election day to managing the technologies that ensure data integrity and voter registration. Proper training of personnel and the use of tools to prevent fraud and uphold ballot security are also integral to this aspect, particularly in light of the technological context in which certain electoral processes take place. Electoral institutions must ensure that the necessary safeguards are in place to prevent computer attacks that could lead to changes in citizens' decisions.¹⁴ Similarly, in States that do not yet use

¹¹ Law No. 20,860, published in the Official Gazette on October 20, 2015.

¹² VENICE COMMISSION and OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (2023): *Georgia - Joint opinion on draft amendments to the Election Code and to the Rules of procedure of the Parliament of Georgia*, December 18, 2023, CDL-AD(2023)047, paragraph 19.

¹³ VENICE COMMISSION and OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (2020): *Montenegro - Urgent joint opinion on the draft Law on elections of members of Parliament and councillors*, October 8, 2020, CDL-AD(2020)026, paragraph 49.

¹⁴ VENICE COMMISSION and DIRECTORATE OF INFORMATION SOCIETY AND ACTION AGAINST CRIME OF THE DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW (2019): *Joint report on digital technologies and elections*, June 24, 2019, CDL-AD(2019)016, paragraph 149; VENICE COMMISSION (2020): *Principles for a fundamental rights-compliant use of digital technologies in electoral processes*, December 11, 2020, CDL(2020)037, paragraph 79.

electronic voting, the physical transportation of ballot boxes must be equipped with all the necessary safeguards to prevent the falsification or even loss of ballots.

ii. Transparency and Accountability

The electoral cycle must be transparent, which means that electoral institutions must provide access to relevant information at all stages of the process, from voter registration and campaign financing to the counting of votes and the publication of results. Voter identification is of paramount importance to the integrity of the election process, both in-person and absentee or vote-by-mail ballot.¹⁵ Ensuring reliable and accurate voter rolls increases citizen confidence in the process and contributes to electoral stability and integrity.¹⁶ Furthermore, the existence of electoral rolls that are audited by an external body to ensure their accuracy seems a necessary and advisable measure.

Monitoring by national and international election observers and clear and regular accountability for their activities strengthen the legitimacy of the electoral process.¹⁷ International election observation has the potential to enhance the integrity of electoral processes by deterring and exposing irregularities and fraud, and by providing recommendations for improving electoral processes.¹⁸ Similarly, respect for the universally accepted practice of witnessing the counting of votes or, in the case of electronic elections, their counting, as well as the procedures for tabulating and announcing the results, is fundamental to electoral integrity.¹⁹

iii. Institutional and Jurisdictional Control Mechanisms

Electoral institutions must be subject to monitoring and evaluation mechanisms to ensure that they are run according to democratic standards. This means that, without prejudice to their institutional autonomy, they must be accountable to the public as well as to judicial and other state institutions. Accordingly, the existence of legal mechanisms to challenge decisions or resolve disputes through the courts is essential to ensure the integrity of the electoral process. Judicial review must ensure the autonomy and neutrality of its decision-making process since there is a link between electoral integrity and institutional strength in each country.

¹⁵ VENICE COMMISSION (2020): *Report on electoral law and electoral administration in Europe*, October 8, 2020, CDL-AD(2020)023, paragraphs 196 and 221.

¹⁶ VENICE COMMISSION and OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (2017): *Bulgaria - Joint opinion on amendments to the electoral code*, June 19, 2017, CDL-AD(2017)016, paragraph 40.

¹⁷ In this regard, the VENICE COMMISSION (2006): *Report on electoral law and electoral administration in Europe*, June 12, 2006, CDL-AD(2006)018, paragraph 131; VENICE COMMISSION (2009): *Report on an internationally recognised status of election observers*, 20 May 2009, CDL-AD(2009)020rev, paragraph 33.

¹⁸ UNITED NATIONS (2005): *Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers*, October 27, 2005, New York, page 3.

¹⁹ VENICE COMMISSION (2010): *Report on the timeline and inventory of political criteria for assessing an election*, October 21, 2010, CDL-AD(2010)037, paragraph 37.

As pointed out by the Venice Commission, to ensure the integrity of electoral processes, laws should give appellate bodies the power to invalidate elections in whole or in part if irregularities have affected the outcome of the vote. However, invalidation should be used only in exceptional cases where there is clear evidence of illegal or improper conduct that has distorted the results, as invalidating for minor errors could create distrust in the process and decrease participation in future elections.²⁰ Likewise, the removal of an elected authority from office may be a valid sanction if he/she has been convicted of serious violations of the regulations that protect the integrity of the electoral process, such as fraud in the election results, violation of the rules of electoral financing, or the existence of conflicts of interest concerning the election.²¹

iv. Election Finance Oversight

Campaign finance and the use of public resources are key aspects of electoral integrity. The institutions in charge of controlling the financing of electoral campaigns must have the capacity to supervise and audit the expenditures of parties and candidates to avoid unlawful conduct that may affect electoral competition. This includes both transparency of donations and regulation of financing, including control of contributions and regulation of campaign spending to avoid undue influence. Consequently, prohibiting or limiting foreign donations to political parties may be necessary to ensure the integrity of the electoral process.²²

v. Protecting Voter Rights

Electoral institutions must, within the scope of their duties, ensure that citizens can exercise their right to take part freely in the electoral process. This means that these institutions must focus their duty on protecting the right to vote, ensuring access to the information necessary to exercise said right, and enabling their participation in all stages of the electoral process. It is also essential to have clear and timely mechanisms to resolve any irregularities or violations of these rights. The protection of voters' rights and electoral integrity requires that vote-buying or bribing voters always constitute a crime, even if it takes place before the election or even after the election results.²³

Although each State has the sovereign right to decide whether to make voting voluntary or compulsory, it must be borne in mind that, in the latter case, the sanctions for non-voting must meet the criteria of proportionality and reasonableness, to encourage civic participation and not cause significant financial strain. In this perspective, it is important not to forget the primary purpose of any sanction, which is to prevent the prohibited behavior - not voting - given the need

²⁰ VENICE COMMISSION (2020): *Report on election dispute resolution*, October 8, 2020, CDL-AD(2020)025, paragraphs 127 and 128.

²¹ VENICE COMMISSION (2023): *Ukraine - Amicus curiae brief on additional sanctions for committing an administrative offence*, December 18, 2023, CDL-AD(2023)050, paragraph 36.

²² VENICE COMMISSION (2020): *Report on electoral law and electoral administration in Europe*, October 8, 2020, CDL-AD(2020)023, paragraph 138; in a similar vein, VENICE COMMISSION (2006): *Opinion on the prohibition of financial contributions to political parties from foreign sources*, March 31, 2006, CDL-AD(2006)014, page 33.

²³ VENICE COMMISSION (2014): *Joint opinion on the draft Electoral law of the Kyrgyz Republic*, June 16, 2014, CDL-AD(2014)019, paragraph 88.

that compulsory voting implies fostering strong electoral participation that favors the democratization processes, as it was shown in the constitutional reform of 2023 carried out in Chile, which replaced voluntary voting with compulsory voting.²⁴

Similarly, practices that tend to influence voting during a reasonable period before the election, and even more so during the election itself, should be avoided so as not to distort the free expression of the electorate.

vi. Stability of Electoral Regulations

The stability of electoral rules is key to ensuring the integrity of electoral processes. Election rules must be clear and consistent, avoiding short-term changes in response to short-term political interests or external pressures. Changes in electoral regulations must be made within the framework of a broad consensus among political and social actors. To encourage this consensus, it is common for constitutions or electoral laws to require high quorums to pass reforms in this area. This ensures that changes are supported by a significant majority and do not merely reflect the interests of a dominant group in power.²⁵

In addition, regulatory stability facilitates the proper preparation of the institutions in charge of organizing and overseeing elections, allowing them to work with clear and predictable rules, which optimizes the administration of elections and minimizes the risk of errors or controversies. In the long run, the stability of electoral rules strengthens the legitimacy of the democratic system because citizens and political actors know that the rules will not be arbitrarily and easily changed and that their observance will be ensured fairly and equitably for all.

5. Implementing Electoral Integrity in Electoral Legislation and its Recent Reforms

Below we present some cases of relevant electoral reforms in which electoral integrity has played a key role. In some cases, there is a deterioration of elements such as institutional autonomy or the independence of judicial control mechanisms due to legal or constitutional changes that jeopardize these elements. In other countries, electoral integrity is compromised by constant changes in electoral rules, both to reduce the ability of the opposition to compete and to favor the ruling party. In other cases, electoral integrity is compromised by the overreach of electoral management bodies to make decisions that are the responsibility of other bodies. Finally, we review the case of Argentina, where a recent amendment to the electoral code introduced the single ballot in national and provincial elections, which favors voter choice, discourages potential fraud, and thus better ensures electoral integrity.

²⁴ Law No. 21,524, published in the Official Gazette on January 04, 2023.

²⁵ VENICE COMMISSION (2024): *Georgia - Opinion on amendments to the Election code which abolish gender quotas*, June 24, 2024, CDL-AD(2024)023, paragraph 21.

5.1 Electoral Integrity and Reforms that Reduce the Autonomy of Electoral Institutions

Electoral integrity is undermined by amendments to the Constitution or the laws that restrict the necessary autonomy of the institutions responsible for administering elections.

For example, in 2018, Poland introduced various reforms to its electoral law that affected the independence of the National Election Commission (*Państwowa Komisja Wyborcza*, PKW), the electoral body in charge of elections and referendums in the country. Before these amendments, the Commission consisted of three judges of the Constitutional Court appointed by the President of the Constitutional Court, three justices of the Supreme Court appointed by the First President of the Supreme Court, and three judges of the Supreme Administrative Court appointed by the President of the Supreme Administrative Court. The members of the Electoral Commission were elected to serve for nine years. The 2018 amendment to the Electoral Code retained the nine members of the Commission, but now only two of them are judges –one from the Constitutional Tribunal, one from the Supreme Court– and the remaining seven members are appointed by the *Sejm*, the lower house of the Polish Parliament.

The judges' composition of the National Electoral Commission was an institutional safeguard of electoral integrity. This composition ensured a certain independence of the body since the judges are selected by judicial mechanisms that are, in principle, more distant from political power. Currently, by allowing the lower house of the Polish Parliament to appoint the majority of the members of the National Election Commission, the incumbent government can have a more direct influence on this body, since in the Polish parliamentary system the party or coalition in power must also have a majority in the *Sejm*. The risk is increased by the fact that the law provides that the term of office of these members coincides with the term of office of the *Sejm*, i.e. they are renewed every four years according to the new majority in the Chamber.

The composition of the PKW raises concerns about the possible interference of these members in the control of elections and their autonomy. The National Electoral Commission oversees the entire electoral process and is responsible for registering parties and candidates, maintaining electoral rolls, supervising elections, and announcing final results, as well as monitoring political party finances and the allocation of public funds.²⁶ The electoral integrity of Poland is threatened by this likely politicization of the PKW.

5.2 Electoral Integrity and Reforms that Limit the Independence of Judicial Oversight Mechanisms

²⁶ RAKOWSKA-TRELA, Anna (2018): "Current Amendments to Polish Electoral Law in the Light of European Standards," in *Polish Political Science Yearbook*, vol. 47, issue 3, page 461.

A recent case of regulatory amendment that threatens the independence of the mechanisms of electoral judicial control occurred recently in Mexico, with the passing of a constitutional reform that authorizes the popular election of the judges of the Electoral Tribunal of the Federal Judiciary (TEPJF in Spanish).

In September 2024, the Mexican Congress passed a constitutional reform that, among other measures, establishes the election by popular vote of various judges of the Judiciary, including the election of the electoral judges who make up the High Chamber of the Electoral Tribunal.

Mexico is entering a period of "democratic regression" with the direct election of judges.²⁷ In general, the popular election of judges, and in particular of the judges who make up the Electoral Tribunal of the Judiciary, raises doubts about their ability to maintain the necessary independence and impartiality in the exercise of their duties. This method of selection entails a risk: the pressure for their positions and decisions to conform to the preferences of the majority, seeking the favor of public opinion, instead of being based exclusively on the legal and constitutional principles that should guide the administration of justice. In this context, the desire for reelection or the fear of losing office may lead judges to alter their judicial behavior, thereby compromising the integrity of the electoral process under their review.

The independence of the judiciary is a fundamental pillar of the Rule of Law, ensuring that the enforcement of the law is objective, free from outside influence, and not subject to the vagaries of politics or the interests of the majority. In a system where judges are elected by popular vote, this principle is undermined, as election campaigns require candidates to take public positions on controversial issues, which tends to polarize and politicize their decisions. Therefore, the electoral logic imposes a competitive dynamic that can seriously undermine the ability of judges to act autonomously. This risk is exacerbated by the fact that the term of office of the judge of the TEPJF is linked to the ordinary federal electoral cycle so that the candidates for judge must compete for the attention of the citizens along with the rest of the elections scheduled for that date. The result is a reduction in the autonomy of the institutions and a weakening of electoral integrity in Mexico.

5.3 Electoral Integrity and Actions of Judicial Oversight Mechanisms That Exceed Their Authority

Venezuela is an example of weakening institutional autonomy and mechanisms of judicial control over electoral decisions. In the elections for President of the Republic on July 28, 2024, both the electoral process carried out by the National Electoral Council (CNE, as per its Spanish acronym) and the subsequent intervention of the Electoral Chamber of the Supreme Court of Justice did not meet the fundamental criteria of electoral integrity that we have outlined herein.

²⁷ GROPPi, Tania (2024): "'Judicial overhaul' e regressione democratica in Messico", in *Federalismi.it, Rivista di diritto pubblico italiano, comparato ed europeo*, issue 23, 2024, p. x.

Before describing what has happened since the aforementioned presidential elections, it is necessary to describe the main characteristics of the reforms introduced to the electoral system in Venezuela. To this end, the 1999 Constitution created the Electoral Branch, which is distinct from the Executive, Legislative, Judicial, and Citizen Branches, and has organic and functional autonomy concerning the other branches of the State. The National Electoral Council was assigned as the governing body, with the National Electoral Board and the Commission for Political Participation and Financing as subordinate bodies. The Electoral Branch was regulated by the Organic Law published in Official Gazette No. 37,573 on November 19, 2002. This body was vested with broad regulatory powers, particularly the function of regulating the electoral laws and resolving any doubts and loopholes they may raise or contain.

Although the appointment of the members (rectors) of the CNE required the intervention of an Electoral Nominating Committee to ensure citizen participation, and the appointment was to be approved by 2/3 of the National Assembly, in practice, and due to the extremely polarized situation in Venezuela, in the absence of laws on this matter, the appointment of the CNE rectors was made by the Constitutional Chamber of the Supreme Court of Justice, which contributed to consolidating the political control of the Executive Branch over this body.²⁸ This was because the Executive Branch also managed to control the composition of the Supreme Court.

Regarding the election of the President of the Republic, the Centro Carter [Carter Center] - an organization that participated as an international observer invited by the CNE - affirmed that the 2024 presidential election in Venezuela does not meet international parameters and standards of electoral integrity and cannot be considered democratic. In its statement following the election process, the Centro Carter [Carter Center] noted that it cannot verify the authenticity of the results of Venezuela's 2024 presidential election announced by the CNE, pointing out that the lack of results broken down by polling station is a serious violation of the principles of transparency. In his opinion, the electoral process did not meet international standards of integrity and violated several provisions of the national laws, showing a behavior of the CNE in favor of the ruling party and to the detriment of the opposition.²⁹ Similarly, the Venice Commission expressed its concern about the Venezuelan electoral process and recalled that the integrity of the elections is ensured by respecting the principles recognized in Article 25 of the International Covenant on Civil and Political Rights, Article 23 of the American Convention on Human Rights, and the Venice Commission's Code of Good Practice in Electoral Matters.³⁰

²⁸ BREWER-CARÍAS, Allan R. (1987) *Reforma electoral en el sistema político en Venezuela: [Electoral reform in the political system in Venezuela:]* Online Legal Library of the Instituto de Investigaciones Jurídicas de la UNAM [UNAM's Legal Research Institute]. Available at: www.juridicas.unam.mx

²⁹ CENTRO CARTER [CARTER CENTER], *Declaración del Centro Carter Sobre la Elección en Venezuela [Carter Center Statement on the Venezuelan Election]*, July 30, 2024. Available at: <https://www.cartercenter.org/news/pr/2024/venezuela-073024-spanish.pdf>

³⁰ VENICE COMMISSION (2024): *Venezuela - Presidential elections - Statement by the Bureau of the Venice Commission*, August 7, 2024, available at: <https://www.venice.coe.int/webforms/events/default.aspx?id=3705&lang=en>

Despite being declared President-elect by the CNE, incumbent President Nicolás Maduro filed a writ of Amparo before the Electoral Chamber of the Venezuelan Supreme Court of Justice, requesting that the body "fully and unequivocally certified" the results of the electoral process.³¹ The Court asserted jurisdiction over this appeal, and ordered various court measures, including the examination of the electoral material by experts and the summoning of all the presidential candidates to provide "all the electoral documents of legal relevance in the possession of the political parties and the candidates".³² Finally, on August 22, the Electoral Chamber issued a ruling in which it "categorically confirms the results of the presidential election of July 28, 2024, issued by the National Electoral Council, in which Nicolás Maduro Moros was elected President of the Bolivarian Republic of Venezuela for the constitutional period 2025-2031."³³

Although the Venezuelan Constitution of 1999 ensures the autonomy of the National Electoral Council as the governing body of the electoral processes in the country³⁴ and assigns to the Electoral Chamber of the Supreme Court of Justice the "contentious electoral jurisdiction",³⁵ in this case, doubts have arisen as to the jurisdiction of the Superior Court of Justice to hear this case, since there is no dispute to be resolved, nor any action or inaction of the CNE that could be corrected in this way. Likewise, the Organic Law of Electoral Processes of Venezuela would not allow the Electoral Chamber to pass a decision on the certification of an electoral process, a matter that belongs exclusively to the National Electoral Council as the governing body of electoral processes. Finally, it is not without risk to institutional autonomy that the day before President Maduro filed the writ of Amparo, the Supreme Court of Justice congratulated him on his reelection, describing the electoral process as "transparent, efficient, verifiable and a benchmark for the world".³⁶

The independence of the Judiciary is essential to ensuring due process, as it ensures that judges can make impartial decisions without undue influence from other branches of government or outside actors. In the case of electoral justice, this is of paramount importance, as a lack of independence from political power can mean undue influence on decisions regarding electoral complaints and thus undermine the integrity of elections. In this case, the Supreme Court has not published the full text of its decision, nor has it allowed access to the parts of the file that affect the necessary transparency required in an electoral process. Similarly, respect for the principle of legality is essential to avoid arbitrariness and partiality in the decisions of the Electoral Judiciary.

³¹ SUPREME COURT OF JUSTICE OF VENEZUELA, Electoral Chamber, file number 2024-000034. Access to the information contained in this file is restricted, so that only the content of certain documents published by the Supreme Court on its social networks is known.

³² SUPREME COURT OF JUSTICE OF VENEZUELA, Electoral Chamber, case number 2024-000034, ruling of August 5, 2024.

³³ SUPREME COURT OF JUSTICE OF VENEZUELA, Electoral Chamber, ruling number 31-2024. The text of the decision is not available, only a summary, which can be found here: <https://accesoalajusticia.org/la-se-certifica-y-convalida-el-resultado-electoral-del-cne-que-dio-como-ganador-a-nicolas-maduro-en-las-elecciones-del-28jul/>

³⁴ Venezuelan Constitution of 1999, articles 292 and 294.

³⁵ Venezuelan Constitution of 1999, article 297.

³⁶ Statement available on the official X account of the Supreme Court of Justice of Venezuela: https://x.com/TSJ_Venezuela/status/1818072469309124713

The encroachment of competences between bodies that are part of the institutionality of the electoral process –in this case, between the Supreme Court of Justice and the CNE– is negative both for the integrity of the elections and for respect for the Rule of Law.

5.4 Electoral Integrity and Failing Electoral Stability

The stability of electoral rules is key to ensuring the integrity of electoral processes. Election rules must be clear, consistent, and permanent, avoiding short-term changes that may respond to short-term political interests or external pressures. Sudden or frequent changes in electoral laws can create uncertainty among voters and political actors, undermining confidence in the system and compromising the fairness of the process.

The reforms of the electoral laws in Georgia were an example of the lack of stability of rules in electoral processes. Since 2001, when the country's Unified Electoral Code was adopted, there have been significant electoral reforms virtually every year since, including a new code enacted in 2011. Many of these amendments have made changes to points relevant to the electoral process, such as the composition of the Central Electoral Commission, and the transition from a mixed electoral system combining proportional and majority representation to a fully proportional system. Although some of the reforms were carried out following international standards and recommendations of organizations such as the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe, other amendments were mainly due to changes in political majorities in the country's government and were viewed with concern by the international community.

In the case of Georgia, the Venice Commission noted that "Georgia's practice of frequently reforming electoral legislation risks undermining the integrity of the electoral process and the State's continuing efforts to consolidate democracy. It also risks confusing voters, parties, and candidates, and makes it difficult for the competent electoral authorities to enforce the law, which could lead to errors in the electoral process and, consequently, distrust in the elected bodies. Given that several recommendations of the Venice Commission and the ODIHR remain outstanding, the call for a more comprehensive and systematic reform of the Georgian electoral laws, well in advance of the elections and through an inclusive consultation process, is reiterated. Care should be taken to address remaining concerns and outstanding recommendations in such a future reform to avoid frequent changes and achieve stability".³⁷

Ensuring electoral stability in Georgia was also one of the aspects identified by the European Commission as a priority for the evaluation of the country's accession to the European Union,

³⁷ VENICE COMMISSION (2024): *Georgia - Opinion on amendments to the Election code which abolish gender quotas*, June 24, 2024, CDL-AD(2024)023, paragraph 21.

which recommended Georgia: "to finalize electoral reforms, including ensuring adequate representation of the electorate, well in advance of election day."³⁸

Meanwhile, in Hungary, after the 2010 elections, Viktor Orbán's Fidesz party won 68% of the seats in the Hungarian parliament due to the disproportionate electoral system that favored the winning party at the time. This supermajority allowed the new government to implement far-reaching reforms, including a new Constitution in 2011 and various changes to the electoral law. Some of these Hungarian reforms have been reviewed in previous Global Network on Electoral Justice reports, such as in 2023 on judicial independence.³⁹ Similarly, other legal reforms, such as gerrymandering and media control, have raised serious concerns about electoral integrity and democracy in Hungary.

In September 2022, the European Parliament passed a resolution expressing concern about events in Hungary that reflect a "systemic threat" to the values of the European Union. Among them, the European Parliament mentions the changes made to the electoral law over the years through the redrawing of electoral districts and the winner-take-all system, which discriminate against opposition parties, as well as the unusual speed with which these electoral changes were adopted and the lack of meaningful public consultations to discuss these reforms.⁴⁰ These criticisms were reiterated in 2024 when the European Parliament insisted on the existence of persistent serious deficiencies related to Hungary's constitutional and electoral system, as well as the system of institutional countervailing powers, among which it mentions "the lack of a level playing field in local and national elections and frequent changes in the electoral code".⁴¹ The use of electoral law amendments to secure a parliamentary majority,⁴² and make it difficult for the opposition to compete, has led to Hungary being described as a "hybrid regime of electoral autocracy".⁴³

It is essential that any amendment to the electoral laws be made within the framework of a broad consensus among political and social actors, as this will ensure that the reforms are not seen as tools to gain electoral advantage. To encourage this consensus, it is common for constitutions or electoral laws to require high quorums to pass reforms in this area. This ensures that changes

³⁸ EUROPEAN COMMISSION (2023): *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2023 Communication on EU Enlargement Policy*. November 8, 2023, COM(2023) 690 final, page 25.

³⁹ THE GLOBAL NETWORK ON ELECTORAL JUSTICE(2023): *Independencia Judicial:*

Principales Amenazas y Soluciones Disponibles
[Judicial Independence: Main Threats and Available Solutions], pages 9-11.

⁴⁰ EUROPEAN PARLIAMENT (2022): Resolution of 15 September 2022 on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2018/0902R(NLE)), paragraphs T and U.

⁴¹ EUROPEAN PARLIAMENT (2024): Resolution of 24 April 2024 on the ongoing hearings under Article 7(1) TEU regarding Hungary to strengthen the rule of law, and their budgetary implications (2024/2683(RSP)), paragraph M.

⁴² SCHEPPELE, Kim Lane (2022): "How Viktor Orbán wins," in *Journal of Democracy*, volume 33, issue 3, p. 55.

⁴³ EUROPEAN PARLIAMENT (2024): Resolution of 24 April, 2024..., paragraph AA.1.

are supported by a significant majority and do not merely reflect the interests of a dominant group in power.

The case of El Salvador was also highlighted in the 2023 Global Network on Electoral Justice report on the erosion of judicial independence in the country.⁴⁴ This element is relevant from the perspective of institutional autonomy and the independence of the control mechanisms of the electoral processes. From an electoral integrity perspective, other legal and constitutional reforms are also of concern.

In 2021, President Nayib Bukele announced his intention to run for reelection as President of El Salvador, which immediately sparked controversy because the Salvadoran constitution explicitly prohibits immediate presidential reelection. Article 152 item 1 of the Constitution states that he cannot be a candidate for President of the Republic: "[w]hoever has served as President of the Republic for more than six months, whether or not consecutively, during the immediately preceding period or during the last six months prior to the beginning of the presidential term". The prohibition of presidential reelection is reinforced by the establishment of a Petrean clause in article 248, final paragraph, of the Constitution, which provides for that "[n]one of the articles of this Constitution relating to the form and system of government, the territory of the Republic and the rotation in the exercise of the Presidency of the Republic may be reformed in any case".

However, the Supreme Court of Justice of El Salvador declared that this prohibition constituted a permanent restriction on the right to vote so that Article 152 of the Constitution should be construed as requiring the president who wishes to be reelected to apply for a license during the six months before the beginning of the next presidential term.⁴⁵ It is relevant to recall that the Constitutional Chamber of the Supreme Court of Justice of El Salvador was completely dismissed by the Legislative Assembly of El Salvador in 2021, and the replacement judges were appointed by the same Assembly, with a political majority sympathetic to President Bukele.⁴⁶ This ruling allowed President Bukele to run for reelection and eventually win the February 2024 election.

The stability of the electoral regulations can be compromised not only by repeated or last-minute changes in the law –as we will see later, El Salvador has suffered from this problem– but also by judicial decisions that supersede the will of the people as expressed in the Constitution and the laws. The Venice Commission, in its report on the limits of reelection –carried out at the invitation of the Secretary General of the Organization of American States– pointed out that the prohibition

⁴⁴ THE GLOBAL NETWORK ON ELECTORAL JUSTICE(2023): *Independencia Judicial*:

Principales Amenazas y Soluciones Disponibles
[*Judicial Independence: Main Threats and Available Solutions*], pages 14 and 15.

⁴⁵ Supreme Court of Justice of El Salvador, Constitutional Chamber, Decision 1-2021 - Loss of Citizenship, Legal Grounds III.

⁴⁶ THE GLOBAL NETWORK ON ELECTORAL JUSTICE(2023): *Independencia Judicial*:

Principales Amenazas y Soluciones Disponibles
[*Judicial Independence: Main Threats and Available Solutions*], pages 14 and 15.

of reelection cannot be interpreted *a priori* as a violation of a human right.⁴⁷ The report also emphasizes that "the limits on presidential reelection are enshrined in the Constitution; therefore, a constitutional reform is required to change them. Only the people, who have legal sovereign power, can change the scope of the delegation given to the president. The decision to alter or eliminate presidential reelection limits must be subject to thorough public scrutiny and debate and must fully respect the relevant constitutional and legal procedures."⁴⁸

In March 2023, El Salvador's Legislative Assembly approved the repeal of Article 291-A of the Electoral Law, which prohibited electoral reforms a year before elections. This allowed the government to pass major reforms less than a year before the February 2024 elections, such as reducing the number of deputies from 80 to 64 and the number of municipalities from 262 to 44. These last-minute changes undermine confidence in the electoral system and compromise its integrity. The Venice Commission recalled that "amendments to electoral laws during the electoral process are often intended, or may appear to be intended, to manipulate the electoral process in favor of partisan interests, unless the amendments are made in pursuit of a fundamental and overriding legitimate interest, such as the protection of the integrity of the elections themselves."⁴⁹

In the current year of 2024, the electoral reform proposed in Mexico by former president Andrés Manuel López Obrador –which has already been mentioned– is an example of changes in electoral laws that have not led to a consensus and that have materialized in a short period of time before the presidential elections of June 2024, which resulted in the victory of the candidate Claudia Sheinbaum.

Former President López Obrador has been applying pressure to reform the National Electoral Institute (INE) since his victory in 2018. This body was created in 2014 as part of an electoral reform pushed by former President Enrique Peña Nieto, replacing the Federal Electoral Institute, which was created in 1990 after the controversial 1988 presidential election, when an alleged failure of the system led to accusations of electoral fraud.

Former President López Obrador's main argument was the need to reduce the excessive cost to the public treasury of INE's operations. However, the "AMLO reform" provoked strong criticism from the citizens themselves, who protested in the streets because of the impact this electoral reform would have on the functioning of the electoral processes and the integrity that should surround them. Thus, it was argued that the reform would eliminate 300 district boards responsible for organizing federal and local elections on the ground, as well as the instruments of citizen participation in the country. It would also eliminate more than 260 positions from 32 local boards.

⁴⁷ VENICE COMMISSION (2018): *Report on term-limits. Part I - Presidents*. CDL-AD(2018)010, March 20, 2018, paragraphs 81 and 82.

⁴⁸ VENICE COMMISSION (2018): *Report on term-limits. Part I - Presidents*. CDL-AD(2018)010, March 20, 2018, paragraph 127.

⁴⁹ VENICE COMMISSION and OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (2023): *Republic of Moldova - Joint follow-up opinion to the joint opinion on amendments to the Electoral code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional*, December 18 2023, CDL-AD(2023)048, paragraph 21.

The INE itself reported that the reform would entail an 84.6% reduction in the National Electoral Professional Service, while at the same time affecting the electoral roll, since the boards were in charge of updating it and issuing the IDs necessary to vote, as well as training polling station officials.⁵⁰

Specifically, INE was to be replaced by a new body called the "National Institute of Elections and Consultations (INEC)," which members would be directly elected by the three branches of government and would have the sole authority to manage the radio and television time of political parties and independent candidacies, 70% of which would be distributed among the political parties according to the results of the election of the immediately preceding federal deputies, and the remaining 30% would be divided equally.

Furthermore, since Mexico is a federally organized State, it proposed to eliminate the state electoral tribunals and concentrate all power to review electoral processes in the Electoral Tribunal of the Judiciary.⁵¹

Consequently, the stability of the electoral regulations, without prejudice to adaptations resulting from new needs such as technological change, is an essential element for the preservation of electoral integrity, especially in the face of attempts by incumbent governments to adapt the electoral system to ensure the continuity of representatives and to consolidate the position of the majority in office.

5.5 Electoral Integrity and the Safeguard of the Right to Vote

In the case of Argentina, the approval of the single ballot for elections is a recent change that is positive for electoral integrity.

In October 2024, the National Congress approved an important reform to Chapter IV of Title III of the National Electoral Law (Law 19,945), which establishes the Single-Paper Ballot System for elections. Until then –except for the province of Mendoza– both national and provincial elections used ballots prepared by each party or electoral list. This practice has led to several challenges, such as the lack of ballots in some polling stations, especially in rural or remote areas, and frequent allegations of ballot theft or destruction, which undermined public confidence in the electoral system.

The adoption of a Single-Paper ballot, the design of which is the responsibility of each National Electoral Board and the printing and distribution of which is the responsibility of the Executive Branch, offers several important advantages for improving electoral integrity. First, it reduces the risk of election fraud related to partisan ballot manipulation, such as "ballot theft" or the unavailability of ballots at certain polling stations. Similarly, the Single Ballot guarantees that all political options are present in a single document, regardless of the size or resources of political parties or political groups. Similarly, centralizing the design and distribution of ballots ensures that

⁵⁰Source: [bbc.com/mundo/noticias-america-latina-64784628](https://www.bbc.com/mundo/noticias-america-latina-64784628)

⁵¹ Chamber of Deputies of Mexico. LXV Legislature. Electoral Reform. Analysis of the current text and the draft text of the bill to amend the Constitution of the Federal Executive Power.

all voters receive the same information and options when voting. The possibility of missing or tampered ballots is eliminated. This increases the transparency of the election process.

The introduction of the Single-Paper Ballot strengthens electoral integrity by reducing the opportunities for interference or manipulation of the vote, and it is the duty of the state to ensure that every citizen has access to all the options available in the democratic process.

6. General Conclusions

- 6.1** Despite the tendency to define electoral integrity as a broad principle encompassing all the necessary safeguards to ensure democratic electoral processes, this concept should focus primarily on the protection of the institutions involved in the electoral process, which are responsible for ensuring free, fair, and transparent elections.
- 6.2** To this end, the bodies responsible for organizing, supervising, and validating electoral processes must meet strict standards of independence, impartiality, and effectiveness. Adherence to these principles is indispensable for establishing and maintaining public confidence in the functioning of the electoral system as a whole and for ensuring the widest and freest participation of the electorate in public affairs.
- 6.3** Therefore, the bodies that make up the electoral institutionality of the States must have the necessary resources, training, and autonomy to carry out their duties without undue interference. Likewise, it is necessary to establish control and accountability mechanisms that preserve their legitimacy in the eyes of society, while avoiding instability of the electoral rules based on successive changes that are not duly agreed.
- 6.4** Although the concept of electoral integrity has not usually been addressed in the national or domestic normative instruments of the States, it would be appropriate, on the other hand, to address the inclusion of the principles that govern it in the domestic laws of each of them, based on the contributions of the Venice Commission.
- 6.5** Among these principles, it is necessary to emphasize the institutional autonomy of the bodies that make up the electoral institutionality of the country, which is expressed in ensuring them a normative level that places them outside the political ups and downs of the moment, a decision-making procedure based on solid majorities, and access to all the necessary resources for the performance of their duties, including those related to technological advances.
- 6.6** From the point of view of transparency and accountability, the preparation of electoral rolls that ensure objectivity and reliably reflect the percentage of citizens entitled to participate in electoral processes is an element worth considering.

Likewise, the presence and activity of electoral observers to ensure the integrity of the relevant processes is another element that should not be overlooked, without forgetting the existence of effective mechanisms to ensure the control and proper use of electoral expenditures.

- 6.7** Since oversight is a backbone element of the Rule of Law, accountability to citizens by the bodies responsible for them cannot be absent in electoral matters. In turn, judicial control, which can lead to the invalidation of the expression of the will of the people, is an indispensable remedy, provided that it is exercised with a delicate balance that does not distort the will of the voters.

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