

REPORT ON THE PROTECTION OF POLITICAL-ELECTORAL RIGHTS THROUGH THE CASE-LAW OF THE ELECTORAL TRIBUNAL OF THE FEDERAL JUDICIARY OF MEXICO DURING THE FEDERAL ELECTORAL PROCESS 2023-2024

Óscar Sánchez Muñoz
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1. Executive summary

This report analyses the jurisdictional work of Mexico's Federal Electoral Tribunal (TEPJF) during the 2023-2024 electoral cycle, focusing on its role in safeguarding political-electoral rights and ensuring electoral integrity.

Key Findings:

Robust electoral justice system: Mexico boasts a robust electoral justice system, with the TEPJF playing a crucial role in upholding democratic principles. However, the system faces several challenges due to political interference in a highly polarised context.

High levels of electoral litigation: The high volume of cases handled by the TEPJF reflects that the electoral justice system is deeply rooted in the country's political culture, but it also highlights a lack of adherence to electoral laws by political actors.

Gender parity in political representation: The TEPJF has been instrumental in advancing gender parity through its case-law, ensuring equal access for women to elected positions. Key rulings during this cycle addressed gender alternation in leadership positions, parity in candidate nominations, and allocation of public funding and media time.

Combating gender-based political violence: The TEPJF has taken significant steps to address gender-based political violence against women, including the creation of a Specialised Electoral Public Defender's Office. However, challenges remain in defining the boundaries between freedom of expression and political violence, leading to inconsistencies in rulings.

Political representation of vulnerable groups: The TEPJF has actively protected the political rights of marginalised groups through affirmative action measures and sanctions against discriminatory practices. Key rulings addressed the representation of indigenous communities, people with disabilities, LGBTQ+ individuals, and migrants. However, challenges persist in ensuring genuine affiliation of candidates with the groups they represent and preventing the misuse of affirmative action.

Voting rights for pre-trial detainees: The TEPJF has upheld the right to vote for individuals in pre-trial detention, aligning with international standards. However, the implementation of this right faces logistical complexities and ongoing debates.

Addressing threats to electoral fairness: The TEPJF has tackled issues such as anticipated campaigning, abuse of public resources, and campaign finance irregularities. However, the effectiveness of sanctions and preventive measures remains a concern, especially regarding the conduct of high-ranking officials.

Information and communication issues: The TEPJF has adjudicated disputes related to media coverage and social media during campaigns, balancing freedom of expression with the need to prevent misinformation and slander.

However, challenges persist in defining the boundaries between legitimate political criticism and harmful speech.

Use of artificial intelligence in campaigns: The TEPJF has addressed the use of AI-generated images in political advertising, highlighting the need for guidelines to ensure transparency and protect the rights of individuals.

2. Introduction

Mexico stands as one of the Venice Commission's most active partners in Latin America. Since Mexico's accession to the Commission in 2012, an active dialogue has been fostered with various national institutions, notably with the Electoral Tribunal of the Federal Judiciary (TEPJF) and National Electoral Institute (INE).

Since 2012, the Commission has been actively co-operating with TEPJF in several areas, notably the development of the VOTA database and active engagement within the World Network of Electoral Justice.

On 25 March 2024, the President of the TEPJF and the Councillor President of the INE officially invited the Venice Commission to participate in their Foreign Visitors Program in the framework of the 2024 federal electoral process of Mexico. The primary aim of this invitation was to provide members of the Venice Commission with a comprehensive overview of the TEPJF's work and its role during the 2023-2024 electoral process and to seek experts' opinion on implementation of international principles and standards, with a particular focus on the effective safeguarding of the political-electoral rights of priority groups.

The Commission accepted the invitation, and between 28 May and 2 June, Commission members Srdjan Darmanović, Óscar Sanchez Muñoz and Katharina Pabel participated in the programme, assisted by Secretariat members Delphine Freymann and Serguei Kouznetsov. Throughout this period, the members of the visitors' programme participated in various meetings with judges of the Superior Chamber of the TEPJF, judges of the Regional Chambers, members of local electoral judicial bodies, representatives of the different services of the Tribunal, national observers specialised in electoral justice, as well as with members of INE and local electoral institutes. During Election Day on 2 June, members of the programme were able to observe the electoral operations in different polling stations in Mexico City.

In the framework of its co-operation with the Venice Commission on electoral process issues, the Tribunal also requested an analytical report on the "Protection of the equal suffrage through the case law of the Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF) during the 2024 elections". This document has been prepared as a response to that request.

This report takes into account the opinions that have been previously adopted by the Venice Commission on the Mexican electoral legislation: CDL-AD(2013)021 and CDL-AD(2022)031. The document CDL-PI(2023)007 synthesised

information concerning the legal developments after the adoption of the 2022 opinion.

Furthermore, during the 2021 Mexican federal elections, an expert from the Venice Commission produced a report on selected rulings of the Electoral Tribunal of Mexico, from the perspective of international standards.

Consultations with international experts proved to be useful for the TEPJF in its work, contributing to enhanced transparency and understanding of the process, its complexities and challenges, as well as to strengthen confidence in the development of elections. Moreover, the strategic project of international accompaniment in electoral justice aims to ensure adherence to international standards of integrity and to assess the impact of rulings on the overall quality of elections. Furthermore, it can foster reflection upon the strengths and weaknesses inherent to the Mexican electoral justice system and contribute to the improvement of the existing legal framework.

3. Background to the TEPJF's jurisdictional activity in the framework of the 2023-2024 federal election cycle

On 2 June 2024, nearly 100 million Mexicans were called to elect a new President to serve a six-year term, all 500 members of the Chamber of Deputies and all 128 members of the Senate of the Republic. Coinciding with the federal electoral process, elections were also held in the states to elect governorships (Mexico City Chief of Government and eight State Governors –Chiapas, Guanajuato, Jalisco, Morelos, Puebla, Tabasco, Veracruz, and Yucatán) and legislatures (in all 32 states), as well as thousands of municipal offices. In total, more than 20,000 public offices were up for election.

Mexico possesses a robust electoral justice system, boasting a recognised track record as a guarantor of democratic, free, and competitive elections. These jurisdictional bodies operate within a legal framework and under organisational conditions that ensure the high degree of professionalism.

However, the country's democratic system¹ is confronted with numerous challenges. On the one hand, criminal groups are trying to use elections to influence government structures². On the other hand, some of the political actors behave in a way which often does not comply with electoral laws: abuse of public resources, illicit financing of political parties and candidates, vote buying and coercion of voters. These serious problems affect citizens' confidence in electoral processes and represent a threat to democracy in the country.

Historically, the TEPJF and, in particular, its Superior Chamber played a leading role in setting important precedents for the protection of citizens' political-electoral rights and electoral integrity. However, the internal crisis affecting the Tribunal in

¹ See Acuerdo Nacional por la Integridad Electoral (ANIE). *Cuarto informe sobre integridad en el proceso electoral 2023-2024*, p. 10.

² See Laboratorio Electoral: *Violencia electoral en México. Proceso 2023-2024 (Informe final)*, 10 September 2024; ANIE: *Expediente: impugnaciones y declaración de validez de la elección presidencial (amicus curiae)*, pp. 1 and 2.

recent months raised some controversy over its performance during the 2023-2024 electoral process.

In quantitative terms, the TEPJF's work throughout the 2023-2024 electoral cycle has been impressive. As the highest body of electoral justice, the TEPJF has, at the time of preparation of this report, adopted decisions on more than 27,000 cases in the context of the federal electoral processes. 23,000 cases were related to the election of MPs with almost 21,000 appeals for reconsideration³. 2,350 cases related to senatorial elections and 2,080 cases concerned the presidential election.

On 15 August 2024, the Superior Chamber of the TEPJF adopted in public session the ruling on the final result of the election for the Presidency of the United States of Mexico, the declaration of validity of the election and the declaration of the President Elect.

Previously, the Superior Chamber took decisions on the appeals concerning the presidential election (**SUP-JDC-906/2024, SUP-JIN-144/2024 y SUP-JIN-145/2024, acumulados -12/08/2024-**), dismissing all of these and the disputed results were confirmed. The opposition claimed that there were multiple unlawful actions that affected the fairness of the election. The complaints filed by the opposition parties alleged that there was a context of widespread violence caused by organised crime; that several public officials, including the president, violated their duty of neutrality; or that MORENA, the ruling party, undertook a vote-buying strategy.

Annuling an election is the most serious sanction that the TEPJF can impose, and to do so, the violations must be systematic and determinant for the result. The six members of the Superior Chamber agreed that the complaints and evidence submitted by the opposition were not sufficient to adopt such a decision. However, two of the judges pointed out that there were indeed facts that should be further investigated and sanctioned.

Consequently, the election was validated because it was free and genuine. It was considered that the petitions for the nullity of the election were unfounded because the accumulation of evidence that was presented and studied did not demonstrate that any of the irregularities denounced could have generated a different result.

Acknowledging that the Tribunal has performed its work efficiently and professionally, it should be noted that it has faced this enormous challenge in a situation of internal crisis derived from the Senate's inaction in filling vacancies in the Superior Chamber and the Regional Chambers. The Superior Chamber had two vacant seats (out of a total of seven) and the Regional Chambers had six. In addition, there was a high number of vacancies in the local electoral tribunals.

³ Of the 20,997 appeals for reconsideration related to deputies' elections, 20,547 correspond to challenges against the allocation of proportional representation seats, of which 8,459 were resolved accumulated to SUP-REC-1250/2024, 7,033 to SUP-REC-10086/2024 and 5,055 to SUP-REC-17241/2024.

This situation has been caused by the failure of the legislative bodies to appoint the members of the electoral tribunals. In the case of the TEPJF, it is the Senate's lack of action that has caused this problem. The Supreme Court of Justice of the Nation sent to the Senate in due time and form, on 18 September 2023, the shortlists for the appointment of the magistrates (in accordance with the provisions of Article 99 of the Political Constitution of the United Mexican States (CPEUM)), but the Senate did not proceed with the appointments. Some national politicians and electoral experts interpreted this delay as a strategy by the political majority to weaken and delegitimise the bodies of the electoral jurisdiction.

The problems arising from the incomplete composition were also coupled at the end of 2023 with the resignation of the President and the appointment of a new President in a climate of internal tensions among the five judges who remained in the Superior Chamber. Although this situation has not affected the normal performance of the Tribunal's functions, there is no doubt that the internal disagreements have had an impact on some of the most important rulings of the electoral process, in which the division of the Superior Chamber into two blocks has become evident.

It cannot be ruled out that the internal tensions in the Tribunal while resolving issues of great relevance to the electoral process may have compromised the credibility of the institution. As we will be able to observe later in this report, on some occasions the lack of consistency in the respect of previous case-law or the occurrence of insufficiently justified changes of criteria could lead to the perception that political views have taken precedence over strictly legal considerations, which may affect the Court's image of independence and impartiality.

Regarding the incomplete composition of the Superior Chamber, the main doubt arose over the declaration of validity or nullity of the presidential election, since according to art. 167 of the Organic Law of the Federal Judiciary (LOPJF) such a declaration could only be made by the Superior Chamber of the TEPJF with the presence of at least six of its members.

This problem was solved by applying the court's own regulatory norms, contained in the Organic Law of the Federal Judiciary, which establishes that when there is a definitive vacancy during an election in the Superior Chamber of the TEPJF, it will be filled by the most senior or, where appropriate, oldest Regional Chamber judge (to deal with urgent matters). In application of this rule, on 18 July 2024, the Superior Chamber decided to invite judge Claudia Valle Aguilasochó to participate in the process of qualification and validation of the presidential election.

The work of the TEPJF has also been affected by the operational difficulties and internal conflict within the electoral management body, the INE. The disagreement among the members of INE's General Council has meant that, since April 2023, the Executive Secretariat, three executive directorates, and four technical units have been vacant, and the President has unilaterally appointed interim officers ("encargados de despacho") to head them. Internal disagreements between the members of INE's General Council had a negative

impact on the operational capacity of the organisation. This situation is completely unprecedented in INE's history and has affected its image of neutrality.

In the case **SUP-RAP-388/2023 and its accumulated cases (10/01/2024)** the Superior Chamber of the TEPJF modified the mechanism for filling vacancies in key INE positions, but on the other hand preserved the Counsellor-President's discretionary authority to appoint interim officers (“encargados de despacho”) removing additional deadlines and requirements not stipulated in the law. Two magistrates dissented, suggesting it validated a way to circumvent control mechanisms in appointing officials.

4. Main goal and thematic areas covered by the report.

The main goal of this report is to provide an impartial analysis of the jurisdictional work carried out by the TEPJF in the context of the 2024 electoral process.

This analysis will focus on the following thematic areas:

- (1) Inclusiveness: Protection of rights of traditionally marginalised groups in terms of political representation.

Over the past 30 years, the TEPJF has played a very active role in ensuring equal access to electoral justice and the protection of the political-electoral rights of traditionally marginalised groups.

Within this section, this report will analyse a selection of recent court decisions on the following issues:

- Gender parity in political representation.
- Gender-based political violence against women.
- Political representation of vulnerable minority groups: indigenous persons, persons of sexual diversity, persons with disabilities and Afro-Mexicans.
- Political rights of persons in pre-trial detention.

- (2) Judicial response to serious phenomena that threaten the freedom and fairness of the electoral contest:

- Anticipated acts of campaigning.
- Abuse of public resources.
- Campaign finance issues.
- Information and communication issues.

5. Specific goals

The specific objectives of the report are threefold:

1. Identify strengths and areas for improvement regarding *access to electoral justice*. In this area, the focus of the analysis will move away from a purely

formalistic approach, limited to procedural aspects, to try to answer the central question of whether the demands and conflicts raised by the different electoral actors (citizens, candidates, parties) have been able to reach the Tribunal and whether the Tribunal has had the legal instruments, material resources and will to respond to all these demands and conflicts.

2. Identify strengths and areas for improvement in relation to *obtaining a legally founded decision* by persons accessing electoral justice. In this area, the questions to be considered are, firstly, whether a legally founded decision is indeed obtained, but, secondly, it is also necessary to see whether such a decision provide an effective response to the claims raised by the plaintiffs, and, thirdly, whether such a decision is consistent with the previous case law of the Tribunal.
3. Identify strengths and areas for improvement in relation to the *application of international standards* by the electoral justice system. In this area, issues to be assessed are the use of standards –whether international standards are explicitly referred to in the rationale for decisions– and compliance with standards –whether the resolutions are in conformity with the international standards, even if they are not explicitly cited in the judgments.

6. Methodology

1. *Analysis of selected judgments.* The selection of judgments has been made in agreement with the TEPJF.
2. *Interviews with members of the TEPJF.* At the time of the visit to Mexico during the election period, several meetings were held with the president and other magistrates of the TEPJF. During the drafting of the report, communication was very fluid and direct interaction continued to be made with magistrates and staff of the Tribunal for specific consultations on the object of analysis.
3. Comparative analysis of national and international court rulings and other reference documents containing international standards.
4. *Analysis of civic organisations reports on the electoral process.* In particular, the report produced by the Centro de Estudios para un Proyecto Nacional Alternativo (CEPNA) –a think tank composed by renowned researchers and academics–, and the series of reports published by the Acuerdo Nacional por la Integridad Electoral (ANIE)⁴. Other consulted documents included the Report on political violence issued by Laboratorio Electoral⁵ and the *amicus*

⁴ ANIE is an agreement signed by 32 civic organisations, public institutions such as the TEPJF itself, 32 Local Electoral Courts, 31 Local Public Electoral Bodies (OPLES), 5 INE Electoral Councillors; 3 Universities: Academia Interamericana de Derechos Humanos (AIDH), Universidad Autónoma Metropolitana (UAM) and Universidad Nacional Autónoma de México (UNAM), through its Informed Vote (Voto Informado) project; and the Committee for Citizen Participation of the National Anti-Corruption System (Comité de Participación Ciudadana del Sistema Nacional Anticorrupción).

⁵ Laboratorio Electoral: *Violencia electoral en México. Proceso 2023-2024 (Informe final)*, 10 September 2024.

curiae brief presented by ANIE to the judicial procedure for the declaration of validity of the presidential election⁶.

7. Analytical study of the TEPJF's case-law during the 2023-2024 electoral process

7.1. Gender parity in political representation

Since 2014, article 41 of the Mexican Constitution establishes the principle of gender parity, ordering authorities to provide adequate conditions for women to have access, on equal terms with men, to public elected and decision-making positions. In recent years, legal and jurisprudential developments aimed at promoting women's participation in public life have evolved. From a conception based on gender quotas, which sought to ensure a minimum threshold of women in positions of political representation, a new rule has been imposed in which not only a minimum number of women is sought, but a full parity in the integration of all state bodies. This new rule has been established with the 2019 constitutional reform⁷.

The TEPJF in Mexico has played a crucial role in promoting gender parity in political representation. Its work has been fundamental in ensuring that women have equal opportunities to access elected positions and decision-making roles. Through its resolutions and rulings, the Tribunal has interpreted and applied electoral regulations with a gender perspective, combating discrimination and promoting the equitable participation of women and men in the country's political life.

During the 2023-2024 electoral cycle, the TEPJF has continued the jurisprudential line it has already established in previous processes, when important precedents in terms of gender parity were set, establishing clear criteria for the nomination of candidates and ensuring that political parties comply with the obligation to include women on their lists in an equitable manner. It has also sanctioned acts of political violence against women, protecting the rights of women who participate in politics and ensuring that they can hold office without being subject to discrimination or violence. This issue will be dealt with in a separate section.

Analysis of individual judgments:

SUP-JDC-74/2023 and accumulated cases (22/02/2023): Gender alternation in the presidency of the INE.

⁶ ANIE: *Expediente: impugnaciones y declaración de validez de la elección presidencial (amicus curiae)*.

⁷ Published in the *Diario Oficial de la Federación* on 06/06/2019.

The Superior Chamber of the Electoral Tribunal of the Judiciary of the Federation resolved a series of citizen lawsuits challenging the agreement of the Chamber of Deputies regarding the appointment process of INE councillors.

From a substantive point of view, two main grievances were analysed:

First, the unconstitutionality of the two-year residence requirement in the country: the Superior Chamber upheld the constitutionality of this requirement, arguing that it is reasonable and proportional to ensure that electoral councillors are linked to the community and the national context.

Secondly, the violation of the principles of equality, progressivity, non-discrimination and gender parity: While the Chamber acknowledged that the call guaranteed gender parity in the composition of the General Council (5 councillors of each gender), it determined that gender alternation in the presidency should be applied.

The Superior Chamber thus follows its own previous case-law in which it had established that alternation is a means to enhance women's political participation⁸ and, therefore, contributes to achieving the objectives of a parity policy. In the case of unipersonal posts and positions of leadership of bodies, given that it is physically impossible to comply with gender parity in the same period, it has been considered that gender parity can be observed if the gender of the person holding the post is alternated in each term or in each appointment period. In several cases involving local electoral institutes⁹, the Superior Chamber determined that alternation constitutes a mechanism that favours the reversal of the historical exclusion in the designation of the highest leadership position of the body. Therefore, the Superior Chamber obliges to analyse the historical context in the integration of the respective electoral body, in order to determine whether women have been excluded from occupying the leadership of the body¹⁰

Applying this line of case-law to the case of INE's leadership, the Superior Chamber observes that there has been a historical and systematic exclusion of women in the access to the presidency of said body, which justifies the adoption of an alternation rule.

Therefore, the Superior Chamber partially modified the contested agreement, ordering that the quintet for the INE presidency be composed exclusively of women, thus guaranteeing gender alternation in that position.

This ruling had two dissenting votes from magistrates Felipe Alfredo Fuentes Barrera and Indalfer Infante Gonzales, who believed that the call for nominations already sufficiently guaranteed equal opportunities for both genders and that parity would be achieved progressively with the new nominations.

⁸ SUP-REC-2038/2021 and accumulated cases.

⁹ This argument was followed in the cases SUP-JDC-117/2021 -presidency of the Electoral Institute of the State of Mexico-, SUP-RAP-452/2021 and accumulated cases -presidency of the Electoral Institute of Querétaro-, SUP-JDC-858/2021 -presidency of the Electoral Institute of Oaxaca-, and SUP-JDC-739/2021 -presidency of the Electoral Institute of Chihuahua.

¹⁰ SUP-JDC-1351/2021.

SUP-RAP-327/2023 and accumulated case (08/09/2023): gender parity in the nomination of candidates for state governorships and Mexico City's chief of government

Movimiento Ciudadano (MC) challenged the INE Agreement of 24/10/2023 (INE/CG569/2023) on gender parity in the nomination of candidates for the elections of state executive bodies.

This agreement, in view of the legislative omission detected in most of the states where the head of the executive was to be elected, obliged national political parties to present at least five female candidates out of a total of nine offices at stake.

Simultaneously, an *amicus curiae* brief was filed by Sara Alicia Alvarado Avendaño, in her own right and as a member of feminist collectives. The court understood that it should be considered as a lawsuit seeking the annulment of the INE's agreement and, consequently, reclassified it as a citizen's lawsuit (**SUP-JDC-564/2023**). From the point of view of access to justice, this is a sign of the flexibility of the TEPJF when it comes to ensuring that all claims find a procedural channel to be dealt with.

The Electoral Tribunal upheld the validity of INE's agreement regarding the obligation to present at least five women as candidates for the executive positions at stake.

The substance of the dispute in this case is the scope of INE's competence to oversee that national political parties develop rules guaranteeing substantive parity in the nomination of candidates for state governorships. In this regard, in its previous case-law, corresponding to the electoral cycles after the 2019 constitutional reform, the TEPJF has laid down a series of criteria¹¹:

- (1) INE is not competent to regulate parity at the state level, as this is a matter exclusive to the states.
- (2) Given the legal vacuum in the states, The Superior Chamber of the TEPJF can order national political parties to modify their internal regulations to guarantee substantive gender parity in terms of access to governorships, by direct application of the Constitution.
- (3) Likewise, the Superior Chamber of the TEPJF can order INE to supervise compliance with the measures to be complied with by national political parties.

Therefore, the TEPJF's premise in this ruling is that there is a valid legal framework that enables INE to issue resolutions aimed at supervising that national political parties comply with substantive parity in the nomination of

¹¹ These criteria were elaborated in successive decisions for the electoral processes between 2021 and 2023: SUP-RAP-116/2020 and accumulated cases, SUP-JDC-91/2022 y SUP-JDC-434/2022, y SUP-RAP 220/2022.

gubernatorial candidates¹². This perhaps nuances what the TEPJF itself said in **SUP-RAP-116/2020 and accumulated cases**, but it cannot be considered an overruling to all intents and purposes, because that ruling already spoke of INE's power to supervise the mandates issued by the TEPJF to political parties. What the Court does in this ruling is simply to give a broader meaning to the term “supervise” that would also include the ability to issue regulations to enable such supervision.

An interesting element of this ruling is that the TEPJF understands that parity should not be considered separately in each of the states that hold elections at the head of their executive, but that it is necessary to have a global vision to assess whether parity exists between all of them, horizontally. This further supports the need for the national body, INE, to be the guarantor of parity.

However, the arguments of the individual appellant (the author of the *amicus curiae* brief) are rejected, since her claim is that the TEPJF went much further and empowered INE to establish actions and guidelines to oblige parties to identify competitive blocs, to link them to alternation in the nomination of their candidates or to issue calls for nominations in which only women would be nominated. The Court denied that INE could have such competence because such regulation corresponds exclusively to the Congress of the Union and state congresses.

Justice Mónica Aralí Soto Fregoso issued a concurring vote on the judgement in the sense that even if all the states had legislated on parity in access to their governorships, this would not prevent INE from intervening to supervise horizontal parity among them, which would require the harmonisation of national and state regulations.

Magistrates Felipe de la Mata Pizaña and Felipe Alfredo Fuentes Barrera signed a dissenting opinion on the grounds that INE's competence should be limited to supervising political parties' compliance with the mandates issued by the TEPJF, but could not go as far as issuing provisions. Given INE's lack of competence, the dissenting magistrates understand that it should have been the Superior Chamber itself that issued the necessary rules to make the principle of parity effective.

The application of the INE Agreement of 24/10/2023 (INE/CG569/2023) was again the subject of a dispute before the Superior Chamber in case **SUP-JDC-274/2024 (13/03/2024)**. The appellant, Carmela Santos Vicente, a MORENA activist and candidate for the governorship of Chiapas, questioned the competence of the INE's Executive Directorate of Political Parties and Prerogatives (DEPPP) to verify compliance with parity requirements in the parties' candidate selection mechanisms, and also questioned the specific mechanism established by MORENA. The appellant's arguments were rejected by the Superior Chamber.

¹² However, the TEPJF determined that it is not up to INE to set the gender alternation rule for local political parties, but to the local electoral institutes, in the event that there is a legislative omission in any of the states.

SUP-RAP-328/2023 (15/11/2023): Public funding and radio and television time for women candidates.

The judgment confirms the modification of INE's Guidelines increasing from 40% to 50% the minimum allocation of public funding and radio and television time for women's candidacies.

The appellant –the political party “Movimiento Ciudadano” (MC)– argued that INE had exceeded its powers by modifying the Guidelines, and that the modification should in any case have been made within 90 days before the electoral process.

The superior chamber ratified that INE does have the power to issue such guidelines, as they do not modify electoral laws, but rather complement them to ensure the effectiveness of the constitutional principle of gender parity. Regarding the certainty and legal security –the principle of stability of electoral law, the Chamber's reasoning was that the modification made cannot be considered as “fundamental” and therefore is not subject to the 90-day deadline.

SCM-JRC-17/2024 and accumulated cases (12/03/2024): Gender parity in candidacies for municipal presidencies in the State of Hidalgo.

This ruling by the Mexico City Regional Chamber of the TEPJF is interesting because of the application of the principle of parity to executive positions at the municipal level.

The first thing to note, from the point of view of access to electoral justice, is the exception to the principle of definitiveness, which requires the exhaustion of judicial remedies at other instances before bringing a case before the TEPJF. In this case, the Regional Chamber interpreted the principle in the sense that, given the proximity of the date established for the registration of candidacies, the jurisprudential criterion was applicable, according to which the TEPJF can be accessed *per saltum* (omitting the previous instances) when the exhaustion of these previous appeals would result in a threat to the substantial rights that are the object of the litigation. It is, therefore, a criterion that introduces flexibility and favours access to justice so that the decision of the jurisdictional body does not become irrelevant by arriving too late.

As to the substance of the controversy, it derives from the Agreement of the Electoral Institute of the State of Hidalgo of 31 October 2023 (IEEH/CG/63/2023) establishing that all parties entitled to present candidates must nominate women candidates for municipal presidency in 20 municipalities (including 7 municipalities classified as indigenous) respecting at all times horizontal parity at the level of the total of their party nominations, gender alternation in vertical parity and the nomination of persons belonging to priority groups within each list of candidates. This agreement meant that the State Electoral Code, which established more lax parity rules, would no longer apply.

In a first judgement issued on 2 January 2024, the Local Court revoked the previous Agreement on the grounds that the affirmative action established by the Electoral Institute was not sufficiently substantiated.

On 16 February, the matter reached the Regional Chamber of the TEPJF for the first time, which partially modified the Local Court's ruling, specifying that the Institute, in its new Agreement, should determine the municipalities to be reserved for women, taking into account those municipalities that had not been governed by women since 1947.

On 15 February 2024, the Electoral Institute issued the new Agreement in compliance with the TEPJF decision (IEEH/CG/024/202424). In the agreement, 27 municipalities that had never had a woman as municipal president were identified, including 10 classified as indigenous municipalities. In these municipalities, the Institute ordered the nomination of female-headed candidacies.

The appellants argued that the Electoral Institute was not empowered to regulate this issue, overriding the provisions of the state's own legislation.

In response, the Regional Chamber recalled that the TEPJF had repeatedly ruled that both local and national electoral institutes had regulatory powers to issue guidelines and rules that seek to maximise the rights of disadvantaged groups, as well as those of women:

“Jurisprudencia 9/2021 de la Sala Superior de rubro y texto PARIDAD DE GÉNERO. LAS AUTORIDADES ADMINISTRATIVAS ELECTORALES TIENEN FACULTADES PARA ADOPTAR MEDIDAS QUE GARANTICEN EL DERECHO DE LAS MUJERES AL ACCESO A CARGOS DE ELECCIÓN POPULAR EN CONDICIONES DE IGUALDAD (Gender parity. Electoral administrative authorities are empowered to adopt measures to guarantee women's right to equal access to elected office). From a systematic interpretation of Articles 1, 4 and 41 of the General Constitution; Article 1, paragraph 1, and 24 of the American Convention on Human Rights; Article 2, paragraph 1, 3 and 26 of the International Covenant on Civil and Political Rights; Articles 4 (f) and (j) and 6 (a) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; Articles 1, 2, 4 (1) and 7 (a) and (b) of the Convention on the Elimination of All Forms of Discrimination against Women; and II and III of the Convention on the Elimination of All Forms of Discrimination against Women; as well as Articles II and III of the Convention on the Political Rights of Women, it should be noted that all electoral administrative authorities, in observance of their obligation to guarantee the right of women to have access to elected office under conditions of equality, have the power to adopt the general guidelines they deem necessary to make the principle of gender parity effective and concrete, as well as to develop, implement and ensure compliance with the legislative precepts in which affirmative action and specific rules on the matter are contemplated.”

In various precedents, The Superior Chamber has validated the adoption of guidelines issued by the various local electoral institutes, aimed at guaranteeing gender equality in the nomination of candidates, as well as adjustments in the

composition of elected public bodies¹³. The problem arises when there is already a law adopted by the state congress. In these cases, the TEPJF's position is that the regulatory norms of the electoral institutes cannot modify or alter the content of a law, but they can detail the normative assumptions for its application when these institutes understand that the law is insufficient to guarantee parity and adequately justify its necessity.

In the specific case, the Regional Chamber stated that the Electoral Institute of the State of Hidalgo had indeed adequately justified the need for the measure – the reservation of the presidency of 27 municipalities for women candidates– and that the rule contained in the local Electoral Code –competitive block candidacies– was insufficient and could be completed by the measure ordered by the Institute.

One of the interesting issues from the point of view of the application of international standards –although these are not directly cited– was the possible violation of the principle of stability of electoral law, as the Electoral Institute adopted its agreement at a time when the electoral process was already well advanced. In this regard, the Regional Chamber relied on the case-law of the Supreme Court which admits exceptions to the principle of stability¹⁴ when the regulatory changes are not of a transcendental nature for the electoral process, something that would perhaps be debatable in a case such as the one at issue in this case. The Regional Chamber chose to follow the interpretation given by the Superior Chamber in the sense that the introduction of normative modifications in a short period of time before the election was admissible when these pursued the fulfilment of duties derived from international conventions to guarantee the effectiveness of human rights¹⁵. In any case, the measure was implemented before the start of the registration of candidates.

SUP-REC-11276/2024 and accumulated cases (30/08/2024): Gender parity in the allocation of seats in the Congress of Nuevo León.

The application of gender parity rules in the allocation of seats in state congresses has been highly controversial since the principle of “parity in everything”, established by the Constitution, requires parity not only at the starting point, when candidacies are submitted, but also in the final result, when seats are allocated, which may require adjustments to be made to the results of the different lists. In this judgment, the Superior Chamber resolved appeals for reconsideration regarding the allocation of proportional representation seats for the Congress of Nuevo León.

Among other questions, the Superior Chamber corrected the Monterrey Regional Chamber's interpretation of the principle of gender parity. The Regional Chamber

¹³ See rulings on appeals SUP-RAP-726/2017 and accumulated cases, SUP-JDC-1172/2017 and accumulated cases, SUP-RAP-121/2020 and accumulated cases, SUP-REC-249/2020 y SUP-REC-231/2021, among others.

¹⁴ This so-called principle of “certainty” is enshrined in Article 105-II, penultimate paragraph, of the Constitution, which establishes that legislative amendments must be made 90 days before the start of the electoral process.

¹⁵ SUP-JRC 14/2020.

had adjusted the allocation of seats to achieve a 50% men and 50% women parity, favouring men in some cases. The Superior Chamber pointed out that this was incorrect, as the principle of parity must be interpreted as a minimum regarding women representation, not as a maximum, and must in any case benefit women, who have historically been underrepresented. The final allocation was 24 women and 18 men.

The decision of the Superior Chamber is consistent with previous TEPJF case-law which has repeatedly stated that principles, norms and rules established for the benefit of under-represented groups cannot be applied to favour men.¹⁶ In the Chamber's opinion, this is based on the fact that, in this case, men are not at the same disadvantage as women in accessing and holding public office, so that no specific action should be taken in their favour. In sum, gender parity rules, being preferential measures in favour of women, must be interpreted and applied for their greatest benefit¹⁷.

SUP-REC-2999/2024 and accumulated cases (30/08/2024): Gender parity in the allocation of seats in the Congress of Sonora.

Another controversial application of the gender parity principle occurred in relation to the Sonora Congress. The Guadalajara Regional Chamber of the TEPJF modified the allocation of seats made by the Instituto Electoral y de Participación Ciudadana of Sonora and finally, the Superior Chamber overturned the Regional Chamber's ruling and confirmed the first allocation made by the Institute.

The debate centred on which political parties should make the adjustments in order to achieve parity in representation. The Superior Chamber, appealing to its precedents¹⁸, ratified that the criterion to follow was to apply these adjustments to political parties with less representation of women.

This judgment is also interesting for its direct reference to international standards. In addition to all the conventional texts referring to women's rights to democratic participation, the Chamber makes a special reference to the Quito Consensus, adopted at the Tenth Regional Conference on Women in Latin America and the Caribbean (2007). This document recognises that:

“[...] parity is one of the key driving forces of democracy, that its aim is to achieve equality in the exercise of power, in decision-making, in mechanisms of social and political participation and representation, in diverse types of family relations, and in social, economic, political and cultural relations, and that it constitutes a goal for the eradication of women's structural exclusion” (paragraph 17).

It also cites, in a similar sense, the recommendation made by the Inter-American Commission on Human Rights regarding the adoption of measures aimed at

¹⁶ SUP-REC-1524-2021.

¹⁷ Jurisprudencia 11/2018 del TEPJF.

¹⁸ SUP-REC-1414/2021 and accumulated cases, regarding the Congress of the Union.

parity at all levels of government, and the obligation of the courts to demand compliance with these mechanisms.

All these documents, in the opinion of the Superior Chamber, bind all authorities at all levels to implement significant measures to achieve real and substantive equality through the effective and equal composition of governmental and collegiate bodies, instead of reducing women's equal participation to mere political nomination.

7.2. Gender-based political violence against women

Political violence against women is probably one of the main obstacles to equal political participation. The legal definition was introduced in April 2020 by a reform in the General Law on Women's Access to a Life Free of Violence:

"Article 29 *bis*. Gender-based political violence against women: is any action or omission, including tolerance, based on gender and exercised within the public or private sphere, that has the purpose or result of limiting, nullifying or undermining the effective exercise of the political and electoral rights of one or more women, access to the full exercise of the powers inherent to their position, work or activity, the free development of public service, decision-making, freedom of association, as well as access to and exercise of prerogatives, in the case of pre-candidacies, candidacies, functions or public offices of the same type."

One of the key changes introduced by this reform is that electoral authorities, the judiciary, and specialised agencies are designated as responsible for addressing and sanctioning gender-based political violence.

In essence, this reform provided a comprehensive legal framework to prevent, address, and punish gender-based political violence against women in Mexico, aiming to guarantee their full and equal participation in the political sphere.

On the basis of this legislation, the TEPJF has undertaken a significant role in combating gender-based political violence against women.

A judgment that should be highlighted is **SUP-JDC-10263/2020**, which mandates political parties to implement concrete actions to prevent and address gender-based political violence against women. Specifically, the ruling compels political parties to develop and enforce internal protocols, create specialised bodies within the parties to receive and process complaints, cooperate with electoral authorities in investigating and sanctioning acts of gender-based political violence, and conduct training programs and awareness campaigns to sensitize party members about this issue.

In April 2024, a Specialised Electoral Public Defender's Office for matters of parity and gender-based political violence was established by the TEPJF. From the point of view of access to justice, this body can become a very useful mechanism for women facing gender-based political violence to seek legal recourse and protection by offering them free legal representation and counselling. The Defender's Office is staffed with experts in electoral law and gender issues,

ensuring that cases of political violence against women are handled with sensitivity and understanding.

Given its recent creation, the number of cases handled by the ombudsman's office is not yet very high –65 cases at the time of writing this report–, but it is undoubtedly a mechanism that is destined to play an increasingly important role in access to justice for women victims of political violence.

The Tribunal's efforts extend beyond individual cases. It has actively promoted awareness and training programs on gender-based political violence for electoral authorities, political parties, and civil society organisations. The TEPJF also collaborates with international organisations and other electoral bodies to share best practices and strengthen its capacity to address this complex issue.

With regard to its strict jurisdictional role, the TEPJF has issued landmark rulings recognising and sanctioning gender-based political violence, setting important precedents for future cases.

During the 2023-2024 electoral process, cases related to gender-based political violence against women have been quite significant. It should be taken into account that many cases have been dealt with by the criminal justice system and that the jurisdictional debate in the TEPJF has focused on issues of a strictly electoral nature, such as statements by male politicians or journalists about female politicians or candidates for elected office, where the main legal issue is the extent of the limits of freedom of expression in the political context.

This is an issue that is not yet fully clarified in TEPJF case-law and the consequence of this has been the diversity of criteria reflected in the decisions. It is important to underline that, in the context of the electoral debate, any decision affecting freedom of expression must be adopted under a thorough examination of each concrete case. The TEPJF faces the challenge of generating certainty in an area where, to date, such certainty does not exist, and the lack of certainty, in this context, has the effect of discouraging public debate. In sum, the TEPJF should prevent the legitimate aim of protecting women's freedom from political violence from being used to limit political criticism and exposure of information of public relevance.

Analysis of individual judgments:

***SUP-REP-642/2023 and SUP-REP-643/2023, accumulated (07/02/2023):
Revocation of sanction against journalist motivated by alleged political
violence against a female candidate.***

The Superior Chamber overturned a judgement of the Specialised Regional Chamber that determined the existence of gender-based political violence against women in the expressions of journalist Denise Eugenia Dresser during a political analysis programme. The judgement considers that such expressions are protected by freedom of expression and journalistic activity.

The controversy originated from a complaint by congresswoman Andrea Chávez, who alleged that Dresser had sentimentally linked her to a presidential candidate, affecting her image and political-electoral rights. The Specialised Chamber found that these expressions constituted political violence against Chávez because they reproduced gender stereotypes.

The Superior Chamber, however, considers these expressions to be political criticism and not an attack on Chávez because she is a woman. Therefore, the enhanced protection of freedom of expression and journalistic activity in the political context prevails, especially when dealing with issues of public interest such as transparency and accountability.

For the Superior Chamber, what is fundamental when qualifying political violence in this type of cases is that the expressions are based on gender elements and have the purpose or result in undermining the political-electoral rights of women. In the specific case, although they may be considered strong or severe, they did not, in the Tribunal's opinion, have the intention of discriminating against Chávez because she is a woman.

From the point of view of access to justice, it is worth noting the admission of an *amicus curiae* brief submitted by Francisco Maldonado Gutiérrez of the Global Campaign for Free Expression ARTICLE 19, Office for Mexico and Central America, and Agnesis Sampieri, Public Policy Analyst for Latin America and the Caribbean at Access Now.

From the point of view of the consistency of the decision with the precedents of the TEPJF itself, the Superior Chamber was of opinion that the revoked judgment had not correctly applied the established case-law (Case-law 21/2018)¹⁹, where a methodology had been established to prove the existence of gender-based political violence within a political debate, based on the concurrence of the following elements:

- “1. It occurs in the framework of the exercise of political-electoral rights or in the exercise of a public office;
2. It is perpetrated by the state or its agents, by superiors, work colleagues, political parties or their representatives, the media and its members, a private individual and/or a group of persons;
3. It is symbolic, verbal, patrimonial, economic, physical, sexual and/or psychological;
4. It has the purpose or result of impairing or nullifying the recognition, enjoyment and/or exercise of women's political-electoral rights; and
5. It is based on gender elements, i.e.: i. is directed at a woman because she is a woman; ii. has a differentiated impact on women; iii. disproportionately affects women (...).”

¹⁹ Jurisprudencia 21/2018, de rubro: VIOLENCIA POLÍTICA DE GÉNERO. ELEMENTOS QUE LA ACTUALIZAN EN EL DEBATE POLÍTICO (gender-based political violence. elements that conform it in the political debate).

Other elements that the Chamber takes into account when issuing its decision are the Protocol for Judging with a Gender Perspective of the Supreme Court of Justice of the Nation and the Guide for Judging with a Gender Perspective in Electoral Matters, elaborated by the TEPJF itself. Both documents point to the importance of taking into account the context in which public statements are made.

In this case, the context of the controversial expressions was a debate on the abuse of public resources, where the journalist's words were uttered spontaneously and in the exercise of her journalistic profession, which makes the TEPJF's previous case-law on the presumption of lawfulness of journalistic activity²⁰ and the special protection of journalistic activity in the context of political debate applicable here as well²¹.

The judgment has several concurring opinions to which it is interesting to refer here.

Magistrate Fuentes Barrera disagrees with the inclusion of the asymmetry of power as a configurative element of gender-based political violence against women and considers that it is necessary to adapt the methodology established in Case-law 21/2018 in cases involving journalists, in order to take into account the special protection of journalistic activity.

Justice Otálora Malassis also agrees with the reversal, but considers that proceedings should not have been initiated against the media outlet Latinus and questions the appropriateness of the concept of asymmetry of power in this specific case.

Magistrate Rodríguez Mondragón, also agreeing with the reversal, disagrees with some aspects of the analysis of electoral competence in this case and the reproduction of gender stereotypes.

SM-JDC-189/2023 (11/01/2024): Reversal of the burden of proof in cases related to gender-based political violence against women.

This judgment from the Monterrey Regional Chamber of the TEPJF involves a female local deputy who accused the coordinator of her parliamentary group of withholding financial support due to her voting against a party initiative.

The Guanajuato Electoral Tribunal had ruled that there was insufficient evidence to prove the accusations. However, the Monterrey Chamber overturned this decision, arguing that the local court failed to apply a gender perspective in its assessment of the evidence. It emphasised that in cases of political violence against women, the burden of proof should shift to the accused, given the often private nature of such acts.

²⁰ Jurisprudencia 15/2018, de rubro: PROTECCIÓN AL PERIODISMO. CRITERIOS PARA DESVIRTUAR LA PRESUNCIÓN DE LICITUD DE LA ACTIVIDAD PERIODÍSTICA (protection of journalism. criteria for waiving the presumption of licitude of journal activity)

²¹ Jurisprudencia 11/2008, de rubro: FREEDOM OF EXPRESSION AND INFORMATION. ITS MAXIMISATION IN THE CONTEXT OF POLITICAL DEBATE.

The Monterrey Chamber applies here the criterion established by the TEPJF in its Jurisprudencia (case-law) 8/2023 in the sense that the reversal of the burden of proof operates in favour of the victim in cases of gender-based political violence in situations of difficulty in providing evidence²².

The case was sent back to the local court with instructions to re-examine the evidence using a gender perspective and to ensure that the accused is aware of the reversed burden of proof.

SRE-PSC-200/2024 (13/06/2024): The President of the Republic committed gender-based political violence against a female public servant.

The Specialised Chamber of the TEPJF determined that the President of the Republic, Andrés Manuel López Obrador, committed gender-based political violence against a female public servant, with expressions made in the morning conferences known as “mañaneras” held on 3, 5, 10, 11 and 14 July, as well as on 3, 7 and 18 August 2023.

The Plenary considered that the head of the Federal Executive made statements that constitute symbolic violence with the aim of undermining the recognition of the political rights of this public servant, based on her gender and her indigenous origin, by reinforcing the stereotype of inferiority or dependence for access to public office.

The President cannot be sanctioned for infractions of an electoral nature; he is only held responsible, in accordance with criteria established by the Superior Chamber of the TEPJF. For this reason, other measures of integral reparation, such as the inscription in the INE's National Registry of Persons Sanctioned for Political Violence against Women, do not apply to him either. As in other similar cases, certain direct collaborators of the President were held responsible for the conduct and the sentence was communicated to the Internal Control Body of the Presidency of the Republic so that it could determine what is legally appropriate.

SUP-REP-696/2024 (10/07/2024): Gender-based political violence against a female candidate.

The Superior Chamber of the TEPJF upheld the sanction against a congressman for having committed acts of gender-based political violence against a female political party militant, candidate for federal Congress.

Leaving aside questions of jurisdiction, which were also the subject of the discussion and are not relevant to this report, what is relevant in this case is that the concept of gender-based political violence is greatly expanded to cover almost any public expression made against a female politician.

²² Jurisprudencia 8/2023, de rubro: REVERSIÓN DE LA CARGA PROBATORIA. PROCEDE EN CASOS DE VIOLENCIA POLÍTICA EN RAZÓN DE GÉNERO A FAVOR DE LA VÍCTIMA ANTE LA CONSTATACIÓN DE DIFICULTADES PROBATORIAS (reversal of the burden of proof. it proceeds in cases of political violence based on gender in favour of the victim when evidentiary difficulties are found).

The statements questioned the political career of this activist, as well as people in her political environment who allegedly influence her political work, without any sexual connotation or gender stereotypes.

The judgement departs from previous decisions in which similar expressions, questioning the political autonomy of certain female politicians or the origin of their appointment, but without linking these issues to gender, or containing a mere allusion to sentimental relationships, were not considered to constitute actual gender-based political violence²³.

SUP-REP-432/2024 and accumulated cases (17/07/2024): Need for a thorough analysis regarding sanctions on gender-based political violence against women.

This ruling highlights the tension between freedom of expression and the need to combat political violence against women. While upholding sanctions against some individuals, it also emphasises the importance of careful consideration of the context and intent behind expressions, especially in the realm of journalistic activity.

The case originated from statements made by the governor of Campeche (Layda Sansores, MORENA) on a program called “Martes del Jaguar” where she implied that female legislators from the PRI party had secured their positions by sending sexually suggestive photos to their party leader. These expressions were subsequently echoed, interpreted and commented on by journalists.

One of the women deputies in question initiated two legal proceedings. On the one hand, a citizen's lawsuit before the TEPJF was resolved by ruling **SUP-JDC 613/2022 (23/11/2022)**, in which the Superior Chamber determined that the statements constituted political violence and affected the political-electoral rights of the appellant, ordering the governor to remove publications, refrain from further manifestations and offer a public apology. On the other hand, a complaint before INE's Technical Unit for Electoral Disputes (UTCE) against the governor, the MORENA party (for *culpa in vigilando*), the party's state president, and various influencers and journalists. This complaint resulted in a special sanctioning procedure resolved by the Specialised Regional Chamber of the TEPJF, imposing sanctions on the defendants such as fines, public reprimands, and inclusion in the National Registry of Persons Sanctioned in Matters of Political Violence against Women based on Gender. The governor's inclusion in this registry for four years and six months was also confirmed.

However, upon appeal, the Superior Chamber (**SUP-REP-150/2023 and accumulated cases**) partially revoked this decision, arguing that the Specialised Chamber had failed to conduct a thorough analysis of the publications, especially concerning the protection afforded to journalistic work. It ordered a

²³ Some of these precedents, cited in the dissenting opinion of Magistrate Otálora Malassis, were SUP-REP 119/2016, SUP-JDC 383/2017, SUP-JDC 473/2022, SUP-JE-286-2022, SUP-JE-240/2022, SUP-JDC 566/2022, among others.

reassessment, emphasising the need to distinguish between factual reporting and opinions and to consider the broader informational context.

In the subsequent ruling (**SRE-PSC-47/2023**), the Specialised Chamber again found several individuals, including journalists and government officials, guilty of gender-based political violence. It argued that their expressions went beyond legitimate journalistic activity and perpetuated harmful gender stereotypes, affecting the political rights of the female legislators. Sanctions and inclusion in the National Registry were upheld, although the duration of the governor's inclusion was reduced to two years.

A dissenting opinion signed by Magistrate Otálora Malassis argued that most of the journalists' expressions were protected under freedom of speech, pointing out that there are no clear reasons to explain why this judgment differs from the judgment in the Denise Dreser case (SUP-REP-642/2023 and SUP-REP-643/2023, acumulados), examined earlier in this report. Other reasons for the dissenting opinion were that indirect responsibility should not be attributed to government officials involved in the transmission of the program, and that the governor's actions should not be assessed as systematic.

SUP-REP-738/2024 and accumulated cases (24/07/2024): publications against a female candidate.

This judgment is another example of the lack of clear criteria for defining the boundary that divides freedom of expression and the exercise of the journalistic profession from expressions or public manifestations that constitute political violence against women.

The case originated from a complaint filed by a female candidate against various media outlets for publications she considered to be gender-based political violence. The Specialised Chamber initially ruled (**SRE-PSC-240/2024**) that 26 of the 28 publications did not constitute such violence but found two publications from *Noticias Cuautla* did. They held the director, Francisco Andrés Salas Salgado, responsible. Both Salas and the complainant appealed this decision to the Superior Chamber.

Salas argued that he merely shared the content and did not author it, and that his actions were protected under freedom of speech and press. The complainant argued that the Specialised Chamber failed to exhaustively analyse one publication from *BDM Noticias* where she was referred to as an "edecán" (hostess), a term she considered sexist and a form of symbolic gender violence.

The Superior Chamber upheld the Specialised Chamber's ruling regarding the two publications from *Noticias Cuautla*, stating that even though Salas shared the content and did not create it, he was still responsible for disseminating it. They emphasised the media's heightened duty to exercise caution in handling information related to public interest.

However, the Superior Chamber partially revoked the decision regarding the *BDM Noticias* publication. The judgment mandated the Specialised Chamber to re-evaluate this publication using a specific methodology to analyse language for

discriminatory gender stereotypes, and to consider the case with a gender perspective. The Chamber stressed the importance of considering the historical disadvantage faced by women in society and the potential impact of seemingly neutral language in perpetuating gender stereotypes.

Magistrate Otálora Malassis signed a dissenting opinion with arguments similar to those expressed in other cases analysed in this report.

SUP-REC-2522/2024 and accumulated cases (30/08/2024): annulment of municipal election due to political violence against a female candidate.

Once the results of the elections in the municipality of Irimbo (Michoacán) were announced, a woman candidate and the Party of the Democratic Revolution (PRD) filed lawsuits before the state Electoral Tribunal, requesting the nullity of the election, arguing that that gender-based political violence was exercised against her in fourteen publications on Facebook in the profile *La Voz de Irimbo*.

Article 72, section d) of the Law of Justice in Electoral Matters and Citizen Participation of the state of Michoacán provides that the election can be declared null and void “for serious, malicious and determining violations” in different cases, including when “political violence based on gender” has taken place.

In the first instance, the local court declared the nullity of the town council election, pointing out that the publications constituted a “systematic campaign” against the complainant candidate, and that these publications could have had a decisive effect on the result because of the small difference in votes between the first and the second placed candidate (just 1,47%) and taking into account the number of followers of the Facebook page and other considerations.

This decision that was confirmed by the Toluca Regional Chamber of the TEPJF. The candidate initially declared as the winner and his political party (PRI) challenged this ruling before the Superior Chamber arguing that it omitted to conduct a study of unconstitutionality of the local rule that provides for the possibility of annulling an election due to gender-based political violence along with other allegations based in the right to effective judicial protection.

The Superior Chamber upheld the ruling of the Toluca Regional Chamber, as the complaints were insufficient to justify the alleged unconstitutionality.

7.3. Political representation of vulnerable minority groups: indigenous persons, persons of sexual diversity, persons with disabilities and Afro-Mexicans

Mexico's political landscape has undergone significant transformations in recent decades to address the historical underrepresentation of vulnerable and marginalised groups. These groups, including Indigenous communities, people with disabilities, LGBTQ+ individuals, migrants, and Afro-Mexicans, have faced systemic barriers to obtain full political participation.

The Mexican Constitution, particularly after reforms in 2011 and 2014, enshrines principles of equality and non-discrimination. Article 1 prohibits discrimination

based on various grounds, including sexual orientation, gender identity, disability, and ethnic origin. Article 2 mandates affirmative action measures to ensure adequate representation of Indigenous communities in legislative bodies.

These principles are further elaborated in legislation. The General Law on Electoral Institutions and Procedures (LEGIPE) includes provisions on affirmative action measures for political parties, requiring them to include a certain percentage of candidates from underrepresented groups in their electoral lists.

The Federal Law to Prevent and Eliminate Discrimination prohibits discrimination in all spheres of public and private life. It establishes mechanisms for individuals to file complaints and seek redress for discriminatory practices, including those that hinder their political participation.

The Federal Law on the Rights of Indigenous Peoples and Communities recognises the collective rights of Indigenous peoples and establishes mechanisms for their participation in decision-making processes that affect their communities.

These constitutional and legislative norms provide a strong legal framework for advancing the political representation of vulnerable groups in Mexico. However, their effective implementation requires the active involvement of electoral institutions, the judiciary, and civil society organisations.

The INE plays a crucial role in implementing affirmative action measures and ensuring the political rights of marginalised groups. It has established guidelines for political parties to promote the inclusion of candidates from underrepresented groups in their electoral lists. The INE also monitors and sanctions discriminatory practices during electoral campaigns.

The TEPJF has played a pivotal role in ensuring the political inclusion of marginalised groups through its case-law. It has actively interpreted and enforced constitutional and legislative provisions to protect their political-electoral rights.

Moreover, the TEPJF has been vigilant in addressing discriminatory practices that hinder the political participation of vulnerable groups. It has sanctioned political parties and candidates for engaging in hate speech or promoting exclusionary narratives during campaigns. By actively intervening to redress such violations, the TEPJF has contributed to creating a more level playing field for marginalised groups in the electoral arena.

The case-law thesis **Tesis II/2019** of the TEPJF has emerged as a crucial legal framework for protecting the rights these groups within the context of electoral processes. It establishes key principles and guidelines that electoral authorities and political parties must adhere to:

- It provides a clear definition of vulnerable groups, encompassing those who face historical discrimination, social exclusion, or political underrepresentation, such as indigenous peoples, Afro-Mexicans, people with disabilities, women, and the LGBTIQ+ community.
- It establishes the obligation for electoral authorities and political parties to implement affirmative action measures to guarantee the effective

participation of vulnerable groups in elections, including measures such as reserved seats, quotas, and targeted outreach programs.

- It explicitly prohibits any discriminatory practices that could hinder the political participation of vulnerable groups, such as the denial of registration, the imposition of arbitrary requirements, or the dissemination of hate speech.
- It emphasises the need to ensure accessibility and inclusion in all aspects of the electoral process, from voter registration to campaign activities, to enable the full participation of people with disabilities and other marginalised groups.

A number of landmark decisions in this area can be cited, such as **SUP-RAP-121/2020**, which addresses the historical underrepresentation and exclusion of these groups by mandating the National Electoral Institute (INE) to implement affirmative action measures. Other relevant rulings are **SUP-REC-277/2020**, reinforcing Indigenous representation, **SUP-JDC-1109/2021**, regarding inclusivity and recognition of non-binary individuals, and **SUP-REC-117/2021**, upholding quotas for LGBTIQ+ candidates.

During the 2023-2024 electoral cycle, a significant number of TEPJF decisions have been related to the political representation of vulnerable groups, especially at the time of filing for candidacy, but also throughout the campaign and at the time of seat allocation.²⁴

National commentators have pointed to a worrying pattern of loopholes and simulations by several political parties in complying with affirmative action to nominate candidates from under-represented groups. They report evidence that some parties could have nominated people who do not really belong to these populations or lack verifiable links in order to meet numerical quotas.

Analysis of individual judgments:

SUP-REC-231/2023 (30/08/2023): Endorses prior consultation on affirmative action for the representation of indigenous and Afro-Mexican communities.

This ruling concerns the constitutionality of an agreement by the Veracruz Local Public Electoral Body (OPLEV) to hold consultations with indigenous and Afro-Mexican communities on affirmative action measures in political representation. The National Action Party (PAN) challenged the agreement, arguing that OPLEV overstepped its authority as the state legislature had not yet failed to legislate on the matter.

The Regional Chamber initially upheld this challenge, but the Superior Chamber overturned its decision. It argued that the Local Electoral Institute can take preparatory steps for affirmative action measures, even before a legislative

²⁴ Acuerdo Nacional por la Integridad Electoral (ANIE). *Cuarto informe sobre integridad en el proceso electoral 2023-2024*, p. 5.

omission occurs. This is crucial to guarantee the right to prior consultation for indigenous and Afro-Mexican communities, which must be free, prior, informed, in good faith, and culturally appropriate.

SUP-JDC-335/2023 (25/10/2023): Confirms non-existence of legislative omission in Querétaro.

This case focussed on the issue of whether recent reforms to Querétaro's electoral law had adequately addressed affirmative action measures for these groups in local elections. The plaintiffs argued that the reforms were insufficient in guaranteeing the nomination and representation of these groups in elected positions. However, the TEPJF concurred with the local tribunal's decision, stating that the legislative changes did provide a framework for affirmative action, even if not explicitly mandating specific quotas or mechanisms. The Superior Chamber emphasised the legislature's discretion in designing such measures and the role of regulations and guidelines in further defining their implementation.

SUP-JDC-529/2023 (08/11/2023): Recognises legislative omission in Quintana Roo.

The Superior Chamber of the TEPJF addressed a citizen's lawsuit brought forth by members of the LGBTQ+ community in Quintana Roo. The controversy stemmed from the omission of the local Congress and the Electoral Institute of Quintana Roo to implement affirmative action guaranteeing the political-electoral rights of this community, particularly the right to be voted for and to integrate electoral authorities.

While the local court dismissed these claims, the Superior Chamber overturned this decision. It determined that the local Congress, despite discussing initiatives on quotas for vulnerable groups, had not legislated specifically to guarantee the rights of people with sexual diversity. The lack of norms ensuring their political participation constitutes a legislative omission.

Consequently, the Superior Chamber ordered the local Congress to enact necessary legislation that will apply from the electoral process following the one that begins in January 2024, due to the substantial nature of the required changes.

Additionally, the Electoral Institute of Quintana Roo was ordered to implement affirmative action ensuring the right citizens with sexual diversity to be voted for in the 2024 electoral process.

SUP-JDC-338/2023 and accumulated cases (15/11/2023): Revocation of INE's Agreement on affirmative action.

This is one of the most important cases addressed by the TEPJF in the previous phase before the filing of the candidacies since it deals with the INE General Council's Agreement INE/CG527/2023, establishing the criteria applicable to the registration of candidates for different positions of popular election in the federal electoral process of 2023-2024.

Several lawsuits were filed against this Agreement challenging the criteria for registration of the candidates for Congress with respect to the affirmative action of the following groups: Mexicans residing abroad, persons with disabilities, persons with sexual diversity, indigenous peoples, young people, and persons in situation of poverty.

It is impossible to analyse in this report all the allegations submitted. Therefore, we will focus on the most relevant ones:

Firstly, the debate on the *principle of progressivity* (or non-regression) of measures. In this regard, the Superior Chamber establishes a set of criteria to analyse whether an *allegedly regressive* measure is valid or justified:

- “(i) It has the essential purpose of increasing the degree of protection of a human right;
- (ii) The substantive scope of protection of the right in question is curtailed or limited;
- (iii) It is justified by compelling reasons;
- (iv) When it significantly diminishes or diverts public resources intended to satisfy the right; and
- (v) It creates a reasonable balance between the fundamental rights at stake, without unreasonably affecting the effectiveness of any of them.”

Applying these criteria, the Superior Chamber found that INE's agreement violated the principle of progressivity to the detriment of vulnerable groups regarding candidacies for the Chamber of Deputies. Thus, the Tribunal orders the revival of the nomination model contained in the affirmative action implemented in the 2020-2021 electoral process. Regarding Candidacies for Senate, the Superior Chamber revokes INE's agreement only in part.

Secondly, the debate about the *inclusion of other vulnerable or marginalised groups*. The applicants pointed out as a group that the elderly group should also be considered for affirmative action, but the Court rejected this claim without actually entering into the debate.

The debate on the inclusion of other groups was raised again in a later case following a request for affirmative action in favour of young people that was rejected by INE (INE/CG08/2024). In the ruling **SUP-JDC-73/2024 (14/02/2024)**, the Superior Chamber reasoned that affirmative action measures for this electoral process were already defined and confirmed in previous rulings, and the INE was bound by those decisions. It emphasised that the definition of groups eligible for affirmative action had been finalised and could not be altered at this stage. Therefore, the INE's response to the request was deemed lawful, and the appeal was dismissed.

Thirdly, the debate about *self-identification*, i.e. the debate on how to prove that individuals belong to the groups favoured by affirmative action. The Superior Chamber did not enter into this debate because it considered it unnecessary, as INE's agreement had already been revoked for other reasons previously stated.

However, it is interesting to refer to the Court's position on this issue as expressed in previous decisions.

In general terms, the TEPJF has maintained that self-identification is a fundamental right of individuals belonging to especially vulnerable groups, and that it must be respected and protected by electoral authorities²⁵. This implies that individuals have the right to identify themselves as members of these groups without needing to meet additional requirements or prove their membership through external evidence. That said, the Tribunal has also pointed out that self-ascription should be complemented with other verification mechanisms, such as consultation with the communities or review of official documents, to ensure that affirmative action and other rights are effectively granted to those who truly need them.

A noteworthy element of this judgment is the use and application of international standards with very extensive and detailed references to conventional norms and UN Committees and other international bodies standards. Specifically, it refers to the case-law of the Inter-American Court on the principle of equality and non-discrimination (case of *Castañeda Gutman v. Mexico*; *Caso de Las Niñas Yean y Bosico Vs. República Dominicana*). In relation to affirmative action, reference is made to Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women and several important decisions of the Inter-American Court.²⁶ Reference is also made to European case law²⁷ and even to more recent US case law²⁸.

SUP-JDC-183/2024 (06/03/2024): Verification of compliance with affirmative action by INE.

This case concerns a lawsuit regarding the alleged failure of INE to enforce affirmative action measures for Afro-Mexican candidates in the "Sigamos Haciendo Historia" coalition's internal selection process for Senate candidacies in Veracruz. The plaintiff, who self-identifies as Afro-Mexican, claims that her non-selection violates her rights and the INE's obligation to ensure compliance with affirmative action measures.

However, the Superior Chamber dismissed the lawsuit, stating that the INE's obligation to verify compliance with affirmative action measures only arises at the time of candidate registration, which had not yet occurred when the lawsuit was

²⁵ SUP-REC-34/2019 and accumulated cases: the TEPJF recognised self-identification as a valid criterion to determine belonging to an indigenous community within the context of independent candidacies; SUP-JDC-12601/2018: self-ascription is a fundamental element to guarantee the right to prior, free, and informed consultation of indigenous peoples and communities; SUP-JDC-433/2015: importance of self-ascription in accessing affirmative action for people with disabilities.

²⁶ Case of *Personas dominicanas y haitianas expulsadas Vs. República Dominicana*; case of *Las Niñas Yean y Bosico Vs. República Dominicana*; case of *Guzmán Albarracín y otras Vs. Ecuador*; case of *Vicky Hernández y otras Vs. Honduras*.

²⁷ ECtHR, *Thlimmenos v. Greece* (6 April 2000); *Pretty v. United Kingdom* (29 April 2002); ECJ, *George Badeck and others* (28 March 2000); *Abrahamsson and Anderson v. Fogelqvist* (6 July 2000)

²⁸ *Students for fair admissions, inc. v. President and fellows of Harvard College, and University of North Carolina, Et Al.* (29 June 2023).

filed. The Court emphasised that the INE's role is to verify compliance during the registration process, not during the internal selection process of political parties or coalitions.

SUP-JDC-279/2024 (13/03/2024): Representation of non-binary persons.

This case is an example of how affected individuals can challenge the internal rules of political parties regarding the inclusion of vulnerable or marginalised groups in candidatures.

The plaintiff challenged the PAN's invitation for the designation of candidates, arguing that it failed to guarantee adequate representation for women and individuals from the LGBTTTQ+ community, particularly non-binary individuals. The TEPJF confirmed the decision of the PAN's Justice Commission, which had upheld the invitation. The court reasoned that the PAN's invitation, while not explicitly reserving a spot for non-binary individuals, was open to all individuals meeting the eligibility criteria, thereby implicitly including them. It also emphasised that the PAN had adhered to gender parity requirements by reserving certain constituencies for women candidates.

However, the court acknowledged the plaintiff's grievance regarding the lack of a "non-binary" option in the party's registration forms. It deemed this exclusionary and mandated that all political parties include a non-binary gender option in future candidate selection processes to ensure the visibility and recognition of individuals who identify outside the traditional gender binary.

SUP-JDC-389/2024 and SUP-RAP-124/2024 accumulated (10/04/2024): Representation of migrant population.

In this case, the TEPJF overturned a decision made by the INE's General Council. The INE's decision pertained to the "Sigamos Haciendo Historia" coalition's alleged non-compliance with gender parity rules in its candidate nominations for federal deputies, and to the ineligibility of a candidate, nominated under the affirmative action category for Mexican citizens residing abroad.

Leaving aside the reasoning relating to parity, which we have already discussed in other resolutions, we will focus on the question of the representation of the migrant population. In the specific case under consideration in the judgment, the INE noted that while this person submitted documents attesting to his current residence abroad and his connection to the migrant community, he also presented a "certificate of residency" (constancia de vecindad) indicating he had been a resident of Oaxaca, Mexico, since 1989. In this respect, the TEPJF contradicts the arguments of the INE and advocates for a flexible evidentiary standard in assessing the connection of migrant candidates to their constituencies. This flexible standard of proof had already been used by the Court in previous cases, as for example in the judgment **SUP-JDC-394/2024 and accumulated cases (03/04/2024)**.

The Superior Chamber argues that rigid evidentiary requirements can disproportionately hinder the participation of marginalised groups, particularly those facing systemic disadvantages. The ruling specifically lists the challenges

faced by Mexican citizens residing abroad in proving their ties to their communities of origin due to factors such as prolonged absence and limited access to documentation. It advocates for a more lenient approach that considers the unique circumstances of these individuals and prioritises their effective access to political participation. This flexible standard aligns with the principles of affirmative action, which aim to rectify historical inequalities and promote substantive equality by removing barriers to participation for underrepresented groups.

SUP-REC-525/2024 (01/06/2024): Representation of Afro-Mexican population.

This ruling upheld an appeal filed by the Institutional Revolutionary Party (PRI) challenging a decision by the Regional Chamber of Mexico City of the TEPJF, which confirmed the INE's approval a candidacy for senator in Guerrero. This candidacy was initially registered under the Afro-Mexican affirmative action category but was later modified after it was determined that the candidate did not belong to that community. The PRI contended that this change violated the principle of legal certainty and undermined the effectiveness of affirmative action measures.

The Superior Chamber revoked the lower court's decision and the INE's approval of this candidacy without the affirmative action status. It emphasised that once a political party designates a specific candidacy to fulfil an affirmative action measure, this decision cannot be arbitrarily modified, especially when it negatively impacts the effectiveness of such measures.

The ruling highlights that the effectiveness of affirmative action hinges on the genuine affiliation of candidates to the groups they intend to represent. It criticises the potential misuse of affirmative action measures for political gain, particularly through the practice of 'usurping' candidacies intended for specific groups. The TEPJF stresses the importance of upholding the principles of certainty and legal security in the application of affirmative action, ensuring that designated spaces for these measures are respected and not arbitrarily modified to the detriment of the intended beneficiaries.

SRE-PSC-214/2024 (Specialised Regional Chamber) (28/06/2024): Social media video questioning the ascription to the sexual diversity community of a female candidate.

This case may be representative of some of the controversy that arose during the election campaign period over affirmative action in favour of vulnerable or marginalised groups.

The legal case originated from a complaint filed by a candidate for federal deputy, against two candidates for local deputies and their political party, Movimiento Ciudadano (MC), alleging political violence based on gender. The complaint stemmed from a video published on Facebook and Instagram where the complainant was accused of falsely claiming to be a lesbian to secure a candidacy reserved for the LGBTQ+ community. The authors of the video

recalled that the deputy had not supported initiatives that favoured the expansion of rights for people of sexual diversity.

The legal controversy revolved around whether the video's content constituted gender-based political violence against women. The complainant argued that the video aimed to discredit her political career and question her sexual orientation, causing harm to her reputation and dignity. The defendants countered that the video was a legitimate exercise of freedom of expression, constituting a strong but valid critique of the complainant's candidacy.

The Specialised Regional Chamber of the TEPJF ultimately ruled that the video did not constitute political violence against women based on gender. It determined that the expressions, while critical, fell within the bounds of permissible political debate and did not directly target the complainant's gender or sexual orientation. The ruling emphasised the importance of safeguarding freedom of expression, particularly in the context of electoral campaigns.

SUP-REC-1135/2024 and accumulated cases (13/08/2024): Representation of migrants in the Congress of the State of Nayarit.

The allocation of seats has also generated controversy in relation to the representation of vulnerable or marginalised groups. This case originated from the allocation of seats in the Nayarit State Congress under the principle of proportional representation (RP). The electoral institute approved the allocation, which was later confirmed by the State Electoral Tribunal. Dissatisfied candidates appealed to the Guadalajara Regional Chamber of the TEPJF, which also upheld the decision (**SG-JDC-505/2024 y sus acumulados**).

The core of the legal dispute lied in whether Movimiento Ciudadano (MC) was eligible to receive seats under the RP principle, despite not having nominated a migrant candidate within the first five positions on their list, as seemingly mandated by the state constitution and electoral law. The Regional Chamber ruled that MC was eligible, interpreting that the 2023 legal reforms had removed the sanction for non-compliance with this requirement²⁹.

The legal reform eliminated the provision that previously conditioned participation in the allocation of seats through proportional representation to the nomination of at least one migrant candidate in order to guarantee the right to political participation not only of migrants, but also of other groups in conditions of vulnerability, such as indigenous peoples and communities, persons with disabilities, persons of sexual diversity, among others. In other words, the reform broadened the range of subjects targeted by the affirmative measures to include other population groups that have also been historically discriminated against in terms of political participation.

The appellants argued that this interpretation violates the principle of progressiveness in human rights, as it rolls back affirmative action measures aimed at promoting the political participation of migrants. They contended that

²⁹ Reform of the Electoral Code of Nayarit adopted on 5 October 2023 modifying article 21.

the obligation to nominate migrant candidates remains constitutionally enshrined and should be enforced.

The decision of the Superior Chamber was to revoke the Regional Chamber's ruling. The ruling determined that despite the 2023 electoral reform, the obligation for parties to nominate migrant candidates for PR seats remained in force due to its presence in the state constitution. Therefore, MC's failure to nominate a migrant candidate disqualified them from participating in the allocation of PR seats. Consequently, the TEPJF conducted a new seat allocation, excluding MC, and ordered the state electoral institute to issue new assignment certificates in accordance with this revised allocation.

SUP-REC-4511/2024 (28/08/2024): Allocation of proportional representation seats in the Federal Congress, indigenous candidate.

Laura Inés Rangel Huerta was a candidate for a federal deputy position on the National Action Party's (PAN) list for the first electoral district, under the indigenous affirmative action category. She was listed in the tenth position on the PAN's list. The INE assigned eight deputy seats to PAN for the first district, leaving Rangel Huerta without a seat.

The plaintiff challenged INE's decision, claiming that the elected PAN candidate in the sixth position was ineligible because he was registered under the diversity quota but did not belong to that group. She also argued that there was under-representation of indigenous communities in the first district, necessitating an adjustment to allocate more seats for indigenous candidates.

The Superior Chamber confirmed the INE's seat allocation dismissing Rangel Huerta's claims on the grounds that she lacked standing to challenge the eligibility of a candidate from a different affirmative action group. The Chamber also stated that affirmative action adjustments and seat reallocations cannot be implemented at this late stage of the electoral process due to principles of legal certainty and security. Such concerns should be raised earlier, either before candidate registration or by challenging the initial affirmative action criteria.

SUP-REC-6462/2024 (28/08/2024): Self-identification of a candidate as a person with sexual diversity.

In this case, an activist for the LGBTQ+ community and president of the Fundación Orgullo Diverso, filed an appeal challenging the INE's allocation of proportional representation seats of the Chamber of Deputies, one of which was assigned to Verónica Pérez Herrera, a candidate from the National Action Party (PAN) under the sexual diversity quota.

The appellant pointed to Pérez Herrera's past actions as a local deputy in Durango, where she voted against the legalisation of same-sex marriage and made statements perceived as contrary to the LGBTQ+ agenda. In her opinion, these actions prove that Pérez Herrera doesn't belong to the LGBTQ+ community, thereby invalidating her claim to a seat allocated under the affirmative action measure for sexual diversity.

Therefore, the core of the legal controversy lies in whether Pérez Herrera self-identification as a member of the LGBTQ+ community is valid.

The Superior Chamber reasoned that the evidence presented by the appellant, was insufficient to disprove her self-identification as a member of the LGBTQ+ community. While acknowledging the appellant's concerns, the Chamber emphasised that self-identification is the primary criterion for recognising a candidate's affiliation with the LGBTQ+ community for affirmative action purposes. Additionally, the Tribunal instructed the INE to initiate dialogues with LGBTQ+ organisations to explore potential refinements to the affirmative action measures for future elections.

7.4. Political rights of persons in pre-trial detention

In Mexico, the right to vote for individuals in pre-trial detention has been a subject of a major legal and political debate. While the Mexican Constitution guarantees universal suffrage (article 35), there have been historical restrictions on the voting rights of incarcerated individuals.

A landmark ruling by the TEPJF (**SUP-JDC-352/2018 and its accumulated cases SUPJDC-353/2018 -20/02/2019-**) affirmed that pre-trial detainees, who are presumed innocent until proven guilty, have the right to vote. The sentence highlighted the need for an evolving interpretation of voting rights, aligning with international standards³⁰.

While the right to vote for pre-trial detainees has been recognised, debates persist regarding the specific mechanisms and procedures for implementing this right. Following the Supreme Court ruling, the INE has implemented pilot programs and reforms to facilitate voting for pre-trial detainees³¹. These efforts have included initiatives such as early voting in prisons and the development of secure voting mechanisms within detention facilities.

These efforts have allowed individuals in pre-trial detention to participate in presidential and some local elections for the first time during 2023-2024 electoral cycle. The move has been lauded as a step towards greater inclusivity and the protection of political rights of traditionally marginalised groups. However, it has also generated discussions on potential challenges, such as ensuring the integrity of the voting process within detention centres and addressing concerns about potential undue influence.

³⁰ Inter-American Commission on Human Rights: *Report on the Use of Pretrial Detention in the Americas*.

³¹ On 3 February 2021, the INE General Council approved a pilot program for the 2020-2021 federal electoral process (Agreement INE/CG97/2021). On 17 December 2021, the INE General Council approved the guidelines and the operating model for the 2021-2022 local electoral process in the state of Hidalgo (Agreement INE/CG1792/2021). On 29 November 2022, the INE General Council approved the guidelines, the operating model and the electoral documentation for the pilot test in the 2022-2023 local electoral process in Coahuila and the State of Mexico (Agreement INE/CG822/2022).

Analysis of individual judgments:

SUP-JDC-648/2023 and accumulated cases (07/02/2024): Confirms agreement of the General Council of INE on voting by persons in pre-trial detention.

The TEPJF's 2019 decision cited above instructed the INE to implement a program to enable the right to vote of pre-trial detainees by 2024. Subsequently, the INE conducted pilot programs and issued guidelines aimed at complying with these instructions. On 3 November 2023, the INE General Council adopted the Agreement INE/CG602/2023 approving the Guidelines, the operation model and the electoral documentation for the organisation of the vote of pre-trial detainees in the 2023-2024 federal electoral process. However, these guidelines primarily focused on the presidential election and local elections in states with specific regulations allowing such voting.

Various citizens in pre-trial detention filed lawsuits against INE's Guidelines arguing that this restriction was discriminatory and contradicted the TEPJF's previous ruling. They contended that the right to vote should be extended to all pre-trial detainees in all elections, regardless of state-level regulations.

The TEPJF upheld the Guidelines, stating that the implementation of voting rights for pre-trial detainees is a gradual process. The court emphasised that its 2019 ruling primarily focused on ensuring voting rights in the 2024 presidential election. The INE's decision to include certain local elections was seen as an additional measure to expand these rights, not a restriction. The Tribunal acknowledged the logistical complexities involved and concluded that the INE had acted within its authority to implement voting rights for pre-trial detainees in a phased manner. It further instructed the INE and local electoral bodies to continue working towards expanding these rights in future local elections.

SUP-REC-342/2023 (21/02/2024): Issuance of credentials to persons in pre-trial detention.

In this case, an individual in pre-trial detention requested the issuance of his voter ID card from the Executive Directorate of the Federal Register of Voters (DERFE). His request was denied twice, with the DERFE stating that individuals in detention centres could not undergo this process. The citizen then filed two lawsuits. The first was dismissed, while the second resulted in a ruling that instructed the DERFE to provide effective guidance on how the individual could exercise his right to vote. However, the DERFE reiterated its stance, stating that the individual was legally and materially unable to attend a citizen service module to obtain the voter ID card and that the previous ruling only guaranteed the right to vote, not the right to obtain the card.

The central issue was whether denying the issuance of a voter ID card to an individual in pre-trial detention violated their right to identity. The plaintiff argued that the decision was made without a human rights perspective, overlooking the fact that he lacked an official means of identification.

The Superior Chamber modified the ruling of the Regional Chamber, emphasising that the right to identity, materialised in the voter ID card, must be guaranteed even to individuals in pre-trial detention, as long as their political rights are not suspended. The court ordered the DERFE to issue the voter ID card to the appellant and instructed the General Council of the INE to issue guidelines to ensure access to the voter ID card as a means of identification for individuals in pre-trial detention.

7.5. Anticipated acts of campaigning

One of the most relevant political and legal controversies during the first phase of the 2023-2024 electoral process, in relation to the respect for electoral fairness, has been the controversy provoked by the decision of the majority party and its allied parties to advance the internal selection procedures for the presidential candidate.

The INE and the TEPJF validated what *a priori* seems to be a clear violation of the legal framework through agreements and rulings that led to the three opposition parties also advancing their selection process too.

Analysis of individual judgments:

SUP-REP-180/2023 and accumulated case (11/07/2023): Selection of presidential candidate by MORENA.

The Superior Chamber of the TEPJF confirmed by a majority of four votes the Agreement of the Complaints and Denunciations Commission of the National Electoral Institute (INE) by which it decided not to suspend the process initiated by MORENA to elect the *National Coordinator of the Committees for the Defence of the Fourth Transformation 2024-2030*, a process that was clearly aimed at electing the candidate for the presidential election.

The complainants requested preventive measures so that i) the process of selecting MORENA's presidential candidacy be halted and ii) the accused parties stop carrying out proselytising activities related to the 2023-2024 electoral process for the renewal of the Presidency.

The INE Complaints Commission had rejected such measures on the understanding that the ongoing process was a self-organisational process of the party. However, it warned that the actions of the party and the persons participating in the process could violate the fairness of the contest. It therefore bound them to respect the principles of legality and fairness, ordering them to refrain from soliciting votes or presenting electoral proposals or platforms.

The plaintiffs challenged this decision before the Superior Chamber, arguing that the measures adopted by INE were insufficient to safeguard the fairness of the upcoming electoral process.

The four magistrates who formed the majority understood that it was not possible to suspend an internal process of a political party. The other three magistrates, disagreed with the majority decision, although their reasoning varied.

Magistrate Otálora Malassis considered that the process should be suspended because it is a simulation to evade the law, which violates the fairness of the contest, prevents proper oversight and undermines the integrity of the electoral process.

The presiding magistrate at that time, Reyes Rodríguez Mondragón, considered that it would not be valid to suspend the process as it was a mechanism of party self-organisation, but that it could violate the fairness of the contest due to the fact that there were no rules that regulate it. Therefore, he considered that INE's General Council should be ordered to issue guidelines to regulate and supervise, in a preventive manner, the process denounced and other similar ones, including the possibility of counting expenses towards the pre-campaign expenditure ceiling.

7.6. Abuse of public resources

Mexican electoral legislation places a high premium on state neutrality and the prevention of public resource abuse during election campaigns. This is enshrined in Article 134 of the Constitution, which prohibits the use of public funds for partisan purposes.

The electoral code establishes clear guidelines on the use of public resources, including restrictions on government advertising and the use of public facilities for campaign events. It also prohibits public servants from engaging in partisan activities during working hours.

The ruling party, MORENA, has been heavily criticised throughout the electoral process for its questionable use of social programmes and public resources to favour its candidates³². The deployment of thousands of national servants wearing the colours of the ruling party to deliver social programmes, as well as the advance payment of pensions for the elderly, have been some of the facts denounced.

Another issue that has been a source of litigation during the electoral process has been the continuous interventions in the campaign by the President of the Nation and other public servants. Through his statements at morning press conferences –popularly known as “mañaneras”– and in the promotion of key legislative reforms, the President has made a veiled campaign in favour of his party and

³² See Acuerdo Nacional por la Integridad Electoral (ANIE): *Cuarto informe sobre integridad en el proceso electoral 2023-2024*, p. 4, pp. 39-45; Centro de Estudios para un Proyecto Nacional Alternativo (CEPNA): *Reporte de observación al término de las campañas electorales*, p. 5.

candidate. The president's undue intervention has been accredited multiple of times by the INE³³ and by multiple rulings by the TEPJF³⁴.

Although the electoral authorities have issued numerous precautionary measures and sanctions –to the president's collaborators, as he cannot be sanctioned– these have been insufficient to inhibit this conduct, generating a climate of inequity and lack of neutrality in the contest.

Analysis of individual judgments:

SUP-RAP-222/2023 (25/10/2023): INE's Guidelines on the actions of public servants.

In compliance with the TEPJF ruling **SUP-JRC-101/2022 (28/09/2022)**, the INE's General Council adopted Agreement INE/CG882/2022, approving Guidelines to ensure neutrality, impartiality, and equity in electoral matters for public servants. Following appeals from MORENA and the President of Mexico, the TEPJF revoked these Guidelines (**SUP-RAP-4/2023 and SUP-JE-12/2023 -08/03/2023**) and instructed the INE to adopt new ones, which it did on September 20, 2023 (INE/CG535/2023).

The new Guidelines were again challenged by MORENA before the TEPJF, alleging that they were contrary to the Constitution and the law, that they exceeded what was ordered by the TEPJF, and that they lacked due motivation and justification for not having established a test of proportionality in each of the rules limiting or prohibiting the participation of public servants in electoral processes.

The Superior Chamber reminds that the INE does have the authority to issue guidelines on this matter, based on its constitutional and legal mandate to ensure fair and impartial elections. This judgment provides a comprehensive legal justification for the INE's authority to issue guidelines aimed at preventing public servants' interference in elections. It emphasises that these guidelines are crucial in upholding the principles of neutrality, impartiality, and equity in the electoral process.

³³ The President of the Republic has been denounced more than 300 times before the UTCE and in at least 30 cases it has been determined that his conduct does violate the current electoral framework. See ANIE: *Expediente: impugnaciones y declaración de validez de la elección presidencial (amicus curiae)*, p. 7.

³⁴ As an example, the following rulings can be cited in which infringements by the President are found: SRE-PSC-236/2024; SRE-PSC-249/2024; SRE-PSC-311/2024; SRE-PSC-323/2024; SRE-PSC-335/2024; SRE-PSC-365/2024; SRE-PSC-392/2024; SRE-PSC-439/2024; and SRE-PSC-441/2024. On the other hand, no infringement was found in the following judgments: SRE-PSC-283/2024; SRE-PSC-304/2024; SRE-PSC-406/2024; SRE-PSC-426/2024; SRE-PSC-432/2024; and SRE-PSC-440/2024.

La sentencia contiene una completa referencia a la jurisprudencia previa del TEPJF relativa al principio de neutralidad de los servidores públicos durante el proceso electoral³⁵.

SUP-REP-70/2024 (07/02/2024): Notimex case. Investigative powers of the UTCE

This ruling is an example of a recurring problem during the 2023-2024 election period, in particular during the months leading up to the election, when bloc dynamics were established in the Superior Chamber of the TEPJF. From an analysis of various rulings of the Superior Chamber issued in the initial months of 2024, the INE's Technical Unit for Electoral Disputes (hereinafter UTCE), in some cases, chose to renounce its investigative powers or failed to carry out a comprehensive analysis of the denounced facts, while in other cases, it assumed excessive powers going beyond its competences.

In the special sanctioning procedures (PES), the UTCE acts as the investigating authority and the Specialised Regional Chamber of the TEPJF is the adjudicating authority, with the possibility of appeal to the Superior Chamber. The procedure starts with a complaint, which the UTCE is obliged to admit or expressly reject within a certain deadline.

During the last electoral process, a significant number of complaints were rejected by the UTCE without ordering further investigation and in many cases, the rejection decision was subsequently endorsed by the TEPJF, always by a 3 to 2 majority, which may contribute to the perception that in this block dynamics political views have taken precedence over strictly legal considerations.

Let's consider the example of the case under analysis. The origin of the case is a complaint by the Democratic Revolution Party (PRD) regarding an alleged

³⁵ Tesis V/2016, de rubro: PRINCIPIO DE NEUTRALIDAD. LO DEBEN OBSERVAR LOS SERVIDORES PÚBLICOS EN EL EJERCICIO DE SUS FUNCIONES (LEGISLACIÓN DE COLIMA) (Principle of neutrality. Public servants must observe it in the exercise of their functions (Colima legislation)); Jurisprudencia 14/2016, de rubro: RADIO Y TELEVISIÓN. LA UTILIZACIÓN DE LOS TIEMPOS ASIGNADOS A LOS PARTIDOS POLÍTICOS, PARA PROMOCIONAR LA IMAGEN DE CANDIDATOS POSTULADOS POR OTROS INSTITUTOS POLÍTICOS O COALICIONES, CONTRAVIENE EL PRINCIPIO DE EQUIDAD (Radio and television. The use of time allocated to political parties to promote the image of candidates nominated by other political institutions or coalitions contravenes the principle of equity); Tesis L/2015, de rubro: ACTOS PROSELITISTAS. LOS SERVIDORES PÚBLICOS DEBEN ABSTENERSE DE ACUDIR A ELLOS EN DÍAS HÁBILES (Proselytising acts. Public servants must abstain from attending them on working days); SUP-JRC-678/2015 y SUP-JDC-1272/2015, acumuladas, con respecto a los principios que rigen las elecciones de autoridades públicas; SUP-JRC-384/2016, se determinó que los beneficios de los programas sociales no pueden ser entregados en eventos masivos y el deber de cuidado; SUP-REP-162/2018, relacionado con el deber de diligencia de los legisladores; Jurisprudencia 38/2013, de rubro: SERVIDORES PÚBLICOS. SU PARTICIPACIÓN EN ACTOS RELACIONADOS CON LAS FUNCIONES QUE TIENEN ENCOMENDADAS, NO VULNERA LOS PRINCIPIOS DE IMPARCIALIDAD Y EQUIDAD EN LA CONTIENDA ELECTORAL (Public servants. Their participation in acts related to the functions entrusted to them does not violate the principles of impartiality and fairness in the electoral contest); SUP-JRC-30/2019 y acumuladas, con respecto a la neutralidad e imparcialidad y el principio de equidad en el proceso electoral; SUP-REC-1452/2018 y acumuladas, con respecto a la imparcialidad, neutralidad y la preservación de las condiciones de equidad en las elecciones; SUP-REP-238/2018, con respecto al principio de neutralidad.

misuse of public funds by several public servants and the MORENA political party to finance the electoral campaign of Claudia Sheinbaum. The UTCE dismissed the complaint, deeming it frivolous due to a lack of sufficient evidence beyond news articles and a social media post. The appeal contests this dismissal, arguing that the evidence presented was sufficient to warrant an investigation. The Superior Chamber of the TEPJF reviewed the case and upheld the UTCE's decision.

The TEPJF's ruling states that the evidence provided by PRD, primarily news articles and a social media post, did not offer sufficient grounds to initiate an investigation. The court emphasised that while the UTCE has an investigative role, the burden of providing at least preliminary evidence lies with the complainant. In this case, the evidence presented lacked specific details regarding the alleged misconduct, hindering the possibility of an effective investigation.

A dissenting opinion was presented, arguing that the dismissal was premature. It contended that the allegations, coupled with the evidence presented, warranted a preliminary investigation by the UTCE. The dissenting judges believed that dismissing the complaint at this stage undermined the investigative role of the UTCE.

SUP-REP-39/2024 (28/02/2024): Speech by the President incurs in personalised promotion. Creation of an auxiliary notebook to compile electoral infractions.

Of the countless cases related to the President's interventions in the campaign, this one has the particularity that in these proceedings the creation and scope of an auxiliary notebook to compile electoral offences was discussed. Such compilation could have been a very useful tool for assessing the systematic nature of the violations in the presidential election.

The case originated from a complaint filed by Senator Kenia López Rabadán concerning a speech given by the President during an event commemorating the fifth anniversary of his electoral victory. The complaint alleged that the President's speech violated electoral regulations by promoting his image, misusing public resources, and creating inequity in the electoral process. The Specialised Chamber initially ruled (**SRE-PSC-118/2023**) that no infractions had occurred, but the Superior Chamber overturned this decision (**SUP-REP-633/2023, 29/11/2023**), mandating a more thorough analysis of the President's speech. Subsequently, the Specialised Chamber re-evaluated the case and determined that the President had indeed engaged in personalised promotion, misused public resources, and violated the principles of impartiality, neutrality, and equity in the electoral contest (**SRE-PSC-118/2023, second ruling**).

The President once again appealed the judgment of the Specialised Chamber, alleging a lack of consistency between the decision and the order of the Superior Chamber, lack of completeness, inadequate substantiation and reasoning of the contested decision, and lack of evidence to prove the infringements attributed to him.

The Superior Chamber of the TEPJF upheld the Specialised Chamber's ruling, confirming that the President's speech constituted electoral infractions. The Court emphasised that public servants, especially those in high-ranking positions, have a duty to ensure their actions and communications do not unduly influence the electoral process. It also underscored the importance of maintaining impartiality, neutrality, and equity in the electoral context.

As noted above, the most interesting aspect of this case was the debate about the creation of an auxiliary notebook to compile the President's infractions. A dissenting opinion was filed by two magistrates who disagreed with the majority's decision to limit the scope of the proposed catalogue of electoral infractions. They argued that the catalogue should include all definitive rulings on electoral violations, not just those from the TEPJF chambers, and should focus on infractions impacting electoral processes rather than solely on sanctioned individuals. They emphasised the importance of transparency and accountability in electoral matters, advocating for a more comprehensive tool to monitor and understand electoral violations.

SUP-REP-164/2024 (20/03/2024): Public presentation by the President of his constitutional reform project and morning conference

This case represents another example of how the UTCE of the INE discretionally renounces its investigative powers and rejects outright a complaint of alleged irregularities. However, in this case, The Superior Chamber –in contrast to what it had done in the **SUP-REP-67/2024 (07/02/2024)** case, which we will discuss later– does revoke the UTCE's agreement on the understanding that its initial rejection decision was made based on substantive arguments, which can only be taken into account after a thorough investigation of the alleged facts.

Jorge Álvarez Máynez, candidate for the presidency of Movimiento Ciudadano (MC), filed a complaint against the President of the Republic and some of his collaborators, for the improper use of public resources, violation of the principle of fairness in the contest, as well as for anticipated acts campaigning, derived from various statements made on 5 February, in the framework of the “Ceremony for the Presentation of the Initiatives for the Reform of the Constitution”, and on 6 February, during the morning press conference (“mañanera”) of that day.

The UTCE dismissed the complaint, considering that a preliminary analysis did not reveal any elements of a possible violation of electoral regulations, as these were acts carried out under the protection of freedom of expression and the citizens' right to information.

On appeal to the TEPJF, The Superior Chamber overturned the UTCE decision considering that the contested dismissal was issued with substantive considerations. The UTCE went beyond a first assessment of the facts and evaluated specific expressions that were the subject of the complaint and qualified them as protected by the right to freedom of expression, even carrying out an exercise of weighing with the right to information of the citizenship.

The Superior Chamber therefore remanded the case back to the UTCE and conducted the appropriate investigation so that a decision could be taken by the Specialised Chamber.

SUP-REP-813/2024 (07/08/2024): Morning press conferences – “mañaneras”– by the governor of Baja California.

The custom of morning press conferences, introduced by President López Obrador, has been replicated by other leaders, provoking the same litigation over the alleged breach of the principle of neutrality in the electoral competition.

In this case, the TEPJF unanimously confirmed the ruling of the Specialised Chamber (**SRE-PSC-282/2024**) stating that the expressions made in two morning conferences by the governor of Baja California, Marina del Pilar Ávila Olmeda, violated the principles of impartiality, equity and neutrality, as they constituted positions to support the candidacy of Claudia Sheinbaum for the presidency of the Republic and other MORENA candidates.

Furthermore, the misuse of public resources was proven because the morning press conferences were published on official social networks of the state government and were held in a venue that belongs to that local power.

The Superior Chamber confirmed the ruling, rejecting the claims made by the Governor and the General Director of social communication, which highlighted that the conferences should be considered as an information activity for citizens, being a communication channel that guarantees transparency, accountability and the right of citizens to access information on matters of general interest.

7.7. Campaign finance issues.

The TEPJF plays a crucial role in safeguarding the integrity of Mexico's electoral processes by ensuring fairness and equity in campaign finance. In past electoral processes, the Tribunal has actively adjudicated cases related to campaign finance reporting and oversight, ensuring transparency and accountability in the use of funds. This includes scrutinising expenditures, donations, and in-kind contributions to prevent illicit financing and maintain a level playing field for all contenders. The TEPJF has also addressed the growing influence of third-party actors in electoral campaigns, particularly in the digital realm.

Transparency is the main objective pursued by the legal framework. To this end, a system for auditing political parties and electoral campaigns has been designed and put into practice, in which the INE oversees through the Technical Auditing Unit (UTF). However, the biggest problem of campaign financing in Mexico is not public or private resources, but illegal resources, i.e. those that are granted to parties or candidates under the table, without being reported, so that they may be resources of illicit origin.

The reality is that the electoral authorities are almost always overwhelmed in trying to track down all unreported income and expenses, especially given the lack of resources and infrastructure to do so in the short timeframes required by

the nature of electoral processes and the poor cooperation from other authorities (Tax Administration Service and others)³⁶.

The legal provision for heavy sanctions, such as the cancellation of the registration of a candidacy for exceeding the pre-campaign expenditure ceiling or for not submitting the campaign income and expenditure report, and even the nullity of the election in the case of exceeding the campaign expenditure ceiling by 5%, have not managed to put an end to the problem of illegal private resources in campaigns.

Political actors tend to make a cost-benefit analysis and often choose to deal with sanctions instead of adhering to strict compliance with the legal framework. A clear example is what happened in the presidential candidates' selection processes, as analysed before. These processes have involved huge expenses that should be audited and added to their pre-campaign expenditure ceilings. However, both INE and the TEPJF have endorsed these unprecedented political processes (**SUP-JDC-255/2023 and its accumulated**).

The TEPJF instructed INE to audit the internal processes of coalitions to select their candidates³⁷. This audit process was unprecedented, as the internal processes of the parties had never been audited before. The UTF found several irregularities such as unreported income and expenses, unverified expenses and expenses not linked to the audited process. INE's General Council imposed sanctions, with MORENA being the most sanctioned party. Finally, the TEPJF ratified the fines imposed by INE.

In the audit of the federal pre-campaigns, INE detected several irregularities in the income and expenses reported by the parties and their pre-candidates, resulting in heavy fines. The main irregularities detected included unreported expenditures, failure to check internet advertising, reports submitted out of time, unverified expenditures, billboards without INE identification and events reported late³⁸.

Analysis of individual judgments:

SUP-RAP-391/2023 (31/01/2024): Confirms INE's resolution sanctioning MORENA for omissions in the auditing of its internal process.

³⁶ See the "Informe que presenta la Comisión de Fiscalización respecto del estado jurídico que guardan los procedimientos administrativos sancionadores en materia de fiscalización que se encuentran en trámite, las sanciones impuestas durante 2016 a 2024 y las solicitudes de información y su atención por diversas autoridades", presented to the INE's General Council on March 2024, p. 15.

³⁷ See Agreement of the General Council of the INE issuing the general guidelines for regulating and auditing the processes, acts, activities and propaganda carried out in political processes, issued in compliance with the order in judgments SUP-JDC-255/2023 and SUP-JE-1423/2023 (INE/CG448/2023), adopted on 26/07/2023.

³⁸ ANIE: *Expediente: impugnaciones y declaración de validez de la elección presidencial (amicus curiae)*, pp. 3 and 4.

This case has to do, precisely, with the guidelines adopted by INE to regulate the auditing of expenses arising from the intra-party selection processes of presidential candidates, in application of the rulings **SUP-JDC-255/2023** and **SUP-JE-1423/2023** of the Superior Chamber.

The TEPJF upholds unanimously a decision by the INE's General Council (INE/CG659/2023) to sanction the political party MORENA for failing to properly oversee its internal selection process. The Electoral Tribunal rejected MORENA's appeals and confirmed a fine exceeding 60 million pesos.

MORENA argued in its appeal that the INE reused a previous pricing matrix, retroactively applied guidelines, caused delays, and questioned the validity of verification reports and the attribution of unreported expenses.

The Tribunal dismissed these arguments:

Firstly, it validated the use of the pricing matrix, stating that although it was created for a previous electoral process, it had been updated and complied with legal parameters.

Secondly, it rejected the claim of retroactivity, as the obligation to report expenses existed beforehand, and the guidelines merely defined the parameters for oversight.

Thirdly, it dismissed accusations of delays, stating that the INE must notify all findings to guarantee MORENA's right to a hearing.

Fourthly, it confirmed the validity of verification reports as full evidence unless proven flawed and rejected arguments about alleged irregularities due to their late submission.

Fifthly, it upheld the attribution of unreported expenses, including events, advertising, and transportation, as MORENA failed to disprove the INE's findings or demonstrate they didn't benefit the party.

Finally, the Tribunal rejected the argument that some advertising expenses (outdoor street advertising) shouldn't be reported. Although protected by freedom of expression, they benefited participants in the internal process.

Regarding outdoor advertising, MORENA alleged a violation of its right of defence, as some of the billboards were already the subject of special sanctioning proceedings (not audit) pending resolution. The Tribunal argues that the two procedures are not incompatible. The fact that a fact is investigated through a special sanctioning procedure is not an impediment for the audit authority to deploy its investigative powers. This is so because both procedures protect different legal interests: the special sanctioning procedure is aimed at resolving complaints about conduct that allegedly violates the campaign rules; on the other hand, the audit procedure protects transparency and accountability in the management of the resources of political parties and other obligated parties.

In conclusion, the ruling upholds the sanction, deeming that MORENA didn't fulfil its burden of disproving the INE's findings and demonstrating compliance with regulations regarding oversight.

7.8. Information and communication issues

In the realm of democratic processes, the media play a pivotal role in shaping public opinion and influencing electoral outcomes. In Mexico, the TEPJF serves as a crucial guardian of electoral fairness within the media landscape. The TEPJF's mandate encompasses the adjudication of disputes arising from media campaigns, ensuring that all contenders have equitable access to communication channels and that the content disseminated adheres to legal and ethical standards.

Moreover, with the escalating prominence of social media platforms as arenas for political discourse and campaigning, the TEPJF's jurisdiction has expanded to encompass these digital spaces. The Tribunal actively adjudicates complaints concerning the dissemination of misinformation, hate speech, and other forms of online misconduct that could undermine the fairness of electoral contests.

Regarding disputes related to the use of the media during the campaign in the 2023-2024 electoral process, many of the most contentious issues have already been analysed in previous sections of this report. Thus, reference has been made above to the issue of gender-based political violence against women, which frequently manifests itself through digital violence on social media. Likewise, violations of the principle of neutrality by public servants often have a projection in their appearances before the media, as we have seen in the case of the morning press conferences –“mañaneras”– of the President of the Republic.

In this area, the dysfunctions resulting from the deliberate lack of action by INE's UTCE and the subsequent validation of these actions by the Superior Chamber of the TEPJF have also become evident.

Analysis of individual judgments:

SUP-REP-67/2024 (07/02/2024): Interview in Chamuco tv. Investigative powers of UTCE

This judgement is another example of the discretion that INE's Technical Unit for Electoral Disputes (UTCE) has shown when admitting or rejecting complaints about irregularities committed during the campaign. In some cases, the UTCE chose to renounce its investigative powers or failed to carry out a comprehensive analysis of the denounced facts. As noted above, this type of case has been frequent in the months leading up to the election, and the intervention of the Superior Chamber, validating the UTCE's inaction in highly controversial decisions decided by a majority of 3 to 2, demonstrates a dynamic of blocs within the TEPJF that may have affected access to justice and the image of independence of the Tribunal itself.

In this case, what is at stake is a complaint filed by the National Action Party (PAN). The PAN alleged that Claudia Sheinbaum Pardo and others had engaged in improper acquisition of television time, misuse of public resources, and a

violation of the principle of impartiality, due to an interview aired on the program "Chamuco TV".

The UTCE determined that, from a preliminary examination, there were no indications that the reported infringements were likely to have occurred. The UTCE, therefore, refused to investigate the alleged facts, in response to which the complainant party filed an appeal before the Superior Chamber, alleging, on the one hand, that the UTCE relied on substantive considerations to dismiss its complaint and, on the other hand, that it violated the principle of exhaustiveness because it did not fully analyse all the issues raised in its original complaint.

The TEPJF dismissed the appeal, stating that the interview was protected under the rights to freedom of expression and freedom of the press and that the PAN had not provided sufficient evidence to challenge the presumption of legitimacy surrounding journalistic work.

A dissenting opinion was filed by two magistrates, who argued that the dismissal of the complaint by the UTCE was based on substantive considerations rather than a preliminary analysis.

SUP-REP-537/2024 y acumulado (30/05/2024): defamatory remarks about a presidential candidate.

Statements made by one of the presidential candidates, Bertha Xóchitl Gálvez Ruiz, about another candidate, Claudia Sheinbaum Pardo, were the subject of several disputes before the TEPJF.

In this case, the Superior Chamber of the TEPJF upheld a decision by the INE's Complaints and Denunciations Commission to partially grant precautionary measures in a case involving alleged electoral slander (ACQyD-INE-217/2024). The case stemmed from statements made by presidential candidate Bertha Xóchitl Gálvez Ruiz during a debate, where she referred to her opponent Claudia Sheinbaum Pardo as a "narco-candidate" and to her party, Morena, as a "narco-party".

Sheinbaum filed a complaint alleging these statements constituted electoral slander. The INE's Commission partially approved the precautionary measures, ordering the removal of the specific phrases "narco-candidate" from online platforms, but not other statements criticising Morena's handling of organised crime.

Gálvez and her party, the PRD (Party of the Democratic Revolution), appealed this decision to the TEPJF. They argued that the measures infringed on freedom of speech, the statements were within the bounds of legitimate political criticism, and the term "narco-candidate" should not be automatically equated with "drug trafficker".

The TEPJF confirmed the INE's decision. It reasoned that while candidates have broad freedom of expression, this is not absolute and must be balanced against the prohibition on electoral slander. The Tribunal found that calling someone a

“narco-candidate” in this context directly implied involvement in drug trafficking, which constitutes a false accusation of a crime and could impact the electoral process.

This judgment was only about precautionary measures. The same statements were also the subject of a special sanctioning procedure (PES). The Specialised Regional Chamber of the TEPJF (**SRE-PSC-325/2024 -25/07/2024-**) ruled that Bertha Xóchitl Gálvez Ruiz committed slander against the Morena political party during the third presidential debate of the 2023-2024 Federal Electoral Process. The Chamber also found that the National Action Party (PAN), the Party of the Democratic Revolution (PRD), and the Institutional Revolutionary Party (PRI) failed in their duty of care due to the infraction committed by their candidate.

In addition to the above, the judgement (**SRE-PSC-324/2024 -25/07/2024-**) of the Specialised Regional Chamber of the TEPJF analysed the repetition of the expression “narco-party” –referring to MORENA– in the third presidential debate, ruling in a similar manner to the previous judgment.

SRE-PSC-434/2024 and SRE-PSC-435/2024 (Specialised Regional Chamber) (22/08/2024): Infringements of the electoral ban with publications in X.

Judicial decisions on violations of the electoral ban are recurrent in Mexican electoral processes. Articles 210, paragraph 1, and 251, paragraph 4, of the General Law on Electoral Institutions and Procedures establish that on Election Day and the three days prior to it, political parties and candidates are prohibited from disseminating electoral propaganda and holding campaign events. This period is known as the period of pre-election silence (“veda electoral”).

With the prominence of social networks, it is nowadays impossible to control the statements made by individuals expressing their political opinions and calling to vote or not to vote for some of the candidates or parties. Therefore, in accordance with the legislation and its interpretation in case law, the violation of the electoral prohibition period is only punishable when the conduct is carried out by political parties, their leaders, their militant candidates, their militants or sympathisers, or even by persons who maintain a preference for a political party, without having a direct link (formal or material) with it, as long as there is a voluntary and repeated expression of such affinity and a desire to collaborate with the aims and interests of the political party manifested in concrete, repeated or planned conduct. In other words, spontaneous conduct carried out by individuals in a non-repetitive or unplanned manner falls outside the prohibition and is covered by freedom of expression.

As example of the application of this doctrine, the ruling **SRE-PSC-434/2024** found that Vicente Fox Quesada, former President of the Republic and sympathiser of the National Action Party (PAN), violated the electoral ban period by disseminating electoral propaganda on his X profile. The ruling focused on several publications Fox made on May 30th and 31st and June 1st, 2024, during the electoral ban period. It determined that Fox's publications constituted electoral propaganda because they explicitly or implicitly called for voting in

favour of Gálvez or against Sheinbaum, thus influencing the electorate during a prohibited period. The Chamber also takes into account that Fox is a notorious sympathiser of PAN.

In a very similar ruling adopted the same day (**SRE-PSC-435/2024**), the Specialised Regional Chamber of the TEPJF ruled that Claudio X. González, a prominent public figure, also violated the electoral ban. The ruling focused on three publications González made on May 30th, 2024, during the electoral ban period. These publications expressed opposition to the MORENA party and its presidential candidate, Claudia Sheinbaum, and implicitly encouraged voting against them. The Chamber concluded that although González is not formally affiliated with any political party, his active involvement and public support for the opposition coalition, particularly for candidate Xóchitl Gálvez, positioned him as a "sympathiser." This classification entails a heightened responsibility to adhere to electoral regulations, including those concerning the ban on propaganda during the *veda* period.

SUP-REP-893/2024 and accumulated cases (30/08/2024): Use of image of a minor created through artificial intelligence.

Artificial intelligence (AI) is increasingly becoming a major electoral tool. In addition to data analysis and profiling for the purpose of micro-segmented messaging, the use of AI is becoming increasingly important for content generation.

In the case under analysis, the Superior Chamber of the TEPJF revoked, by majority vote, the ruling of the Specialised Regional Chamber (**SRE-PRSC-369/2024**), which found that the use of an AI-generated image of a child in an ad violated children's rights. The TEPJF overturned this, stating that the use of an AI-generated, non-identifiable child's image did not jeopardise any child's rights.

The TEPJF also instructed the INE to modify its guidelines to include provisions for verifying or certifying the use of AI-generated images of children or adolescents in political advertising.

A dissenting opinion was presented by Judge Reyes Rodríguez Mondragón, who agreed with overturning the lower court's ruling on the use of AI-generated images but disagreed with the mandate to modify the INE's guidelines. He argued that this case was insufficient to justify such a change and that the INE may not have the resources or expertise to regulate AI effectively. He proposed a more flexible approach, focusing on transparency and requiring parties to disclose the use of AI in their campaigns.

8. Conclusions

1. The electoral justice system provided for in Mexican law is a robust one offering political actors and citizens sufficient avenues for the defence of their political-electoral rights and for the guarantee of the integrity of the electoral process.

2. The high level of electoral litigation (the TEPJF has dealt with more than 20,000 cases in the 2023-2024 electoral process) is a sign that the system of complaints and appeals is deeply rooted in the country's political culture, but it also reveals the high number of violations committed by political contestants that could be considered as a matter of concern. Mexican electoral justice system was implemented in the 1990s with a high level of litigation motivated by a lack of confidence in the electoral system. However, excessive level of judicial activity does not necessarily mean greater protection of rights. It is therefore necessary to strike a balance between ensuring broad access to justice for all those involved and the quality of judicial decisions.

3. During the 2023-2024 electoral process, electoral authorities, both INE and TEPJF, have been subjected to unprecedented pressures coming from the political actors in a context of high political polarisation. In this sense, there is a need for a profound reflection on how to guarantee independence and impartiality in polarised contexts, for which prudence, distance from political power, and responsibility must prevail.

4. In general terms, the electoral complaints system acts swiftly and effectively to restore the legal order or political-electoral rights allegedly violated. However, the internal tensions that have affected Mexican electoral institutions –both administrative and judicial bodies– and the dynamics of polarisation that have been established within them, resulted in a significant number of complaints about alleged irregularities that have reached INE have not been dealt with sufficient diligence, and their consequent validation by the TEPJF decisions added tensions within the Superior Chamber. This situation may have had an undesirable impact on the image of independence of the electoral justice system.

5. The TEPJF's sensitivity and vocation for inclusion in relation to the protection of the rights of traditionally marginalised or vulnerable groups is remarkable. During the 2023-2024 process, the TEPJF has given continuity to its previous case-law protecting the rights of indigenous communities, LGBTQ+ people, migrants and Afro-Mexicans. However, it should also be noted that affirmative action poses important challenges to electoral justice bodies that must be addressed. One of them is the articulation between the different affirmative actions, so that they do not contradict each other and produce undesired effects. Another challenge is to develop clear jurisdictional criteria to solve the problems generated by the self-identification of persons belonging to these groups, establishing effective mechanisms to combat fraud. Finally, and in the longer term, it will be necessary to address the question of the temporary nature of these measures, since their ultimate aim to achieve real and effective equality instead of generating new inequalities.

6. Particularly noteworthy is the TEPJF's contribution to the implementation of voting measures for persons in pre-trial detention, at least in presidential elections and in some local elections, bringing Mexican into line with international standards. It is understandable that this implementation will be gradual, given the practical difficulties involved. It is therefore necessary that these efforts continue

in the coming years and address all outstanding challenges regarding the guarantee of the integrity of the electoral process in prisons and concerns related to undue influence.

7. In the area of gender parity, the TEPJF already has a proven track record that demonstrates its strong commitment to real and effective equality between women and men in terms of their rights to political participation. In the 2023-2024 electoral cycle, the jurisprudential work has been decisive in making the constitutionally established principle of “parity in everything” a reality, urging and validating the actions of electoral administration bodies and often making up for the legislator's omissions. However, some controversial interpretations of the principle of progressivity have led to certain distortions that call for a more careful analysis.

8. Particularly noteworthy in this latest electoral process is the importance that the TEPJF has given to the problem of gender-based political violence against women. The creation by the TEPJF of the Specialised Electoral Public Defender's Office for matters of gender-based political violence is an important step towards favouring access to electoral justice for women victims of violence. In the strictly jurisdictional sphere, however, the Court's performance in this area has been affected by differences in criteria when it comes to defining acts of political violence against women in the sphere of social communication, with changes in criteria showing that the case-law is not yet settled.

9. In terms of the right to obtain a decision based on law, the TEPJF judgments analysed stand out for their high technical quality. All the judgments analysed are duly grounded and motivated, in accordance with the evidence and proof provided in the case file and show a high level of compliance with exhaustiveness –responding to all the allegations raised by the appellants– and with congruence –correspondence between the reasons given in legal arguments and the final decision–.

10. An area for improvement is the possible confluence of different sanctioning proceedings in relation to the same facts. This is the case, for example, with the special sanctioning procedure and the financial audit procedure. Admittedly, both procedures have their own rationale and protect different legal interests, but it would be desirable to redesign these procedures so that they can be combined or at least improve coordination to avoid contradictions in the classification of the facts and in the decisions.

11. Regarding the consistency of decisions with previous case law, in general terms there is a high level of exhaustiveness in the invocation of precedents, which facilitates the work of legal practitioners and commentators. However, it should be noted that internal tensions that have prevailed in the Tribunal during the last phase of the electoral process have led in some cases to accusations of a lack of respect for precedents or changes of criteria without sufficient justification. In any case, it is always desirable that judicial decisions make reference to both the precedents that support the adopted decision and those

that do not, so that the Tribunal can explain the reasons that justify opting for one line or the other.

12. With regard to the reference and application of international standards, it should be noted that the TEPJF is characterised by its recurrent invocation and implementation of international standards in comparison with other jurisdictional bodies in the international context.

13. With regard to the implementation of international standards through TEPJF case-law, it is worth noting the Tribunal's commitment to these standards in areas such as voting for persons deprived of their liberty, gender parity, the fight against gender-based political violence against women, the rights of indigenous populations and affirmative action in favour of other vulnerable or marginalised groups.

14. Having said this, it is also necessary to point out that some of the Tribunal's decisions are controversial from the point of view of the principles –also contained in international standards– of legal certainty and the stability of electoral law. For example, in the area of gender parity, the Tribunal's interpretation of what constitutes an omission by the legislator in cases where there is clearly legislation in force may be dubious from the point of view of the legal certainty, although it must also be considered that the motivation of this transformative case-law is based on the impossibility of maintaining situations that are contrary to international standards. Likewise, some judicial decisions that have a strong normative character, or that validate regulatory resolutions of the electoral administration bodies, may be questionable from the point of view of the basic principle of not making fundamental changes to the rules of the game once the electoral process has begun.

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