

UC San Diego

SCHOOL OF GLOBAL POLICY AND STRATEGY
Center for U.S.-Mexican Studies



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UNIVERSIDAD

ELECTORAL NEWSLETTER
NO. 9 | FEBRUARY 2024

Democratic Integrity: Mexico 2024

ELECTORAL JUSTICE IN MEXICO



Summary

"Electoral justice, in a technical or strict sense, refers to the different legal-technical appeal mechanisms (trials, petitions, or complaints) of electoral acts and procedures that ensure they are in accordance with the law (i.e., the Constitution, laws, international treaties, and any other applicable norm)."

Electoral Dictionary, Inter-American Institute for Human Rights

The Federal Electoral Tribunal (TEPJF) holds the sole responsibility for the final counting of votes, legal certification, and declaration of validity of presidential elections in Mexico. This tribunal is also the final court of appeal for any electoral disputes that may arise during the elections. At both the federal and local levels, the decisions of its superior chamber are final and may not be reviewed, even by the Supreme Court of Justice of the Nation (SCJN).

The TEPJF's role is to ensure that elections are conducted in accordance with constitutional principles and to guarantee that citizens are granted the full exercise of their political rights, without any bias or discrimination. Thus, any person who considers that his or her political and electoral rights have been violated can turn to the Electoral Tribunal. It is also the only institution that has the power to declare an election null and void.

In this issue, we explain the powers of the different chambers of the Federal Electoral Tribunal and how they are constituted. This system of electoral justice in Mexico is relatively recent, dating back to 1996, and it was not until the 2000 election that there was a judicial qualification of the presidential election. Before that, the political parties were judge and jury: an electoral college was constituted in the Chamber of Deputies, which made the final counts of the presidential election and declared its validity.

In the "Last Glance" section, we discuss the currently incomplete integration of the Superior Chamber of the Federal Electoral Tribunal. Due to the failure of the Senate to appoint judges, only five out of seven seats are occupied with four months remaining before the June 2024 election.

Electoral Justice in Mexico

Political Conflict and Electoral Justice

The right to vote is one of the fundamental rights of citizenship. Democratic states have an obligation to promote, respect, protect, and guarantee the exercise of political rights, beginning with the right to vote. To fulfill these obligations, democratic states have established electoral institutions.

Elections are a set of procedures for citizens to exercise their right to vote and for the different political options to compete, in an institutionalized, peaceful, and legitimate way, for control of government. Since it is a competition for political power, it is usual and even natural for conflicts to arise between parties, which must be resolved by an impartial authority: an administrator of electoral justice.

Mexico has specialized electoral tribunals in each of its 32 states, as well as a national tribunal: the Federal Electoral Tribunal. Through this model of specialized electoral justice, the six guiding principles of the electoral function established by the Mexican Constitution are enforced: i) impartiality; ii) legality; iii) independence; iv) objectivity; v) certainty; and vi) maximum publicity (maximum transparency).

If any political actor, whether a party or a candidate, or even an individual citizen, believes that their political rights have been violated, they may appeal to the electoral tribunal.



Article 41 of the Constitution expressly states that the electoral appeal system "shall guarantee the protection of the political rights of citizens to vote, to be elected, and to associate."

Thus, every aspect of conducting legitimate elections, from the registration of each person on the electoral roll, to the creation of new political parties, to the campaigns and counting of votes, can be reviewed by the electoral courts to ensure full compliance with the Constitution and the law.

Although this has led to a certain "judicialization" of electoral life in Mexico, it has also resulted in the institutional and legal resolution of political controversies. So far in the twenty-first century, there has not been a single electoral dispute that has not been resolved through constitutional channels. The decisions of the electoral tribunals have been respected.

The Federal Model of Electoral Justice

Mexico is a federal republic with 32 states. In each of these entities, there is an administrative electoral authority—the local electoral institute—and an electoral tribunal whose members are appointed by the Senate of the Republic. The local electoral tribunals can only rule on matters related to the elections of their corresponding state, including elections in municipalities and for governorships and state congressional seats. Additionally, these tribunals rule on matters relating to the direct democracy mechanisms established in the local constitutions such as recall referendums.



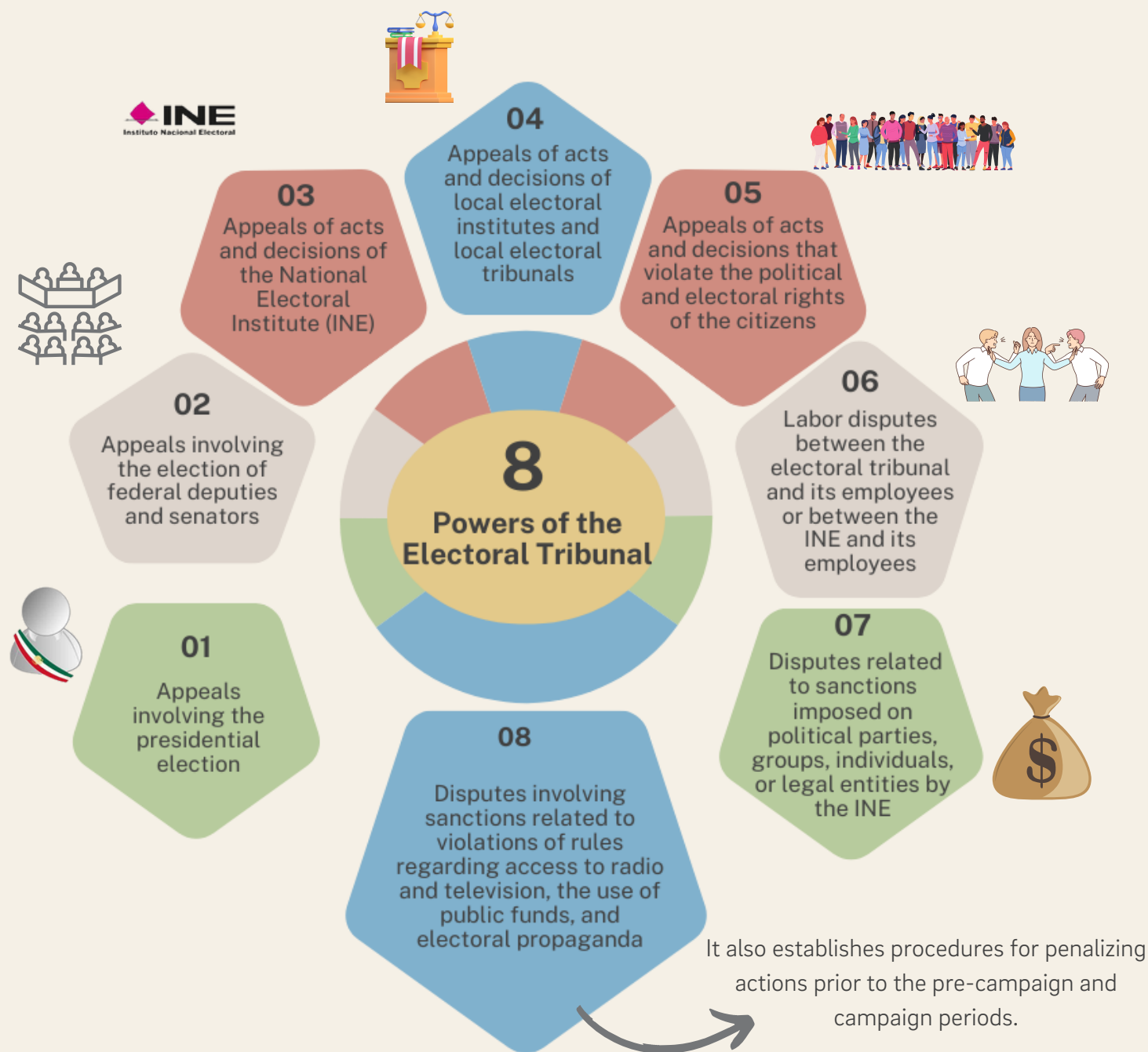
The decisions of these 32 local electoral tribunals can be appealed to the Federal Electoral Tribunal.

This Federal Electoral Tribunal is the final arbiter for the resolution of local electoral controversies and also directly hears appeals filed regarding all federal electoral processes—namely elections to federal congress and the presidency—as well as matters related to federal direct democracy mechanisms and the presidential recall referendum established in the Federal Constitution.

The existence of a specialized and definitive institution to resolve all electoral disputes in the country guarantees that such matters are resolved uniformly, as there are no regional variations and a citizen's place of residence or the location where the dispute arises does not affect the exercise of political rights.

Powers of the Federal Electoral Tribunal

The Federal Electoral Tribunal is the final authority to resolve disputes arising from any election in Mexico. In other words, it is responsible for resolving the following types of electoral disputes in a final and non-appealable manner:



Furthermore, even if there is no controversy, the Superior Chamber of the Electoral Tribunal of the Federal Judiciary has the sole responsibility for the final count of ballots, certification and declaration of validity of the presidential election.

Source: Compiled by the authors based on the Political Constitution of the United Mexican States, Article 41, Base VI; 60, Sections 2 and 3; and 99, Section 4.

The Structure of the Federal Electoral Tribunal

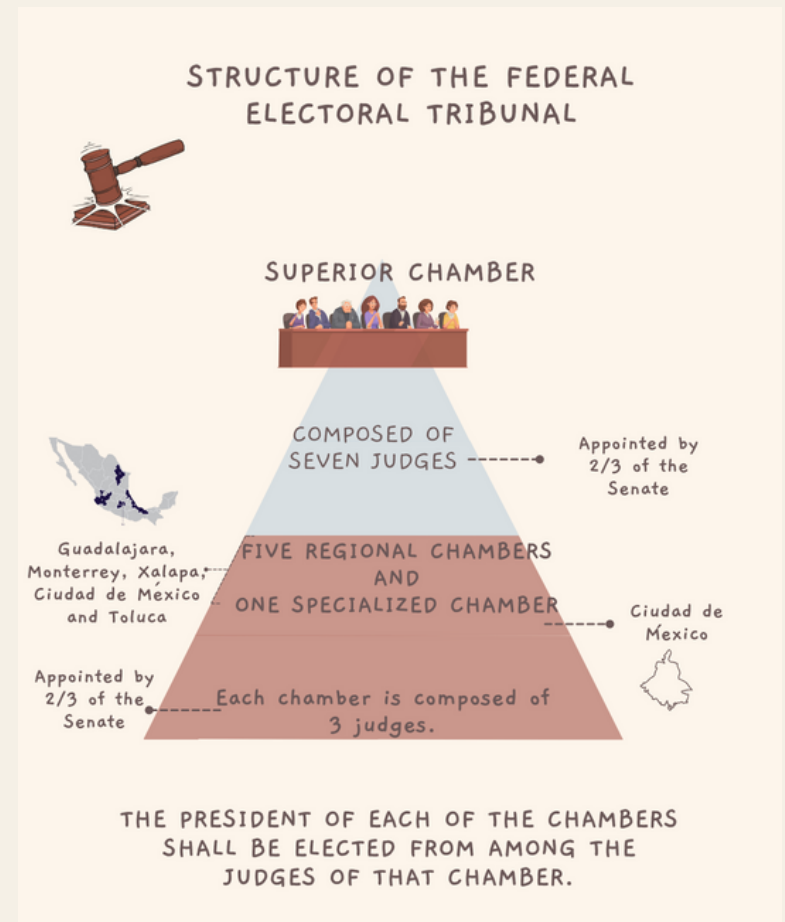
The Federal Electoral Tribunal is composed of a supreme chamber, five regional chambers and a specialized chamber.

The Superior Chamber of the Electoral Tribunal can hear cases filed before the five regional chambers.

The regional chambers operate on a permanent basis and hear cases that come before the Electoral Tribunal from local or federal proceedings, depending on the location where (geographically) those cases originate.

The regional chambers have jurisdiction to:

- (a) Hear appeals relating to: federal elections of deputies and senators by the relative majority system, as well as elections of local deputies and municipal councils.
- b) Hear appeals relating to the acts and resolutions of the decentralized bodies of the INE;
- c) Hear cases regarding violations of political-electoral rights during the internal electoral processes of political parties for candidates and leadership positions.



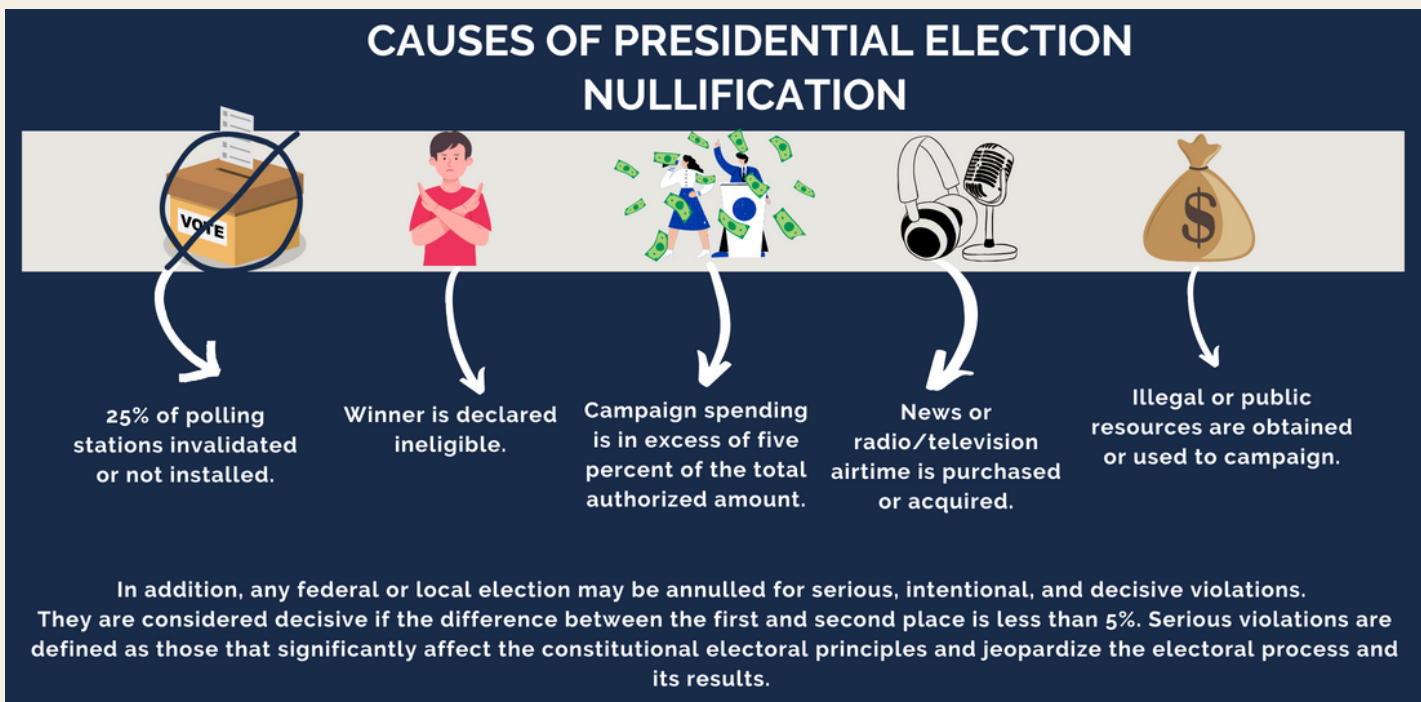
The five regional chambers correspond to the five electoral regions into which the country is divided, and are located at the capital of each district, as follows: 1st region, Guadalajara Regional Chamber (covering Baja California, Baja California Sur, Chihuahua, Durango, Jalisco, Nayarit, Sinaloa and Sonora); 2nd region, Monterrey Regional Chamber (covering Aguascalientes, Coahuila, Guanajuato, Nuevo León, San Luis Potosí, Tamaulipas and Zacatecas); 3rd region, Xalapa Regional Chamber (which includes the states of Campeche, Chiapas, Oaxaca, Tabasco, Quintana Roo, Veracruz and Yucatán); 4th region, Mexico City Regional Chamber (which includes Mexico City, Guerrero, Hidalgo, Morelos, Puebla and Tlaxcala); and 5th region, Toluca Regional Chamber (which includes the states of Colima, México, Michoacán and Querétaro).

The Specialized Chamber of the Electoral Tribunal has the power to resolve complaints regarding violations of articles 41 and 134 of the Constitution, which relate to the non-interference of public servants in electoral processes, violations of the rules of electoral propaganda, as well as anticipated campaign or pre-campaign acts.

Qualification and Nullification of an Election

Since the Federal Electoral Tribunal has the power to qualify the election and resolve definitively all electoral controversies, it can also declare the elections null and void, which is an extreme measure to be applied only when the integrity of the elections has been seriously compromised.

Article 99 of the Constitution states that "the Chambers of the TEPJF may declare an election null and void only on the grounds expressly provided for by law."



Election of Federal Electoral Court Judges

The judges of the chambers of the Electoral Tribunal are elected by a qualified majority of at least two-thirds of the members of the Senate of the Republic.

The lists of candidates for election to the Electoral Tribunal are drafted by the Supreme Court of Justice of the Nation. This is designed to ensure that the federal executive in Mexico has no influence in the appointment of electoral judges.

This model guarantees that electoral judges reach their position having passed through the filter of a judicial body—the Supreme Court of Justice of the Nation—and that they also enjoy the support of a broad consensus of the the political forces represented in the Senate.

Last Glance

Incomplete Superior Chamber of the Federal Electoral Tribunal

According to the Constitution, the Superior Chamber of the Federal Electoral Tribunal is to be composed of seven judges.

1

On October 31, 2023, two judges of the Superior Chamber reached the end of their constitutional term. At the beginning of February 2024, five months after the start of the federal electoral process and with only four months before votes are cast, the Senate of the Republic has as of yet failed to make the appointments.

2

The Senate must select the judges from a slate proposed by the Supreme Court of Justice of the Nation. Since September 25, 2023, the Court has sent the Senate two slates of nominations (a list of three female candidates and a list of three male candidates). On October 17, 2023, the Judicial Committee of the Senate approved the proposals sent by the Court, thus confirming the eligibility and suitability of the six candidates presented. However, the vote did not go to the full Senate, where appointments require the support of 2/3 of the legislators.

The new judges should have taken office on November 1, 2023.

3

The result is that currently the Supreme Chamber of the Federal Electoral Tribunal is operating with only five of its seven members. The Organic Law of the Federal Judiciary establishes that the Superior Chamber can only session with 4 judges present. Furthermore, according to article 167 of the cited Law, in order to declare the validity or even the nullity of the elected President, the Superior Chamber must meet with the presence of at least six of its seven members. However, four months before the June 2 election, the appointments have not been made.

4

This could lead the Federal Electoral Tribunal to fill its own vacancies with judges currently serving in the regional chambers, as provided for in the Constitution. In this case, the vacancies would be filled by the most senior members of the regional chambers, with the eldest two selected if multiple candidates exist.

The incomplete integration of the Superior Chamber of the Federal Electoral Tribunal, due to the omission of the Senate of the Republic, is an unprecedented situation in the political history of Mexico.

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