

ANALYSIS OF THE JUDICIAL REFORM IN MEXICO

Problems regarding the judicial constitutional
reform presented on February 5, 2024

OFFICIAL VERSION

This study does not represent an institutional position of the Supreme Court of Justice of the Nation, but rather constitutes an academic analysis carried out by the members of the Center for Constitutional Studies.

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Executive Summary

Analysis of the Judicial Reform in Mexico

Context of the Judicial Power in Mexico

The Federal Judicial Power (PJF) includes 932 jurisdictional bodies (besides the SCJN and the TEPJF), distributed in 77 cities or municipalities of the country (June 10, 2024), which require the work of 1,580 heads of jurisdictional bodies (judges, and magistrates). Between the administrative and jurisdictional personnel, there is a total of 54,388 public servants working in the PJF, according to the National Census of Federal Justice Administration of INEGI (2023).

During 2023, Federal Judicial Power dealt with 1,473,133 cases, while the number of cases finished during the same period was 1,413,724. This means that, on average, each judge solved 895 cases during that year.

The local judicial powers are composed of 5,315 jurisdictional and administrative bodies that require the work of 73,000 public servants. During the year 2022, the state judicial powers dealt with 2,154,768 cases, of which 1,320,702 were concluded. During that year, each state judge was responsible for solving an average of 428 cases.

Main changes proposed by the judicial reform

The bill presented on February 5, 2024 includes important changes in the federal and state justice system, among which the following stand out:

- Election of judges by popular vote
- Creation of a new judicial administration body
- Creation of a court of judicial discipline
- Procedural changes to ensure prompt and expeditious justice

Problems identified in judicial reform and their practical implications

The analysis of the main changes proposed by the reform showed some of the problems associated with such modifications. The following is a summary of the practical implications of these changes and their possible effects on access to justice for individuals and the work rights of judicial branch employees.

A. Problems associated with the legitimacy and quality of justice

1. The popular election of judges does not guarantee greater legitimacy for judicial powers.
2. The popular election of judges does not guarantee a higher quality of judicial decisions.
3. The popular election of judges does not guarantee that those elected have the necessary knowledge and skills to perform the judicial function.
4. The popular election will affect access to justice and the legal security of persons involved in judicial proceedings.

B. Problems associated with the process of electing judges

1. Unjustified dismissal of federal and state judges.
2. High and unnecessary costs derived from the popular election of the federal and state judiciary.
3. The process of selecting candidates does not guarantee that the persons chosen will be suitable to perform the judicial function.
4. The process of selecting candidates for reelection compromises their impartiality during their term of office.
5. The popular election of judges may place them in a situation of vulnerability to political violence and/or organized crime.

6. The popular election poses risks in terms of possible undue influence from private interests and organized crime.
7. The popular election of the members of highly specialized tribunals compromises their ability to resolve conflicts effectively and impartially.

C. Problems associated with the integration and operation of a new judicial administration body

1. The annual negotiation of the PJF's budget compromises its independence.
2. The decisions of the judicial management body are not subject to appeal, which may lead to arbitrariness or abuse in its decisions.
3. The commission in charge of labor conflicts in the PJF disappears and no replacement is established.
4. There are no mechanisms for open justice and/or citizen participation in judicial administration bodies.

D. Problems associated with the Court of Judicial Discipline

1. The popular election of the Tribunal's judges compromises its independence and impartiality.
2. The coincidence between the terms of office of the members of the Tribunal and the authorities that nominate them is detrimental to their independence in the performance of their duties.
3. The mechanism for appointing members of the Tribunal does not guarantee that they have the ideal profile to perform the function.
4. Disciplinary procedures may be influenced by political preferences or affiliations.

5. The impossibility of challenging the decisions of the Disciplinary Tribunal transgresses the human right to a fair trial and judicial independence.
6. The assumptions of disciplinary sanctions constitute open clauses that violate the legal certainty of the judges and may lead to abuses.

E. Problems associated with the changes to ensure prompt and expeditious justice

1. Tackling the judicial backlog without a proper diagnosis does not guarantee prompt and expeditious justice.
2. The reform does not comply with the principle of gradual implementation, which compromises its success.

In this context, any attempt at judicial reform or policy must necessarily consider its potential impact on the day-to-day operation of the courts and on people's access to justice. A modification that is not properly planned and executed may aggravate and compromise the thousands of cases that are subject to the jurisdiction of Mexican judges.

1. Current situation of justice in Mexico

a. Federal Judiciary (PJF)

According to the National Census of Federal Justice Administration (2023),¹ the Federal Judicial Power (PJF) includes 932 jurisdictional bodies (besides the SCJN and the TEPJF), which require the work of 1,580 heads of jurisdictional bodies (judges, and magistrates). The jurisdictional and administrative bodies are divided as follows:

Supreme Court of Justice of the Nation (SCJN)	Electoral Tribunal of the Judiciary of the Federation (TEPJF)
1 Plenum 2 Rooms 32 Administrative bodies or units	1 Superior Chamber 5 Regional Chambers 1 Special Room 31 Administrative bodies or units
Federal Judiciary Council	
270 Collegiate Circuit Courts 25 Unitary Circuit Courts (until December 2022) 39 Collegiate Courts of Appeal 447 District Courts	42 Federal Criminal Justice Center 1 National Center for Specialized Justice 128 Federal Labor Courts 5 Regional Plenary Sessions

The 932 jurisdictional bodies (except for the SCJN and the TEPJF) are composed of 1,580 federal judges, divided into 981 magistrates and 599 judges. During the year 2023, 1,473,133 cases entered the Federal Judicial Branch, while the number of cases solved in the same period was 1,413,724. This means that, on average, each judge solved 895 cases during that year.

¹ Available at: "<https://www.inegi.org.mx/programas/cnijf/2023/>".

b. Profile of federal judges

According to the most updated data available,² the majority of district judges grew up in a middle-class household (52%); 25%, in a lower middle-class household; 12.7%, in a lower-class household; and only 9.9% report coming from an upper middle-class household.³ At the same time, more than 70% of district judges studied elementary, secondary and high school education in public institutions, and more than 80% studied a bachelor's degree in public institutions. Likewise, judges who have studied a postgraduate degree (67%) have mostly done so in Mexican institutions; only 8% have done so abroad.⁴

c. Selection process for judges in the federal Judicial Branch

The Judicial Career Law of the PJF, published in 2021, established new rules, consistent with a meritocratic and equal opportunity scheme, so that people are chosen based on their knowledge, skills and abilities, and not through subjective selection criteria.⁵ Although there were no major changes in the requirements to fill the positions of magistrates or judges,⁶ the law established exams and mandatory courses for entry and promotion in all the different levels of the judicial career (judicial officer, judicial clerk, court clerk, district judge and circuit magistrate).

In accordance with the Judicial Career Law, competitive examinations are carried out in three phases: 1) application of questionnaires, 2) admission of the best averages for the judges' training course and 3) evaluation by a jury through oral examinations, resolution of practical cases, simulated hearings or any other evaluation mechanism established by the Federal Judicial Training School (EFFJ).

² The information in this section was obtained from Aguiar Aguilar, Azul A., *Legal Culture, Sociopolitical Origins and Professional Careers of Judges in Mexico*, Palgrave Macmillan Cham, 2024, especially, Chapter 4, "Who Inhabits the Federal Judiciary? Sociopolitical Origins and Professional Trajectories of the Judicial Elite", pp. 65-87.

³ Aguiar Aguilar, A., *op. cit.*, p. 71.

⁴ *Ibidem*, pp. 73-75.

⁵ Suprema Corte de Justicia de la Nación, *Proyecto de reformas con y para el Poder Judicial de la Federación*, Mexico, 2020, p. 18.

⁶ Be a Mexican citizen by birth, not acquire another nationality, be in full exercise of his or her rights, be older than 35 or 30 years of age, respectively, have a law degree, have at least five years of professional practice, be of good reputation and not have been convicted of a felony punishable by deprivation of liberty.

d. State judiciaries

According to the National Census of State Justice Administration (2023),⁷ the local judicial powers are composed of 5,315 jurisdictional and administrative bodies that require the work of 73,000 public servants. The judicial and administrative bodies are divided as follows:

- 2,886 courts
- 381 revision courts
- 135 sentence enforcement courts
- 390 trial courts and sentence enforcement courts
- 1,523 administrative bodies or units

The Superior Courts of Justice of the different states have a total of 603 magistrates; the local courts of the different states have 4,398 judges. During 2022, 2,154,768 cases were filed in the state judiciaries, of which 1,320,702 were concluded in the same period. Given that for that year there were 627 magistrates and 4,398 local judges, each state judge was responsible for the solution of 428 cases on average.

e. Selection process for judges in the state judiciaries.

Given that 52% of the cases pending resolution in the local judiciaries are grouped in five states (State of Mexico, Mexico City, Veracruz, Jalisco and Nuevo Leon) and that one out of every three local judges are concentrated in these states, a description of the selection process for judges in these entities is presented below.

In these states, magistrates are appointed by the local congresses, except for the State of Mexico, where the local Judiciary Council is the body in charge of approving and appointing judges. This appointment requires the prior accreditation of the examination conducted by the same Congress or by the State Judiciary Council. To appoint a judge, the interested parties are summoned and must pass a competitive examination conducted by the local Judiciary Council. Afterwards, the same institution ratifies them in the position.

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Available at:
"https://www.inegi.org.mx/contenidos/programas/cnije/2023/doc/cnije_2023_resultados.pdf".

f. Strengthening of the judiciary

As can be seen, the federal and state judiciaries show high levels of efficiency despite their limited personal and institutional resources. In this sense, it is impossible to directly attribute the current lag to the current methods of appointment, judicial training or the indolence of the judges; it is more likely that these deficiencies are due to the scarcity of human and institutional resources and workloads.

Therefore, it is necessary for the Mexican State to make greater efforts to increase the operational capacities of the judiciaries (i.e., the number of judges and jurisdictional and administrative personnel), without neglecting the professionalization and continuous training of these legal operators. In this context, any attempt at judicial reform or policy must necessarily consider its potential impact on the day-to-day operation of the courts and on people's access to justice. A modification that is not properly planned and executed may aggravate and compromise the thousands of cases that are subject to the jurisdiction of Mexican judges.

2. Election of judges by popular vote.

a. Problems associated with the legitimacy and quality of justice.

i. The popular election of judges does not guarantee a greater legitimacy of the judicial function.

Reform proposal

The initiative proposes the election by popular vote of justices of the Supreme Court of Justice of the Nation, circuit magistrates, district judges, local magistrates, local judges, magistrates of the Judicial Disciplinary Tribunal and magistrates of the Electoral Tribunal. In this regard, it is proposed to amend Articles 94, 95, 96, 97, 99, 100, 116 and 122 of the Political Constitution of the United Mexican States (CPEUM). Specifically, the explanatory memorandum argues that "[o]ne relevant aspect to consider in order to affirm the need to structurally reform the method for the integration of the Judicial Power is the perception that the population has had regarding this Power during the last few years. Since the 1990s, the Mexican population has indicated that it does not trust the courts, judges and magistrates (...)".

Problems identified

Argument 1. The legitimacy of the judges does not depend exclusively or mostly on the method of designation.

The legitimacy of judges, understood as the social recognition of their authority and power to decide,⁸ does not depend exclusively or mostly on the method of appointment. The legitimacy of judges is mainly linked to the quality of their performance and decisions once in office. In other words, substantive legitimacy, or legitimacy of the exercise of the function, is more relevant than formal legitimacy, or legitimacy of origin, to build credibility and citizen confidence in a sustained manner over time.

⁸ Tayler, Tom R., "Psychological Perspectives on Legitimacy and Legitimation," *Annual Review of Psychology*, vol. 57, 2006, pp. 375-376. Available at: «<https://doi.org/10.1146/annurev.psych.57.102904.190038>».

In this regard, it is important to emphasize that the election of judges does not ensure the quality of their performance and decisions. Therefore, elected judges are not - as one might mistakenly believe - a guarantee of assured legitimacy. On the contrary, the disappearance of competitive examinations and the probable absence of judicial experience and/or training may lead to deficient performance and decision making that will not solve the current problems of institutional credibility that the reform intends to address.

In this sense, it is possible to concede that the election has the potential to provide initial legitimacy to those elected, but the conditions foreseen will most likely be insufficient to sustain their legitimacy in the medium or long term. An intermediate scheme could consist of opening all competitive examinations to the general public, as recently occurred with the exams to appoint new labor judges.

Given the counter-majoritarian nature of the judicial function, judges must be independent of majorities.

A constitutional democratic system is one in which political power is the power of majorities and in which such majorities are limited by the principles and rules of the Constitution. In this context, the judges must be independent of the majorities, to be able to guarantee the limits imposed by the Constitution, even when they are contrary to the interests of the majorities. If the judges depend on the will of the people to assume or remain in office, it is likely that their decisions are intended to please the majority political forces. In this sense, the attempt to endow judges with legitimacy, via popular election, could have a negative impact on the possibility of ensuring compliance with the Constitution itself.

Judges are not the only State officials who do not have direct democratic legitimacy.

Many public servants assigned to the Executive Branch in strategic positions (e.g. secretaries of state) and even some legislators (e.g. elected via proportional representation), both federal and state, are not directly elected by the citizenry. For example, the federal public administration is made up of 277 persons in charge of highly

relevant bodies or areas, such as secretaries of state or decentralized bodies, who are not democratically elected.⁹ In the federal Congress there are 200 deputies and 32 senators that are also not directly elected by the people.¹⁰ This group of public servants is appointed directly by people who were elected or elected indirectly, without controls or robust filters to ensure their suitability for the position.

On the contrary, the current system for the appointment of justices contemplates the participation of the Executive Branch and the Senate to address the absence of direct election. Likewise, the appointment of federal and state judges -in most states- is the result of promotion within the judicial career ladder (with multiple exams and mandatory courses), as well as a competitive examination that ensures that those who occupy judicial positions have the necessary knowledge and skills to perform them satisfactorily.

Argument 4. The election of judges is a process of low information and participation that does not ensure the legitimacy of those elected.

International experience, especially in the United States, suggests that judicial elections are low-information elections; that is, it is difficult for people to acquire sufficient knowledge about the judicial function and the competencies of the candidates to make an informed decision when casting their vote. The initiative, by limiting the acts, times and financing of campaigns, proposes conditions for this dynamic to be replicated in Mexico as well. This means that judicial elections are often influenced by issues of little relevance to the judicial function -such as the candidate's position on the ballot-. This lack of quality information in the election process is likely to undermine the legitimacy of the elected judges.

Empirical evidence for the arguments

The case of the United States

Extensive empirical research has shown that the method of appointment of judges is marginal to the trustworthiness of the institution. What is more relevant in determining

⁹ INEGI, National Census of Federal Government (CNGF), 2023.

¹⁰ INEGI, National Census of State Governments (CNGE), 2023.

judicial legitimacy is the quality of the performance of the judges and not so much how they were appointed.¹¹ In this regard, the election of judges does not ensure, to any degree, that they will perform better than current judges.

A study conducted in the United States, where local judges are elected, showed that, under certain circumstances, the election of judges can be counterproductive to judicial legitimacy. Specifically, the study found that when there is a high level of electoral activity, the legitimacy of elected judges is lower than that of appointed judges because their promotional activities undermine the perception of judicial impartiality.¹² A series of studies conducted in the United States confirms that the public is particularly uninformed in the case of judicial elections. The selection of the candidate rarely responds to the candidate's profile or competence, but rather to shortcuts such as the party that nominates him or her.¹³

The case of Bolivia

A study conducted in Bolivia, where constitutional judges are elected, showed that the legitimacy of the constitutional court increased only among people sympathetic to the government in office, but decreased significantly among the general public.¹⁴ Likewise, it is important to note that in Bolivia there have been two elections of constitutional judges, in 2011 and 2017. In both, there was a very high number of invalid votes (59 and 65.8%,

¹¹ Tayler, Tom R., "How Do the Courts Create Popular Legitimacy? The Role of Establishing the Truth, Punishing Justly and/or Acting Through Just Procedures," *Albany Law Review*, vol. 77, 2014, pp. 101-143. Available at: "<https://ir.law.fsu.edu/articles/123>"; Lerner, Melvin J., *Critical Issues in Social Justice. The Social Psychology of Procedural Justice*, Springer New York, 1988; Tyler, Tom R. and Jackson, Jonathan, "Popular Legitimacy, and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement," *Psychology, Public Policy, and Law*, vol. 20, 1, 2013, pp. 78-95. Available at: "10.1037/a0034514".

¹² Woodson, Benjamin, "The Two Opposing Effects of Judicial Elections on Legitimacy Perceptions," *State Politics & Policy Quarterly*, vol. 17, 2017, pp. 24-46. Available at: [«https://doi.org/10.1177/1532440016647410»](https://doi.org/10.1177/1532440016647410).

¹³ Bam, Dmitry, "Voter Ignorance and Judicial Elections," *Kentucky Law Journal*, vol. 102, issue 3, 2013-2014, pp. 553-599. Available at: "<http://digitalcommons.maine.gov/faculty-publications/27>"; McKenzie, Mark J., Rugeley, Cynthia R. and Unger, Michael A., "Investigating How Voters Weigh Issues and Partisanship in Judicial Elections," *American Review of Politics*, vol. 33, 2012-2013. Available at: "<https://doi.org/10.15763/issn.2374-7781.2012.33.0.295-321>"; Lim, Claire S.H. and Snyder, James M., "Is more information always better? Party cues and candidate quality in U.S. judicial elections," *Journal of Public Economics*, vol. 128, 2015, pp. 107-123. Available at: [«https://doi.org/10.1016/j.jpubeco.2015.04.006»](https://doi.org/10.1016/j.jpubeco.2015.04.006).

¹⁴ Driscoll, Amanda and Nelson, Michael J., "Judicial Selection and the Democratization of Justice: Lessons from the Bolivian Judicial Elections," *Journal of Law and Courts*, vol. 3, 1, 2015, pp.115-148, doi: "10.1086/679017".

respectively) as a sign of rejection of the nominated candidates. Therefore, the balance of these exercises suggests a low effective electoral participation that does not contribute to the social legitimization of the institution, as intended.¹⁵

In Bolivia, new judicial elections were to be held in December 2023, but since the ruling party did not have a majority, it was not possible to define the list of candidates.¹⁶ This has led to a political and judicial crisis that has resulted in extensions to the election, publication and repeal of special laws and citizen mobilizations.

ii. The popular election of judges does not guarantee a higher quality of judicial decisions.

Reform proposal

The initiative proposes the election by popular vote of justices of the Supreme Court of Justice of the Nation, circuit magistrates, district judges, local magistrates, local judges, magistrates of the Judicial Disciplinary Tribunal and magistrates of the Electoral Tribunal. In this regard, it is proposed to amend Articles 94, 95, 96, 97, 99, 100, 116 and 122 of the CPEUM. Specifically, the explanatory memorandum states, "that the judicial system has not been able to respond to the demands of society and, therefore, to guarantee the population a prompt and expeditious justice" and that, therefore, the judicial reform is necessary to correct this situation.

Problems identified

Argument 1. The election of judges leads to judicial decisions that obey the preferences of those who nominate and elect them.

¹⁵ Due Process Foundation, *Judicial elections in Bolivia: did we learn our lesson*, Washington DC, 2018, p. 20. Available at: "https://www.dplf.org/sites/default/files/informe_dplf_elecciones_judiclaes.pdf".

¹⁶ Molina, Fernando, "La elección popular de jueces en Bolivia se atasca en el Congreso", *El País*, August 30, 2023. Available at: "<https://elpais.com/internacional/2023-08-31/la-eleccion-popular-de-jueces-en-bolivia-se-atasca-en-el-congreso.html>".

Having elected judges does not guarantee that better decisions will be made in terms of access to justice. The judicial function necessarily involves making unpopular decisions, given that through sentences the claims of one party are confirmed and those of another are denied; this dynamic is inherent to the function itself. This is because the purpose of the judicial function is not to produce popular decisions, but rather correct decisions that are in accordance with the law and that resolve the conflicts that arise. Stability in office makes it possible for judges to make correct decisions, even though they may be unpopular or contrary to the interests of various groups.

Conditioning the job stability of judges on political-electoral cycles can have a negative influence on the quality of their decisions. This is because it opens the possibility that they may prioritize decisions that please their future constituents or the political, economic and/or social groups that support them instead of making correct and lawful decisions. This, as the evidence shows, can occur in the case of constitutional judges as well as in the case of judges of first and second instance.

Argument 2. The election of justices of the SCJN may hinder the continuity in the protection of the rights and freedoms of individuals.

In the specific case of the Supreme Court of Justice of the Nation, its decisions establish binding precedents for the entire national, federal and local judiciary. In this regard, it is important to recognize that recent decisions have promoted the protection of the rights and freedoms of individuals, for example, the right to a widow's pension for same-sex couples, the right to social security for domestic workers or the right of children to be free from *bullying* in schools, among others.

In this context, the immediate change in the composition of this court compromises the stability of relevant precedents; this can be risky in aspects that have been controversial from a moral perspective and compromises the permanence of these decisions for fear that they may displease some sector of the citizenry or the political or economic interests of the persons who will propose the judges.

Empirical evidence for the arguments

The case of the United States

Studies in the United States, where some of the local judges are elected, have shown that judges tailor their decisions to try to retain office; this is especially noticeable in criminal proceedings. One study found that judges tailor their decisions to the ideological affinities of their constituents; that is, judges in liberal districts were more lenient in criminal sentencing, while judges in conservative districts imposed harsher sentences.¹⁷

Similarly, judges tend to adopt more punitive stances as elections approach: one study found that judges tend to impose longer sentences and death sentences as the election approaches,¹⁸ and another study showed that incarceration rates increase in the last six months of the election cycle (especially for defendants of African descent in largely white and conservative communities).¹⁹

The case of Bolivia

In Bolivia, where constitutional judges have been elected since 2011, the Constitutional Court, made up of elected judges, ruled to allow the then president to run for a third time despite the existence of an express prohibition in the Constitution. Subsequently, in a 2017 decision the Constitutional Court overturned a constitutional prohibition that enabled the president to participate again in elections in 2019.²⁰

¹⁷ Boston, Joshua and Silveira, Bernardo S., "The Electoral Connection in Court: How Sentencing Responds to Voter Preferences," *Journal of Law and Courts*, vol. 12, no. 1, 2024, pp. 23- 44. Available at: « <https://doi.org/10.1017/jlc.2022.19>».

¹⁸ Abrams, David, Galbiati, Roberto, Henry, Emeric and Philippe, Arnaud, "Electoral Sentencing Cycles Get access Arrow," *The Journal of Law, Economics, and Organization*," vol. 39, no. 2, 2023, pp. 350- 370. Available at: " <https://doi.org/10.1093/jleo/ewab037>."; Dippel, Christian and Poyker, Michael, "Rules versus norms: How formal and informal institutions shape judicial sentencing cycles," *Journal of Comparative Economics*, vol. 49, no. 3, 2021, pp. 645-659, Available at: "<https://doi.org/10.1016/j.jce.2021.02.003>"; Berry, Kate, "How Judicial Elections Impact Criminal Cases," *Brennan Center for Justice at New York University School of Law* 2015. Available at: "https://www.brennancenter.org/sites/default/files/2024-01/written_materials_-_panel_6.pdf".

¹⁹ Park, Kyung H. , "The Impact of Judicial Elections in the Sentencing of Black Crime," *Journal of Human Resources*, vol. 52, no. 4, 2017, pp. 998-1031. Available at: « <https://doi.org/10.3368/jhr.52.4.0415-7057R1>».

²⁰ Vivanco, José Miguel and Pappier, Juan, "Evo Morales manipulates human rights to cling to presidency," *Human Rights Watch*, November 9, 2017. D is available at: "<https://www.hrw.org/es/news/2017/11/09/evo-morales-manipula-los-derechos-humanos-para-aferrarse-la-presidencia>"; Driscoll, Amanda and Nelson, Michael J., "Chronicle of an Election Foretold. Bolivia's 2017 judicial elections," *Politics and Government*, no. 1, 2019, pp. 41-64.

iii. Popular election does not guarantee that those elected have the necessary knowledge and skills to perform the judicial function.

Reform proposal

The initiative proposes the election by popular vote of justices of the Supreme Court of Justice of the Nation, circuit magistrates, district judges, local magistrates, local judges, magistrates of the Judicial Disciplinary Tribunal and magistrates of the Electoral Tribunal. Various articles (95, 97, 99) establish criteria for access to judicial election;²¹ states in the Explanatory Memorandum that, in addition to such requirements, the selection of judges must take into consideration their abilities, ethical and moral soundness, sensitivity and closeness to the problems and concerns of society.

Problems identified

The judicial career guarantees that the selection of judges is based on merit, objective processes and rigorous quality standards.

The judicial career is the system in charge of the entry, training, evaluation, promotion, permanence and dismissal of Judicial Branch personnel. Through a system of this type, with competitive examinations, academic programs, evaluations and incentives, the selection of suitable profiles to hold different jurisdictional positions is encouraged, based on merit and through rigorous, transparent and objective processes. Likewise, the judicial career fosters a sense of identity and commitment to the role of the Judicial Branch: to protect rights and impart justice in an effective and sensitive manner to people's circumstances.

Although one of the main objectives of the judicial career is to develop the technical skills and specialization necessary to perform the judicial function, it does not end there. It also has as a fundamental component the teaching of certain administrative and managerial skills

²¹ Be a Mexican citizen, in full exercise of rights, 35 years of age for Justices and magistrates, and 30 years of age for judges, have a law degree with five years of seniority, five or ten years of professional practice, good reputation, without criminal conviction, with at least one or two years of residence in the country and without having held a series of state offices or positions.

that cannot be overlooked for the proper performance of judicial work, as well as raising awareness so that judicial officials act with empathy towards the people who come to them.

Therefore, the role of training through judicial schools is essential, as it is the ideal space to contribute to the professionalization of judicial officials. The judicial career is responsible for strengthening knowledge, skills and competencies, both in the different areas of law as well as those specific to the jurisdictional function and those related to administrative and judicial management. In this sense, the requirements provided by the initiative are insufficient to ensure the knowledge and skills necessary to perform the judicial function among those who are elected.

Judicial schools and institutes do not have the capacity to train all persons elected to the judicial function.

The immediate replacement of all federal and local judges (around 7,000) poses risks related to education and training, which could result in significant lags in the administration of justice, as well as in deficient judicial sentences. Although Mexico has a Federal Judicial Training School, as well as judicial training institutes in the 32 states, the fact is that these centers are not sufficient to train all the people who could enter judicial positions at the same time.

On the other hand, the proposal for the immediate replacement of all judges eliminates an essential element in the training of judicial personnel: socialization and learning from the experiences of other judges and the study of their cases. As in any field, it is essential to share experiences and learn through practice knowledge that is transmitted from one person to another. Amalia Amaya Navarro²² points out that judicial socialization is crucial, since judicial virtues are acquired through imitation and habit, so a central part of an education oriented to the development of virtues must consist of interaction among people and the study of cases decided by exemplary judges. The substitution of all judges at the same time is a proposal that would make it very difficult to continue with this type of learning.

Empirical evidence for the arguments

²² Amaya Navarro, María Amalia , *Temas Selectos de Derecho Electoral 6. Una aproximación a la ética jurídica*, Mexico, Tribunal Electoral del Poder Judicial de la Federación, 2011.

The case of Mexico

In an investigation conducted by México Evalúa,²³ it was found that the judicial career has had a positive impact on the professionalization of judicial officials, and that its consolidation is a key element for the Rule of Law. The same study identified three levels of impact of the judicial career that demonstrate the first argument:

- Institutional level: the judicial career provides legitimacy to the judiciary and contributes to its efficiency to the extent that the processes of selection, promotion, evaluation, and permanence are clearly established and tend to the professionalization of the institution's personnel.
- Individual level: the judicial career provides members of the Judicial Branch with jurisdictional guarantees that allow them to be certain that the mechanisms for selection and promotion, evaluation, ratification and permanence are based on meritocratic criteria and not on arbitrary decisions. Therefore, the judicial career also involves two important elements: job security and immobility, since it is based on the idea that there is the possibility of climbing the ladder to reach the top.
- Social level: the judicial career guarantees the right of access to justice because it allows the population to have independent judges, with suitable profiles for the position, selected on merit, with transparent and objective criteria.

iv. The popular election will affect access to justice and the legal security of the persons involved in judicial proceedings.

Reform proposal

The initiative proposes that all judges of the Federal Judicial Branch will conclude their term of office on the day on which the persons elected through the extraordinary electoral process are sworn in; this is established in the second and seventh transitory articles. Likewise, it indicates, in articles 116, section III, and 122, section A, section IV, that the

²³ México Evalúa, *20 recommendations to consolidate the judicial career*, 2021, pp. 5-17.

implementation of the reform at the local level will be carried out according to the same bases as the Judicial Power of the Federation. It states that the election modalities and the duration of the term of office of the judges of the local judicial powers will oversee by the states in their constitutions and laws.

Problems identified

Argument 1. The popular election of judges will immediately and severely disrupt all criminal proceedings in the country.

The abrupt change of the entire federal judiciary will immediately interrupt all active criminal proceedings in the country, which will probably imply the loss of relevant evidence and irreparably affect the rights of victims and defendants. From one day to the next there will be new criminal judges in charge of oral criminal proceedings already underway; the new judges will have to conduct oral hearings, without previous experience, and interact with prosecutors and expert defense attorneys, in cases they will not know in depth. This will later be replicated in the local judiciaries of the states.

The immediate substitution of criminal judges will affect the principle of continuity, included in the Constitution, which mandates that the proceedings take place without interruptions. It will also violate the principle of immediacy, also established in the Constitution, which mandates that the judge must be present at all hearings and that the same person must attend all procedural acts at the same stage. Thus, for example, the judge who decides on the control of the detention of a person, as the first act within the initial stage, must be the same person who decides on the last act of this stage.²⁴

The initiative will make it impossible to comply with this principle and, in this regard, the SCJN has established that the change of a judge within the same procedural stage entails the reinstatement of the proceeding. Therefore, the substitution of criminal judges may result in the reinstatement of the current criminal proceedings and consequently in a severe delay in their conclusion. In addition, this reinstatement may imply that certain evidence

²⁴ Several months may validly elapse between the completion of certain acts of the criminal proceeding. For example, the period for the complementary investigation implies a separation of up to six months between the moment of its authorization and the moment in which the judge or judge of control could issue a dismissal, if so required, or the Prosecutor's Office could present its accusation.

loses quality or validity due to the passage of time, which in turn could lead to the sentence issued in the oral trial not having sufficient and adequate information to resolve the case.

Argument 2. The popular election of judges will seriously affect the continuity of active judicial processes.

If judges are replaced immediately, they will need time to learn the details of the cases already in process and to develop technical skills for the proper management of the judicial office. It should be noted that each of the more than 1,500 federal judges solves, on average, 19 cases per week. It is very likely that the lack of technical skills of the new judges and the need for training will result in delays in the solution of cases already in process (about 1,500,000 federal cases in the country).

In this regard, although the reform proposes the obligation to solve cases within a maximum of six months, compliance would be unfeasible if the judiciary does not have sufficient knowledge to do so, which would lead to a significant backlog in the administration of justice or to the need for the new Judicial Disciplinary Tribunal to sanction elected judges for their lack of experience.

In 2021 there was an important change in the Mexican jurisprudence system and a transition to a system of precedents that includes thousands of mandatory criteria. People without a broad knowledge of the mandatory jurisprudence issued by the Supreme Court and the regional plenary courts will require a long time to become familiar with them, in any legal matter. The elected judges will hardly have this knowledge, so their decisions could easily deviate from binding criteria, affecting the rights of the parties in the proceedings, legal certainty and directly violating Article 94 of the Constitution. In this scenario, there will be no certainty as to the rules to be applied by the new courts.

The issue is aggravated if one takes into consideration the importance of knowledge in interpreting and applying international human rights norms contained in treaties, the jurisprudence of the Inter-American Court of Human Rights and other binding instruments. This problem will later be replicated in the local judiciaries of all the states.

Empirical evidence for the arguments

The case of Mexico

According to the most recent data, during 2023 the Federal Judicial Branch processed 1,413,724 cases, out of a total of 1,473,133, which were submitted to it. Regarding the number of judges, by the end of 2023 the PJF had 981 magistrates and 599 federal judges. This means that, on average, each judge solved 895 cases during that year.

At the state level, in 2022, 2,154,768 cases entered the state judiciaries. These cases were distributed among 627 magistrates and 4,398 local judges. On average, each local judge resolved 428 cases during the year. In summary, the immediate replacement of federal and local judges will jeopardize the continuity and conclusion of approximately 3,000,000 cases that are tried annually in Mexico.

b. Problems associated with the process of choosing judges.

i. The election will lead to the unjustified removal of federal and state judges.

Reform proposal

The second transitory article of the initiative establishes that justices, circuit magistrates, district judges, magistrates of the Electoral Tribunal of the Judiciary of the Federation and councilors of the Judiciary will conclude their term of office on the date on which the persons resulting from the extraordinary election are sworn in.

Problems identified

Argument 1. The dismissal without just cause of all currently active federal judges violates international obligations of the Mexican State.

The initiative proposes to remove in a single moment the entire federal judiciary without any justified and individualized reasons. This flagrantly violates the standard set by the Inter-American Court of Human Rights (IACHR). This international court has insisted that the decision to remove judges from office must be based on the permitted grounds, such

as having completed the term of office or period of office, reaching retirement age, having been proven to have committed serious disciplinary offenses, or having been incompetent in the performance of their duties.²⁵ In addition, the IACHR Court has said that job stability entails the guarantee that, in the event of arbitrary dismissal or termination, the worker may appeal the decision before the relevant authorities.

Therefore, it is likely that the arbitrary dismissals will result in legal action by the affected judges. The removal of the entire Mexican judiciary means the dismissal of almost 1,580 federal judges (magistrates and judges) and more than 5,000 state judges (magistrates and judges). This could lead, in the first place, to a high-pressure scenario for the justice system, as there is a possibility that around 6,580 people will file legal actions. The substitution also poses a complicated economic situation for the granting of the corresponding pensions or indemnities. Secondly, it is likely that many cases will be brought before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, which could result in condemnatory sentences against the Mexican State.

ii. High and unnecessary costs derived from the popular election process of the federal and state judiciary.

Reform proposal

The initiative proposes the election by popular vote of justices of the Supreme Court of Justice of the Nation, circuit magistrates, district judges, local magistrates, local judges, magistrates of the Judicial Disciplinary Tribunal and magistrates of the Electoral Tribunal. In this regard, it is proposed to amend Articles 94, 95, 96, 97, 99, 100, 116 and 122 of the CPEUM.

The sixth transitory provision proposes that during the transition period for the judges of the Disciplinary Tribunal to be sworn in, the Federal Judiciary Council will implement a work plan for the transfer of material, human, financial and budgetary resources to the

²⁵ See I/A Court H.R., Case of Quintana Coello et al. v. Ecuador (Preliminary Objections, Merits, Reparations and Costs), Judgment of August 23, 2013, Series C No. 266.

Judicial Disciplinary Tribunal with respect to the disciplinary functions of the members of the Federal Judiciary, and to the judicial administration body with respect to its administrative, judicial career and internal control functions.

Problems identified

The electoral process to elect judges will represent a very high and unnecessary cost to the treasury.

According to the civil organization *Laboratorio Electoral*, "the electoral budget for 2024 is \$60,451,351,931". In the 2024 electoral process, a little more than 19,000 positions of popular election will be disputed. In the case of the election of the national judiciary, around 7,000 positions would have to be elected out of a universe of more than 40,000 candidates.²⁶ The cost of the process would be about half the cost of the federal elections.

This is an unnecessary budgetary allocation, since there are more effective, objective and reasonable mechanisms for the selection of judges, which guarantee their independence and impartiality and allow these resources to be used for substantive improvement of the judicial function or other strategic areas of the State.

Argument 2. The removal of the current judges may result in high costs associated with legal conflicts and the payment of indemnities and acquired rights.

The proposal to dismiss all female and male judges (approximately 7,000) at the same time generates a high risk that they will file labor lawsuits or litigation in the international arena, which would imply a significant cost to compensate them for the impact on their guarantees of tenure and their acquired labor rights. On the other hand, there is a risk that unionized personnel in courts and tribunals may suffer unjustified dismissals. It is likely that judicial support personnel (clerks, court clerks and court officers, among others) will not be evaluated by the new judges according to the quality of their work, but rather

²⁶ See Angel, Arturo, "Plan C implicaría mega elección de más de 7 mil jueces y magistrados entre casi 44 mil candidatos". Available at: "<https://wradio.com.mx/2024/06/19/plan-c-implicaria-mega-eleccion-de-mas-de-7-mil-jueces-y-magistrados-entre-casi-44-mil-candidatos/>". [accessed June 23, 2024].

according to their ideological affinity, their usefulness to achieve personal or group objectives or based on other political criteria.

There are approximately 54,000 people working in the Federal Judiciary and a massive dismissal would represent an unusual number of labor lawsuits and a complex financial operation for the immediate payment -to which they are entitled- of their severance insurance and other benefits derived from the violation of labor rights.

iii. The process of selecting candidates does not guarantee that the persons chosen are suitable to perform the judicial function.

Reform proposal

The initiative proposes the election by popular vote of justices of the Supreme Court of Justice of the Nation, circuit magistrates, district judges, local magistrates, local judges, magistrates of the Judicial Disciplinary Tribunal and magistrates of the Electoral Tribunal.

Article 96 establishes the direct and secret election on the first Sunday of June. In the case of justices, the Executive Branch shall nominate 10 persons, the Federal Congress shall nominate 10 persons and the Judicial Branch shall nominate 10 persons. In the case of magistrates and federal judges, each branch will nominate two persons per judicial circuit. Specifically, the Explanatory Memorandum states that the selection of judges "must consider, in addition to their abilities, their ethical and moral soundness, their sensitivity and closeness to the problems and concerns of society".

Problems identified

Argument 1. The method of designating candidates to judicial positions favors their proximity to political authorities, political parties or judicial leaders.

The judicial career and judicial immobility mean that members of the judiciary do not need to be linked to associations, parties or political authorities to ensure job opportunities or

professional development. Their promotion in the judicial career depends mainly on their ability to pass exams and courses.

The system proposed by the initiative establishes that each of the branches of government proposes one third of the candidates for each position. This favors that the persons proposed by the Executive and Legislative branches (two thirds of each group of candidates) require a certain degree of partisan or political ties to be nominated. This will probably have an impact on the profile of the nominees, since their chances of being considered will increase with their closeness to these political authorities.

Even in the case of persons proposed by the Judiciary, it is likely that their knowledge and technical skills are secondary variables, and their nomination depends on their proximity to the judicial leadership. This will be a significant impediment for profiles of competent and virtuous lawyers, but lacking the political skills that would allow them to access the nominations. Ultimately, these conditions may favor the arrival of political/partisan profiles to judicial positions and inhibit the nomination of technical profiles without political protagonism.

The probable proximity of candidates to political authorities, political parties or judicial leaders will affect the perception of their impartiality.

The legitimacy of the judiciary depends largely on their being perceived as impartial institutions that build their decisions on public reasons and not on personal preferences or affinities -political, religious or of any other kind-. This is justified because the judges make decisions linked to the most important values and assets of all people, such as their life, their family, their property and their liberties. In this sense, the impartiality of the courts must be both real and apparent. The very likely closeness of the nominees to the Executive Branch and Congress (therefore, to certain political parties) will undermine the perception of impartiality among the citizenry and may generate suspicions about their ability to decide based on facts and law.

Empirical evidence for the arguments

The case of Bolivia

A study conducted in Bolivia, where constitutional judges are elected, showed that the legitimacy of the constitutional court increased only among people sympathetic to the government in office, but decreased significantly among the general public.²⁷ Likewise, during the first elections held in 2011, the Mixed Commissions of the Plurinational Legislative Assembly (Legislative Branch), in charge of evaluating the profiles of individuals to verify that they met the requirements demanded by law, did not use a homogeneous work methodology, which led to errors in the verification of requirements and, ultimately, that those who were nominated were not the ideal profiles.²⁸

iv. The process of selecting candidates for reelection compromises their impartiality during the performance of their duties.

Reform proposal

The initiative proposes that magistrates and judges serve for nine years and that they may be reelected "each" time their term ends, without further details on the rules for reelection. This proposal is found in Article 96.

Problems identified

Argument 1. The initiative does not define the number of possible reelections, which generates uncertainty for the judges regarding their future employment.

The initiative does not establish the possible number of reelections for judges and merely mentions that they are eligible "each time their term ends". This will generate uncertainty for these persons with respect to their future employment. In this regard, as has been insisted, stability in judicial office makes it possible for judges to make correct and lawful

²⁷ Driscoll, Amanda and Nelson, Michael J., "Judicial Selection and the Democratization of Justice: Lessons from the Bolivian Judicial Elections," *Journal of Law and Courts*, vol. 3, 1, 2015, pp. 115-148. .

²⁸ OAS, C-052/12, Informe Verbal del Jefe de Misión Presidente Martín Torrijos, Misión de Observación Electoral en Bolivia, Washington DC, November 10, 2011.

decisions, even though they may be unpopular or contrary to the interests of political, economic and social groups.

Argument 2. The initiative does not define the nomination process for reelection, which could lead to closeness during the term of office with the persons or groups that nominated them.

The initiative does not specify whether the judges in office are considered for automatic reelection or whether they must be nominated by the authorities, again, to opt for reelection. In the second scenario, the tenure of elected judges would be subject not even to the vote of the citizens, but to the opinion of the authorities that nominated them in the first place. This will probably compromise their decisions, especially in cases of direct interest of the Executive, Congress or the Judiciary to the detriment of the quality of the decision. In addition, it is likely that the judges will make use of the human and institutional resources of the jurisdictional bodies to promote their reelection.

Empirical evidence for the arguments

The case of Switzerland

In the case of Switzerland - one of the examples mentioned in the initiative, where judges are elected by Parliament and only a minority by the citizens - there have been cases of judges initially proposed by political parties who were not supported in their reelection due to their decisions, without these being illegal or wrong. For example, Judge Yves Donzallaz, who made a progressive decision on migration that did not please the party that nominated him.²⁹

In Switzerland itself, because of these problems, an initiative has been presented for an Expert Commission to propose judges based on their knowledge and skills,³⁰ and a recent report by the Group of States against Corruption of the Council of Europe (GRECO) has

²⁹ Peter, Theodora, "The independence of justice under question," *Swiss Community*, September 30, 2021. Available at: "<https://www.swisscommunity.org/es/news-medios/panorama-suizo/articulo/la-independencia-de-la-justicia-en-tela-de-juicio>".

³⁰ Justiz Initiative, "The Justice Initiative Brings Justice." Available at: "<https://www.justiz-initiative.ch/startseite.html>".

determined that the current election system in Switzerland does not guarantee quality and efficiency in its judicial decisions.³¹

v. The popular election of judges may place them in a situation of vulnerability to political violence and/or organized crime.

Reform proposal

The initiative proposes the election by popular vote of justices of the Supreme Court of Justice of the Nation, circuit magistrates, district judges, local magistrates, local judges, magistrates of the Judicial Disciplinary Tribunal and magistrates of the Electoral Tribunal.

Article 96 proposes a campaign period for candidates, during which they will have the right to time on radio and television, as well as the right to participate in debate forums organized by the National Institute of Elections and Consultations. The initiative states that public or private financing of their campaigns will be prohibited, as well as the contracting by themselves or through an intermediary of spaces on radio and television. It also establishes that political parties may not carry out acts of proselytism.

Problems identified

Argument 1. The current security conditions in the country represent a threat to the integrity of candidates for judicial office.

Since 2013, the UN Rapporteur expressed its concern about the possible interference of organized crime in justice institutions through corruption and threats to public

³¹ Council of Europe Group of States against Corruption, "Fourth Evaluation Round of the Second Compliance Report on the Prevention of Corruption in respect of Members of Parliament, Judges and Prosecutors" (Appendix to the Second Compliance Report adopted by GRECO at the 92nd Plenary Meeting 2 December 2022). Available at: "<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ab2e3a>".

servants. Faced with such facts, the Judiciary Councils, both federal and state, have implemented special security measures to protect the conditions of judges.³²

The proposal to appoint judges through popular elections may place them in a situation of vulnerability to political violence or organized crime. Like political party candidates, candidates for judicial positions run the risk of suffering aggressions during the campaigns, such as threats, intimidation, harassment, and even homicide.

Empirical evidence for the argument

Mexico

Violence associated with political campaigns has escalated due to the presence of criminal organizations. The 2018, 2021 and 2024 electoral periods were recorded as the most violent in the country. According to the monitoring of political-criminal violence "*Votar Entre Balas*" (Voting Between Bullets), a total of 73 candidates were murdered during that period and 875 officials and family members suffered direct attacks.³³ The year 2023 was the most violent year since 2018 and registered a total of 574 aggressions by organized crime against people linked to politics and public servants of federal, state and municipal governments. The states with the most aggressions were Guerrero, with 91; Guanajuato, with 64; Zacatecas, with 43; Veracruz, with 42; and Michoacán and Chiapas, with 38 each.

The phenomenon of violence and insecurity has influenced the electoral participation of Mexicans.³⁴ For example, in the municipality of San Pedro Tlaquepaque, Jalisco, electoral participation dropped from 54 to 21% because the alderman suffered an attack by organized crime in 2018. Another case was in Apaseo el Grande, Guanajuato, which

³² United Nations Commission on Human Rights, A/HRC/17/30/Add.3, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to Mexico, April 18, 2011, paras. 51-53.

³³ Data Cívica, "Periodo electoral 2023-2024 cerró con 34 asesinatos y otras 95 agresiones a candidaturas", 10 June 2024. Available at: "[Comunicado: Periodo electoral 2023-2024 cerró con 34 asesinatos y otras 95 agresiones a candidaturas \(datacivica.org\)](https://datacivica.org/comunicado-periodo-electoral-2023-2024-cerro-con-34-asesinatos-y-otras-95-agresiones-a-candidaturas)."

³⁴ Hernández-Gutiérrez, José Carlos and Recuero-López, Fátima, "Violencia, inseguridad y participación electoral en México", *Revista Española de Investigaciones Sociológicas*, no. 185, 2024, pp. 79-96. Available at: "10.5477/ cis/reis.185.79-96".

had a drop from 50 to 39% of electoral participation due to the homicide of the candidate for councilman and two party militants in 2021.³⁵

The violence generated by organized crime has permeated the candidacies of political parties, as candidates have preferred to stop campaigning for their safety and that of their families. In total, the violence led to the resignation of more than 1,000 candidates.³⁶ There is no reason to assume that candidates for judicial office would be exempt from these dynamics.

vi. The popular election poses risks in terms of possible undue influence of private interests and/or organized crime. viii.

Reform proposal

The initiative proposes the election by popular vote of justices of the Supreme Court of Justice of the Nation, circuit magistrates, district judges, local magistrates, local judges, magistrates of the Judicial Disciplinary Tribunal and magistrates of the Electoral Tribunal.

Article 96 proposes a campaign period for candidates, during which they will have the right to time on radio and television, as well as the right to participate in debate forums organized by the National Institute of Elections and Consultations. The initiative states that public or private financing of their campaigns will be prohibited, as well as the contracting by themselves or through an intermediary of spaces on radio and television. It also establishes that political parties may not carry out acts of proselytism.

Problems identified

³⁵ Data Cívica, "Por cada agresión a candidatos baja 1.3% la asistencia a votar, revela Votar Entre Balas," February 16, 2024. Available at: "https://media.datacivica.org/pdf/Comunicado_Por_cada_agresi%C3%B3n_a_candidatos_baja_1.3_porcentaje_la_asistencia_a_votar_VotarEntreBalas.pdf".

³⁶ S. a., "Violence forced more than a thousand candidates to resign during the campaign: Laboratorio Electoral," May 31, 2024. Available in: "[Violencia obligó a renunciar a más de mil candidatos durante la campaña: Laboratorio Electoral - Proceso](#)".

Argument 1. Private or criminal interests may exert undue influence in the process of electing judges.

The election by popular vote of the persons in charge of imparting justice generates a risk of co-optation of jurisdictional bodies by private interests, such as large business groups or even criminal organizations. Although the initiative foresees control mechanisms to avoid the infiltration and influence of other actors in the electoral processes, the Mexican experience shows that these types of mechanisms have not been effective in preventing other actors from influencing or getting involved in the processes to favor their interests. The mechanisms foreseen by the initiative do not shield the electoral processes from such a possibility.

The proposed reform to the Judiciary establishes the National Institute of Elections and Consultations as in charge of organizing and overseeing the election process; however, as the Mexican experience shows, it is very difficult to ensure that candidates and political parties do not engage in proselytizing or receive illegal financing, especially in local environments controlled largely by organized crime organizations.

vii. The popular election of the members of highly specialized tribunals compromises their ability to resolve conflicts in an effective and impartial way.

Reform proposal

The initiative proposes the election by popular vote of justices of the Supreme Court of Justice of the Nation, circuit magistrates, district judges, local magistrates, local judges, magistrates of the Judicial Disciplinary Tribunal and magistrates of the Electoral Tribunal.

Various articles (95, 97, 99) establish the criteria for access to judicial election.³⁷ In addition to these requirements, the Explanatory Memorandum states that the selection of judges

³⁷ Be a Mexican citizen, in full exercise of rights, 35 years of age for justices and magistrates, and 30 years of age for judges, have a law degree with five years of seniority, five or ten years of professional practice, good reputation, without criminal conviction, with at least one or two years of residence in the country and without having held a series of state offices or positions.

must take into consideration their abilities, ethical and moral soundness, sensitivity and closeness to the problems and concerns of society.

Problems identified

Argument 1. The lack of technical specialization of the persons who sit on tribunals in specific matters will prevent cases from being resolved in an efficient manner.

Currently, in Mexico there are several courts that are highly specialized, either because they deal with highly technical matters or because they solve controversies whose procedure is particular and different from the others. The problems identified in previous sections regarding the popular election of judges are equally applicable to the members of the Electoral Tribunal, of the regional circuit plenary courts and of courts specialized in specific matters; however, it is important to highlight a particular dimension of this specialized jurisdictions.

The Electoral Tribunal oversees settling legal controversies of an eminently political nature. The regional plenary courts, which are specialized by subject matter, have as one of their main functions to resolve contradictions of criteria among the collegiate circuit courts of the same region. The courts and tribunals specializing in antitrust, broadcasting and telecommunications cases were created to provide greater certainty to economic agents by applying the complex regulatory frameworks governing telecommunications and antitrust activities in a more efficient and technically informed manner, to avoid contradictory criteria that complicate the application of the law and generate legal uncertainty.³⁸

It is evident that the knowledge, skills, experience and technical solvency of the judges in charge of these specialized tribunals must be greater. Their impartiality and independence must also be reinforced to deal with the interests involved in this type of conflicts and to comply with standards that guarantee the functioning of a democratic state.

Regarding the Electoral Tribunal, the European Commission for Democracy through Law (Venice Commission), in its Opinion on the draft constitutional amendments on the

³⁸ Decree amending and adding several provisions of Articles 6, 7, 27, 28, 28, 73, 78, 94 and 105 of the Political Constitution of the United Mexican States, regarding telecommunications. Published in the *Official Gazette of the Federation* on June 11, 2013.

electoral system addressed to Mexico,³⁹ pointed out that the proposed procedure of election by popular vote is unusual and creates risks for its status as an impartial body. For the Commission, the composition of electoral tribunals should not be based on political preferences and choices, but primarily on professional criteria.

It also argued that, even if the nomination of candidates required a certain evaluation of their experience, direct voting could easily lead to a situation in which members are politically oriented. On the other hand, in the *Report on the resolution of electoral conflicts*, the Commission held that "in electoral matters, as in other areas, the judiciary, including a specialized electoral jurisdiction, must represent a guarantee of impartiality of the whole process, and therefore must offer sufficient guarantees of independence".⁴⁰

With respect to courts specializing in economic competition, broadcasting and telecommunications, the Organization for Economic Cooperation and Development (OECD) and the Secretariat of Economy⁴¹ stated that the specialization of these jurisdictional bodies provides at least three advantages: 1) greater efficiency, through specialized procedures, personnel and judges, 2) greater uniformity, as a result of dealing with an exclusive jurisdiction over a particular area of law, and 3) quality decisions, due to greater expertise and experience in the correct application of the law to the facts.

The same organization pointed out that these judicial authorities are more frequently required to provide economic support for the arguments presented in the context of competition law, as well as to use economic methods that help to clarify the hypotheses in dispute and to present evidence that contributes to prove them.⁴² For this reason, it is essential that the persons who make up these tribunals have the necessary technical knowledge to resolve the matters presented to them.

The replacement of the total number of judges specialized in these matters jeopardizes the timely and technically correct resolution of the cases pending before these bodies at the time it occurs.

³⁹ Venice Commission, Opinion No. 1087/2022 on the draft constitutional amendments on the electoral system, October 24, 2022, paragraphs 38- 45.

⁴⁰ Venice Commission, Opinion No. 913/2018, Report on Electoral Dispute Resolution, paragraph 46.

⁴¹ OECD , *The resolution of competition matters by bodies of specialized and general jurisdiction: a balance of international experiences*, 2016, pp. 13-14.

⁴² *Ibidem*, p. 73.

3. New administrative body in the Federal Judicial Branch

a. Problems associated with the integration and operation of the new judicial administration body.

i. The annual negotiation of the PJF's budget compromises its independence.

Reform proposal

The reform centralizes in the judicial administration bodies (OAJ), at the federal and local levels, the management and administration of the budget of the judicial branches. The OAJs will oversee preparing the general budgets and submitting them to the competent body of the Executive for inclusion in the Federal Expenditure Budget. In this regard, it proposes to amend Articles 99 and 100 of the Political Constitution of the United Mexican States (CPEUM) and to establish transitory Article 6.

Problem identified

Argument 1. The annual negotiation of the Judicial Branch budget with the Executive Branch affects the human right to judicial independence.

In accordance with international human rights standards on the subject, the boards of administration of the Judiciary must have organizational management autonomy. This is a necessary but not sufficient condition for the protection of judicial independence.⁴³ The financial autonomy of the judiciary is an international obligation of States. It is a commitment to allocate sufficient resources to this public power, in a transparent manner and based on objective criteria. Therefore, this allocation should not depend on specific political situations or on other public authorities or entities.

The optimal way to protect the resources of the Judiciary from annual political haggling is to establish in the Constitution a fixed percentage of the budget. The UN Special

⁴³ Inter-American Commission on Human Rights (IACHR), *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, 2013. Available at: "<https://www.oas.org/es/cidh/defensores/docs/pdf/operadores-de-justicia-2013.pdf>".

Rapporteur on the Independence of Judges and Lawyers, in her visit to Mexico in 2011,⁴⁴ stressed that the functioning of the Judiciary and the administration of justice need adequate and independent budgets. She suggested that it is necessary to establish a fixed allocation of 2% of the general annual budget. This would help strengthen the financial independence of this power at the federal and state levels.

Empirical evidence for the argument

The case of Mexico

The Presidency of the Supreme Court informed that, according to the inflation expectations established by the Ministry of Finance at the end of 2023, the PJF requested a real increase of 4% with respect to the budget approved for 2023. The resources requested would translate, approximately, into the equivalent of 0.26% of the country's Gross Domestic Product. In the same exercise, legislators cut \$6,454,000 to the PJF and, therefore, its budget for 2024 represents the lowest amount of the six-year term due to a cut of 3.6% in real terms, in relation to 2023. The amount allocated for the Judicial Branch in 2024 is \$78,327,278,245 distributed as follows:

- Supreme Court of Justice of the Nation: \$5,787,183,598.00
- Council of the Federal Judiciary: \$68,917,261,195.00
- Electoral Tribunal of the Judiciary of the Federation: \$3,622,833,452

From a comparative perspective, the participation of the PJF in the country's public spending is notoriously lower than that of other Latin American countries. According to information presented by the Economic Commission for Latin America and the Caribbean (ECLAC), the regional average in 2020 was 0.56% of the Gross Domestic Product (GDP), while in Mexico it was the equivalent of 0.29% of the national GDP. That proportion decreased in 2023 to 0.26%.⁴⁵

⁴⁴ Report of the Special Rapporteur on the independence of judges and lawyers. Mission to Mexico, 2011. Available at: "www.hchr.org.mx/wp/wp-content/themes/hchr/images/doc_pub/informe_final_independencia_jueces_.pdf".

⁴⁵ In this regard, see "4. Expenditure policy of the legislative and judicial branches and autonomous entities". Available at:

ii. The decisions of the judicial administration body are unassailable, which may lead to arbitrariness or abuses.

Reform proposal

The initiative proposes that the decisions of the OAJ be final and unassailable and, therefore, no appeal may be filed against them. Consequently, it proposes to amend Article 100 of the CPEUM.

Problem identified

Argument 1. The unassailable nature of the OAJ's decisions violates international standards on the right of judicial officials to access to justice and to recourse against judicial and administrative decisions.

The reform's explanatory memorandum emphasizes the enormous concern that, at present, the CJF's decisions are unassailable. The text recalls that the United Nations Rapporteur for Judicial Independence recommended, during her visit to Mexico in 2011, that administrative decisions that have an impact on judges should be subject to review by another independent entity. However, the same initiative, in Article 100, exempts all decisions of the OAJ from any appeal against them.

Disregarding the right of judicial operators to challenge before an impartial review body the administrative decisions that affect them violates their human rights and international standards. The possibility of resorting to the *amparo* trial in these cases should not be unknown to any person, which includes individuals dedicated to the administration of justice.⁴⁶ It is often believed that matters of administration only impact issues ancillary to the administration of justice, but this is not the case. The decision on how resources are

"www.ppef.hacienda.gob.mx/work/models/7183r4rR/PPEF2024/oiqewbt4/docs/exposicion/EM_Capitulo_4.pdf".

⁴⁶ Inter-American Dialogue, *A threat to judicial independence Analysis of the constitutional reform initiative in Mexico*. Available at: "www.law.stanford.edu/wp-content/uploads/2024/05/ES_Informe-Mexico_Independencia-Judicial.pdf".

distributed directly affects the exercise of fundamental rights, in this case, of judicial personnel.

iii. The commission in charge of labor disputes in the PJF disappears and no replacement is established.

Reform proposals

The tenth transitory article of the initiative to reform the Political Constitution of the United Mexican States establishes that, for purposes of the last paragraph of article 100 of the reformed Constitution, the labor rights of the employees of the PJF will be respected. It specifies that the expenditure budgets of the corresponding fiscal year will consider the necessary resources for the payment of supplementary pensions, medical support and other labor obligations, under the terms established by the applicable laws or general working conditions.

The last paragraph of the amended Article 100 CPEUM provides that, within the scope of the Federal Judicial Branch, no funds, trusts, mandates or similar contracts that are not provided for by law may be created or maintained in operation.

Problem identified

Argument 1. The reform initiative does not establish which organ or entity will be competent to process labor disputes previously heard by the Labor Disputes Commission of the CJF.

Although the reform states that the labor rights of the PJF will be respected, the commission in charge of hearing such matters disappears in the initiative. The reform bill does not say anything about who will be the authorities responsible to handle such conflicts. With this, there would be no competent authority to handle labor and social security conflicts of such personnel.

Current regulations stipulate that the Labor Disputes Commission of the PJF is competent to hear labor disputes between Supreme Court and CJF officials and their employers.

With the disappearance of the CJF, the fate of the labor commission remains in limbo and, with it, the possibility of CJF and Supreme Court personnel to claim possible violations of their rights as workers.

In short, if the Disputes Commission was already highly questioned because it did not comply with international human rights standards, since it was not an impartial judge and did not have jurisdictional status, the precariousness of the rights as workers of this type of civil servants is deepened because the reform initiative does not specify which will be the competent entity to process these matters.

iv. There are no mechanisms for open justice and/or citizen participation in the judicial administration body.

Reform proposal

The opinion states that one of the main reasons for proposing the constitutional reform is the deep rift between society and the jurisdictional authorities.

Problems identified

Argument 1. The initiative fails to incorporate an open justice and citizen participation perspective.

An important part of open justice⁴⁷ is citizen participation, which is a "strategy to generate social legitimacy and citizen justice".⁴⁸ In Mexico, open justice practices and mechanisms for citizen participation in the judicial sphere have already been developed. From 2017 to

⁴⁷ This is defined as the existence of norms, policies and institutional capacities that guarantee transparency, access to information and citizen participation in jurisdictional and non-jurisdictional functions performed by judicial institutions, within a framework of integrity and accountability through innovation in the use of technologies. See Cortez Salinas, Josafat and Saavedra Herrera, Camilo, *Observatorio de Justicia Abierta 2019*, Mexico, INAI/UNAM, "Mensaje" de la comisionada Blanca Lilia Ibarra Cadena .

⁴⁸ EQUIS Justicia para las mujeres A.C., *Mecanismos de participación ciudadana en los poderes judiciales de México*, Mexico, EQUIS Justicia para las mujeres, 2023, p. 6.

2021, *Equis Justicia* documented 31 open justice exercises promoted by different courts in Mexico.⁴⁹

The reform initiative only contemplates one mechanism for citizen participation in the Judicial Branch: the popular vote. However, as mentioned above, this has several drawbacks and problems. Therefore, it is necessary to point out that it is problematic that although the initiative proposes the "democratization" of the Judicial Branch, it does not contemplate other mechanisms that bring citizens closer to the judiciary.

Argument 2. The initiative does not contemplate any collegiate body to collaborate with the OAJ in its administrative functions.

The opinion indicates that the initiative to reform the Judicial Branch is motivated by the distancing between society and the jurisdictional authorities. However, the initiative lacks mechanisms of open justice and/or citizen participation; it does not contemplate bodies or mechanisms that directly involve citizens in the administration and oversight of the judiciary. This omission is especially worrisome if we consider that several judicial powers already have such bodies (State of Mexico,⁵⁰ Oaxaca⁵¹ and Coahuila).⁵²

⁴⁹ EQUIS Justicia para las mujeres A.C., *Modelo de justicia abierta feminista. Primeros pasos para la igualdad y no discriminación en los Poderes Judiciales*, Mexico, EQUIS Justicia para las mujeres, 2023, p. 34.

⁵⁰ The Judicial Branch of the State of Mexico has an Accessible and Inclusive Advisory Council, which is a body "in charge of giving opinions, proposing and advising the Judicial Branch of the State of Mexico in matters related to policies and actions that contribute to the effective social inclusion, participation and accessibility of judicial servants and service users with disabilities. It is formed with members of the Judicial Branch of the State of Mexico, but also includes members of three public, social or private institutions related to the issue of disability and two persons representing the group of persons with disabilities. Agreement of the Plenary of the Judiciary Council of the Judicial Branch of the State of Mexico, in ordinary session of October 16, 2023, approving the creation of the Accessible and Inclusive Advisory Council of the Judicial Branch of the State of Mexico. Available at: "<https://legislacion.edomex.gob.mx/sites/legislacion.edomex.gob.mx/files/files/pdf/gct/2023/octubre/oct261/oct261c.pdf>". [Accessed June 18, 2023].

⁵¹ The Judicial Branch of the State of Oaxaca has a Consultative Council, which is a participation mechanism that involves the citizenry. It is made up of civil society organizations and serves as a specialized and consultative body to generate guidelines, projects and activities in the areas of human rights, gender and transparency in the Judicial Branch of Oaxaca. See Judicial Branch of the State of Oaxaca, "Buenas prácticas en Oaxaca consolidan la justicia abierta," Wednesday, November 11, 2020. Available at: "<https://www.tribunaloaxaca.gob.mx/Home/getPublicacion?idInformacion=214037>". [Accessed June 18, 2024].

⁵² Similarly, there is the Judicial Observatory of the Judicial Branch of the State of Coahuila, which is attached to the Presidency of the Superior Court of Justice. It is a citizen body for consultation and support to the judicial branch of the state. It also contributes "in the supervision and monitoring of the

4. Court of Judicial Discipline

a. Problems associated with the Court of Judicial Discipline

i. The popular election of the Tribunal's judges compromises its independence and impartiality.

Reform proposals

The initiative proposes eliminating the Federal Judiciary Council (CJF) and placing the oversight and discipline of public servants of the Federal Judicial Branch in a Judicial Disciplinary Tribunal, composed of five magistrates elected by popular vote. For each of the positions of magistrate, the citizens may elect from a list of 30 candidates, of which 10 will be proposed by the Federal Executive, five by each House of Congress, by a qualified vote of two thirds of the legislators present, and 10 by the Plenary of the Supreme Court of Justice of the Nation, by a majority of six votes.⁵³

The Explanatory Memorandum of the initiative states that the creation of the Court of Judicial Discipline responds to the low rate of complaints, prosecution, trials and sanctions against judicial officers, despite the "generalized knowledge of inappropriate behavior". The opinion of the Constitutional Points Commission adds that the performance of the Judiciary Council in disciplinary matters has been questionable because acts of corruption persist, as well as "unjustified delays and delays in the attention and conduct of trials".

work of the jurisdictional and non-jurisdictional bodies of the Judicial Branch to identify problems in the operation of the same and formulate, if necessary, recommendations and proposals for their better operation. It has a General Technical Council, Regional Chapters and Citizen Observers. The General Technical Council is made up of members of the private sector and academia. The positions are honorary. The Citizen Observers are an auxiliary body of the General Technical Council and the Regional Chapters. The Citizen Observers are citizens". Judicial Branch of the State of Coahuila de Zaragoza, "Observatorio Judicial Coahuila. Citizen Consultation Body. Available at: <https://www.pjecz.gob.mx/observatorio-judicial/quienes-somos/#:~:text=El%20Observatorio%20Judicial%20es%20un,y%20no%20no%20jurisdiccionales%20del%20Poder.>" [Accessed June 18, 2024].

⁵³ Pursuant to the third section of the second paragraph of Article 100 of the reform initiative, the Powers of the Union that do not send their nominations to the Senate within the term established in the call will lose the right to propose candidates to the Disciplinary Tribunal and will have no way to remedy the omission.

Problems identified

Argument 1. Judicial discipline procedures must respect the guarantee of independence and impartiality.

The Mexican Constitution⁵⁴ and the American Convention on Human Rights⁵⁵ recognize that every person facing proceedings that could affect his or her personal sphere has the right to be tried by an independent and impartial tribunal. These procedural guarantees extend to the disciplinary sphere and contain specific standards for judicial officials. In this regard, the Inter-American Court has established that all disciplinary proceedings brought against judges must be resolved in accordance with standards of conduct established in fair procedures that ensure the competence, objectivity and impartiality of the disciplinary body.⁵⁶

Argument 2. The intervention of other public authorities in the appointment of the authorities of the disciplinary tribunal transgresses the guarantee of independence and impartiality.

The reform initiative grants the Executive and the Legislature the power to select the persons who will compete in the elections to integrate the Disciplinary Tribunal, transgressing international and Inter-American standards that oblige the Mexican State to guarantee judicial officials the right to have disciplinary proceedings processed by an independent and impartial body.

One element that may lead to presume a lack of impartiality in disciplinary proceedings is precisely the dependence on other branches of government and the conditions for the exercise of the position. In the same sense, both the Inter-American Commission⁵⁷ and the Office of the United Nations Rapporteur for the Independence of Judges and

⁵⁴ See Articles 14 and 16 of the Political Constitution of the United Mexican States.

⁵⁵ See Article 8 of the ACHR, on judicial guarantees.

⁵⁶ Cf. I/A Court H.R., Case of López Lone et al. v. Honduras. Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs. Judgment of October 5, 2016. Series C No. 302. Case of the Constitutional Tribunal v. Peru. Judgment of January 31, 2001, paras. 74 and 84.

⁵⁷ IACHR, [Guarantees for the Independence of Justice Operators, Toward Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc. 44, December 5, 2013, para. 197.

Lawyers⁵⁸ have expressed that independence is compromised when there is interference by other branches of government in the appointment of persons who make up the judicial disciplinary bodies.

Empirical evidence for the arguments

The case of Bolivia

Bolivia is the only State in which the body in charge of disciplining judicial officials is made up of persons elected by citizen vote. The Council of the Judiciary was established in 2012 and its disciplinary powers extend to the ordinary, agro-environmental and specialized jurisdictions. Persons aspiring to the position of councilor of the magistrature may apply directly to the legislative body or may be proposed by social organizations, indigenous nations or peoples, public or private universities, professional associations and duly recognized civil institutions.⁵⁹ In this way, the public powers, particularly the Executive and Legislative, do not formally interfere in the selection of candidates for the Council who will compete through popular vote.

The members of the Council are empowered to appoint disciplinary judges, who in turn are competent to hear in the first instance disciplinary proceedings against judicial officials for minor and serious misconduct, in addition to gathering evidence for the substantiation of proceedings for disciplinary offenses considered to be very serious. When a judicial official is denounced for a very serious offense, the disciplinary judge draws lots to appoint two citizens registered in the electoral roll to form a Collegiate Disciplinary Tribunal.⁶⁰

The sentences issued by the disciplinary courts or tribunals may be appealed before the Disciplinary Chamber of the Council of the Magistracy.⁶¹ In other words, in Bolivia there is a complex system of judicial discipline, in which the Councilors elected by popular vote only intervene as a second instance in the case of disagreement of the officials with the

⁵⁸ Report of the Special Rapporteur on the independence of judges and lawyers Diego García Sayán, A/75/172 Independence of judges and lawyers, July 17, 2020, para. 31.

⁵⁹ Article 170 of Law 025. Available at: "<https://tsj.bo/wp-content/uploads/2019/11/ley-025-ley-del-organo-judicial.pdf>".

⁶⁰ Article 189 of Law 025.

⁶¹ *Idem*.

resolution of a disciplinary court or tribunal. The Mexican initiative does not comply with the standards and mechanisms of the Bolivian case.

ii. The coincidence between the terms of office of the members of the Tribunal and the authorities that nominate them is detrimental to their independence in the performance of their duties.

Reform proposals

According to the fifth paragraph of Article 100 of the reform initiative, the judges of the Disciplinary Tribunal shall hold office for six years, without the possibility of reelection. The renewal of the Tribunal will be staggered. The fifth transitory provision establishes that in the first integration of the Disciplinary Tribunal, the magistrates will have different terms, depending on the number of votes with which they are elected: three members of the Tribunal will hold office for five years, ending in 2030, while the remaining two will have a term of eight years, ending in 2033.

Problem identified

Argument 1. The duration of the term of office contemplated in the initiative compromises judicial independence.

International bodies such as the European Court of Human Rights⁶² and the Inter-American Court⁶³ have recognized that the duration of the term of office of the members of the disciplinary body or tribunal has an impact on its independence. It is essential to guarantee that there will be no overlapping in the exercise of the positions of the persons responsible for judicial discipline and the authorities that appoint them.

⁶² In this regard, see Report of the Special Rapporteur on the independence of judges and lawyers, Diego García Sayán, A/75/172, July 17, 2020, paras. 25-27.

⁶³ IACHR Court. *Case of Villarroel Merino et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2021. Series C No. 430.

Under the judicial reform initiative, a percentage of the magistrates of the Disciplinary Tribunal will be elected on the same day that the head of the federal Executive and the representatives of the Legislature are elected. The rest of the members of the Tribunal will conclude their term of office on the same date as the legislators, so that their replacements will be elected on the same day the legislature is renewed.

This increases the risk that the election of the magistrates of the Disciplinary Tribunal will be conditioned by party affiliations or political preferences. Not only will the Executive and the Legislature have broad discretion to select the candidates for the Tribunal, but it is also very likely that they will be part of the same political project or party to which the person who nominated them as candidates belongs.

iii. The mechanism for appointing members of the Tribunal does not guarantee that they have the ideal profile to perform the function.

Reform proposals

Article 100, third paragraph of the judicial reform initiative establishes that in order to be eligible for the position of magistrate of the Disciplinary Tribunal, candidates must meet the requirements set forth in Article 95 of the Constitution and be distinguished by "their professional capacity, honesty and honorability in the exercise of their duties".

Problem identified

Argument 1. The mechanism for appointing members of the Judicial Disciplinary Tribunal does not guarantee that they have the appropriate profile to perform the function.

By subjecting the appointment of the members of the Judicial Disciplinary Tribunal to the political-electoral cycles, it is highly probable that the citizenry will vote for the magistrates proposed by the authorities of the political party of their preference, leaving in second

place the professional capacity, suitability and ethics of the candidate.⁶⁴ This will lead to the court being made up of political/partisan profiles instead of technical ones.

This implies the risk that elected magistrates will channel disciplinary procedures to sanction judges whose decisions do not conform to the political preferences of the regime in power, or that the disciplinary system will be paralyzed by the coincidence of political affinities among the magistrates and judicial officials subject to scrutiny. If the disciplinary magistrates and judges belong to the same political formula and are elected in the same elections, they will have incentives to avoid sanctioning disciplinary offenses, so as not to affect the political preference of the electorate.

Empirical evidence for the argument

The case of Bolivia

In a 2024 report on the human rights situation in Bolivia, the Inter-American Commission noted that the judicial elections do not meet their objective of democratizing the composition of the high courts, since the nominations proposed by the Plurinational Legislative Assembly were made based on political criteria, leaving aside the capacity of the candidates.⁶⁵

The selection of candidates for judicial positions with political profiles like those of the parliamentary majority provoked the discontent of the population. As a reflection of this dissatisfaction, the percentage of invalid votes has been very high and the percentage of citizen participation in the elections continues to decrease, which strengthens questions about the legitimacy of the Bolivian model for the selection of judges.

⁶⁴ Inter-American Dialogue, *A Threat to Judicial Independence. Análisis de la iniciativa de reformas constitucionales en México*. May 2024, p. 15. Available at: "https://law.stanford.edu/wp-content/uploads/2024/05/ES_Informe-Mexico_Independencia-Judicial.pdf".

⁶⁵ IACHR Commission. Report "*Social Cohesion: the Challenge for the Consolidation of Democracy in Bolivia*", approved on January 20, 2024, chapter V. Justice System, p. 145 et seq. Available at: "<https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2024/053.asp>".

iv. Disciplinary procedures may be influenced by political preferences or affiliations.

Reform proposals

The function of the Judicial Disciplinary Tribunal shall consist of hearing, investigating, substantiating and, as the case may be, sanctioning judicial officials for 1) acts or omissions contrary to the law, the public interest or the proper administration of justice, including acts of corruption, influence peddling, nepotism, complicity or concealment of alleged criminals, and 2) sanctioning judicial officials whose decisions violate the principles of objectivity, impartiality and impartiality, nepotism, complicity or concealment of alleged criminals, and 2) also sanctioning officials of the Federal Judicial Branch whose decisions violate the principles of objectivity, impartiality, independence, professionalism or excellence, in addition to those determined by law. These powers are established in the fourth paragraph of Article 100 of the judicial reform initiative.

Problem identified

Argument 1. Disciplinary criteria must respond to the characteristics, goals and purposes of the administration of justice.

The members of the PJF are public servants whose conduct is subject to administrative responsibility. However, unlike other public authorities in which the conduct of public servants is conditioned to supra-subordinate relationships, the work of judges has a double dimension: they are public servants and at the same time they are holders of the jurisdictional power granted to them by the Constitution. In this second dimension, judges must have autonomy to solve the controversies raised by citizens in accordance with the applicable law and with the guarantee that they will not be subject to personal, political, economic or any other kind of pressure.⁶⁶

Freedom of jurisdiction" is a guarantee for the citizens who turn to the courts in search of an adequate solution to the conflicts they face. However, freedom of jurisdiction is not synonymous with impunity. The justice system must include mechanisms to sanction

⁶⁶ Cf. Lubert, Steven, "Judicial Discipline and Judicial Independence," in *Law and Contemporary Problems*, Duke University School of Law, Vol. 61, No. 3, 1998, p. 61. 3, 1998, p. 61.

judges who engage in objectively incorrect conduct, such as discrimination, sexual harassment or receiving bribes.

However, it is crucial to be clear that the purpose of disciplinary proceedings is not to prosecute or punish, but to preserve the integrity of the justice system and the trust of the citizens, as well as to safeguard justice and those who are not suitable to exercise the jurisdictional function. The initiative does not contain sufficient safeguards to prevent the judicial discipline regime from becoming an instrument of political pressure, altering the purposes for which it was created⁶⁷ and becoming a tool to pressure the judges to modify their decisions and judicial criteria.

Empirical evidence for the argument

The case of the United States

In the United States, the oversight and discipline of state judges, who are selected through different electoral mechanisms, is in the hands of collegiate bodies identified as "judicial discipline councils". The members of the disciplinary councils are appointed by the local Executive, respecting an equitable number of judges, lawyers and civil society. In this legal system, it has been emphasized that the intervention of the disciplinary councils does not imply replacing the criminal jurisdiction nor should it result in the review of the judicial decision, a task that is the sole responsibility of the appellate bodies.

v. The impossibility to challenge the Tribunal's decisions violates the human right to a fair trial and judicial independence.

Reform proposal

⁶⁷ In this regard, see I/A Court H.R., Constitutional Court (Camba Campos et al. v. Ecuador). *Constitutional Tribunal (Camba Campos et al.) v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013.

The initiative to reform Article 100 of the Constitution explicitly establishes that the decisions of the Disciplinary Tribunal "shall be final and unassailable and, therefore, there shall be no trial or appeal whatsoever against them".

Problem identified

The impossibility of appealing the decisions of the Court of Judicial Discipline violates the human right to judicial independence.

International standards applicable to judicial discipline recognize the right of Judicial Branch officials to have a recourse to request that an independent and impartial judicial body review the decisions of the disciplinary body. Such recourse must be suitable and effective. Therefore, the Judicial Branch reform initiative must include, in the national legal framework, an effective remedy for judicial officials to appeal sanctions imposed through disciplinary proceedings. Its absence in the initiative contravenes the provisions of Articles 8 and 9 of the American Convention on Human Rights.

In this regard, the United Nations Special Rapporteur on the Independence of Judges and Lawyers expressed her concern about the fact that in Mexico "according to the Constitution itself, the decisions of the Council of the Federal Judiciary [in disciplinary matters] are final and unassailable and, therefore, there is no trial or appeal against them".⁶⁸ Therefore, it "recommended that all disciplinary and administrative decisions that have an impact on the status of judges and magistrates should have the possibility of being reviewed by another independent jurisdictional body."⁶⁹

For its part, the IACHR Court⁷⁰ has indicated that "the right to job stability of judicial officials includes the guarantee that, in case of dismissal or termination of a judicial official, this is done under justified causes and that the worker can appeal the decision before the

⁶⁸ Report of the Special Rapporteur on the Independence of Judges and Lawyers, April 18, 2011, referred to on page 27 of the initiative presented by the Federal Executive. Available at: "<https://gaceta.diputados.gob.mx/PDF/65/2024/feb/20240205-15.pdf>".

⁶⁹ *Idem*.

⁷⁰ IACHR Court. *Case of Aguinaga Aillón v. Ecuador*. Merits, Reparations and Costs. Judgment of January 30, 2023. Series C No. 483, para. 99.

relevant authorities". For the IACHR Court, this guarantee is an elementary condition for the due fulfillment of judicial functions.⁷¹

vi. The assumptions of disciplinary sanctions constitute open clauses that violate the legal certainty of the judges and may lead to abuse.

Reform proposal

Article 100 of the initiative and of the opinion lists the grounds for sanctioning public servants of the PJF. The first is "incurring in acts or omissions contrary to the law, the public interest or the proper administration of justice, including those related to acts of corruption, influence peddling, nepotism, complicity or concealment of alleged criminals".⁷² The second reason is "when its determinations do not conform to the principles of objectivity, impartiality, independence, professionalism or excellence, in addition to the matters determined by law".⁷³

Problems identified

Argument 1. The disciplinary grounds do not comply with the principle of taxativity in administrative matters.

The initiative contains grounds for punishment that are ambiguous and very open, particularly those referring to conduct contrary to the law, the public interest or the proper administration of justice. Accordingly, it is worrisome what the Judicial Disciplinary Tribunal may understand by "acts contrary to the public interest or the law". For example, if a judge issues an injunction that is not in the interests of the other branches of government, such as the federal Executive, this could be considered an act contrary to the public interest.

⁷¹ I/A Court H.R., Case of Lagos del Campo v. Peru, supra, para. 150. *Case of Lagos del Campo v. Peru*, supra, para. 150 and *Case of Nissen Pessolani v. Paraguay*, supra, para. 102.

⁷² Initiative, pp. 82- 83; Opinion, pp. 53- 54.

⁷³ *Idem*.

In this regard, one of the principles of administrative law is taxativity. It has been considered that "[t]he principle of exact application of the law, in its aspect of taxativity, provided for in the third paragraph of Article 14 of the Constitution, modulated to administrative matters, (...) may be defined as the requirement that the texts containing the punitive rules describe with sufficient precision what conducts are prohibited and what sanctions will be imposed on those who incur in them".⁷⁴ The aforementioned is absent in the sanction assumptions contemplated in the initiative.

Argument 2. The disciplinary cause related to the "concealment of possible offenders" transgresses the right to the presumption of innocence.

The initiative contemplates a ground for sanction consisting of "concealment of possible offenders". This assumption raises important questions; for example, whether the release of an accused person by a judge could be considered by the Disciplinary Tribunal as "concealment of possible offenders".⁷⁵ There are multiple constitutional and legal reasons why a judicial authority could release an accused person: for example, when the accused person was illegally detained or when certain investigative procedures, such as searches, were not carried out in accordance with constitutional and international standards. However, the initiative would open the possibility that judges could be sanctioned for making such determinations.

Argument 3. Disciplinary grounds transgress the human right to judicial independence because they allow the judge to be sanctioned for the sense of his or her decisions.

The grounds that refer to acts or omissions contrary to the law, the public interest or the proper administration of justice and the one that refers to the concealment of alleged criminals are aimed at punishing the judges for the meaning of their judicial decisions and not for their behavior. However, judges may in no way be punished for the meaning of their decisions.

⁷⁴ Unconstitutionality Action 47/2016. Voted on April 23, 2018. Speaker: Alberto Pérez Dayán.

⁷⁵ In this regard, Article 20(B)(I) of the Constitution states that the accused person shall have the right to be presumed innocent until his or her responsibility is declared by a sentence issued by the judge in the case.

In this regard, the Inter-American Court has pointed out that judges cannot be removed or punished based on the meaning of their decisions.⁷⁶ The same court has emphasized that "international law has formulated guidelines on the valid reasons for the suspension or removal of a judge, which may be, among others, misconduct or incompetence. However, judges cannot be removed from office solely because their decision was overturned on appeal or review by a higher judicial body."⁷⁷ The IACHR Court is very clear in stating that the disciplinary control of judges is only intended to "assess the conduct, suitability and performance of the judge as a public official",⁷⁸ but not to punish them for the sense of their decisions.

For its part, the Human Rights Committee noted that "[j]udges may be removed only on serious grounds of misconduct or incompetence, in accordance with fair procedures guaranteeing objectivity and impartiality established by the Constitution or by law. The removal of judges by the executive branch, for example before the expiration of the term for which they were appointed, without any specific reason being given to them and without their having effective judicial protection to challenge the removal, is incompatible with the independence of the judiciary. This also applies, for example, to the removal by the executive branch of government of allegedly corrupt judges without any of the procedures established by law being followed".⁷⁹

⁷⁶ Inter-American Court of Human Rights, *Case of Apitz Barbera et al ("Corte Primera de lo Contencioso Administrativo") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C, No. 182, para. 78.

⁷⁷ *Ibidem*, para. 84.

⁷⁸ *Ibid.*, para. 86.

⁷⁹ Human Rights Committee of the Covenant on Civil and Political Rights, "General Comment 32 on Article 14: The right to a fair trial and to equality before courts and tribunals," para . 20.

5. Prompt and expeditious justice

a. Problems associated with changes to ensure prompt and expeditious justice.

i. Tackling the judicial backlog without an adequate diagnosis and solution does not guarantee prompt and effective justice.

Reform proposals

It is proposed to amend Article 17 of the Constitution to require judges to issue rulings within a maximum period of time based on quantitative criteria. Both Articles 17 and 20 of the Constitution provide that the authorities that do not comply with the determined time limits must themselves initiate an accountability procedure before the Judicial Disciplinary Tribunal, which will determine the consequences of the unjustified delay.

Problems identified

Argument 1. The six-month period established in Article 17 for resolving matters is not supported by any national or international standard.

According to international (IACHR Court) and national (SCJN) standards, the adequacy or inadequacy of a time period to resolve a judicial matter is not based on a certain number of months, but on the review of four criteria: 1) the complexity of the matter, 2) the procedural activity of the interested party, 3) the conduct of the judicial authorities and 4) the effect generated on the legal situation of the person involved in the process. The six-month term proposed in the reform does not consider the Inter-American criteria and does not consider the complexities that must be analyzed to determine whether a case was resolved within a "reasonable" term.

Argument 2. The fear of an arbitrary sanction for failure to comply with the deadlines may affect the jurisdictional work.

The lack of reasonableness of the deadline may cause the judges, to avoid a sanction, not to analyze the cases with sufficient care, so long as they are solved within the

established term. Likewise, the reform does not establish what sanction the judges who do not resolve the cases within the constitutional time limit would face.

Argument 3. The creation of a disciplinary measure when a judge exceeds the time limit for sanctions is an inadequate response to the judicial backlog.

The judicial backlog is a function of a series of factors, such as the number of judicial officials to solve cases and its consequences on the workload. There are multiple normative and procedural problems that generate delays, such as delays in notifications, delays in the production of evidence, delays in scheduling hearings, loss of files, limited physical space, procedural simulations; problems of corruption and inefficiency of judicial officials and those belonging to other public institutions, among others. It is also necessary to consider the speed or delay in the performance of other organs of the justice system, such as the Prosecutor's Office. A real and pertinent response to the backlog of judicial processes must consider measures in all the factors described above. The initiative proposes a superficial measure that does not start from the recognition of the structural problems faced by the justice system.

ii. The reform does not comply with the principle of gradualism in its implementation, which compromises its success.

Reform proposals

The transitory articles of the reform do not contemplate a gradual implementation plan that considers the complexities of a transformation of this magnitude. The initiative proposes that all judges of the Judicial Branch of the Federation will conclude their term of office on the day on which the persons elected through the extraordinary electoral process are sworn in. This is established in the second and seventh transitory articles of the proposal. Likewise, it establishes, in articles 116, section III and 122, section A, section IV, that the implementation of the reform at the local level will be carried out according to the same bases as the Judicial Power of the Federation. It states that the election

modalities and the duration of the term of office of the judges of the local judicial powers will be defined by the states in their constitutions and laws.

Problem identified

Argument 1. The absence of a gradual implementation plan compromises the success of any type of judicial reform.

The reform proposal does not consider gradualness in the achievement of its objectives or in the effective implementation of its proposals. It proposes the overnight replacement of the entire federal judiciary (approximately 1,580 male and female judges) as well as the replacement of the entire state judiciary without a critical path that considers the complexities of an institutional transformation of this magnitude. In other words, the reform proposal does not consider implementation scenarios that assess type of cases (criminal, administrative, civil, family, mercantile or labor), type of processes (oral, written, amparo trials, etc.) or regional or geographical variables (circuits, states, cities, etc.). These absences can result in an abrupt and uneven implementation with high institutional, social, political and economic costs.

Empirical evidence

The case of Mexico

In Mexico, the last 20 years have been characterized by judicial reforms (especially those related to the transition to oral proceedings) in areas such as criminal, commercial, labor and family/civil law. All these experiences have shown the importance of effective planning and implementation to ensure the effectiveness of regulatory change. They have also shown that the processes of institutional transformation and reorganization require several years for their consolidation (for example, the penal reform established a period of eight years for its implementation, which turned out to be insufficient).

6. Annexes

a. Analysis of the Judicial Branch Reform Initiative based on the jurisprudence of the Inter-American Court of Human Rights.

Judicial guarantees		Reform Initiative presented by the Executive Branch	Inter-American standard	Cases
Internal independence (of the judges, vis-à-vis judicial disciplinary bodies)	Judicial guarantees in judicial discipline proceedings	<p>It is proposed to abolish the Federal Judiciary Council and replace it with a judicial administration body and a Judicial Disciplinary Tribunal.</p> <p>The Judicial Disciplinary Tribunal "...will have a collegiate composition, made up of five members elected by the citizens at the national level in accordance with the procedure established in Article 96 of the Constitution for Justices of the SCJN" (p. 52, first paragraph).</p>	<p>1. The principle of judicial independence derives not only from the right of individuals to be judged by an independent judge, but also from the rights of judges themselves to irremovability and stability in office, expressed in judicial guarantees during removal proceedings and in the right of access to and permanence in public office on general terms of equality.</p>	<p>Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2013. Series C No. 266</p>
		<p>The Court, "...is empowered to hear, investigate and, as the case may be, sanction administrative responsibilities and conduct contrary to the principles of excellence, professionalism, objectivity, impartiality and independence of the Justices of the SCJN, the Circuit Magistrates, the District Judges, as well as the personnel of the Federal Judicial Branch, in addition to the matters determined by secondary law" (p. 52, second paragraph). (p. 52, second paragraph)</p> <p>"...it is proposed to empower the Disciplinary Tribunal to request information, summon</p>	<p>2. Job stability entails the guarantee that, in the event of arbitrary dismissal or termination, this is carried out under justified causes and that the worker may appeal the decision before the relevant authorities, who have the obligation to verify that the causes of dismissal are not arbitrary. This guarantee is an elementary condition of independence in the exercise of the judicial function for the due fulfillment of judicial functions.</p>	<p>Aguinaga Aillón v. Ecuador. Merits, Reparations and Costs. Judgment of January 30, 2023. Series C No. 483</p>

		<p>and warn the public servants of the Judicial Branch that it deems necessary to assist in its investigations, as well as to file criminal complaints before the competent authorities for the commission or omission of acts that could constitute a crime, and also to request the Chamber of Deputies the trial of proceeding against Justices and Justices of the SCJN. Given their nature, it is foreseen that the resolutions and sanctions imposed by the Court are final and unassailable, therefore, no lawsuit or appeal may be filed against them". (p. 52, last paragraph)</p> <p>"The new Court of Judicial Discipline is also empowered to hear matters related to the discipline of the members of the Electoral Tribunal, including the investigation and sanctioning of the public servants who are part of it, since, being part of the Federal Judiciary, it must be subject to the same mechanisms and procedures that govern all the organs that comprise it" (p. 56, third paragraph).</p> <p>Article 97 (fourth paragraph)</p> <p>...</p> <p>Any person or authority may report to the Judicial Disciplinary Tribunal facts that could be subject to sanction committed by any public servant of the Federal Judicial Branch, including Justices, magistrates and</p>	<p>1. The guarantee of irremovability must allow the reinstatement of a judge who has been arbitrarily deprived of his or her status as a judge. Otherwise, States could remove judges and intervene in the Judiciary without major costs or control. Moreover, this could provoke fear in other judges who observe that their colleagues are removed and not reinstated, even if the removal was arbitrary. Such fear may also affect judicial independence because it could encourage judges to follow instructions or refrain from challenging the appointing or sanctioning body. Therefore, an appeal declaring the nullity of a judge's dismissal as unlawful must necessarily lead to the reinstatement of the official.</p> <p>...</p> <p>4. In terms of Article 8(1) of the American Convention on Human Rights, the subject of the right to be heard by an independent judge or court is the justiciable, that is, the person placed before the judge who will resolve the case submitted to him.</p>	<p>Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197</p>
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		<p>judges, for the purpose of investigating and, if appropriate, sanctioning the conduct denounced. The Judicial Disciplinary Tribunal will conduct its investigations in a prompt, complete, expeditious and impartial manner, in accordance with the procedure established by law.</p> <p>...</p> <p>Article 100.</p> <p>"The Disciplinary Tribunal will function in Plenary. It may hear, investigate, substantiate and, as the case may be, sanction public servants of the Federal Judicial Branch who incur in acts or omissions contrary to the law, the public interest or the proper administration of justice, including those linked to acts of corruption, influence peddling, nepotism, complicity or concealment of alleged criminals, or when its determinations are not in accordance with the principles of..." (p. 82).</p> <p>Article 100</p> <p>The decisions of the Disciplinary Tribunal shall be "final and unassailable and, therefore, there shall be no trial or appeal whatsoever against them" (p. 83).</p>	<p>2. In the disciplinary sphere, it is essential that the act that constitutes an offense and the arguments on which the sanctioning decision is based be precisely stated. In the case of decisions that are not necessarily punitive, if they are not duly grounded, discretion transforms them into arbitrary acts that violate the duty to state reasons. This violation of the duty to state reasons also violates the right to fully exercise an adequate defense.</p>	<p>Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227</p>
		<p>Article 100</p> <p>The decisions of the Disciplinary Tribunal shall be "final and unassailable and, therefore, there shall be no trial or appeal whatsoever against them" (p. 83).</p>	<p>The use of open-ended disciplinary types does not per se violate the American Convention. The vagueness of a disciplinary type must be analyzed, first, based on the purpose of the disciplinary rules to protect the judicial function, and, second, it is necessary to review the motivation of the decision when using an open-ended ground. The motivation must prove that the parties were heard during the process and identify the facts, reasons and legal grounds that allowed the authority to decide the case.</p>	<p>Martínez Esquivia v. Colombia. Preliminary Objections, Merits and Reparations. Judgment of October 6, 2020. Series C No. 412</p>

			<p>2. The guarantee of stability and irremovability implies specific protections for judges. In particular, a removal process must respect the standards derived from the guarantee of judges to remain in office, in order to protect them from arbitrary removal. This implies that removal from office must be based exclusively on permissible grounds, either by means of a process that complies with due process guarantees or because the term or period of office has expired. Thus, judges may only be removed from office for serious breaches of discipline or incompetence and any disciplinary process against them must be resolved in accordance with the standards of judicial conduct established in fair procedures that ensure objectivity and impartiality according to the Constitution or the law.</p>	<p>López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302</p>
			<p>3. The application of the procedural guarantees established in Article 8.2 of the American Convention on Human Rights is part of the set of minimum guarantees that must be respected</p>	<p>Urrutia Laubreaux v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of</p>

			when a sanctioning process is carried out. Respect for these guarantees in turn allows for the judicial independence of judges, which is necessary for the exercise of the judicial function.	August 27, 2020. Series C No. 409
External independence (vis-à-vis other public authorities)	Impeachment	"...the Magistrates of the Court of Judicial Discipline, as well as the members of the Plenary of the judicial administration body may be subject to impeachment... Similarly, grounds are provided for the members of the Disciplinary Courts and local administration bodies that are created in the federal entities to be subject to impeachment" (p. 57, third paragraph).	<p>1. In political trials against judges, the legislative authorities exercise materially jurisdictional functions. Therefore, States must respect the guarantees of due process of law, in the terms of Article 8 of the American Convention. In particular, for the removal of judges there must be a previously established procedure conducted by a competent, independent and impartial body. In addition, the judicial authorities must be allowed to exercise their rights of defense, to be heard and to participate in the process.</p> <p>2. The process of removing judicial authorities from office through impeachment is subject to legal norms that must be strictly observed by the members of Congress. Consequently, States must ensure that persons who have been removed from judicial office have a prompt,</p>	Constitutional Tribunal v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71

			<p>simple and effective judicial remedy to challenge the acts issued during the impeachment trial.</p> <p>3. The fact that an appeal is decided by the same persons who filed the initial accusation violates the guarantee of impartiality, since it prevents the appeal from producing the expected result, since there is a preconception of the persons who must resolve it.</p>	
			<p>Political trials do not, per se, violate the American Convention, as long as their regulatory framework complies with the guarantees of due process and there are criteria that limit the discretion of the judging bodies, specifically, the one that processes and decides the case against a judge. These trials should not be initiated for reasons of political expediency or opportunity. Throughout the process, the prosecuting entity must apply objective legal criteria to define whether the accused incurred in the behaviors previously defined in the regulations as grounds for dismissal.</p>	<p>Ríos Avalos et al. v. Paraguay. Merits, Reparations and Costs. Judgment of August 19, 2021. Series C No. 429</p>

		<p>"...criminal proceedings may be brought against the Magistrates of the Judicial Disciplinary Tribunal, as well as the members of the Plenary of the judicial administration body, for the commission of crimes during their term of office when the Chamber of Deputies declares by an absolute majority of its members present whether or not to proceed against the accused person" (p. 57, last paragraph).</p>	<p>In accordance with inter-American standards, the legislative authorities of a State party should not promote political trials and remove judges for the purpose of revoking the sentences adopted by them because they affect the conditions of impartiality that a judge must have to decide his cases. The possibility of political trials for the decisions that a judge makes may generate pressure on him or her at the time of ruling because of the risk of being subjected to sanctions that do not guarantee the rights to due process and judicial protection.</p>	<p>Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C No. 268.</p>
Stability and tenure	<p>"...the present initiative proposes that Circuit Magistrates, as well as District Judges, serve for a term of nine years, with the possibility of re-election for one or more additional terms" (p. 45, first paragraph).</p>	<p>3. The guarantee of stability or irremovability of judges is fulfilled when the criteria and procedures for their appointment, promotion, suspension and dismissal are reasonable and objective and they are not discriminated against in the exercise of this right. Equal opportunity of access and stability in office, in part, guarantee freedom from undue interference and political pressure.</p>	<p>Colindres Schonenberg v. El Salvador. Merits, Reparations and Costs. Judgment of February 4, 2019. Series C No. 373</p>	

	<p>Transitory regime and dismissal of judges</p>	<p>"...the Justices of the Supreme Court of Justice of the Nation, the Magistrates of Circuit Courts, the Judges of District Courts, the Magistrates of the Superior Chamber and the regional chambers of the Electoral Tribunal of the Federal Judiciary and the Councilors of the Federal Judiciary who are in office at its entry into force conclude their term of office on the same date on which the public servants emanating from the extraordinary election to be held for the renewal of the positions of command of the Federal Judiciary are sworn in" (p. 60, first paragraph). 60, first paragraph).</p>	<p>2. In order for a Congress to be able to remove judicial officers from office, this power must be previously established in the Constitution or the law and the reason for the removal must be justified and motivated. In addition, the decision to remove judges from office must be based on the grounds permitted for removing a judge from office, i.e., having completed the term of office or period of office, reaching retirement age, or having been proven to have committed serious disciplinary offenses or to have been incompetent.</p>	<p>Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2013. Series C No. 266</p>
			<p>Both the grounds for removing a judge from office and the competent body to carry out the process must have been previously established in the Constitution or the law. When the grounds for dismissal are not provided for in the rules applicable to judges and, nevertheless, the officials are dismissed based on those grounds, the State violates the principle of prior judicial rule and, therefore, judicial independence.</p>	<p>Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C No. 268</p>

			<p>2. Job stability entails the guarantee that, in the event of arbitrary dismissal or termination, this is carried out under justified causes and that the worker may appeal the decision before the relevant authorities, who have the obligation to verify that the causes of dismissal are not arbitrary. This guarantee is an elementary condition of independence in the exercise of the judicial function for the due fulfillment of judicial functions.</p>	<p>Aguinaga Aillón v. Ecuador. Merits, Reparations and Costs. Judgment of January 30, 2023. Series C No. 483</p>
			<p>2. The guarantee of stability and irremovability implies specific protections for judges. In particular, a removal process must respect the standards derived from the guarantee of judges to remain in office, in order to protect them from arbitrary removal. This implies that removal from office must be based exclusively on permissible grounds, either by means of a process that complies with due process guarantees or because the term or period of office has expired. Thus, judges may only be removed from office for serious breaches of discipline or</p>	<p>López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302</p>

			incompetence and any disciplinary process against them must be resolved in accordance with the standards of judicial conduct established in fair procedures that ensure objectivity and impartiality according to the Constitution or the law.	
Selection and appointment of judges	Judicial career	"...the admission, training and permanence of judicial career personnel of the Federal Judicial Branch shall be subject to the regulations established in the applicable provisions, excluding from such parameters the Circuit Magistrates and District Judges, whose admission and permanence shall be subject to the constitutional provisions applicable to their direct election by citizen vote" (p. 53, third paragraph).	1. Judicial Branch officials play an important role in the administration of justice, and must therefore be free from any interference or pressure in their work. For this reason, the guarantees of equal opportunity in access to and stability in the position and the minimum guarantees of due process are applicable to them, as well as to judges, when administrative, constitutional, administrative and labor proceedings involving the possibility of dismissal are followed. 2. In the processes of continuous evaluation of personnel in charge of the administration of justice, the personnel must be able to i) know precisely the general evaluation criteria used by the competent authority to determine their permanence in office; ii) know the	Moya Solís v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 3, 2021. Series C No. 425

			<p>reasons why the competent authorities may consider them unsuitable to perform their functions; iii) present, before a decision is taken, the arguments to refute their alleged failures; and iv) offer evidence of the suitability of their performance. Likewise, it is essential to adhere to the principle of legality and the right to have duly motivated resolutions.</p>	
			<p>1. The ratification processes in which the conduct and suitability of a judicial officer is evaluated, and which involve the possibility of dismissal, may become materially punitive proceedings. Therefore, they must comply with the same due process guarantees that apply to disciplinary proceedings, although their scope is different in content and intensity. Judicial officials evaluated as part of a ratification process have the right to know the reasons why the evaluators consider that they are incompetent to continue in the exercise of their duties, to present arguments of defense before a final decision and, in general, to offer evidence of their suitability in the</p>	<p>Cuya Lavy et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 28, 2021. Series C No. 438</p>

			performance of their duties.	
Appointment of judges	Election by popular vote of Justices of the SCJN, Circuit Judges, District Judges, Magistrates of the Electoral Tribunal, as well as Magistrates of the Judicial Disciplinary Tribunal.	1. In relation to judicial independence, judges should be appointed for their professional abilities and suitability to hold office and should have guarantees of irremovability.	Valencia Hinojosa et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 29, 2016. Series C No. 327	
		In relation to judicial independence, judges must be appointed for their professional abilities and suitability to hold office, so that no pressure is generated by the nominators, and they must have guarantees of irremovability. Regarding impartiality, the judge is required to objectively analyze the facts and minimize the doubts of the persons subject to judicial proceedings in relation to their impartiality, which is allegedly affected when there is functional dependence on other branches of power and conditions of the exercise of the position such as time limits for the exercise of their functions.	Villarroel Merino et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2021. Series C No. 430	

b. Summary of proposals associated with the election of judges by popular vote.

	Proposal	Normative source
1	Reduce the number of Justices of the Supreme Court of Justice of the Nation (SCJN) from 11 to 9.	Article 94, second paragraph
2	Eliminate the Chambers of the SCJN to operate only in Plenary.	Article 94
3	Popular election of Justices, district judges, circuit magistrates, magistrates of the Superior Chamber and Regional Chambers of the Electoral Tribunal of the Federal Judiciary (TEPJF), magistrates of the Judicial Discipline Tribunal, judges and magistrates of the local judicial branches throughout the country.	Article 94, eighth paragraph; Article 96
4	An extraordinary election will be held to renew all judgeships of the Federal Judicial Branch. All incumbent judges of the Judicial Branch of the Federation shall conclude their term of office on the day on which the winners of the extraordinary election are sworn in. The Justices who complete their term of office shall not receive a retirement bonus.	Second transitory and seventh transitory articles
5	Procedure for the extraordinary election: I. The Senate will have 30 calendar days from the entry into force of the reform decree to issue the call for the list of candidates; II. The Powers of the Union shall nominate the number of candidates corresponding to them in accordance with Articles 96, 99 and 100 of the Decree; III. The Senate shall verify eligibility requirements;	Second transitory article

	<p>IV. The public electoral body must organize and carry out the election process within a term not to exceed one year from the date of the Decree's entry into force;</p> <p>V. The Electoral Tribunal of the Federal Judicial Power will qualify the election;</p> <p>VI. Those elected will be sworn in before the Senate of the Republic.</p>	
6	<p>The Justices elected in the extraordinary election will serve until 2033, 2036 and 2039 -in groups of three-. Whoever obtains the most votes will serve the longest.</p> <p>The term of office of all circuit magistrates, judges and district judges elected during the extraordinary process will expire in 2030. The persons occupying such positions when the Decree enters into force will be eligible for such positions.</p>	Third transitory article
7	<p>Four of the magistrates of the Superior Chamber of the TEPJF elected in the extraordinary election will conclude their term of office in 2030, three more will do so in 2033. Whoever obtains more votes will last longer in office. In each regional chamber, two magistrates will serve until 2030 and one until 2033. Whoever obtains more votes will serve longer.</p>	Fourth transitory article
8	<p>Three of the magistrates of the Judicial Disciplinary Tribunal elected in the extraordinary election will finish their term in 2030, two more will finish in 2033. Whoever obtains more votes will last longer in office. The counselors of the Federal Judiciary may participate in the process to join this Tribunal.</p>	Fifth transitory article
9	<p>Reduce the qualified majority from eight to six votes to generate binding precedents.</p>	Article 94, twelfth paragraph
10	<p>Establish that the remuneration of no official of the Judicial Branch of the Federation may be higher than that of the President of the Republic.</p>	Article 94, thirteenth paragraph

11	Reduce the term of office of Justices from 15 to 12 years.	Article 94, fourteenth paragraph
12	The election of Justices and federal judges will be held during the ordinary election day of the corresponding year.	Article 96, first paragraph
13	The requirements of age, seniority with a professional degree, residence and incompatibility with the exercise of certain positions during the previous year to be a Justice are maintained. It is added as an impediment to have been a magistrate of the Electoral Tribunal of the Judicial Power of the Federation.	Article 95
14	<p>For the election of the nine Justices, the Senate will issue a call for nominations. The President of the Republic will nominate up to 10 persons, the Legislative Branch up to five persons for each Chamber -elected by two thirds of its members present- and the Plenary of the Supreme Court up to 10 persons -elected by a majority of six votes-.</p> <p>The Senate will qualify the profiles and send them to the National Institute of Elections and Consultations to organize the process. The Electoral Tribunal of the Judiciary of the Federation will qualify the election. The winners will be sworn in on the day of the beginning of the first ordinary session of the Senate (September 1).</p>	Article 96, base I
15	The election of circuit magistrates and district judges will be carried out by judicial circuit and according to the same procedure as for Justices. Each Power of the Union shall nominate up to two persons on a parity basis for each vacant position.	Article 96, base II
16	Circuit magistrates and district judges will serve for nine years and may participate in the electoral process for reelection at the end of their term.	Article 96, base II

17	Access to radio and television for candidates in official times determined by INEC. Prohibition of campaign financing and contracting of radio and television time. No pre-campaign stage.	Article 96
18	Prohibition of reinstatement of judges outside the judicial circuit where they were elected. Only the Judicial Disciplinary Tribunal may remove them.	Article 97, first paragraph
19	To be a magistrate, magistrate, judge or judge, a person must be a Mexican citizen by birth; be 35 years old for magistrates and 30 years old for judges; have a law degree with five years of seniority and professional practice of at least five years in an area related to the candidacy.	Article 97, second paragraph
20	The judicial career for the rest of the personnel of the Federal Judicial Branch remains in effect.	Article 97, third paragraph
21	The seven magistrates of the Electoral Tribunal of the Federal Judicial Power will be elected through the same procedure as the members of the Supreme Court of Justice of the Nation. The qualification of the election will be in charge of the latter. The requirements to become a member of the Superior Chamber or the regional chambers are the same as for the Supreme Court.	Article 99
22	The magistrates of the regional chambers and the Superior Chamber of the Electoral Tribunal shall hold office for a term of six non-renewable years.	Article 99, twelfth and thirteenth paragraphs
23	The five magistrates of the Court of Judicial Discipline will be elected through the same procedure as the members of the Supreme Court of Justice of the Nation. The qualification of the election will be in charge of the Electoral Tribunal of the Judicial Power of the Federation. The requirements are the same as for the Supreme Court.	Article 100, second paragraph

24	The judges of the Judicial Disciplinary Tribunal will serve for six years, will be replaced on a staggered basis and will not be eligible for reelection.	Article 100, fifth paragraph
25	The election of male and female judges of the local judicial branches will be carried out in accordance with the bases that govern the Federal Judicial Branch. The modalities of the election and the duration of the term of office shall be regulated by the local constitutions and laws, but the possibility of reelection is established.	Articles 116, item III, and 122, paragraph A, item IV
26	The Mexican Congress and local legislatures will have 180 calendar days to adapt federal legislation and local constitutions to the reform. In the meantime, the Constitution will apply directly.	Eighth transitory article

c. Synthesis of proposals related to the new judicial governing body.

	Proposal	Normative source
1	Transfer the administration of the Judicial Branch of the Federation to a judicial administration body (OAJ).	Article 94, first paragraph
2	The OAJ will be in charge of determining the number, division into circuits, territorial jurisdiction and specialization by subject matter, including broadcasting, telecommunications and economic competition, of the Collegiate Circuit Courts, the Collegiate Courts of Appeal and the District Courts.	Article 94, fifth paragraph
3	The law shall establish the form and procedures by means of open competitions for the integration of the jurisdictional bodies. Exceptions are made for circuit magistrates and district judges.	Article 94, sixth paragraph
4	When elections of circuit magistrates and district judges are to be held, the OAJ shall issue and forward the call to the Senate of the Republic, in a list	Article 96

	indicating the number of vacancies, the subject matter and the respective judicial circuit.	
5	The licenses of circuit magistrates and district judges may be granted by the OAJ, provided that they do not exceed a term of two years.	Article 98
6	In the event of death, resignation or definitive absence of circuit magistrates and district judges, the OAJ shall submit a list of three candidates for consideration by the Senate of the Republic. The Senate will elect, by the qualified vote of the majority of the members present, an interim person to fill the vacancy until the person elected to the position in the next ordinary election takes office. The persons proposed in the slate must meet the requirements to be elected	Article 98
7	The OAJ shall be in charge of the administration and internal control of the Electoral Tribunal. The Electoral Tribunal will propose its budget to the judicial administration body for inclusion in the proposed budget of the PJF.	Article 99, II to X
8	The OAJ shall have technical and managerial independence. It shall be responsible for administration, internal control and the judicial career.	Article 100
9	The OAJ will define the number, division into circuits, territorial jurisdiction and specialization by subject matter of the Collegiate Circuit Courts, the Appellate Courts and the District Courts.	Article 100
10	The OAJ shall be responsible for examining and deciding on the admission, tenure and dismissal of judicial personnel, as well as their training, promotion and performance evaluation.	Article 100
11	The OAJ shall carry out the internal control of the administration of human, material and financial resources of the Judicial Branch.	Article 100
12	The decisions of the OAJ shall be final and unassailable and, therefore, no appeal shall lie against them.	Article 100
13	The OAJ will function as a Plenary and will be composed of five persons, for individual non-renewable terms of six years. Its composition will be as	Article 100

	<p>follows: one will be appointed by the Presidency of the Republic, one by the Senate of the Republic (by a qualified vote of two thirds of its members present) and three by the plenary of the Supreme Court (by a majority of six votes).</p> <p>The presidency of the AOJ will last two years and will be rotating.</p>	
14	<p>The members of the plenary of the OAJ must be Mexican by birth, in full use of their civil and political rights; be at least 35 years old on the day of the appointment; have a degree in Law, Economics, Actuarial Science, Administration, Accounting or other related to the activities of the OAJ. The degree must be at least five years old; they must not have been disqualified from holding a job, position or commission, nor have been convicted of a felony punishable by deprivation of liberty.</p>	Article 100
15	<p>The removal of the members of the Plenary of the OAJ will be made in accordance with Title IV of the CPEUM, on the responsibilities of public servants, individuals linked to serious administrative misconduct or acts of corruption and State assets. If for any reason it is necessary to replace any of the members of the OAJ, the authority that nominated him/her shall do so, and he/she shall remain in office for the remaining term of the appointment of the person who was replaced.</p>	Article 100
16	<p>The OAJ will have a Federal Judicial Training School, in charge of implementing the training, education and updating processes for the jurisdictional and administrative personnel of the PJJ and its auxiliary bodies.</p> <p>It will also conduct competitive examinations for access to the different categories of the judicial career.</p>	Article 100
17	<p>The OAJ will be in charge, through the Federal Institute of the Public Defender's Office, of public defense services in federal matters.</p> <p>The Federal Judicial Training School will train public defenders and conduct the competitive examinations.</p>	Article 100
18	<p>The OAJ shall have the power to issue general agreements for the exercise of its functions.</p>	Article 100

	The Court of Judicial Discipline may request the OAJ to issue general resolutions or to execute resolutions necessary to ensure the proper exercise of the federal jurisdictional function in matters within its jurisdiction.	
19	At the request of the plenary of the Supreme Court, the OAJ may concentrate in one or more jurisdictional bodies the knowledge of matters related to serious human rights violations.	Article 100
20	The OAJ will prepare the budget of the PJF, who will submit it for inclusion in the Federal Expenditure Bill.	Article 100
21	The members of the plenary of the OAJ may not accept or perform any employment or assignment from the Federation, the federal entities or private individuals, except for unpaid assignments in scientific, educational, literary or charitable associations. Persons who have served as members of the plenary of the OAJ may not, within two years from the date of their retirement, act as patrons, attorneys or representatives in any proceedings before the bodies of the PJF.	Article 101
22	The members of the plenary of the OAJ may be subject to impeachment, as well as the members of the plenary of the OAJs of the local judiciaries.	Article 110
23	In order to proceed criminally against the members of the OAJ Plenary for crimes committed while in office, the Chamber of Deputies shall declare by an absolute majority of its members present in session whether to proceed against the accused person.	Article 111
24	At the state level, the independence of magistrates and judges in the exercise of their functions must be guaranteed by the Constitution and the law, which will establish, among others, the creation of an OAJ with technical, managerial and ruling independence. The OAJs will be in charge of the administration of the admission, training and permanence of those who serve the judicial branches of the states.	Article 116, III
25	At the state level, the exercise of Judicial Power is deposited, among others, in the OAJ. Local laws will establish the conditions for the operation of the OAJ with technical and managerial independence and the power to issue	Article 122, A IV

	resolutions. They will also be in charge of the admission, training, permanence and specialization of the members of the Judicial Branch.	
26	The Council of the Federal Judiciary (CJF) will continue to exercise its powers and duties of administration, oversight and discipline of the PJF, with the exception of the Supreme Court, until the OAJ is created.	Fifth Transitory
27	The members of the CJF in office when the reform decree enters into force will conclude their term of office on the date on which the elected judges of the Judicial Disciplinary Tribunal are sworn in.	Fifth Transitory
28	<p>The OAJ will begin its functions on the date on which the judges of the Disciplinary Tribunal are sworn in. On the same date, the CJF will cease to exist.</p> <p>During the transition period, the CJF will implement a work plan to transfer material, human, financial and budgetary resources to the OAJ, with respect to its administrative, judicial career and internal control functions.</p> <p>The CJF will approve the general and specific agreements necessary to implement this work plan, according to the plans established in this plan.</p>	Sixth Transitory
29	The CJF will continue the substantiation of the proceedings pending resolution. It will deliver all pending files and their documentation to the OAJ, as appropriate.	Sixth Transitory
30	The members of the Plenary of the OAJ shall be appointed to begin their functions on the same day on which the judges of the Judicial Disciplinary Tribunal are sworn in.	Sixth Transitory

d. Summary of proposals related to the Judicial Disciplinary Tribunal

	Proposal	Normative source
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1	Establish a Court of Judicial Discipline composed of five magistrates elected by popular vote, from the lists of the Federal Executive, the Chambers of Congress and the Supreme Court of Justice of the Nation.	Article 100, first and second paragraphs.
2	The judges of the Disciplinary Tribunal shall hold office for six years, without the possibility of reelection. The renewal of the Tribunal shall be staggered.	Article 100, fifth paragraph.
3	To be eligible for the position of judge of the Disciplinary Tribunal, candidates must meet the requirements set forth in Article 95 of the Constitution and be distinguished by "their professional capacity, honesty and honorability in the exercise of their duties".	Article 100, third paragraph.
4.	The decisions of the Court of Judicial Discipline "shall be final and unassailable and, therefore, there shall be no trial or appeal whatsoever against them".	Article 100
5	<p>The grounds that will give rise to the sanction of public servants of the Federal Judiciary are the following:</p> <p>A) "Incurring in acts or omissions contrary to the law, the public interest or the proper administration of justice, including those linked to acts of corruption, influence peddling, nepotism, complicity or concealment of alleged criminals."</p> <p>B) "When its determinations do not conform to the principles of objectivity, impartiality, independence, professionalism or excellence, in addition to the matters determined by law."</p>	Article 100

e. Summary of proposals related to prompt and expeditious justice.

	Proposal	Normative source
1	A maximum period of six months to resolve matters depending on the amount in proceedings; otherwise, an investigation process will be initiated by the disciplinary body.	Article 17 CPEUM

2	In the event of failure to comply with the constitutional deadlines for the adjudication of criminal proceedings, an investigation will be initiated by the disciplinary body.	Article 20 CPEUM B. The rights of any person charged
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