

THE INDEPENDENCE AND IMPARTIALITY OF ADJUDICATORS IN MEXICO

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1. INTRODUCTION

Judicial independence is a goal democracies strive to achieve.¹ If the judiciary is free of constraints that undermine its impartial judgement, it will be in a better position to develop judicial review that defends the rule of law, protects the separation of powers, and promotes due process of law.² To accomplish this, the judiciary should be independent from the parties to a conflict, autonomous from the political institutions of a government, and independent from contested political ideologies.³ In other words, the judiciary cannot be an extension of the legislative and executive arms of the government.⁴ However, the formation of an independent judiciary may be hampered by institutional legacies, insufficient training and support for judges, and the power of strong political players.⁵ Without the ability of courts to render independent judgments, democratic development stalls and the likelihood of reverting the state into an authoritarian regime increases.⁶

Strengthening judicial independence so that courts hold political actors accountable (judicial review) is symptomatic of an improving democracy.⁷ ‘Why should any authoritarian regime’, Shapiro asks, ‘allow a small group of persons, not themselves, to make public policy decisions contrary to, or at least independent of, their preferences’.⁸ But without judicial independence, courts cannot effectively and democratically intervene in the political process.⁹ Institutional guarantees to safeguard judicial independence are therefore extremely important.¹⁰

¹ As pointed out by Gibler and Randazzo: ‘[n]ewly independent judiciaries are sometimes created in unstable states and are unable to stop antidemocratic reversals’. ‘Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding’ (2011) 55 *American Journal of Political Science* 696, 707.

² Charles G Geyh, ‘The Endless Judicial Selection Debate and Why It Matters for Judicial Independence’ (2008) 21 *The Georgetown Journal of Legal Ethics* 1259, 1260.

³ Paul W Kahn, ‘Independence and Responsibility in the Judicial Role’ in Irwin P Stotzky (ed), *Transition to Democracy in Latin America: The Role of the Judiciary* (Routledge 2018) 73.

⁴ Erik S Herron and Kirk A Randazzo, ‘The Relationship Between Independence and Judicial Review in Post-Communist Courts’ (2003) 65 *The Journal of Politics* 422, 423.

⁵ Shapiro argues that ‘the political parties-court connection is not always and necessarily a negative one’ ‘The Success of Judicial Review and Democracy’, *On Law, Politics, and Judicialization* (Oxford University Press 2002) 160.

⁶ Gibler and Randazzo (n 2) 707. Cf According to Moohyung the real challenge to promoting judicial independence lies in maintaining it, rather than in establishing it. This because autocratic regimes may grant judicial independence, provided that it does not strongly constrain their opportunism. ‘Rethinking Judicial Independence in Democracy and Autocracy’ (Doctor of Philosophy, Duke University 2020) 19.

⁷ Cf. Annabelle Lever, ‘Is Judicial Review Undemocratic?’ [2007] *Public Law* 280.

⁸ Martin Shapiro, ‘Judicial Power and Democracy’ in Christine Landfried (ed), *Judicial Power: How Constitutional Courts Affect Political Transformations* (Cambridge University Press 2019) 22.

⁹ Carlo Guarnieri and Patrizia Pederzoli, *The Power of Judges: A Comparative Study of Courts and Democracy* (Cheryl Thomas tr, Oxford Scholarship Online 2012) 18.

¹⁰ Theunis Roux, *The Politico-Legal Dynamics of Judicial Review: A Comparative Analysis* (Cambridge University Press 2018) 12.

Since 1994, Mexico has initiated a wave of judicial reforms aimed to strengthen judicial independence and impartiality. Although there have been shortcomings along the way, improvements have been made. The latest judicial reform (2021) has precisely aimed to improve the criteria for selecting adjudicators and the methods to balance the appointing authority's influence. To understand the process of this reform, we provide a historical context.

Our report proceeds as follows. Section 2 explains the historical context of the latest judicial reform, which situates the evolution of the Mexican judiciary in the structural trend of judicialisation – the process whereby adjudicatory bodies increasingly dominate the making of public policies.¹¹ Section 3 explains the criteria for the selection of adjudicators as well as the authorities that design them – in particular, we focus on the judicial bodies at the federal level. Section 4 explains the methods to balance the appointing authority's influence, which, for the most part, is limited to appealing the results of the competitive examinations and ratifying magistrates and district justices. Section 5 discusses the parameters to ensure that federal adjudicators act independently and impartially. Section 6 explains the three punishments for federal adjudicators who do not act independently and impartially: political impeachment, administrative responsibility procedure, and criminal charges. Finally, section 7 explains the consequences of violating *res judicata* if adjudicators act in violation of the principles of impartiality and independence.

2. HISTORICAL CONTEXT OF THE 2021 JUDICIAL REFORM

The post-war period brought about an era of dictatorial and authoritarian regimes in Latin America.¹² Judiciaries were servile institutions to political and military systems;¹³ judicial independence and impartiality were not attainable aspirations, but uncharted territories.¹⁴ For example, in Peru, the government of General Juan Velasco replaced the entire Supreme Court with judges ideologically sympathetic to his regime.¹⁵ In El Salvador, the judiciary lacked independence and failed to examine cases of serious human rights violations.¹⁶

Similarly, in Mexico, the Justices of the Supreme Court of Justice of the Nation (SCJN) acquired the role of 'regime supporters'.¹⁷ Between 1944 and 1994, the majority of presidents appointed more than half of the justices during their tenure, and over 40% of them served for fewer than five years, arriving and departing according to the presidential term.¹⁸ This resulted in a judiciary that primarily employed a legalist standard of judicial interpretation that condoned state abuse.¹⁹

Against this backdrop, which included 65 years of the rule of a severely delegitimised political party, i.e. the Institutional Revolutionary Party (IRP), and several local electoral defeats, the newly elected Mexican president, Ernesto Zedillo, launched a new judicial reform in 1994.²⁰ At its core, there was a change of personnel along with an expansion of the jurisdiction of the SCJN so as to secure its independence.²¹

¹¹ C Neal Tate, 'Why the Expansion of Judicial Power?' in C Neal Tate and Torbjörn Vallinder (eds), *The Global Expansion of Judicial Power* (New York University Press 1995) 28.

¹² Alexandra Barahona de Brito, *Human Rights and Democratization in Latin America: Uruguay and Chile* (Oxford University Press 1997) 2–5.

¹³ Elin Skaar, *Judicial Independence and Human Rights in Latin America Violations, Politics, and Prosecution* (Palgrave Macmillan 2011) 2–4.

¹⁴ Margaret Popkin, 'Fortalecer La Independencia Judicial' in Luis Pásara (ed), *En busca de una justicia distinta. Experiencias de reforma en América Latina* (UNAM 2004) 410.

¹⁵ By 1975, the Peruvian regime had replaced 504 out of 643 lower-level judges. Linn A Hammergren, *The Politics of Justice and Justice Reform in Latin America: The Peruvian Case in Comparative Perspective* (Westview Press 1998) 144.

¹⁶ Margaret Popkin, *Peace without Justice: Obstacles to Building the Rule of Law in El Salvador* (Pennsylvania State University Press 2000) 3.

¹⁷ Andrea Castagnola and Saul Lopez Noriega, *Judicial Politics in Mexico: The Supreme Court and the Transition to Democracy* (Routledge 2016) 24.

¹⁸ Beatriz Magaloni, 'Authoritarianism, Democracy and the Supreme Court: Horizontal Exchange and the Rule of Law in Mexico' in Scott Mainwaring and Christopher Welna (eds), *Democratic Accountability in Latin America* (Oxford University Press 2003) 288–289.

¹⁹ Arianna Sánchez, Beatriz Magaloni and Eric Magar, 'Legalist versus Interpretativist: The Supreme Court and the Democratic Transition in Mexico' in Gretchen Helmke and Julio Rios-Figueroa (eds), *Courts in Latin America* (Cambridge University Press 2011) 190.

²⁰ Jorge A Vargas, 'The Rebirth of the Supreme Court of Mexico: An Appraisal of President Zedillo's Judicial Reform of 1995' (1996) 11 *American University International Law Review* 295, 299.

²¹ Miguel Schor, 'An Essay on the Emergence of Constitutional Courts: The Cases of Mexico and Colombia' (2009) 16 *Indiana Journal of Global Legal Studies* 173, 181.

On the one hand, the number of justices was lowered from 25 to 11; life appointments were replaced with 15-year appointments; and the president nominated justices, who must be confirmed by a Senate majority of two-thirds.²² On the other hand, two new mechanisms of constitutional control were introduced.²³ First, the Court could resolve disagreements between various governmental branches over the constitutional legality of their respective actions (constitutional controversies). Second, qualified minorities of legislative bodies at the federal, state, municipal levels, as well as the Attorney General, could challenge the constitutionality of federal and state laws and international treaties, directly before the court, by filing a constitutional action. Finally, the reform created the Federal Judicial Council (FJC), charged with administering the federal judiciary – namely, selecting judges and determining their promotions.²⁴

Some scholars have argued that the 1994 reform was an insurance policy designed to protect the weakening IRP, which was operating in an unstable political environment.²⁵ However, ex post explanations which try to capture hidden motivations are hard to study.²⁶ Instead, here it is argued that this and the following reforms have taken place in the wider context of making the judiciary independent to advance democratic governance in Latin America:²⁷ a process which tries to politically insulate the judiciary from institutions under popular control,²⁸ while increasing its intervention in political processes through various forms of judicial review.²⁹

The latest breakthroughs in the transformation of the Mexican judiciary support this thesis. First, between 2009 and 2011, a series of judicial decisions and reforms brought about a paradigm shift in the jurisprudence of the SCJN, which marked the start of the 10th epoch of the court's jurisprudence.³⁰ It set forth the diffuse control of constitutionality and conventionality. This meant that any Mexican judge or court could examine whether a law – or, more specifically, any other legal element – is contrary to the Constitution and, if so, refuse to apply it in resolving a specific case.³¹ Necessarily, this new form of constitutional judicial review renders Mexican courts unable to effectively make or block public policies.³²

However, a series of controversial designations of the SCJN Justices and nepotistic practices within the FJC prompted a downshift in safeguarding the independence of the Mexican judiciary.³³ Caballero notes two controversial appointments: first, the obscure designation process of justice Eduardo Medina Mora (2015), who had been criticised because of his previous performance at the Center for Investigation and National Security and as Attorney General of the Republic;³⁴ and second, the controversial designation of Yazmín Esquivel Mossa, given that she is the wife of businessman José Mara Riobóo, a contractor and consultant for the current Mexican administration.³⁵ Additionally, a recent study shows the existence of clientelist networks in Mexico's judicial system, in which a high percentages of judicial officials have relatives in the circuit they represent – in some instances, up to 66%.³⁶

²² Juan Gonzalez Bertomeu, 'Judicial Politics in Latin America' in Tatiana Alfonso, Karina Ansolabehere and Rachel Sieder (eds), *Handbook of Law and Society in Latin America* (Routledge 2018) 172.

²³ Josafat Cortez Salinas and Grisel Salazar Rebolledo, 'La Construcción de La Independencia y Del Poder de La Suprema Corte de Justicia En México. Explicando La Reforma Judicial de 1994' [2019] *Estudios políticos* (México) 213, 219.

²⁴ Beatriz Magaloni, 'Authoritarianism, Democracy and the Supreme Court: Horizontal Exchange and the Rule of Law in Mexico' in Scott Mainwaring and Christopher Welna (eds), *Democratic Accountability in Latin America* (Oxford University Press 2003) 294.

²⁵ Jodi Finkel, 'Judicial Reform as Insurance Policy: Mexico in the 1990s' (2005) 47 *Latin American Politics and Society* 87, 88.

²⁶ Gonzalez Bertomeu (n 23) 171.

²⁷ Michael Dodson, 'Assessing Judicial Reform in Latin America' (2002) 37 *Latin American Research Review* 200, 201.

²⁸ Owen M Fiss, 'The Right Degree of Independence' in Irwin P Stotzky (ed), *Transition to Democracy in Latin America: The Role of the Judiciary* (Routledge 2018) 62.

²⁹ Guarnieri and Pederzoli (n 10) 18.

³⁰ Eduardo Ferrer Mac-Gregor and Rubén Sánchez Gil, *Control Difuso de Constitucionalidad y Convencionalidad* (Suprema Corte de Justicia de la Nación, Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos y Comisión de Derechos Humanos del Distrito Federal 2013) 14–15.

³¹ *ibid* 15.

³² Shapiro (n 9) 21.

³³ José Antonio Caballero, 'La Reforma Judicial de 2021. ¿Hacia Dónde va La Justicia?' (*Nexos*, 5 October 2021); Sociedad, 'Organizaciones Exigen Cambiar El Proceso Para Designar a Los Ministros' *Expansión Política* (13 March 2019).

³⁴ Also, in 2019, Medina Mora resigned with no official explanation

³⁵ Caballero (n 34); Sociedad (n 34).

³⁶ Felipe Borrego Estrada, 'Estudio Sobre Redes Familiares y Clientelares En El Consejo de La Judicatura Federal' [2017] *Reforma Judicial. Revista Mexicana de Justicia* 159, 159–163.

These controversies alone triggered the 2021 judicial reform.³⁷ The reform project indicates the need for combating nepotism within the judiciary.³⁸ It underscores that federal judges do not always conduct themselves with independence and impartiality; neither has the judicial career system been successful in ensuring that those who become judges are the most honest and best prepared; nor has it been possible to banish corruption. If anything, inbreeding and cronyism have produced deep-rooted clientelist networks, in which positions are trafficked, favours are exchanged, or worse, a price is put on justice.³⁹

The reform considers two major aspects – namely, jurisdiction and governance. Given the scope of this report, we concentrate on the latter.⁴⁰ The main governance focus is to address the way people enter a judicial career, to reduce clientelism within the judiciary.⁴¹ To that end, the reform limits the ability of judges and magistrates to appoint their staff; it underscores the immovability of judges; it establishes the Federal Judicial Training School – charged with implementing the processes of formation, training and updating of the jurisdictional and administrative personnel of the judiciary,⁴² as well as of conducting competitive examinations; and, finally, it introduces gender parity criteria.⁴³

3. CRITERIA FOR THE SELECTION OF ADJUDICATORS

The manner in which judges are recruited has an impact not only on the professional makeup of the judiciary, but also on the connections it develops with other political actors.⁴⁴ The European Court of Human Rights (ECtHR) has determined that to decide whether a body can be deemed independent, the way in which its members are appointed and their tenure in office must be examined.⁴⁵ In the same vein, a report concerning the judicial independence of the ECtHR finds that the practice of appointments is important in relation to two factors. First, given that the legitimacy and credibility of any judicial institution are contingent upon public faith in its independence, it is essential that judicial nomination processes adhere to recognised principles of judicial independence.⁴⁶ Second, the likelihood of judges lacking the necessary skills and capacities to carry out their profession increases if there are neither objective nor transparent standards of appointment, based on appropriate professional qualifications.⁴⁷

3.1. FEDERAL ADJUDICATORS

In this section, we analyse the designation process, along with the criteria for selecting adjudicators of the Mexican judiciary at the federal level.⁴⁸ This includes the Justices of the SCJN, the Magistrates of the Electoral Tribunal, and Circuit Magisters and District Judges. We do not consider the designation process of the Councillors of the FJC, given that its organisational nature is more administrative than adjudicatory.

³⁷ Carlos Martín Gómez Marinero, 'La Reforma Judicial de 2021' [2021] *Hechos y Derechos*.

³⁸ José Antonio Caballero, *La Reforma Judicial de 2021 ¿Hacia Dónde va La Justicia?* (Universidad Nacional Autónoma de México and Instituto de Investigaciones Jurídicas 2021) 13 and 17.

³⁹ Poder Judicial de la Federación, *Reforma Judicial Con y Para El Poder Judicial* (México 2020) 3.

⁴⁰ For a comprehensive overview of the reform's whole scope, see: Caballero (n 39) 29–81.

⁴¹ *ibid* 88.

⁴² Formation refers to the process of developing a new judicial profile with the highest technical standards and human quality (*Escuela Federal de Formación Judicial*' (2023) <<https://escuelajudicial.cjf.gob.mx/>>, while training is the process of learning specific tasks and techniques to respond to the specific needs of judicial officers (Consejo de la Judicatura Federal and Escuela Federal de Formación Judicial, 'Informe de Actividades 2022' (2022) 27).

⁴³ Political Constitution of the United Mexican States 1917 Article 100, paras 7-8; Judicial Career Law of the Judicial Branch of the Federation 2021.

⁴⁴ Guarnieri and Pederzoli, *supra* n. 9, 18–19.

⁴⁵ See, for instance, the recent decision of the ECtHR against Poland, in which it found that the procedure for appointing judges had been unduly influenced by the legislative and executive powers, which 'amounts to a fundamental irregularity adversely affecting the whole process and compromising the legitimacy of a court composed of judges so appointed'. *Reczkowicz v. Poland*, no. 43447/19, ECHR 2021, para. 276.

⁴⁶ Jutta Limbach et al., 'Judicial Independence: Law and Practise of Appointments to the European Court of Human Rights' (Interights, 2003), 5–6; United Nations, *Basic Principles on the Independence of the Judiciary*. [Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985].

⁴⁷ Limbach et al., *supra* n. 45, 5–6.

⁴⁸ Political Constitution of the United Mexican States (n 43), Article 94, paras 1-6 ; Organic Law of the Federal Judiciary 2021, Article 1.

3.1.1. *The Supreme Court of Justice of the Nation*

The SCJN is the country's highest constitutional court and the head of the federation's judiciary.⁴⁹ It is composed of 11 Justices⁵⁰ with a 15-year tenure.⁵¹ Among its responsibilities are to defend the legal order established by the Federal Constitution, to maintain the balance of power between the various branches and spheres of government, and to definitively resolve matters of great social importance.⁵²

The process of appointing the SCJN Justices begins with the President of Mexico submitting a list of three candidates for consideration to the Senate. Following a hearing, the Senate appoints a justice by a vote of two-thirds of the senators present. If the Senate does not make a decision within 30 days, the person designated by the President will occupy the position of justice. However, if the Senate rejects the entire list of three candidates, the President must submit a new one. If this second slate is also rejected by the Senate, then the President will name the new Justice.⁵³

The Constitution suggests that appointments of the SCJN justices shall preferably be made from among those persons who have served with efficiency, capacity and probity in the administration of justice, or who have distinguished themselves for their honourability, competence and professional background in the exercise of legal praxis.⁵⁴ Additionally, to be elected a justice of the SCJN, it is required that the officeholder should:

1. be a Mexican citizen by birth, in full exercise of political and civil rights;
2. be at least 35 years of age on the day of the appointment;
3. possess, on the day of the appointment, at least 10 years of seniority and a professional law degree issued by an authority or institution legally empowered to do so;
4. have a good reputation, and not have been convicted of a crime punishable by more than one year's imprisonment;
5. have resided in the country during the two years prior to the day of the appointment; and
6. not have been Secretary of State, Attorney General of the Republic, a senator, a federal deputy, or head of the executive power of any federal entity, during the year prior to the day of appointment.

This process of electing SCJN Justices has been criticised. Allier has noticed four procedural flaws.⁵⁵ First, the President is not obliged to motivate the candidacies he or she proposes to the Senate. Second, there is no law establishing objective criteria for the selection of aspiring ministers, which would provide certainty to the appointment system. Third, there is a lack of participation by both the federal judiciary and civil society in the selection and appointment process. Fourth, this process endorses the prevalence of presidentialism and participacy. To correct these flaws, Allier suggests that the candidate be knowledgeable about constitutional law, human rights and the branches of law that correspond to the chambers of the SCJN.⁵⁶

Another proposal to reform the designation process comes from José and Miguel Carbonell;⁵⁷ they consider that the system of shortlists should be replaced, and, to that end, that the Senate should have exclusive authority to nominate and appoint individuals. Likewise, they recommended holding extensive hearings to fully assess the qualifications and expertise of applicants for the top post in the federal judicial branch, as well as to create a more expedited approach in the case of an unexpected SCJN vacancy.

⁴⁹ Political Constitution of the United Mexican States (n 44), Article 94, para 3; Organic Law of the Federal Judiciary 2021, Article 2.

⁵⁰ *ibid*, Article 94, para 3; Organic Law of the Federal Judiciary (n 48), Article 2.

⁵¹ Political Constitution of the United Mexican States (n 44), Article 94, para 14; Organic Law of the Federal Judiciary (n 50) Article 8.

⁵² SCJN, '¿Qué Es La Suprema Corte de Justicia de La Nación?' <<https://www.scjn.gob.mx/conoce-la-corte/que-es-la-scjn>>. The complete list of attributions is set forth in Organic Law of the Federal Judiciary (n 50), Article 10.

⁵³ Political Constitution of the United Mexican States (n 44), Article 96, para 2.

⁵⁴ *ibid*, Article 95, para 2.

⁵⁵ Jaime Allier Campuzano, 'NUEVO PROCEDIMIENTO PARA LA DESIGNACIÓN DE MINISTROS DE LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN' [2019] *Revista del Instituto de la Judicatura Federal* 4.

⁵⁶ *ibid*.

⁵⁷ José Carbonell and Miguel Carbonell, 'El Nombramiento de Los Ministros de La Suprema Corte: Una Propuesta de Reforma', *Estado constitucional, derechos humanos, justicia y vida universitaria. Estudios en homenaje a Jorge Carpizo*, vol III (Universidad Nacional Autónoma de México 2015) 71–72. José Carbonell and Miguel Carbonell, 'El Nombramiento de Los Ministros de La Suprema Corte: Una Propuesta de Reforma' (2014) 23 *Quid Iuris* 77.

We consider that both the Allier and Carbonell approaches may serve as gateways to addressing the problems of nepotism and controversial designations that triggered the judicial reform. Certainly, reducing the President's discretion to nominate SCJN Justices while incorporating the views of the federal judiciary and civil society would help to democratise the selection process.

3.1.2. *The Electoral Tribunal*

The Electoral Tribunal is a specialised judicial body of the Federal Judiciary, and the highest judicial authority in electoral matters.⁵⁸ It settles, in the last instance, any challenge or controversy that may arise in federal and local electoral processes.⁵⁹ The Electoral Tribunal operates on a permanent basis with a Superior Chamber, seven Regional Chambers and a Specialised Regional Chamber.⁶⁰ Magisters at the Superior and Regional Chambers have a tenure of nine years, which cannot be extended.⁶¹

In addition to meeting the criteria to be a Justice of the SCJN,⁶² the Organic Law of the Judiciary of the Federation (OLJF) considers that an electoral magistrate of the Superior Chamber must:⁶³

1. have a voting card with a photograph;
2. be able to prove his or her knowledge of electoral law;
3. not hold or have held the position of President of the National Executive Committee or equivalent of a political party;
4. not have been registered as a candidate for any office of popular election in the last six years immediately preceding the appointment; and
5. not hold or have held a national, state, district or municipal leadership position in any political party in the six years immediately preceding the appointment.

The OLJF sets forth three additional conditions to the selection of magistrates of the Regional Chambers; namely, they must be at least 35 years old at the time of designation; have a clean record and not have been convicted of an intentional offence punishable by more than one year's imprisonment; and possess a legally recognised law degree and a minimum of five years of professional experience.⁶⁴ Although it is not expressly stated in the OLJF, these three additional criteria are also applicable to the selection of Superior Chamber magisters, given that the Constitution expresses that they should meet also the criteria to be a Justice of the SCJN.

The process of designating a Magister of the Electoral Tribunal (either at the Superior Chamber or at the Regional Chambers) is more rigorous than that for the SCJN Justices.⁶⁵ It combines a nomination process carried out by the SCJN and a designation by the Senate. First, the Plenary of the SCJN issues a general call for applications; namely, any person who meets the legal requirements listed above can apply. Additionally, applicants should submit their résumé and write a 10-page essay on an electoral topic chosen at the discretion of the SCJN.⁶⁶ After examining and evaluating the candidates, the SCJN shortlists a number of candidates to undergo an oral and public examination. Each of the shortlisted candidates is examined by one of the SCJN Justices concerning the functioning of the Superior or Regional Chamber, as appropriate. Afterwards, each of the candidates presents, before the Plenary of the SCJN, the key points of their essay; they are then examined on those

⁵⁸ Political Constitution of the United Mexican States (n 44), Article 99; Organic Law of the Federal Judiciary (n 50), Article 164.

⁵⁹ Organic Law of the Federal Judiciary (n 50), Article 165.

⁶⁰ Political Constitution of the United Mexican States (n 44), Article 99, para 2; Organic Law of the Federal Judiciary (n 50), Article 165.

⁶¹ Political Constitution of the United Mexican States (n 44), Article 99, paras 12 and 13.

⁶² *ibid*, Article 99, para 12.

⁶³ Organic Law of the Federal Judiciary (n 50), Article 193.

⁶⁴ *ibid*, Article 194, sections II, III and IV.

⁶⁵ Political Constitution of the United Mexican States (n 44), Article 99, para 11.

⁶⁶ SCJN Pleno, ACUERDO NÚMERO 6/2016 2016.

points by one Justice.⁶⁷ Finally, the Justices vote upon whom they consider to be the most appropriate candidates to comprise the trio from which the Senate elects one magister.⁶⁸

Second, the Justice Commission of the Senate carries out a hearing process in which, after evaluating the candidates' compliance with the formal legal requirements, it proposes to the Plenary of the Senate of the Republic one person from each slate proposed by the SCJN to occupy the positions in question.⁶⁹

The appearances are in trios; each of the three members presents for five minutes. The nominees discuss the significance and fitness of their candidacy, the substance of their essays, and the role they aim to establish as a Magistrate of the Electoral Tribunal, if selected.⁷⁰ Following the presentation of the three candidates, the senators who are members of the Justice Commission have up to two minutes to ask questions. The selection procedure concludes after four days, following the final appearance. Once this procedure is completed, the names of candidates for appointment as Magistrates of the Electoral Tribunal are presented to the Plenary of the Senate of the Republic, who will decide by a vote of two-thirds of the members present.⁷¹

In a General Agreement, the Justice Commission has set forth that the decision of the senators to elect the Magistrates of the Electoral Tribunal should be motivated following the parameters of the candidates' excellence in preparation and their professional experience; their theoretical and practical training; their knowledge of and familiarity to electoral matters; the jurisdictional impartiality they can ensure; and the relevance and suitability of their candidacy.⁷²

3.1.3. *Circuit Magistrates and District Judges*

The circuit magistrates are the adjudicators of the different collegiate tribunals in Mexico, which have the powers of constitutional courts of cassation.⁷³ There are three types of circuit tribunals: collegiate tribunals of appeal,⁷⁴ circuit collegiate tribunals,⁷⁵ and regional plenary,⁷⁶ each of which are distributed across 32 judicial circuits in the national territory.⁷⁷ Each tribunal is made up of three circuit magistrates, who may specialise in one area or several (civil, criminal, administrative and labour).⁷⁸

On the other hand, district judges are the judicial bodies of first instance of the federal judicial branch. They hear disputes arising from the enforcement or application of federal laws in civil, criminal and administrative matters, and resolve indirect *amparo* lawsuits in those same subjects.⁷⁹

Both magistrates and judges are appointed for a probation period of six years, at the end of which, if ratified, they can only be removed due to political impeachment or serious administrative misconduct, as outlined below in Sections 6.1 and 6.2d⁸⁰

⁶⁷ SCJN Pleno, ACUERDO NUMERO 14/2016 2016.

⁶⁸ SCJN Pleno, LISTA aprobada por el Pleno de la Suprema Corte de Justicia de la Nación en su sesión pública celebrada el dieciséis de agosto de dos mil dieciséis, de los cuarenta y dos candidatos a integrar las ternas que serán propuestas a la Cámara de Senadores del Congreso de la Unión para la designación de Magistrados de la Sala Superior del Tribunal Electoral del Poder Judicial de la Federación. 2016.

⁶⁹ Rules of Procedure of the Senate of the Republic 2010, Article 257, section II.

⁷⁰ Senado Comisión de Justicia, 'Acuerdo de la Comisión de Justicia por el que se establece el procedimiento para la comparecencia y dictaminación de los candidatos presentados por la Suprema Corte de Justicia de la Nación para Magistrados de las Salas Regionales del Tribunal Electoral del Poder Judicial de la Federación' (2013), section 2.

⁷¹ Political Constitution of the United Mexican States (n 44), Article 99, para 12.

⁷² Senado Comisión de Justicia Acuerdo de la Comisión de Justicia por el que se establece el procedimiento para la comparecencia y dictaminación de los candidatos presentados por la Suprema Corte de Justicia de la Nación para Magistrados de las Salas Regionales del Tribunal Electoral del Poder Judicial de la Federación. (n 71).

⁷³ Fabiola Martínez Ramírez and Edgar Caballero González, 'El Recurso de La Casación' [2009] *Revista Iberoamericana de Derecho Procesal Constitucional* 147, 149.

⁷⁴ The Organic Law of the Federal Judiciary, Article 35 lays down the full list of their competence.

⁷⁵ *Ibid.*, Article 38 lays down the full list of their competence.

⁷⁶ *Ibid.*, Article 42 lays down the full list of their competence.

⁷⁷ *ibid.*, Article 1, sections III, IV and V.

⁷⁸ Federal Law of Responsibilities of Public Servants 1982, Article 2.

⁷⁹ Organic Law of the Federal Judiciary (n 50), Articles 49-62.

⁸⁰ Political Constitution of the United Mexican States (n 44), Article 110, para 3. The comprehensive list of reasons for impeachment is found in Federal Law of Responsibilities of Public Servants (n 79), Article 7.

As we have mentioned, a series of controversies triggered a judicial reform,⁸¹ which established the Judicial Career Law of the Judicial Branch of the Federation (JCLJBF). The JCLJBF establishes the guiding procedures to appoint judicial personnel. In line with the text of the Constitution, the JCLJBF states the FJC is the authority in charge of appointing circuit magistrates, as well as district judges, based on objective criteria and in accordance with internal or external competitive examinations.⁸²

Circuit magistrates and district judges must meet the same formal legal requirements, except for the age criterion. These include:⁸³

1. being a Mexican citizen by birth, without having acquired another nationality;
2. being in full enjoyment and exercise of their civil and political rights;
3. being over 35 years of age for magistrates and 30 for judges;
4. having a good reputation;
5. not having been convicted of a felony punishable by deprivation of liberty; and
6. having a law degree legally issued and at least five years of professional experience’.

Although the formal requirements for circuit magistrates and district judges are identical, the entry process differs, in that only district judges and secretaries of study and account of the SCJN can participate in the competitive examinations to fill the positions of circuit magistrate.⁸⁴

First, there are two procedures for the competitive examination for the appointment of district judges: school-based and non-school-based.⁸⁵ The former is carried out through a training course given by the Judicial School,⁸⁶ while the latter refers to open or internal competitive examinations, which include the completion of a questionnaire whose content deals with subjects related to the function of the position for which the candidate is applying.⁸⁷ Access to both the training courses and the competitive examinations is both internal (for those already part of the judiciary) and external (available to anyone), provided they meet the above criteria.⁸⁸

The competitive examinations for both circuit magisters and district judges consist of two stages. The first stage consists of a multiple-choice test – 50 questions for magisters⁸⁹ and 100 for judges⁹⁰ – a practical test, consisting of writing a draft judgment, and a 15-minute oral exam before a jury. Finally, district judges who successfully pass the examination undergo an induction and specialisation course to strengthen and improve the performance of the judicial function.⁹¹ The appointments are made by the Plenary of the FJC⁹² and published in Mexico’s Official Gazette.⁹³

As we have mentioned, after successfully completing a probation period of six years, the FJC determines whether to ratify the magister or the judge. To do so, it evaluates:⁹⁴

1. whether they have not been sanctioned for serious misconduct as a result of an administrative complaint during their tenure as a district judge or circuit magistrate;
2. whether they have a satisfactory evaluation as a federal judge, in accordance with the following:
 - a. judicial functioning, based on the following:

⁸¹ There have been allegations of exam leaks in the organisation of the competitive examinations. See José Antonio Belmont, ‘Destituyen e Inhabilitan a Magistrado Por Filtración de Exámenes Para Jueces’ *Milenio* (5 August 2020).

⁸² Political Constitution of the United Mexican States (n 44), Article 100, paras 7, 10 and 11.

⁸³ Judicial Career Law of the Judicial Branch of the Federation (n 44) Articles 11 and 12, respectively.

⁸⁴ *ibid*, Article 22, para 5.

⁸⁵ *ibid*, Article 24.

⁸⁶ *ibid*, Article 25.

⁸⁷ *ibid*, Article 26, paras 3 and 4.

⁸⁸ *ibid*, Article 20, section II.

⁸⁹ FJC Pleno, Acuerdo General del Pleno del Consejo de la Judicatura Federal, que establece el procedimiento y lineamientos generales para acceder al cargo de Magistrado de Circuito, mediante Concursos de Oposición Libres 2021, Décima Quinta, 1.

⁹⁰ FJC Pleno, Acuerdo General del Pleno del Consejo de la Judicatura Federal, que reforma el diverso que establece el Procedimiento y Lineamientos Generales para acceder al cargo de Juez y Jueza de Distrito Especializado en Materia de Trabajo mediante Concursos Abiertos de Oposición 2020, Décima Quinta, 1.

⁹¹ *ibid*, Vigésima Segunda.

⁹² Political Constitution of the United Mexican States (n 44), Article 97.

⁹³ Judicial Career Law of the Judicial Branch of the Federation (n 44), Articles 25, para 5; 26, para 7; and 27, para 7.

⁹⁴ *ibid*, Article 67.

- i. results of inspection visits, and
- ii. performance, evaluated based on productivity derived from statistical information;
- b. suitability, where the following is accredited:
 - iii. that they have conducted themselves without intent to deceive the various administrative instances of the Council in its surveillance processes, visits, statistics, discipline, work conflicts or in compliance with the judicial policies implemented, especially those to combat nepotism;
 - iv. that they hold the appropriate law degrees, as well as refresher and specialisation courses;
 - v. that they have not been sanctioned for crimes or misdemeanours that, regardless of their individual qualification, as a whole are considered serious because they reflect patterns of conduct that are far from the constitutional standards of excellence, objectivity, impartiality, professionalism and independence; and
 - vi. that they have not incurred a systematic breach of labour standards, for which disciplinary proceedings, labour disputes and ordinary visit rulings may be reviewed; and
3. any other issues deemed pertinent by the FJC, provided that they are included in general agreements published six months prior to the date of ratification.

The weight assigned to points 1, 2 and 3 must be determined in the respective general agreement and shall be stated in the resolutions of the FJC in which the ratification is agreed upon.⁹⁵

3.2. THE METHOD FOR APPOINTING NATIONAL CANDIDATES TO POSITIONS AS INTERNATIONAL ADJUDICATORS

Although Mexican citizens have occupied several positions as international adjudicators,⁹⁶ there are no formal methods to nominate them to the relevant international adjudicatory bodies. This is particularly concerning if we consider that in 2019 Mexico obtained, worldwide, the highest number of elected candidacies to bodies of the multilateral system, with a total of 32, at a 100% success rate in its nominations.⁹⁷ The internal regulations of the Secretariat of their Economy and Internal Affairs consider provisions on nominating personnel to international organisations, but no formal criteria or standards are put forward.⁹⁸

In light of the above, the nomination and designation of María del Socorro Flores Liera as justice of the International Criminal Court in 2019 sparked controversy as to the method whereby Mexico nominated her.⁹⁹ As Martínez and Guzmán note, her selection procedure did not meet the criteria set forth in Article 36(4)(a)(i) of the Rome Statute, because neither did the Mexican President provide a shortlist of candidates, nor was the Senate consulted during the selection process.¹⁰⁰

This is symptomatic of a bigger problem. Mexico lacks a policy or legal framework governing judicial nominations to international organisations. Additionally, there is no impartial and independent selection body to make such nominations, which would ensure fairness and the suitability of those nominated. In this sense, Martínez and Guzmán suggest the Senate and the Secretariat of Foreign Affairs establish a clear selection method that ensures equal opportunity for all applicants: one in which the nomination process provides a set of transparent, merit-based criteria that certify impartiality and appropriately assess the candidate's profile, abilities, knowledge and experience.¹⁰¹

⁹⁵ *ibid*, Article 67, para 2.

⁹⁶ To name a few examples, Bernardo Sepúlveda Amor was a justice at the International Court of Justice; Ricardo Ramírez Hernández was a member and president of the Appellate Body of the World Trade Organization; and Sergio García Ramírez and Eduardo Ferrer Mac-Gregor Poisot have been judges and presidents of the Inter-American Court of Human Rights.

⁹⁷ Secretaría de Relaciones Exteriores, 'Durante 2019 México Obtuvo El Número Más Alto de Candidaturas Electas a Organismos Multilaterales', 2 January 2020, <https://www.gob.mx/sre/prensa/durante-2019-mexico-obtuvo-el-numero-mas-alto-de-candidaturas-electas-a-organismos-multilaterales>.

Internal Regulations of the Secretariat of Economy 2019, Article 5, section XVIII; Internal Regulations of the Secretariat of Internal Affairs 2019, Article 5, section XVIII.

⁹⁹ Rodolfo González Espinosa, 'La Nueva Jueza Mexicana En La Corte Penal Internacional: Una Oportunidad Perdida' *Nexos* (7 January 2021).

¹⁰⁰ Graciela Martínez Manzo and Olga Guzmán Vergara, 'ICC 2020 Judicial Elections: Mexico Aims for a Seat on the Bench' [2020] *International Justice Monitor* <<https://www.ijmonitor.org/2020/09/icc-2020-judicial-elections-mexico-aims-for-a-seat-on-the-bench>>.

¹⁰¹ *ibid*.

4. THE METHODS TO BALANCE THE APPOINTING AUTHORITY'S INFLUENCE

As we have discussed, the process of electing SCJN Justices and Electoral Magisters is carried out between two governmental branches. Concerning the former, the president nominates and the Senate chooses, while for the latter, the SCJN nominates and the Senate appoints. However, neither the decisions to nominate nor to appoint can be recursed.

Similarly, the decisions of the FJC to appoint magistrates and judges cannot be appealed. Only the results of the competitive examinations may be challenged before the Plenary of the FJC.¹⁰² The appeal for administrative review must be filed within five working days following the date on which the notification of the results of the competitive examination has taken effect or has become known.¹⁰³ Decisions declaring the administrative review appeal well founded may correct the score or annul the competitive examination, order that the appellant be re-examined, or order any other measure to correct the violation suffered by the appellant.¹⁰⁴

The decisions of the FJC referring to the ratification of magistrates and district judges may be appealed before the Plenary of the SCJN, which should only verify whether they have been adopted in accordance with the rules established by the Constitution, the JCLJBF, internal regulations and general agreements issued by the FJC.¹⁰⁵ The appeal for administrative review must be filed within five working days following the date on which the notification of the resolution to be challenged becomes effective.¹⁰⁶ Finally, the resolutions declaring the appeal for review to be well founded shall be limited to declaring the nullity of the challenged act, so that the Plenary of the FJC may issue a new resolution within a term not to exceed 30 calendar days.¹⁰⁷

Although the positive impact of the new process of admission into the federal judiciary may be tangible in the short term, it will be hard to tackle nepotistic difficulties without modifying the structure of the judicial office and its system of responsibilities. This is because, as Caballero notes, within the judicial office structure responsibility is often centred on the head of the jurisdictional unit – either the circuit magistrate or the district judge. As a result, adjudicators prefer to place a premium on trust in their employees rather than competence, a trait that creates an inbuilt incentive for clientelist partnerships.¹⁰⁸

5. PARAMETERS TO ENSURE THAT ADJUDICATORS ACT INDEPENDENTLY AND IMPARTIALLY

The World Justice Project places Mexico in the bottom four countries in Latin America, and among the 30 countries with the most corrupt public servants.¹⁰⁹ This is why institutional mechanisms ensuring adjudicators behave impartially and independently are important in combating corrupt practices. Although real efforts have been made, these problems have been persistent within the judiciary.¹¹⁰

As we have mentioned, controversial designations of SCJN Justices and nepotistic practices within the FJC have prompted internal responses within the judiciary. In light of this, the FJC set forth the Comprehensive Plan to Combat Nepotism. The Plan includes¹¹¹ strengthening of the methods of selection of judicial personnel; a digital register of family relationships;¹¹² the fact that hiring persons related to other incumbents by blood or affinity within the fifth degree will require the non-binding opinion of an Integrity Committee; and an electronic mailbox for reporting cases of nepotism.

¹⁰² Political Constitution of the United Mexican States (n 44), Article 100, para 11; Judicial Career Law of the Judicial Branch of the Federation (n 44) Article 74.

¹⁰³ Judicial Career Law of the Judicial Branch of the Federation (n 44), Article 76.

¹⁰⁴ *ibid*, Article 78.

¹⁰⁵ Political Constitution of the United Mexican States (n 44), Article 100, para 10; Judicial Career Law of the Judicial Branch of the Federation (n 44) Article 68.

¹⁰⁶ Judicial Career Law of the Judicial Branch of the Federation (n 44), Article 70.

¹⁰⁷ *ibid*, Article 73.

¹⁰⁸ Caballero (n 39) 93–96.

¹⁰⁹ World Justice Project, 'Rule of Law Index' (2020) 17–18.

¹¹⁰ In the latest Corruption Perception Index of Transparency International, Mexico ranks 124 out 180. See <https://www.transparency.org/en/cpi/2020/index/mex>

¹¹¹ FJC Pleno, Acuerdo Del Pleno Del Consejo De La Judicatura Federal Por El Que Se Establece El Plan Integral De Combate Al Nepotismo 2019 [CJF-002].

¹¹² In order for all public servants to declare, under oath, their family relationships in the judiciary, by affinity and consanguinity up to the fifth degree.

Another important instrument to ensure the impartiality of Mexican adjudicators is the Code of Ethics of the Judicial Branch of the Federation (CEJBF). The CEJBF sets forth the judicial principles, rules and virtues applicable to guide the conduct of federal judges and their assistants, as well as to facilitate ethical reflection on the various aspects of judiciary praxis.

The Code is divided into five chapters. The first four chapters define the four fundamental guiding principles of judicial ethics (independence, impartiality, objectivity and professionalism). The fifth chapter does not include a guiding concept of judicial ethics, but rather presents a variety of judicial characteristics that collectively comprise the ideal profile of a good judge under the term ‘excellence’: a competent judge’s ideal profile.¹¹³

Although ethical codes are not a panacea to solve a lack of impartiality, they are definitely important. If applied seriously, their usage can create an ethical environment or culture, as part of a learning process that includes the promotion, inculcation, reinforcement and assessment of ethical behaviour.¹¹⁴ In addition, they are helpful in certain situations, such as preventing technical infringements and increasing scrutiny both inside and outside public organisations.¹¹⁵

Additionally, the JCLJBF considers that members of the judiciary have the duty to act in conformity with the judicial function's independence, ensuring the prompt, complete, expeditious and impartial administration of justice.¹¹⁶

6. CONSEQUENCES FOR DOMESTIC ADJUDICATORS OF A BREACH OF THE REQUIREMENT TO ACT INDEPENDENTLY AND IMPARTIALLY

The Mexican legal system considers three consequences for the federal adjudicators that we have discussed if they do not act with independence and impartiality: political impeachment, administrative liability trial, and criminal charges.

6.1. POLITICAL IMPEACHMENT

Political impeachment is a judicial proceeding entrusted to the legislative branch,¹¹⁷ whose purpose is to investigate the conduct of high-ranking public officials, including the federal adjudicators listed in sections 3.1.1 to 3.1.3,¹¹⁸ in order to ascertain political responsibility and to impose an appropriate sanction.¹¹⁹ The procedure starts with a complaint, which could be made by any Mexican citizen, and is overseen by the legislative branch in two phases. The first stage is before the Chamber of Deputies, which serves as the investigating and accusing body; and the second stage is before the Chamber of Senators, which serves as the jury of judgment and conducts the trial of responsibility¹²⁰ in accordance with the provisions of Articles 22 et seq. of the Federal Law on Public Servants’ Responsibilities (FLPSR).¹²¹

Article 7 of the FLPSR establishes a numerus clausus list of conduct in relation to which political impeachment can be initiated, among which the violation of human rights stands out:¹²² the Charter of the Rights of Persons before the Judiciary, in the Ibero-American Judicial Area, ‘recognises a fundamental right of the population to have access to independent, impartial, transparent, accountable, efficient, effective and equitable justice’.¹²³ In

¹¹³ Suprema Corte de Justicia de la Nación, Consejo de la Judicatura Federal and Tribunal Electoral, *Código de Ética Del Poder Judicial de La Federación* (Suprema Corte de Justicia de la Nación 2004) 5–6.

¹¹⁴ Alan Doig and John Wilson, ‘The Effectiveness of Codes of Conduct’ (1998) 7 *Business Ethics: A European Review* 140, 146–147.

¹¹⁵ Maíra Martini, ‘THE EFFECTIVENESS OF CODES OF CONDUCT FOR PARLIAMENTARIANS’ (Transparency International 2012).

¹¹⁶ Judicial Career Law of the Judicial Branch of the Federation (n 44), Article 44, section VII.

¹¹⁷ Political Constitution of the United Mexican States (n 44), Article 109.

¹¹⁸ The full list is set forth in *ibid* Article 110, paras 1-2.

¹¹⁹ Abelardo Esparza Frausto, *El Juicio Político* (Cuadernos de la Judicatura 2001) 43.

¹²⁰ Political Constitution of the United Mexican States (n 44), Article 110, paras 5 and 6.

¹²¹ Marisol Luna Leal, ‘Algunos Aspectos de Procedimiento Del Juicio Político En México’ [2010] *Letras Jurídicas* 167, 173.

¹²² It is worth noticing that the Chamber of Deputies has approved a new law on political impeachment, the *Ley de Juicio Político y Declaraciones de Procedencia*, which it currently being discussed in the Senate. See Redacción, ‘Ley de Juicio Político: 11 Puntos Clave Para Entenderla’ *El Financiero* (2 September 2021)

<<https://www.elfinanciero.com.mx/nacional/2021/09/02/ley-de-juicio-politico-11-puntos-clave-para-entenderla/>>.

¹²³ Charter of Rights of the People before the Judiciary in the Ibero-American Judicial Space 2002 Preamble and Article 17.

this sense, it is possible to assume that if an adjudicator violates the right to independent and impartial justice, political impeachment will follow.

The sanctions this procedure considers are the dismissal or permanent disqualification from performing activities, employment, posts, or commissions of any kind in the public service.¹²⁴ But when the conduct of the adjudicator is of a criminal nature, the Chamber of Deputies would issue a declaration of proceeding, which effectively *activates* the possibility of initiating criminal proceedings against, in this case, the relevant adjudicator.¹²⁵

6.2. ADMINISTRATIVE RESPONSIBILITY PROCEDURE

The SCJN determines that administrative liability arises for public servants who fail to comply with legality, honesty, loyalty, impartiality and efficiency in the public function.¹²⁶ When that happens within the federal judiciary, the comptrollers of the SCJN, the Federal Judiciary Council and the Electoral Tribunal¹²⁷ initiate the administrative responsibility procedure, whose purpose is to ‘sanction conduct that harms the proper functioning of the public administration’.¹²⁸

The General Law of Administrative Responsibilities (GLAR) considers two types of administrative misconduct, i.e. non-serious and serious. Among non-serious misconduct¹²⁹ is non-compliance with the relevant codes of ethics, such as the CEJBF,¹³⁰ while serious misconduct includes taking over, processing or resolution of matters in which an adjudicator has a conflict of interest.¹³¹ Additionally, the OLJF considers that any behaviour that threatens the independence of the judicial function, such as accepting or exercising instructions, pressures, commissions or any action that generates or implies undue subordination with respect to any person, would trigger administrative liability.¹³²

The penalties applicable to these administrative misconducts consist of: private or public warning; private or public reprimand; economic sanction; suspension; removal from office; and temporary disqualification from holding jobs, positions or commissions in the public service.¹³³

Finally, it is important to mention that administrative responsibility procedures remain confidential. Although this is in line with the United Nations Basic Principles on the Independence of the Judiciary,¹³⁴ as Caballero notes, this makes it difficult to follow up on cases, to effectively combat corruption or to at least be informed about it.¹³⁵

6.3. CRIMINAL CHARGES

According to Article 111 of the Federal Constitution, the Justices of the SCJN and the Magisters of the Superior Chamber of the Electoral Tribunal may not be prosecuted for criminal actions unless the Chamber of Deputies approves, by an absolute majority of its members, a ‘declaration of procedural immunity’. The SCJN has explained that the recognition of this constitutional immunity is a characteristic element of a democratic state, consisting of protecting the constitutional functions performed by certain public servants – a protection that has as its ultimate objective the avoidance of possible obstructions for political purposes or retaliation from light, malicious or

¹²⁴ ‘Diccionario de Derecho Parlamentario’ (Fundación Mexicana 1993) 212.

¹²⁵ Political Constitution of the United Mexican States (n 44), Article 111; Federal Law of Responsibilities of Public Servants (n 79), Article 7.

¹²⁶ *RESPONSABILIDADES DE SERVIDORES PÚBLICOS SUS MODALIDADES DE ACUERDO CON EL TITULO CUARTO CONSTITUCIONAL* [1996].

¹²⁷ These are the organisations responsible for the control and inspection of compliance with the administrative operating rules governing the Federal Judiciary's bodies and public servants, Organic Law of the Federal Judiciary (n 50), Article 105.

¹²⁸ Marco Antonio Castro Rojas, ‘Ponencia VI. Los Sujetos de Responsabilidad’ (1987) V *Revista Mexicana de Justicia* 111.

¹²⁹ There are additional 10 types of non-serious misconduct. See General Law of Administrative Responsibilities 2016, Articles 49 and 50.

¹³⁰ *ibid*, Article 49, section I.

¹³¹ General Law of Administrative Responsibilities, Article 58. The full list of serious administrative misconduct is set forth in Articles 51–64.

¹³² Organic Law of the Federal Judiciary (n 50), Article 110, section I.

¹³³ *ibid*, Article 135. Additionally, this law establishes that misconduct shall be assessed and, if applicable, punished in accordance with the criteria set forth in Articles 75–80 of the GLAR.

¹³⁴ United Nations Basic Principles on the Independence of the Judiciary. (n 47) s 17.

¹³⁵ Caballero (n 39) 21–22.

irresponsible accusations that seek to interrupt such constitutional functions of an essential nature for the constitutional order.¹³⁶

It is important to notice that the ‘declaration of procedural immunity’ is only addressed to the heads of the highest bodies of the judiciary. According to SCJN Justice Fernando Franco, this legal figure must be interpreted as aimed at safeguarding autonomy and independence from external interference or pressures imposed by external agents through complaints lodged against those in the highest positions in the respective government branches.¹³⁷ In this sense, only magisters of the Regional Chambers of the Electoral Tribunal, circuit magisters and district judges can be prosecuted for federal crimes without a prior ‘declaration of procedural immunity’.

The Federal Criminal Code includes a comprehensive list of crimes against the administration of justice. In particular, we note that the following may be against the principles of judicial impartiality: first, hearing matters which the adjudicator is legally impeded from hearing;¹³⁸ and second, issuing a decision on the merits or a final judgment that is unlawful because it violates a precept of the law or is contrary to the proceedings of the trial, or omitting to issue a procedural decision on the merits or a lawful final judgment within the parameters established by law.¹³⁹ The first situation is not allowed because in line with the Federal Code of Civil Procedures (FCCP), judges, magistrates or justices shall not hear legal disputes that may affect their impartiality, including having a direct interest in the subject matter of the dispute or being an acquaintance or relative of any of the parties to the dispute.¹⁴⁰ In the second situation, the sanction for the former is imprisonment of three to eight years and a monetary fine, while the latter carries a penalty of four to 10 years and a pecuniary fine.

Enforcement of Final Judgments Rendered by Adjudicators in Breach of the Requirement to Act Independently and Impartially

In 2004, the Code of Civil Procedures of Mexico City was reformed to include a new chapter, ‘The Action for Nullity of a Concluded Judgment’, which contained seven sections that contemplated various situations in which the action for annulment of a concluded judgment could be exercised. According to Ovalle Favela, ‘these seven sections allowed the nullity action to be exercised in very broad and flexible cases, which undoubtedly seriously affected the authority of *res judicata*.’¹⁴¹ Moreover, several members of the Legislative Assembly of Mexico City, along with the Attorney General, filed an action of unconstitutionality (No. 11/2004). After resolving these unconstitutionality lawsuits, the SCJN found five of the seven portions of Article 737-A of the Code of Civil Procedures of Mexico City unconstitutional, which, ultimately, were reduced to two and changed.¹⁴²

One of the sections of Article 737-A provided that the judgment could be annulled if the sentences were ‘the product of the fraud of the judge’, such as if an adjudicator hears legal disputes in which there is a *cause of origin* affecting his or her impartiality – as listed in Article 39 of the FCCP. However, the SCJN found that despite the existence of fraudulent conduct by the judge, this cannot be considered as a defect in the process that transcends the result of the judgment or as a defect in the judgment itself, and therefore considered that such assumptions are contrary to the guarantee of legal certainty.¹⁴³

The SCJN has affirmed this line of thought in subsequent decisions. It has been determined that when there is a definitive pronouncement derived from a jurisdictional conflict in which an adjudicatory body has established its competence to hear a matter, such a resolution acquires the category of *res judicata*, which is irrefutable, indisputable, and unmodifiable. Therefore, in the appeal for review in which the judgment of indirect *amparo* is challenged, the appellate court can no longer question that decision.¹⁴⁴

Having that said, there are instances in which, during the course of a trial, unforeseeable or previously unknown events arise; they may modify the situation that prevailed at the time the jurisdictional decision to hear

¹³⁶ *Controversia Constitucional 99/2016*, para 81.

¹³⁷ *Constitutional Controversy 207/2017* [2020] Concurr Vote (SCJN).

¹³⁸ Federal Criminal Code 1931, Article 225, section I.

¹³⁹ See the complete list of the cases of impediment to attain jurisdiction in: Federal Code of Civil Procedures 1943, Article 39.

¹⁴⁰ Federal Criminal Code (n 139), Article 225, section VI.

¹⁴¹ José Ovalle Favela, ‘La Nulidad de La Cosa Juzgada’ [2011] *Reforma Judicial*. *Revista Mexicana de Justicia* 97.

¹⁴² *ibid*.

¹⁴³ *NULIDAD DE JUICIO CONCLUIDO EL ARTÍCULO 737 A, FRACCIONES I Y VI, DEL CÓDIGO DE PROCEDIMIENTOS CIVILES PARA EL DISTRITO FEDERAL VIOLA LA GARANTÍA DE SEGURIDAD JURÍDICA* [2008].

¹⁴⁴ *RECURSO DE REVISIÓN DEBE PREVALECER LA AUTORIDAD DE LA COSA JUZGADA RESPECTO DE LAS DETERMINACIONES SOBRE CUESTIONES COMPETENCIALES* [2012].

the dispute was made, one which directly influences the competence of the adjudicator, which is known as ‘supervening incompetence’.¹⁴⁵ When the above occurs, such as the emergence of any of the situations listed in Article 39 of the FCCP, the adjudicatory body must declare itself legally incompetent.¹⁴⁶ In this sense, the actions of the court declared incompetent are null and void, and the nullity only operates from the moment at which the incompetence occurred.¹⁴⁷ However, supervening incompetence can only be claimed before a final decision has been rendered by either a circuit collegiate tribunal or the SCJN, when they function as constitutional courts of last resort.

7. CONCLUSION

Since 1994, the Mexican judiciary has undergone a serious transformation towards achieving more independence and impartiality. However, controversial appointments of SCJN justices along with nepotistic practices within the judiciary triggered a legitimacy crisis which, ultimately, resulted in the 2021 judicial reform. Although the reform underscores important elements to safeguard the impartiality and independence of the judiciary, including limiting circuit magistrates' and district judges' capacity to appoint their staff, emphasising judicial immovability, and establishing the Federal Judicial Training School, it fails to address the structure of the judicial office and its system of responsibilities.

Overall, the method of appointing magisters of the Electoral Tribunal, circuit magisters and district judges aims at securing meritocracy and independence. Unfortunately, the same cannot be said concerning the designation of the SCJN, which remains heavily influenced by the roots of Mexican presidentialism and participacy. More problematic, however, is the lack of a legal framework governing judicial nominations to international organisations.

Decisions to nominate and appoint SCJN justices and magisters of the Electoral Tribunal cannot be recused, only the results of the competitive examinations for circuit magisters and district judges. Likewise, the decisions referring to their ratification may be appealed before the SCJN.

To ensure that members of the federal judiciary act impartially and independently, the FJC has established the ‘Comprehensive Plan to Combat Nepotism’. Likewise, the SCJN has established a Code of Ethics, which, although not magic, if implemented efficiently may create an ethical environment. In this sense, we recall that violations of the principles of independence and impartiality may trigger three types of liabilities: political, administrative and criminal.

Finally, in the event that a final judgment is rendered by partial and non-independent adjudicators, the Mexican legal system does not provide for any legal recourse. This is because the SCJN considers that legal certainty is a principle that overrides the existence of fraudulent conduct by the judges or parties to the dispute.

¹⁴⁵ Federal Code of Civil Procedures (n 140), Article 17.

¹⁴⁶ *COMPETENCIA EN EL JUICIO DE AMPARO INDIRECTO EL JUEZ DE DISTRITO DEBE DECLARARSE LEGALMENTE INCOMPETENTE, DESPUÉS DE CELEBRADA LA AUDIENCIA CONSTITUCIONAL, SI EN EL TRÁMITE DEL ASUNTO SE MODIFICÓ EL SUPUESTO QUE LA ORIGINABA, AUN CUANDO ESTA DETERMINACIÓN SEA CONSECUENCIA DE LO RESUELTO EN UN CONFLICTO COMPETENCIAL* [2014].

¹⁴⁷ Federal Code of Civil Procedures (n 140), Article 17, paras 1 and 2.