



Felipe de la Mata Pizaña*

The Role of the Electoral Court of the Federal Judiciary of Mexico in the Construction of an Inclusive and Parity Democracy

[Rola Trybunału Wyborczego w ramach Federalnego Sądownictwa Meksyku w budowaniu demokracji opartej na integracji i parytetach]

TABLE OF CONTENTS: I. INTRODUCTION. II. CONSTITUTIONAL RECOGNITION OF WOMEN'S RIGHT TO BE VOTED. 1. Gender electoral quotas. 2. Electoral gender parity. 3. Constitutional reform on electoral gender parity. 4. Constitutional reform on "total parity". 5. Legal reform on gender parity and affirmative actions. III. ELECTORAL CASE-LAW: FROM GENDER QUOTAS TO GENDER PARITY. 1. The origin of parity. 2. Insufficiency in the regulation of parity. 3. Parity within political parties. 4. Parity in governorships. Parity "in everything". IV. CONCLUSIONS.

Abstract

In the last twenty-five years, electoral justice in Mexico has contributed to the protection and effective exercise of women's right to vote. From the judicial function, the right to be nominated by political parties and effective access to elected office has been strengthened.

The Mexican Electoral Court has generated a relevant line of case-law on the right of women to vote, which has also been extended to the parity integration of political parties' governing bodies. This text consists of two chapters. The first chapter describes the path of this protection, from the establishment of gender quotas in the electoral law to the constitutional reform on total gender parity. The second chapter develops the electoral case-law based on emblematic cases on this issue.

Keywords: electoral justice in Mexico, gender parity in politics, gender quotas, electoral law and women's rights, party nominations and gender equality, Electoral Court of Mexico case law.

* **Felipe de la Mata Pizaña** – Full Professor, PhD in Law, National Autonomous University of Mexico (UNAM, affiliation); Justice of the Superior Chamber of the Electoral Court of the Federal Judiciary (Mexico); <https://orcid.org/0009-0005-8416-9659>; fdelamata.pizana@te.gob.mx / profesor prawa, PhD, Narodowy Uniwersytet Autonomiczny Meksyku (UNAM, afiliacja); sędzia Izby Wyższej Trybunału Wyborczego w ramach Federalnego Sądownictwa Meksyku.

I. INTRODUCTION

Mexico is a benchmark in the integration of parity in popularly elected bodies. Currently, several city councils, several local congresses and the Chamber of Deputies are made up of a majority of women, or women make up half of their members or are very close to half of the genders that comprise them.

In the last twenty-five years, electoral justice in Mexico has contributed to the protection and effective exercise of women's right to vote, the right to be nominated by political parties and effective access to elected office. This path has gone through several legal and constitutional electoral reforms, which started from the formula: the parties "may nominate" to another formula: the parties "shall nominate". This led to the installation of gender quotas and, subsequently, to total parity in elective public office. As a result, the Mexican Electoral Court has generated a vast jurisprudential line on the right of women to vote, which, in addition, has been extended to the parity integration of political parties' governing bodies.

This text is composed of two chapters. The first deals with the path of this protection, from the establishment of gender quotas in the electoral law to the 2020 reform regarding total gender parity. The second chapter describes, in general, the corresponding case-law line, based on emblematic cases on this issue.

II. CONSTITUTIONAL RECOGNITION OF WOMEN'S RIGHT TO VOTE

In France¹, women pioneers of women's rights demanded that anti-discrimination laws should cease to be partial in their recognition of women's rights, and that the principle of a fundamental right to equality should be proclaimed. At first, electoral gender quotas were the legal mechanisms that, based on percentages or reserved seats, increased women's political participation. However, in 1982, the French Constitutional Council invalidated the bill that established that there could be no more than 80% of the same sex on the list for the municipal council (Scott, 2012: 83); quotas were criticized² and it

¹ The movement for parity in France began in the 1980s and was subsequently intensified at the Athens conference in 1992. See Scott 2012, 83.

² The various obstacles that in different political contexts affected the effectiveness of quota laws opened the debate on political gender parity. They demanded the design of lists of candidates with 50% of each sex sequentially and alternately (Archeti, 2011: 10).

was pointed out that they limited the fundamental rights of voters (universal suffrage), that they divided the citizenry into sex categories and introduced a new form of discrimination.

Hence, beyond quotas, a point of arrival was considered: parity, with the different view that representative democracy would solve the absence of women in politics. In 1992, in the search for a law to regulate gender parity, it was argued that in order to democratize politics, the gap between representatives and represented should be closed, universal citizenship should be admitted to include the excluded, and the recognition of the equality of women and men should be rethought.

1. Electoral gender quotas

The electoral gender quota is an affirmative action that seeks to place the right to political participation of women and men on an equal footing. Quotas are the reservation normally made by the electoral law or the Constitution so that no gender can have more than a certain percentage of representatives in legislative bodies (Rey Martínez, 1995: 84, 85, quoted by Carbonell, 2002: 305). In view of the fact that the number of women in popularly elected positions is still limited. Therefore, “[...] electoral gender quotas arise from the observation of the low rate of women accessing representative public office” (Carbonell, 2002: 306).

Electoral gender quotas in Mexico were first established in 1996, in the Federal Code of Electoral Institutions and Procedures (COFIPE), in a 70–30 percentage. Subsequently, in 2002, sanctions were included for non-compliance by the parties. In 2008, the COFIPE was modified to a 60–40 percentage in the registration of candidates of each gender.

The response to these quotas was a socialization of gender that was reluctant to mainstream. Although they had an impact on increasing women’s political participation, they were insufficient or were evaded by political actors. This was reflected in actions such as frauds against the law, in cases such as the one known in Mexico as the “Juanitas”,³ the nomination of women in districts or municipalities that were not very competitive; the distribution of lesser amounts of funding to their campaigns, among other fraudulent situations.

Electoral gender quotas were replaced, when elevated to constitutional rank, with the principle of parity, in addition to being regulated in the General Law of Electoral Institutions and Procedures (LEGIPE) and in the General Law of Political Parties (LGPP).

³ This was the name given to this case and to the phenomenon in which the women owners of the formulas, once they took possession of the elected positions, resigned the position so that the men could occupy it.

2. Electoral gender parity

At the European Summit on Women and Decision-making (1992), European women ministers and former ministers proclaimed the need to achieve a balanced distribution of public and political power between women and men. The Declaration presented “parity democracy”, a concept which, although it does not appear literally, states: “Equality requires parity in the representation and administration of nations, women represent half of the intelligence and qualifications of humanity and their under-representation in decision-making positions constitutes a loss for society as a whole [...]. A balanced participation of women and men in decision-making is likely to engender different ideas, values and behaviors, which go in the direction of a fairer and more balanced world, both for women and men.”

Subsequent European movements influenced the Latin American continent around 2007, at the X Regional Conference on Women in Latin America and the Caribbean, in the Quito consensus. At this conference, parity was recognized as a mechanism for promoting democracy and a goal for eradicating the structural exclusion of women. Thus, each of the countries represented was entrusted with the adoption of measures necessary for its effective implementation to be manifested in the representation of women in popularly elected positions.⁴

In 2010, the XI Regional Conference on Women in Latin America and the Caribbean was held and the Brasilia consensus was signed. Emphasis was placed on the implementation of parity in the composition of electoral lists, strategies for the equal access of women to decision-making spaces in political parties, campaign financing and electoral propaganda.⁵

Different meetings of women leaders were crucial to promote the inclusion of parity in regulatory frameworks. As a constitutional principle, it became mandatory for their societies and for the subjects involved in their electoral processes. According to studies by Nélida Archeti (2011) Beatriz Llanos (2013), Line Bareiro and Lilian Soto (2015), Latin America is the geographical area in which more countries have adopted gender parity in their legislations.⁶

From 1992 to the present, the concept of parity has acquired a more substantive development, to the point of gaining a “[...] predominant place in the debates on the enrichment of democracy. Unlike the quota, which is a temporary adjustment measure aimed at reducing the underrepresentation of women in politics, parity constitutes an accelerator of *de facto* equality and is

⁴ See agreement 2 of the Quito consensus.

⁵ See agreement 3 of the Brasilia consensus.

⁶ The first countries to include gender parity were: Bolivia, Ecuador, Costa Rica, Nicaragua, Honduras and Mexico.

a definitive measure that seeks to ensure that political power is shared by men and women” (INSTRAW/UNIFEM, 2010, in Archeti, 2011: 22).

Thus, parity is a definitive measure that reformulates the conception of political power, redefining it as a space that must be shared equally between men and women (Llanos, 2013). And the fact is that: “parity implies a strictly balanced distribution of 50% for each sex, while quotas range between 30% and 40% of female representation” (Zúñiga, 2013: 89). In order to fulfill its objective, parity uses the resignification of the principle of representation based on a rewriting of the social pact, in which the other half of humanity is included. In this way, parity has the aptitude to be permanent, which is different from the temporary configuration of quotas (Zúñiga, 2013: 90).

Parity, according to its application, stands out for its three essential characteristics, which are:

1. It is used in collegiate and unipersonal bodies. It is applicable to representative positions in collegiate bodies, such as the legislature, as well as in those positions in which only one person represents the public office, such as municipal presidencies or governorships.
2. It is horizontal and vertical. Collegiate bodies are composed of 50–50 of each gender. In the case of unipersonal positions, of the total number for the same elected position, 50–50 must be distributed by each gender. In the case of odd-numbered bodies, they must conform to a difference between the two genders that is not greater than one. Parity must be considered integral.

In short, gender parity is a principle of balanced distribution of power that goes beyond equality. It is a proposal for the transformation of all areas of social life. Parity constitutes a strictly balanced 50–50 distribution for each sex, and aims to permeate transversally in all social and cultural spaces, through a rewriting of the social pact, suppressing the symbolism of sexuality in political representation.

3. Constitutional reform on electoral gender parity

The experience of quotas in different electoral processes was part of the reasons why, in the 2014 electoral reform, gender parity was included in the Mexican Constitution in Article 41, Base I, second paragraph. It was established as a mandatory principle for political parties in the nomination of candidates for the Congress of the Union and local legislatures.

In this context, electoral gender parity becomes a fundamental and transcendental issue to contribute to women’s political participation, which involves the principle of substantive equality and non-discrimination. LEGIPE incorporates the principle of gender parity and adds that, in the candidate

formulas, the owner and the substitute must be of the same gender. It also provides that the lists of plurinominal candidacies must be made up alternately by the different sexes, so that both have the possibility of having access to representation.

Parity is established in Article 3 of the General Law of Political Parties. It is stated that each political party shall determine and make public the criteria to guarantee gender parity in the candidacies for federal and local legislators, which must be objective, ensuring conditions of equality between genders. It also establishes that no criteria will be accepted that would lead to any of the genders being assigned districts in which the party has obtained the lowest percentages of votes in the previous electoral process.

At that time, the Electoral Court of the Judiciary of the Federation (TEPJF, acronym in Spanish) established the parameter of validity of parity for the three levels of government. Thus, it established that parity for nomination in municipalities is not understood in the same way as for federal and local congresses ('Jurisprudences' 2015/6 and 2015/7). This is because it must be applied in an integral or dual manner (both vertically and horizontally), in such a way as to maximize the substantial equality of women's political rights at said level of government.

4. Constitutional reform on "full parity"

This reform fully protects women's equal access to public office: all authorities in the country must be composed on an equal basis. The second article, paragraph A, section VII, was amended, in the sense that in municipalities with indigenous population, representatives must be elected before the municipal councils observing the principle of gender parity in accordance with the applicable norms. Article 35, section II, establishes that it is the right of citizens to vote in conditions of parity for all popularly elected positions. Article 41 of the Constitution added that the law shall determine the forms and modalities for observing the principle of gender parity in appointments to the secretariats of the Federal Executive Branch and their equivalents in the states. The same principle will be observed in the integration of the autonomous agencies.

The principle of gender parity shall be observed for political parties in the nomination of their candidates. The exercise of public power must be made possible considering the rules to guarantee gender parity in the candidacies to the different positions of popular election. In Article 115, Section I, it was established that the municipal councils must also be integrated in accordance with the principle of gender parity.

5. Legal reform on gender parity and affirmative action

Legal regulations were amended to guarantee women's political rights. Although they stand out because they regulate gender-based political violence, they also include legal modifications of rules to make parity effective. Thus, the General Law of Electoral Institutions and Procedures now provides as follows:

- ◆ Political equality between women and men is guaranteed with the allocation of 50% of women and 50% of men in candidacies for elected office and in appointments to positions by designation.
- ◆ It establishes that the National Electoral Institute (INE), local electoral bodies (OPLES) and political parties must guarantee gender parity and respect for women's human rights (art. 3).
- ◆ Parties must draw up lists of candidates with gender alternation for each elective period (art. 14).
- ◆ The registration of candidates for municipal offices must guarantee the principle of parity and that alternates must be of the same gender (art. 26).
- ◆ The integration of INE's General Council, its commissions and the OPLES' management bodies must be parity (art. 36, 42 and 99).
- ◆ The integration of local electoral jurisdictional bodies must be gender parity and with alternation in the majority gender (art. 106).
- ◆ There must be horizontal and vertical parity in the election of municipal councils (art. 207).
- ◆ The obligation to observe gender parity at the local level and the power of the OPLES to sanction non-compliance is established (art. 233 and 235).
- ◆ For proportional representation (PR) deputies, of the 5 lists, at least 2 must be headed by formulas of the same gender, alternating each period; and the same applies for the national list of senatorial seats (art. 234).
- ◆ Parties must promote substantive equality and guarantee equal participation in the integration of their bodies and in the nomination of their candidates, as well as at the municipal level.
- ◆ The guarantee of equal participation of women and men in its internal processes for the selection of candidates is established (art. 23).

For the most part, all these new electoral norms took into account precedents and criteria established in sentences and the case law line generated by the Electoral Court (TEPJF). Therefore, the following section describes the jurisprudential line created in more than twenty-five years by the electoral justice regarding the protection of women's right to vote, as well as their inclusion in electoral and partisan bodies.

III. ELECTORAL CASE LAW: FROM GENDER QUOTAS TO GENDER PARITY

Through its chambers, the TEPJF has analyzed a variety of issues related to gender quotas and parity. The rulings of the TEPJF have been milestones and mechanisms for the constant promotion and expansion of women's rights.

This section describes some emblematic cases in which concrete actions have been taken to strengthen women's political participation. It is divided into the following subsections:

- (i) foundations and origin of parity;
- (ii) insufficiency in its regulation;
- (iii) parity within political parties;
- (iv) parity in governorships, and
- (v) parity "in everything".

1. The origin of parity

Alternation in the proportional representation lists

In the 2009 federal congressional elections, a political party proposed that one of its proportional representation lists be headed by a woman. The second and third places were occupied by men. Finally, the fourth place was obtained by a woman, who claimed that the principle of alternation was violated and that she deserved the third place on the list.⁷

The Superior Chamber of the TEPJF, based on a grammatical and systematic interpretation of Article 220.1⁸ of the Electoral Code (COFIPE), considered that the rule of alternation consists of placing in succession a woman followed by a man, or vice versa, in such a way that the same gender is not in two consecutive places.

The order of the candidacies must be repeated and successive, through the interspersed placement of candidacies of different genders, individually considered. This allows both genders to reach a seat more or less similarly. The current legislation only provided that the candidacies should be integrated with at least 40% of owners of the same gender, with the duty to ensure parity. This parity could not be achieved if the political parties decided to place the candidacies of a certain gender at the end of the list. What is relevant about

⁷ SUP-JDC-461/2009.

⁸ "Article 220. 1. The lists of proportional representation shall be composed of segments of five candidates. In each of the segments of each list there shall be two candidacies of different gender, alternately."

gender alternation is that it allows balancing the possibilities between men and women, and achieving substantive equality.

“Anti Juanitas” case⁹

In the 2011–2012 electoral process, the National Electoral Institute issued an agreement on the rules for the nomination of candidates and established that political parties would seek to integrate formulas with people of the same gender. Several women challenged this recommendation, because: a) if fully complied with, it prevented women from being alternates in formulas headed by men, and b) therefore, this recommendation should be exclusively for formulas headed by women and prevent men from being alternates in these formulas. It was considered that the candidacies should be composed of at least 40% of the same gender, i.e., the formulas should be made up of an owner and a substitute of the same gender. This criterion could be applied to both relative majority and proportional representation formulas.

Regarding the relative majority formulas, the internal democratic procedures cannot be an exception to comply with the 60–40% rule in the nomination of candidates. Although the selection of candidacies originated in an internal democratic procedure, political parties were required to present at least 120 formulas of deputies of the same gender. For senatorial seats, at least 26 formulas had to be presented.

Parity in the integration of city councils¹⁰

In 2015, it was determined that parity is applicable in the integration of municipal councils. In a relevant case, it had to be determined whether the parity, in its vertical criterion, should include the presidency and municipal syndicate, or only the *regidurías*. Likewise, it had to be resolved whether the parity could be applied in a horizontal criterion for all municipal councils.

In the ruling, it was considered that vertical parity should include the positions elected by the principle of relative majority, that is, the municipal presidency and syndicate. This was the only way to guarantee a parity integration, as far as possible, of men and women, so that both genders could occupy an equal number of positions within the city council. This is so because if parity is a measure to favor equal opportunities for men and women, it should have a useful effect on the registration of candidacies.

The principle of parity should also be applied with a horizontal criterion, with equal numbers of men and women running for the office of municipal president, which would allow both genders to occupy an equal number of

⁹ SUP-JDC-12624/20211 and accumulated.

¹⁰ SUP-REC-46/2015.

municipal presidencies. The principle of progressivity must be understood not only in a formal but also in a material sense. It makes viable the effective access to public office under equal conditions.

Parity must be complied with in coalitions

The TEPJF determined that the principle of parity must be upheld by all political parties, whether they are competing individually or through coalitions.¹¹ The duty imposed on coalitions to guarantee the parity nomination of candidates could not be conceived as independent or different from the duty imposed on political parties. Thus, it is neither valid nor constitutional to try to evade parity under the pretext that certain political parties formed a coalition. Therefore, it would not be admissible for a political party that participates in a flexible or partial coalition with candidates of the same sex to do so without a sufficient number of persons of the other sex for the nomination to be parity.

2. Inadequate parity regulation

At this stage, since 2016, other precedents were generated judging with a gender perspective, which look at a principle of insufficient parity. Those cases are the ones explained below.

Allocation of vertical parity candidacies in municipalities composed of odd-numbered councilors¹²

In 2017, the Superior Chamber of the TEPJF validated the non-application of an article of the Electoral Law of the State of Tabasco that established that, when the number of candidacies to be elected was odd, each coalition, party or slate of independent candidates, if applicable, would freely determine the gender of the last formula that exceeded the parity criterion.¹³ The TEPJF considered that the allocation of more women candidates should be favored in order to achieve vertical parity in city councils composed of odd numbered councilors.

¹¹ SUP-REC-115/2015.

¹² SUP-REC-1183/2017.

¹³ Article 185, paragraph 6 of the local electoral law.

Women can head the lists registered by political parties in proportional representation¹⁴

The TEPJF confirmed the implementation of the affirmative action related to women being able to head the lists of proportional representation, considering that it was adequate and necessary. This, because placing women at the top of such lists substantially increased their chances of accessing the state legislature, thus satisfying the constitutional principle of gender parity.

Women may be alternates for formulas headed by male proprietors¹⁵

In 2017, the Electoral Institute of the State of Jalisco established that in the nomination of deputies the formula headed by the male sex could have as alternate a person of the female sex.¹⁶ The TEPJF considered that it was admissible for parties to nominate candidate formulas in which women were substitutes for men. This translated into greater possibilities for women to have access to positions of popular representation. This provision was a measure that derived from a valid interpretation because it coexisted harmoniously with other constitutional rights, values and principles.

Register more women, according to horizontal parity, in an odd number of city councils¹⁷

In 2017, the Electoral Institute of the State of Baja California (IEEBC) established that the lists of deputies by the principle of proportional representation and the majority of municipal presidencies would be headed by women. The TEPJF considered the measure as reasonable, necessary, suitable and proportional, since it generated an important effective access: it put more women in hierarchical political positions, such as municipal presidencies or mayoral offices. Positions that symbolize the exercise of power. The Court considered that the measure was justified because the fact of nominating three women and two men for the position of municipal president changed the ideology and made women visible in important positions. With this, the principle of reelection in representative public positions, which is also provided for in the Constitution, was minimally affected.

¹⁴ SUP-REC-83/2018.

¹⁵ SUP-REC-7/2018.

¹⁶ Article 8, paragraph 2, of the Guidelines.

¹⁷ SUP-JRC-4/2018.

3. Parity within political parties

Political parties faced a dilemma in complying with parity within their own bodies, since it was clear that there could be no parity in popularly elected bodies if the parties themselves did not comply with it when integrating their internal leaderships. In this problem, the Superior Chamber played an important role because it established criteria for all political parties to comply with parity within their leadership, as described in the following cases.

Full parity in the internal bodies of political parties¹⁸

In 2017, the Superior Chamber of the TEPJF established a criterion according to which parity is enforceable in the integration of the leadership bodies of political parties. Although the Federal Constitution imposes a duty on political institutions to guarantee gender equality in the nomination of candidates for elected office, parity does not end there, but rather seeks to guarantee the active participation of both genders. With this criterion, the Electoral Tribunal eliminated the *de facto* or *de jure* obstacles that prevented the equal participation of women and men in the internal life of the political parties and, therefore, guaranteed the parity conformation in the party leadership bodies.

Parity in the chairmanship and general secretariat of a national steering committee¹⁹

A woman challenged the election of the president and general secretary of the National Executive Committee of a political party for failing to comply with parity rules. The Superior Chamber of the TEPJF considered that the principle of gender parity was not guaranteed in the integration and election of the formula for the Presidency and General Secretary of the National Executive Committee of the political institute, and that it should have been integrated by persons of different genders, as established by the party's regulations.

However, in order to guarantee legal certainty, due to the proximity of the electoral process at the time of the resolution, it was ordered that the principle of parity must be complied with in the subsequent procedure for the renewal of the presidency and general secretariat of the National Executive Committee.

¹⁸ SUP-JDC-369/2017 and accumulated.

¹⁹ SUP-JDC-20/2018.

Horizontal and vertical gender parity in partisan bodies²⁰

The Superior Chamber of the TEPJF established the criterion that the principle of vertical and horizontal parity must be observed by political parties in the internal procedures for the election of leaders of all their bodies. This was intended to ensure that women would have access to all party leadership positions, including those of the highest hierarchy, political importance or public significance. Thus:

- (a) The aim was to make women visible in the highest decision making positions, thus contributing to their political scaling up.
- (b) It contributes to the dilution of prejudices and negative stereotypes in society against women and their capacity to lead or preside over political institutions or bodies, and
- (c) It contributes to the fact that the gender of the person, at some point, is indifferent and irrelevant to determine who should lead an organ, or occupy a public office.

Political parties must observe the principle of parity, which must be observed and applied in a total and integral manner, not in a biased or isolated manner. Therefore, in the respective electoral process they must apply the principle of parity, both vertically and horizontally.

Horizontal gender parity must be applied in decentralized party bodies²¹

The Superior Chamber of the TEPJF resolved a case in which the internal regulations of a political party established that its governing bodies should promote the principle of parity and encourage the economic and political empowerment of women. However, the political party considered that the general delegations were part of the deconcentrated structure of the National Executive Committee and did not constitute leadership bodies.

In this case, the Superior Chamber considered that although the general delegations are decentralized bodies, they do not cease to be part of the National Executive Committee. In effect, the general delegations execute policies and strategies determined by the presidency of the National Executive Committee, and are representatives and spokespersons of that executive body in the corresponding federal entity. Therefore, it determined that, by being part of that Committee, the delegations are subject to the gender parity mandate.

²⁰ SUP-REC-578/2019.

²¹ SUP-JDC-1862/2019.

4. Parity in governorships²²

In 2020, an aspiring candidate for the governorship of a State of the Republic (Michoacán), and several civil associations, requested the National Electoral Institute to issue criteria to guarantee the principle of gender parity in the nomination of candidates for the fifteen governorships to be elected the following year.²³ INE issued the requested guidelines on parity in the nomination of gubernatorial candidates, which was challenged by several political parties and citizens.²⁴ In the first case, they considered that the national electoral authority lacked the power to set such measures, and in the second case they argued that the measures were insufficient.

The Superior Chamber of the TEPJF warned that the legislative bodies had not complied with the constitutional mandate to establish the rules for the parity nomination of political party candidates for single-member positions. It considered that it, as the highest judicial authority in electoral matters, should directly apply the Constitution to give effect to the constitutional principle of parity. Therefore, it determined:

- (i) to revoke the INE's agreement,
- (ii) to order the Congress of the Union and the local congresses to regulate this issue before the subsequent election,
- (iii) it obliged the national political parties to nominate at least seven women candidates,
- (iv) in case of non-compliance, the registration of male candidates would be denied.

This is a matter of great relevance for the national legal order, because for the first time concrete duties were established for political parties in the sense of applying the principle of parity in the nomination of candidates for the highest political office in the federal entities. The case was a watershed for the implementation of parity in the nomination of gubernatorial candidates. It was taken up in other cases resolved in 2022 and 2023 in which political parties were also ordered to guarantee parity in several governorships.²⁵

In 2023, an electoral reform was approved in which the regulation of parity in the governorships of the states was taken up again based on the rulings of the TEPJF. In this way, the relevance of this criterion was evident and clear.

²² SUP-RAP-116/2020.

²³ Mexico is a federation made up of 32 states that historically have been governed by men. These are important positions because they exercise the executive power in each of the States of the Republic.

²⁴ In the following terms: (a) National and local parties were to publish the criteria on parity for the 15 governorships, (b) Local electoral authorities (OPLES) were to inform INE of the criteria for parity in the selection of gubernatorial candidates, (c) Parties were to nominate at least 7 women as gubernatorial candidates, (d) Local parties were to nominate preferably one person of a different gender than the one registered in the previous election, (e) New local parties would preferably nominate women.

²⁵ SUP-JDC-91/2022, SUP-JDC-434/2022 and SUP-RAP-220/2022.

5. Parity “in everything”

This last section presents recent criteria that have established parity duties not only in popularly elected bodies, but also in electoral authorities, in the integration of commissions of the Congress of the Union and, recently, in the election of members of the Judiciary, both federal and local.

Parity in all legislatures²⁶

In 2021, the Superior Chamber determined that in odd-numbered legislatures, the legislative majority should alternate gender in a progressive manner. For parity, when it comes to even-numbered congresses, the rule is 50/50 of both genders, at least. However, in this context, what should be done in the case of an odd-numbered congress? It was determined that:

(1) in odd numbered legislatures of deputies, where one gender has one more member than the other, alternation in the following integration must be taken into account and the other gender must have a majority representation, and

(2) implementing the rule of alternation does not affect the principle of freedom of legislative configuration because it is based on the non-existence of a measure that guarantees parity to integrate the local congress.

These types of decisions radiate to all congresses in the country that do not have specific rules in this regard and that have an odd number of deputies.

Parity in the federal chamber of deputies²⁷

In 2021, for the first time in the history of Mexico, the federal chamber of deputies will be made up of 250 women and 250 men out of a total of 500 members. This integration was achieved thanks to the intervention of the Electoral Court: in resolving various challenges, it was favored that the integration be parity. After resolving challenges on the allocation of deputies by the principle of proportional representation, the chamber was made up of 251 men and 249 women. In order to achieve exact parity, it was ordered to modify an allocation by applying the criterion of adjustment to the political party in which women were least represented. Thus, for the first time, parity was achieved in the Chamber of Deputies at the federal level.

²⁶ SUP-REC-1524/2021 and accumulated.

²⁷ SUP-REC-1414/2021 and accumulated.

Parity in the permanent commission of the chamber of deputies²⁸

In 2022, a female deputy challenged the composition of the Permanent Commission of the Chamber of Deputies of the Congress of the Union, considering that it was not in accordance with the principle of parity because it was composed of fifteen men and only four women. The Superior Chamber determined that the Permanent Commission should be parity, since it is a substantive body with constitutional attributions, which is not limited to procedural or internal work aspects, but assumes decisions during the recesses of the Congress of the Union. Thus, if the Chamber of Deputies is made up of 250 male and 250 female deputies, this parity should not end there, but should be extended and projected in the composition of the Permanent Commission.

Women in the presidency of the National Electoral Institute

Since the creation of the National Electoral Institute more than three decades ago, it had never been presided over by a woman (except on temporary occasions). In fact, since 1990, men have occupied the presidency of the highest administrative authority on elections. In 2023, the Superior Chamber of the TEPJF issued a ruling, in which it established that it was time for the presidency of INE to be occupied by a woman.²⁹

The Political Coordination Board of the Chamber of Deputies (JUCOPO) issued the call for the renewal of four INE board memberships, including the presidency. The Superior Chamber modified the call so that the election of the presidency would be exclusively for women. As of April 4th, 2023, the presidency of INE was occupied, for the first time in history, by a woman. In the context of the lack of female presence in the presidency of the General Council of INE, the decision taken by the Superior Chamber of the TEPJF directly promoted women's access to the highest management positions within the public service.

The precedents outlined above show that the resolutions of the Superior Chamber of the TEPJF have broadened the spectrum of protection of parity. It is not limited to the bodies elected by popular vote, but goes beyond, by establishing criteria for the integration of electoral authorities.

Parity in the election of the Presidency of the Republic

In Mexico, 200 years of independent life have passed without having been a single woman President of the Republic. Therefore, it was reasonable from the outset that women should be guaranteed the right of access,

²⁸ SUP-JE-93/2022.

²⁹ SUP-JDC-74/2023 and accumulated.

under conditions of equality and parity, to the highest political office in the country.

In this context, the Superior Chamber of the TEPJF analyzed a case in which it had to decide whether the principle of parity is applicable to the election of the Presidency of the Republic and, consequently, whether there was an omission of the Congress of the Union and the General Council of INE to legislate or regulate, respectively, on this aspect.³⁰

The Superior Chamber considered that the principle of gender parity does apply to the election of the Presidency of the Republic. From the point of view of international human rights law and the Constitution, the principle of gender parity applies to all popularly elected positions.

International treaties to which the Mexican State is a party establish the right of women to hold public office and to exercise all public functions established by national legislation, on equal terms with men, without any distinction or discrimination.

As seen above, the principle of gender parity was established in the Mexican Constitution in 2014. With the constitutional reform of 2019, known as the “in all” parity reform, its applicability was established for all popularly elected positions (art. 35, section II). It was stipulated that the Congress of the Union should, within a non-extendable term of one year from the entry into force of the decree, make the corresponding regulatory adjustments, in order to observe said principle.

As we saw, in 2020, in resolving appeal 116/2020, the Superior Chamber established that parity is a principle applicable in elections of unipersonal positions, such as the governorships of the federal entities. Likewise, it reiterated INE’s obligation to verify gender parity, in case there are omissions in its regulation. Thus, it was clear that the principle of gender parity is applicable to the election of the Presidency of the Republic. And that to consider otherwise would imply going against international and constitutional provisions, as well as the TEPJF’s own criteria.

Once the Superior Chamber established that the principle of gender parity applies in the election of the Presidency of the Republic, it determined the existence of the omission of the Congress of the Union to issue concrete and specific legislative measures to give content to that principle. This is because, despite the existence of a constitutional mandate to apply the principle of parity for all popularly elected positions and the existence of a term determined by the Permanent Constituent itself to issue the relevant regulation, the Congress of the Union has not done so.

On the other hand, the Superior Chamber considered that, in view of the omission of the federal legislative branch, it was necessary for the General

³⁰ SUP-JDC-574/2023.

Council of INE to regulate the way in which the principle of parity should operate with respect to the election of the Presidency of Mexico. In this sense, the Superior Chamber determined that:

(a) the Congress of the Union must regulate parity with respect to the election of the presidency of the Republic; and

(b) if at the end of the legislature the omission of the Congress persists, the General Council of INE must issue the pertinent rules to be applied in the next federal electoral process.

The constitutional principle of gender parity is aimed at reversing structural inequality so that women have full access to all popularly elected positions. It is not enough to leave the inclusion of women in electoral contests as a mere possibility; it is necessary to ensure compliance with the constitutional principles and norms regarding parity and equality. Therefore, the Congress of the Union, or failing that, the General Council of INE must establish legislative and regulatory mechanisms, within the scope of its competencies and powers, to allow women equal access to the most important political office in the country.

Gender parity in judicial elections

A constitutional reform of September 15, 2024 established the popular election of all judges and magistrates of the Federal Judicial Branch, including the Justices of the Supreme Court, as well as of the judicial branches of the States of the Republic.

As has been reiterated in this article, the Mexican Constitution establishes the right of a citizen to be voted in conditions of parity for all popularly elected positions (art. 35, section II). Thus, the principle of parity is one of the constitutional principles whose fulfillment is also determinant for the popular election of female Justices, magistrates and judges in the framework of the historic election day of June 1, 2025.

Within this framework, on February 12, 2025, the General Council of the National Electoral Institute approved the parity criteria to be applied after the vote count in the extraordinary election of judges. In said agreement, it established an alternation scheme and the rules to guarantee gender parity in the jurisdictional positions of the federal Judicial Branch. Several candidates disagreed with these criteria and filed citizen lawsuits for alleged violations of their rights to vote, to remain in office (in the case of judges currently in office), as well as, among others, for the alleged disproportionality of the affirmative action established and the alleged violation of the principle of the reservation of the law.

The Superior Chamber of the TEPJF confirmed the criteria approved by INE.³¹ INE did not exceed its regulatory power because it acted in exercise of

³¹ SUP-JDC-1284/2025 and accumulated.

a constitutional mandate and in compliance with its obligation to guarantee gender parity in the integration of federal judicial bodies. Even the judicial reform decree is explicit in the sense that INE may issue the general agreements it deems necessary for the extraordinary electoral process, observing, among several principles, precisely that of gender parity (second transitory article).³²

The Constitution also mandates INE to carry out the computations of the judicial election, publish the results and deliver the majority certificates to the candidates who obtain the highest number of votes. In addition, it provides that it must allocate judicial offices alternately between women and men (Art. 96, Section IV).

INE also did not violate the right to vote under equal conditions, nor the authenticity or effectiveness of the vote. In particular, some judges currently in office considered that, given the numerical composition of candidates in their respective circuits, with a predominance of male candidates, the application of the parity criteria would inevitably lead to the fact that, even if they obtained a majority of the votes, they would not be assigned the office to which they aspired.

However, INE fulfilled its responsibility by applying Articles 94 and 96 of the Constitution and, in that sense, harmonized the right to vote with the principle of parity, derived from two constitutional mandates that do not cancel each other out, but must coexist. It was considered that INE approved proportional and reasonable criteria because the measures consisting of assigning the winners of the election starting with women and allowing more women to be elected constitute affirmative actions justified by the need to reverse the historical disparity in the integration of the jurisdictional bodies. INE also did not violate the principle of certainty because the criteria it approved establish clear and precise rules on how the principle of parity will be applied once the judicial election is held.

As can be seen, this case is also emblematic: the first election of judges in the history of Mexico will be held with full respect for the parity allocation of elected judicial positions, which is in keeping with an inclusive, fair and egalitarian judicial democracy.

IV. CONCLUSIONS

Based on the rulings issued by the Electoral Court of the Federal Judiciary, discussed in this article, it can be seen that an extensive line of case law has been built with the aim of achieving gender equality in state decision-making

³² The decree reforming the judiciary in the Mexican Constitution can be consulted in the 'Official Gazette of the Federation' 2024, Sept. 15, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5738985&fecha=15/09/2024#gsc.tab=0 (in Spanish).

positions in Mexico. In this review of the electoral jurisprudence on women's political participation rights, it is evident that there has been progress towards total parity, and that the TEPJF has participated in and influenced, through its rulings, the constitutional and legal reforms on women's political rights.

It is also noted that electoral justice and gender perspective are closely linked to the principle of equality, women's right to political participation and total parity. Electoral justice and gender perspective show a justice system that has broken away from the structurally ingrained division of gender roles. For this reason, the active participation of justice operators is needed: to break down gaps, eradicate the patriarchal vision of law, and ensure that gender equality is observed in their resolutions. Electoral jurisprudence shows a constant progressive vision to reach a more effective equality for all Mexican women. In fact, the absence of rules has not been an impediment for the authorities to make the necessary changes to achieve parity as a constitutional principle.

The day when women hold all the seats that make up a legislature, or seats in a city council, or party positions, will be the day when equality will be real and effective. It will be a historical vindication, for the centuries that they have been denied their participation in public office. This was echoed by Justice Ruth Bader Ginsburg, who, when asked the question, "When will there be enough women on the Supreme Court?" – she answered: "When there are nine. People were shocked. But there were nine men, and nobody's ever raised a question about that."

Abstrakt

W ciągu ostatnich dwudziestu pięciu lat wymiar sprawiedliwości w sprawach wyborczych w Meksyku przyczynił się do ochrony i skutecznego wykonywania prawa kobiet do głosowania. Dzięki władzy sądowniczej wzmocniono prawo kobiet do kandydowania z ramienia partii politycznych oraz rzeczywisty dostęp do sprawowanych funkcji publicznych.

Meksykański Trybunał Wyborczy stworzył istotną linię orzecznictwa dotyczącą prawa kobiet do głosowania, które zostało również rozszerzone na parytetową integrację organów zarządzających partii politycznych.

Niniejszy tekst składa się z dwóch rozdziałów. W pierwszym opisano drogę do osiągnięcia tej ochrony: od ustanowienia kwot płci w prawie wyborczym po reformę konstytucyjną dotyczącą całkowitej parytetu płci. W drugim rozdziale omówiono orzecznictwo wyborcze oparte na emblematycznych sprawach dotyczących tej kwestii.

Słowa kluczowe: sprawiedliwość wyborcza w Meksyku, parytet płci w polityce, kwoty płci, prawo wyborcze a prawa kobiet, nominacje partyjne i równość płci, orzecznictwo Trybunału Wyborczego Meksyku.

BIBLIOGRAPHY

Aguilar, José Antonio. Igualdad democrática y medidas afirmativas. ¿Equidad y cuotas?, Mexico: TEPJF 2011.

Amorós, Celia, Tiempo de feminismo. Sobre feminismo, proyecto ilustrado y postmodernidad, Madrid: Cátedra feminismos 1997.

Añazco, Yanira (ed.), Democracia y participación política de las mujeres. Visiones desde Europa y América Latina, Valencia: Tirant lo Blanch 2013.

Aparicio, Javier, Cuotas de género en México: candidaturas y resultados electorales para diputados federales 2009, Mexico: TEPJF 2011.

Archeti, Nérida, La paridad política en América Latina y el Caribe. Percepciones y opiniones de los líderes de la región. Serie mujer y desarrollo, No. 108. Chile: ONU-CEPAL 2011.

Bustillo, Roselia y Gilas, Karolina (eds.), Líneas Jurisprudenciales en materia electoral, México: Tirant lo Blanch 2014.

Declaración de Atenas. Cumbre Europea sobre las Mujeres y la Toma de Decisiones. Atenas, 1992.

Hacia una Democracia paritaria: Análisis y revisión de las leyes electorales vigentes. Toledo: CELEM, 2022; http://www.celem.org/prog_europeos/mujeres_ciudadanas2000/libro_demo/capitulo%20i.pdf.

IDEA-Internacional, OEA y CIM. La apuesta por la paridad: democratizando el sistema político de América Latina. Los casos de Ecuador, Bolivia y Perú, Perú 2013; <http://www.oas.org/es/CIM/docs/ApuestaPorLaParidad-Final>.

IDEA-Internacional, PNUD y ONU-Mujeres. Participación política de las mujeres en México. A 60 años del reconocimiento del derecho al voto femenino, México 2013.

La apuesta por la paridad: democratizando el sistema político en América Latina. Los casos de Ecuador, Bolivia y Costa Rica, IDEA-OEA 2013; <http://www.oas.org/es/CIM/docs/ApuestaPorLaParidad-Final>.

Mestre i Mestre, Ruth M. y Zúñiga Añazco, Yanira (eds.), Democracia y participación política de las mujeres. Visiones desde Europa y América Latina, Valencia: Tirant lo Blanch 2013.

Mujeres en el parlamento. Más allá de los números. Serie Manuales. Estocolmo: IDEA, 2002.

Rey, Fernando. Cuotas 2.0. Un nuevo enfoque de las cuotas electorales de género. Serie: Cuadernos de Divulgación, No. 22, México: TEPJF 2013.

Roza, Vivian, Llanos, Beatriz y Garzón, Gisela (eds.), Partidos políticos y paridad: La ecuación pendiente, Lima: IDEA Internacional 2010.

Scott, Joan, Parité. Equidad de género y la crisis del universalismo francés, México: FCE 2012.