

III. General overview on the electoral system in Mexico

15. The national legislative body, the Mexican General Congress, is elected by a mixed electoral system. The representatives of both chambers of the Congress, the House of Representatives and the Senate, are elected in two different ways and procedures. In the case of the lower chamber, 300 representatives are elected "*according to the principle of majority voting, by means of uninominal electoral district system*",⁶ while the 200 remaining representatives in the 500-member House of Representatives are elected "*in accordance with the principle of proportional representation, by means of the regional lists voted in the plurinominal districts*".⁷ The same principle is applied to the 128-member Senate, where three-quarters of the senators are elected in the way that "*in each State and the Federal District (Mexico City)*"⁸, *two (senators - S.D.) will be elected by the principle of relative majority voting, and one will be assigned to the largest minority*",⁹ while the rest of the 32 senators "*will be elected by the principle of proportional representation, voted in only one plurinominal district.*"¹⁰

16. In order to reduce the influence of political parties and their leadership in the legislative process, efforts have been made in the recent past to substitute the proportional clause in the electoral system with a full-fledged first-past-the-post system both for electing members of the House of Representatives and for the Senate. These attempts have failed. The President of Mexico, has not been able to control the majority in the House of Representatives since 1997. A part of the Mexican political class sees this as a consequence of the proportional clause, while at the same time a first-past-the-post system is perceived as a way to favour the biggest party in power.

17. There is a wide variety of electoral systems with proportional representation in different States¹¹. The Venice Commission has no preference for any specific method or degree of proportionality regarding the distribution of seats. States enjoy a broad margin of appreciation as these choices are political decisions¹². There are two different interests at stake which have to be balanced: to honour as much as possible the representation principle (which is enshrined in the proportionality principle); or to favour the creation of majorities, letting the main political coalition govern¹³. Both electoral principles, majoritarian and proportional, as well as their combination in a mixed system are legitimate choices and it is up to the Mexican political class to make its choice.

18. Article 11 of the Mexican Electoral Code stipulates that both chambers of Congress, i.e. the House of Representatives and the Senate, "*will be totally reformed*" *after their mandating period - three years for the House of Representatives and six years for the Senate*". This provision introduced, as early as 1934 under the presidency of Lázaro Cárdenas, bans on the immediate re-election of members of the legislative body. As a consequence, each and every member of the House of Representatives and the Senate may be re-elected only after the break of three or six years (depending on the chamber) and the principle is applicable on each possible new term.

⁶ *Mexican Federal Code of Electoral Institution and Procedures* (the Electoral Code), Article 11.

⁷ *Ibidem*.

⁸ Distrito Federal is the capital - Mexico City.

⁹ *Electoral Code*, Article 11.

¹⁰ *Ibidem*.

¹¹ For example, in some countries with a proportional system, the establishment of open lists has been considered to possibly reduce the influence of leadership of political parties. However, this system has also its drawbacks.

¹² Venice Commission, CDL-AD(2012)012.

¹³ See *Quelques éléments à prendre en compte dans le choix d'un système électoral*, Jean-Claude COLLIARD, *Réunion sur lessystèmes électoraux en Tunisie*, CDL-EL(2012)007.

19. The ban on re-election of the President reflected the legacy of the Mexican revolution of 1910 and the political ideas followed by president Cárdenas for members of the legislative body. This principle has survived in the Mexican politics to today. The intention behind such a principle was clear: to discourage the creation of an immovable and fixed political class that might stay in Parliament for life without a clear democratic basis. However, it is arguable whether this measure is still needed in a democratic State.

20. The Venice Commission has considered the issue of the limitation and duration of the terms of office of elected representatives on several occasions, such as in the *Report on Democracy, limitation of mandates and incompatibility of political functions*¹⁴. Indeed, the limitation of mandates is a challenge not only for the principle of representation as such, but also for contemporary democratic practice. The Constitution of Mexico is among the rare constitutions in the world that does not foresee the possibility of a consecutive parliamentary mandate¹⁵. The limitation of mandates may be criticised or praised. According to the Venice Commission,

*“62. The critics say that the frequent replacement of the holders of public (political) functions in the country can have a negative impact on the quality and on the continuity of the public policies in the country and that it brings about major political uncertainty. The supporters of the limited mandate believe that it is a positive aspect of the system seen through the prism of an influx of fresh ideas, pluralism in political thought, avoidance of political domination and, most importantly, avoidance of the concept of irreplaceability in the political establishment.”*¹⁶

21. The Venice Commission is of the opinion that prohibiting the re-election of parliamentarians involves the risk of a legislative branch of power being dominated by inexperienced politicians. This may lead to an increased imbalance in favour of the executive, even if the Head of State and possibly ministers, are not re-eligible, since the executive is seconded by a permanent public service¹⁷.

22. Taking into account that there is a long tradition and practice concerning the re-election ban of Parliament members in Mexico, the Venice Commission encourages nevertheless all the stake-holders to consider the fact that most other democracies avoid to introduce this principle in their Constitutions and/or electoral legislation.

¹⁴ CDL-AD(2012)027.

¹⁵ Article 59 of the Constitution of Mexico – Senators and deputies in the Congress of the Union cannot be re-elected . See CDL-AD(2012)027, para. 44.

¹⁶ *Ibidem*, para. 62.

¹⁷ *Ibidem*, para. 71.