

Costa Rica: A Powerful Constitutional Body

Rubén Hernández Valle

The Supreme Electoral Tribunal (Tribunal Supremo de Elecciones, TSE) of Costa Rica was established as an independent agency in 1946. Before then, election administration was the responsibility of the internal affairs secretary, who was part of the executive branch of government, and the elections were called by the Congress.

The TSE was incorporated into the new constitution of 1949 as a constitutional agency with full powers to administer elections. Since then it has become the most prestigious institution in the country.

The TSE is regulated by articles 99–104 of the constitution, the Organic Law of the TSE (Law no. 3504) and the Electoral Act (Law no. 1536).

Institutional Structure

The TSE consists of three regular judges and six substitute judges, all of whom must be at least 35 years old and have at least ten years of professional legal practice as judges or otherwise. These judges are known as electoral judges. Their appointment is made by two-thirds of the members of the Supreme Court of Justice. They are subject to the same immunities and responsibilities as the judges of the Supreme Court.

The appointment of an electoral judge is for a period of six years but can be renewed. In practice, most of the judges remain in office until they retire. A member of the TSE may only be removed from office by two-thirds of the members of the Supreme Court of Justice on the grounds of misconduct.

Powers and Functions

The TSE has power to organize, implement and supervise all elections, including presidential, legislative and local elections. Its main powers and functions are to:

- organize, implement and supervise all elections at both national and local level;
- register political parties in accordance with the provisions of the constitution and the Electoral Act;

- monitor the organization and operation of the political parties, including their finances;
- arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the electoral registers;
- monitor political campaigns and establish rules and regulations which govern the political parties and the political elections; and
- determine the electoral district boundaries.

The constitution provides that the TSE is responsible for the authentic interpretation of both the constitutional and legislative norms regarding electoral matters. This means that the constitution gives the TSE constitutional powers as well as legislative powers.

No appeal exists against the decisions and resolutions of the TSE. This is a remarkable and important attribute, because no one can contest the results of an election in court.

During the election campaign period, which lasts three months, the TSE assumes direct control of the Civil Guard (part of the domestic security forces). In this way elections are fully guaranteed to be free and without interference from the political authorities.

The Congress cannot enact any law regarding electoral matters later than six months before polling day or earlier than six months after polling day. The TSE must be consulted in advance on every proposal for legislation regarding electoral matters; if this is not complied with, the resulting law is null and void. For the Legislative Assembly to enact legislation which is contrary to the opinion of the TSE, a majority of two-thirds of its members is required.

Financing

Constitutional provisions ensure the permanent financing of the work of the TSE, as well as of the cost of elections. According to article 177 of the constitution, and in order to make the universal suffrage effective, the Legislative Assembly cannot reject or change the funds included in the TSE's annually proposed budgets. This constitutional provision guarantees the TSE sufficient funds to carry out its functions without any financial burdens.

Costa Rica sustains its electoral process through local resources. It is, however, seeking assistance from international agencies, both governmental and non-governmental, in order to introduce electronic voting in future elections.

Accountability

The legislative scheme for elections in Costa Rica does not expressly place accountability requirements on the TSE. Oversight mechanisms do exist in the Legislative Assembly in the form of committees on electoral matters, but these mechanisms are not adequate to ensure effective reporting and accountability to the Legislative Assembly. There have therefore been proposals that the TSE should be required to submit to the Legislative Assembly a report both annually and after each election, and a management and financial audit report after each election.

The TSE does not have to go through public tender for the acquisition of goods and services. The level of transparency of its financial and budgetary processes, procurement procedures and procedures for awarding contracts has come under critical scrutiny. Many scholars have proposed that the operations of the tender process should be reviewed to assure transparency.

The Professionalism of Electoral Officers

The TSE, having been established in 1946, has an important record of democratic experience of organizing multiparty elections. It has recruited and trained its electoral staff to the level required to manage elections in accordance with modern practices. There is therefore a continuous monitoring of tasks, scheduling and quality control, all of which receive attention during the conduct of electoral processes.

Along with the regular personnel, the TSE engages temporary election staff who are chosen from among civil society groups to carry out some of the tasks of election administration. They supervise the conduct of the electoral campaign, and on election day they provide assistance to the members of the polling station committees.

However, all members of polling station committees are appointed directly by the political parties. The role of the TSE is limited to officially endorsing such appointments.

The method used for the training of temporary staff ensures a consistently high standard. Great emphasis is placed on dry runs of election procedures, highlighting aspects such as the determination of valid votes, the counting and tabulating of the votes, and the filling out of the relevant forms. Experience has shown that protection of the secrecy of the vote should be further emphasized in future training of presiding officers.

Career development and training for the core staff of the TSE exist both at headquarters and in the regional offices. Many years ago the TSE established a process of staff assessment which is linked to a programme of professional upgrading and career development, with a view to developing a cadre of election administration professionals. This comprehensive and coordinated training strategy has been designed to raise standards and to ensure that all staff have a clear understanding of their responsibilities.

Relations with the Media

The TSE has a framework within which to monitor the media during an election campaign. According to the Electoral Act, the TSE ensures that all the electronic and print mass media fully observe the relevant regulations during the campaign. Where offences appear to have been committed, the TSE has the obligation to file actions before the criminal courts.

In general, the media comply with the law and operate in a non-discriminatory way, although some have made allegations of bias in favour of the incumbent party. When a petition alleging such bias is filed, the TSE must initiate a full investigation to determine if it has legal grounds.

The existence of a modern Media Centre at the headquarters of the TSE has improved reporting of election results, which has increased the confidence in the electoral process both of the political parties and of citizens.

Relations with Other Institutions and Agencies

The relationship between the TSE and the executive branch has always been one of mutual respect. According to the constitution, the TSE may issue the necessary orders to police officers to ensure the neutrality of the electoral process. In practice, authority over the police is passed over to the TSE during election campaigns.

The TSE's relationship with the legislature, although normally good, was not able to generate sufficient influence to lead to a number of reforms that the TSE proposed to the 2002 Electoral Bill being enacted.

Political parties generally have full confidence in the independence and impartiality of the TSE, mainly due to the TSE's ability to deliver elections on schedule and to remain neutral and transparent throughout the electoral process.

Civil society groups' views about the quality of the working relationships they enjoy with the TSE are positive. Their contacts with the TSE have always been open and based on mutual trust.

The TSE has been receptive to accommodating international observers as well as observers' support personnel during the last four or five elections.

Electoral Reform Management

Following widespread criticisms of the electoral legislation after the last two elections, the TSE initiated a series of workshops and seminars to discuss necessary electoral reforms with stakeholders. It then prepared some of the recommended reforms and drafted a bill which was submitted to the Congress for its approval. The reforms are wide-ranging and include some fundamental constitutional changes regarding the electoral system; legislative reforms to the organization and operation of political parties; and other reforms to amend the Electoral Act, which was approved back in 1952.

The electoral history of Costa Rica has shown the huge impact that the independent EMB has had on the democratic well-being of the state. Since 1949 the country has held 13 consecutive elections in which the two major political parties have alternated in power. This fact has strengthened the country's democracy and reinforced a popular feeling that the electoral institutions work to guarantee free elections.

The major constraint is the lack of new electoral legislation to make elections less expensive and to encourage the formation of modern political parties. During the last three elections almost every single actor in the electoral process has emphasized the need to make elections more cost-effective. Proposals for the introduction of e-voting are seen as an effective response to the transport costs associated with the use of traditional voting materials.