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Supreme Court Shorthanded at Start of New Session; Juan Silva Meza Elected Chief Justice

by Carlos Navarro

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Mexico's high court (Suprema Corte de Justicia de la Nación, SCJN) began its 2011 session with only 10 ministers because of a partisan disagreement among members of the Senate on a replacement for the late Justice José de Jesús Gudiño Pelayo, who died in September 2010. The lack of a full 11-member court had some repercussions, as the SCJN left a decision pending following a 5-5 tie on a dispute between the municipality of Tulum in Quintana Roo state and the federal government.

Despite the lack of a full complement of members, the court did start the year with a new chief justice, with the ministers electing Juan Silva Meza to head the SCJN for 2011-2014. Silva Meza is the fifth person to hold the post since reforms to the SCJN were approved in 1994. Under those reforms, final approval for court nominees was shifted from the executive branch to the Senate. Silva Meza, who gained nine of the 10 votes, will replace Guillermo Ortiz Mayagotia as chief justice.

Death of Justice Gudiño Pelayo creates vacancy

The SCJN post has been vacant since the death of Gudiño Pelayo, who suffered a heart attack while on vacation in London with his family. Gudiño is known, among other things, for his strong support for Mexico City's gay-marriage law and the right of same-gender couples to adopt children ([SourceMex, Aug. 25, 2010](#)).

It took Calderón several weeks to send his nominations to the Senate to replace Gudiño. On Dec. 1, the president submitted the names of three women to the Senate, Elvia Díaz de León, Lilia Mónica López Benítez, and Andrea Zambrana Castañeda. With the slate, the president wanted to increase the number of women on the court. Currently, two women serve on the SCJN, Olga Sánchez Cordero and Margarita Luna Ramos.

The president did not mention gender when he sent the list to the Senate, saying in a written statement that all three candidates were "persons of proven moral quality and dedication to service." The nominees were all federal judges, but some experts suggested at the time that only López Benítez had broad support from the Senate.

The pundits were wrong because a majority of the members of Calderón's Partido Acción Nacional (PAN) voted for Díaz de León, leaving López Benítez without the required two-thirds majority for ratification. The other parties attempted to persuade PAN senators to change their minds, and Senate President Manlio Fabio Beltrones scheduled a second vote. The senators from the conservative party refused to budge, which still left the court with 10 members going into the Christmas break. If just nine PAN members had shifted their position during the second vote, López Benítez would have been ratified.

Díaz de León, who was previously nominated by former President Vicente Fox in 2003, is considered more socially conservative than López Benítez. Instead of selecting Díaz de León that year, the Senate picked Luna Ramos.

The PAN's insistence a more conservative justice might have been a last-ditch effort to leave a mark on the court. Some observers pointed out that none of the six justices nominated during the 10 years of PAN presidencies have held positions supporting the PAN's socially conservative agenda. Fox nominated Luna Ramos, Ramón Cossío Díaz, Fernando Franco, and Sergio Valls, while Calderón submitted the names of Luis María Aguilar and Arturo Zaldívar.

"The six justices nominated by PAN presidents have cast 22 votes on such issues as decriminalization of abortion, contraceptive pills, gay marriage, and gay adoptions ([SourceMex, Feb. 11, 2004](#)), ([Oct. 15, 2008](#)), and ([Aug. 25, 2010](#))," said the Mexico City daily newspaper Reforma. "Not a single vote was in line with PAN principles."

Without a two-thirds vote in December, Calderón has the responsibility under the Constitution to submit a new list of candidates for the court. There was some thought that López Benítez would again be placed on the list because of the strong support she received during the first round of votes. As of the end of January, the president had yet to present nominees to the court, and the Constitution does not stipulate a time frame for submissions to be sent to Senate.

Less-than-full SCJN unable to resolve Quintana Roo dispute

The divisions between the PAN and the other parties in the Senate left the SCJN short one member at the start of its new session in January. In most cases, this would not present a problem because the high court can operate shorthanded for a brief period. But a problem did arise as the court was convening early in the year when a case involving a dispute between the municipal government of Tulum and the federal government regarding a protected area was brought to the full court.

Justice Valls, who had been assigned to study the case that was first presented to the SCJN in 2008, had sided with the Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT), which questioned the right of the municipality of Tulum to include the Tulum National Park and the Tulum-Tancah Archeological Zone in its urban-development plan for 2006-2030. SEMARNAT contended that the municipality was proposing to develop an area considered Mexican cultural patrimony.

But there were many ambiguities and contradictions in the original plans that led to the creation of both the park and the archeological zone. This prompted some justices to hesitate to support SEMARNAT's push to have the court invalidate Tulum's urban-development plan. One concern was that the national park and the archeological zone were created at different times, and there is some overlap in the territory that they cover. "When the national park was created in 1981, it was determined that the area was 664 hectares, while the decree establishing the monuments in 1993 set aside 691 ha," said Justice Franco.

"I cannot affirm that the archeological zone and the national park comprise the exact same area," added Franco. "They could be treated differently because they have distinct objectives and different legal frameworks and regulations."

As a result of the discrepancies, the SCJN was deadlocked 5-5 on the issue in a preliminary vote. An 11th justice would have tipped the scales one way or the other.

The situation put newly elected Chief Justice Silva Meza in a difficult position. Silva, who originally voted against the SEMARNAT position, offered to change his vote. Then he retracted his position

and proposed placing another minister in charge of the case. However, regulations do not allow a case with a tied vote to be turned over to another justice.

In the end, Justice Valls withdrew the case and offered to resubmit it when the court had a full slate of justices.

Even before the Tulum case came up, Silva Meza had raised concerns that an incomplete court would keep the judicial branch from performing its job. He urged Calderón to present a second list of names as soon as possible and the Senate to act quickly on those nominations. "It is urgent that all branches of government take all means necessary to ensure that we have a complete court," the new chief justice said.

Silva Meza, who is considered a progressive, outlined his goals during his acceptance speech. "We will strengthen justice, we will ensure that everyone respects our judges and justices as authorities," he said. "Regardless, I'll make sure we work harder and harder to achieve unity."

The chief justice also pledged to create an environment of independence in the judicial system and guarantee that judges remain autonomous.

"Now more than ever, our population needs to trust us," he said. "I will not generate expectations. I will not say that everything is going to change and then all remains the same. No, my commitment is to make sure that we work together and take full responsibility for our actions."

While Silva Meza's election was overwhelming, the justice was competing against Sánchez Cordero, who sought to become the first woman to hold the leadership post in the SCJN. "Never before has a woman presided over the SCJN," said Sánchez Cordero.

"There are not too many countries in the world where a woman is the head of the high court," she added, citing Ellen Gracie in Brazil and María Emilia Casas in Spain as two exceptions.

But this was not the time for the SCJN to elect a woman chief justice, as Sánchez Cordero received only a single vote.

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