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Supreme Court to Elect New President, Welcome New Justice in 2015

by Carlos Navarro

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The Suprema Corte de Justicia de la Nación (SCJN) is preparing to elect a new president in 2015, and the court's new leader could well determine the court's approach regarding legal decisions. The SCJN has come under some criticism that its recent rulings have been based more on following the letter of the law than on the protecting human and individual rights. Six of the justices—Luis María Aguilar, Arturo Zaldívar, Margarita Luna Ramos, Fernando Franco González, Jorge Pardo Rebolledo, and Alfredo Ortiz Mena—have announced their intention to seek the lead post in the SCJN to replace Justice Juan Silva Meza, who completes his four-year term as president of the high court this month. Luna Ramos, if elected, would be the first woman to serve as president of the high court.

The SCJN will also welcome a new member in 2015, a replacement for Justice Sergio Valls Hernández, who died on Dec. 3 after an extended illness. President Enrique Peña Nieto is charged with presenting the nomination of Valls Hernández's replacement, which must then be ratified by the Senate. Only one name has surfaced as a possible replacement: Javier Laynez Potisek, the government's top financial prosecutor. Peña Nieto has an opportunity to further influence the composition of the court, since Justices Silva Meza and Olga Sánchez Cordero complete their terms at the end of 2015.

A 'legalistic' court

Critics say the SCJN's overly strict interpretation of the law is evidenced by its recent decisions to deny the requests to approve public consultations on energy reform, the minimum wage, and a reduction on the size of the Congress. In issuing its decisions, the high court ruled that the issues proposed by the three political parties for referendum were the exclusive domain of the Congress and therefore could not be eligible for public consultation ([SourceMex, Nov. 5, 2014](#)).

In another controversial decision, the court ordered the release of French citizen Florence Cassez in 2013, even though there was compelling evidence that she participated in a kidnapping ring. In this case, the dilemma of the court was whether to protect the rights of an individual or issue a ruling that had implications for thousands of crime victims. In the end, the court ruled that the manner in which Cassez was arrested violated her individual rights, which required that she be released ([SourceMex, Jan. 30, 2013](#)).

Justice José Ramón Cossío, one of the few members of the high court not seeking the leadership post, suggests a problem is the lack of an exact definition of what constitutes the "rule of law" in Mexico. "The rule of law is not a product available in the marketplace with instructions on how to use it once taken out of the package," Cossío wrote in a guest piece in the daily newspaper *El Universal*. "It is, foremost, a starting point to construct, plan, and execute a diverse set of actions varying in intensity, length, and practicality."

In most years, only two or three justices seek the leadership post, and the decision of more than half the court to seek the SCJN presidency reflects a lack of cohesiveness on the high court. "The decision of six of the 11 justices to seek the leadership post on the high court is no doubt a reflection of what is happening in our country," columnist Francisco Zea wrote in the daily newspaper *Excelsior*. "This is evidence of a lack of agreements and leadership."

Zea said a malaise is afflicting the judicial branch at all levels. "Who could separate the turbulent times we are experiencing in the judicial branch, including the evident corruption of some judges and the 'length of time' that the courts are taking to impart justice in some cases, where they don't seem to grasp the reality that our country is facing."

While each justice should vote his or her conscience on each issue that comes before the court, some analysts believe the president could help set the tone for the SCJN.

Analysts agree that the current court is politically diverse, which ensures a healthy debate on the issues. Two legal experts— Pedro Salazar of the Universidad Nacional Autónoma de México (UNAM) and Saúl López Noriega of the Instituto Tecnológico Autónomo de México (ITAM)— believe the next president of the SCJN should have a more progressive philosophy, meaning that the SCJN would place a higher premium on protecting human rights than on following the letter of the law, they said in an interview with *El Universal*.

Analysts said Ortiz Mena was only appointed in 2012, so his candidacy might not have much of a chance.

Of the candidates seeking the court presidency, Zaldívar Lelo de Larrea is considered part of the progressive bloc, while Luna Ramos, Pardo Rebolledo, and Franco González have taken a more conservative path. If Luna Ramos is elected, she would be the first woman to preside over the SCJN. There is one other woman on the court, Olga Sánchez Cordero.

"Luna Ramos has greater clarity on jurisprudence," said Julio Caballero, a legal expert at the Centro de Investigación y Docencia Económicas (CIDE). "If we need someone with institutional memory, she is the one. Her opinions are typically anchored on precedents established by the court."

"Zaldívar Lelo de Larrea is on the opposite extreme," said Caballero. "He would hand down opinions that would generate new criteria."

The CIDE expert said, however, that a major factor that should be considered in the election of the new SCJN president is institutional leadership rather than expertise in jurisprudence.

Death of Valls Hernández creates vacancy

The sudden death of Valls Hernández has created a vacancy in the SCJN that Peña Nieto is expected to fill sometime in 2015. Valls, who had served two-thirds of his 15-year term and was due to retire in 2019, suffered from poor health related to kidney problems and Hepatitis C. In October of this year, the SCJN justice requested a leave of absence from the court to dedicate himself full time to his recovery.

Valls Hernández, 74, was the third SCJN justice to die while in office. The two others were Humberto Román Palacios and Jesús Gudiño Pelayo ([SourceMex, Jan. 26, 2011](#)). Valls was appointed to the post by ex-President Fox following the death of Román Palacios in 2004.

Valls Hernández put a premium on transparency in his rulings, as evidenced by his Web page. The late justice emphasized that transparency must become a "daily criterion" for all administrative, legislative, and judicial entities that govern society.

Fernando Ramírez de Aguilar from the daily business newspaper *El Financiero* says that Valls Hernández is known for three important decisions. In August 2014, he wrote the opinion that threw out the constitutional challenge that a group of federal legislators, primarily from the opposition PAN and the center-left Partido de la Revolución Democrática (PRD), filed against the initiative that applied a uniform value-added tax (*impuesto al valor agregado, IVA*) of 16% to border states ([SourceMex, Oct. 23, 2013](#)). The measure, part of the tax-reform plan proposed by Peña Nieto and approved by a majority of Congress, would ensure that all states paid a uniform IVA. Border states previously applied only an 11% IVA.

Valls Hernández was also behind the decision of the SCJN to exercise its investigatory powers to look into the fire that killed 49 children at a federally sponsored day-care center in the city of Hermosillo in Sonora state in June 2009 ([SourceMex, June 23, 2010](#)).

The late SCJN justice also supported the case brought to the court by an individual seeking the right to a sex-change operation and a change of identity. "In this ruling, the director of the civil registry of the Federal District was ordered to make the pertinent modifications, which opened the door for other cases involving legal action by transgender persons," said Ramírez de Aguilar.

Layne Potisek only candidate proposed initially

In the aftermath of Valls Hernández's death, only one name surfaced as a potential replacement: Laynez Potisek, who has held the post of financial prosecutor since the Calderón administration. Laynez Potisek was twice proposed for high-level judicial posts, and someone else was chosen in both cases. In 2006, Laynez Potisek's name was submitted for an open slot on the federal electoral court (Tribunal Electoral del Poder Judicial de la Federación, TEPJF), but he was deemed not to have sufficient experience in electoral matters. Five years later, in 2011, Calderón proposed Laynez Potisek for the post of magistrate in the International Criminal Court (ICC), but the Mexican candidate did not make it past the initial round.

Despite his earlier setbacks, the absence of speculation on other candidates to replace Valls Hernández would seem to indicate that Laynez Potisek might have a good chance to rise to the SCJN, especially if the PAN and PRI support him in the Senate.

Some observers cite his recent experience as a plus. "He has been involved and actively participated in a series of studies in comparative rights, examining the legal systems in England, France, the US, Argentina, and Chile as examples to implement a new financial prosecution system in Mexico," said the online news site Terra.com.

In his current role as financial prosecutor, Laynez Potisek has been involved in investigations and prosecutions of money-laundering operations. One of his recent cases involved the role of Grupo Financiero Banamex (GFB), a subsidiary of US-based Citigroup, in the high-profile fraud case involving Oceanografía, a contractor for the state-run oil company PEMEX ([SourceMex, March 19, 2014](#)). Partly as a result of federal investigations and information from Citigroup, the government's banking regulator (Comisión Nacional Bancaria y de Valores, CNBV) imposed a huge fine on Banamex because of lapses in oversight of loans to Oceanografía that resulted in losses of more than US\$500 million for the Mexican bank ([SourceMex, Oct. 22, 2014](#)).

Layne Potisek also played a small role in the recent debate on the energy reforms approved in Congress ([SourceMex, Dec. 18, 2013](#), and [Aug. 6, 2014](#)). During a hearing before legislators, the financial prosecutor reassured members of the Chamber of Deputies that the federal government would not exercise its right of eminent domain to take land from individuals or communities in sites where deposits of hydrocarbons have been found. "There will be no de facto expropriations," said Layne Potisek.

The financial prosecutor noted that the Peña Nieto administration has adopted a policy of consultation and negotiation, particularly involving lands owned by indigenous communities or communal farms (ejidos). One possibility, he said, is for the Secretaría de Energía (SENER) to negotiate a lease of lands where exploration or extraction of hydrocarbons is required. The property owners would also be offered the opportunity to participate in profit sharing, he said.

Layne Potisek did not address the question of what the government would do if landowners absolutely refused to allow extraction or exploration activities on their lands.

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