

“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”



# TERRUM

**Justice in Question: Analyzing the Recent Resignation and Nomination Controversy in Mexico.**

**By Gerardo Reyes.**

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# Justice in Question: Analyzing the Recent Resignation and Nomination Controversy in Mexico.

by Gerardo Reyes.

The Political Constitution of the United Mexican States (CPEUM by its acronym in Spanish) stipulates that the Supreme Court of Justice of the Nation is the main and highest organ of the Judiciary in Mexico. It is composed of 11 Justices, who are divided into two chambers of five justices each, along with a Chief Justice who does not belong to either of the two chambers. Article 95 of the Mexican Constitution stipulates the eligibility criteria for the election of a justice to the Supreme Court of Justice of the Nation. The prospective justice must meet the following qualifications:

- a. Be a Mexican citizen by birth<sup>1</sup>, fully exercising their political and civil rights.
- b. Be at least thirty-five years old on the day of the appointment.
- c. Have a minimum of ten years of professional experience as a licensed attorney, accompanied by a commendable professional reputation.
- d. Have resided in the country for the two years preceding the day of the appointment.
- e. Not have held the positions of Secretary of State, Attorney General of the Republic, senator, federal deputy, or head of the executive branch of any federative entity during the year prior to the day of their nomination.

The Justices of the Supreme Court of Justice shall serve a term of fifteen years and can only be removed according with article 98 of the CPEUM:

“Article 98 of the CPEUM. When the absence of a Justice exceeds one month, the President of the Republic shall submit the appointment of an interim Justice for Senate approval, following the provisions of Article 96 of this Constitution.

In the event of a Justice's absence due to death or any other cause of permanent separation, the President shall submit a new appointment for Senate approval, in accordance with the terms of Article 96 of this Constitution.

Resignations of Justices of the Supreme Court of Justice shall only be accepted for serious reasons; they shall be submitted to the Executive, and if accepted, forwarded for approval to the Senate.”

Nevertheless, in light of the aforementioned circumstances, Justice Arturo Zaldivar decided to resign from his position and leave the Supreme Court of Justice of the Nation during the last year of his period. The letter of resignation was formally presented to the President of the Republic on November 7, 2023. Subsequently, the resignation was acknowledged and referred to the Senate for its requisite approval.

The resignation specifically states that Justice Arturo Zaldivar has chosen to depart from the Supreme Court because he deems it of greater importance to contribute to *“the consolidation of the transformation of Mexico, from positions that provide the opportunity to have an impact on the construction of the country.”*<sup>2</sup>

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1.-According with article 30 of the CPEUM. Mexican nationality is acquired by birth in the following cases: I. They are born within the territory of the Republic, regardless of the nationality of their parents. II. They are born abroad to Mexican parents, a Mexican mother, or a Mexican father. III. They are born abroad to parents who have acquired Mexican nationality through naturalization, including a father or mother who became a Mexican citizen through naturalization. IV. They are born on board Mexican vessels or aircraft, whether they are military or merchant.

2.- <https://twitter.com/ArturoZaldivarL/status/1721975321119879235?lang=es> Last query: December 26, 2023.

The document indicates that Justice Zaldivar did not cite a serious reason for his resignation. Consequently, the resignation of the mentioned justice contravenes the provisions of the highest law of Mexico. However, it is noteworthy that there is no regulatory provision or legal precedent interpreting the concept of: "serious cause or serious reason for the resignation of a Justice of the Supreme Court of the Nation." Therefore, during a hearing of the Justice Committee of the Mexican Senate, Senator Claudia Anaya argued *"There is no serious cause, is only a personal cause. With this resignation, we will be allowing the distortion and imbalance of powers. It's not a sin to go into an electoral campaign; it's a shame"*<sup>3</sup> suggesting that the Justice's resignation has political implications rather than being rooted in legal grounds.

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On the other hand, during an interview with a major media outlet,<sup>4</sup> Justice Zaldivar defended his resignation by arguing that, as established in the preceding paragraphs, the concept of "serious cause for resignation from the Supreme Court" is "legally indeterminate"<sup>5</sup> (concept without an absolute definition). He asserted that his resignation should be interpreted in light of the new paradigm of human rights and the new regime of freedoms. Therefore, if his resignation were deemed inappropriate, it would violate the justice's right to "free development of personality" and "freedom of work." He concluded that a serious cause is not solely related to disability, illness, or similar, but rather that the serious cause is at the discretion of the resigning individual.

The decision of the Senate Justice Committee ratified the acceptance of the Justice's resignation, which was not contested and was confirmed through the appointment of the new Justice in late 2023. In accordance with Articles 76, section VIII; 89, section XVIII; and 96 of the Mexican Constitution, the President of the Republic will submit a list of three candidates to the Senate. Within the following 30 days, the Senate will vote on the new Justice, who must secure a two-thirds majority vote. In the event of the rejection of the first list, *"the President of the Republic shall submit a new list, under the terms of the preceding paragraph. If this second list is also rejected, the person appointed by the President of the Republic from within that list will assume the position."*<sup>6</sup>

**"...in light of the aforementioned circumstances, Justice Arturo Zaldivar decided to resign from his position and leave the Supreme Court of Justice of the Nation during the last year of his period. The letter of resignation was formally presented to the President of the Republic on November 7, 2023."**

On December 14, 2023, the Ministry of the Interior (Segob by its acronym in Spanish) released a statement<sup>7</sup> announcing that, in light of the Senate's rejection of the two sets of nominees for the position of Justice, the

3.-<https://www.cronica.com.mx/nacional/acusaciones-servil-avanza-renuncia-ministro-zaldivar-comisiones-senado.html> Last query: December 26, 2023.

4.- [https://twitter.com/Radio\\_Formula/status/1722242581730668844](https://twitter.com/Radio_Formula/status/1722242581730668844) Last query: December 26, 2023.

5.- <https://dpej.rae.es/lema/concepto-jur%C3%ADdico-indeterminado> Last query: December 26, 2023.

6.- Article 96 of the Mexican Constitution.

7.- <https://www.gob.mx/segob/prensa/se-congratula-gobernacion-por-la-designacion-de-lenia-batres-como-ministra-de-la-suprema-corte-de-justicia-de-la-nacion> Last query: December 26, 2023

President of the Republic had chosen an individual from the most recent list that had been submitted to the Senate.

The first rejected list comprised Bertha María Alcalde Luján, who earlier in the year 2023 was in the process of becoming the president of the National Electoral Institute (INE) but she did not succeed. Lenia Batres Guadarrama, currently serves as an associate counselor for legislation and normative studies at the Legal Counsel of the Federal Executive. Additionally, María Estela Ríos González, legal advisor to the President of Mexico, was part of this initial list. Subsequently, the President submitted a new list, reiterating the inclusion of the first two candidates mentioned and introducing Eréndira Cruzvillegas Fuentes, head of the Legal Affairs Unit at the Ministry of Culture<sup>8</sup>. Nevertheless, the second list was also rejected by the Mexican Senate.

As evident, the President of Mexico leverages a legal gap by including two candidates in the second nomination who had previously faced rejection. This is facilitated by the absence of any prohibition on the reiteration of candidates. Consequently, it provides the President of Mexico with increased influence over the appointment of new justices.

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In conclusion, the structure and operation of the Supreme Court of Justice of the Nation in Mexico, as outlined in the Political Constitution of the United Mexican States, aim to portray a balance of powers designed to ensure the integrity and competence of its members. The criteria established for the selection, term, and potential removal of justices underscore the importance of experience, eligibility, and adherence to ethical standards. However, the recent resignation of Justice Arturo Zaldivar has drawn attention to potential ambiguities in the legal framework, particularly concerning the definition of "serious cause" for resignation.

The circumstances surrounding Justice Zaldivar's resignation have sparked a debate over the interpretation of this term, with differing opinions on whether political considerations may carry more weight than strictly legal justifications. The absence of explicit regulatory constraints on reiterating candidates for the position further highlights the discretion wielded by the President of Mexico in the nomination process. As the Senate grapples with the acceptance or rejection of candidates, the events related to Justice Zaldivar's departure shed light on the need for a nuanced examination of legal provisions to ensure transparency, uphold the rule of law, and maintain the integrity of Mexico's highest judicial body.

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8.- <https://www.forbes.com.mx/amlo-repite-a-lenia-batres-y-bertha-alcalde-en-terna-para-vacante-en-la-corte/> Last query: December 26, 2023.

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