

Argentina: Milei Undermines Judicial Independence

Congress Should Review Dubious Appointments



Public hearing of the Agreements Committee of the Senate of the Nation, in which Federal Judge Ariel Lijo answered questions on his nomination to the Supreme Court, on August 21, 2024, in the Blue Room, in Buenos Aires, Argentina. © 2024 Senado de la Nación

(Washington, DC) – [Argentine](#) President Javier Milei’s decision to fill two vacancies on the Supreme Court by presidential decree undermines judicial independence, Human Rights Watch said today.

On February 26, 2025, President Milei issued a [presidential decree](#) to appoint a federal judge, Ariel Lijo, and a legal scholar, Manuel García-Mansilla, to fill the vacancies. The decision came after President Milei failed, for months, to muster the two-thirds Senate majority needed to fill the vacancies under normal procedures. The idea that President Milei can simply bypass the Senate and make these appointments through decree is based on a dubious interpretation of the Argentine Constitution.

“Appointing Lijo and García-Mansilla by decree is one of the most serious attacks on the independence of the Supreme Court in Argentina since the country’s return to democracy,” said [Juanita Goebertus](#), Americas director at Human Rights Watch. “The Senate should rise to the occasion and ensure that no appointments are made to the Supreme Court without its consent.”

On February 25, the Milei administration issued a [news release](#) announcing it would move forward with the appointments by decree, saying that Congress “had avoided respecting the decision of this government” on the candidates, whose “suitability for the positions had been demonstrated.”

However, since President Milei had nominated Lijo and García-Mansilla in April 2024, numerous [rights groups](#), citizens, [business associations](#), and [scholars](#) had formally [expressed concern](#) over Lijo's record as a federal judge and García-Mansilla's [views](#) on sexual and reproductive health rights. Lijo has five pending disciplinary investigations before the Council of the Judiciary, the body charged with investigating and removing federal judges. According to one [report](#), he has faced 29 other disciplinary proceedings that were eventually closed. Some [proceedings](#) were based on [allegations](#) that Lijo delayed and manipulated investigations into corruption.

A provision in Argentina's constitution allows the president to "fill employment vacancies that require Senate approval and that occur during a congressional recess." While courts have not ruled on how this provision applies to Supreme Court justices, many scholars question whether Supreme Court justice vacancies fit the category of "employment" mentioned in the constitution. Many argue that the provision refers solely to ambassadors, members of the military, and other executive branch officials. Experts also question whether the provision can be read as applying to vacancies that occur before the congressional recess in which the appointment by decree is carried out.

Argentina is party to international human rights treaties, including the [International Covenant on Civil and Political Rights](#) and the [American Convention on Human Rights](#), that require it to safeguard the independence and impartiality of its judiciary. The Inter-American Court of Human Rights has repeatedly [held](#) that judges should be appointed through an "adequate process" that protects their independence, including from the executive and legislative branches.

Under the Argentine Constitution, presidential appointments made during a congressional recess should last until the "end of the following congressional period," meaning in this case November 30, 2025. Even so, the Senate would be able to remove officials appointed this way on any basis. If judges were appointed this way, they would have no security of tenure, undermining their real or perceived independence.

The Senate plays a crucial role in ensuring that the appointment of Supreme Court justices respects constitutional procedures and carefully considers their qualifications, experience, and integrity, Human Rights Watch said. The Senate should immediately put the two appointments under vote when it resumes session.

In December 2015, then-President Mauricio Macri cited the same constitutional provision to fill two vacancies in the Supreme Court by [presidential decree](#). Human Rights Watch, other nongovernmental organizations, and legal scholars [criticized](#) the decision. Still, however, the justices appointed by Macri did not take office until they [obtained](#) the required two-thirds vote in the Senate, six months later, and the Senate was not considering the nominations at the time the presidential decrees were issued.

"By bypassing the ordinary Senate approval process and appointing a candidate with a troubling disciplinary record, the government is undermining the very foundations of judicial independence," Goebertus said. "Argentina's democratic institutions need to show their strength and uphold the rule of law."