

The constitutional boundaries of treaty incorporation in Argentina: a critical analysis of *Acevedo v. Manufactura Textil San Justo*

Los límites constitucionales de la incorporación de tratados en Argentina: un análisis crítico del caso Acevedo contra Manufactura Textil San Justo

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Abstract: This article offers a critical analysis of the landmark judgment of the Supreme Court of Justice of Argentina in *Acevedo, Eva María v. Manufactura Textil San Justo S.A.* (CSJ 1559/2018), delivered on 3 April 2025. The case concerned the domestic applicability of International Labour Organization (ILO) Convention No. 173 in the context of bankruptcy proceedings. In overruling prior case law, the Court reaffirmed that the ratification of international treaties by the Executive Branch is constitutionally indispensable for such treaties to acquire legal effect within the Argentine legal system. The article examines the Court's legal reasoning, its interpretation of Articles 75(22) and 99(11) of the Argentine Constitution, its reliance on the Vienna Convention on the Law of Treaties, and the broader implications of the decision for the separation of powers and the incorporation of international treaties under Argentine constitutional law.

Keywords

Argentine Constitutional Law; Treaty Incorporation; Ratification; Supreme Court of Justice of Argentina; ILO Convention No. 173

Resumen: El artículo analiza críticamente el fallo emblemático de la Corte Suprema de Justicia de la Nación Argentina en el caso *Acevedo, Eva María c/ Manufactura Textil San Justo S. A.* (CSJ 1559/2018), dictado el 3 de abril de 2025. El caso se centró en la aplicabilidad interna del Convenio N.º 173 de la OIT en el marco de un proceso concursal. Al dejar sin efecto su jurisprudencia previa, la Corte reafirmó que la ratificación de los tratados internacionales por parte del Poder Ejecutivo es constitucionalmente

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indispensable para que estos adquirieran efectos jurídicos en el ordenamiento argentino. El trabajo examina el razonamiento jurídico del Tribunal, su interpretación de los artículos 75 inciso 22 y 99 inciso 11 de la Constitución Nacional, su referencia a la Convención de Viena sobre el Derecho de los Tratados y las implicancias de la decisión para el principio de separación de poderes y la incorporación de tratados internacionales en el derecho constitucional argentino.

Palabras clave

Derecho constitucional argentino, incorporación de tratados, ratificación, Corte Suprema de Justicia de la Nación, Convenio OIT N.º 173

1. Introduction

The judgment in *Acevedo, Eva María v. Manufactura Textil San Justo S.A.* (hereinafter *Acevedo*)² constitutes a defining moment in Argentine jurisprudence concerning the relationship between international treaty law and domestic constitutional requirements. At its core, the ruling clarifies a long-contested question: whether a treaty approved by Congress may become enforceable within the domestic legal order in the absence of formal ratification by the Executive Branch.

The case arose when the Administración Federal de Ingresos Públicos (Federal Administration of Public Revenues, AFIP) challenged a bankruptcy distribution plan that granted priority to labor claims on the basis of the Protection of Workers' Claims (Employer's Insolvency) Convention No. 173 (hereinafter, the 'ILO Convention 173')³ and the precedent *Pinturas y Revestimientos Aplicados S.A.*⁴ The Corte Suprema de Justicia de la Nación (Supreme Court of Justice of the Nation, CSJN) ruled in favor of AFIP and, in doing so, delivered a far-reaching doctrinal clarification. The Court expressly overruled *Pinturas y Revestimientos*, holding that reliance on an unratified treaty as binding domestic law constituted a grave and manifest constitutional error.

This article analyzes the *Acevedo* judgment considering Argentine constitutional law—particularly Articles 75(22) and 99(11)—and the Vienna Convention on the Law of Treaties (VCLT).⁵ It argues that the decision reaffirms the indispensable role of the Executive in the treaty-making process and confirms that legislative approval alone does not suffice to generate enforceable domestic legal effects.

2. Case Background

Eva María Acevedo, a former employee of Manufactura Textil San Justo S.A., sought recognition of her labor claims as privileged in the company's bankruptcy proceedings. The trustee prepared a distribution plan favoring verified labor creditors, citing Law 24.285—which approved ILO Convention No. 173—and the precedent *Pinturas y Revestimientos Aplicados S.A.* as its legal basis. This meant that the

² Corte Suprema de Justicia de la Nación (CSJN). *Acevedo, Eva María v. Manufactura Textil San Justo S.A.* CSJ 1559/2018/RH1 (2025), <https://shorturl.at/sWaiE>

³ ILO. C173 - Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), adopted on 23 June 1992, entered into force on 8 June 1995. <https://shorturl.at/jkJPd>

⁴ CSJN. *Pinturas y Revestimientos Aplicados S.A.* Fallos 337:315 (2014). <https://shorturl.at/ajR0d>

⁵ Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, (UNTS) vol. 1155, p. 331. The VCLT was approved through Law 19.865, on 3 October 1972, ratified by Argentina on 5 December 1972 and it entered into force for Argentina on 27 January 1980.



distribution draft was made exclusively in favor of the verified labor claims, displacing the claims of state agencies, whether national, provincial, or municipal.

AFIP contested the plan, arguing that the order of payment should be governed by Law 24.522 Ley de Concursos y Quiebras (the Bankruptcy and Insolvency Act)⁶ and that ILO Convention No. 173 had not been properly incorporated into domestic law due to the absence of executive ratification. The trial court upheld AFIP's position and ordered the trustee to reformulate the distribution plan in accordance with domestic bankruptcy law. It held that *Pinturas y Revestimientos* was inapplicable, characterizing its reliance on Convention No. 173 as erroneous, given that the Convention had never entered into force for Argentina.

The court reasoned that although Convention No. 173 had been approved by Congress through Law 24.285, such approval merely authorized the Executive to ratify the treaty at the international level pursuant to Article 75(22) of the Constitution. Absent a distinct act of ratification by the Executive -as required by Article 99(11) of the Constitution and Article 7(2)(a) of the VCLT- the Convention was not binding on Argentina and could not be applied by domestic courts. This follows from three considerations: first, the validity of a treaty or convention in the domestic legal order coincides with its validity at the international level; second, the domestic law approving a treaty does not, in itself, "transform" the international convention into domestic law; and third, although Law 24.285 employs the term "ratified," ratification as an internationally binding act of the State does not consist in the legislative approval provided for in Article 75(22) of the National Constitution. Rather, such approval merely authorizes the National Executive to proceed with ratification at the international level⁷ (*Acevedo*, paragraph 2°).

The appellate court reversed this decision, reinstating the labor preference in favor of Ms. Acevedo. In reaching its decision, the tribunal concluded that the ruling of the trial court departed from the precedent established by the CSJN in *Pinturas y Revestimientos Aplicados S.A.* and invoked the principle embodied in Article 27 of the VCLT, according to which a State may not invoke its internal law as justification for failing to perform a

⁶ Ley 24.522, *Ley de Concursos y Quiebras*. Approved on 20 July 1995, Partially Enacted on 7 August 1995. <https://shorturl.at/ZKrn7>

⁷ "Article 75.- Congress is empowered: [...] 22.- To approve or reject treaties concluded with other nations and international organizations, and concordats with the Holy See. Treaties and concordats have a higher hierarchy than laws [...]"

treaty. It also emphasized the institutional authority of Supreme Court precedent and the obligation of lower courts to follow it (*Acevedo*, paragraph 3°).

The Supreme Court ultimately reversed the appellate judgment, concluding that ILO Convention No. 173 was not legally binding in Argentina due to the absence of executive ratification.

3. Relevant Supreme Court Precedents

As Gil Domínguez has observed, Supreme Court jurisprudence on this issue may be grouped into two lines of cases. The first includes *Sullivan*⁸, *Clínica Marini*⁹, and *Pinturas y Revestimientos Aplicados S.A.*, in which the Court applied ILO Convention No. 173 to grant labor claims priority over other creditors. The second group includes *Asociación Francesa Filantrópica y de Beneficencia*¹⁰ and *Institutos Médicos Antártida*¹¹, where the Court addressed the application of human rights treaties - particularly the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities¹² - to prioritize claims involving children with disabilities (Gil Domínguez, 2025).

In the first group of cases, Convention No. 173 was treated as a binding treaty with *supra-legal* status¹³ and applied directly. In the second group, it was cited more indirectly as supporting interpretive reference.

Among the current members of the Court, Justice Lorenzetti applied this interpretive approach in *Sullivan* and *Clínica Marini* but did not participate in *Pinturas y Revestimientos*. Justice Rosatti relied on similar reasoning in *Asociación Francesa Filantrópica y de Beneficencia* and *Institutos Médicos Antártida*.

⁸ CSJN. *Sullivan, Silvia Mónica y otros c/ Ultracom Puntana S.R.L. - medida cautelar - emb. preventivo - recurso extraordinario de inconstitucionalidad*. Fallos 335:2019 (2012). <https://shorturl.at/xkxmK>

⁹ CSJN. *Clínica Marini S.A. s/ quiebra*. Fallos 336:908 (2013). <https://shorturl.at/hbmBo>

¹⁰ CSJN. *Asociación Francesa Filantrópica y de Beneficencia s/ quiebra s/ incidente de verificación de crédito por L.A.R. y otros*. Fallos 341:1511 (2018). <https://shorturl.at/zxYQj>

¹¹ CSJN. *Institutos Médicos Antártida s/ quiebra s/ inc. de verificación* (R.A.F. y L.R.H. de F.). Fallos 342:459 (2019). <https://tinyurl.com/mtufk5na>

¹² *Convention on the Rights of Persons with Disabilities*. Done at New York, 13 December 2006. Entry into force 3 May 2008, in accordance with article 45(1). UNTS, vol. 2515, p. 3.

¹³ *Supra-legal* status refers to a hierarchical position in which a norm has authority above ordinary legislation but below the Constitution. Laws with supra-legal status prevail over conflicting statutes enacted by the legislature, which must be interpreted and applied consistently with those higher-ranking norms.

4. Legal Issues Raised

The Court was required to determine whether the precedent established in *Pinturas y Revestimientos Aplicados S.A.* should be maintained or whether compelling constitutional reasons justified its abandonment.

Specifically, the Court addressed three interrelated questions:

- a) Does Congressional approval (Law 24.285) alone make the treaty enforceable?
- b) Does the lack of Executive ratification render ILO Convention 173 inapplicable domestically?
- c) Should the Pinturas precedent be overturned under constitutional and international law?

5. Treaty Incorporation under the Argentine Constitution

The coexistence of international and domestic legal systems requires States to determine how international obligations are given effect internally. This inquiry traditionally revolves around two questions: whether incorporation is required, and, if so, the hierarchical status of international norms within domestic law (Arredondo, 2012, p. 91). This article focuses primarily on the first issue.

Comparative constitutional practice reveals two principal approaches. Under *monist* theories, international law is automatically incorporated into domestic law as part of a unified legal order (Kelsen, 1946, pp. 369-370). *Dualist* theories, by contrast, require a distinct act of transformation or reception before international norms may be applied domestically. Both approaches recognize that peremptory norms¹⁴ of international law (*jus cogens*) bind States irrespective of domestic incorporation procedures. “These peremptory norms may exist alongside other international norms that only become binding after they are adopted by the State according to its domestic constitutional processes, either through direct incorporation or through transformative legislation.” (Shelton, 2012, p. 2).

Argentina adopts a mixed system. Treaties can be concluded either in ‘proper form’ or in a ‘simplified form.’ Treaties concluded in *proper form* require three distinct steps: negotiation and signature by the Executive; approval or rejection by Congress; and a

¹⁴ Peremptory norms of international law (*jus cogens*) are fundamental rules accepted and recognized by the international community of states as norms from which no derogation is permitted. They prevail over all other rules of international law, and any treaty or act that conflicts with them is void.

subsequent act by the Executive expressing the State's consent to be bound at the international level, typically through ratification. Only upon completion of these stages, and entry into force under the treaty's own terms, does a treaty become binding both internationally and domestically.

In contrast, agreements concluded in *simplified form* may become binding through acts other than ratification—such as an exchange of notes—without requiring parliamentary involvement. These instruments typically concern matters falling within the exclusive competence of the Executive Power or situations in which prior legislative authorization has already been granted. The number of such simplified agreements is considerable. This practice is legally permissible because international law does not prescribe any particular form as a condition for the validity of treaties (Raustiala, 2005, p. 581).

The Argentine Constitution makes no explicit reference to treaties concluded in simplified form. As the Supreme Court emphasized in *Acevedo*, Articles 99(11)¹⁵ and 75(22) of the Constitution assign distinct and complementary roles to the Executive and Legislative branches. Congressional approval does not replace ratification; it merely authorizes the Executive to perform that act.

The conclusion of treaties constitutes a complex federal act, as repeatedly affirmed by the CSJN, including in the landmark case *Ekmekdjian v. Sofovich*¹⁶. In the constitutionally prescribed process for concluding international treaties, the Executive Power negotiates and signs the instruments, while the National Congress exercises its authority to approve or reject them through federal legislation. Subsequently, the Executive Power proceeds to ratify those treaties that have been “approved by law.” Both branches therefore intervene in the production of a single federal act endowed with both domestic and international legal effects. This “complex federal act” entails a structured

¹⁵ The Executive Power “... concludes and signs treaties, concordats, and other agreements required to maintain good relations with international organizations and foreign powers...”.

¹⁶ The Court explicitly cites the *Ekmekdjian v. Sofovich* case (Fallos: 315:1492), where it had already established that the incorporation process of treaties requires Executive ratification as a *sine qua non* final stage. This doctrine was reiterated in *Méndez Valles* (Fallos: 318:2639) and has been maintained by the Court in rulings related to foreign affairs, such as *Cafés La Virginia SA* (Fallos: 325:380), *Massa* (Fallos: 330:1135), which recognized the role of the Executive in the international representation of the Argentine State. See also, among others, *Fibraca Constructora S.C.A. c. Comisión Técnica Mixta de Salto Grande* (1993), *Servini de Cubría, M. c. Arte Radiotelevisivo Arg. S.A. y Borensztein, Mauricio* (1992); *Serra, Fernando Horacio y otro c. Municipalidad de la Ciudad de Buenos Aires s/recurso de hecho* (1993); *Hagelin, Ragnar c. P.E.N. s/juicio de conocimiento* (1993); *Artigue, Sergio Pablo s/incidente de restitución de detenido* (1994), *Arancibia Clavel, Enrique Lautaro s/homicidio calificado y asociación ilícita y otros* (2004).



process in which legislative approval and executive ratification are jointly required for a treaty to acquire legal force within the domestic legal order. The Court reaffirmed this doctrine in *Méndez Valles* (Fallos: 318:2639, para. 9).

Beyond the powers enumerated in Article 99(11), the Argentine Constitution assigns the Executive a series of functions that clearly underscore the centrality of foreign relations within its constitutional remit. Among other powers, the President is authorized to “appoint and remove ambassadors, plenipotentiary ministers, and *chargés d’affaires*, with the advice and consent of the Senate” (Art. 99 [7]), and to “declare war and order reprisals with the authorization and approval of Congress” (Art. 99 [15]). Additional provisions further confirm the Executive’s leading role in the conduct of the State’s external relations (Art. 99 [13] and [16]).

The Court has consistently recognized the central role of the President in the conduct of international relations, emphasizing that “it is the National Executive Branch that holds the authority to represent the Argentine Republic in matters that may involve the country’s responsibility in the international sphere, since it has been constitutionally entrusted with the conduct of the Nation’s foreign relations” (*Carranza Latrubesse*, Fallos: 325:380 [2002]; *Lavado*, Fallos: 330:1135, para. 13).

6. The Effect of the Executive’s Failure to Ratify ILO Convention No. 173

Although, following the 1994 constitutional reform, there is no longer any doubt as to the primacy of international law over domestic law, its practical application continues to encounter a significant difficulty arising from the distinction between “operational” and “programmatic” treaties—a differentiation developed by the Supreme Court in *Ekmekdjian v. Sofovich*. In that decision, the Court held that “treaties are operational when they contain provisions that are sufficiently specific with respect to the factual situations they regulate so as to allow for their immediate application.”

This judicial construction, which predates the constitutional reform, has given rise to an *contrario sensu* interpretation: namely, the implicit recognition of “programmatic” treaties. Yet no such distinction is found in the constitutional text itself. As a result, it has become procedurally possible to challenge the direct applicability of international law unless it can be shown that the relevant treaty provisions are operational in nature.

This line of reasoning—aimed at distinguishing between operational and programmatic treaty provisions—was relied upon by the Attorney General of the Nation

in the *Sancor* case and is more broadly recurrent in Argentine judicial practice. It reflects an understanding according to which international treaties are deemed to contain both immediately enforceable and merely programmatic clauses.

In the case under analysis, the appellate court overturned the trial court's decision and set aside the order to revise the proposed distribution plan. It held that the legislative approval of ILO Convention No. 173 through Law 24.285 sufficed to incorporate the Convention into the Argentine legal system, rendering it directly applicable within the domestic legal order. On that basis, the appellate court concluded that the privilege accorded to labor claims was *operative*.

This reasoning raises a central question: does congressional approval of an international treaty -such as that granted by Law 24.285- suffice to make it domestically enforceable? Ratification remains the oldest and most formal means by which a State expresses its consent to be bound by a treaty.

The appellate court held that legislative approval of Convention No. 173 sufficed to incorporate it into domestic law. The Supreme Court rejected this view, reaffirming that approval and ratification are constitutionally distinct acts.

The Court relied on long-standing constitutional practice and jurisprudence, noting that since the origins of the Argentine Republic, Presidents have consistently ratified treaties approved by Congress, acting on the conviction that such ratification was constitutionally required. The enactment of Law 24.080, which conditions the domestic effects of treaties on the publication of their ratification, further confirms this understanding.

Accordingly, the Court held that the absence of executive ratification prevented Convention No. 173 from entering into force for Argentina and, consequently, from producing legal effects in domestic bankruptcy proceedings.

7. The Vienna Convention on the Law of Treaties

The Court's reasoning is firmly grounded in the VCLT, which Argentina approved by Law 19.865 and ratified in 1972. Articles 7, 11, and 14 establish that consent to be bound is ordinarily expressed through ratification unless the treaty provides otherwise. This rule is firmly established in international legal doctrine and has been consistently observed in the State's practice since the founding of Argentina's constitutional order.

Article 11 of the VCLT establishes that consent to be bound may be expressed through other means if the treaty so provides or if the parties so agree. However, ILO Convention 173 expressly requires ratification and notification to the Director-General of the ILO. Since no such act occurred, Argentina never became a party to the Convention (Acevedo, para. 19, *in fine*). The Court emphasized that using the word *ratificase* (ratifies) in a congressional statute does not equate to actual ratification, as defined under international law and constitutional doctrine. The tribunal therefore concluded that neither Article 27 of the VCLT nor considerations of international responsibility were applicable, as no binding treaty obligation existed.

8. Overruling *Pinturas y Revestimientos Aplicados S.A.*

In *Pinturas y Revestimientos Aplicados S.A.*, the Supreme Court held that the mere enactment of an approval law was sufficient to incorporate a treaty into domestic law, even conferring upon it supra-legal status. In *Acevedo*, however, the Court sharply criticized this doctrine, describing it as a “grave and clear constitutional error” (paras. 20–22). It is important to note that the *Pinturas* ruling had immediate practical consequences: it displaced fiscal privileges in bankruptcy proceedings in favor of labor claims based on an unratified treaty. This practical impact ultimately prompted the Court’s re-evaluation of the doctrine.

The Supreme Court expressly overruled *Pinturas y Revestimientos Aplicados S.A.*, holding that it conflated parliamentary approval with ratification and improperly treated an unratified treaty as binding domestic law. The Court stressed that laws approving treaties are not *materially* legislative in nature; they do not, by themselves, create general rights or obligations for individuals (Arredondo, 2012, p. 41). The Court also underscored that the ILO does not recognize Argentina as a party to Convention No. 173, a fact that further reinforces its position (para. 19).

The Court reaffirmed that domestic courts must respect the constitutionally prescribed process, noting that precedents that disregard this requirement threaten legal certainty, compromise institutional integrity, and jeopardize Argentina’s compliance with its international obligations.

By correcting this doctrinal error, the Court restored coherence to the constitutional distribution of powers and reinforced legal certainty.

9. Implications for the Separation of Powers

The *Acevedo* decision reinforces a strict separation of powers in treaty-making and foreign relations. It prevents the Legislative from effectively binding the State internationally without Executive consent and preserves the President's constitutional authority over foreign affairs.

The ruling also provides guidance to domestic courts, ensuring that international norms are applied only once they have been validly incorporated. This protects both the principle of legality and Argentina's international responsibility.

Conclusion

The Supreme Court's decision in *Acevedo* constitutes a reaffirmation of the constitutional limits governing treaty incorporation in Argentina. By clarifying the non-binding status of unratified treaties and overruling contrary precedent, the Court restored doctrinal coherence and strengthened the separation of powers.

The ruling represents a significant reinforcement of institutionalism. It restores a doctrine rooted in the origins of Argentine constitutionalism and upholds the logic of checks and balances inherent in the republican system. By controlling the process through which international norms are incorporated, it prevents the automatic application of non-binding norms, clarifies institutional roles, and ensures that judicial decisions are not based on provisions not yet in force. Politically, it safeguards the coherence of foreign policy, a core function of the Executive.

By grounding its reasoning in both the Argentine Constitution and the Vienna Convention on the Law of Treaties, the Court has established a durable precedent likely to influence future cases involving labor rights, international obligations, and constitutional interpretation. The decision underscores that international engagement must occur within the framework of domestic constitutional processes, thereby ensuring both legal validity and democratic accountability.

Taken together, the judgment enhances legal predictability, safeguards institutional roles, and ensures that international engagement occurs within constitutionally prescribed procedures. It is a significant milestone in contemporary Argentine constitutional jurisprudence.

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