

Cordoba and Buenos Aires (Argentina) & Sydney (Australia), May 17th 2009. The Supreme Court of Justice of Argentina is considering illegality of the entering of exhausted nuclear fuel from Australian OPAL's reactor. OPAL was built by INVAP, a governmental company from Argentina. The Court will decide if the entering of exhausted nuclear fuel violate or not Article 41st of the Constitution of Argentina. Such import for treatment was included in the contract signed by ANSTO and INVAP in 2000.

During a public hearing organized by the Supreme Court, Dr. Raul Montenegro and Dr. Daniel Sabsay explained why the contract signed by ANSTO and INVAP "is illegal". The hearing was held at the Court in Buenos Aires, May 2009. Such hearings are an innovative mechanism of public participation established by the Court, which is the highest tribunal of Argentina.

Dr. Raul Montenegro, professor of Evolutionary Biology at the National University of Cordoba and Alternative Nobel prize 2004, said: "INVAP and CNEA incorrectly focused the issue when considering that exhausted nuclear fuel is not radioactive waste. We demonstrated to the Court that exhausted nuclear fuel from Australia is radioactive waste according Law of Argentina 25018 and definitions published by CNEA and the National Regulatory Authority". [CNEA is the Atomic Energy Commission of Argentina].

"Exhausted nuclear fuel from Australia also contain non radioactive metallic waste. In Argentina the entering of such waste is clearly forbidden by article 3rd of the Federal Law on Hazardous Waste n° 24051. Suspiciously INVAP and ANSTO never considered this regulation during the preparation of the contract", said Raúl Montenegro. He added: "We are planning new claims against INVAP in Federal Courts. Laws are approved for being respected, not violated through secret contracts".

Raul Montenegro is president of FUNAM, the NGO that publicly denounced illegal provisions in the contract signed by ANSTO and INVAP. In October 2000 FUNAM simultaneously alerted in Argentina and Australia that the contract "violates article 41st of the Constitution of Argentina".

Dr. Daniel Sabsay, professor of Constitutional Right at the University of Buenos Aires said to the Judges of the Supreme Court: "The Constitution of Argentina has higher legal category than international contracts and conventions, and clearly forbids the entering of radioactive waste according Article 41st. Such article also obliges the government to provide environmental information. Nevertheless nothing was done vis-à-vis the contract ANSTO-INVAP. In fact the contract remained secret". Sabsay also underlined that "principles, guarantees and rights provided by the Constitution cannot be changed through laws devoted to regulate specific matters, e.g. those contained in Article 41st. The entering of radioactive waste is forbidden, and

criteria of temporal entering and distorted definitions of radioactive waste are unacceptable. This is clearly established by the principle of reasonability contained in Article 28th of the Constitution of Argentina".

In 2002 Juan Schröder presented an injunction against INVAP at the Federal Court of Justice. He is a recognized filmmaker and environmentalist of Argentina, elected in 1994 for revisiting the Constitution of Argentina. He contributed to the writing of the article that forbids the entering of foreign radioactive waste. According Schröder the contract signed by ANSTO and INVAP "clearly violates article 41st of the Constitution of Argentina".

Four years later, the 19th October 2006, the Federal Court of Justice of Bahia Blanca finally accepted Schröder's petition and concluded that the entering in Argentina of exhausted nuclear fuel from Australia "is not constitutional" [Appeal Chamber]. Bahia Blanca was supposed to be the port for eventual shipments. The Court also asked the government to display "appropriate measures for stopping the entrance" of Australian radioactive waste. INVAP and CNEA reacted, and presented an Extraordinary Resource to the Supreme Court of Justice. "This is the last instance for the case I introduced in the Justice seven years ago", said Juan Schröder.

Montenegro declared that "besides the fact that any entering of foreign radioactive waste is illegal in Argentina, CNEA has no infrastructure for the commercial conditioning of Australian nuclear waste in Ezeiza. In Argentina a total of 3 million kilograms of radioactive waste produced by local nuclear power plants and research reactors remain stored without treatment, and CNEA doesn't have infrastructure for treating them". Montenegro said: "all uranium mines managed by CNEA or contracted companies remains without remediation and pollutes the environment, among them Sierra Pintada and Los Gigantes. CNEA cannot offer commercial expertise on nuclear waste management because they permanently failed in managing their own radioactive waste".

ARGENTINA: PREVIOUS SENTENCES CONSIDER "ILLEGAL" THE ENTERING OF FOREIGN RADIOACTIVE WASTE.- UNCLEAR PROCEDURES OF AUSTRALIAN MEMBERS OF THE GOVERNMENT VIS-A-VIS THE CONTRACT AND THE NUCLEAR AGREEMENT.

Previous sentences also consider "illegal" the shipment of foreign radioactive waste throughout the territory and jurisdictional sea of Argentina. In the case "Carlos José Díaz versus National State" which involved the shipment of radioactive waste from France to Japan, the Federal Court considered that even the temporary navigation of ships transporting radioactive waste violates Article 41st of the Constitution, and cannot pass through sea waters of Argentina (31st January 2000). The Court asked the National government "to prohibit the entering of the ship Pacific Swan".

According Dr. Raul Montenegro "Australian members of the government deliberately ignored such prohibitions. The public hearing organized by the Supreme Court this month clearly demonstrate that the contract between ANSTO and INVAP and further nuclear agreement signed by Argentina and Australia were flawed from the beginning".

In 2002 Montenegro presented a claim at the Federal Court of Justice against Australian Minister of Science Peter McGauran and Australian ambassador in Argentina Sharyn Minahan, "for having publicly defended an illegal contract and agreement". Montenegro asked the Public Prosecutor Graciela de Filoňuk "to investigate eventual violations to articles 210 and 213 of the Penal Code".

For more information contact:

Press officer of FUNAM

Nayla Azzinnari

Mobile: 54-9-11 5 460 9860

Email: nay_azz@hotmail.com