

AMIA CASE: GENERAL PROSECUTOR ALBERTO NISMAN FILED A CONSTITUTIONAL CHALLENGE TO THE MEMORANDUM OF UNDERSTANDING SIGNED WITH IRÁN.

Today, Alberto Nisman, General Prosecutor of the AMIA case, filed a constitutional challenge to the memorandum of understanding signed with the Islamic Republic of Iran, stating that it constitutes a wrongful interference of the Executive Branch within exclusive competencies of the Judiciary, damaging its independence, also stating that it involves serious violations of rights and civil liberties recognized by the National Constitution and several international covenants that enjoy “constitutional hierarchy”. According to the Prosecutor, such breaches entail international responsibility for Argentina, which is risking international sanctions by Human Rights bodies.

In the motion filed today before Federal Judge Rodolfo Canicoba Corral, Nisman presented a detailed analysis of the matter and stated that the memorandum constitutes an endless repetition of breaches to different constitutional principles and rights, such as the republican system, the division of powers, the judicial independence, the principles of due process and natural justice, the right to defense in trial, the equality before the law and the victim’s rights to access to justice and to an effective remedy.

Mr. Nisman asserted that this agreement openly violates article 109 of Argentine Constitution, which prohibits the executive branch to exercise judicial functions, as well as, article 27 which states that treaties with foreign powers should observe public law principles embodied in the Constitution, which are –in fact- repeatedly infringed by this memorandum.

In another passage of his motion, the prosecutor reviewed the backgrounds and legal nature of “truth commissions” and, also, the particular cases in which States resort to them, and concluded that such recourse is completely inadequate and unconstitutional within the context of the AMIA case. The “Truth Commission” created by this agreement represents a political body which temporally takes the judicial case from its natural judge in order to exercise judicial functions, as it has been wrongly authorized by the memorandum. The commission is empowered to gather, receive and examine evidence, study each defendant’s legal situation and incriminating evidence, request additional information, interrogate the defendants and their natural judge and it is also obliged to elaborate a report. In it, the commission will take into consideration the legislation of a state which has been protecting suspects of terrorism. This report, elaborated by the commission without any control or revision, will be deemed “the truth” and both states will take it into account in their future

actions. Such clauses openly violate the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Prevention and Punishment of the Crime of Genocide, all of which are international treaties that, according to article 75 section 22 of the Argentine Constitution, enjoy “constitutional hierarchy”.

These instruments enshrine independent and impartial justice as a fundamental human right, and –therefore- Argentina is risking potential sanctions both within the Inter-American Human Rights System and before the UN Human Rights Committee.

Mr. Nisman understood that this parajudicial political body invades the Judicial Branch and becomes judge of the natural judges, disrupting the division of powers and the independence of the judiciary. Even if it ends up corroborating all the measures and decisions made by the natural judges so far, it opens the door to endless annulments which will condemn the case to its closure, impeding the possibility to bring justice to the 85 victims of the AMIA bombing.

In his motion, the Prosecutor clearly recognized the broad constitutional authority of the Executive Branch to sign treaties, and its capacity to negotiate specifically with the Islamic Republic of Iran, since such actions represent a decision discretionally made by the political branch, within the exclusive and excluding competencies of the Executive, whose political decisions cannot be subjected to trial. However, in this case, the constitutional challenge lies in the fact that the actual content of this agreement conflicts openly and directly with our National Constitution and, also, with some of the international human rights covenants with constitutional hierarchy.

Besides a thorough analysis of the other constitutional rights and civil liberties violated by the memorandum, Mr. Nisman ended his motion arguing that there is no flagrant breach of due process than to remove from the judiciary a criminal case undergoing judicial process, in order to entrust it -even temporally- to a political body. This serious infringement impairs fundamental principles and rights embodied in our Constitution and several international covenants with “constitutional hierarchy”.