

BRAZILIAN SUPREME COURT AND THE ASBESTOS ISSUE: FUNDAMENTAL RIGHTS, ENVIRONMENT, HEALTH, AND WORK

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Abstract

The article analyzes the trajectory of the ban on the use of asbestos in the production of goods in Brazil as a materialization of the fundamental right to a healthy working environment, through the main decisions of the Federal Supreme Court in constitutionality control and which were decisive in shaping national policy. The disputes were judged on issues involving the federal pact, concurrent legislative competence, and fundamental rights. Asbestos is a natural fiber with resistance and insulation properties that was widely used in construction and in various products due to its low cost. However, studies have shown that exposure to asbestos is linked to serious diseases such as asbestosis and cancer, which has led to a ban on its use in many countries. In Brazil, regulation has been slow, facing regional resistance. In 2017, the Supreme Court (STF) ruled on the constitutionality of state laws banning asbestos, emphasizing that public health must take precedence over economic interests. The decision set an important precedent for environmental protection and public health, reinforcing the need for policies that prioritize the safety of the population. The Supreme Court's case law reflects the complexity of discussions involving economic development, health and the environment and highlights the importance of sustainable alternatives. The debate on constitutionality is still ongoing, and the search for a balance between development and health protection remains fundamental.

Keywords

Working environment. Health. Sustainable development. Asbestos.

Summary

Introduction. 1. The fight to abolish asbestos 2. The regulation of asbestos in Brazil 3. Asbestos and the Federal Supreme Court: an analysis from the perspective of the federal pact and the constitutional distribution of competences for the violation of the fundamental right to health and the environment 4. The Supreme Court's ban on asbestos as a constitutional issue: the Supreme Court's judgments and asbestos. 5. Conclusion.

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INTRODUCTION

Asbestos is a natural fiber used in various industrial sectors due to its heat-resistant and insulating properties, durability, and low cost. Historically, asbestos has been widely used in construction, the automobile industry and consumer products: roof tiles, brake pads, firefighters' clothing, insulation, pipes, paints, cigarette filters, toys, chlorine bleach, caustic soda, among others.

Associated with serious health risks, with repercussions for the entire community and repercussions for environmental protection, the use of asbestos has been the subject of intense debate and legal action in Brazil. Scientific studies have shown that exposure to asbestos is associated with several serious diseases, such as asbestosis, lung cancer and mesothelioma. As knowledge of the health risks grew, many countries banned the use of asbestos. In Brazil, regulation was slow, and the asbestos industry still encountered resistance in some regions, where the material continued to be exploited and used.

The road to the ban was long and bumpy, and the role of the Federal Supreme Court was crucial. This paper analyzes the main decisions of the Federal Supreme Court on asbestos that have been decisive in shaping national policy in relation to this mineral in disputes involving the federal pact, concurrent legislative competence and fundamental rights.

In 2017, the Court ruled on Direct Action for Unconstitutionality (ADI) 4067, which challenged the constitutionality of state laws banning the use of asbestos. The decision reaffirmed the competence of the states to legislate on the matter, recognizing that public health and environmental protection are fundamental values that can justify a ban on asbestos, highlighting that the protection of public health must prevail over economic development interests. These decisions not only confirmed the ban on the use of asbestos in various regions of Brazil, but also set an important precedent for the protection of the environment and public health.

The case law of the Federal Supreme Court reaffirms the need for public policies that prioritize the safety of the population in the face of

health risks that may be dictated by the Judiciary and reflects the complexity of the relationship between economic development, public health and environmental protection, cut up by divergent positions adopted by federal entities. The possibility of sustainable economic alternatives resulting from scientific progress has been decisive in ensuring environmental protection in an environment of economic development. As Brazil moves forward in this discussion, which is still open due to the pending judgment on the constitutionality of a state law in the Federal Supreme Court, it is essential that civil society, government bodies and the judiciary continue to engage in dialogue in search of solutions that balance development and health protection.

1. THE FIGHT TO ABOLISH ASBESTOS

The fight to preserve a balanced and healthy working environment belongs to everyone. It certainly encompasses those directly involved in the legal employment relationship, but it is not restricted to the immediate interest of the workers who are on the production line, as a workforce; it expands to the whole of society, going beyond individual issues. It is a right to have rights; a right of the commons, of solidarity, in the sense that all workers should have their rights guaranteed and their lives protected. The workers' struggle is thus the struggle for a better world and has its best example in the (ongoing) struggle against asbestos and for sustainable development, enshrined in the UN's 2030 agenda.

The World Health Organization and the International Association for Research on Cancer recognize the high carcinogenic risk of asbestos, which intensely affects workers and involves the entire community that lives near production sites, as well as the entire community that uses products containing it as an element:

[...] in a survey of workers treated at the institution and presented to the Federal Supreme Court (STF) in 2012, out of 1,333 exposed workers, 356 were diagnosed with

diseases associated with asbestos, which corresponds to 26.7% of the total. At the time, there were 139 cases of asbestosis, eight of lung cancer, seven of mesothelioma and two of laryngeal cancer [...]

[a 2015 paper points to a] "significant increase" in cases of mesothelioma (a type of cancer) in the state of São Paulo from 2000 to 2012. There was a clear excess of mesothelioma cases in São Paulo municipalities that had used chrysotile for several decades, such as in the city of Leme, reaching 11 times the number observed in Brazil. [...]

Exposure to asbestos occurs in the workplace, in the homes of workers who bring in their contaminated work clothes, in the vicinity of companies that use it in their production process and on contaminated sites (former factory areas).²

The World Health Organization, in its Health Assembly Resolution 60.26, recommends that all countries completely eliminate the use of the product as a preventive measure, estimating that around 125 million people worldwide would be exposed to asbestos by 2018.³

² ABREA. BRAZILIAN ASSOCIATION OF THOSE EXPOSED TO ASBESTOS. Fundacentro warns of the harmful effects of asbestos use. Available at: < <https://www.abrea.com.br/not%C3%ADcias/publica%C3%A7%C3%B5es/311-fundacentro-alerta-para-efeitos-nocivos-do-uso-do-amianto.html>>. Accessed on: 14nov.2024.

³ WORLD HEALTH ORGANIZATION. Asbestos: elimination of asbestos-related diseases. Available at: < <https://iris.who.int/bitstream/handle/10665/340579/WHO-FWC-PHE-EPE-14.01-eng.pdf?sequence=1>>. BRASIL DE FATO. From magic mineral to killer dust: the return of asbestos could cause a cancer epidemic. Available at: <https://www.brasildefato.com.br/2019/05/16/de-mineral-magico-a-poeira-assassina-volta-do-amianto-pode-causar-epidemia-de-cancer>. Acesso on: 14nov.2024.

The fight against asbestos is therefore a fight for survival, in search of a better world with healthier people. Its use has been banned in several countries since Iceland - the first to abolish it - decided to ban its use in 1983; in the European Union the ban dates back to 2005.

More recently (2024), the United States of America joined the list of countries banning imports; under President Trump, the United States Environmental Protection Agency (EPA) was directed to facilitate use, while under President Biden⁴ a new regulation bans imports, ensuring a "transition" period for the introduction of substitute alternatives in production technology. US legislation in the 1970s and 1990s, however, already restricted their use.

The main - but not the only - disease caused by asbestos is asbestosis, a pulmonary fibrosis, also called "stone lung", which causes hardening of the lungs and leads to respiratory failure; progressive and fatal, acquired through inhalation, it manifests itself in an average of a decade (10 to 15 years). It not only affects workers, but also the population living near the site where it is used.

Research by the Companhia Siderúrgica Nacional (CSN), the Federal University of São Carlos (UFSCAR) and the Multidisciplinary Center for the Development of Ceramic Materials (CMDMC) has developed a substitute, ceramic fiber, which also increases the mechanical strength of cement and is a thermal insulator. There is therefore an alternative, so it wouldn't be impossible to produce any of the goods that previously used asbestos. This is a hypothesis in which there is no contradiction/opposition between economic development and the guarantee of a right. The multiplicity of situations that arise when the issue

⁴ EPA. U.S. ENVIRONMENTAL PROTECTION AGENCY. Biden-Harris Administration finalizes ban new Toxic Substance Control Act process, marking historic milestone for nation's chemical safety efforts. Available at: < <https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-ban-ongoing-uses-asbestos-protect-people-cancer>>. Accessed on: 14nov.2024.

is confronted by the law, however, demonstrates the difficulty encountered in judgments in understanding the framework for resolving the dispute.

2. THE REGULATION OF ASBESTOS IN BRAZIL

As a federation, legislation in Brazil follows the rules of the distribution of competences dictated by the 1988 Constitution. Federal law and state and municipal laws coexist at the same time, each disciplining issues related to authorizations to set rules, which sometimes creates complexities, both in terms of assessing whether they fall within the limits of competence and the need to observe the various state and municipal legislative frameworks in the circulation of goods and services.

2.1 Legislation (federal, state and municipal)

In Brazil, in regulatory terms, federal law 9.055,⁵ of June 1, 1995 is the general norm, establishing rules for the extraction, industrialization, use, commercialization and transport of asbestos and products containing it, as well as natural and artificial fibers, of any origin, used for the same purpose, authorizing and regulating.

Since 2001, the states of São Paulo, Rio de Janeiro, Mato Grosso do Sul, Pernambuco, Rio Grande do Sul, as well as the municipality of São Paulo have issued laws banning the use of asbestos; the state of Goiás, where asbestos is extracted, has reiterated in legislative measures the authorization for its extraction and has filed lawsuits in the Supreme Court to have the prohibitive laws of other states annulled.

⁵ BRAZIL. Federal Law 9.055, of June 1, 1999. Available at: <https://www.planalto.gov.br/ccivil_03/Leis/L9055.htm>. Accessed on: 14nov.2024.

In the state of Mato Grosso do Sul,⁶ state law 2.210, of January 8, 2001, in its 1st article, prohibited "the manufacture, entry, sale and storage of asbestos or asbestos-based products intended for civil construction in the territory of the state of Mato Grosso do Sul". The governor of the state of Goiás filed a Direct Action of Unconstitutionality against this law (ADI 2396).

The municipality of São Paulo published municipal law 13.113, of March 16, 2001,⁷ , which bans the use of materials, building elements and construction equipment made of asbestos. The National Confederation of Industrial Workers filed an action for breach of fundamental precept (ADPF 109).

The state of São Paulo issued state law 10.813, on May 24, 2001,⁸ , which prohibited from January 1, 2005, among other things, "the import, extraction, processing, sale, manufacture and installation, in the state of São Paulo, of products or materials containing any type of asbestos, in any form", according to art. 1. The governor of the state of Goiás filed a Direct Action of Unconstitutionality against this law (ADI 2656).

In 2007, the state of São Paulo published a new state law 12.684, of July 26, 2007,⁹ prohibiting "as of January 1, 2008, the use, in the state of

⁶ MATO GROSSO DO SUL. Legislative Assembly. State Law 2210 of January 5, 2001. Available at: < <https://www.legisweb.com.br/legislacao/?id=136506>>. Accessed on: 14nov.2024.

⁷ SÃO PAULO. City Council. Municipal Law 13.113, of March 16, 2001. Available at: < <https://leismunicipais.com.br/a/sp/s/sao-paulo/lei-ordinaria/2001/1312/13113/lei-ordinaria-n-13113-2001-dispoe-sobre-a-proibicao-do-uso-de-materiais-elementos-construtivos-e-equipamentos-da-construcao-civil-constituídos-de-amianto>>. Accessed on: 14nov.2024.

⁸ SÃO PAULO. Legislative Assembly. State Law 10.813, of May 24, 2001. Available at: <<https://www.al.sp.gov.br/repositorio/legislacao/lei/2001/lei-10813-24.05.2001.html>>. Accessed on: 14nov.2024.

⁹ SÃO PAULO. Legislative Assembly. State law 12.684, of July 26, 2007. Available at: <<https://www.al.sp.gov.br/repositorio/legislacao/lei/2007/lei-12684-26.07.2007.html>>. Accessed on: 14nov.2024.

São Paulo, of products, materials or artifacts that contain any type of asbestos or asbestos" (art. 1). 1º), or "other minerals that accidentally contain asbestos in their composition, such as talc, vermiculite, soapstone, the use of which will be preceded by mineralogical analysis that proves the absence of asbestos fibers among its components (art. 1º, § 2º). **The ban is immediate from the publication of the law in the case of** "products, materials or artifacts intended for use by children and adolescents, such as toys and school articles, and for domestic use, such as household appliances, fabrics, gloves, aprons and ironing articles" (art. 2). The National Association of Freight Transport and Logistics filed an Argument for Failure to Comply with a Fundamental Precept against the law (ADPF 234), so that its constitutionality could be analyzed in the light of constitutional principles and values. The National Confederation of Industrial Workers (CNTI) filed a Direct Action of Unconstitutionality (ADI 3937).

The state of Rio de Janeiro¹⁰ regulated the matter by state law 3,579, of June 7, 2001, banning the extraction of asbestos throughout the state, as well as its use in products (articles 2 and 3). The National Confederation of Industries (CNI) filed a Direct Action of Unconstitutionality (ADI 3470) and the National Confederation of Industrial Workers (ADI 3406).

The state of Goiás, through its Legislative Assembly, approved state law 20.514 of July 16, 2019,¹¹ which authorizes the extraction and processing of chrysotile asbestos in the state.

2.2 Convention 162 of the International Labor Organization

¹⁰ RIO DE JANEIRO. Legislative Assembly. State Law 3.579, of June 7, 2001. Available at: < <https://leisestaduais.com.br/rj/lei-ordinaria-n-3579-2001-rio-de-janeiro-dispoe-sobre-a-substituicao-progressiva-da-producao-e-da-comercializacao-de-produtos-que-contenham-asbesto-e-da-outras-providencias>>. Accessed on: 14nov.2024.

¹¹¹ GOIÁS. Legislative Assembly. State Law 20.514, of July 16, 2019. Available at: < <https://legisla.casacivil.go.gov.br/api/v2/pesquisa/legislacoes/10022717/pdf>>. Accessed on: 14nov.2024.

Brazil ratified and incorporated into domestic law Convention 162 of the International Labor Organization by means of Decree 10,088 of November 5, 2019.¹² ILO Convention 162 on the Safe Use of Asbestos was concluded in Geneva on June 4, 1986 and was approved in Brazil by Legislative Decree 51 of August 25, 1989,¹³ with the deposit of the Convention's Ratification Letter on May 18, 1990. It entered into force for Brazil on May 18, 1991, in accordance with Article 24, § 3, and was promulgated on May 22, 1991:

Art. 3 [...] 1 - National legislation shall prescribe the measures to be taken to prevent and control the risks to health arising from occupational exposure to *asbestos* and to protect workers against such risks; 2 - National legislation adopted pursuant to the application of paragraph 1 of this Article shall be subject to periodic review in the light of technical development and increased scientific knowledge.

The Convention dealing with "Asbestos" states that it is "[...] the fibrous form of mineral silicates belonging to the serpentine metamorphic rock groups, i.e. chrysotile (white asbestos), and amphiboles, i.e. actinolite, amosite (brown asbestos, cummingtonite - grunerite), anthophyllite,

¹² BRAZIL. Presidency of the Republic. Decree 10.088, of November 5, 2019. Consolidates normative acts issued by the Federal Executive Branch that provide for the promulgation of International Labor Organization (ILO) conventions and recommendations ratified by the Federative Republic of Brazil. Available at: < planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/d10088.htm>. Accessed on: 14nov.2024.

¹³ NATIONAL CONGRESS. Legislative Decree 51, of August 25, 1989. Available at: < <https://www2.camara.leg.br/legin/fed/decleg/1989/decretolegislativo-51-25-agosto-1989-360126-publicacaooriginal-1-pl.html>>. Accessed on: 14nov.2024.

crocidolite (blue asbestos), tremolite, or any mixture containing one or more of these minerals". Brazil only produces asbestos/asbestos chrysolite".

3. ASBESTOS AND THE FEDERAL SUPREME COURT: AN ANALYSIS FROM THE PERSPECTIVE OF THE FEDERAL PACT AND THE CONSTITUTIONAL DISTRIBUTION OF COMPETENCES FOR THE VIOLATION OF THE FUNDAMENTAL RIGHT TO HEALTH AND THE ENVIRONMENT

A multiplicity of laws issued on the issue of asbestos, some in contradictory directions, from both the federal government and the states and municipalities, led the Federal Supreme Court to rule, generating a problem in the spectrum of the federative pact and a solution dimensioned by the debate around the constitutional distribution of competences, to assess a possible (or not) constitutional authorization of concurrent normative competence. In addition to the analysis of the material (in)constitutionality that has arisen as a result of studies that have proven the harmfulness of asbestos.

After overcoming the debate from the perspective of the federative pact, aspects arising from the conflict of norms came to light, given the concomitant existence of a federal law and an International Convention of the International Labor Organization (162), introduced into domestic law.

Furthermore, judgments dictated by the filter of commerce led to conclusions focused on economic freedom, commerce and freedom of movement, in discussions to delimit the field of transportation of products as part of the concept of commerce.

Finally, and against this backdrop, the events damaging to health imposed an adequate response to guarantee the right to a healthy environment and the fundamental right to health, imposing limits on free enterprise, freedom of trade and movement.

The issue is still contentious, even after a decision with general repercussions by the Federal Supreme Court, since the state of Goiás passed a law to ensure its economic and financial interests, despite the constitutional rules in force. Despite the fact that the Federal Supreme Court has settled on the banning of asbestos in Brazil, understanding that any legislative measure authorizing the use of asbestos is unconstitutional because it violates the right to a healthy environment and the right to health as a fundamental right, the state of Goiás has sought a loophole for the extraction of asbestos for export, in a law that is currently under review, to be assessed in 2024.

In 2017, the Federal Supreme Court (STF), by 7 votes to 2, banned the exploitation of asbestos in Brazil, after three decades of debate on the subject (Federal Law 9.055/1999).¹⁴ However, the issue is still *sub judice* due to a law issued by the state of Goiás which authorized the exploitation of asbestos for export purposes.

States and municipalities are prohibited from passing laws allowing the use of asbestos. Understanding that it is prohibited domestically but not for export, state law 20.514 of 2019 authorized the exploitation of chrysotile asbestos in the state of Goiás, in the municipality of Minaçu. The municipality has 30,000 inhabitants and - supposedly - its main economic source is the asbestos mine.

The Cana Brava mine was discovered in 1962 and is the largest active mine in Brazil to date. It is owned by Sama Minerações, which

¹⁴ Amianto Brasile: storica sentenza della Corte Suprema che apre la strada alla sua messa al bando. Available at: < <https://afevaemiliaromagna.org/2017/08/28/amianto-brasil-storica-sentenza-della-corte-suprema-che-apre-la-strada-alla-sua-messa-al-bando/>>; A recent decision by the Federal Supreme Court (STF), with a majority vote, has vetoed the manufacture, industrialization, commercialization and distribution of asbestos in Brazil. Available at: < <https://www.diario-prevenzione.it/una-recente-decisione-della-corte-suprema-federale-stf-con-voto-a-maggioranza-ha-vietato-lestrazione-lindustrializzazione-la-commercializzazione-e-la-distribuzione-dellamianto-in-brasil/>>. Accessed on: 14nov.2024.

belongs to the Eternit group. Today, Brazil is the world's third largest exporter, with the largest chrysotile mining company in Latin America. The state legislative measure directly benefited one company, Eternit, which as a result of the authorization overcame a judicial recovery process (filed in 2018) due to an increase of around 152% in asbestos exports from 2020 until 2023, when the judicial recovery ends with an increase in revenue of 172%¹⁵. All extraction is exported to Southeast Asian countries and India. The annual turnover in 2023 was R\$364 million in revenue for the company, i.e. 1/3 of Eternit's total turnover.

The Federal Supreme Court, in response to a request from the Federal Public Prosecutor's Office, ordered the suspension of exploitation until the (in)constitutionality of the state law was analyzed.

On February 1, 2019, the asbestos mines ceased their extraction activities. A few months later, more precisely on April 27, 2019, a temporary external commission of politicians,¹⁶ among them the President of the Federal Senate, Senator Davi Alcolumbre (DEM), accompanied the governor of the state of Goiás Ronaldo Caiado (DEM), a ruralist and businessman, on a visit to get to know the reality of the city of Minaçu. The commission was set up at the request of Senator Vanderlan Cardoso. The main aim, they said, was to preserve jobs, a total of 400 direct jobs and 1500 indirect jobs. However, they defended the return of asbestos mining, under the economic argument that "it is not possible that the coldness of a line of law can override the lives of people who work, who earn their living with dignity, in this mining company, causing wealth to be transferred to this

¹⁵ UOL. Eternit profits from asbestos exports while awaiting STF vote> Available at < <https://economia.uol.com.br/noticias/redacao/2024/08/13/eternit-stf.htm>>. Accessed on: 14nov.2024.

¹⁶ BRAZIL. Federal Senate. President of the Senate accompanies commission on visit to Minaçu, in Goiás. Available at: < <https://www12.senado.leg.br/noticias/materias/2019/04/26/presidente-do-senado-acompanha-comissao-em-visita-a-minacu-em-goias>>. Accessed on: 14nov.2024

municipality, to the state of Goiás and to Brazil".¹⁷ The Labor Prosecutor's Office says that the region does not depend on asbestos for its survival, not least because of the economic diversification of the city, which has become a hub for trade and the exploitation of other minerals.¹⁸

Today its use is banned in Brazil, but the mining company continues to export the material to countries that have not yet banned it, such as Colombia, Mexico, Ecuador, Angola, Cuba, Venezuela, Ethiopia, Angola, Bolivia, among others.

4. THE SUPREME COURT'S BAN ON ASBESTOS AS A CONSTITUTIONAL ISSUE: THE SUPREME COURT'S JUDGMENTS AND ASBESTOS

Early decisions by the Federal Supreme Court show that the dispute was resolved by discussions on the federal pact, competitive legislative competence, and not on the grounds that fundamental rights enshrined in the 1988 Constitution had been violated, such as the right to health or a healthy environment.

The disputes revolved around positions adopted by various states, which were judicially attacked by the state of Goiás, which was - and still is - concerned with financial and tax aspects, as well as prioritizing the economy/development - and private corporations - to the detriment of the fundamental rights of its population.

¹⁷ BRAZIL IN FACT. From magic mineral to killer dust: the return of asbestos could cause a cancer epidemic. Available at: <<https://www.brasildefato.com.br/2019/05/16/de-mineral-magico-a-poeira-assassina-volta-do-amianto-pode-causar-epidemia-de-cancer>>. Accessed on: 14nov.2024.

¹⁸ BRAZIL IN FACT. From magic mineral to killer dust: the return of asbestos could cause a cancer epidemic. Available at: <<https://www.brasildefato.com.br/2019/05/16/de-mineral-magico-a-poeira-assassina-volta-do-amianto-pode-causar-epidemia-de-cancer>>. Accessed on: 14nov.2024

4.1. Law 2210/2001, of the state of Mato Grosso do Sul

(i) ADI 2396/MS,¹⁹ Reporting Justice Ellen Gracie, in a judgment of September 26, 2001, decided on a request for an injunction at the request of the governor of Goiás against Law 2210/2001, of the state of Mato Grosso do Sul, which in Article 1 prohibited the manufacture, entry, sale and storage of asbestos or asbestos-based products, intended for civil construction, in the territory of the state of Mato Grosso do Sul. He dismissed the allegation of lack of thematic relevance to bring the action, since Goiás is one of the largest producers of asbestos and its interest lies in the need to preserve its economy, including in terms of state tax collection, by being able to send its products to other states such as Mato Grosso do Sul. It recognized the legitimacy, then, "Present is the need to defend the interests of the state, given the prospect that the contested law will result in the closure of a consumer market for products manufactured in its territory, with damage to the generation of jobs, the development of the local economy and state tax collection". The preponderance of the reason for the decision was economic. The preliminary injunction suspended several provisions of the contested law (more precisely art. 1 and §§ 1, 2 and 3; art. 2; art. 3 and §§ 1 and 2; and the sole paragraph of art. 5), in view of the existence of a federal law (Law 9055/99) which, in general, allows the sale and use of *asbestos*, and the state cannot provide otherwise.

(ii) ADI 2396/MS,²⁰ Reporting Justice Ellen Gracie, in a judgment on May 8, 2003, made it clear that "It is not up to this Court to

¹⁹ STF. ADI 2396/MS, Reporting Justice Ellen Gracie, judgment on September 26, 2001. Available at: <https://portal.stf.jus.br/servicos/dje/listarDiarioJustica.asp?tipoPesquisaDJ=AP&classe=ADI&numero=2396#>>. Accessed on: 14nov.2024.

²⁰ STF. ADI 2396/MS, Reporting Justice Ellen Gracie, judgment on May 8, 2003. Available at:

give the final word on the technical-scientific properties of the element in question and the risks of its use for the health of the population," which will be the responsibility of the health authorities. Having already partially granted the injunction requested, in a direct action of unconstitutionality brought by the governor of Goiás, the STF declared unconstitutional Law 2210/2001, of the state of Mato Grosso do Sul, which prohibited the manufacture, entry, sale and storage of asbestos or asbestos products intended for civil construction, in the territory of the state. It held that the state of Mato Grosso do Sul had overstepped its bounds on the issue of the distribution of legislative powers, which are concurrent with those of the member states. It recognized the general legislative competence attributed to the Union and the residual or implicit competence attributed to the member states and, therefore, characterized an offence against art. 24, items V, VI and XII of the Constitution of the Republic, which attributes to the Union, States and Federal District concurrent competence for production and consumption, environmental protection, pollution control and health protection, a state rule that prohibits the manufacture, entry, sale and storage of asbestos in flagrant contrast to the existence of federal law 9055/95 authorizing it. State law could fill in the gaps left by federal law, but it cannot provide in opposition.

4.2. Law 10.813/2001 of the state of São Paulo

(i) ADI 2656/SP,²¹ Reporting Justice Maurício Correa, in a judgment that took place on May 8, 2003, coinciding with the judgment of

<<https://portal.stf.jus.br/servicos/dje/listarDiarioJustica.asp?tipoPesquisaDJ=AP&class=ADI&numero=2396#>>. Accessed on: 14nov.2024.

²¹ STF. ADI 2656/SP, Reporting Justice Maurício Correa, judgment on May 8, 2003. Available

at:<<https://portal.stf.jus.br/servicos/dje/listarDiarioJustica.asp?tipoPesquisaDJ=AP&class=ADI&numero=2656#>>. Accessed on: 14nov.2024.

ADI 2396/ MS, likewise assessed the issue as affecting the discussion of concurrent legislative competence. It ruled on a direct action of unconstitutionality brought by the governor of the state of Goiás against law 10.813/2001 of the state of São Paulo, which prohibited the import, extraction, processing, marketing, manufacture and installation in the state of products or materials containing any type of asbestos, recognizing the active legitimacy of the governor of Goiás to initiate the concentrated control of constitutionality and the thematic pertinence, based on economic criteria, because "Restrictions on its commercialization imposed by the São Paulo legislation, with evident repercussions on the economy of Goiás, the state where the largest natural reserve of the ore is located. Declared several provisions of Law 10.813/2001 unconstitutional for violating art. 24, inc. V, of the Constitution of the Republic of 1988, which gives the Union, the States and the Federal District concurrent competence to legislate on production and consumption. Since there was a federal law to regulate (Law 9055/95), he considered that the São Paulo state law was supplementary in nature. As for the ban on importing and extracting any kind of *asbestos* in the state, the São Paulo state law encroached on the Union's competence to legislate on foreign trade, as well as on mines and mineral resources, which are Union assets, according to the 1988 Constitution, art. 20, inc. IX, and art. 22, items VIII and XII). It is also a matter of national interest to protect and defend public health and the environment.

4.3 Law 12.684/2007, of the state of São Paulo

(i) ADPF 234 - MC/DF,²² Reporting Minister Marco Aurélio Mello, in a judgment on September 28, 2011, granted, by a majority, a

²² STF. ADPF 234 - MC/DF, Reporting Justice Marco Aurélio Mello, judgment on September 28, 2011. Available at: <
<https://portal.stf.jus.br/processos/downloadPeca.asp?id=15346814479&ext=.pdf>>.
 Accessed on: 14nov.2024.

preliminary injunction in a motion for breach of fundamental precept brought by the National Association of Freight Transport and Logistics, to suspend the bans on the transport of asbestos products, thus guaranteeing the circulation of asbestos cargo in national and international transport. In the opinion, it is stated that "there is a relevant request aimed at removing from the legal-normative scenario a state law that hinders the transportation of certain goods in the respective geographical region - of the state". The vote highlighted the "perplexing coexistence, in the legal system, of a local ban on the sale of asbestos of the chrysotile variety - Article 1 of State Law No. 12.684/2007 - with comprehensive permission to carry out such activity - Article 2 of Law No. 9.055, of January 1, 1995, regulated by Decree No. 2.350, of October 15, 1997. In other words, nationwide, the sale of this type of asbestos is permitted, but prohibited in the state of São Paulo. The problem reported by the plaintiff is that part of the asbestos production has to travel through the state of São Paulo to reach its destination, an act that has been hindered by authorities who - while applying the state law - ignore the authorization contained in the federal law". Therefore, the Court focused on the issue of freedom of movement on public highways: "In contrast, it is a question of making it impossible for certain users to access public services constitutionally attributed to the Union - interstate highways and ports". According to the Court, it would be the end of the federation if each member state legislated on interstate and international transportation, imposing restrictions on trade, prohibiting access to their own markets, preventing exports through international border regions. Furthermore, there is no delegation from the Union to the states to legislate. There is also freedom of trade, with the right to travel guaranteed as a condition for commercialization, within the framework of free enterprise. The vote states that those who use would do so in final terms, they would be the holders of one of the faculties inherent to ownership. Those who transport, in turn, provide a service, but do not necessarily have ownership of the thing. Thus, if the use of *asbestos* is prohibited in the state of São Paulo, transportation would not be when the material was destined for other states of the federation or abroad, which would not constitute "use" in the

technical sense of the word. Justice Ricardo Lewandowski pointed out that the state of São Paulo did not have the power to prohibit transportation destined for export and interstate trade, but could prohibit the transportation of *asbestos* destined for use exclusively within the geographical limits of its state. Justices Ayres Britto, Celso de Mello and Cezar Peluso, President, voted against the injunction. Justice Ayres Brito stated that it would be logical for a state law to prohibit the transportation of *asbestos*, *insofar as* it prohibits the production and sale of the product. He also argued that the federal law that deals with transportation would refer to ILO Convention 162, to which Brazil is a signatory. Thus, the convention would categorize the legislation on the subject as a rule of progressively attenuated effectiveness, to the point of eventually prohibiting the material from remaining on the market. He also pointed out that the federal law would contain a paradox, since it allows the transport and trade of one variety of *asbestos* in national territory and prohibits the sale of other variants of the material, due to its recognized harmfulness. He considered that the questioned law would therefore be much closer to international conventions and the Constitution than the authorizing federal law itself. The issue of transportation would therefore lose significant density if confronted with the protection of health and the environment, principles that govern the entire economic order. However, the judgment prevailed on the grounds that it was framed as freedom of movement and commerce; nevertheless, the mention of ILO Convention 162, as well as the discussion around the environment, bring to the debate a necessary approach to the violation of fundamental rights.

(ii) ADI 3937 MC/SP,²³ Reporting Justice Marco Aurélio Mello, on June 4, 2008, decided by a majority, with the votes of Justices

²³ STF. ADI 3937 MC/SP, Reporting Justice Marco Aurélio Mello, judgment June 4, 2008. Available at: <

Eros Grau and Joaquim Barbosa prevailing and the Reporting Justice defeating the request to grant the injunction against the National Confederation of Industrial Workers (CNTI) in the face of law 12.684/2007, of the state of São Paulo. The reporting justice understood that the logic of the distribution of competences precedes the judgment as to whether or not the result of the rule is benign: "this is because, in law, the means justify the ends and not the other way around". Justice Joaquim Barbosa in his vote cited the serious damage to health caused by asbestos, recognized by the World Health Organization, with no safe limits for human exposure. He invoked ILO Convention 162, promulgated by Decree 126/91, through which Brazil undertook to develop and implement measures to protect workers exposed to asbestos, in a norm protecting fundamental rights, the right to health and a balanced environment, which has supra-legal and infra-constitutional *status*, and is a criterion for evaluating state norms. The pre-existence of the Convention does not ensure that the federal law is recognized as a general rule, since it conflicts with the Convention. Justice Eros Grau argued in his vote that federal law 9.055/95 was unconstitutional because it collided with art. 196 of the Constitution of the Republic, which guarantees the right to health: "Health is the right of all and the duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other illnesses and universal and equal access to actions and services for its promotion, protection and recovery";

(iii) ADI 3937 / SP,²⁴ Reporting Minister Marco Aurélio, draftsman of the judgment Minister Dias Toffoli, judgment on August 24,

<https://portal.stf.jus.br/processos/downloadPeca.asp?id=15357640223&ext=.pdf>. Accessed on: 14nov.2024

²⁴ STF. ADI 3937 / SP, Reporting Justice Marco Aurélio, draftsman of the judgment Justice Dias Toffoli, judgment on August 24, 2017. Available at: <<https://portal.stf.jus.br/processos/downloadPeca.asp?id=15339396406&ext=.pdf>>.

2017. The Plenary, in conclusion and by a majority, dismissed a direct action filed against Law 12.684/2007, of the State of São Paulo, which prohibits the use of products, materials or artifacts containing any type of *asbestos* in the state territory. It also incidentally declared the unconstitutionality of article 2 of federal law 9.055/1995, which allows the extraction, industrialization, commercialization and distribution of the use of chrysotile *asbestos* in Brazil. The court focused on legislative competence, due to the need, in the Federation, to find a point of stability between centralization and decentralization: the federal government is responsible for issuing general rules and the states are responsible for supplementing federal legislation where applicable, as provided for in the Constitution of the Republic of 1988, in its Article 24, §§ 1 and 2. Only if there is no federal law can the states exercise their full legislative powers (art. 24, § 3). In this case, if there is a federal law laying down general rules, the state law must be suspended insofar as it contradicts the federal law (art. 24, § 4). It is imperative that the concurrent competence exercised by the Union thus encompasses national interests, which cannot be limited to the state borders, and the Union, when editing general rules, must allow for not exhausting the normative discipline, leaving substantial competence for the states to legislate. Law 9.055/1995 admits the use of *asbestos* in a restricted way, so local legislation could not, in theory, ban it completely. However, since it is incompatible with the current Constitution, it opens up the possibility for the states to legislate on the matter until any new federal law comes into force. The Court pointed out that at the time the federal law was passed (1995), there were reports of possible damage to health and the environment caused by the use of the substance, but at the time of the ADI judgment there was consensus around the highly carcinogenic nature of the

Accessed on: 14nov.2024. Italian translation of the news report on the judgment, revised by Andrea Caselli, available at: <https://afevaemiliaromagna.org/wp-content/uploads/2017/08/comunicato-stf-brasile-24-agosto-2017.pdf>>. Accessed on: 14nov.2024.

mineral and the impossibility of its safe use. There is no economic infeasibility for the production of goods, since *asbestos* can be replaced by other materials (PVA and PP fibers), which have no carcinogenic properties and are recommended by Anvisa. The material unconstitutionality of Law 9.055/1995 is recognized as supervening, because it offends the right to health (Constitution of the Republic, arts. 6 and 196), the state's duty to reduce the risks inherent in work through health, hygiene and safety standards [Constitution of the Republic, art. 7, inc. XXII], and the protection of the environment [Constitution of the Republic, art. 225]. Given the invalidity of the general federal rule due to its unconstitutionality, the states now have full legislative competence on the matter, until new federal legislation is enacted, so the constitutionality of the law of the state of São Paulo is recognized.

4.4 Law 13.113/2001, of the municipality of São Paulo

ADPF 109/SP,²⁵ Minister Rapporteur Edson Fachin, in a judgment handed down on November 30, 2017, by a majority, decided to dismiss the request in the action for non-compliance with a fundamental precept (ADPF) filed against Law 13.113/2001, of the municipality of São Paulo, as well as Decree 41.788/2002, which prohibits the use, sale and production of asbestos-based products, in view of the understanding that in the constitutional space there is a sense of cooperative federalism inaugurated by the 1988 Constitution of the Republic, which opened "[...] the doors of constitutional hermeneutics to contemporaneity", in order to observe the "[...] need to maximize the exercise of these competences so that the State fulfills its goal of pacification and social satisfaction". Faced

²⁵ STF. ADPF 109/SP, Reporting Justice Edson Fachin, judgment November 30, 2017. Available at: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=15339418048&ext=.pdf>. Accessed on: 14nov.2024.

with a recognized principle of subsidiarity, preference should be given to the entity that "more appropriately" or "more efficiently" exercises the powers of government, in order to optimize cooperation between federated entities and maximize the normative content of fundamental rights, states and municipalities can, in the exercise of their own competences and with the aim of closing normative gaps, issue laws to serve interests that are peculiar to them. Thus, invoking an opinion from the Attorney General's Office, "in the case of asbestos, the elements gathered by science and experience are sufficient to intensify the state's protective measures. State and municipal laws that extend the deficient protection of federal law must be accepted, in order to better realize constitutional precepts." By a majority vote, Article 2 of Law 9.055/1995 was declared unconstitutional and the municipal law banning asbestos was deemed constitutional.

4.5 Law 3.579/2001, of the state of Rio de Janeiro

(i) ADI 3470/RJ,²⁶ Reporting Justice Rosa Weber, judgment on November 29, 2017, by a majority dismissed the requests in ADIs filed against law 3.579/2001, of the state of Rio de Janeiro, which prohibits the extraction of asbestos in state territory and provides for the progressive replacement of the production and marketing of products containing it. Article 2 of federal law 9.055/1995 was declared unconstitutional, with binding and *erga omnes* effect (ADI 3937/SP had already been ruled unconstitutional). The Court then decided to notify the Federal Senate of the decision declaring the law unconstitutional, so that it could publish it and intensify publicity. Justice Celso de Mello considered that this was a true

²⁶ STF. ADI 3470/RJ, Reporting Justice Rosa Weber, judgment on November 29, 2017. Available at: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=15357641320&ext=.pdf>. Accessed on: 14nov.2024.

constitutional change that expands the powers of the Federal Supreme Court in matters of constitutional jurisdiction, since what is being proposed is an interpretation that gives the Federal Senate the possibility of simply, through publication, prevailing as a result of the abstract control of constitutionality, the understanding that the use of *asbestos*, chrysotile and other types, offends constitutional postulates and, therefore, cannot be the subject of authorizing rules. Justice Cármen Lúcia reiterated that this was an innovation in jurisprudence in the sense that not every normative act would be declared unconstitutional, but the very matter contained therein, which, as Justice Edson Fachin pointed out, would result in the consummative preclusion of the matter. For the reporting judge, Law No. 9.055/1995, as a general rule, adopts a teleological stance towards the economic exploitation of asbestos, and recognizes its risks and the need for control, defining the minimum conditions to be observed so that the exploitation of asbestos of the chrysotile variety is tolerated as lawful. Mere tolerance does not bind the legislative activity of the states and does not preempt state legislative activity which, in the legitimate exercise of concurrent competence, may impose stricter or more prohibitive controls. Therefore, federal law 9.055/1995 and state law 3.579/2001, of Rio de Janeiro, are oriented in the same direction, state legislation being complementary, advanced where the federal legislator preferred to restrain itself, to impose a higher level of protection than the minimum provided for in federal law. Furthermore, since art. 2 of federal law 9.055/1995 is unconstitutional and therefore null and void, and there is no federal law on general rules in the legal system, the states may exercise their full legislative powers, as the state of Rio de Janeiro has done;

(ii) ADI 3406/RJ,²⁷ Reporting Justice Rosa Weber, judged on November 29, 2017, dismissed, by a majority, the requests made against law

²⁷ STF. ADI 3406/RJ, Reporting Justice Rosa Weber, judgment on November 29, 2017. Available at: <

3.579/2001, of the State of Rio de Janeiro, also declaring, by a majority and incidentally, the unconstitutionality of art. 2, of federal law 9.055/1995, with binding and *erga omnes* effect (it had already been declared unconstitutional, incidentally, in the judgment of ADI 3937/SP). The constitutionality of the state law results from the recognition that "[...] the accumulated scientific knowledge on the extent of the harmful effects of asbestos on health and the environment and the evidence of the ineffectiveness of the control measures contemplated therein, the tolerance of the use of chrysotile asbestos, as set out in art. 2 of Law no. 9.055/1995, does not adequately and sufficiently protect the fundamental rights to health and a balanced environment (arts. 6, 7, XXII, 196, and 225 of the Federal Constitution), nor does it align with the international commitments of a supralegal nature assumed by Brazil and which have shaped the content of these rights, especially ILO Conventions 139 and 162 and the Basel Convention. Unconstitutionality of insufficient protection. Validity of legislative initiatives relating to its regulation, at any federal level, even if they result in the banning of any and all use of asbestos".

4.6 Law 11.643/2001 of the state of Rio Grande do Sul

ADI 3357 / RS,²⁸ with Justice Ayres Britto as Rapporteur and Justice Dias Toffoli as Redactor of the judgment; the judgment took place on November 30, 2017. The Federal Supreme Court, by a majority, dismissed the action seeking the unconstitutionality of Law 11.643/2001, of the State of Rio Grande do Sul, which prohibited the production and sale

<https://portal.stf.jus.br/processos/downloadPeca.asp?id=15339388321&ext=.pdf>.

Accessed on: 14nov.2024.

²⁸ STF. ADI 3357 / RS, Reporting Justice Ayres Britto, draftsman of the judgment Justice Dias Toffoli, judgment November 30, 2017. Available at: <
<https://portal.stf.jus.br/processos/downloadPeca.asp?id=15339408211&ext=.pdf>>.

Accessed on: 14nov.2024.

of asbestos-based products and, incidentally, declared the unconstitutionality of Article 2 of Federal Law 9.055/95. The decision was based on the protection of the environment and the protection and defense of health. Although it recognized concurrent legislative competence, the impossibility of state legislation regulating the same matter in disagreement with what has already been established in federal law was ruled out in this case by the nullity of the federal rule that prevented it. This is an analysis of the supervening unconstitutionality of the federal rule, due to proof of the carcinogenic nature of chrysotile asbestos and the impossibility of using it in an effectively safe manner, which led to a change in the factual relationships underlying the legal rule;

4.7 Law 12.589/2004 of the state of Pernambuco

ADI 3356/ PE,²⁹ Reporting Justice Eros Grau and Justice Dias Toffoli, was judged on November 30, 2017, at the same session as ADI 3357/RS. It reached the same conclusion. The Federal Supreme Court, by a majority, dismissed the requests formulated in the direct action of unconstitutionality filed against Law 12.589/2004 of the State of Pernambuco, which prohibited the manufacture, trade and use of materials, construction elements and equipment made of asbestos or asbestos. Incidentally, the supervening unconstitutionality of art. 2 of federal law 9.055/95 was declared and, therefore, in view of the non-cumulative concurrent legislative competence, "in which there is an express delimitation of the modes of action of each federative entity, which do not overlap", the collision of normative treatment of the same matter ceased. The basis for the constitutionality of the prohibitive state rule is the

²⁹ STF. ADI 3356/ PE, Rapporteur Minister Eros Grau, Redactor of the judgment Minister Dias Toffoli, judgment on November 30, 2017. Available at: < <https://portal.stf.jus.br/processos/downloadPeca.asp?id=15357641025&text=.pdf>>. Accessed on: 14nov.2024.

recognition of the carcinogenic nature of chrysotile asbestos and the impossibility of safe use, not harmful to health, which is protected by the 1988 Constitution. There is recognition that Brazil did not have a qualified product to replace asbestos at the time of the trial and, furthermore, that the country undertook, by internalizing Convention 162 of the International Labour Organization, to accept its principles and revise national legislation to ban its use in the face of the existence of another technically viable material;

4.8 Federal Law 9.055/1995

ADI 4066/DF,³⁰ proposed by the National Association of Labor Prosecutors and the National Association of Labor Court Magistrates, was reported by Justice Rosa Weber. In the judgment, which took place on August 24, 2017, there was no pronouncement of unconstitutionality of art. 2 of federal law 9.055/1995, due to the lack of a quorum (art. 97, Constitution of the Republic of 1988), due to the impediment of Justices Roberto Barroso and Dias Toffoli. In her vote, the Justice stated that the use of chrysotile *asbestos* is harmful to health and violates fundamental rights to health and the environment, as well as not being in line with the international commitments of a supralegal nature assumed by Brazil before the International Labor Organization (Convention 162). Justice Edson Fachin recognized the existence of an omission characterized by insufficient protection of health and the environment because 22 years after the federal law in question came into force, the set of technical-scientific circumstances needs to be revisited. Justice Ricardo Lewandowski pointed out that there is no doubt in the minds of the world and Brazilian scientific community *as*

³⁰ STF. ADI 4066/DF, Reporting Justice Rosa Weber, judgment on August 24, 2017. Available at <https://portal.stf.jus.br/processos/downloadPeca.asp?id=313831911&ext=.pdf>. Accessed on: 14nov.2024.

to the carcinogenic potential of all varieties of *asbestos*, and that it is a case of applying the precautionary principle for environmental protection by the states, of preventive measures where there are threats of serious or irreversible risks: "the lack of total scientific certainty will not be used as a reason for postponing cost-effective measures to prevent environmental degradation". Justice Celso de Mello, in his vote, stressed that the federal legislation is incompatible with basic values and fundamental rights enshrined in the constitutional order, since it ensures adequate protection and sufficient protection of the right to health, which entails unconstitutionality by omission, resulting from the lack or incomplete and imperfect realization of a social program that should have been effectively assumed and implemented by the State, in addition to, in the material content of the normative precept, colliding with the right to an ecologically balanced environment. Justice Gilmar Mendes considered that, as this was a borderline case in terms of constitutional jurisdiction, it was necessary to "adopt a sensible judgment in the observation of a possible path towards unconstitutionality", and to recommend that the National Congress re-evaluate the current rule in a legislative process, including the suppression of exploitation, indicating that it would not be the case to declare it unconstitutional. Justice Marco Aurélio, in the same vein, stated that the Judiciary could not replace the Legislative Branch, and that declaring the law unconstitutional would therefore offend the independence and harmony between the branches of government.

4.9 Constitutional Complaint

Rcl 26003/SP,³¹ proposed by Rapido 900 de Transportes Rodoviários Ltda against a judgment of the Superior Labor Court (TST),

³¹ STF. Rcl 26003/SP, Reporting Justice Alexandre de Moraes, judgment on November 13, 2018. Available at: <

for allegedly infringing on the authority of the decision of the Federal Supreme Court (STF) that partially granted an injunction in the Argument for Failure to Comply with a Fundamental Precept (ADPF) 234. It was reported by Minister Alexandre de Moraes and drafted by Minister Rosa Weber. On November 13, 2018, the First Panel, by a majority, dismissed the case. The Superior Labor Court had upheld a decision handed down in a public civil action which, based on Article 1 of Law 12.684/2007 of the State of São Paulo, prohibited the use of any type of *asbestos*, and ordered the company not only to refrain from transporting loads containing *asbestos in natura*, but also to make reparation for collective moral damage;

4.10 Law 20.514, of July 16, 2019, of the state of Goiás

ADI 6200/ GO,³² Reporting Minister Alexandre de Moraes. Proposed by the National Association of Labor Attorneys to discuss the unconstitutionality of Law 20.514, of July 16, 2019, of the state of Goiás. Filed on July 19, 2019, it is still awaiting judgment after a request for review. The vote of the Reporting Justice is for the unconstitutionality of the law of the state of Goiás, with modulation of effects for 12 months after the publication of the minutes of judgment. Justice Rosa Weber anticipated her vote for unconstitutionality without modulation of effects.

5 CONCLUSION

The ban on the use of asbestos in Brazil demonstrates the difficulty of a federative pact due to the clash in the Supreme Court between

<https://portal.stf.jus.br/processos/downloadPeca.asp?id=314800531&ext=.pdf>. Accessed on: 14nov.2024.

³² STF. ADI 6200 /GO, Reporting Justice Alexandre de Moraes. Awaiting judgment. Available at: < <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5738022>>. Accessed on: 14nov.2024.

states and between states and municipalities. The 1988 Constitution of the Republic provides for non-cumulative concurrent competence, in which there is an express delimitation of the actions of each federative entity, which do not overlap. It is up to the Union to issue general rules (art. 24, § 1), and it is not up to the states to contradict or replace what has been regulated in a general rule, but rather to supplement it (art. 24, § 2), under penalty of distorting the minimum of normative unity. Failure to comply with the constitutional limits imposed on the exercise of concurrent competence implies that the law is formally unconstitutional.

Supervening material unconstitutionality can occur when scientific progress proves the harmful nature of a material or activity. Although the position adopted by the Federal Supreme Court corroborates the thesis, in the face of scientific progress, either by the constitutionality of any state legislation that prohibits the use of asbestos in Brazilian territory, or by the material supervening unconstitutionality of the federal legislation that authorized it, the extraction of asbestos in Brazil still occurs under the cloak of a state's legislation exclusively for export, under the argument of meeting its economic/tax interest and the right of everyone to have an income from work.

The 1988 Constitution of the Republic guarantees the fundamental right to health and the environment for all workers, so any unprotective state infra-constitutional legislation that allows work in contact with unhealthy agents can lead not only to the unconstitutionality of the rule, but also to an omission characterized by insufficient protection of health and the environment, even if the activity is exclusively export-oriented.

Brazil, in approving Convention 162 of the International Labor Organization, of June 1986, committed itself to international principles, to reviewing national legislation due to technical development and progress in scientific knowledge, so that, if there is a substitute for asbestos, the legislation must impose the adoption of a less harmful material or even determine its effective ban for use anywhere in the world.

As highlighted in ADI 3470/RJ:

There is no doubt that the Constitution, taken as a system, authorizes the state to impose limitations on fundamental rights, in view of the need to bring it into line with other equally protected fundamental rights. Thus, the postulate of free competition and the fundamental rights to freedom of initiative and property, enshrined in articles 1, IV, 5, XXII, and 170, caput and IV, of the Constitution, do not prevent the state from imposing conditions and limits on the exploitation of private activities, given the need to make them compatible with other principles, guarantees, fundamental rights and constitutional protections, whether individual or social, especially in the case of the industrial and commercial exploitation of asbestos, the protection of health and the preservation of the environment. The 1988 Constitution enshrines that the purpose of economic development is not divorced from the social process. 11 Article 170, caput, of the Constitution raises the value of human labor to the status of the foundation of the country's economic order and articles 5, XXIII, and 170, III, proclaim the social function of property as a legitimizing factor, from the perspective of fundamental rights, of the limits placed on the freedoms to contract and undertake. In this context, it is unacceptable to see social progress and collective well-being as obstacles to economic development when they constitute their own.

The principle of cooperation that has been established in Brazilian constitutional federalism, as well as that of responsibility towards future

generations, dictate the need for the fundamental right to health to be observed by all member states and municipalities, and to be covered internationally as a right of all, with internal legislative measures that protect not only Brazilian citizens, but everyone, indiscriminately.

Thus, there is an urgent need to understand that a balanced and healthy environment must supersede any economic perspective of the alleged development of countries, not only in reducing the risks of asbestos exploitation, which is why the state law authorizing asbestos mining in Brazil must be declared unconstitutional, as a commitment to the future of humanity.

Brazil should not allow the export of a product that is harmful to the population of other countries. After all, we should have the same rights for our own people as for others, as a common law that dictates the actions of states and their governments.