http://dx.doi.org/10.18623/rvd.v18i41.1751

# THE SUPREME COURT AND THE USE OF ASBESTOS IN BRAZIL: CASE STUDY OF ADIs No. 3937/SP AND No. 4.066/DF

**Artenira da Silva and Silva**[1]
Universidade Federal do Maranhão (UFMA)

**Maicy Maia**[2]
Universidade Federal do Maranhão (UFMA)

## ABSTRACT

This article focuses on the role of the Brazilian Supreme Court (STF) in the judgment of Direct Actions of Unconstitutionality related to the use of asbestos/chrysotile asbestos in national territory. It seeks to examine the decision-making parameter of the Constitutional Court in this matter and the hermeneutic turn that resulted from the strong tension between the interests involved in the judgment: the values of human dignity, the rights to health and an ecologically balanced environment, in relation to rights to free enterprise, free trade and free competition. It appears that the counterbalancing of these interests and rights and their relationship with the hermeneutic evolution of the subject in the STF, was based on the progress of technical-scientific knowledge on the harmful effects of asbestos or the impossibility of controlling these to human health and to the environment. As a research strategy, a case study was carried out in the judgments of Direct Unconstitutionality Actions No. 3937/SP and No. 4066/DF, literature review and document analysis of the chosen cases.

**Keywords:** Asbestos; constitutional jurisdiction; hermeneutic evolution; overruling; STF.

1 Postdoc in Psychology and Education from Universidade do Porto. PhD in Public Health from Universidade Federal da Bahia (UFBA). Master in Health and Environment from UFMA. Specialist in Psycholinguistics from UFMA. Psychology graduate from Pontifícia Universidade Católica de São Paulo (PUC-SP). Professor and effective researcher at the Master of Law and Institutions of the Justice System at UFMA. ORCID: https://orcid.org/0000-0002-1716-6133 / email: artenirassilva@hotmail.com

2 Master in Law and Institutions of the Justice System, by the Graduate Program in Law at UFMA. Bachelor of Law from UFMA. ORCID: https://orcid.org/0000-0002-2571-8233 / email: maicymaia@gmail.com

## *O STF E A UTILIZAÇÃO DO AMIANTO NO BRASIL: ESTUDO DE CASO DAS ADIs N. 3.937/SP E N. 4.066/DF*


### *RESUMO*

*Este artigo debruça-se sobre a atuação do Supremo Tribunal Federal (STF) no julgamento das Ações Diretas de Inconstitucionalidade relacionadas à utilização do asbesto/amianto crisotila em território nacional. Busca-se examinar o parâmetro decisório da Corte Constitucional nessa matéria e o giro hermenêutico que resultou da forte tensão entre os interesses envolvidos no julgamento: os valores da dignidade da pessoa humana, os direitos à saúde e ao meio ambiente ecologicamente equilibrado, em relação aos direitos à livre iniciativa, ao livre comércio e à livre concorrência. Verifica-se que o contrabalanceamento desses interesses e direitos e sua relação com a evolução hermenêutica do tema no STF, deu-se com esteio no progresso dos conhecimentos técnico-científicos sobre os efeitos nocivos do asbesto ou a impossibilidade de controle destes à saúde humana e ao meio ambiente. Como estratégia de pesquisa, realizou-se estudo caso nos julgamentos das Ações Diretas de Inconstitucionalidade n. 3937/SP e n. 4066/DF, revisão bibliográfica e análise documental dos casos escolhidos.*


***Palavras-chave:*** *amianto; evolução hermenêutica; jurisdição constitucional; overruling; STF.*

## INTRODUCTION

In 2017, the Brazilian Supreme Court (STF) finally took a stand on the controversial use of asbestos in Brazil. This article analyzed the judgments related to the matter and the issues that crossed it. The greatest difficulty of the judgment was precisely the importance of the issues that intersected it, very valuable for the Brazilian legal system, but which needed to be weighed, with a view to legal security and social pacification.

In 2017, the World Health Organization (WHO) warned that all types of asbestos are responsible for causing lung cancer, mesothelioma, laryngeal and ovarian cancer, as well as lung fibrosis. This information is confirmed by the words of Hermano Castro, director of the National School of Public Health (ENSP/FIOCRUZ), in an interview given to the Collaborating Center for Health Surveillance (CECOVISA), within the scope of ENSP/FIOCRUZ[3] (FIOCRUZ, 2017). Nevertheless, in Brazil, the extraction, industrialization, use and sale of asbestos, of the chrysotile type, have a legal provision, under the terms of Law n. 9055/1995, which establishes the possibility of controlled use of the mineral, which is widely used in the manufacture of tiles, sheets, partitions, water tanks, coating, tubes, even friction product components, such as clutch discs, brake inserts and linings for vehicles, as well as thermal insulators.

With the judgment of Direct Unconstitutionality Actions (ADIs) No. 3,937/SP and No. 4.066/DF, the understanding of the Brazilian Constitutional Court has changed. The parameter previously used, which was the possibility of the controlled use of chrysotile asbestos, was overcome, resulting in a new constitutional parameter, which rules out

3 […] The main diseases related to asbestos are asbestosis, a type of pulmonary fibrosis, irreversible and without specific treatment; pleural involvement: plaques, calcifications, thickening and pleural effusion; lung cancer, mesothelioma and respiratory function alterations. As the latency period between exposure and the onset of the disease can be decades: 3 to 4 decades for mesothelioma, for example, even with the ban on asbestos, we would still have the emergence of cases in the next 40 years, reflecting the exposure to the mineral. […] Currently, companies that use asbestos carry out their own washing of clothes, but for many years the family members were exposed to the mineral, with the appearance of many cases of illnesses among family members, generated by contact with asbestos brought on the clothes of the family. workers. […] Environmental degradation caused by mineral extraction is a reality in mining regions. Furthermore, the inappropriate disposal of asbestos-based materials (tiles, water tanks, industrial assets) can contaminate the soil and put the health of the population who inadvertently come into contact with the material at risk. There is currently a CONAMA resolution No. 348 which considers asbestos hazardous waste and must have a special procedure for disposal. Some scholars consider mesothelioma (asbestos-related pleural cancer) a marker of environmental exposure, since a high percentage of mesotheliomas, some studies reach up to 50% of cases, is not related to occupational exposure. Mesothelioma has no dose-response relationship, that is, cancer can appear regardless of the exposure dose, which can be attributed to environmental exposure (FIOCRUZ, 2017).

any possibility of using chrysotile, based on the advancement of technical-scientific knowledge and its appropriation by the Brazilian Constitutional Court.

Throughout the judgments analyzed herein, the collision of interests related to free enterprise, trade and competition, in the face of the rights to health and an ecologically balanced environment, became quite clear. There were, on the one hand, those who defend the use of chrysotile asbestos, under the allegation of exercising free enterprise, progress and economic development through the generation of jobs. On the other hand, there were those who understand that such rights cannot be above the health of those who work directly with asbestos and an ecologically balanced environment.

For the development of this article, the research strategy adopted was the study of multiple cases, namely, the examination of the judgment of Direct Actions of Unconstitutionality No. 3,937/SP and No. 4.066/DF, since, in the fomer, the constitutionality of the state legislation that prohibits the use of asbestos in the State of São Paulo is questioned, while in the latter, the constitutionality of the federal rule that allows controlled use of chrysotile asbestos is challenged. By examining the judgment of these two ADIs, it is possible to have a broad view of the problems that the use of asbestos entails and the conflicts of interest involved in the claim. In addition to the case study of these judgments, this work also used research into documents and materials, such as videos and news, through a literature review and analysis of the content of the documents and materials mentioned.

## 1 SELECTION OF CASES

Case study is defined by Yin (2001) as a research strategy aimed at the empirical investigation of a contemporary phenomenon, in its real-life context, suitable for situations where the boundaries between the phenomenon and the context are not clearly delimited. For the author, case study is particularly advantageous when the research is intended to answer questions such *as how* or *why,* in relation to current events, over which the scholar has no control. In the words of Freitas and Jabbour (2011), case study is a narrative that is built on a given event, from the most diverse kinds of sources and guided by a theoretical framework:

> A case study is a story of a past or current phenomenon, drawn from multiple sources of evidence, which may include data from direct observation and systematic interviews, as well as research in public and private archives […]. It is supported by a theoretical framework, which guides the questions and propositions of the study, brings together a range of information obtained through various data and evidence collection techniques […] (FREITAS; JABBOUR, 2011, p. 11).

Freitas Filho and Lima, in *Metodologia da análise de decisões* (2010), argue that it is possible to use the case study as a research technique, which intends to analyze a decision, a group of decisions or a given legal problem-issue:

> In the Case Study, an intensive study of a decision, a group of decisions or a given legal problem-issue is carried out, through the exploration of the greatest number of variables involved in it, from a perspective of multiple variables, of an event or unique situation, called a "case". The purpose of the Case Study is for the researcher to acquire a more accurate understanding of the circumstances that determined the occurrence of a given result, capturing the complexities involved in the situation. In this case, instead of using a rigid methodology, with a fixed and determined protocol, the case study presupposes a certain autonomy in the construction of the narrative and the structure for exposing the problem (FREITAS FILHO; LIMA, 2010, p. 2).

About these guidelines, this study analyzed the Direct Actions of Unconstitutionality (ADIs) No. 3,937/SP and No. 4.066/DF, in order to identify the grounds that led the STF to overrule what is communicated in art. 2, of Law No. 9055/1995, permitting the controlled management of chrysotile asbestos, for the complete impossibility of using that mineral in the national territory.

These trials were chosen because they capture the object of this article more comprehensively, since ADI No. 3,937/SP discusses the constitutionality of the state law of São Paulo, which prohibits the use of that substance in that state, while ADI No. 4.066/DF attacks the constitutionality of a federal law allowing for the use of chrysotile asbestos in national territory, questioning whether this norm does not meet the basic precepts of the Federal Constitution of 1988. It is noteworthy that the two judgments were concluded on 08.24.2017[4].

4 STF – ADI No. 3,937: "Decision: The Court dismissed the direct action, with the incidental declaration of unconstitutionality of art. 2 of Law 9,055/1995, Justices Marco Aurélio (Rapporteur) and Luiz Fux, who upheld the action, were defeated, and Justice Alexandre de Moraes, who considered the action groundless, was partially defeated, without incidental declaration of unconstitutionality of art. 2 of Law 9,055/95. Absent, justifiably, Justice Gilmar Mendes. Justice Roberto Barroso, successor of Justice Ayres Britto, did not vote. In this settlement, Justice Edson Fachin recast his vote to collaborate with Minister Dias Toffoli's vote. Justice Dias Toffoli wrote up the decision. Justice Carmen Lúcia presided over the trial. Plenary, 8.24.2017.

## 2 HEALTH AS THE FOUNDATION OF THE DIGNITY OF THE HUMAN PERSON IN BRAZIL

The Federal Constitution of 1988 establishes in its art. 1 that the Federative Republic of Brazil is a Democratic State of Law and elects, among its foundations, the dignity of the human person and the social values of work and free enterprise. A Democratic State of Law is one that is based on popular sovereignty, with mechanisms for ascertaining and implementing the will of the people in the main political decisions of the State, endowed with a materially legitimate constitution, arising from the popular will and with binding power of all Powers arising from it. In addition, a State along these lines presupposes the existence of respect for fundamental human rights and a body responsible for safeguarding the Constitution and the values contained in it, in particular, the principles of legality, equality and legal security (SILVA, 2005).

The dignity of the human person, in turn, is invoked in art. 1, of the Universal Declaration of Human Rights (1948) and informs that all human beings are born free and equal in dignity and rights (UNICEF, 1948). The historical genesis of the Democratic Rule of Law is directly linked to the dignity of the human person as a value, since, in the beginning, the human being had a relative value, conditioned to his position in society and to the goods he held. Over time, human dignity was recognized as something inherent to the condition of being human, which meant a real advance, placing all human beings on an equal footing, entitled to a minimum of dignity.

Bobbio (2004) argues that it is not enough for human beings' declarations of rights to mention that they are free, equal and deserving of dignity, as statements of this nature are, in fact, intentions, objectives, ideals, values that must be pursued and that, as a result, impose obligations not only on the legislator, but on society as a whole, especially on interpreters and Law enforcers. In the words of Barroso (2010), the principle of human dignity represents a set of civilizing values, incorporated into the heritage of humanity, but which do not safeguard these civilizing values from daily

STF – ADI No. 4,600: "Decision: The Court, by majority vote, acknowledged the action, recognizing the plaintiffs' active legitimacy, and Justices Alexandre de Moraes and Marco Aurélio were defeated. On merit, the Court computed five votes (from Justices Rosa Weber (Rapporteur), Edson Fachin, Ricardo Lewandowski, Celso de Mello and Cármen Lúcia) for the merits of the action, and four votes (from Justices Alexandre de Moraes, Luiz Fux, Gilmar Mendes and Marco Aurélio) for the dismissal of the action, and for not having reached the quorum required by art. 97 of the Constitution, the unconstitutionality of art. 2 of Law n. 9055/1995, in judgment devoid of binding effectiveness, was not declared. Justices Roberto Barroso and Dias Toffoli were impeded, Justice Gilmar Mendes was absent, justifiably. Justice Carmen Lúcia presided over the trial. Plenary, 8.24.2017".

offenses, which must be fought, aiming at least to the protection of the existential minimum, that is, a series of basic needs that must be met, since, without them, it is not possible to enjoy the other rights.

According to Bobbio (2004), the dignity of the human person is something that must be pursued, a goal and, from the moment that this value is affirmed and placed as the foundation of a State, it ceases to be an end in itself and it takes the position of instrument for the attainment of objectives that are set beyond it. Thus, human rights cease to be a mere arrangement and are embodied in rights, in the strict sense of the word. With the invocation of the responsibility to materialize these international values of human dignity, freedom and equality, human rights assume the character of the objective of these States and enter the national legal systems as "fundamental rights", that is, basic rights, essential to the human being, in the promotion of a dignified life, with a minimum of both personal and social well-being.

According to Silva (2008), in Brazil, the legal affirmation of fundamental rights in the Political Charter aims not only at the formal recognition of these rights, but also at their material, concrete realization.

The right to health fits into the second dimension of fundamental rights, with a social spectrum, being inherent to a minimally dignified human life. About this humanistic context, art. 196 of the Federal Constitution of 1988 establishes that "Health is everyone's right and the State's duty, guaranteed through social and economic policies aimed at reducing the risk of disease and other health problems and at universal and equal access to actions and services for its promotion, protection and recovery" (BRASIL, 1988, p. 83). Currently, much of the doctrine defends that the best definition for health is the one provided by the WHO (1946, p. 1):

> Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.
> The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.
> The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States.
> The achievement of any State in the promotion and protection of health is of value to all.
> Unequal development in different countries in the promotion of health and control of disease, especially communicable disease, is a common danger.

As a fundamental right of a social nature, health imposes on the State two conditions: abstaining from any act that undermines the right to health, while establishing to the State the duty to adopt measures and benefits for prevention and treatment of diseases (SILVA, 2008).

## 3 THE ROLE OF THE STF AS GUARDIAN OF THE CONSTITUTION AND OF THE VALUES CONTAINED IN IT IN THE CASE OF CHRYSOTILE ASBESTOS

It is up to the STF, as guardian of the Constitution, to defend the values contained therein; among them, the life, health and dignity of the human person, interpreting all these rights in their maximum effectiveness. Guarding the Constitution is carried out, among other ways, from the control of constitutionality of laws and administrative acts, whose purpose is to ensure the order and coherence of the normative system, based on the supremacy and rigidity of the Magna Carta, so that the legal and administrative rules are always in full compliance with their foundation of validity, which is the Constitution itself.

Thus, constitutionality control can occur in two ways: (a) concrete/diffuse, in which the preservation of the constitutional text occurs indirectly, through the defense of a subjective right, argued in a concrete case; and (b) abstract/concentrated, in which the object of constitutional control is a rule or administrative act, in the abstract, that is in disagreement with the Constitution.

For some time now, issues involving the right to health have found protection in the Brazilian Constitutional Court, mainly in view of the answers that the Judiciary Branch gives to the jurisdictions, generally more agile than those presented by other branches. This is what Streck (1999) observes when he verifies that, compared to other constituted powers, the speed and quality of the answers given by the Judiciary in questions related to the right to health are more effective, which demonstrates the judicial process as a true instrument of citizenship.

Like many other demands, litigation involving the right to health and the use of asbestos reached the STF.

According to Martin-Chenut and Saldanha (2016), asbestos is a mineral with physical-chemical characteristics of flexibility, mechanical resistance, low thermal conductivity, good thermal and acoustic insulation capacity, resembling materials such as cement and resins, as well as stability

in variable pH environments. According to the authors, asbestos had more than 3,000 ways of application, including the manufacture of corrugated tiles, water tanks, cladding plates, tubes, friction products (clutch discs, brake inserts and linings for vehicles, and thermal insulators). However, despite all this versatility, several studies indicate that asbestos is responsible, directly and indirectly, for serious damage, both to human health and the environment.

> Scientific studies show that asbestos is the cause of a true "health catastrophe", which causes double-sided damage: (a) to human health, by causing diseases such as *asbestosis* (pulmonary fibrosis); *lung cancer* (malignant tumor); *mesothelioma* (malignant tumor of the pleura and pericardium; cancer of the tongue, larynx and ovary, pharynx, stomach and colon (IARC, 2012, p. 76)4; and (b) the environment, both during the course of its extraction and production and later, in the course of waste management (MARTIN-CHENUT; SALDANHA, 2016, p. 5).

The framework of interests outlined in the controversy over the use of asbestos is highly tense. There are entrepreneurs in the industry and workers' union organizations desiring the use of asbestos without any restrictions, while human rights groups and social movements aim to preserve occupational, consumer and environmental health, standing for the total ban of asbestos in the national territory.

Law no. 9055/1995 regulates the extraction, industrialization, use, marketing and transport of asbestos and products containing it, as well as natural and artificial fibers, of any origin, used for the same purpose. In its art. 1, the norm prohibits the extraction, production, industrialization, use and sale of actinolite, amosite (brown asbestos), anthophyllite, crocidolite (blue asbestos) and tremolite, as well as products containing these mineral substances, throughout the country. Nevertheless, art. 2 of the legislation in question adopts the thesis of the controlled use of asbestos, in its chrysotile variety:

> Art. 2. Asbestos/asbestos of the chrysotile variety (white asbestos), from the serpentine mineral group, and other natural and artificial fibers of any origin, used for the same purpose, will be extracted, industrialized, used and marketed accordingly with the provisions of this Law.
> Sole paragraph. For the purposes of this Law, natural and artificial fibers are considered to be harmful to human health (BRASIL, 1995, p. 1).

Martin-Chenut and Saldanha (2016) clarify that the path chosen by the federal legislator joined the thesis of the controlled use of asbestos and this legislative choice was due to the economic interests involved:

> Certainly, the strong economic interests of the world spectrum, which involve public interests both from the few asbestos-producing countries, as well as from the large transnational companies that explore the extraction, production and manufacture of its derivatives, play a fundamental role in maintaining the thesis of controlled use.
> […]
> The maintenance of an industry that generates millions of dollars annually, for a few, integrates the logic of the hegemonic globalization process that presents a double face (Santos, 2006; Saldanha and Blatt, 2007). The first can be identified as a "globalized localism", because the logic of controlled use, assumed by Brazilian federal law, has its origin in the pro-asbestos world crusade, developed for several years by Canada, which, as seen, has stopped consuming this mineral internally for more than thirty years. In fact, whenever a particular logic or actor can be identified as the winner of a struggle for the appropriation of certain knowledge or practice, capable of imposing patterns of negotiation, production, inclusion or exclusion, globalized localism will be present. And, to the extent that these logics or patterns are "exported", causing a very specific impact on legislation or actions in other countries, the other face of hegemonic globalization emerges, that is, that of a globalism located by, often, determining, disintegrating and de-structuring certain local conditions to then restructure them in the form of a "subaltern inclusion" (Santos, 2006, p. 434) (MARTIN-CHENUT; SALDANHA, 2016, p. 12-13).

With the polarization around the discussion, with the publicity of damage to health and the environment, as well as the emergence of several studies relating this damage to the use of asbestos, the debate on asbestos – once pacified by the General Court of Brazil, admitting the validity of Law No. 9055/1995 and the thesis of the controlled use of chrysotile – returned[5] to the Judiciary Branch.

Thus, it was observed that the demands were intended to question state laws prohibiting the extraction, industrialization, transport, use, and commercialization of asbestos or to question the constitutionality of the Federal Law and its legislative option for the controlled use of the mineral in national territory. In these circumstances, it was up to the STF, as guardian of the Constitution, to judge the facts and defend the values enshrined in our Constitution.

5 It is said "returned to the Judiciary Branch" because the STF, previously, had already expressed its opinion on the use of chrysotile, in 2003, in ADIs No. 2656 (Rapporteur Minister Maurício Correia) and No. 2396 (Rapporteur Minister Ellen Gracie), in 2003, the STF declared the unconstitutionality of laws in the States of São Paulo and Mato Grosso do Sul, which prohibited the sale of products containing asbestos, based on the understanding that state laws offended provisions that determined the exclusive competence of the federal government to legislate on foreign trade, mines and mineral resources (art. 22, VIII and XII) and to issue general rules on production and consumption (art. 24, V), environmental protection and pollution control (art. 24, VI) and protection and defense of health (art. 24, XII). In the declaration of the unconstitutionality of the aforementioned state legislations, it was highlighted that both were contrary to the provisions of Federal Law No. 9055/1995, which is the general federal standard that governs the production and consumption of asbestos (STF, 2002; 2001).

## 4 ADI NO. 3937/SP AND THE INCIDENTAL DECLARATION OF UNCONSTITUTIONALITY OF FEDERAL LAW NO. 9.055/1995

On August 6, 2007, the National Confederation of Industry Workers (CNTI), filed a Direct Action of Unconstitutionality, reported by Minister Marco Aurélio de Mello, booked under number 3937/SP, against Law No. 12,684/2007, of the State of São Paulo, which prohibits the use in that state of products, materials or artifacts that contain any type of asbestos or other minerals that accidentally have asbestos fibers in their composition.

CNTI maintained that chrysotile asbestos is used in many Brazilian industries, promoting millions of direct and indirect jobs in almost all units of the federation. According to the Plaintiff, the prohibition on the use of chrysotile asbestos reveals an affront to the principles of free enterprise and legal reserve, in addition to arguing that the São Paulo law presents a formal defect, as it invades the legislative competence of a matter already legislated by the Union, in the Law No. 9055/1995. For CNTI, the use of chrysotile asbestos is possible, provided that it is handled safely and responsibly, in which case it does not pose a risk to health. Initially, the CNTI requested the suspension of the effectiveness of State Law No. 12,684/2007, arguing that the prohibition of the use of chrysotile would cause irreparable damage to the economy and full employment, as well as there would be a lack of roof tiles and water tanks on the market, since the largest manufacturers of these products were located in the state of São Paulo. The request for preliminary suspension of State Law No. 12,684/2007 was granted by the Rapporteur of the action, but was not confirmed by the Court.

The Attorney General's Office (PGR) ruled against ADI No. 3937/SP, since Brazil, as a signatory of Convention No. 162-ILO, promulgated by Decree No. 126/1991 (Convention of Asbestos), agreed that all asbestos varieties can harm health and, therefore, should be gradually replaced, until they are completely banned (ILO, 1991b). He also highlighted that, according to the Descriptive Note No. 343, WHO, July 2010, all forms of asbestos are carcinogenic to humans and can also cause other diseases, such as asbestosis (a type of pulmonary fibrosis), plaques, thickening and pleural effusions (STF, 2013).

The PGR mentioned the guidelines of the National Cancer Institute (INCA), stating that there are no safe levels for exposure to asbestos fibers. He also argued that the São Paulo legislation was more attentive to

workers' health than the federal legislator, thus not incurring in any defect of competence, since its object is not full employment. In the view of the PGR, the issue is indisputably about the health of everyone, not just the worker, in addition to the prohibition imposed by the São Paulo norm to resist the proportionality test[6] and that there is no free enterprise, free trade and free competition that can prevail over the fundamental right to health, finally manifesting itself in the rejection of ADI No. 3937/SP.

The parties then requested the holding of a public hearing on the use of asbestos and its risks, appointing several speakers on the subject. The request was granted and the public hearing was held in August 2012, with the testimony of about 35 (thirty-five) people, on the implications of the production and use of chrysotile asbestos both for the labor market and FOR the national economy, as well as for human health (AUDIÊNCIA…, 2012a, 2012b, 2012c, 2012d).

As *amicus curiae,* the Brazilian Association of People Exposed to Asbestos (ABREA), the Brazilian Association of Fiber-cement Products Industries and Distributors (ABIFIBRO), the Brazilian Chrysotile Institute (IBC), the Union of Non-Metallic Minerals Extraction Industry Workers from Minaçu/GO, the Federal Council of the Brazilian Bar Association (CFOAB), and the National Association of Labor Attorneys (ANPT) were heard. In August 2017, the Plenary of the STF ruled ADI 3937/SP definitively and decided for the dismissal of this action, incidentally declaring the unconstitutionality of art. 2 of Law No. 9,055/1995[7].

In charge of writing up the decision, Justice Dias Toffoli made a brief review of the use of asbestos in the STF jurisprudence, recalling that, in 2003, in the judgment of ADIs No. 2656 and No. 2396, the Court declared the unconstitutionality of the laws of the states of São Paulo and Mato Grosso do Sul, which prohibited the sale of asbestos-containing products[8],

6 According to the opinion of the PGR: "[…] In any case, the law of São Paulo easily wins the test of proportionality in its three aspects: it is adequate, because it is able to achieve the purpose of reducing the risk and to health arising from exposure to asbestos; it is necessary, since there is no other way to effectively prevent the occurrence of diseases (there are no safe levels of protection); and it is proportional in the strict sense, since the cost it generates, of not allowing the use, commercialization and extraction of asbestos, is infinitely smaller than the health benefit it entails" (STF, 2013, p. 16).

7 On that occasion, Justices Marco Aurélio de Mello (Rapporteur) and Luiz Fux remained defeated. Justice Alexandre de Moraes dismissed ADI n. 3937/SP, but without declaring the unconstitutionality of art. 2 of Law No. 9,055/1995, being partially defeated. Justice Gilmar Mendes was justifiably absent from the trial and Justice Roberto Barroso did not vote. Justice Edson Fachin recast his vote to collaborate with Justice Dias Toffoli, the latter in charge of writing the decision. Although the decision of the judgment of ADI No. 3937/SP has not been placed on the STF website, the vote-view of Minister Dias Toffoli has already been made available in the same place.

8 At that time, the STF understood that such state laws offended the provisions that determined the exclusive competence of the Federal Government to legislate on foreign trade, mines and mineral

since such norms were contrary to the provisions of Federal Law No. 9055/1995, general federal norm, regulating the production and consumption of asbestos (STF, 2017b).

However, at the time of the judgment of ADI No. 3937/SP, the STF remodeled its understanding on asbestos use, due to an unconstitutionalization process[9] of art. 2 of Law No. 9055/1995, opportunity in which the Court surpassed the state norm to the detriment of the federal norm, since the former provided more adequate health and environmental protection.

What was found in this judgment was that, over time, the federal rule did not follow the constitutional evolution, failing to adapt to the values and objectives of the Constitution[10], which is why "[…] the States now have full legislative competence on the matter until a possible new federal legislation, pursuant to art. 24, §§3 and 4, of CF/88 […]" (STF, 2017b, p. 11).

Based on the information brought to the records of ADI No. 3937/SP, through the *amicus curiae* heard at a public hearing on the subject, the Justice stated that, due to the change in the fact that, currently, there is wide scientific recognition of the harmfulness of asbestos to human health, there is not even a hypothesis of controlled management. Therefore, Law No. 9055/1995 became unconstitutional over time, which is why ADI 3937/SP was dismissed and, incidentally, the unconstitutionality of art. 2 of Law No. 9055/1995.

## 5 ADI NO. 4066/DF AND THE DECLINE OF THE THESIS OF CONTROLLED USE OF CHRYSOTILE ASBESTOS

Filed by ANPT and by the National Association of Labor Justice Magistrates (ANAMATRA), in April 2008, booked as ADI No. 4066/DF

resources (art. 22, VIII and XII), as well as to edit general rules on production and consumption (art. 24, V), environmental protection and pollution control (art. 24, VI) and health protection and defense (art. 24, XII).

9 According to the Rapporteur, given the open nature of the causes of action in concentrated constitutional review actions, the Constitutional Court can re-examine, reconsider and redefine its own decisions, being able to go beyond what it previously judged, "[…] if it is understood that, due to hermeneutic evolution, such decision is no longer consistent with the current interpretation of the Constitution […]" (STF, 2006 including the declaration of unconstitutionality of any normative act.

10 The Rapporteur explained that it is possible that a law, previously considered constitutional, as in the case of Law No. 9055/1995, over time, will be declared unconstitutional, thanks to the occurrence of two factors: (a) change in the control parameter; or (b) by virtue of changes in the factual relationships underlying the legal rule. Therefore, the process of interpreting legal norms cannot lose sight of the fact that facts and social reality communicate with the legal sphere in different ways, and hermeneutics requires constant articulation between normative text and reality, so that the jurisdiction Constitution must be exercised, in the words of Justice Dias Toffoli, with prudence and sensitivity to continuous changes, both factual and legal (STF, 2017b).

and distributed to Minister Carlos Britto as Rapporteur, the aforementioned ADI No. 4066/DF questioned the constitutionality of art. 2 of Law No. 9055/1995, in view of the violation of arts. I, III and IV[11], 170, *caput* and VI[12], 196[13] and 225[14], all from the 1988 Federal Constitution.

The two entities demonstrated the thematic relevance of their functions to the object of ADI No. 4066/DF and their duty to act in defense of social interests, valuing human work and the dignity of the human person, then affected by the questioned rule, since art. 2 of Law No. 9055/1995 allowed the extraction, industrial use and commercialization of chrysotile asbestos, activities harmful to the health, environment and human dignity of workers and citizens exposed to the aforementioned mineral. According to scientific studies, there is no "[…] safe level of exposure to asbestos, as well as that all fibers are carcinogenic, whatever their type or geological origin [...]" (STF, 2017c, p. 2).

The Plaintiffs argued that the initial bill of Law No. 9055/1995 intended the progressive replacement of the use of asbestos in all its modalities, following the world trend in other more developed countries, but with the advent of the new international order, based on globalized economies, the large economic groups adopted the guise of transnational companies, which allowed the exploitation of certain activities – such as asbestos exploitation – to be shifted to peripheral countries, where labor, environmental and health laws are more compliant with the performance of economic activities whose object are polluting raw materials or riskier to human health. The Plaintiffs also argued that technological advances enabled the development of an alternative material that was perfectly suitable for replacing asbestos, much safer for the environment, workers, the population in general and without prejudice to the performance of activities related to

11 CF/1988, art. I, III and IV: Article 1. The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state and is founded on: I – sovereignty; […] III – the dignity of the human person; IV – the social values of labour and of the free enterprise; […].

12 CF/1988, art. 170, caput: The economic order, founded on the appreciation of the value of human work and on free enterprise, is intended to ensure everyone a life with dignity, in accordance with the dictates of social justice, with due regard for the following principles: […] VI – environment protection, which may include differentiated treatment in accordance with the environmental impact of goods and services and of their respective production and delivery processes; […].

13 CF/1988, art. 196: Health is a right of all and a duty of the State and shall be guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at the universal and equal access to actions and services for its promotion, protection and recovery.

14 CF/1988, art. 225: All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.

the fiber-cement sector.

The Presidency of the Republic, through the Attorney General of the Union (AGU), as well as the Federal Senate (STF, 2015), claimed that the extraction, industrialization, use and trade of chrysotile asbestos must occur under the terms of Law No. 9,055/1995, that is, in a controlled manner, and that such control "[...] is oriented to ensure environmental values and quality of life [...]" (STF, 2015), protecting the environment and the quality of life, while the federal legislation under attack allows society to explore products relevant to the economy and modern social life, defending the inexistence of "[…] sufficient scientific diagnosis, attesting to the demonstrably harmful effects of the use of the material as permitted by the federal legislator" (STF, 2015).

In this ADI, *amicus curiae* were also heard, including ABIFIBRO (event 26), IBC (event 30), the Brazilian Association of the Industry of Alkali, Chlorine and Derivatives (ABICLOR) (event 08), ABREA (event 39), the Legislative Assembly of the State of Pernambuco (event 43), the National Confederation of Industry Workers (CNTI) (event 56), the Unified Union of Oil Workers, Petrochemicals and Plastics in the States of Alagoas and Sergipe (SINDIPETRO AL/SE) (event 64), the state of Goiás (event 102), the Union of Workers in the Non-Metallic Mineral Extraction Industry of Minaçu-GO (event 105), the Legislative Assembly of the State of São Paulo (event 129), the state of São Paulo (event 169), the Brazilian Mining Institute (IBRAM) (event 227), the Federation of Industries of the State of Bahia (FIEB) (event 263), the Federation of Industries of the State of Alagoas (FIEA) (event 263), and CFOAB (event 263).

In August 2017, ADI No. 4066/DF was upheld, but without pronouncing unconstitutionality, for not having reached the quorum of art. 97, of the Federal Constitution, removing the binding effectiveness[15] of this judgment. From the analysis of the vote of the Rapporteur Justice Rosa Weber, it is clearly recognized that there are limits to jurisdictional cognition and that the decision of the Constitutional Court must be based on the conclusions of the scientific community, considering the state of the art at the time

15 Thus: "[…] The Court, by majority, acknowledged the action, recognizing the active legitimacy of the plaintiffs, defeating Justices Alexandre de Moraes and Marco Aurélio. On merit, the Court computed five votes (from Justices Rosa Weber [Rapporteur], Edson Fachin, Ricardo Lewandowski, Celso de Mello and Cármen Lúcia) for the merits of the action, and four votes (from Justices Alexandre de Moraes, Luiz Fux, Gilmar Mendes and Marco Aurélio) for the dismissal of the action, and for not having reached the quorum required by art. 97 of the Constitution, the unconstitutionality of art. 2 of Law 9,055/1995, in a judgment devoid of binding effectiveness. Justices Roberto Barroso and Dias Toffoli were impeded. Justice Gilmar Mendes was absent, justifiably. Justice Carmen Lúcia presided over the trial. Plenary, 8.24.2017 […] (STF, 2015).

of the judgment. The STF is solely responsible, based on this knowledge, to decide whether the controlled use of chrysotile is reconciled with the objectives and values set forth in the Federal Constitution of 1988:

> […] it is not the role of this Supreme Court, when examining this action, to decide on the harmfulness of exposure to chrysotile asbestos, nor on the feasibility of its safe economic exploitation. Belonging to the field of empirical reality, the answers to such questions are accessible through technical and scientific investigation. Along the same lines, it is not the Court's responsibility to assess whether this or that study presented is correct, since judgments of a technical-scientific nature on questions of fact are beyond its jurisdiction. […]
>
> In this ADI 4066, supported by significant and numerous technical inputs indicative of the presence of consensus on the dimension of the negative effects, from the point of view of public health and the environment, of the use of chrysotile asbestos, the Court is called to rule on the following question: if, in view of what the current medical and scientific consensus affirms – which cannot be disregarded at all –, the extraction of chrysotile asbestos, as well as its industrial and commercial exploitation, as authorized by Law No. 9,055/1995, is compatible with the political choice, made by the Constituent Power, of ensuring, to all Brazilians, the rights to health and to the enjoyment of an ecologically balanced environment (STF, 2017c, p. 9-11).

When rescuing the STF's jurisprudence on the matter, the Rapporteur highlighted that, until the judgment of ADI No. 3937/SP, the Constitutional Court's understanding was that the questioned provision was "[…] the normative source authorizing the exploitation of chrysotile asbestos […]" (STF, 2017c, p. 17), therefore, state laws prohibiting the exploitation, use, transport or commercialization of asbestos in their respective territories were declared unconstitutional for exceeding the constitutionally defined supplementary jurisdiction, as in the case of ADIs No. 2396/MS and No. 2656/SP. However, the judgment of ADI No. 3937/SP, "[…] represented an evident overruling of the jurisprudence then established on the matter […]" (STF, 2017c, p. 21), making it clear that the purpose of social development is linked to social progress, so it is "[…]unacceptable to have social progress and collective well-being as obstacles to economic development when they constitute their own ends […]" (STF, 2017c, p. 25).

## 6 THE SCIENTIFIC CONSENSUS ON THE DAMAGE OF ASBESTOS TO HUMAN HEALTH AS PROTECTION OF THE INTERPRETATIVE PARAMETER: OVERRULING

The case study of ADIs No. 3937/SP and No. 4066/DF demonstrate a shift in the STF's interpretation of the asbestos issue: in 2003, the Court's

position was to declare the unconstitutionality of state laws that prohibited the sale of products containing asbestos, as they were contrary to Law No. 9055/1995. More recently, there has been a change in the STF's understanding of the issue.

The testimony of various specialists on asbestos, of the most diverse nuances, together with the Court's position of recognition that it was not acting in a matter of its expertise, were fundamental in recognizing the mismatch between Federal Law No. 9055/1995 and the constitutional text. In addition, the normative force of the Constitution, prescribed by Konrad Hesse (1991), was duly recognized by the STF in the judgment of the studied ADIs.

Scientific advances have demonstrated to the Constitutional Court that the use of asbestos, even in a controlled manner (chrysotile), is no longer consistent with the protection of the fundamental right to health, declared in the constitutional text. What, in 2003, at the time of the judgments of ADIs No. 2656 and No. 2396, the STF understood to be unconstitutional, nowadays is no longer so.

From the lessons of Hesse (1991), despite the impersonality of scientific knowledge, it can be understood as a real force of power, subject to appropriation by sectors of society that seek to support their concerns. It is worth remembering that the preservation of the constitutional text is nothing more than its ability to resist time and this property derives exactly from its normative force.

As we have seen in the cases studied, the STF listened to *amicus curiae* from the two specters involved, and it is only up to the Constitutional Court to choose the one that best fits the text of our Constitution. In this step, the STF revised its understanding on the use of asbestos, admitting the occurrence of an unconstitutionalization process[16] of art. 2 of Law No. 9055/1995. During this process, the Court superseded the state norm in detriment to the federal norm, since the former provided more adequate protection to health and the environment and, therefore, was more in line with the constitutional text.

16 According to the Rapporteur, given the open nature of the causes of action in concentrated constitutional review actions, the Constitutional Court can re-examine, reconsider and redefine its own decisions, and may go beyond what it previously judged, "[…] if it is understood that, due to hermeneutic evolution, such decision is no longer consistent with the current interpretation of the Constitution […]" (STF, 2006), including the declaration of unconstitutionality of any normative act.

## FINAL CONSIDERATIONS

The analysis of the judgments of ADIs No. 3937/SP and No. 4066/DF shows that the use of chrysotile asbestos, allowed in a controlled manner by Federal Law No. 9055/1995, was overruled by the STF. This change was fundamentally due to the appropriation of technical-scientific knowledge, included in the court records through public hearings, opinions and specialized research on the issue. Equally decisive in the cases analyzed was the recognition by the judges of the need for legal knowledge to be supported by technical-scientific knowledge, freeing decisions from arbitrariness and guaranteeing the excellence of the jurisdictional function, with responsibility and quality.

In this judgment, it was possible to observe that the federal law did not follow the constitutional evolution, losing conformity with the values and objectives of the Federal Constitution. Due to this circumstance, the States acquired full legislative competence on the matter, until new federal legislation on the subject is published.

It is a correct solution to the issue of chrysotile asbestos exploitation, whose main vector is the right to health of a specific vulnerable group: workers of this industrial sector and who are exposed to the harmfulness of the aforementioned mineral. The Rapporteur clarified that the fundamental right to free enterprise does not prevent the State from carrying out impositions, conditions and limits for the exploration of private activities, as in the case of chrysotile exploration, aiming to make free enterprise and progress compatible with other principles, rights and fundamental guarantees, such as the right to health and environmental preservation.

The public hearing held during the instruction of ADI No. 3937/SP showed that there is already a scientific consensus about the harmfulness of chrysotile asbestos. Among the contributions noted by the Justice, we highlight those of the Ministry of Health[17], of the Ministry of the Environment[18], of the physician and researcher René Mendes, specialist in public health and occupational medicine, defender of the inexistence of safe or controlled management of asbestos, which was corroborated by the Oswaldo Cruz Foundation (Fiocruz) researcher Hermano Albuquerque de

17 The Ministry of Health recommended the elimination of any form of use of chrysotile asbestos throughout national territory, as the mineral's carcinogenic potential is indisputable, and that Brazil already has the technology to replace it without further compromise.

18 The Ministry of the Environment highlighted the difficulties in carrying out the disposal of asbestos waste.

Castro, who stated that there is no longer any doubt that all asbestos varieties cause cancer, and that it was such a finding that influenced its ban in more than 36 (thirty-six) countries.

The ADI No. 4066/DF Rapporteur then formed the conviction[19] that "[…] at the current stage, the accumulated scientific knowledge allows us to affirm, beyond reasonable doubt, the harmfulness of chrysotile asbestos to human health and the environment […]" (STF, 2017c, p. 39), having concluded that art. 2 of Law No. 9055/1995, in view of the deficiency in the protection of fundamental rights to health and the environment, since the aforementioned provision disregards that the "[…] accumulated scientific knowledge on the extent of the harmful effects of asbestos on health and the environment […]", in addition to characterizing "[…] evidence of the ineffectiveness of the control measures contemplated therein […]" (STF, 2017c, p. 45), since Brazil remained inert, even after ratifying international treaties in which it committed to the gradual extinction of the use of asbestos.

From the scientific consensus on the harmfulness, both to human health and the environment, the STF was able to conclude that the risks posed by the extraction, exploitation, processing, use, transport or commercialization of chrysotile asbestos are incompatible with the values and objectives contained in the Brazilian Constitution, since the case of chrysotile reverberates in the protection of human dignity, affecting the valuation of human work, the preservation of the environment and the health of those who work directly with asbestos, as well as those who consume the products that contains it.

The hermeneutic evolution observed in the cases studied required the articulation of factual reality – obtained through technical-scientific knowledge – and legal knowledge, with caution and attention to social transformations and/or evolution of scientific knowledge. The Brazilian Constitutional Court decided that there is no need to talk about free enterprise, free trade, economic progress, full employment, when the fundamental right to health – especially the fundamental right of a specific vulnerable group, that is, those people who work directly with chrysotile – is at a risk foretold. This hermeneutic evolution allowed the STF to reassess

19 It should also be noted that the Rapporteur asserted the incompatibility of Law n. 9055/1995 with the Basel Convention and Conventions No. 139 and No.162, the latter of the International Labor Organization (ILO), since Law No. 9055/1995 does not impose the progressive reduction of asbestos-containing waste, does not determine the replacement of the use of the mineral, nor does it provide mechanisms for periodic review and updating of health risk control strategies.

its previous decisions on the use of chrysotile asbestos in Brazil, based on the consensus on the profound harmfulness of asbestos, enabling the change of the jurisprudential parameter, that is, the overruling under study.

By recognizing the damage to fundamental rights such as health and an ecologically balanced environment, brought about by the legal permissive contained in Law No. 9,055/1995, the STF had no other understanding but to admit that such federal rule went through a process of unconstitutionalization, which is why the state laws contrary to it are more protective of the dignity of the human person, and should, therefore, prevail over Law No. 9055/1995, last safeguard of the possibility of using asbestos in Brazil.

## REFERENCES

AUDIÊNCIA Pública Amianto: 24/08/2012 (1/4). [*S. l.: s. n.*], 2012a. 1 vídeo (103 min). Publicado pelo canal STF. Available from: https://www.youtube.com/watch?v=qvVgf_pSTnY. Access on: Dec. 07, 2017.

AUDIÊNCIA Pública Amianto: 24/08/2012 (2/4). [*S. l.: s. n.*], 2012b. 1 vídeo (50 min). Publicado pelo canal STF. Available from: https://www.youtube.com/watch?v=vKe8d6Zrfjg. Access on: Dec. 07, 2017.

AUDIÊNCIA Pública Amianto: 24/08/2012 (3/4). [*S. l.: s. n.*], 2012c. 1 vídeo (136 min). Publicado pelo canal STF. Available from: https://www.youtube.com/watch?v=U3DRJxPp_fs. Access on: Dec. 07, 2017.

AUDIÊNCIA Pública Amianto: 24/08/2012 (4/4). [*S. l.: s. n.*], 2012d. 1 vídeo (108 min). Publicado pelo canal STF. Available from: https://www.youtube.com/watch?v=mwnVI3nxDNo. Access on: Dec. 07, 2017.

BARROSO, L. R. *Curso de Direito Constitucional contemporâneo:* os conceitos fundamentais e a construção do novo modelo. 2. ed. São Paulo: Saraiva, 2010.

BOBBIO, N. *A era dos Direitos.* 7. ed. Rio de Janeiro: Campus Elsevier, 2004.

BRASIL. *Lei n. 9.055, de 1º de junho de 1995.* Disciplina a extração, industrialização, utilização, comercialização e transporte do asbesto/amianto e dos produtos que o contenham, bem como das fibras naturais e artificiais, de qualquer origem, utilizadas para o mesmo fim e dá outras providências. Brasília, DF: Diário Oficial da União, 1995. Available from: http://www.

planalto.gov.br/ccivil_03/leis/L9055.htm. Access on: Dec. 6, 2017.

BRASIL. Presidência da República. Casa Civil. Subchefia para Assuntos Jurídicos. *Constituição Federal de 1988.* Brasília, DF: Diário Oficial da União, 1988. 130 p. Available from: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm. Access on: Dec. 07, 2017.

FUNDAÇÃO OSVALDO CRUZ. *Entrevista com Hermano Castro*. [Rio de Janeiro]: ENSP/FIOCRUZ, 2017. Available from: https://portal.fiocruz.br/pt-br/content/entrevista-hermano-castro-comenta-o-banimento-do-amianto-no-brasil. Access on: Dec. 6, 2017.

FREITAS FILHO, R.; LIMA, T. M. Metodologia de Análise de Decisões*: MAD. Univ. JUS*, Brasília, n. 21, 2010.

FREITAS, W. R. S.; JABBOUR, C. J. C. Utilizando o estudo de caso como estratégia de pesquisa qualitativa: boas práticas e sugestões. *Revista Estudo e Debate*, Lajeado, v. 18, n. 2, p. 07-22, 2011.

HESSE, K. *A Força Normativa da Constituição.* Porto Alegre: Sergio Antonio Fabris Editor, 1991.

MARTIN-CHENUT, K.; SALDANHA, J. O caso do amianto: os limites das soluções locais para um problema de saúde global. *Lua Nova*, São Paulo, n. 98, p. 141-171, maio/ago. 2016.

OMS – ORGANIZAÇÃO MUNDIAL DA SAÚDE. *Amianto.* Genebra: OMS, 2017. Available from: http://www.who.int/ipcs/assessment/public_health/asbestos/es/. Access on: 6 dez. 2017.

OMS – ORGANIZAÇÃO MUNDIAL DA SAÚDE. *Constituição Mundial da Saúde.* Genebra: 1946. Available from: www.direitoshumanos.usp.br/index.php/OMS-Organização-Mundial-da-Saúde/constituicao-da-organizacao-mundial-da-saude-omswho.html. Access on: Dec. 07, 2017.

OIT – ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. *Convenção n. 139.* Aprova o texto da Convenção n. 139, da Organização Internacional do Trabalho, (OIT), sobre a prevenção e o controle de riscos profissionais causados pelas substâncias ou agentes cancerígenos. [Brasília, DF]: Diário Oficial da União, 1991a. 5 p. Available from: http://www.trtsp.jus.br/geral/tribunal2/LEGIS/CLT/OIT/OIT_139.html. Access on: Jan. 24, 2018.

OIT – ORGANIZAÇÃO INTERNACIONAL DO TRABALHO.

*Decreto n. 126, de 22 de maio de 1991*. Promulga a Convenção n. 162, da Organização Internacional do Trabalho – OIT, sobre a Utilização do Asbesto com Segurança. [Brasília, DF]: Diário Oficial da União, 1991b. Available from: http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0126.htm. Access on: Jan. 24, 2018.

SÃO PAULO (Estado). *Lei n. 12.684, de 26 de julho de 2007*. Proíbe o uso, no Estado de São Paulo de produtos, materiais ou artefatos que contenham quaisquer tipos de amianto ou asbesto ou outros minerais que, acidentalmente, tenham fibras de amianto na sua composição. São Paulo: MPSP, 2007. Available from: http://www.mpsp.mp.br/portal/page/portal/cao_consumidor/legislacao/leg_produtos_geral/leg_pg_asbesto/448FF05F6B-392FEBE040A8C02C013604. Access on: Dec. 8, 2017.

SILVA, E. M. O Estado Democrático de Direito. *Revista de Informação Legislativa*, Brasília, DF, v. 42, n. 167, p. 213-229, jul./set. 2005. Available from: http://www2.senado.leg.br/bdsf/item/id/794. Access on: Dec. 07, 2017.

SILVA, J. A. *Curso de Direito Constitucional Positivo.* 31. ed. rev. atual. São Paulo: Malheiros, 2008.

STRECK, L. L. *Hermenêutica jurídica e(m) crise*: uma exploração hermenêutica da construção do Direito. Porto Alegre: Livraria do Advogado, 1999.

STF – SUPREMO TRIBUNAL FEDERAL. *ADI 3.937, rel. p/ o ac. min Dias Toffoli, j. 24-8-2017, P, Informativo 874.* Brasília, DF: STF, 2017a. 6 p. Available from: http://www.stf.jus.br/portal/constituicao/artigobd.asp?item=%201814. Access on: Dec. 07, 2017.

STF – SUPREMO TRIBUNAL FEDERAL. *Ação Direta de Inconstitucionalidade n. 3.937*. Brasília, DF: STF; MPF; PGR, 2011. 16 p. Available from: http://www.mpf.mp.br/pgr/documentos/ParecerADI3937_amianto_sp.pdf. Access on: Dec. 07, 2017.

STF – SUPREMO TRIBUNAL FEDERAL. *Ação Direta de Inconstitucionalidade 4.066 Distrito Federal*: Voto Senhora Ministra Rosa Weber (Relatora). Brasília, DF: STF, 2017c. 49 p. Available from: http://www.abrea.com.br/images/tranning/VOTO_ADI_4066_Rosa_Weber.pdf. Access on: Jan. 25, 2018.

STF – SUPREMO TRIBUNAL FEDERAL. *ADI 2396:* Relator: Min Ellen Gracie. Assunto: Amianto – Proibição – Lei 2.210/01 – MS. Brasília, DF: STF, 2001. Available from: http://redir.stf.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=1900150. Access on: Jan. 24, 2018.

STF – SUPREMO TRIBUNAL FEDERAL. *ADI 2656:* Relator Min. Maurício Corrêa. Assunto: Amianto – proibição – Lei 10.813/01 art. 1º a 8º SP. Brasília, DF: STF, 2002. Available from: http://redir.stf.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=2019351. Access on: Jan. 24, 2018.

STF – SUPREMO TRIBUNAL FEDERAL. *ADI 4.066:* Relator: Min. Rosa Weber: Assunto: Comercialização sem Restrições de Produtos Industrializados. Brasília, DF: STF, 2015. Available from: http://redir.stf.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=2607856. Access on: Dec. 26, 2017.

STF – SUPREMO TRIBUNAL FEDERAL. *Consulta Processual:* ADI 3937 – Controle de Constitucionalidade, Fiscalização. Brasília, DF: STF, 2013. Available from: http://redir.stf.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=2544561. Access on: Dec. 07, 2017.

STF – SUPREMO TRIBUNAL FEDERAL. *Reclamação n. 4.374-PE*. Relator atual: Min. Gilmar Mendes. Brasília, DF: STF, 2006. 7 p. Available from: http://portal.stf.jus.br/processos/detalhe.asp?incidente=2382733. Access on: Jan. 17, 2018.

STF – SUPREMO TRIBUNAL FEDERAL. *Voto-Vista Ministro Dias Toffoli – ADI 3937 – SP.* Brasília, DF: STF, 2017b. 27 p. Available from: http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/votoDTamianto.pdf. Access on: Dec. 26, 2017.

UNICEF – FUNDO DAS NAÇÕES UNIDAS PARA A INFÂNCIA. Assembleia Geral das Nações Unidas: *Declaração Universal dos Direitos do Homem.* [*S. l.*]: UNICEF, 1948. Available from: https://www.unicef.org/brazil/pt/resources_10133.htm. Access on: Dec. 07, 2017.

YIN, R. K. *Estudo de caso:* planejamento e métodos. 2. ed. Porto Alegre: Bookman, 2001.

Article received on: 01/07/2020.
Article accepted on: 06/28/2021.

**How to cite this article (ABNT):**
SILVA, A. S.; MAIA, M. The Supreme Court and the use of asbestos in Brazil: case study of ADIs No. 3,937/SP and No. 4.066/DF. *Veredas do Direito*, Belo Horizonte, v. 18, n. 41, p. 247-270, may/aug. 2021. Available from: http://www.domhelder.edu.br/revista/index.php/veredas/article/view/1751. Access on: Month. day, year.