

Attorney General Says Brazil's Biosecurity Law Is Unconstitutional

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Brazil's Federal Supreme Court (STF) received a petition of Direct Action of Unconstitutionality (ADI) challenging more than 20 provisions of the Biosecurity Law, which regulates and monitors activities and research involving genetically modified organisms (GMOs) and their derivatives.

The action, proposed by the attorney-general of the Republic, Cláudio Fonteles, questions the authority assigned to the National Technical Commission on Biosecurity (CNTBio), linked to the Ministry of Science and Technology, in relation to transgenics.

According to the law that is being contested, it would be up to this commission "to decide, in the ultimate and determining instance, on cases in which the activity is potentially or effectively the cause of environmental degradation, as well as the need for environmental licensing."

Fonteles argues that this authority contradicts the Constitution, which makes the Federal Government, states, the Federal District, and municipalities responsible for protecting the environment and combating pollution in any of its forms.

The attorney-general believes that municipalities and states should not be required to ask the Federal Government for authorization to apply instruments of the National Environmental Policy, including environmental licensing.

In Fonteles' view, the law undermines the National Environmental System (Sisnama) and the process of environmental licensing, because it dispenses with the Advance Environmental Impact Study (EIA), which becomes a responsibility of the CNTBio, which is not connected to the System.

According to Fonteles, the law deprives the Brazilian Institute of Environment and Renewable Natural Resources (Ibama) of the authority to analyze the implications of permitting the cultivation of transgenic seeds, since it would be up to the CNTBio to issue licenses.

Fonteles also said that the Biosecurity Law nullifies the efficacy of the National Environmental Policy Law and abrogates the normative jurisdiction of the National Environmental Council (Conama) by making the licensing of genetically modified organisms contingent upon a prior value judgment by the CNTBio.

"It will no longer be the nature of the activity pursued by the entrepreneur that will determine the effectuation of a licensing process, but, rather, the opinion of a technical commission linked to the Ministry of Science and Technology on the environmental impacts of genetically modified organisms (GMOs)," Fonteles explained.

This is the second Direct Action of Unconstitutionality brought by the attorney-general of the Republic against the Biosecurity Law. On May 30, another ADI was filed contesting the use of human embryonic stem cells for research and therapy.

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