Revista ARACÊ
ISSN: 2358-2472

PLURALIST AND PROCEDURAL INTERPRETATION OF THE CONSTITUTION AND ITS RELATIONSHIP WITH HUMAN RIGHTS FROM THE MONIST THEORY

https://doi.org/10.56238/arev7n1-234

Submission date: 12/29/2024 **Publication date:** 01/29/2025

Victor Hugo Barboza Chalub[1], Guiomar Rocha Pereira Magalhães Bittencourt[2], Clara Rodrigues de Brito[3] and Lidiana Costa de Sousa Trovão[4]

ABSTRACT

This research aims to analyze the pluralist and procedural interpretation of the Constitution and its relationship with the protection of human rights, from the perspective of Hans Kelsen's monist theory. Kelsen's monist theory defends the idea that the legal system is a hierarchical set of norms, culminating in a fundamental norm (Grundnorm), which confers validity to all other norms in the system. In the context of constitutional interpretation, this perspective emphasizes the unity and coherence of the legal system. This research analyzes how the pluralist and procedural approach to constitutional interpretation can enrich the protection of human rights, respecting the hierarchical structure and normative coherence defended by Kelsen's monist theory. It will investigate how constitutional courts fulfill their role as guardians of the Constitution, ensuring that infra-constitutional norms are aligned with constitutional principles and internationally recognized human rights. In addition, specific cases and international comparisons will be examined to illustrate the practical application of these interpretative approaches and their impact on the protection of human rights. This research seeks to contribute to a deeper understanding of the dynamics between different methods of constitutional interpretation and the protection of human rights, within the context of monist theory, providing a critical and comparative analysis that can inform future legal and legislative practices.

[1] Master in Sustainable Environmental Systems from the University of Vale do Taquari; Master in Legal and Political Sciences from the Universidade Portucalense Infante D. Henrique (UPT); PhD candidate in Economic enterprises, development, and social change at UNIMAR; Notary of the 2nd Notary Office of Notes, Protests, Titles and Documents and Civil Registry of Legal Entities of Goianésia-GO.
Lattes: http://lattes.cnpq.br/0562418899867386

[2] Master in Legal and Political Sciences from the Universidade Portucalense Infante D. Henrique (UPT) and in Sustainable Environmental Systems from the Universidade Vale do Taquari (Univates). PhD candidate in Economic enterprises, development, and social change at UNIMAR. Specialist in Notary and Registry Law (Uniderp), Specialist in Public Law with Higher Education (Uniderp), and graduated in Law from the Federal University of Alagoas (UFAL). Notary Public and Real Estate Registry Officer of the 7th Extrajudicial Office of Imperatriz-MA.

[3] PhD in Law – Economic Enterprises, Development, and Social Change – from the University of Marília – UNIMAR; Master in Law – Economic Enterprises, Development, and Social Change – from the University of Marília – UNIMAR; Master in Legal and Political Sciences from the Universidade Portucalense Infante D. Henrique – (credits completed); Coordinator and Professor of the Lato Sensu Postgraduate Center of SVT Faculdade. Professor at the State University of Maranhão – UEMA.
Lattes: http://lattes.cnpq.br/6395956349800702

[4] PhD and Master in Law – Economic Enterprises, Development and Social Change – from the University of Marília – UNIMAR; Post-doctorate in progress from the University of Marília/SP; Specialist in Civil Law and Civil Procedural Law from UNIDERP/ANHANGUERA (Campo Grande/MS); Graduated in Law from the Federal University of Maranhão – UFMA; Bachelor in History (UEMA). She was a PROSUP/CAPES scholarship holder during her Master's and Doctorate degrees. She has been a professor in higher education since 2013 and is currently a tenured professor at the State University of Maranhão – UEMA.
Lattes: http://lattes.cnpq.br/0447378714381744

Revista ARACÊ
ISSN: 2358-2472

Keywords: Human Rights. Pluralist and Procedural Interpretation of the Constitution. Pluralism. Constitutional Principles. Monist Theory.

Revista ARACÊ
ISSN: 2358-2472

INTRODUCTION

This research aims to analyze the pluralist and procedural interpretation of the Constitution and its relationship with the protection of human rights, from the perspective of Hans Kelsen's monist theory. Kelsen's monist theory defends the idea that the legal system is a hierarchical set of norms, culminating in a fundamental norm (Grundnorm), which confers validity to all other norms in the system. In the context of constitutional interpretation, this perspective emphasizes the unity and coherence of the legal system.

The first chapter, Monist Theory, and Hans Kelsen's International Legal Philosophical Thought explores the foundations of monist theory, highlighting how Kelsen conceives the hierarchical structure of law and the importance of the fundamental norm. Kelsen's contributions to international legal philosophical thought and his influence on legal theory will be examined.

In the second chapter, Compatibility between Monism and Legal Pluralism, the research investigates how Kelsen's monist theory can be compatible with the pluralist interpretation of law. The possible synergies between a unified view of law and the coexistence of multiple interpretative approaches will be discussed, considering the implications for legal theory and practice.

The third chapter, Pluralist Interpretation, and Human Rights analyzes how a pluralist approach to constitutional interpretation can enrich the protection of human rights. It will examine the benefits of incorporating diverse interpretative perspectives in the promotion and guarantee of human rights while respecting the normative coherence advocated by monist theory.

The fourth chapter, Interpretative Procedures in the Brazilian Constitution, focuses on the methods and processes used to interpret and apply the Brazilian Constitution. It will explore the interpretative procedures adopted by Brazilian constitutional courts and their compliance with the principles of monist theory and the protection of human rights.

Throughout the research, it will investigate how constitutional courts perform their role as guardians of the Constitution, ensuring that infra-constitutional norms are aligned with constitutional principles and internationally recognized human rights. Specific cases and international comparisons will be examined to illustrate the practical application of these interpretative approaches and their impact on the protection of human rights.

This research seeks to contribute to a deeper understanding of the dynamics between different methods of constitutional interpretation and the protection of human

Revista ARACÊ
ISSN: 2358-2472

rights, within the context of monist theory. The critical and comparative analysis aims to inform future legal and legislative practices, providing valuable insights for the development of constitutional and international law.

MONIST THEORY AND THE INTERNATIONAL LEGAL PHILOSOPHICAL THOUGHT OF HANS KELSEN

Hans Kelsen, one of the most influential legal theorists of the 20th century, developed the pure theory of law, which is the basis of legal monism. Kelsen's monist theory defends the idea that there is a hierarchy of legal norms, culminating in a fundamental norm (Grundnorm). In the context of constitutional interpretation, Kelsen offers a unique and rigorous perspective that emphasizes the unity and coherence of the legal system.

Kelsen's monist theory is based on three main pillars. First, the hierarchy of norms, where each norm derives its validity from a higher norm until it reaches the fundamental norm. Second, the fundamental norm (Grundnorm), which is a hypothetical basis conferring validity on all other norms in the system. This norm is not written, but a necessary presupposition for the validity of the legal system. Third, is the unity of the legal system, where Kelsen argues that international law and domestic law are part of a single legal system, with international law occupying the superior position in the normative hierarchy. According to Maliska (2022, p. 13): Without seeking to disregard the importance of these two theories in understanding the insertion of national orders in the context of international society, they contribute little to understanding the current stage of the debate in the field of constitutional law regarding the delimitation of the degree of openness of the Constitution. Of course, we are also discussing here the relationship between the national (constitutional) legal order and the international legal order. However, rather than taking sides between one of the two theories, it is perhaps essential to understand the place of the Constitution as a fundamental statute that confers democratic legitimacy on the legal order in the context of the opening of this Constitution itself to the international order.

Thus, in constitutional interpretation, Kelsen insists that norms must be interpreted according to their position in the legal hierarchy. Ideas and their relationship with the fundamental norm. For him, constitutional courts are the guardians of the Constitution, responsible for ensuring that infra-constitutional norms are by the Constitution, which, in turn, derives its validity from the fundamental norm. Kelsen's approach to interpretation is

Revista ARACÊ
ISSN: 2358-2472

formalist and scientific, avoiding extra-legal influences and focusing on the internal logic of the legal system (Portela, 2017).

The hierarchy of international norms can be analyzed from the perspective of two main theories: the monist theory and the dualist theory. The monist theory advocates the unity of the system of International Law and the domestic Law of the country, while the dualist theory understands that there are two distinct legal orders, the international and the domestic (Martins, 2024).

For the defenders of the dualist doctrine, international law and domestic law are two distinct, independent, and separate systems that are not confused. They emphasize that, while international law regulates relations between states, domestic law aims to regulate relations between individuals.

Furthermore, they argue that international law depends on the common will of several states, while domestic rights are the result of the unilateral will of each state. Consequently, international law would not create direct obligations for individuals unless its rules are incorporated into domestic law (Accioly, 2019).

The monist doctrine, on the other hand, is not based on the will of states, but rather on a higher standard. For monists, the law is unique, whether it applies to the internal relations of a state or international relations. Within the monist strand, there are two opposing positions: some argue that, in case of doubt, international law should prevail, supporting the thesis of the primacy of international law; others, however, defend the thesis of the primacy of domestic law. It is important to examine each of these positions to understand their implications and foundations.

According to Araújo (2016), the dualist theory, as outlined by Triepel, asserted the existence of two distinct systems: the international legal order and the domestic legal order. Domestic law consisted of the set of rules established by the State in the national community, regulating relations between private individuals and between the State and these individuals.

International Law exclusively addressed relations between States, considering them equal. Private parties were excluded from this system, since only States, in a coordinated manner, were subjects of International Law for relations distinct from those of domestic law (Araújo, 2016).

Revista ARACÊ
ISSN: 2358-2472

There was therefore no "competition" between these rules of different origins. For Triepel, the difference between the two systems resided in their legal sources. While domestic law originated from the will of the State, in the international sphere, this source derived from a collective will of the States, and the legislation of a given State could not bind the other members of the international community (Araújo, 2016).

Triepel concluded that, in this system, it was necessary to transpose the rule of international origin to the domestic system using a legislative manifestation, which only then transformed it into a domestic rule. The reception of the norm of international law in domestic law did not occur directly, but after undergoing a process of internalization.

This new act of will of the State, at the domestic level, when accepting norms originating from a treaty, differed from the manifestation of its will at the international level, even though it was often only the transposition of the international norm; only the latter would have internal validity. Even in cases where the reception of the treaty occurred in a simplified form (for example, through mere publication in the Official Gazette), what was binding for the State was the domestic law now published, and not the international treaty that had given rise to it (Araújo, 2016).

Within the monist current, there are two possible interpretations. The first, defended by Haroldo Valladão, maintains that the international order has primacy over domestic law. The second interpretation equates the international norm with domestic law, suggesting that the prevalence of one over the other depends on the chronological order of its creation, that is, domestic law prevails if it is later than the international norm (Martins, 2024).

This debate leads to reflection on the monist and dualist currents. For the monist current, International Law and Domestic Law make up the same and unique legal order. For the dualists, International Law and Domestic Law constitute separate, incommunicable, and distinct orders. Consequently, for the monist current, the act of ratification of the treaty, in itself, radiates legal effects at the international and domestic levels, concomitantly – the ratified treaty is binding on both the international and domestic levels. For the dualist current, ratification only has effects on the international level, and an internal legal act is necessary for the treaty to have effects on the domestic level.

In the monist view, treaties are automatically incorporated on the domestic level, while in the dualist current, incorporation is not automatic. Automatic incorporation is adopted by most European countries, such as France, Switzerland, and the Netherlands; in

Revista ARACÊ
ISSN: 2358-2472

the American continent, by the United States and some Latin American countries; and also by African and Asian countries. This form of incorporation is widely considered to be the most effective and advanced system for ensuring the implementation of international treaties on the domestic level (Piovensa, 2023).

In other monist states, such as Germany or France, for example, ratification of the treaty means automatic internalization. An act similar to the Brazilian executive decree is not required. It is not uncommon for the Executive Branch to send a message to the National Congress requesting approval of a treaty, but then change its mind and do not enact the executive decree (Varella, 2019).

Brazil commits itself to the other parties to the treaty, but the treaty is not valid domestically. When it concerns a treaty that has been approved by the Legislature, the executive decree enacts the treaty. When it concerns a simplified treaty that has not been evaluated by the Legislature, the decree is published by the Executive Branch, by the President of the Republic.

The 1988 Brazilian Constitution is not clear about which theory it adopts, but everything indicates that it adopts the monist theory, according to which a ratified treaty can complement, amend, or revoke domestic law, as long as it is a norm.

At this point, it is worth noting that, according to the dualist theory, an international norm cannot be applied without corresponding domestic regulation. The country must legislate by the international diploma. Amílcar de Castro, a defender of this theory, states that the treaty operates only in the international order, which is independent of the self-applicable national order and is already in force in the international sphere (Martins, 2024).

In its international relations, Brazil is governed by the principle of national independence (art. 4, I), which prevents the coexistence of two legal orders at the same time. § 2 of Art. 5 of the Constitution determines that the rights and guarantees expressed in the Constitution do not exclude others arising from international treaties to which Brazil is a party.

Article 84, section VIII, provides that it is the exclusive competence of the President of the Republic to enter into international treaties, conventions, and acts, subject to a referendum by the National Congress. The international norm is treated as a federal law, since the National Congress has exclusive competence to definitively resolve international treaties (art. 49, I), which is done using a legislative decree, with the nature of federal law (art. 59, VI).

Revista ARACÊ
ISSN: 2358-2472

Article III, item b, section III, Article 102 of the Constitution establishes that the STF is competent to judge, in an extraordinary appeal, cases involving the unconstitutionality of treaties, demonstrating that treaties are hierarchically below the Constitution.

Subparagraph a of section III of article 105 of the constitutional text grants the STJ the competence to judge, in a special appeal, decisions that contradict treaties or deny their validity, indicating that treaties have a hierarchy of federal law. Countries such as Germany, Mexico, Uruguay, the United States, and France also adopted the monist theory.

In the words of Varella (2019, p. 167-168):

> State courts must apply treaties as part of national law. It matters little whether the State is monist or dualist; with the incorporation of the treaty into the domestic legal system, it becomes a norm like any other. In Brazil, federal or state judges must know and apply them internally. This obligation becomes more pressing with the rapid expansion of international standards on topics that were previously exclusively regulated by domestic law. The public administration must also be aware of the internalized treaties, and a decision contrary to the treaty or failure to apply it, in a specific case, may give rise to the international responsibility of the State.

The STF has already ruled that an internal standard after a treaty prevails over the international instrument, even if the latter has not been denounced by Brazil. The court ruled that “treaties concluded by the Federal State have, in our normative system, the same degree of authority and effectiveness as the aforementioned laws” (STF, 2024).

Therefore, the approval of an ordinary law is not necessary for the treaty to be valid in the country. However, it is possible to justify that an international standard has its form of revocation, and denunciation, and can only be changed by another standard of equal or superior category. Superior, international, or supranational, and never by an inferior, internal, or national norm.

If a treaty before the Constitution is contrary to it, the Constitution prevails if it is more recent. If the treaty is after the Constitution, it may be declared unconstitutional, and an extraordinary appeal for such declaration is admissible (art. 102, III, b, of the Constitution).

The relationship between monist theory and constitutional interpretation emphasizes normative coherence and consistency. In constitutional interpretation, it is crucial to ensure that all norms derive their validity from a coherent structure, respecting the normative hierarchy that culminates in the fundamental norm.

Any interpretation that results in contradictions or inconsistencies within the legal system is unacceptable according to monist theory. Constitutional supremacy is maintained

Revista ARACÊ
ISSN: 2358-2472

through rigorous constitutionality control, ensuring that all infra-constitutional norms are aligned with the Constitution.

In practice, this approach can be seen in decisions by constitutional courts in countries such as Germany and Austria, where these courts, influenced by Kelsen, have played an active role in interpreting and ensuring constitutional supremacy.

They ensure that infra-constitutional norms are aligned with the Constitution, maintaining the coherence of the legal system. Furthermore, the incorporation of human rights norms from international law into domestic law exemplifies the practical application of the monist theory, where such norms can have a direct effect, without the need for separate legislative incorporation, as long as they conform to the hierarchical structure of the legal system.

Kelsen's monist theory provides a clear and coherent framework for constitutional interpretation, ensuring the unity and hierarchy of legal norms. Kelsen's approach ensures that constitutional interpretation respects the supremacy of the Constitution and maintains the integrity of the legal system as a whole, with constitutional courts playing a crucial role in applying this scientific and formalist methodology.

COMPATIBILITY BETWEEN MONISM AND LEGAL PLURALISM

The pluralist interpretation of the Constitution recognizes the coexistence of multiple interpretative approaches that can be used to give meaning to constitutional norms. This approach contrasts with the monist view by accepting the diversity of possible interpretations within the same legal system, allowing greater flexibility in the application of constitutional norms.

The procedural interpretation focuses on the methods and processes used to interpret and apply the Constitution, emphasizing the importance of clear and consistent procedures to ensure the legitimacy and fairness of legal decisions.

The internal application of International Law does not imply, in all cases, the exclusion of norms from the legal system of a given State. International Law often addresses issues also regulated by domestic law (Mazzuli, 2020).

It is worth mentioning that monism has its variations, and, thus, radical monism establishes the primacy of international treaties over the domestic legal system. On the other hand, moderate monism hierarchically equates treaties with ordinary laws, subordinating them to the Federal Constitution. In the event of a conflict between

Revista ARACÊ
ISSN: 2358-2472

international and domestic norms, the chronological criterion is used to resolve the antinomy (Teixeira, 2020).

Due to the plurality of interpretations of theories of International Law, the incorporation mechanism, and the hierarchical status of treaties in the Brazilian legal system, it is necessary to identify two distinct moments.

The first is the incorporation of international sources into the domestic legal system. Since the 1970s, with the judgment of RE 71.154, the Brazilian Supreme Federal Court has affirmed the adoption of a form of moderate dualism by Brazil (Teixeira, 2020).

The analysis of the 1988 constitutional text (articles 84, VIII, and 49, I, of the Federal Constitution) consolidates this understanding by explicitly stating the mandatory participation of the Executive and Legislative Branches in the insertion of international norms into the national legal system. This understanding was reaffirmed in decisions such as the ruling in Letter Rogatory 8,279 (Teixeira, 2020).

Brazil adopts a model that requires the joint participation of the Executive and Legislative Branches for the incorporation of international standards, following a moderate dualism that subordinates treaties to the Federal Constitution and resolves normative conflicts based on the chronological criterion.

What has been happening is the expansion of interpretation in Brazil given the strengthening of the Judiciary and Constitutional Jurisdiction by the 1988 Constitution, especially due to the complex mechanisms of constitutionality control and the vigorous effects of its decisions, such as the erga omnes and vinca effects. Lanes, added to the inertia of the Political Powers in fully implementing the constitutional norms, new interpretative techniques have expanded the jurisdictional action in areas traditionally belonging to the Legislative and Executive Powers.

According to Moraes (2023), it is worth highlighting the possibility of the Supreme Federal Court granting interpretations of the Constitution, declarations of nullity without reducing the text, and, more recently, with Constitutional Amendment No. 45/04, the constitutional authorization to issue, ex officio, Binding Precedents.

These not only deal with the validity and effectiveness of the legal system but also with its interpretation, often allowing the transformation of the Supreme Court into a true positive legislator. This occurs by completing and specifying undetermined principles and concepts of the constitutional text, or even by shaping its interpretation with a high degree of subjectivity.

Revista ARACÊ
ISSN: 2358-2472

Judicial activism, an expression first used in 1947 by Arthur Schlesinger Jr. in an article about the US Supreme Court, has become an extremely relevant topic in Brazilian law, not only regarding its possibility but mainly regarding its limits. There is much controversy about the practice of judicial activism, including regarding its conceptualization (Moraes, 2023). Judicial activism would be “a philosophy regarding judicial decision-making through which judges allow their decisions to be guided by their personal opinions about public policies, among other factors” (according to Black’s Law Dictionary). Some North American legal scholars point to this practice as something that, at times, indicates ignorance of precedents, allowing violations of established principles. Hence the importance of clarifying the context (domestic or international) in which a lawsuit is initiated and which norm is hierarchically superior (domestic or international) in the application of a specific case. It is important to remember Article 27 of the 1969 Vienna Convention on the Law of Treaties, which expressly enshrines the supremacy of international law over domestic state law, by prohibiting a State from invoking provisions of its domestic law as justification for non-compliance with an international norm (Miranda, 2023).

Therefore, in the event of a conflict between international law and domestic state law before the jurisdiction of a domestic court, the problem is resolved based on the supremacy of international law. In this context, non-compliance with the precepts of international law entails the international responsibility of the offending State.

These are the premises that must be followed by local courts when it comes to the domestic application of norms of public international law, except in the specific case of international norms for the protection of human rights, which guarantee the application of the norm most favorable to the human being, whether international or domestic, as provided for in the respective treaties (Miranda, 2023).

Apart from this specific case, the problem is resolved by the primacy of international law over domestic law, as this is the only way to give coherence to the system of norms that organizes the international society of States today.

PLURALIST INTERPRETATION AND HUMAN RIGHTS

The conflict between rights and constitutionally protected assets arises from the fact that the Constitution protects a variety of legal assets (such as public health, security, freedom of the press, territorial integrity, national defense, family, elderly people, indigenous people, etc.), which may eventually come into conflict or collision. To resolve

Revista ARACÊ
ISSN: 2358-2472

these conflicts and ensure the applicability of all constitutional norms involved, the doctrine offers several rules of constitutional hermeneutics that assist the interpreter in this task.

The pluralist interpretation of the Constitution recognizes the coexistence of multiple interpretative approaches that can be used to give meaning to constitutional norms.

This approach contrasts with the monist view by accepting the diversity of possible interpretations within the same legal system, allowing greater flexibility in the application of constitutional norms. Procedural interpretation focuses on the methods and processes used to interpret and apply the Constitution, emphasizing the importance of clear and consistent procedures to ensure the legitimacy and fairness of legal decisions. Naturally, there was resistance from various Member States, especially in defense of their constitutional norms and infra-constitutional norms after European norms. However, gradually, States began to accept the prevalence of Community law over domestic law, regardless of their hierarchical level (Varella, 2019). Pluralist interpretation, according to monist theory, refers to the approach that recognizes the existence of multiple interpretative perspectives. tions within the legal system, while maintaining the coherence and unity of the legal system as a whole. From the perspective of monist theory, proposed by jurists such as Hans Kelsen, the legal system is understood as a hierarchy of norms, culminating in a fundamental norm that confers validity to all other norms in the system.

In this context, pluralist interpretation recognizes the diversity of interpretative methods and theoretical perspectives that can be applied in the analysis of legal norms, without compromising the hierarchical structure of the legal system. In other words, although there are different approaches to interpreting the Constitution and other laws, they must all be by the fundamental principles and values established by the fundamental norm.

Within monist theory, it allows for different views and interpretations to coexist in the legal system, as long as they do not contradict the fundamental norm and constitutional principles. This promotes greater flexibility in the application of the law, allowing judicial decisions to reflect different perspectives and understandings on complex legal issues. However, according to Leite and Lessa (p. 169-170):

Pluralism, unlike ethical skepticism, defends the existence of multiple views on all values existing in the cultures and legal systems of each state and that these values may prove to be irreconcilable with each other in certain situations, which would create a disincentive to adherence to and submission to an order of International Law in these situations. The many ways of overcoming this criticism of the legitimacy of International

Revista ARACÊ
ISSN: 2358-2472

Law, whether by attempting to universalize some basic values, in the field of human rights, for example, or by attempting to see some components of these values as "unquestionable" a priori – the right not to be tortured, for example – lead to a single conclusion: overcoming this criticism revolves around where to draw the line between universal standards and objective standards. It is at this point that the divergences are most intense since the line will be drawn depending precisely on the subjective aspects that differentiate each state's understanding of the values that it seeks to universalize.

However, it is important to emphasize that, despite the plurality of interpretations, the monist theory emphasizes the importance of coherence and unity of the legal system as a whole. Thus, even in the face of diverse interpretations, courts and other legal bodies must seek to maintain the harmony and integrity of the legal system, respecting the fundamental norm and the constitutional principles that underpin it.

Regarding human rights, many modern Constitutions incorporate rights provided for in international treaties. In Brazil, for example, the Federal Constitution of 1988 includes fundamental rights provided for in international treaties on human rights and grants the status of constitutional norms to these rights when ratified and approved by the National Congress.

How different forms of constitutional interpretation affect the protection of human rights.

INTERPRETATIVE PROCEDURES IN THE BRAZILIAN CONSTITUTION

The interpretative procedures in the Brazilian Constitution are fundamental to guarantee the effectiveness of constitutional norms and the coherence of the legal system as a whole. These procedures refer to the methods and processes used by courts and other competent bodies to interpret and apply constitutional provisions in specific cases.

One of the most important aspects of interpretative procedures in the Brazilian Constitution is the guarantee of constitutional supremacy. This means that the Constitution is the hierarchically superior norm in the Brazilian legal system, and all other norms must comply with its precepts. In this sense, constitutional courts have the role of ensuring that ordinary laws, international treaties, and other infra-constitutional norms are aligned with the fundamental principles and values established in the Constitution.

In addition, interpretative procedures include the analysis of constitutional provisions in light of general principles of law, consolidated case law, and international treaties to

Revista ARACÊ
ISSN: 2358-2472

which Brazil is a signatory. This allows for a broader and more up-to-date interpretation of the Constitution, taking into account social, cultural, and technological advances that occur over time.

Brazilian courts also adopt different interpretative techniques to resolve constitutional issues, such as literal, historical, systematic, teleological, and sociological interpretations. Each of these techniques offers a unique perspective for understanding the meaning and scope of constitutional norms, allowing for a more comprehensive and accurate analysis of the cases presented.

In the Brazilian Constitution, the p Interpretative procedures are guided by constitutional principles and may involve various techniques and approaches. Among these procedures, the following stand out: literal interpretation, which seeks to understand the constitutional text in its direct meaning; historical interpretation, which considers the historical context in which the rules were drafted; and systematic interpretation, which analyzes the structure of the Constitution as a whole, seeking to identify its internal coherence. There is also teleological interpretation, which seeks to understand the fundamental objectives and values that guide the legal system, and sociological interpretation, which considers the social, cultural, and economic aspects of contemporary society. Another important procedure is interpretation by the Constitution, which consists of interpreting laws and normative acts by constitutional principles and values, avoiding their invalidation whenever possible. These procedures reflect the diversity of approaches available for analyzing the constitutional text and its practical application in specific cases, ensuring the harmony and coherence of the Brazilian legal system. In this way, interpretative procedures in the Brazilian Constitution guarantee constitutional supremacy, in updating and adapting the rules to social changes and in strengthening the Rule of Law in Brazil. These procedures reflect the country's commitment to democratic principles, respect for fundamental rights, and the pursuit of justice and equality for all citizens. It is also worth mentioning the doctrinal scholium of Habërle (2002), who states in his work that the theory of constitutional interpretation has so far addressed two essential issues: the investigation into the tasks and objectives of constitutional interpretation and the analysis of methods (the process of constitutional interpretation) (rules of interpretation). To date, no significant emphasis has been given to the issue of the systematic context in which a third (new) problem arises related to the participants in the interpretation, an issue that, it is worth noting, influences the practice in general. A general analysis reveals the existence of

Revista ARACÊ
ISSN: 2358-2472

a wide circle of participants in the pluralistic interpretation process, often diffuse. This would already be sufficient reason for the doctrine to treat this issue prominently, especially considering a theoretical, scientific, and democratic conception, according to Habërle (2002). The theory of constitutional interpretation has been largely linked to a model of interpretation of a "closed society". Furthermore, it limits its scope of investigation by focusing mainly on judges' constitutional interpretation and formalized procedures.

If we consider, as Habërle (2002) does, that a theory of constitutional interpretation must seriously address the issue of "Constitution and constitutional reality" – here we think of the need to incorporate social sciences and also legal-functional theories, as well as methods of interpretation aimed at serving the public interest and general well-being – then we must question more decisively the agents that shape "constitutional reality".

The approach presented highlights the importance of considering the various agents involved in constitutional interpretation, going beyond the traditional focus on judges and formal procedures. By recognizing the wide range of participants and influencers in this process, such as legislators, lawyers, academics, and even civil society, we can better understand how constitutional interpretation reflects and shapes the constitutional reality of a country.

By incorporating a broader view that includes social sciences and legal-functional theories, as well as interpretative methods focused on the public interest and general welfare, we can enrich the analysis of constitutional interpretation. This allows for a deeper understanding of how constitutional norms are applied and adapted to constantly evolving social, political, and economic circumstances.

Therefore, this approach highlights the importance of a broader analysis of constitutional interpretation, recognizing the complexity and interdependence of the various agents and factors involved in this process that are fundamental to democracy and the rule of law.

CONCLUSION

The research explored the pluralist and procedural interpretation of the Constitution and its relationship with the protection of human rights, in light of Hans Kelsen's monist theory. Based on the analysis of the different chapters, it was possible to understand how these interpretative approaches intertwine and influence legal practice.

Revista ARACÊ
ISSN: 2358-2472

For Hans Kelsen, from a scientific point of view, both systems (monist and dualist) are equally valid, that is, any norm can be adopted as the starting point of the total legal system. However, in your opinion, the primacy of international law should be preferred for practical reasons.

Initially, the analysis of monist theory and the international legal philosophy of Hans Kelsen was used. It became clear that the hierarchical view of law proposed by Kelsen, centered on the fundamental norm, underpins the coherence and unity of the legal system, providing a solid basis for constitutional interpretation.

The compatibility between monism and legal pluralism was then investigated, revealing that, although they may seem to be antagonistic approaches, there is room for harmonious coexistence. The diversity of interpretations can enrich the understanding of the law without compromising its internal coherence.

The third chapter explored how pluralist interpretation can strengthen the protection of human rights, recognizing the importance of considering different perspectives in the application of constitutional norms. At the same time, we highlighted the need to respect the hierarchical structure of the legal system, as advocated by monist theory.

The interpretative procedures in the Brazilian Constitution were also analyzed, emphasizing the importance of ensuring that constitutional courts play their role as guardians of the Constitution, aligning infra-constitutional norms with constitutional principles and internationally recognized human rights.

The analysis of interpretative procedures in the Brazilian Constitution reveals their fundamental importance in ensuring not only the effectiveness of constitutional norms but also the coherence of the legal system as a whole. These procedures encompass a variety of methods and processes used by courts and competent bodies to interpret and apply constitutional provisions in specific cases.

One of the most prominent aspects of these procedures is the guarantee of constitutional supremacy, which places the Constitution as the hierarchically superior norm in the Brazilian legal system. This implies that all other norms must comply with constitutional precepts, a responsibility attributed to constitutional courts to ensure that ordinary laws, international treaties, and other infra-constitutional norms are aligned with the fundamental principles and values established in the Constitution.

In addition, interpretative procedures include the analysis of constitutional provisions in light of general principles of law, consolidated case law, and international treaties to

Revista ARACÊ
ISSN: 2358-2472

which Brazil is a signatory. This allows for a more comprehensive and up-to-date interpretation of the Constitution, taking into account social, cultural, and technological advances that occur over time.

It has been shown that Brazilian courts adopt a variety of interpretative techniques to resolve constitutional issues, such as literal, historical, systematic, teleological, and sociological interpretation. Each of these techniques offers a unique perspective for understanding the meaning and scope of constitutional norms, allowing for a more comprehensive and accurate analysis of the cases presented.

Thus, it was found that interpretative procedures in the Brazilian Constitution play a crucial role in guaranteeing constitutional supremacy, updating and adapting norms to social changes, and strengthening the rule of law in the country. They reflect Brazil's commitment to democratic principles, respect for fundamental rights, and the pursuit of justice and equality for all citizens.

Furthermore, the discussion of the agents involved in constitutional interpretation, as highlighted by the approach presented, highlights the importance of a broader analysis of this process. Recognizing the interdependence of the various agents and factors involved in constitutional interpretation is fundamental to a deeper and more accurate understanding of this process that is crucial for democracy and the rule of law.

In this way, it is concluded that the pluralist and procedural approach to constitutional interpretation can promote greater protection of human rights while respecting the hierarchical structure and normative coherence advocated by Kelsen's monist theory.

Revista ARACÊ
ISSN: 2358-2472

REFERENCES

1. ACCIOLY, Hildebrando; Nascimento e Silva, G. E; CASELLA, Paulo Borba. Manual de direito internacional público. 24. ed. São Paulo: Saraiva Educação, 2019.

2. ARAUJO, Nadia de. Direito Internacional Privado: Teoria e Prática Brasileira. 1. ed. Porto Alegre: Revolução eBook, 2016.

3. BUSTAMANTE, Thomas da Rosa; POLIDO, Fabrício Bertini Pasquot. Filosofia do direito internacional. São Paulo: Almedina, 20

4. HABËRLE, Peter. Hermenêutica constitucional a sociedade aberta dos intérpretes da constituição: contribuição para a interpretação pluralista e "procedimental" da Constituição. Porto Alegre: Sérgio Fabris Editor, 2002.

5. LEITE, Filipe Greco De Marco; LESSA, Rafaela Ribeiro Zauli. O conceito de legitimidade aplicado ao direito internacional e suas instituições. In: BUSTAMANTE, Thomas da Rosa; POLIDO, Fabrício Bertini Pasquot. Filosofia do Direito Internacional. São Paulo: Almedina, 2018.

6. MALISKA, Marcos Augusto. Fundamentos da Constituição. Abertura. Cooperação. Integração. Heidelberg, 2022.

7. MAZZUOLI, Valerio de Oliveira. Curso de direito internacional público. 13. ed. Rio de Janeiro: Forense, 2020.

8. MIRANDA, Carolina Barros de Carvalho. Direitos humanos e jurisdição internacional. São Paulo: Almedina, 2023.

9. PORTELA, Paulo Henrique Gonçalves. Direito Internacional Público e Privado: incluindo noções de Direitos Humanos e Direito Comunitário. 9. Ed. São Paulo: JusPODVM, 2017.

10. STF. Supremo Tribunal Federal. STF decide que convenções internacionais prevalecem sobre legislação brasileira no transporte aéreo de carga do exterior. 22/02/2024. Disponível em: https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=527698&ori=1#:~:text=O%20ministro%20ressaltou%20que%20o,se%20tratando%20de%20transporte%20internacional. Acesso em: 03 jun. 2024.

11. TEIXEIRA, Carla Noura. Manual de direito internacional público e privado. 5. ed. São Paulo: Saraiva Educação, 2020.

12. VARELLA, Marcelo Dias. Direito internacional público. 8. ed. São Paulo: Saraiva Educação, 2019.