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INFORMATION AND HUMAN RIGHTS

PRESENTATION

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SUR 18 was produced in collaboration with the organizations **Article 19** (Brazil and United Kingdom) and **Fundar** (Mexico). In this issue's thematic dossier, we have published articles that analyze the many relationships between information and human rights, with the ultimate goal of answering the questions: What is the relationship between human rights and information and how can information be used to guarantee human rights? This issue also carries articles on other topics related to today's human rights agenda.

Thematic dossier: Information and Human Rights

Until recently, many human rights organizations from the Global South concentrated their activities on the defense of freedoms threatened by dictatorial regimes. In this context, their main strategy was whistleblowing, closely linked to the constant search for access to information on violations and the production of a counter narrative capable of including human rights concerns in political debates. Since they found no resonance in their own governments, the organizations very often directed their whistleblowing reports to foreign governments and international organizations, in an attempt to persuade them to exert external pressure on their own countries.*

Following the democratization of many societies in the Global South, human rights organizations began to reinvent their relationship with the State and with the system's other actors, as well as how they engaged with the population of the countries where they were operating. But the persistence of violations even after the fall of the dictatorships and the lack of transparency of many governments from the South meant that the production of counter narratives continued to be the main working tool of these organizations. Information, therefore, was still their primary raw material, since combating human rights violations necessarily requires knowledge of them (locations where they occur, the main agents involved, the nature of the victims and the frequency of occurrences etc.). Their reports, however, previously submitted to foreign governments and international organizations, were now directed at local actors, with the expectation that, armed with information about the violations and endowed with voting power and other channels of participation, they themselves would exert pressure on their governments. Furthermore, after democratization, in addition to combating abuses, many human rights organizations from the Global South aspired to become legitimate actors in the formulation of public policies to guarantee human rights, particularly the rights of minorities that are very often not represented by the majority voting system.

In this context, the information produced by the public authorities, in the form of internal reports, became fundamental for the work of civil society. These days, organizations want data not only on rights violations committed by the State, such as statistics on torture and police violence, but also activities related to public management and administration. Sometimes, they want to know about decision-making processes (how and when decisions are made to build new infrastructure in the country, for example, or the process for determining how the country will vote in the UN Human Rights Council), while at other times they are more interested in the results (how many prisoners there are in given city or region, or the size of the budget to be allocated to public health). Therefore, access to information was transformed into one of the main claims of social organizations working in a wide range of fields, and the issue of publicity and transparency of the State became a key one. This movement has scored some significant victories in recent years, and a growing number of governments have committed to the principles of Open Government** or approved different versions of freedom of information laws.***

This legislation has played an important role in the field of transitional justice, by permitting that human rights violations committed by dictatorial governments finally come to light and, in some cases, that those responsible for the violations are brought to justice. In their article **Access to Information, Access to Justice: The Challenges to Accountability in Peru**, Jo-Marie Burt and Casey Cagley examine, with a focus on Peru, the obstacles faced by citizens pursuing justice for atrocities committed in the past.

As the case of Peru examined by Burt and Cagley demonstrates, the approval of new freedom of information laws no doubt represents important progress, but the implementation of this legislation has also shown that it is not enough to make governments truly transparent. Very often, the laws only require governments to release data in response to a freedom of information request. They do not, therefore, require the State to produce reports that

*K. Sikkink coined the term "boomerang effect" to describe this type of work by civil society organizations from countries living under non-democratic regimes.

**The Open Government Partnership is an initiative created by eight countries (South Africa, Brazil, South Korea, United States, Philippines, Indonesia, Mexico, Norway and United Kingdom) to promote government transparency. The Declaration of Open Government was signed by the initial eight members in 2011, and by the end of 2012 the network had been joined by 57 nations (Available at: http://www.state.gov/r/pa/prs/ps/2012/09/198255.htm). The initiative takes into account the different stages of public transparency in each of the member countries, which is why each country has its own plan of action for implementing the principles of open government. More information on the initiative is available at: http://www.opengovpartnership.org.

***In 1990, only 13 countries had some form of Freedom of Information legislation (Cf. Toby Mendel. 2007. Access to information: the existing State of affaire around the world. In. VILLANUEVA, Ernesto. **Derecho de la información, culturas y sistemas jurídicos comparados**. México: Universidad Nacional Autónoma de México). By 2010, however, approximately 70 countries had adopted such a law. (Cf. Roberts, Alasdair S. 2010. A Great and Revolutionary Law? The First Four Years of India's Right to Information Act. **Public Administration Review**, vol.70, n. 6, p. 25–933.). Among them, South Africa (2000), Brazil (2012), Colombia (2012), South Korea (1998), India (2005), Indonesia (2010), Mexico (2002) and Peru (2003).

make the existing data intelligible, nor to release the information on their own accord. The problem is exacerbated when the State does not even produce the data that is essential for the social control of its activities. Another area in which transparency is deficient is information on private actors that are subsidized by public funding, such as mining companies, or that operate public concessions, such as telecommunications providers.

Many organizations from the South have spent time producing reports that translate government data into comprehensible information that can inform the working strategies of organized civil society or the political decisions of citizens. Human rights organizations have also pressured their governments to measure their performance against indicators that can help identify and combat inequalities in access to rights. This is the topic of the article by Laura Pautassi, entitled **Monitoring Access to Information from the Perspective of Human Rights Indicators**, in which the author discusses the mechanism adopted recently by the Inter-American System of Human Rights concerning the obligation of States-Parties to provide information under article 19 of the Protocol of San Salvador.

The relationship between information and human rights, however, is not limited to the field of government transparency. The lack of free access to information produced in the private sphere can also intensify power imbalances or even restrict access to rights for particularly vulnerable groups. The clearest example of this last risk is the pharmaceutical industry, which charges astronomical prices for medicines protected by patent laws, effectively preventing access to health for entire populations. The privatization of scientific production by publishers of academic journals is another example. The issue gained notoriety recently with the death of Aaron Swartz, an American activist who allegedly committed suicide while he was the defendant in a prolonged case of copyright violation. Sérgio Amadeu da Silveira opens this issue of SUR with a profile of Swartz (**Aaron Swartz and the Battles for Freedom of Knowledge**), linking his life to the current struggles for freedom of knowledge given the toughening of intellectual property laws and the efforts of the copyright industry to subordinate human rights to the control of the sources of creation.

Since the internet has taken on a crucial role in the production and dissemination of information, it is natural for it to have become a battleground between the public interest and private interests, as illustrated by the Swartz case. On this point, civil society and governments have sought to adopt regulations intended to balance these two sides of the scale, such as so-called Internet Freedom, the subject of another article in this issue. In **Internet Freedom is not Enough: Towards an Internet Based on Human Rights**, Alberto J. Cerda Silva argues that the measures proposed by this set of public and private initiatives are not sufficient to achieve their proposed goal, which is to contribute to the progressive realization of human rights and the functioning of democratic societies.

The importance of the internet as a vehicle of communication and information also means that internet access is now a key aspect of economic and social inclusion. To correct inequalities in this area, civil society organizations and governments have created programs aimed at the so-called "digital inclusion" of groups that face difficulty accessing the web. Fernanda Ribeiro Rosa, in another article from this issue's dossier on Information and Human Rights, **Digital Inclusion as Public Policy: Disputes in the Human Rights Field**, defends the importance of addressing digital inclusion as a social right, which, based on the dialogue in the field of education and the concept of digital literacy, goes beyond simple access to ICT and incorporates other social skills and practices that are necessary in the current informational stage of society.

Non-thematic articles

This issue also carries five additional articles on other relevant topics for today's human rights agenda.

In **Development at the Cost of Violations: The Impact of Mega-Projects on Human Rights in Brazil**, Pétalla Brandão Timo examines a particularly relevant contemporary issue: the human rights violations that have occurred in Brazil as a result of the implementation of mega development projects, such as the Belo Monte hydroelectric complex, and preparations for mega-events like the 2014 World Cup.

Two articles address economic and social rights. In **Land Rights as Human Rights: The Case for a Specific Right to Land**, Jérémie Gilbert offers arguments for the incorporation of the right to land as a human right in international treaties, since to date it still only appears associated with other rights. In **Reaching Out to the Needy? Access to Justice and Public Attorneys' Role in Right to Health Litigation in the City of São Paulo**, Daniel W. Liang Wang and Octavio Luiz Motta Ferraz analyze legal cases related to the right to health in São Paulo in which the litigants are represented by public defenders and prosecutors, in order to determine whether the cases have benefited the most disadvantaged citizens and contributed to the expansion of access to health.

Another article looks at the principal UN mechanism for the international monitoring of human rights. In **The United Nations Human Rights Council: Six Years on**, Marisa Viegas e Silva critically examines the changes introduced to this UN body in the first six years of its work.

In **Human Rights, Extradition and the Death Penalty: Reflections on the Stand-Off between Botswana and South Africa,** Obonye Jonas examines the deadlock between the two African nations concerning the extradition of Botswana citizens who are imprisoned in South Africa and accused in their country of origin of crimes that carry the death penalty.

Finally, Antonio Moreira Maués, in **Supra-Legality of International Human Rights Treaties and Constitutional Interpretation**, analyzes the impacts of a decision in 2008 by the Supreme Court on the hierarchy of international human rights treaties in Brazilian law, when the court adopted the thesis of supra-legality.

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This is the sixth issue of SUR published with funding and collaboration from the Carlos Chagas Foundation (FCC). We would like to thank the FCC once again for its crucial support of Sur Journal since 2010. We would also like to express our gratitude to Camila Asano, David Banisar, David Lovatón, Eugenio Bucci, Félix Reategui, Ivan Estevão, João Brant, Jorge Machado, Júlia Neiva, Luís Roberto de Paula, Marcela Viera, Margareth Arilha, Marijane Lisboa, Maurício Hashizume, Nicole Fritz, Reginaldo Nasser and Sérgio Amadeu for reviewing the articles submitted for this issue of the journal. Finally, we would like to thank Laura Trajber Waisbich (Conectas) for the insights on the relationship between information and human rights that provided the foundation for this Presentation.

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ABSTRACT

In December 2008, when ruling on a number of cases involving the civil imprisonment of unfaithful trustees, the Supreme Court modified its understanding of the hierarchy of international human rights treaties in Brazilian law, adopting the thesis of supra-legality. This article analyzes the potential impacts that this change can have on constitutional interpretation in Brazil, examining how the Supreme Court has applied the thesis of supra-legality and the extent to which the hierarchy of international human rights treaties has influenced, in other countries, their use in interpreting the Constitution. The article concludes that supra-legality allows for the construction of arguments in favor of using human rights treaties as a parameter of constitutional interpretation in Brazilian law.

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KEYWORDS

International human rights treaties – Supra-legality – Supreme Court

SUPRA-LEGALITY OF INTERNATIONAL HUMAN RIGHTS TREATIES AND CONSTITUTIONAL INTERPRETATION

Antonio Moreira Maués*

1 Introduction

In December 2008, the Supreme Court delivered judgment on a series of cases[1] that significantly modified its understanding of the hierarchy of international human rights treaties in Brazilian law. Although article 5, paragraph 2 of the Constitution of 1988[2] had already innovated by providing for the incorporation of rights recognized in international treaties, the Supreme Court had upheld the jurisprudence established under the regime of the Constitution of 1969, according to which international treaties were equal in rank to ordinary laws. The adoption of this understanding by the Supreme Court was not immune to criticism, since several authors, when interpreting this constitutional provision, argued that human rights treaties had a constitutional status (CANÇADO TRINDADE, 1996; PIOVESAN, 1997) or even a supra-constitutional status (MELLO, 1999).

The cases that led to the Court's new orientation involved the civil imprisonment of unfaithful trustees, which is provided for in article 5, LXVII of the Constitution of 1988[3] and which contrasted with article 7.7 of the American Convention on Human Rights (ACHR), according to which imprisonment for indebtedness is only permissible for non-payment of alimony.[4] For many years, the Supreme Court considered that the constitutional norm had not been affected by Brazil's 1992 ratification of the ACHR, thereby maintaining the validity of the infra-constitutional norms that regulated this type of imprisonment. The court, having published a binding precedent on the matter, now considers, however, that the civil imprisonment of unfaithful trustees is *unlawful*.[5]

The summary of the Supreme Court's exemplary decision in Extraordinary Appeal No. 466,343, taken unanimously, helps us understand the reasons for the change:

*I would like to thank the Federal Coordination Office for the Improvement of Higher Education Personnel (CAPES) for its support of my Senior Internship at the University of Essex, during which time part of the research presented here was conducted. This period of research would not have been possible without the encouragement of the late Prof. Kevin Boyle, to whose memory I dedicate this article.

Notes to this text start on page 221.

> *CIVIL IMPRISONMENT. Deposit. Unfaithful Trustee. Collateral. Declaration of enforcement action. Absolute Inadmissibility. Insubstantiality of the constitutional provision and the subordinate norms. Interpretation of article 5, item LXVII and paragraphs 1, 2 and 3 of the Federal Constitution in the light of article 7, paragraph 7 of the American Convention on Human Rights (Pact of San José da Costa Rica). Appeal Denied. Joint judgment of Extraordinary Appeal No. 349,703 and Habeas Corpus No. 87,585 and No. 92.566. Civil imprisonment of unfaithful trustees is unlawful, regardless of the type of the deposit.*

As can be noted, for the Supreme Court to rule out the possibility of imprisonment for unfaithful trustees, it first had to modify its understanding of the hierarchy of international human rights treaties in Brazil so that the constitutional and infra-constitutional provisions could be interpreted *in the light* of the ACHR. Upon examining the justices' votes, we can identify two theories that substantiate this new interpretation: for the majority, human rights treaties had acquired supra-legal status, remaining lower in rank than the Constitution, although higher than other laws; for the minority, the constitutional status of these treaties ought to be acknowledged, so they can become, together with the constitutional text, part of the constitutional block.[6]

The fact that the decision on imprisonment of unfaithful trustees was taken unanimously does not diminish the interest in analyzing its legal grounding, since it sets a precedent that will influence future decisions on the application of human rights treaties.[7] For this reason, the new understanding has attracted the attention of legal scholars, who have identified the need for the Supreme Court to develop a *dialogue* with other courts, in particular the Inter-American Court (RAMOS, 2009; SILVA, 2010), or to exercise the "conventionality control" of the law (CAMPOS; BASTOS JUNIOR, 2011; MAZZUOLI, 2011). In this article, we intend to analyze the changes that supra-legality can bring to the field of interpreting the Constitution by exploring how this thesis can be applied more consistently to the protection of human rights in Brazil. With this objective in mind, the article is divided into three parts. In the first section, we present an analysis of the Supreme Court's decision in the case of imprisonment of unfaithful trustees, in order to understand the meaning of the category of supra-legality, followed by an exploratory search intended to identify how the adoption of this thesis has been influencing the court's jurisprudence. In the next section, we examine, based on a study of other countries' legal systems, how the hierarchy of human rights treaties conditions their use in interpreting the Constitution. In the final section, we present arguments in favor of using human rights treaties as parameters of constitutional interpretation in Brazilian law.

2 The meaning of supra-legality

Prior to 1988, the Supreme Court had established the understanding, in its ruling of Extraordinary Appeal No. 80,004 (J. 01/06/1977), that international treaties are incorporated into domestic law with the same status as ordinary legislation, and may be revoked by a subsequent law or be overridden by a specific law. The need for a judicial interpretation of the matter was also due to the Constitution's silence

on the reception of international treaties and their effects on domestic law, since the constitutional norms on the subject are limited to the process of conclusion and approval of treaties (DALLARI, 2003, p. 46).

The fact that the rulings of the Supreme Court on the subject did not pertain to human rights, together with the explicit mention of international treaties made in article 5, paragraph 2 of the Constitution of 1988, created the expectation that the ratification of these international instruments by Brazil would lead to a change in the understanding of the court. This did not occur: in the ruling of the Direct Case of Unconstitutionality (ADIn) No. 1,347 (J. 05/10/1995), the Supreme Court refused to use international treaties as a parameter for constitutional review, denying that the Conventions of the International Labour Organization (ILO) could be invoked as grounds for declaring the unconstitutionality of a Labor Ministry Decree. Moreover, in ADIn No. 1,480 (J. 04/09/1997), the court reaffirmed that international treaties are not only subordinate to the Constitution, but they also have the same level of validity, effectiveness and authority as ordinary laws (GALINDO, 2002, p. 215-217; MAUÉS, 2008, p. 297-298).

The case of unfaithful trustees, however, posed a different problem. Ratified by Brazil in 1992, the ACHR was *lex posterior derogat legi priori*[8] in relation to the legal provisions that regulate this type of civil imprisonment. Nevertheless, the Supreme Court solidified the understanding that the ACHR may neither override constitutional authority nor, as a general infra-constitutional norm, take precedence over special constitutional norms on civil imprisonment.[9]

This jurisprudence explains, in part, the minor impact that Brazil's ratification of human rights treaties had on domestic law, since these treaties were rarely used by the national judiciary. Placed on a par with ordinary laws and subject to the principle of speciality, international human rights treaties did not appear to offer a firm legal basis for arguing in court.[10]

The time between these decisions and those taken in December 2008 was marked by some changes that prompted the Supreme Court to review its jurisprudence.[11] Most prominent was the enactment of Constitutional Amendment No. 45, which added three important provisions on human rights: the requirement to incorporate international human rights treaties with the same legal status as constitutional amendments, provided they are approved by at least the same majority needed to pass such an amendment;[12] the constitutionalization of Brazil's accession to the International Criminal Court;[13] and the possibility for jurisdiction to be taken to federal justice in cases of serious human rights violations.[14] Although these are distinct issues, the innovations of Constitutional Amendment No. 45 all had in common the constitutional empowerment of international human rights law, by expressly making it possible to attribute constitutional status to human rights treaties, by subjecting the country to international criminal jurisdiction and by creating new instruments for complying with the obligations of the Brazilian State on the matter of protecting human rights.

The Supreme Court recognized the significance of these changes. Indeed, Justice Gilmar Mendes affirmed, in his opinion in Extraordinary Appeal No. 466,343, that the incorporation into the Constitution of article 5, paragraph 3 "emphasized the special nature of human rights treaties in relation to reciprocity treaties between States Parties, conferring upon them a privileged place in the legal system" (BRASIL.

2008b, p. 1.144), which indicated the insufficiency of the thesis of ordinary legality of these treaties and the outdated nature of the jurisprudence of the Supreme Court. In a similar vein, Justice Celso de Mello stressed that Constitutional Amendment No. 45 "introduced a legally relevant fact, capable of allowing the Supreme Court to redefine its position on the legal status that international human rights treaties and conventions have in the domestic legal system of Brazil" (BRASIL. 2008b, p. 1.262).

The common view shared without exception by all the justices, that the Supreme Court should recognize the privileged position of international human rights protection norms, did not avert a controversy over their hierarchy. Now that the thesis of ordinary legality for human rights treaties had been discarded, and with none of the Supreme Court justices defending the thesis of supra-constitutionality, two approaches vied to define the court's understanding.

For the minority, represented by the opinion of Justice Celso de Mello, human rights treaties have a "materially constitutional" nature, even those approved before Constitutional Amendment No. 45, and they therefore comprise the "constitutional block". As such, the newly added paragraph 3 of article 5 of the Constitution, by formally attributing constitutional status to treaties approved under its terms, should not strip previously approved treaties of their material constitutional status, recognized based on the duty of the State to:

> *Respect and promote the realization of the rights guaranteed by the Constitutions of national States and assured by international declarations, in order to permit the practice of an open constitutionalism to the process of growing internationalization of the fundamental rights of the human person.*
>
> (BRASIL. 2008b, p. 1.217-1.218).

As such, paragraph 3 should strengthen the constitutionality of human rights treaties, since it would be unreasonable for treaties on the same subject to have different hierarchies.

The position adopted by most Supreme Court justices, however, was the thesis of supra-legality. The main reasons presented in favor of this decision were:

a) the formal and material supremacy of the Constitution over the entire legal system, based on the possibility of constitutional review even of international legislation;[15]

b) the risk of an inadequate broadening of the term "human rights", that would permit the production of legislation outside the control of its compatibility with the domestic constitutional order;

c) the understanding that the inclusion of article 5, paragraph 3 implied recognizing that the treaties ratified by Brazil before Constitutional Amendment No. 45 cannot be considered constitutional norms.

In spite of this, the current trend of global constitutionalism that respects international laws aimed at protecting human rights, the evolution of the Inter-American system of human rights protection, and the principles of international law on compliance with

international obligations would no longer permit the thesis of legality to be maintained. Therefore, supra-legality was presented as a solution that would make the jurisprudence of the Supreme Court compatible with these changes, without the problems that would result from the thesis of constitutionality. As such, human rights treaties could now override the legal effectiveness of any infra-constitutional law conflicting with them.

The fact that, despite their different reasoning, all the Supreme Court justices agreed on the unlawfulness of imprisonment for unfaithful trustees demonstrates that, in many cases, the option for the thesis of constitutionality or supra-legality does not lead to different decisions. However, one consequence of the thesis of supra-legality is to deny that human rights treaties can serve as a parameter for constitutional review, i.e. that they do not integrate the group of provisions based on which the constitutionality of laws and other legal acts are analyzed (CRUZ VILLALÓN, 1987, p. 39-41). In contrast, the adoption of the thesis of constitutionality would allow the mechanisms of constitutional review to be engaged to examine the validity of laws not only before the Constitution, but also in relation to human rights treaties.

In spite of this difference, a more careful examination of the fundamentals of the Supreme Court's decision illustrates that the two theses have a good deal in common. When ruling on the cases that involved the imprisonment of unfaithful trustees, the court not only interpreted the infra-constitutional legislation to ensure it was compatible with the ACHR, but it also interpreted the Constitution itself based on this treaty. As a result of the adoption of the thesis of supra-legality, the constitutional clause that determines the imprisonment of unfaithful trustees was drained of its legal force: since this clause is subject to legal regulation to have full effectiveness, what the Supreme Court did, by banning the ordinary legislator from deciding on the matter, was to prevent the constitutional norm from being applied, unless under the extremely unlikely hypothesis that the content of the laws that address the institution of civil imprisonment, currently contained in civil legislation and civil procedure, is approved by a constitutional amendment. Even in this case, such a constitutional amendment would be subject to review based on the principle of non-retrogression. Considering that the legislator cannot regulate this institution without disrespecting the ACHR, which is higher in rank than ordinary laws, this regulation has become legally impossible, as exemplified by Binding Precedent No. 25.[16]

By withdrawing the authority of the ordinary legislator, the Supreme Court effectively changed its interpretation of the constitutional provision, restricting the scope of the exception it provides for. The clause that deals with the imprisonment of unfaithful trustees was no longer interpreted as a norm that requires the legislator to regulate the institution, nor did it start to be interpreted as a norm that grants him this authority, since the legislator may not exercise it while the ACHR is in effect in Brazil. Therefore, it can be said that the Supreme Court reinterpreted the Constitution and established a norm that bans the ordinary legislator from regulating the institution. For these reasons, we consider that the expression used in the aforementioned court summary is accurate: not only the ordinary legislation, but the Constitution itself was interpreted *in the light* of the ACHR.

The analysis of the decision in the case of unfaithful trustees demonstrates that, despite the differences between the theses of constitutionality and supra-legality, both hypotheses admit the possibility that the Constitution – and not

just infra-constitutional laws – can be interpreted in a manner compatible with international human rights treaties. Is this decision an isolated case? An examination of the jurisprudence of the Supreme Court reveals that, even before 2008, a new approach was already beginning to emerge that conferred greater legal force to international human rights treaties. Based on the adoption of the thesis of supra-legality, we can see that these precedents have grown stronger and new precedents are being established using human rights treaties, particularly the ACHR, to interpret the Constitution, as we can see in the cases below:

a) according to article 7.2 of the ACHR: "No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto". This provision has been used by the Supreme Court to interpret the principle of the presumption of innocence (article 5, LVII) in cases that involve the right of convicted defendants to appeal in freedom. In Habeas Corpus No. 99,891 (J. 15/09/2009), the Supreme Court overturned a decision by the Superior Court of Justice (STJ) that had enforced the sentence once the case had been appealed to a higher court. Confirming that the court does not recognize the constitutional possibility of preventive detention, taking into account the presumption of innocence, the scope of this detention is established in the ACHR, which does not guarantee convicted defendants the right to always appeal in freedom, since each country's legal system must establish when preventive detention is permitted. Under Brazilian law, this implies recognizing the exceptional nature of preventive detention, which must meet the requirements of article 12 of the Code of Criminal Procedure and demonstrate its absolute necessity;[17]

b) Constitutional Amendment No. 45 included the right to a trial of reasonable duration (article 5, LXXVIII) among the fundamental guarantees, a right that is also recognized more specifically in articles 7.5 and 7.6 of the ACHR:

> *Article 7 (...) 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful (...).*

Before adopting the thesis of supra-legality, the Supreme Court had already used this provision of the ACHR, together with the constitutional clause on the right to a trial of reasonable duration, to rule in favor of remitting preventive detention due to excessively long court proceedings. In Habeas Corpus N. 85,237 (J. 17/03/2005), cited as a precedent in several other decisions, Justice Celso de Mello had already affirmed the importance of the ACHR as a parameter to resolve the "tension" between the punitive action of the State and the defendant's desire for liberty, which has been upheld in later decisions;[18]

c) concerning judicial guarantees, the ACHR recognizes several rights:

> Article 8.2.b. *"prior notification in detail to the accused of the charges against him"*, "Article 8.2.d. *the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel"*, "Article 8.2.f. *the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts"*, "Article 8.2.h. *the right to appeal the judgment to a higher court"*.

These provisions have been used by the Supreme Court to interpret the constitutional guarantees of an adversarial trial and a full defense (article 5, LV), recognizing, among the *means* inherent in a full defense, that charges are void if they do not observe the standards provided for in the ACHR;[19] that the accused has the right, even when detained, to be present at the procedural acts;[20] that failure to personally serve the accused with a summons can lead to the annulment of the case, since it makes it impossible for him to exercise the right defend himself and the right to freely choose his counsel, which is provided for in the ACHR;[21] and that article 594 of the Code of Criminal Procedure, which establishes the committal of the accused to prison as a condition for appeal is unconstitutional, among other reasons because it does not respect the right of appeal to a higher court, which is provided for in the ACHR;[22]

d) the ACHR contains two important clauses on freedom of expression:

> *Article 13.1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a) respect for the rights or reputations of others; or b) the protection of national security, public order, or public health or morals.*

In the judgment of Extraordinary Appeal No. 511,961 (J. 17/06/2009), the Supreme Court declared the requirement for journalists to have a higher education degree, stipulated in article 4, item V of Decree-Law No 972/1969, unconstitutional. In its justification for the decision, the Court makes broad use of the ACHR, and also draws on the Advisory Opinion No.5 of the Inter-American Court and the decisions of the Inter-American Commission, emphasizing that the Court's interpretation was adjusting to that of the Inter-American System. In other words, the Supreme Court interprets constitutional norms related to the freedom of expression and the freedom to practice a profession in the same way, considering the practice of journalism as a manifestation of the freedom of expression.

This series of decisions demonstrates that the jurisprudence of the Supreme Court has begun to use human rights treaties more consistently to interpret not only infra-constitutional legislation, but also the Constitution itself. It can be

observed, therefore, that the adoption of the thesis of supra-legality permits the court to go beyond the need to examine the compatibility of laws with international treaties. In order to understand the extent to which the hierarchy of human rights treaties influences the interpretation of the Constitution, it is worth looking at the experiences of other countries.

3 Comparative experiences

In the previous section, we saw how the debate in recent years in the Supreme Court revolved around defining the hierarchy of international human rights treaties in Brazil. While the adoption of the thesis of supra-legality has prompted changes in the jurisprudence of the Supreme Court that would not have been possible if the thesis of legality had been maintained, we can see that several of the court's decisions resemble the thesis of constitutionality when it comes to the interpretation of constitutional provisions in conjunction with human rights treaties, with a view to making them compatible. This leads us to conclude that the hierarchy of these treaties is not the only variable that helps to understand their impact on domestic law, as we can observe in the experiences of other countries.

In the context of the European Convention on Human Rights (ECHR), a study conducted in 18 countries (KELLER; STONE SWEET, 2008) demonstrates that they all underwent structural changes in their constitutional systems as a result of the reception of the ECHR. The most significant changes included the possibility for judges to exercise the constitutional review of laws based on the ECHR; the development of a monist system, in relation to the Convention, in countries that are traditionally dualist; and the modification of the traditional views on the separation of powers concerning the role of the judiciary.

Although these changes are the result of multiple factors, one of the central elements of the process was the incorporation of the ECHR into domestic law, making it binding on governments and allowing judges to directly apply the Convention. Concerning hierarchy, the study indicates the importance of recognizing at least the supra-legal status of the ECHR, in order to protect it from subsequent ordinary laws. However, the extension of the use of the ECHR by national courts does not depend on its hierarchy alone, but also on how the courts use the Convention to interpret the Constitution, as demonstrated by the experiences of three countries that do not recognize the constitutional status of human rights treaties.

In Spain, the Constitution of 1978 establishes that all international treaties are subordinate to it, conferring on the Constitutional Court the authority to exercise both the prior and successive control of their constitutionality (GÓMEZ FERNÁNDEZ, 2004). Meanwhile, the Constitution states, in article 96.1, that treaties that are incorporated into domestic law may only be modified in the manner provided for in the treaties themselves or in accordance with the general rules of international law, which protects them from any alteration or repeal that could result from ordinary legislation.

Just as important as these provisions in understanding the role of human rights treaties in the Spanish legal system is article 10.2, according to which:

> *Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.*

In the application of this rule, the Spanish Constitutional Court developed a jurisprudence that requires all the public authorities to interpret constitutional rights in accordance with human rights treaties. As such, the Constitutional Court began to enforce the content of the rights declared in the Constitution based on international treaties, recognizing as fundamental certain faculties not expressed therein, while also using for this purpose the jurisprudence produced by international organizations. Therefore, although human rights treaties do not have the status of constitutional norms in the Spanish legal system, which means they may not serve as an autonomous canon for validating norms, they have become parameters for interpreting the Constitution (QUERALT JIMÉNEZ, 2008; SAIZ ARNAIZ. 2011).

Even though it lacks a constitutional clause like the one in Spain, Germany also exemplifies how international treaties can be used when interpreting the Constitution. In this country, which has a dualist tradition, a specific Act of Parliament is required for international treaties to be effective domestically, meaning that human rights treaties are incorporated as ordinary federal laws. As a result, they are not protected against subsequent federal laws, which, since they are equal in rank, would imply that their provisions would be repealed according to the principle that subsequent laws repeal prior laws (ABDELGAWAD; WEBER, 2008, p. 117-118; MÜLLER; RICHTER, 2008, p. 165).

In order to avoid the problems that could result from the repeal of international treaties by subsequent ordinary laws, the German Constitutional Court adopted, from 1987 onwards, the understanding that although treaties do not have constitutional status, the interpretation of the Constitution must take their content and development into consideration, since an obligation exists to interpret infra-constitutional norms in harmony with the commitments assumed by Germany before international law. On the matter of fundamental rights specifically, the court also established that the jurisprudence produced by the European Court of Human Rights (ECtHR) should also serve as interpretive assistance in defining the content and scope of fundamental rights and the principle of the rule of law (ABDELGAWAD; WEBER, 2008, p. 119-120; HOFFMEISTER, 2006, p. 728).

Subsequently, following the decision of the *Görgülü* case, in 2004, the German Constitutional Court took another step to reinforce the importance of human rights treaties in the domestic order. In addition to upholding the previous understanding on the need to interpret the Constitution in harmony with international treaties, the Constitutional Court accepted that national courts have the duty to observe the rulings of the ECtHR and to consider the ECHR when interpreting the Constitution. Failure to comply with this duty can result in the filing of a constitutional complaint with the Constitutional Court for the violation of fundamental rights. This understanding, however, does not alter the supremacy of the Constitution, since the provisions of international treaties may not offend fundamental constitutional principles (HOFFMEISTER, 2006, p. 725-730; MÜLLER; RICHTER, 2008, p. 166-168).

Finally, the case of the United Kingdom deserves attention for its singularity. Although it was one of the first States to ratify the ECHR, the United Kingdom did not incorporate it into domestic law. This only occurred following the approval of the Human Rights Act (HRA) of 1998, which came into force in 2000. This change resulted from the growing number of rulings against the British State by the European Court of Human Rights, which made it necessary to create mechanisms to improve the protection of human rights in the country. The HRA incorporates the rights mentioned in the ECHR into domestic law and establishes that the public authorities have a duty to observe the Convention, while empowering citizens to defend these rights in the national courts (BESSON, 2008, p. 36-42).

Formally, the HRA has the same hierarchy as other British laws and subsequent Acts of Parliament may modify it. However, two instruments grant it a distinct status in the domestic legal system: the first (article 3) establishes that the courts should interpret legislation – both prior and subsequent to the HRA – in a manner compatible with the rights recognized by the ECHR, meaning that when more than one interpretation of the law is possible, judges should give preference to the one that is more aligned with the ECHR. The second instrument (article 4) applies when it is not possible to interpret legislation in a manner compatible with the Convention: in these cases a "declaration of incompatibility" must be issued by the court, which does not affect the validity of the law, but encourages the Parliament to review the law and authorizes the Executive to begin a fast-track legislative process to modify it (BESSON, 2008, p. 51-52). The political weight of declarations of incompatibility can be determined by the fact that every one that has been issued has led to changes in the legislation or the start of a legislative process (REINO UNIDO. DEPARTMENT FOR CONSTITUTIONAL AFFAIRS, 2006, p. 17; KLUG; STARMER, 2005, p. 721).

As we know, the United Kingdom does not have a written Constitution that establishes parameters for reviewing the validity of laws. Nevertheless, the HRA represented a notable change in the British legal system, since the rights set out in the ECHR began to be used by the Judiciary to interpret legislation, either aligning it with the HRA or encouraging its review by Parliament, which has led some authors to classify it as a constitutional statute (CLAYTON, 2004, p. 33).

In the context of the Inter-American System for the Protection of Human Rights, Latin American countries in particular highlight the various ways in which international human rights treaties have been incorporated into domestic law. According to Brewer-Carías (2006), all the possible hierarchies (supra-constitutionality, constitutionality, supra-legality and legality) can be found in Latin American legal systems. Moreover, several Constitutions contain clauses providing for the incorporation of rights inherent to the human person, recognizing their direct applicability and establishing criteria for constitutional interpretation in accordance with international treaties.

Concerning this last case, the author emphasizes that, even in the absence of constitutional clauses on the hierarchy of international treaties, these treaties can acquire constitutional status and be directly applied on account of the different rules of constitutional interpretation, such as those that stipulate that the rights declared in the Constitution must be interpreted in accordance with international instruments;

those that establish a general orientation for the action of agencies of the State in relation to the respect and guarantee of human rights; and those that establish that human rights be interpreted based on the principle of progressiveness, according to which no interpretations are permitted that result in a reduction of their effective enjoyment, exercise and protection.

On this point, the most well known example is Colombia, whose Constitution of 1991 contains a provision similar to the one included in the Spanish Constitution (article 93):

> *International treaties and agreements ratified by the Congress that recognize human rights and that prohibit their limitation in states of emergency have priority domestically. The rights and duties mentioned in this Charter will be interpreted in accordance with international treaties on human rights ratified by Colombia.*

Based on this clause, the Colombian Constitutional Court constructed its own concept of the "constitutional block", which has two meanings: in the first (*stricto sensu*), the block is formed by the principles and norms of constitutional value, i.e. the text of the Constitution and international human rights treaties that cannot be limited even during states of emergency; in the second (*lato sensu*), the block is formed by all those norms, of different hierarchies, that serve as a parameter to review the constitutionality of laws, i.e. other human rights treaties, organic laws and some statutory laws. Despite this distinction, the jurisprudence of the Constitutional Court considers that all international human rights treaties serve to interpret constitutional rights, and this includes the jurisprudence of international courts, meaning it is responsible for harmonizing the rights recognized in the Constitution and in international treaties (UPRIMNY, 2001, p. 19-20).

The common feature of the aforementioned cases is that the hierarchy of human rights treaties in the domestic legal system is not the only variable that conditions their use in interpreting the Constitution. As we have seen, even countries that do not recognize the constitutional status of these treaties attempt to interpret constitutional provisions in harmony with them. This means that the debate on the hierarchy of human rights treaties in Brazil should be complemented with some reflection on their hermeneutic function in our legal system.

4 International human rights treaties as a parameter of constitutional interpretation

In addition to benefiting from the principle of *pacta sunt servanda,*[23] which is a basic tenet of international law (article 26 of the Vienna Convention on the Law of Treaties), human rights treaties have characteristics that make it necessary to adjust the domestic law of States Parties to international norms. Unlike instruments that only create reciprocal obligations between States, these treaties are intended to protect people, establishing duties of governments to the people under their jurisdiction. It is no coincidence, therefore, that the content of human rights treaties frequently overlaps with the content of Constitutions, since guaranteeing

the rights of the human person is common to both systems (BERNHARDT, 1993, p. 25-26; DRZEMCZEWSKI, 1997, p. 20-23; RAMOS, 2004, p. 36-40).

Therefore, the obligations assumed by the State when ratifying a human rights treaty involve an examination of whether the acts of the public authorities, including legislative acts, respect the provisions of the treaty. Very often, the central issue to be judged by the international court concerns the compatibility of domestic law with the treaty, such as situations in which the application of a law inevitably results in the violation of international norms (BERNHARDT, 1993, p. 30-32), which requires the law to be reviewed or repealed in order to stop the State's non-compliance with its obligations. The awareness of this repercussion explains the tendency, noticeable in countries from both the European human rights system and the Inter-American system, to incorporate these treaties into domestic law, and it is consolidated in article 2 of the ACHR.[24] The incorporation of international norms also allows domestic courts to help guarantee compliance with obligations by States, when their authority is recognized to apply them directly (KELLER; STONE SWEET, 2008, p. 683-688).

The frequency with which problems of compatibility emerge between domestic law and international law also derives from the open nature of constitutional and international human rights provisions, which require a definition of the scope and the content of the guaranteed rights. Both the European Court and the Inter-American Court of Human Rights interpret their respective treaties as *living instruments* that must be applied in light of present-day conditions (KILLANDER, 2010). This dynamic interpretation implies that international courts should continuously clarify and develop the principles and rules established in the treaties, defining the obligations that correspond to the States. As the domestic application of the treaty evolves, the jurisprudence of the bodies originally charged with its protection becomes more relevant. This lays the groundwork for a dialogue between the national and international jurisdiction on the compatibility of domestic and international law (SLAUGHTER, 1994).

In this context, it is no longer possible to defend a strictly hierarchical vision of the relationship between domestic law and international human rights treaties (BOGDANDY, 2008; TORRES PÉREZ, 2009, cap. 3). The development of regional protection systems has created a dynamic in which national bodies cannot ignore the impact of decisions taken by international courts in the field of human rights, otherwise the State will be constantly called to account by the international community. Since the duty of the State to comply with its obligations does not depend on the hierarchy attributed to international treaties, it is necessary to adopt hermeneutic criteria that permit States to harmonize the provisions of these treaties with the provisions of domestic law, in particular those of a constitutional nature.[25]

Based on the assumption that the rights recognized in treaties should be guaranteed by the State to the people under its jurisdiction (even though their provisions may not have been incorporated into domestic law or, if this has occurred, regardless of the status they have been assigned in the legal hierarchy), we can see that the problem revolves around knowing which of these rights are binding on the public authorities. Both *fundamental rights* recognized in a Constitution and

human rights recognized in an international treaty have the same purpose: to limit the coercive power of the State (LETSAS, 2007, p. 33-35). Therefore, the questions that ought to be asked by a judge applying a constitutional or international provision are the same: is the State authorized to use its coercive power in this specific situation? From this point of view, the answer formulated by the Supreme Court in the case of civil imprisonment of unfaithful trustees is exemplary: the use of coercion in this hypothesis is not authorized *in the light* of the ACHR.

This series of elements and an understanding of the experiences in other countries lead us to conclude that the difference between the theses of supra-legality and constitutionality in Brazilian law ought to be put into relative terms. As we have seen, supra-legality precludes human rights treaties from being used as a parameter of constitutional review, which for the Supreme Court continues to be exclusively the Constitution of 1988. Therefore, the field in which the difference between the theses of supra-legality and constitutionality can be highlighted is eminently procedural: whether through a concrete review or an abstract review, international human rights treaties may not be invoked as a cause of action, unless they have been incorporated into the legal system as a constitutional amendment, under the terms of article 5, paragraph 3.

However, the jurisprudence of the Supreme Court indicates that human rights treaties are used not only as parameters for interpreting infra-constitutional norms, but also for interpreting constitutional norms. The institutions of civil imprisonment for unfaithful trustees, the presumption of innocence, a trial of reasonable duration, an adversarial trial and a full defense, freedom of expression and freedom to practice a profession, in the aforementioned cases, were all interpreted so as to make them compatible with the ACHR. This resulted in the recognition of new fundamental rights in the Brazilian legal system. Thus, the Supreme Court does indeed use human rights treaties as *parameters of constitutional interpretation*,[26] since they provide hermeneutic criteria for defining the content of constitutional norms. When judging the legality of government acts on the basis of the Constitution, the Supreme Court analyzes the human rights recognized in international treaties to determine how the constitutional provisions should be interpreted.

The use of human rights treaties as parameters of constitutional interpretation also resolves any problems of compatibility between constitutional and international provisions: it permits the Supreme Court to harmonize these sets of norms based on the interpretation that offers the best protection of human rights. Consequently, it also preserves the integrity of the Brazilian legal system, since the State should always act consistently with the principles that justify its actions (DWORKIN, 1999). Therefore, the ratification of a human rights treaty by Brazil implies that new principles must be taken into account in constitutional interpretation. These principles require the recognition of other rights and the extension of already recognized rights, as provided for in article 5, paragraph 2 of the Constitution. This means that the Judiciary will sometimes have to review its jurisprudence in search of consistency with the set of principles that govern Brazilian law, rejecting those precedents that are incompatible with a more updated interpretation of fundamental rights.

5 Conclusion

The incorporation of human rights treaties into domestic law is a factor that helps States comply with their obligations in this field. In this article, we have attempted to explore how the adoption of the thesis of supra-legality can contribute to the improvement of human rights protection by the Brazilian State. Based on an analysis of the jurisprudence of the Supreme Court, we found that supra-legality enables human rights treaties to be used to interpret not only legal provisions, but also the Constitution itself. We then determined that the experience in other countries indicates that the hierarchy attributed to treaties is not decisive for their use in this way, taking into account the requirement to make the Constitution compatible with international treaties. Finally, we defended that human rights treaties should serve as a parameter of constitutional interpretation in Brazilian law, in order to permit the harmonization of constitutional and international provisions.

It is worth noting, furthermore, that the use of international treaties should not be restricted to the Supreme Court, but they should also serve as interpretive guidance for all judicial bodies. Moreover, the public authorities should improve their knowledge of international human rights law, particularly the Inter-American system (BERNARDES, 2011, p. 141-146), so that the commitments assumed by Brazil are respected. In the legislative process, this requires an analysis of the compatibility of bills with human rights treaties and, in the Executive Branch, that any administrative act contravening these treaties be annulled. From this perspective, supra-legality can offer many ways for improving the protection of human rights in Brazil.

REFERENCES

Bibliography and other sources

ABDELGAWAD, Elisabeth Lambert; WEBER, Anne. 2008. The reception process in France and Germany. In: KELLER, Helen; STONE SWEET, Alec (Eds.). **A Europe of rights**: the impact of the ECHR on national legal systems. Oxford: Oxford University Press. p. 107-164.

BERNARDES, Marcia Nina. 2011. Sistema Interamericano de Direitos Humanos como esfera pública transnacional: aspectos jurídicos e políticos da implementação de decisões internacionais. **SUR**, São Paulo, v. 8, n. 15, p. 134-156, dez. Available at: <http://www.surjournal.org/conteudos/getArtigo15.php?artigo=15,artigo_07.htm>. Last accessed on: May 2013.

BERNHARDT, Rudolf. The Convention and Domestic Law. 1993. In: MACDONALD, Ronald St. John.; MATSCHER, F.; PETZOLD, H. (eds.). 1993. **The European System for the Protection of Human Rights**. Dordrecht: Martinus Nijhoff Publishers. p. 25-40.

BESSON, Samantha. 2008. The reception process in Ireland and the United Kingdom. In: KELLER, Helen; STONE SWEET, Alec (Eds.). 2008. **A Europe of rights**: the impact of the ECHR on national legal systems. Oxford: Oxford University Press. p. 36-106.

BOGDANDY, Armin von. 2008. Pluralism, direct effect, and the ultimate say: on the relationship between international and domestic constitutional law. **International Journal of Constitutional Law**, Oxford, v. 6, No. 3, p. 397-413, jul./oct.

BREWER-CARÍAS, Allan R. 2006. La aplicación de los tratados internacionales sobre derechos humanos en el orden interno. **Revista Iberoamericana de Derecho Procesal Constitucional**, México. DF, n. 6, p. 29-78, jul./dic.

CAMPOS, Thiago Yukio Guenka; BASTOS JUNIOR, Luiz Magno Pinto. 2011. Por uma delimitação conceitual do controle judicial de convencionalidade no âmbito do Sistema Interamericano de Direitos Humanos: diálogos entre ordem interna e internacional. In: ANNONI, Danielle (Org.). **Direito internacional dos direitos humanos**: homenagem à Convenção Americana de Direitos Humanos. São Paulo: Conceito Editorial. p. 257-296.

CANÇADO TRINDADE, Antônio Augusto. 1996. A interação entre o direito internacional e o direito interno na proteção dos direitos humanos. In: CANÇADO TRINDADE, Antônio Augusto (Ed.). **A incorporação das normas internacionais de proteção dos direitos humanos no direito brasileiro**. San José, Costa Rica; Brasília: Instituto Interamericano de Direitos Humanos.

CLAYTON, Richard. 2004. Judicial deference and "democratic dialogue": the legitimacy of judicial intervention under the Human Rights Act 1998. **Public Law**, London, p. 33-47, Spring.

CRUZ VILLALÓN, Pedro. 1987. **La formación del sistema europeo de control de constitucionalidad (1818-1939)**. Madrid: Centro de Estudios Constitucionales.

DALLARI, Pedro Bohomoletz de Abreu. 2003. **Constituição e tratados internacionais**. São Paulo: Saraiva.

DRZEMCZEWSKI, Andrew Z. 1997. **European Human Rights Convention in Domestic Law**: a comparative study. Oxford: Clarendon Press.

DWORKIN, Ronald. 1999. **O império do direito**. São Paulo: Martins Fontes.

GALINDO, George Rodrigo Bandeira. 2002. **Tratados internacionais de direitos humanos e Constituição brasileira**. Belo Horizonte: Del Rey.

GÓMEZ FERNÁNDEZ, Itziar. 2004. **Conflicto y cooperación entre la constitución española y el derecho internacional**. Valencia: Tirant lo Blanch.

HOFFMEISTER, Frank. 2006. Germany: status of European Convention on Human Rights in Domestic Law. **International Journal of Constitutional Law**, Oxford, v. 4, No. 4, p. 722-731, Oct.

KELLER, Helen; STONE SWEET, Alec (Eds.). 2008. **A Europe of rights**: the impact of the ECHR on national legal systems. Oxford: Oxford University Press.

KILLANDER, Magnus. 2010. Interpretação dos tratados regionais de direitos humanos. **SUR**, São Paulo, v. 7, n. 13, p. 149-175, dez. Available at: <http://www.surjournal.org/conteudos/pdf/13/07.pdf>. Last accessed on: May 2013.

KLUG, Francesca; STARMER, Keir. 2005. Standing back from the Human Rights Act: how effective is it five years on? **Public Law**, London, p. 716-728, Winter.

LETSAS, George. 2007. **A theory of interpretation of the European Convention on Human Rights**. Oxford: Oxford University Press.

MARINONI, Luiz Guilherme. 2010. **Precedentes obrigatórios**. São Paulo: Revista dos Tribunais.

MAUÉS, Antonio Moreira. 2008. Perspectivas do Sistema Interamericano de Proteção dos Direitos Humanos no Brasil. In: NUNES, António José Avelãs; COUTINHO, Jacinto Nelson de Miranda (Orgs.). **O direito e o futuro, o futuro do direito**. Coimbra: Almedina. p. 289-312.

MAZZUOLI, Valerio de Oliveira. 2011. **O controle jurisdicional da convencionalidade das leis**. 2. ed. São Paulo: Revista dos Tribunais.

MELLO, Celso Duvivier de Albuquerque. 1999. O § 2º do art. 5º da Constituição Federal. In: TORRES, Ricardo Lobo (Org.). **Teoria dos direitos fundamentais**. Rio de Janeiro: Renovar. p. 1-33.

MÜLLER, Felix; RICHTER, Tobias. 2008. Report on the Bundesverfassungsgericht's (Federal Constitucional Court) Jurisprudence in 2005/2006. **German Law Journal**, v. 9, No. 2, p. 161-193, Feb. Available at: <http://www.germanlawjournal.com/index.php?pageID=11&artID=897>. Last accessed on: May 2013.

PIOVESAN, Flavia. 1997. **Direitos humanos e o direito constitucional internacional**. São Paulo: Max Limonad.

QUERALT JIMÉNEZ, Argelia. 2008. **La interpretación de los derechos**: del Tribunal de Estrasburgo al Tribunal Constitucional. Madrid: Centro de Estudios Políticos y Constitucionales.

RAMOS, André de Carvalho. 2004. **Responsabilidade internacional por violação de direitos humanos.** Rio de Janeiro: Renovar.

_____. 2009. O diálogo das cortes: O Supremo Tribunal Federal e a Corte Interamericana de Direitos Humanos. In: AMARAL JUNIOR, Alberto do; JUBILUT, Liliana Lyra (Orgs.). 2009. **O STF e o direito internacional dos direitos humanos**. São Paulo: Quartier Latin. p. 805-850.

REINO UNIDO. DEPARTMENT FOR CONSTITUTIONAL AFFAIRS. 2006. **Review of the Implementation of the Human Rights Act**. London: DCA.

SAIZ ARNAIZ, Alejandro. 2011. La interpretación de los derechos fundamentales de conformidad con el derecho internacional de los derechos humanos. **Hendu**, v. 2, n. 1, p. 20-42. Available at: <http://www.periodicos.ufpa.br/index.php/hendu/article/view/664/938>. Last accessed on: May 2013.

SILVA, Virgílio Afonso da. 2010. Integração e diálogo constitucional na América do Sul. In: BOGDANDY, Armin von; PIOVESAN, Flavia; ANTONIAZZI, Mariela Morales (Coords.). 2010. **Direitos humanos, democracia e integração jurídica na América do Sul**. Rio de Janeiro: Lumen Juris. p. 515-530.

SLAUGHTER, Anne-Marie. 1994. A typology of transjudicial communication. **University of Richmond Law Review**, Richmond, v. 29, p. 99-137.

STRECK, Lenio Luiz. 2011. **Verdade e consenso**. 4. ed. São Paulo: Saraiva.

TORRES PÉREZ, Aida. 2009. **Conflicts of rights in the European Union**: a theory of supranational adjudication. Oxford: Oxford University Press.

UPRIMNY, Rodrigo. [2001]. El bloque de constitucionalidad en Colombia: un análisis jurisprudencial y un ensayo de sistematización doctrinal. Available at: <http://www.dejusticia.org/index.php?modo=interna&tema=sistema_judicial&publicacion=72>. Last accessed on: May 2013.

Jurisprudence

BRASIL. 1977. Supremo Tribunal Federal. **Recurso Extraordinário nº 80.004.**

_____. 1995a. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade nº 1.347.**

_____. 1995b. Supremo Tribunal Federal. **Habeas Corpus nº 72.131.**

_____. 1997. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade nº 1.480.**

_____. 2000. Supremo Tribunal Federal. **Recurso em Habeas Corpus nº 79.785.**

_____. 2005. Supremo Tribunal Federal. **Habeas Corpus nº 85.237.**

_____. 2006a. Supremo Tribunal Federal. **Habeas Corpus nº 88.359.**

_____. 2006b. Supremo Tribunal Federal. **Habeas Corpus nº 86.634.**

_____. 2008a. Supremo Tribunal Federal. **Habeas Corpus nº 92.569.**

_____. 2008b. Supremo Tribunal Federal. **Recurso Extraordinário nº 466.343.**

_____. 2009a. Supremo Tribunal Federal. **Habeas Corpus nº 95.464.**

_____. 2009b. Supremo Tribunal Federal. **Habeas Corpus nº 96.059.**

_____. 2 009c. Supremo Tribunal Federal. **Recurso em Habeas Corpus nº 83.810.**

_____. 2009d. Supremo Tribunal Federal. **Habeas Corpus nº 93.503.**

_____. 2009e. Supremo Tribunal Federal. **Recurso Extraordinário nº 511.961.**

_____. 2009f. Supremo Tribunal Federal. **Habeas Corpus nº 99.891.**

_____. 2009g. Supremo Tribunal Federal. **Habeas Corpus nº 98.878.**

_____. 2010a. Supremo Tribunal Federal. **Habeas Corpus nº 99.914.**

_____. 2010b. Supremo Tribunal Federal. **Habeas Corpus nº 98.579.**

_____. 2010c. Supremo Tribunal Federal. **Habeas Corpus nº 102.368.**

_____. 2010d. Supremo Tribunal Federal. **Recurso em Habeas Corpus nº 103.546.**

NOTES

1. Cf., for them all, Extraordinary Appeal No. 466,343 (J. 03/12/2008). All the judgments cited in this article were consulted on the website of the Supreme Court: <http://stf.jus.br>. Last accessed in: May 2013.

2. "Article 5, paragraph 2. The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party."

3. "Article 5, LXVII. There shall be no civil imprisonment for indebtedness, except in the case of a person responsible for the voluntary and inexcusable default of an alimony obligation and in the case of an unfaithful trustee."

4. "Article 7.7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support."

5. Binding Precedent No. 25: "Civil imprisonment of unfaithful trustees is unlawful, regardless of the type of the deposit".

6. At the end of the debates held throughout the trial, Justice Gilmar Mendes presented an "addendum to the vote" establishing, on behalf of the majority, the thesis of supra-legality.

7. The growing importance of court precedents in Brazilian law has been emphasized, albeit in very distinct ways, in the literature. Cf. Marinoni (2010) and Streck (2011).

8. TN: Subsequent laws repeal prior laws.

9. Cf., for them all, Habeas Corpus No. 72,131 (J. 23/11/1995).

10. Also contributing to this situation was the fact that only in 1998 did Brazil recognize the jurisdiction of the Inter-American Court of Human Rights, which to date has judged only five cases against the Brazilian State: Ximenes Lopes, in July 2006; Nogueira de Carvalho, in November 2006; Escher, in July 2009; Garibaldi, in September 2009; and Guerrilha do Araguaia, in November 2010.

11. Previously, the thesis of supra-legality appeared for the first time in the Supreme Court in a case heard in 2000. In the Appeal in Habeas Corpus No. 79,785 (J. 29/03/2000), the reporting justice Sepúlveda Pertence admitted that international human rights treaties, while positioned below the Constitution, should be endowed with "supra-legal force" to give direct application to their norms, even when contrasting with ordinary laws, "whenever, without infringing on the Constitution, they complement it, by specifying or broadening the rights and guarantees it contains." In spite of this, the court refused to make the right of appeal to a higher court an absolute constitutional guarantee, thereby limiting the applicability of article 8.2.h of the ACHR, according to which, "[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: (...) h) the right to appeal the judgment to a higher court".

12. "Article 5, paragraph 3. International human rights treaties and conventions which are approved in each House of the National Congress, in two rounds of voting, by three fifths of the votes of the respective members shall be equivalent to constitutional amendments."

13. "Article 5, paragraph 4. Brazil accepts the jurisdiction of an International Criminal Court to whose creation it has expressed its adhesion".

14. "Article 109, paragraph 5: In cases of serious human rights violations, and with a view to ensuring compliance with obligations deriving from international human rights treaties to which Brazil is a party, the Attorney-General of the Republic may request, before the Superior Court of Justice, and in the course of any of the stages of the inquiry or judicial action, that jurisdiction on the matter be taken to Federal Justice".

15. It is worth noting that the position defended by Justice Celso de Mello does not exclude the principle of constitutional supremacy, recognizing that there would be an internal hierarchy in the constitutional block that would preserve the rights enshrined in the Constitution from any restrictions imposed on them by international treaties.

16. This change in the interpretation of the Constitution is even more evident when contrasted with the fundamentals presented by Justice Moreira Alves in the judgment of Habeas Corpus No. 72,131: "Since, then, it is a mere ordinary legal provision, this paragraph 7 of article 7 of the Convention in question may not restrict the scope of the exceptions provided for in article 5, LVII of our current Constitution (and note that these exceptions take precedence over the fundamental right of the debtor to not be susceptible to civil imprisonment, which implies a real fundamental right of the creditors of alimony and of conventional or necessary deposit), even for the effect of revoking, through a constitutional interpretation of its silence in the sense of not admitting that the Brazilian Constitution expressly admits, the rules on the civil imprisonment of unfaithful trustees (...)". (BRASIL. SUPREMO TRIBUNAL FEDERAL, 1995b, p. 8.686).

17. Similarly, Habeas Corpus No. 96,059 (J. 10/02/2009), Habeas Corpus No. 99,914 (J. 23/03/2010) and Habeas Corpus No. 102,368 (J. 29/06/2010).

18. Similarly, Habeas Corpus No. 95,464 (J. 03/02/2009), Habeas Corpus No. 98,878 (J. 27/10/2009), Habeas Corpus No. 98,579 (J. 23/03/2010) and Appeal in Habeas Corpus No. 103,546 (J. 07/12/2010).

19. Habeas Corpus No. 88,359 (J. 14/11/2006).

20. Habeas Corpus No. 86,634 (J. 18/12/2006) and Habeas Corpus No. 93,503 (J. 02/06/2009).

21. Habeas Corpus No. 92,569 (J. 11/03/2008).

22. Appeal in Habeas Corpus No. 83,810 (J. 05/03/2009)

23. In Latin, "agreements must be kept". (Editor's note).

24. "Article 2. *Domestic Legal Effects*. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

25. Note that even the attribution of constitutional status to human rights treaties does not dispense with the need for hermeneutic principles to solve potential conflicts between original constitutional provisions and international provisions, as exemplified by recourse to criteria such as the "most favorable law".

26. The importance of this category to understand the relations between the Constitution and international treaties is emphasized by Gómez Fernández (2004, p. 359-361).

RESUMO

Em dezembro de 2008, ao julgar várias ações que envolviam a prisão civil do depositário infiel, o Supremo Tribunal Federal modificou seu entendimento sobre o nível hierárquico dos tratados internacionais de direitos humanos no direito brasileiro, passando a adotar a tese da supralegalidade. Este artigo analisa os possíveis impactos que a mudança pode trazer para a interpretação constitucional desenvolvida no Brasil, examinando como o STF tem aplicado a tese da supralegalidade e de que modo o nível hierárquico dos tratados de direitos humanos influencia, em outros países, seu uso na interpretação da Constituição. O trabalho conclui que a supralegalidade permite construir argumentos que favoreçam a utilização dos tratados de direitos humanos como parâmetro de interpretação constitucional no direito brasileiro.

PALAVRAS-CHAVE

Tratados Internacionais de Direitos Humanos – Supralegalidade – Supremo Tribunal Federal.

RESUMEN

En diciembre de 2008, al juzgar varias causas en torno a la prisión civil del depositario infiel, el Supremo Tribunal Federal de Brasil (STF) cambió su concepción sobre el nivel jerárquico de los tratados internacionales de derechos humanos en la legislación brasileña, pasando a adoptar la tesis de la supralegalidad. Este artículo analiza las posibles repercusiones de ese cambio sobre la interpretación constitucional llevada a cabo en Brasil, examinando de qué manera el STF ha aplicado la teoría de supralegalidad y de qué forma el nivel jerárquico de los tratados de derechos humanos influye, en otros países, sobre su uso en la interpretación de la Constitución. Este trabajo concluye que la supralegalidad permite construir argumentos que favorezcan la utilización de los tratados de derechos humanos como parámetro de interpretación constitucional en el derecho brasileño.

PALABRAS CLAVE

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