ABSTRACT: We analyze in this article the extension of the scope of the Maria da Penha Law to men as victims of domestic and family violence in Pelicani (2007) from a cognitive-pragmatic point of view. So, we use a descriptive-explanatory methodology guided by the theoretical notions of goal-conciliation (RAUEN, 2014) and relevance (SPERBER; WILSON, 1986, 1995), correlating the 1988 Brazilian Federal Constitution, the Maria da Penha Law and Pelicani’s text. The study suggests that Pelicani’s intentional action plan consists of proposing to use the method of interpretation according to the Constitution to harmonize the Law with the principle of equality sheltered in the Constitution and, therefore, to extend its scope to men, preserving the juridical good of the inviolability of the right to security, whereas it would protect all the victims of domestic and family violence regardless of sex or affective option.

Resumo: Neste artigo, a partir de um viés pragmático cognitivo, analisamos a extensão do escopo da Lei Maria da Penha a homens vítimas de violência doméstica e familiar em Pelicani (2007). Para tanto, mobilizamos a metodologia descritiva e explanatória orientada pelas noções teóricas de conciliação de metas de Rauen (2014) e de relevância de Sperber e Wilson (1986, 1995), estabelecendo correlações entre a Constituição Federal de 1988, a Lei Maria da Penha e o texto de Pelicani. O estudo sugere que o plano de ação intencional de Pelicani (2007) consiste em utilizar o método de interpretação conforme a Constituição para harmonizar a Lei Maria da Penha ao princípio da igualdade albergado na Constituição e, desse modo, estender seu escopo a homens, preservando o bem jurídico de inviolabilidade do direito à segurança na medida em que ela passaria a proteger a todas as vítimas de violência doméstica e familiar independentemente de sexo ou de opção afetiva.


Resumen: En este artículo, a través de un abordaje pragmático -cognitivo, se analiza la ampliación del ámbito de la Ley Maria da Penha a los hombres víctimas de violencia doméstica y familiar en Pelicani (2007). Por lo tanto, movilizamos la metodología descriptiva y explicativa orientada por las nociones teóricas de conciliación de metas (RAUEN, 2014) y relevancia (SPERBER; WILSON, 1986, 1995), estableciendo correlaciones entre la Constitución Federal Brasileña de 1988, la Ley Maria da Penha y el texto de Pelicani. El estudio sugiere que el plan de acción intencional de Pelicani reside en proponer usar el método de interpretación de acuerdo con la Constitución, para armonizar la Ley Maria da Penha con el principio de igualdad contemplado en la Constitución y, con esto, ampliar su alcance a los hombres, preservando el bien jurídico de la inviolabilidad del derecho a la seguridad, en la medida en que protegería a todas las víctimas de la violencia doméstica, independientemente del sexo o la opción afectiva.

Palabras clave: Teoría de Conciliación de Metas. Teoría de la Relevancia. Ley Maria da Penha.

1 Introduction

Admittedly, the Maria da Penha Law – Law 11,340, August 7, 2006 – has made a significant progress in protecting women from domestic and family violence generally perpetrated by their companions. However, there are several open questions that merit analysis by legal operators. Among them, it is argued that the Law, by protecting only women and, with certain concession, female transvestites, transsexuals and transgenders, violates the principle of equality and has no shelter in the 1988 Brazilian Federal Constitution. This is precisely the line of argument in Rosa Benites Pelicani’s 2007 article “Maria da Penha Law and the principle of equality: interpretation according to the Constitution”,2 published in the Journal of the Law Course of the Methodist University of São Paulo. In this text, Pelicani (2007, p. 237) proposes an interpretation of the Maria da Penha Law according to the Constitution to “extend its application to men, also a possible victim of domestic and family violence.” Pelicani argues in favor of harmonizing the Law with the Constitution in the expectation of avoiding the declaration of its eventual unconstitutionality.3

Although Pelicani bases her argumentation on 1988 Brazilian Federal Constitution, it is important for the sake of the present work to point out that the origin of the criticism is the interpretation of the first sentence of section 5 of the Law itself:

Section 5. For the purposes of this Law, domestic and family violence against women shall mean any action or omission based on gender that causes death, injury, physical, sexual or psychological suffering and moral or property damage: [...]. (BRASIL, 2006, our bold).4

We agree with Rauen, F. and Ribeiro (2016, p. 91) when they argue the choice of the lexical items ‘woman’ and ‘gender’ yields a heated dispute. According to them, “if the lexical item ‘woman’ suggests an interpretation based on the notion of sex – a controversial

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2 A Lei Maria da Penha e o princípio da igualdade: interpretação conforme a Constituição.

3 This text is relevant because it shows dissonant arguments in favor of a radical extension of the scope of the Law to shelter male victims of female aggression. The analysis of this text comprises a larger project on the subject, including studies of Rauen, F. and Ribeiro (2016, 2017) and Rauen, B. (2017a), analyzing the extension of scope to female transvestites, transsexuals and transgenders; the present study (RAUEN, B., 2016) on the extension of scope to hetero-affective men; and an ongoing project on the reception of this thesis in the jurisprudence of courts of justice (RAUEN, B., 2017b).

4 Art. 5º Para os efeitos desta Lei, configura violência doméstica e familiar contra a mulher qualquer ação ou omissão baseada no género que lhe cause morte, lesão, sofrimento físico, sexual ou psicológico e dano moral ou patrimonial: [...]. (BRASIL, 2006, our bold).
notion itself – the term ‘gender’ does not suggest the same interpretation.” Surely, the mode of interpretation of these lexical items defines the following arguments. Rauen, F. and Ribeiro (2016) – in analyzing Dias and Reinheimer’s (2011) interpretation of the question – show we can extend the scope of the Law to female transvestites, transsexuals and transgenders only with an ad hoc interpretation of the lexical item ‘woman’ as a gender.

Pelicani (2007) goes a step further by extending the scope of the Law to men as possible victims of domestic and family violence, shifting the critical attention to the notion of violence itself. So, if the aggression occurs within the domestic and family spheres, then it does not matter the sex or gender of both victims and aggressors. The question here is how this cognitive operation is possible.

Given this scenario, the general aim of this study is to analyze, through a cognitive-pragmatic bias, the extension of the scope of the Maria da Penha Law to men as victims of domestic and family violence in Pelicani (2007), (i) mobilizing the descriptive-explanatory methodology guided by the theoretical notions of goal-conciliation (RAUEN, 2014) and relevance (SPERBER; WILSON, 1986, 1995), and (ii) correlating 1988 Brazilian Federal Constitution, Maria da Penha Law and Pelicani’s text.

In general, Sperber and Wilson’s (1986, 1995) relevance theory describes and explains inferential processes in interpreting communicative stimuli. An interpreter – in finding a controversial juridical subject – positions himself/herself as second, from the point of view of a chain of inferences, in relation to a singular first text or a set of first texts. According to relevance theory, these processes are based on two principles of relevance, here understood as an inequation in which the cognitive effects derived from processing a communicative piece must be greater than the processing effort required to process it. The cognitive principle of relevance predicts that the mind maximizes cognitive effects, and the communicative principle of relevance predicts that utterances are produced so that their optimal relevance is presumed.

Rauen’s (2014) goal-conciliation theory advances relevance theory by proposing that the cognitive and communicative principles are ordered by higher order goals. It follows from this approach that if a legal operator is interested in problematizing the text of some law – especially when it is presumed to what conclusion he wants to come to – he will elaborate an antefactual abductive hypotheses with which he will support the a priori conclusion, so that the outcome of the criticism will conciliate with this anticipated goal.

To deal with the aim of this study, we analyzed the article in three methodological steps. First, we chose textual excerpts from Pelicani’s (2007) article – which are based on punctual textual aspects of both, the Maria da Penha Law and the 1988 Brazilian Federal Constitution – to establish a continuum between the texts of the Laws and the development of its criticism in the article. In the second place, according to relevance theory, we analyzed the ostensive-inferential process that constitutes the argumentation of the article, elaborating the respective explicatures of the logical forms of the utterances involved in this task; and then integrating these explicatures into inferential chains to substantiate the author’s position, when necessary. Third, according to goal-conciliation theory and based on these inferential chains, we analyzed the development of argumentation in terms of intentional action plans towards the achievement of goals and subgoals.

Thus, we organized the text in three more sections, respectively dedicated to write brief theoretical notes on both relevance and goal-conciliation theory, to analyze Pelicani’s (2007) arguments, and to present final remarks.

2 BRIEF THEORETICAL NOTES

We assume in this research that the elaboration of a criticism consists of an intentional action plan towards the achievement of a goal, whose result is composing a text – Pelicani’s article (2007), in this case. Given that any correlation between texts in the chain of interpretation is at the service of this intentional action plan, we assume that analyzing the critique depends on understanding the supporting plan.
In goal-conciliation theory, we can describe and explain any intentional action plan in four stages, such that the first stage – assumed as axiomatic – is projecting a goal [1], and the others consist of formulating [2], performing [3], and checking [4] at least one antefactual abductive hypothesis.

The first three stages of this model are abductive. In an explanatory or a posteriori abduction, we start with an observation of a fact, for example, that a street is wet (x is Q). Further, we abduct a hypothesis of connection between a certain cause P and the fact Q, for example, a rain fall. It follows from this that it is most likely or plausible being the rain the cause of the wet street (x is P). Rauen (2013, 2014, 2016) generalizes this architecture to deal with cases of a priori abduction. He takes the case of an individual i, projecting himself/herself to be in a certain state of goal Q in the future. Now, a description of the type x is Q corresponds to some state x in the future that will satisfy the expectation of achieving that goal state Q [stage 1]. The problem is how achieving this state. In these circumstances, Rauen proposes that individual i yields an antefactual abductive hypothesis that there is an antecedent action P likely to be sufficient to achieve the consequent state Q [stage 2]. It follows that x is P, and individual i executes the action P in the expectation of achieving Q [stage 3].

Rauen, in turn, considers deductive the last three stages of the model, insofar as we can treat the antefactual abductive hypothesis (P is Q) in the plan of intentional action as a major premise [stage 2], the antecedent action x is P as a lower premise [stage 3], and the proposition x is Q [stage 4] as a deductive conclusion.

We can see this architecture in the following figure.

<table>
<thead>
<tr>
<th>Abduction</th>
<th>[1]</th>
<th>Q</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deduction</td>
<td>[2]</td>
<td>P</td>
</tr>
<tr>
<td></td>
<td>[3]</td>
<td>P</td>
</tr>
<tr>
<td></td>
<td>[4]</td>
<td>Q'</td>
</tr>
</tbody>
</table>

**Figure 1:** Abductive-deductive architecture in goal-conciliation theory

**Note:** Q represents the achievement of the goal.

**Source:** Authors’ elaboration

Let us see how we can model the aim of the Pelicani’s (2007) article in goal-conciliation-theoretic terms. In the abstract of the text – motivated by manifestations of the Maria da Penha Law unconstitutionality, by treating only one of the genders involved in the litigation, and, therefore, threatening the principle of equality – she argues we must interpret the Law according to 1988 Brazilian Federal Constitution to extend its application to men as potential victims of domestic and family violence.

In viewing the entry into Brazilian legal system of the new Law for the protection of women, called the Maria da Penha Law, and manifestations in the sense of its unconstitutionality, due to the principle of equality, it is proposed to interpret it according to the [1988 Brazilian] Constitution to extend it also to men as possible victims of domestic and family violence. (PELICANI, 2007, p. 237, our brackets).

A description of this aim in goal-conciliation terms starts from the projection, formulation or emergence of a goal [stage 1], thus formalized:


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5 On the notion of abduction, see Psillos (2002).

6 Diante do ingresso no ordenamento jurídico brasileiro da nova Lei de proteção à mulher, batizada de Lei Maria da Penha, e de manifestações no sentido de sua inconstitucionalidade, em razão do princípio da igualdade, propõe-se a sua interpretação conforme a Constituição para estender sua aplicação ao homem, também possível vítima da violência doméstica e familiar. (PELICANI, 2007, p. 237, our brackets).
According to Pelicaní’s (2007) aim, the goal projection consists of some degree of cognitive emergency of the author proposing to extend the application of the Law to men as possible victims of domestic and family violence:

[1] Pelicaní designs Pelicaní’s goal Q to propose extending the application of the Maria da Penha Law to men who are possible victims of domestic and family violence considering the entry into the Brazilian legal system of the new Law for the protection of women, called the Maria da Penha Law, and manifestations in the sense of its unconstitutionality due to the principle of equality in $t_1$.

In this description, $t_1$ represents the instant at which the goal Q of proposing the extension of the scope of the Maria da Penha Law to men as potential domestic and family violence victims emerges, and the goal Q represents a future state not yet actual at that time $t_1$.

The output of this stage can be represented as follows:

[1] Q

Propose to extend the application of the Maria da Penha Law to men as possible victims of domestic and family violence... Pelicaní.

The second stage represents the emergence of at least one antefactual abductive hypothesis to achieve the goal Q:

[2] Pelicaní abducts an antefactual abductive hypothesis $H_a$ to achieve the goal Q at the time $t_2$ (RAUEN, 2014, p. 599, our adaptation).

According to this formulation, at a time $t_2$ that succeeds $t_1$, individual i generates ex-ante-facto an abductive hypothesis $H_a$ to achieve the goal Q. This hypothesis must meet four criteria: (i) to be mapped by a hypothetical formulation “If P, then Q,” (ii) to associate an antecedent action $P$ at least likely to be sufficient to extend the scope of the Law to men, (iii) to be consistent with the cognitive principle of relevance, and (iv) to emerge as an optimal ad hoc solution for that extension of scope.7 As we have seen in the Pelicaní’s abstract (2007), she abducts the hypothesis that proposing to interpret the Maria da Penha Law according to 1988 Brazilian Federal Constitution allows proposing to extend its scope to men as possible victims of domestic and family violence.

[2] Pelicaní abducts that if Pelicaní proposing to interpret the Maria da Penha Law according to the 1988 Brazilian Constitution, then Pelicaní can propose extending the application of the Maria da Penha Law to men as possible victims of domestic and family violence... in $t_2$.

We can represent the output of [2] schematically as follows:

[1] Q

Propose to extend the application of the Maria da Penha Law to men as possible victims of domestic and family violence... Pelicaní.

[2] P Q

Propose to interpret the Maria da Penha Law according to 1988 Brazilian Federal Constitution, Pelicaní.

Propose to extend the application of the Maria da Penha Law to men as possible victims of domestic and family violence... Pelicaní.

The probable execution of the antecedent action $P$ characterizes the third stage:

[3a] Pelicaní i performs P to achieve Q at the time $t_3$, or [3b] Pelicaní i does not perform P to achieve Q at the time $t_3$ (RAUEN, 2014, p. 601, our adaptation).

7 RAUEN (2014, p. 600-601) describes criteria for choosing an antefactual abductive hypothesis.
Rauen (2014) assumes there is a proper time $t_3$ of the execution of the action that follows the formulation of the hypothesis $H_a$. For him, the foreground schema is agentive or active, anticipating that Pelicani will propose to interpret the Maria da Penha Law according to the 1988 Brazilian Federal Constitution.

Or, more schematically:

1. Q
   Propose to extend the application of the Maria da Penha Law to men as possible victims of domestic and family violence...Pelican.

2. P Q
   Propose to interpret the Maria da Penha Law according to the 1988 Brazilian Federal Constitution, Pelican.

3. P
   Pelican proposes to interpret the Maria da Penha Law according to the 1988 Brazilian Federal Constitution.

In the fourth stage, we check the hypothetical formulation deductively:


In the case at hand, the fourth stage anticipates that Pelicani should check whether the interpretation according to 1988 Brazilian Federal Constitution allows proposing the extension of the scope.

[4a] Pelican $i$ checks the proposal for the application of the Maria da Penha Law to men as possible victims of domestic and family violence...by proposing an interpretation of the Maria da Penha Law according to 1988 Brazilian Federal Constitution in $t_i$.

Or, more schematically:

1. Q
   Propose to extend the application of the Maria da Penha Law to men as possible victims of domestic and family violence...Pelican.

2. P Q
   Propose to interpret the Maria da Penha Law according to the 1988 Brazilian Federal Constitution, Pelican.

3. P
   Pelican proposes to interpret the Maria da Penha Law according to the 1988 Brazilian Federal Constitution.

4. Q'
   Pelican proposes to extend the application of the Maria da Penha Law to men as possible victims of domestic and family violence...

According to Rauen (2014), two concepts emerge at the checking stage: goal conciliation and hypothesis confirmation. For him, there is a goal conciliation whenever the state $Q'$ of the environment at $t_i$ satisfies, coincides with or corresponds with the goal $Q$ at $t_i$. There are four possibilities in this context:

(a) **active conciliation**, when individual $i$ performs the action $P$ in the scope of the hypothesis $H_a$, and the state $Q'$ at the time $t_i$ conciliates with the goal $Q$ at the time $t_1$; (b) **active non-conciliation**, when individual $i$ performs action $P$ in the scope of hypothesis $H_a$, and the state $Q'$ at the time $t_i$ does not conciliates with the goal $Q$ at the time $t_1$; (c) **passive conciliation**, when individual $i$ does not perform the action $P$ in the scope of hypothesis $H_a$, and the state $Q'$ at the time $t_i$ even so conciliates with the goal $Q$ at the time $t_1$; (d) **passive non-conciliation**, when individual $i$ does not perform the action $P$ in the scope of hypothesis $H_a$, and the state $Q'$ at the time $t_i$ does not conciliates with the goal $Q$ at the time $t_1$. (RAUEN, 2014, p. 604).
The table below summarizes these possibilities:

<table>
<thead>
<tr>
<th>Stages</th>
<th>Active Conciliation (a)</th>
<th>Active Non-Conciliation (b)</th>
<th>Passive Conciliation (c)</th>
<th>Passive Non-Conciliation (d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>[1]</td>
<td>Q</td>
<td>Q</td>
<td>Q</td>
<td>Q</td>
</tr>
<tr>
<td>[2]</td>
<td>P</td>
<td>Q</td>
<td>P</td>
<td>Q</td>
</tr>
<tr>
<td>[4]</td>
<td>Q'</td>
<td>¬Q'</td>
<td>Q'</td>
<td>¬Q'</td>
</tr>
</tbody>
</table>

Table 1: Possibilities for achieving goals


In the case, Pelicani’s strategy conforms to what Rauen (2014) defines as active conciliation (1a), if the proposition of interpreting the Law according to the 1988 Brazilian Federal Constitution allows proposing the extension of the application of the Law to men as possible victims of violence domestic and family. Otherwise, it conforms as active non-conciliation (1b).

On the other hand, an antefactual abductive hypothesis is confirmed when the achievement state $Q'$ at $t_4$ “satisfies, coincides, or corresponds with the hypothesis $H_a$ at the time $t_2$” (RAUEN, 2014, p. 604), so that the result of the action $P$ reinforces the abductive antefactual hypothesis $H_a$.

The evaluation of these hypotheses depends on the degree of trust or strength attributed to the connection between their antecedents and consequents, and this stems from the ontology of both individual prior conciliations and prior non-conciliations (RAUEN, 2013, 2014, 2016).

According to the author, there is a scale of strength with five possibilities. When action $P$ is sufficient, necessary and certain for the achievement of $Q$, the hypotheses are categorical $P \iff Q$; when the action $P$ is sufficient, necessary, but not certain for the achievement of $Q$, the hypotheses are biconditional $P \leftrightarrow Q$; when the action $P$ is sufficient, but not necessary for the achievement of $Q$, the hypotheses are conditional $P \rightarrow Q$; when the action $P$ is necessary, but not sufficient for the achievement of $Q$, the hypotheses are enabling $P \leftarrow Q$; and, finally, when the action $P$ is neither sufficient, nor necessary for the achievement of $Q$, the hypotheses are tautological $P \equiv Q$.

The table below formalizes these possibilities:

<table>
<thead>
<tr>
<th>Conciliations</th>
<th>Propositions</th>
<th>Categorical</th>
<th>Biconditional</th>
<th>Conditional</th>
<th>Enabling</th>
<th>Tautological</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$P$</td>
<td>$Q$</td>
<td>$P \iff Q$</td>
<td>$P \leftrightarrow Q$</td>
<td>$P \rightarrow Q$</td>
<td>$P \leftarrow Q$</td>
</tr>
<tr>
<td>(1a) Active Conciliation</td>
<td>V</td>
<td>V</td>
<td>V</td>
<td>V</td>
<td>V</td>
<td>V</td>
</tr>
<tr>
<td>(1b) Active Non-Conciliation</td>
<td>V</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>V</td>
</tr>
<tr>
<td>(1c) Passive Conciliation</td>
<td>F</td>
<td>V</td>
<td>F</td>
<td>F</td>
<td>V</td>
<td>F</td>
</tr>
<tr>
<td>(1d) Passive Non-Conciliation</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>V</td>
<td>V</td>
<td>V</td>
</tr>
</tbody>
</table>

Table 2: True table for modeling hypothetical utterances


From the point of view of authorship, the proposition of interpreting the Law according to the 1988 Brazilian Federal Constitution is, minimally, a condition for the application of the Maria da Penha Law to men, qualifying the abductive hypothesis as conditional. A different aspect is the interpretation of Pelicanì’s (2007) argument by others, since interpreting the Law as the Constitution allows, but does not guarantee, that the legal operators will extend its scope to men. So, there is no guarantee that this argument will be upheld.

Putting this question, we can distinguish the notions of self- and hetero-conciliation. According to Rauen (2014), there is a goal self-conciliation when individual himself / herself analyzes if his / her actions results conciliate with the initial goals, and there is hetero-conciliation when this analysis is collaborative. In later cases, communicative processes are fundamental.
To describe and explain communicative processes in goal-conciliation theory, we admit three layers of intentions. In this theoretical approach, a practical intention superordinates an informational intention, which superordinates a communicative intention. In the article at stake, the practical intention of proposing to interpret the Maria da Penha Law according to the 1988 Brazilian Federal Constitution – as a way to achieve the highest practical intention to extend the application of the Law to men as possible victims of domestic and family violence – superordinates an informational intention to make manifest or more manifest this assumption to readers; and this informative intention superordinates the communicative intention of – through the elaboration of an article – to make mutually manifest to both Pelicani and readers, that Pelicani suggests this assumption.8

From the point of view of the article authorship, we can insert these layers into successively embedded intentional action plans, as shown below.

[1]  Q
Propose to extend the application of the Maria da Penha Law to men as possible victims of domestic and family violence ..., Pelicani.

[2]  P  Q
Propose to interpret the Maria da Penha Law according to the 1988 Brazilian Federal Constitution, Pelicani.

[4]  O  P
Inform the possibility of interpreting the Maria da Penha Law according to the 1988 Brazilian Federal Constitution, Pelicani.

[5]  N  O
Communicate, through the elaboration of an article, the possibility of interpreting the Maria da Penha Law according to the 1988 Brazilian Federal Constitution, Pelicani.

[6]  N
Pelicani communicates, through the elaboration of an article, the possibility of interpreting the Maria da Penha Law according to the 1988 Brazilian Federal Constitution.

[7]  O’
Pelicani informs the possibility of interpreting the Maria da Penha Law according to the 1988 Brazilian Federal Constitution.

[8]  P’
Pelicani proposes to interpret the Maria da Penha Law according to

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For the reader to evaluate Pelicani’s (2007) proposition, it is necessary to recover these layers of intentions. For that, we adopt in goal-conciliation theory the relevance-theoretic interpretation procedure. According to Sperber and Wilson’s (1986, 1995) relevance theory, relevance is a function between positive cognitive effects to be maximized and processing efforts to be minimized. In this theory, positive cognitive effects can be yielded when we process a stimulus in a context of previous cognitive assumptions. This stimulus may reinforce previous assumptions, contradict and eliminate them, or even yield implications – inferential conclusions that emerge from the combination of these stimuli with the cognitive context, but which do not derive from these stimuli or from that context alone. The central theoretic-assumption is that, ceteris paribus, the relevance will be greater as cognitive effects are greater and processing efforts required to generate those effects are smaller.

Assuming this theoretic notion, relevance theory is organized into two principles: the cognitive principle of relevance that the mind will always maximize cognitive effects and the communicative principle of relevance that utterances as open ostensible stimuli will be presumed to be optimally relevant. An utterance has optimal relevance when the interpreter evaluates it as at least enough to deserve to be processed and as the most relevant stimulus the speaker has been able to produce. Assuming this presumption, based on linguistic decoding, the interpreter follows a route of minimum effort, enriches the stimulus to obtain explicit meanings if necessary, and completes that meaning at an implicit level, if pertinent.

The following comprehension procedure summarizes this process:

**Relevance-theoretic comprehension procedure**

Follow a path of least effort in computing cognitive effects:
1. Consider interpretations in order of accessibility;
2. Stop when your expectation of relevance is satisfied.


Let’s take the final part of Pelicani’s abstract as an example:

(1a) Linguistic Form: […] one proposes its interpretation according to the Constitution to extend its application to the man, also a possible victim of domestic and family violence (PELICANI, 2007, p. 267).
(1b) Logical Form: (Propose x, y, αplace, βfinality (extend x, y, z)).

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9 We describe the interpretation in four versions. In version (1a), we present the linguistic form of the utterance, in version (1b), we present the logical form, in version (1c), we present the explicature, and in version (1d) we fit the explicature into a description that considers the speaker’s propositional attitude.

10 “[…] propõe-se a sua interpretação conforme a Constituição para estender sua aplicação ao homem, também possível vítima da violência doméstica e familiar”.

11 According to Silveira and Feltes (2002, p. 18), we present the linguistic expressions, when they are referenced, in simple quotation marks (‘Maria’), the encyclopedic entries in small caps (maria) and references in the world without any indicative (Maria).

12 The sign ‘∅’ represents that the logical entry was not filled by a lexical item in the utterance.
(1d) Extended explication: Pelicani proposes that one proposes the interpretation of the Maria da Penha law according to the 1988 Brazilian Federal Constitution to the legal operators in the article for the legal operators to extend the application of the Maria da Penha Law to the man, also a possible victim of domestic and family violence.

As we have described, to understand the aim of the article, we assume that the reader fits the excerpt from the linguistic utterance (1a) of the abstract in a logical form (1b) according to which “someone x proposes something y for someone z in a certain place α and with a certain finality β.” This β finality, in turn, consists of “someone x extends something y to someone z.” In version (1c), we see how the logic form has been enriched. We assign the Maria da Penha law as reference of the lexical item ‘its’, by reference to the beginning of the abstract; we complemented the lexical item ‘Constitution’ with 1988 Brazilian Federal, since it is the current Brazilian Federal Constitution; we fill the receiver’s ellipse with LEGAL OPERATORS for being the most likely candidate for a discussion about law enforcement; we fill the ellipse of place of the proposition with ARTICLE, since it is in the article that, supposedly, the argument will be developed; we fill the subject’s ellipse of ‘extending’ with LEGAL OPERATORS because they are the enabling actors to extend the Maria da Penha law to male victims; and, once again, we attribute the Maria da Penha law as a reference of the lexical item ‘its’, since it is this law that should be extended to male victims. Finally, in version (1d), we fit the explication (1c) into a speech act, clarifying that it is Pelicani who elaborates the proposition at stake.

Assuming the interpreter is able to arrive at version (1d), and that he intends to describe and explain this proposition in intentional action plan terms, as we have done, he can infer that the aim of the proposition – extend the application of law – it is a higher-level goal, and that interpretation according to the Constitution is a means to achieve this higher-level goal. We can describe an inference like this as follows:

\[ S_1^{13} \rightarrow \text{Pelicani proposes that one proposes the interpretation of the Maria da Penha Law according to the 1988 Brazilian Federal Constitution to the legal operators in the article for the legal operators to extend the application of the Maria da Penha Law to the man, also a possible victim of domestic and family violence (implicated premise derived from the explication of the abstract's excerpt);} \]

\[ S_2 \rightarrow S_3 \text{ (inference by modus ponens)}^{14}; \]

\[ S_3 \rightarrow \text{Interpreting the Maria da Penha Law according to the 1988 Brazilian Federal Constitution is a subgoal for the legal operators to extend the application of the Maria da Penha Law to the man also a possible victim of domestic and family violence (implicated conclusion).} \]

Once known the descriptive-explanatory architectures of both goal-conciliation and relevance theory, we can analyze Pelicani’s article (2007) in the next section.

3 Pelicani’s (2007) Article Analysis

In the introduction of her article, Pelicani contextualizes the Maria da Penha Law and discusses its eventual unconstitutionality according to the principle of equality. Then, she presents, once more, the aim of the text as follows:

\[ ^{13} \text{Sperber and Wilson (1986, 1995) assume that inferential calculations are formed by } S_1 \text{– } S_n \text{ assumptions conceived in a chain of inferences as both implicated premises or implicated conclusions.} \]

\[ ^{14} \text{According to relevance theory, there is an interpretive module of deductive character with free access to assumptions from memory and from the environment. This module operates predominantly by rules like elimination e, modus ponens and modus tollens. In an e-elimination rule, if we take together two true assumptions } P \text{ and } Q \text{ each of which is true separately, } P \text{ or } Q \text{. Formally: } P \rightarrow Q, P \text{ “(the symbol } ightarrow \text{ is equivalent to the logical operator of conjunction) In a modus ponens rule, when we take an implication relation between two assumptions } P \text{ and } Q \text{, if the first is affirmed } P \text{, the second follows necessarily } Q \text{. Formally: } P \rightarrow Q, P \text{ “(the symbol } \rightarrow \text{ is equivalent to the logical operator of implication, if } P \text{ then } Q \text{. Sometimes it is possible to combine two rules as in the case of the conjunctive modus ponens: } (P \rightarrow Q, R \rightarrow Q) \rightarrow R, P \rightarrow Q, R \text{ “or else } (P \rightarrow Q, R, Q \rightarrow R, R \text{ “. In a modus tollens rule, we start with a set of two alternatives } P \text{ or } Q \text{, and next we obtain the negation of one of them, } \neg Q \text{ or } \neg P \text{. In this case, we conclude with } P \text{ or } Q \text{. Formally: } P \lor Q, \neg Q, P \text{ “or } P \lor Q, \neg P, Q \text{ “(the symbol } \lor \text{ is equivalent to the logical operator of disjunction and the symbol } \neg \text{ is equivalent to the logical operator of negation). Again, one may think here of a disjunctive modus ponens rule: } (P \lor Q) \rightarrow R, \neg Q, P \rightarrow R, R \text{ “or } (P \lor Q) \rightarrow R, \neg P, Q \rightarrow R \text{.”} \]
This text seeks to bring to light reflections about the possibility of harmonizing the Maria da Penha Law with the [1988 Brazilian] Federal Constitution, regarding the principle of equality, without there being any need to declare its eventual unconstitutionality, simply by applying the so-called "interpretation according to Constitution." (p. 238, our brackets).

In the previous section, we have obtained from the abstract the goal \( Q \) of proposing to extend the application of the Maria da Penha Law to men and the subgoal \( P \) of proposing the method of interpretation according to the Constitution. Now, she suggests the text aims at harmonizing the Law with Constitution, by applying the "interpretation according to the Constitution," making implicit the extension of its application to men.

Note that this extension can only be done textually from the reference to the abstract and – strictly speaking – it should be explicit in the introduction. The reader could only infer it indirectly from the contextualization of this version of objective with the discussion about the unconstitutionality of the previous paragraph. Observe the inferential calculus.

\[
S_1 \Rightarrow S_2 \rightarrow S_3 \text{ (conjunctive modus ponens inference)}
\]

\( S_3 \) – Pelicani proposes extending the application of the Maria da Penha Law to men as possible victims of domestic and family violence by interpreting the Maria da Penha Law according to 1988 Brazilian Federal Constitution (implicated conclusion).

If Pelicani’s goal is to extend the application of the Maria da Penha Law to men, harmonizing the Law with the Constitution, it becomes a major subgoal that superordinates the minor subgoal of applying the notion of interpretation according to Constitution. Now, interpreting the Law according to the Constitution makes feasible harmonizing it with Constitution, and this harmonization makes feasible extending its application to male victims.

At the end of the introduction, Pelicani presents the article’s organization. First, she reviews Maria da Penha’s case; next, she addresses the notion of constitutional principles, highlighting the principle of equality and comparing it with the Law; and, finally, she highlights and applies the method of interpretation according to the Constitution to this Law.

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15 Este texto busca trazer à tona reflexões sobre a possibilidade de harmonização da Lei Maria da Penha à Constituição Federal, no que tange ao princípio da igualdade, sem que haja necessidade de se declarar a sua eventual inconstitucionalidade, bastando a aplicação da chamada "interpretação conforme a Constituição."
According to Pelicani (2007), 1988 Brazilian Federal Constitution is an open legal-normative system of principles of a more general abstract character, and of rules of a more specific abstract character, prescribing an imposition, permission or prohibition. According to Bastos (2002, p. 242), the principles suit as criteria for interpreting the constitutional document and the infra-constitutional norms must spell out their values. So, constitutional principles are “a kind of constitutional norm, with a more comprehensive abstract content, which expresses the values contained in the Constitution, and establishes the north for the entire Brazilian juridical system” (PELICANI, 2007, p. 243).

For her, the principle of equality or isonomy is part of the Constitution. In the first sentence of section 5, we can observe that, without distinction of any kind, all should be treated as equal by the Law, ensuring among other rights, the right of the inviolability of security; and subsection I of this section establishes that men and women are equal in rights and obligations.

Section 5 Everyone is equal under the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in Brazil the inviolability of the right to life, liberty, equality, security and property, as follows:

I - men and women are equal in rights and obligations, under the terms of this Constitution;16 [...] Given that the subsection IV of section 3 establishes that one of the fundamental aims of the Constitution is promoting the good for all, without preconceptions of origin, race, sex, color, age and any other forms of discrimination, the principle of equality – Pelicani reinforces – is one of its “supreme values” and, since the infra-constitutional legislator did not observe the principle of equality in protecting only female victims of domestic and family violence with the Maria da Penha Law, this Law is unconstitutional.

The text then appreciates the application of the Aristotelian notion according to that, one must treat equals equally and unequals unequally as a way of justifying the restriction of the protection of female victims of domestic and family violence, that is, enabling the Law to distinguish the unequals – men and women – to the extent of their differences.

On this application, Pelicani suggests that we must meet three requirements to avoid disrespect the isonomy based on Mello (1997, p. 27-28): what is the discriminatory factor, the rationale for this discrimination and the correlation with the Constitution. According to the first requirement, the discriminatory factor in the Maria da Penha Law is the exclusive election of women as victims of domestic and family violence, when men may also be victims of corporal, psychological, sexual, patrimonial or moral violence in these contexts. According to the second requirement, if the law “establishes, in fact, public policies to protect the victim of domestic and family violence, in the intimate relations of affection, in the living together of the family, and within the domestic unit” (PELICANI, 2007, p. 246), there is no logical connection to restrict the victim character to women. According to the third requirement, if the law must protect victims of domestic and family violence, men can be victims of domestic and family violence, and the Constitution chooses equality or isonomy among its fundamental principles, then the Maria da Penha Law disrespects this principle.

S₁ – The law should protect victims of domestic and family violence (implicated premise);
S₂ – Men can be victims of domestic and family violence (implicated premise);
S₃ – The Constitution elects the principle of equality or isonomy among its fundamental principles (implicated premise);
S₄ – S₁ ∧ S₂ ∧ S₃ → S₅ (conjunctive modus ponens inference);
S₅ – The Maria da Penha Law violates the principle of equality or isonomy sheltered in the Constitution (implicated conclusion).

This argument, however, is only possible if we accept the extension of the scope. Strictly speaking, the Maria da Penha Law was designed to protect female hetero-affective victims of male hetero-affective aggressors, in such a way that to the lexical item ‘woman’ was attributed the meaning WOMAN as a female individual. According to Rauen, F. and Ribeiro’s (2016) analysis of Dias and

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16 Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes:
1 - homens e mulheres são iguais em direitos e obrigações, nos termos desta Constituição.

Rauen & Rauen | Extension of the scope of the Maria da Penha Law to men as victims of domestic and family violence...
Reinheimer’s (2011) chapter *On violence against women as a violation of human rights – section 6*, we can extend the scope of the Law to lesbians and female transvestites, transsexuals and transgenders, providing an *ad hoc* interpretation *WOMAN* as an individual of the female gender to the lexical item ‘woman.’ This implies extending the scope to female and male homosexual victims of both male and female homosexual aggressors. Pelicani (2007), in turn, suggests that the legal right to be preserved is the inviolability of the right to security in domestic and family relations sheltered in the Constitution (first sentence of section 5). With this extension of scope given as presupposed in the Pelcani’s argument, we could extend the Maria da Penha Law to male hetero-affective victims of female hetero-affective aggressors.

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**Table 3: Extending the scope of the Maria da Penha Law**

**Source:** Our elaboration.

Assuming this extension, we can revise the primary operative norm of the Maria da Penha Law, as described by Rauen and Ribeiro (2017), towards a version in which the lexical item ‘woman’ is removed, since men or women, hetero-affective or homo-affective, may occupy both victims or aggressors’ positions.

Logical structure of the primary operative norm of the Maria da Penha Law:

\[(\neg P \rightarrow \neg Q) \land (\neg Q \rightarrow R)\]18

**According to Rauen, F. and Ribeiro (2017, p. 194):**

If there is domestic and family coexistence with women19, then there should be no domestic and family violence against women \(\neg Q\), and [but] if there is domestic and family violence against women \(Q\), then sanctions of the Maria da Penha Law should be applied \(R\).

**According to Pelciani (2007):**

If there is domestic and family coexistence \(P\), then there should be no domestic and family violence \(\neg Q\), and [but] if there is domestic and family violence \(Q\), then sanctions of the Maria da Penha Law must be applied \(R\).

Assuming this expanded norm, it is possible to review the chain of goals and sub-goals that underlies Pelciani’s (2007) article, adding a higher-level goal at the top of the chain – something like “protecting victims of domestic and family violence with the Maria da Penha Law.” If that is the case, Pelciani (2007) proposes to interpret the Law according with the Constitution to harmonize it with the principle of equality sheltered in 1988 Brazilian Federal Constitution. In doing so, she extends the scope of the Law to men and, therefore, to protect victims of domestic and family violence regardless gender or affective option.

[1] R

Propose to protect victims of domestic and family violence with the

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17 Da violência contra a mulher como uma violação de direitos humanos – artigo 6º.

18 It should be the case that the proposition \(P\) implies the negation of the proposition \(Q\) and [but] should be the case that the proposition \(Q\) implies the proposition \(R\). On operative norms, read Oliveira (2015).

19 We can interpret the lexical item ‘women’ more narrowly as a female sex subject, or more broadly as a female gender subject (thus harboring female transvestites, transsexuals and transgenders).
Finally, there is no denying that the Maria da Penha Law is welcome because it aims to care for and preserve the central nucleus of society that is the family. Precisely because this circumstance, it is urgent to overcome its eventual unconstitutionality and extend it, specifically, to the man, as a possible victim of domestic and family violence.20

20 Enfim, não há [como] negar que a Lei Maria da Penha é bem-vinda, porque visa a cuidar e preservar o núcleo central da sociedade que é a família. Exatamente por essa circunstância, urge superar a sua eventual inconstitucionalidade e estendê-la, em concreto, também, ao homem, possível vítima da violência doméstica e familiar (our brackets).
Precisely because the Law is welcomed, the author argues interpreting the Maria da Penha Law according to 1988 Brazilian Federal Constitution. Pelicani stresses the legal interpretation only makes sense when one observes the application of the norm, and interpreting a norm depends on “knowing the field of reality that gives rise to its application” (2007, p. 255). In this matter, it is interesting to refer to the section 1 of the Maria da Penha Law to the subsection §8 of the section 226 of the Constitution, according to which it is up to the State to provide “assistance to the family in the person of each one of its members, creating mechanisms to restrain violence within their relations.” In fact, section 1 of the Maria da Penha Law “creates mechanisms to restrain and prevent domestic and family violence...,” but what about the restriction of this measure to women? Pelicani (2007, p. 255-256) argues:

The constitutional text, from the abstract to the concrete, aims at preserving the family, restraining violence in their relations and ensuring protection to each one of its members. Therefore, the interpreter is given, according to the constitutional command, to ensure that the Maria da Penha Law applies not only to the woman but to both spouses or partners. (emphasis added).

According to her, it is legitimate applying four methods of interpretation to evaluate the constitutionality of a law: (i) the grammatical or literal, considering the text of the law; (ii) the logical or teleological, considering the purposes or the legal right to be protected; (iii) the systematic, considering the adhesion of the law to the legal system surpassed by the Constitution; and (iv) the historical, considering the legislative history of its elaboration. According to Pelicani (2007, p. 256-257), the application of all these methods results in unconstitutionality, since the Maria da Penha Law is based on the Organization of American States (OAS) Inter-American Commission on Human Rights’ Report n. 54/01, April 4, 2000, which suggests the adoption of public policies to curb domestic violence “as long as it is reported to women”. So, the Law textually and teleologically restricts its application to women, in a dissonant and, therefore, unsystematic manner with the 1988 Brazilian Federal Constitution.

It follows from this conclusion that the only way to harmonize the Maria da Penha Law with the constitutional principle of equality is interpreting it according to the Constitution, since this method allows maintaining the unity of the legal system and the ascendancy of the Constitution, without declaring the unconstitutionality of the Law. Thus, according to Pelicani (2007, p. 258), nothing prevents the Maria da Penha Law from being applied to male victims of domestic and family violence.

4 FINAL REMARKS

We analyze in this article the extension of the scope of the Maria da Penha Law to men, as possible victims of domestic and family violence in Pelicani (2007), adopting a cognitive-pragmatic bias guided by the theoretical notions of Rauen’s (2014) goal-conciliation and Sperber and Wilson’s (1986, 1995) relevance. The results suggest the author organizes her argumentation from an implicit higher-level goal of protecting all victims of domestic and family violence regardless of sex or affective option with the Maria da Penha Law. This superordinate goal is to extend the scope of the Law to men who are possible victims of domestic and family violence, explicitly a circumstance of purpose of the objective outlined in the article’s abstract. For that, she suggests it is necessary harmonizing the Law with 1988 Brazilian Federal Constitution – the explicit objective in the introduction, but not in the abstract –, given its probable unconstitutionality in protecting only female victims of domestic and family aggression. Finally, to harmonize the Law with the Constitution, Pelicani suggests applying the method of interpretation according to the Constitution.

21 The method of interpretation according to the Constitution is used when the application of other methods yields doubts on the constitutionality of a law. In this method, an interpretation is adopted that favors constitutional principles and jurisprudence preserving the aim of the law. Classically, antinomies result in the exclusion of one of the laws, but in the interpretation according to the Constitution the antimony occurs between constitutional and unconstitutional interpretations of a law, and the constitutional ones must prevail. Thus, one avoids premature withdrawal from the legal system of useful laws for the protection of a relevant legal asset.

22 O texto constitucional, do abstrato para o concreto, visa a preservar a família, coibir a violência nas suas relações e assegurar proteção a cada uma das pessoas que a compõem. Portanto, é dado ao intérprete assegurar, segundo o comando constitucional, que a Lei Maria da Penha se aplique não apenas à mulher, mas a ambos os cônjuges ou companheiros. (negrito nosso).
To shape this intentional action plan, the author organizes her text to make mutually manifest – communicative intent – the informational intent to make manifest the pertinence of the method of interpretation according to the Constitution to the case. For that, after reviewing historical antecedents of the Law, she addresses the constitutional principle of equality or isonomy, stressing that men and women are equal in rights and obligations, in addition to anticipating arguments contrary to the Aristotelian notion of unequal treatment to unequal ones: "[...] To think of giving differential treatment only to women, in the name of equality by the law, without thinking of having care of the family, also extended to the man, a possible victim of family and domestic conflict, is not to observe, exactly, the principle of equality by the law." (PELICANI, 2007, p. 253).23

It is from this cognitive operation that Pelicani assumes as necessary the extension of the scope of the primary operative norm of the Maria da Penha Law to male victims. If the legal right to be protected is the inviolability of the right to security in family and domestic life, regardless of sex or affective choice of victims and aggressors, then the penalties of the Law must also be applied to aggressive hetero-affective women.

Objectively, however, the text of the Law does not contemplate this extension – at most an *ad hoc* interpretation WOMAN* encompassing female transvestites, transsexuals and transgenders. Its aim is to protect exclusively women, its historical origin is markedly feminine and its harmonization to the legal system infeasible, since 1988 Brazilian Federal Constitution assumes the principle of equality as north. Therefore, the only solution that avoids declaring its unconstitutionality is to interpret the Maria da Penha Law according to Constitution. In this way, the subgoals are progressively conciliated to harmonize the Law with the Constitution, extend its scope to male victims, and protect victims of domestic and family violence regardless of gender and affective option. A completely different aspect, however, is whether this line of argument will be accepted by readers in general and by legal operators in particular – hetero-conciliation. Nevertheless, this is an issue that goes beyond the aims of this study.

REFERENCES


23 [...]. Pensar em dar tratamento diferenciado somente à mulher, em nome de igualdade perante a lei, sem pensar em dispor de atendimento à família, extensivo também ao homem, possível vítima do conflito familiar e doméstico, é não observar, exatamente, o princípio da igualdade perante a lei (PELICANI, 2007, p. 253).

RAUEN, B. M. Extensão do escopo da Lei Maria da Penha a homens vítimas de violência doméstica e familiar em Pelicani (2007): análise de viés pragmático cognitivo. 2016. 5 f. Projeto (Iniciação Científica) – Curso de Bacharelado em Direito, Universidade do Sul de Santa Catarina, inédito.

______. Análise de viés pragmático-cognitivo da jurisprudência sobre a extensão do escopo da Lei Maria da Penha a homens vítimas de violência doméstica e familiar, 2017a. 5f. Projeto (Iniciação Científica) - Curso de Bacharelado em Direito, Universidade do Sul de Santa Catarina, inédito.

______. Aplicação da Lei Maria da Penha em casos envolvendo vítimas transexuais femininas: análise fundamentada no conceito de violência de gênero em jurisprudências selecionadas de tribunais de justiça. 2017. 83 f. Monografia (Trabalho de Conclusão de Curso) - Curso de Bacharelado em Direito, Universidade do Sul de Santa Catarina, 2017b.


______. Hipóteses abdutivas antefactuais e modelação proativa de metas. Signo, v. 38, p. 188-204, 2013.


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