Comentario sobre la Sentencia *Habeas Corpus* n. 833085-3/2005. The 9th Criminal Court of the State of Bahia (Brazil). Case Suiça vs. Zoological Garden of the City of Salvador

ANIMAL RIGHTS IN BRAZIL: *HABEAS CORPUS* FOR CHIMPAZEES

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Some segments of the abolitionism movement are taking use of the direct action, since the use of naked models to call the attention of the public opinion until the sabotage of laboratories used for animal experimentation. However these activities can call the attention of the public opinion for the question, they do not have the power to change the system, because the Law only changes through written laws or by jurisprudence.

Others are trying to insert the abolitionism speech in the politics sphere, convinced that the importance that the legislators will give to the animal's interests depends on the extension and the number of organizations to support these claims.

One of the strongest segments of the movement for animal's rights uses the veganism - the abstinence from the use of any product that is provide by the exploration of animals - as life

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philosophy, but mainly as a form of civil disobedience to the institutionalized system of animal exploitation.

Others still use the judicial system as strategy to reach the objectives of the movement, either entering directly with legal action on behalf of animals, either representing to the prosecutors and federal prosecutors, denouncing the activities that violate the physical and psychic integrity of the animals, such as circuses, zoos, rodeos, cockfights, etc2.

In fact, in the attempt to produce social changes, activist for the animals rights, like me, have been appealing to the institutions and the legal language to reach its objectives.

Indeed, the sources of the legal meaning exceed the borders of the governmental institutions, because they are contained in all those who thinks, speaks and acts in the legal context of the society, in way that the meanings of the legal institutions constituted and at the same time are made in non-judicial spheres and non-state areas of social interaction.

Knowing that the laws are constituted by words and vacant, ambiguous or indeterminate concepts, these activists know that they can contain multiples meanings, since rare times occur unified interpretations.

According to Helena Silverstein, the activists for the animal's rights act even in a constitutive and instrumentalist perspective. In the constitutive perspective, they look for to extend the legal effects of the norms through the creation of new meanings and legal ways. In the

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On this issue see the jurisprudence datas collected by LEVAI, Laerte Fernando in ***Animal rights***. Campos do Jordão. Mantiqueira. 2004, p.108-117 and CARVALHO, Carlos Gomes de. ***The environment in the courts:*** the right of neighborhood to environmental law. São Paulo. Method. 2001, p. 459-534.

instrumentalist perspective they try to explore the indirectly effects of the judicial litigations, in the certainty of small victories can promote an advance in educational level and in the conscience of population, beyond helping in the construction of the movement, in its mobilization and in the increase of the politic pressure against their opposes3.

Helena Silvertein, however, maintains an approximation of perspectives, since the direct and indirect effects of litigation always involves the production of new meanings in favor of activists, influencing the practices, attitudes and expectations of the movement, while they contributed to the increase the credibility of the movement, building solidarity ties among activists4.

In fact, 100 years after Joseph do Patrocínio write your last words5, together with a group of prosecutors, law professors, animal welfare associations and law students, we petition an order of Habeas Corpus in favor of the chimpanzee Suiça (Switzerland, in Portuguese), which lived caged in the Zoological Garden of the City of Salvador.

In sentence published in the Journal of the Judiciary of October 5th/2005 (date celebrated as the world-wide day of the animals) the Judge Edmundo Lucio da Cruz, of the 9th Criminal Court of

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SILVERSTEIN, Helena. ***Unleashing rights***: law, meaning, and the Animal Rights Movement. Michigan: University of Michigan, 1996, p.162.

[4]Idem. Ibidem, p.164.

[5]On January 29 of 1905, José do Patrocínio sat up in front of his small desk in the small shed where he lived in the neighborhood of Inhaúma in Rio de Janeiro. He began to write: "There is talk about the organization of a society protective of animals. I have a Egyptian respect for animals. I think they have souls, though rudimentary, and that they have consciously revolt against human injustice. I saw a donkey sigh after been brutally beaten by a wagoner who cram the wagon with cargo for a chariot, which wanted that the miserable animal remove him from a quagmire... "It even ended a word or phrase - a jet of blood gush of her mouth. The "Tiger of Abolicionismo" - poor and friendless - died, immersed in debt and sunk into oblivion. In: José do Patrocínio. Available in WWW. culturalbrasil.pro.br. Captured on September 13, 2008.

the State of Bahia, judged the Habeas Corpus n. 833085-3/2005, opening a historical precedent for the legal world, to admit a chimpanzee as a subject of rights in a court.

The hermeneutical method we used was the evolutionary interpretation, which aims to find the will of the autonomous norms and tailor them to the social reality due to historical changes, social or political, giving them new content6.

Over time, the legal hermeneutics often accumulate a series of experiments in the creation of mechanisms for legal change and adaptation, since the judgments of equity until analog interpretations, which ultimately make possible the coexistence of norms, that even contradictory, can continues being considered valid7.

Indeed, in many cases the social values become an obsolete norm, as in the case of art. 219, IV, of the old Brazilian Civil Code, that allowed the cancellation of the marriage for error of person, when it had the defloration of the woman and this fact was ignored by the husband, article that had been revoked already for the negative custom before the new Civil Code8.

The Writ also is based in the analogical interpretation, still considered an important source of law, assuming that they must give equal treatment to similar cases. Undeniably, a court decision may be considered unacceptably arbitrary if judge similar cases differently, with no relevant reasons for that9.

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[6]BARROSO, Luis Roberto. ***Interpretation and application of the constitution***. 6. ed. São Paulo: Saraiva, 2004. p. 146.

[7]LOPES, José Reinaldo de Lima. **Law and social transformation:** interdisciplinary test of changes in law. Belo Horizonte: Nova Alvorada, 1997. p. 94-95.

[8]BRAZIL. Civil Code (1917). Article 218, caput, and 219, VI

[9]RACHELS, James. Do animals have a right to liberty. In: REGAN, Tom; SINGER, Peter. ***Animal rights and human***

As we know, the analogy consists in the use of a norm established for determined *facti species* or behaviors which it is not possible to identify an applicable norm, since that we can identify similarities between the facts or the law to be applied to the species10.

The case Suiça vs Salvador Zoo demonstrated that as well as the species, the ideas also evolve, and that the judges can not simply ignore the scientific advances.

In a Habeas Corpus, the patient is the true owner of the right which is claimed, so the judge must analyze initially if the process fills the right of the action and the conditions of the action.

In fact, before receiving the petition, the judge had to decide if the chimpanzee Suiça could or could not be titular of the right to freedom of locomotion. Also, he had to decided if his court was competent to judge the fact and if the petitioners had procedural and postulate capacity to enter with the Writ.

Indedd, in our system, before the judge decides if he will receive an initial petition, he proceeds to a temporary cognition of the merit, analyzing the constant elements of the initial and the documents that the goes with the claim, only determining the citation of the other part when it is convinced, if *et inquantum*, of the truthfulness of the author's allegations and of the probable origin of the request, same because this decision is not a simple expedition, but a preliminary decision of

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obrigations. New Jersey: Prentice-Hall, 1976. p. 206.

[10]According to Norberto Bobbio, in this type of interpretation seeks to redefine a term, but continue to apply the same standard, featuring a new genus referred to in the law, the legal theory, 10. ed., Brasília, UnB, 1999. p. 156. Similarly Tércio vai Sampaio Ferraz Junior, for whom the doctrine states that the broad interpretation to include the contents of the standard was already a sense that there just was not explained in the legislature, **Introduction to the study of law:** technical, decision, domination, São Paulo, Atlas, 1990, p. 270.

positive content, and that statement possesses content of decision11.

By doing that preliminary judgement of standing, the judge is, since then, impeded of considering inept the initial petition and of extinguishing the process without judgement of merit12.

After receive the request and to notify the authority of the Zoo to render information, for general surprise, on September 27 of 2005, the Suiça chimpanzee died, what determined the extinction of the process without judgement of merit, once the death of the patient determined the loss of the object of the process (which was the illegal coercion of her locomotion freedom)13.

At the sentence, the judge admits that he might have extinguished the process, *ab initio litis*, judging inept the initial petition, using the argument of legal impossibility of the petition, or lack of interest in action, against an alleged inadequacy of the procedural instrument.

He also cited an ancient precedent of the STF (Supreme Federal Court of Law), before saying:

> I am sure that, with the acceptance of the discussion, I could arouse the attention of lawyers across the country, making the subject matter of extensive discussion, because it is known that the Criminal Process of Law is not static, but subject to constant change, where new decisions have to adapt to the modern times14.

[11]MOREIRA, José Carlos Barbosa. **New Brazilian Civil Procedure**. 20. ed. Rio de Janeiro: Forense, 2000. p. 23.

[12]DIDIER JÚNIOR, Fredie. **Procedural requirements and conditions of the action**: the assessment of admissibility of the process. São Paulo: Saraiva, 2005. p. 302.

[13]CÂMARA, Alexandre Freitas. **Lessons in civil procedural law**. Rio de Janeiro: Lumen Juris, 2002. p. 204.

[14]BRAZIL. In Habeas Corpus 9 ª Vara 833085-3/2005 the Crime of the City of Salvador, Bahia. Judge Edmundo Lucio da Cruz. Diary of the Judiciary, October 4, 2005. At sentencing, the Judge says "It is true that with this initial decision, assuming the debate on the subject treated here, some contrary 'lawyers on call', they forgot a maxim of Roman law that it provides: Interpretatio in quacumque Disposition facienda sic ut non sint superfluous amount sine virtute et operandi

It is important to emphasize that the process, although was interrupted, can not be considered invalid, since, in the grounds of the verdict, the judge made it clear that the Writ fulfilled all the conditions of action, which means that the judicial protection claim was susceptible to assessment, the parties were legitimate and the Habeas Corpus was a necessary and appropriate instrument for the petition, and, therefore, could occasion a satisfactory result for the patient.

Definitely, the case Suiça vs Zoological Garden of the City of Salvador turned out to be a precedent in legal history, becoming, perhaps, the landmark of the animal rights in Brazil, after enforce one of the main demands of the abolitionist movement: the recognition of animals as subjects of law, with ability to assert those rights in court, as provided with full legal capacity and ability to be part of a process.

Although the Suiça chimpanzee had not died, and the judge had reject the Writ (considering, for example, that the sanctuary that the chimpanzee was going to was not in better conditions than the cage of the zoo Salvador), the case still had to be considered unpublished, because the most important thing in this judgment was the recognition of a non-human animal as the holder of the right to claim their own rights in court.

The fact had a positive impact in the media and between activists and scientists from various universities in the world, which celebrated the news as something unprecedented, sending hundreds of messages of solidarity to the petitioner and the magistrate.

(in any provision should be made so that the interpretation of the words are superfluous and not because of work).

In September 2008, the minister Antonio Herman Benjamin, of the Second Class of the Superior Court of Justice (STJ), interrupted a judgment of a habeas corpus, asking for time to examine better the petition for habeas corpus brought on behalf of two chimpanzees: Lili and Megh, brought from the Zoo of Fortaleza to the shrine "Paths of Development" (affiliated to the Great Apes Project - GAP - Brazil), in São Paulo, seized by IBAMA for lack of proper environmental permits.

Dissatisfied with the decision of the Regional Court of the 3rd Region (TRF3), which determined the animals were reintroduced in nature (decision which determined the death of primate, since the species has no habitat in Brazil), the owner of the sanctuary entered with a Habeas Corpus to keep them under their custody, where they live in freedom15.

In short, the Brazilian environmental laws and the Constitution recognize that animals are sentient beings, which may be affected directly. This is why any conduct which subjects the animals to cruelty is prohibited, and nobody can deny that the primary purpose of these norms is to protect life, the liberty and physical integrity of the animals.

I will struggle with all my sources to constitutional rules be enforcement in Brazil, and to one day our country respect our treated cousin.

[15] MATSUBARA, Marcia Myuki Oyama and ANJOS, Terezinha Pereira dos. No Habeas Corpus 96.344/SP. "It is so obvious that this precedent, recently, on 25/06/2007, was published in the Times Magazine, entitled as a matter Monkey is people", since the controversy of human rights claims made by a couple of chimpanzees, the court of Austria, and even cited the case of Brazil's unprecedented chimpanzees Swiss "