

PRECEDENTES JUDICIAIS

CASES

CLASS ACTION¹

Plaintiff – Ministério Público do Estado da Bahia, Associação Brasileira terra verde viva e Associação célula mãe

Defendant – Portugal Produções Artísticas Ltda - “Circo Portugal”

Vistos, etc.

The office of the Public Prosecutor of the State of Bahia, ASSOCIAÇÃO BRASILEIRA TERRA VERDE VIVA E ASSOCIAÇÃO CÉLULA MÃE, the first represented by its distinguished Public Prosecutor that subscribes the complaint, and the others by their distinguished attorneys, legally constituted, promoted class action against PORTUGAL PRODUÇÕES ARTÍSTICAS LTDA - “CIRCO PORTUGAL”, in synthesis, asserting, claiming and reporting practices of cruelty to animals trapped in the defendant’s establishment, clarifying that these are non-human animals, such as elephants, lions, horses, camels, and ducks, which have and are endowed with feelings and instincts and these species are trained using methods that often expose their dignity, are often beaten, punished, suffer pain, fear, dissatisfaction and discomfort.

The plaintiffs also argue that the domestication of wild animals is an anti-natural act, and therefore, itself is an act of cruelty. They made, moreover, considerations about the term “domestic animal”, producing accurate explanation about the new Animal Law, based on constitutional provisions, the Decree nº 24645/34, the Law of Environmental Crimes, in order to require a preliminary order to suspend immediately the animals exhibit by the defendant and the consequent search and seizure of all animals

that are in the circus possession, to be sent to the Getúlio Vargas Zoo. The plaintiffs also require the court to adjudicate the merits on their favor and grant the claims on pages 17 et seq.

The case files have been sent to me.

Now I decide.

The class action is the adequate procedure to request judicial measures regarding abuse, or acts of any kind that expose the dignified life of non-human animals, such as we can suggest for the exact understanding of the provisions of article 1 of Law No. 7347 of July 24th, 1985, that provides for the scope of the class action in the manner that follows:

“Article 1 Shall be governed by the provisions of this law, without prejudice of the popular actions, lawsuits for moral and patrimonial damages caused:

I – to the environment;

II - to the consumer;

III – to the assets and rights of artistic, aesthetic, historic, tourist and landscape;

IV - by violation of economic order and the economy;

V – to the urban order.”

Before addressing the main issue, we should make some basic preliminary considerations that will provide support to understand what in this action.

As we can see, there is a false comprehension of non-human animals as creatures devoid of spirituality, which brought on them a vision of inferiority and submission to humans.

Undoubtedly, this idea goes back to the beginnings of our existence, because since before the Christian era, Aristotle proclaimed man as the only creature with an intellectual soul and in

its staggered and immutable universe a hierarchical system was structured. That image persists until today, even with all the Copernican, Darwinist, and Freudian evolution, but slowly the anthropocentric world is conceding its place to the biocentrism and certainly in recent times has been proven the dignity that non-human animals carry, worth of respect, fruit of the most exquisite good, life, a true gift.

We understand that we live in a new era, where we must give reasons for our existence that is revealed on reciprocity, solidarity not only amongst men and women, but all species, where each one has its value and complement the other.

In this aspect has already impressed us in our youth the destructive power of human beings as Chico Buarque has sung: “the man is coming”, the reason why all beautiful birds run away from him and be afraid and cautious of this “rational species”.

It is needed, in fact, to know that life implicates in recognizing each one of its expressions, manifestations, reinventing synergetic relations in which diversity is the way of cooperation and inclusion.

The Federal Constitution and the Civil Code have two legal views about animals, leaving us no doubt that the Federal Constitution came to raise the animals as subjects of fundamental rights such as life, liberty, the physical and psychological integrity.

According to the constitutional provision, regardless of any other rule, animals are subjects of rights and, as such, prevails as a magnum principle, the repudiation of any act that demeans or tarnish the dignity of their lives. Therefore, any offense should be banned and any cruelty repealed.

Evil must be extirpated, as the philosopher Tom Regan has stated, and all animal exploitation is intrinsically immoral and violates a natural law: respect.

Based on this fertile soil, we want to investigate the cause of animal protection contained in this action that requests a preli-

minary order that are expressed prerequisites of *fumus boni iuris* and *periculum in mora*.²

These prerequisites are shown in the case file in the strong terms. The first, because submitted to the man's will over an apparent and false protection. Food, for example, is offered to circus animals when they obey orders by their handlers, otherwise the animals suffer restriction and sometimes acts of cruelty. The *periculum in mora*, is expressed in the continuous animal slavery, subjecting them to the desire of its master, usually, animals are exploited and disfigured of its unique identity, given by nature.

The defendant practices are offensive to the provisions of art. 224, VII of the Federal Constitution, being inconceivable the maintenance of these animals in captivity.

For these reasons, I decide to issue the preliminary order to determine the immediate suspension of the animals exhibition by the defendant, ordering the search and seizure of all animals that are in the establishment and premises, which shall be immediately sent to the Getulio Vargas Zoo, who should take care of them until their reinstatement to their natural habitat, under penalty of daily fines of R\$ 50,000.00.

Still, I determine the defendant to transport these non-human animals to the Salvador Zoo, conducting them with the zeal and care needed in its own vehicles and trucks under its own expense, under penalty of fine in the amount already arbitrated, and shall also, provide the animals caretaker to perform acts that may result in learning and preparation of technicians from the local zoo to deal with the animals, protecting them in all their dignity, respect and care to the life of each one.

Finally, notify the parties, serving the defendant, using this decision as NOTIFICATION WRIT, to answer this lawsuit within the legal deadline, advising that, not contested this lawsuit, it will be presumed as true all the claimants' arguments, unless it is an inalienable right.

In the terms of article 154 combined with article 244 both from the Civil Procedure Code that do not require a specific form to procedural acts and consider valid every act as long as its objective is achieved, I determine that a copy of this decision serve as a court order to subpoena and summon the defendant. The register office should issue two copies of this sentence, one to serve as an injunction and the other for the defendant, stamping and signing to ensure its authenticity and delivering to the Justice Official or expediting by postal system.

The necessary impulse to enforce this order shall be given by the justice servers themselves, as provided for in article 162, paragraph 4 of the Civil Procedure Code. Moreover, grant the benefits from Law 1060/50.³

Subpoenas necessary, issuing letter to the Military Police Command to ask to follow the action, providing the necessary reinforcement in order to promote the peaceful enforcement of this determination.

Salvador, July 12th, 2010

ANA CONCEIÇÃO BARBUDA SANCHES GUIMARÃES
FERREIRA

Judge

Notas

- ¹ Translation Marcus Serra Junior. The translator would like to thank Conceição Torres, Antonio Gidi, and Priscila de Jesus for reviewing an earlier draft of this text.
- ² Translator's Note: These Latin expression mean respectively probability of the plaintiff prevailing in the merits and the urgent necessity of the provision.
- ³ Translator's Note: This is the statute that provides, inter alia, free access to the courts, without payment of fees.