

JURISPRUDÊNCIA

CASES

9th Criminal Court
Suica - Habeas Corpus
Brazil - Correio da Bahia

FIRST CASE TO CONSIDER THAT A CHIMPANZEE MIGHT BE A LEGAL PERSON TO COME BEFORE THE COURT UNDER A PETITION FOR HABEAS CORPUS

Judge Edmundo Lucio da Cruz, Judge delivered the opinion of the court.

Opinion of the Court:

In favor of: Suica

REQUESTED BY: Heron Jose de Santana, Luciano Rocha Santana, Antonio Ferreira Leal Filho, Tagore Trajano de Almeida Silva and others

CO-PLAINTIFF AUTHORITY: Thelmo Gavazza, Director of Biodiversity, Environmental and Hydrological Resource Department

SENTENCE: Pages 170 to 173: Hons. HERON JOSE DE SANTANA GORDILHO and LUCIANO ROCHA SANTANA, Prosecutors from the Environmental Department and other entities and individuals indicated in the petition (page 2), have requested a REPRESSIVE HABEAS CORPUS in favor of "Suica," a chimpanzee (scientific name *Anthropopithecus troglodytes*), a monkey who is caged at Parque Zoobotanico Getulio Vargas (Salvador's zoo), located at Av. Ademar de Barros, in this capital, and the co-plaintiff authority in this case is Mr. Thelmo Gavazza, Director of Biodiversity of the Environmental and Hydrological Resource Department, SEMARH.

To support the request, the petitioners alleged that "Suica" is caged in a cage that has severe infiltration problems in its physical structure, which would hinder the animal's access to the direct transit area, which is larger, and also to the hall used

to handle the animal; the cage's total area is 77.56 square meters and 4.0 meters high in the solarium, with a confinement area 2.75 meters high, thus preventing the chimpanzee to move around. With the purpose of showing the grounds of this writ, the petitioners allege, in short, that "in a free society, committed to ensuring freedom and equality, laws evolve according to people's thinking and behavior, and when public attitudes change, so does the law, and several authors believe that the Judiciary can be a powerful social change agent." They also state, in short, that as of 1993 a group of scientists began to openly defend the extension of human rights to large primates, giving rise to the Great Ape Project, which is supported by primatologists, ethologists and intellectuals, which is based on the premise that human beings and primates became different species about 5 to 6 million years ago, and some evolved into the current chimpanzees and bonobos, and another into 2-footed erect primates, wherefrom *Homo Australopithecus*, *Homo aridipithecus* and *Homo paranthopus* descend, in short, the intent is to equate primates to human beings for the purposes of granting habeas corpus. Lastly, the petitioners say that this instrument alone, can extend the definition of personality (or humanity) to hominids. They base it on the concept of environmental safety, and seek a grant of Habeas Corpus in favor of "Suica" the chimpanzee, determining its transfer to GAP's Great Ape Sanctuary in the city of Sorocaba, State of Sao Paulo, having already made available the transportation for this transfer.

One could, from the very topic of the petition, have enough grounds to dismiss it, from the very outset, arguing the legal impossibility of the request, or absolute inapplicability of the legal instrument sought by the petitioners, that is, a Habeas Corpus to transfer an animal from the environment in which it lives, to another. However, in order to incite debate of this issue, with persons and entities connected to Criminal Procedural Law, I decided to admit the argument. In fact this is an unprecedented case in Bahia's law, although I am aware of a case heard by

the Federal Supreme Court, wherein a Rio de Janeiro attorney, in conjunction with an animal protection agency, requested an Habeas Corpus to release a bird, which was caged, however, the Court dismissed the case, according to the opinion writer justice, Hon. Justice Djalci Falcao, who voted for dismissal, with the understanding that “an animal cannot be involved in a legal relationship as subject of law, it can only be object of law, acting as a thing or asset.” (STF RHC - 63/399). I have been on the bench for 24 years, always working in criminal courts, and this the first case I have been assigned where the subject of the Habeas Corpus is an animal, to wit, a chimpanzee. However, the theme is deserving of discussion as this is a highly complex issue, requiring an in-depth examination of “pros and cons”, therefore, I did not grant the Habeas Corpus writ, preferring rather to obtain information from the co-plaintiff authority, in this case, Mr. Thelmo Gavazza, Director of Biodiversity of the Environmental Department, requesting he did so within 72 hours.

It is true that, in this initial ruling, admitting the debate of this matter, I have displeased some overzealous jurists[1] who might have forgotten a Roman Law maxim, which says that “in any provision, the petition must be submitted so that words are not superfluous, and rendered worthless”. Additionally, I would like to recall the wise words of the late Prof. Vicente Rao, who wrote in his monumental work - *The Law and Life of Rights*: “jurists should not seek demagogic applause, which they are not in need of. Quite the contrary, they have to courageously set forth the true scientific and philosophical principles of Law, proclaiming them loud and clear. They have to make these prevail in a tumultuous legislative scene, where changes are dictated by social contingencies, extracting there from rules which govern new needs, without sacrificing freedom, dignity and human personality.” Among the factors that influenced my accepting this matter for discussion is the fact that among the petitioners are persons with presumed broad legal knowledge, such as Prosecutors and Law professors.

On the last day of the 72-hour deadline for submission of information, the illustrious co-plaintiff, SEMARH's Biodiversity Director, filed a petition in this Court (page 166), requesting the extension of the deadline, by another 72 hours, as due to internal issues at the Court, there was a delay collecting information. I accepted the extension of deadline, by another 72 hours, and did so because I understood that the Biodiversity Division of the Environmental and Hydrological Resource Department, a direct administration agency, cannot be compared to a Police Precinct (normally, in habeas corpus the co-plaintiff is a police authority) therefore there was no police authority involved, which deals with human detainees, and the petitioners supposedly had enough time to research and back-up their claims, gathering opinions of several persons and entities connected to the matter. However, surprisingly, I became aware, through a second petition sent to this Criminal Court, signed by the SEMARH's Biodiversity Director (page 168) received today at this Court (on 09/27/2005), that "Suica" the chimpanzee, the subject of this Habeas Corpus, was deceased inside the Salvador Zoo. The petitioner indicated that this sad fact took place "in spite of all efforts made and all care provided to the chimpanzee".

The news took me by surprise, no doubt causing sadness, as I visited the Ondina Zoo, covertly, on the afternoon of 10/21/2005, last Saturday, and did not perceive any apparent abnormality concerning "Suica" the chimpanzee, although I would like the record to show that I am not an expert on the matter. I am sure that with the acceptance of the debate, I caught the attention of jurists from all over the country, bringing the matter to discussion. Criminal Procedural Law is not static, rather subject to constant changes, and new decisions have to adapt to new times. I believe that even with "Suica's" death the matter will continue to be discussed, especially in Law school classes, as many colleagues, attorneys, students and entities have voiced their opinions, wishing to make those prevail.

The topic will not die with this writ, it will certainly continue to remain controversial. Thus, can a primate be compared to a human being? Can an animal be released from its cage, by means of a Habeas Corpus? As for the final decision, I recall article 659 of the CPPB: "If a Judge or Court finds that violence or illegal coercion has ended, the request will be dismissed." Thus, with the death of the chimpanzee, subject hereof, the Habeas Corpus has lost its purpose, its reason of being, thus ending the action. The doctrine says: "In a legal action, there must be a petitioner interest in seeking the end of the illegal constraint, which has either been consummated or about to be so. Therefore, if the violence or coercion no longer exists, one of the conditions for the action has disappeared, ending the admissibility of the habeas corpus." (Guilherme de Souza Nucci, *Código de Processo Penal Comentado* (Annotated Criminal Procedure Code), 2nd edition 2003, page 878). "The judgment of a habeas corpus request, whether by a single judge or by a competent Court, can be dismissed if the alleged constraint is found to be unreal." (Article 659, CPP) - Habeas Corpus - Heraclito Antonio Mossin, 4th edition, 1998, page 192. On the other hand, article 267, of the current Civil Procedure Code establishes on section IV that a case should be dismissed, without judging the merits, when missing the elements for valid and regular constitution and development of the proceeding. The Civil Procedure Code also applies, by analogy, to the criminal area, where applicable.

Therefore, I dismiss the case. Enter. Notify and file a certified copy with the Court of record. Salvador, September 28, 2005.

Edmundo Lucio da Cruz, Judge.

Translation Prepared by Carlos de Paula

[1] According to the translator, this could mean either "overzealous jurists" or, if meant sarcastically, "jurist wannabees," people who claim to have an understanding of the law, but really don't.

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