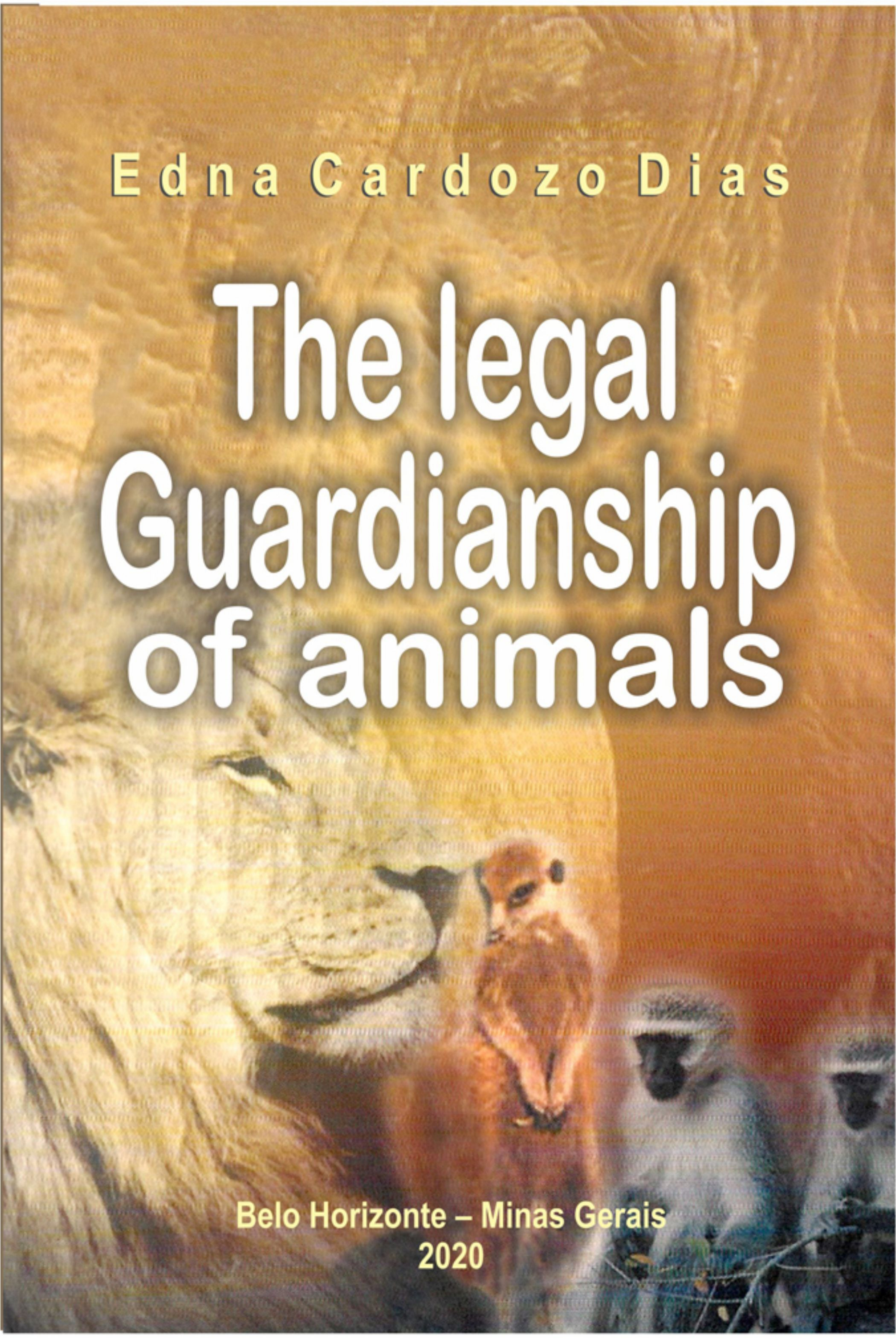

Edna Cardozo Dias
The legal Guardianship of animals
Belo Horizonte – Minas Gerais
2020

Edna Cardozo Dias
Lawyer, PhD in Law,
Legal Consultant and University Professor

The Legal Guardianship of Animals

Belo Horizonte - Minas Gerais
2020

© 2020
EDNA CARDOZO DIAS

Editor
Edna Cardozo Dias

Final art
Aderivaldo Sousa Santos

Review
Maria Celia Aun

Cardozo, Edna

The Legal Guardianship of Animals / — Edna Cardozo Dias: Belo Horizonte/Minas Gerais - 2020 - 3ª edition.

346 p.

1. I.Título.

Printed in Brazil
All rights reserved
Requests for this work

Internet site shopping:
amazon.com.br and amazon.com.
Email: ednacardozo@gmail.com

I dedicate this book

To the common mother of all beings - the Earth - which contains the essence of all that lives, which feeds us from all joys, in the hope that this work may inaugurate a new era, marked by a firm purpose to restore the animal's dignity, and the human being commitment with an ethic of life.

Appreciate

Professor Arthur Diniz, advisor of my doctoral thesis, defended at the Federal University of Minas Gerais - UFMG, which was the first thesis on animal law in Brazil in February 2000, introducing this new branch of law in the academic and scientific world, starting the elaboration of a "Animal Rights Theory".

Sumário

Chapter 1 - PHILOSOPHY AND ANIMALS 15
1.1 The Greeks
1.1.1 The Pre-Socratic
1.1.2 The Sophists
1.1.3 The Socratic Philosophy
1.1.4 Plato
1.1.5 Peripathetism
1.1.6 Epicureanism
1.1.7 The Stoic Philosophy
1.2 The Biblical View - The Saints and the Animals
1.2.1 St. Thomas Aquino
1.2.2 St. Francis of Assisi
1.3 Liberal philosophers and animals
1.3.1 Montaigne
1.3.2 Hobbes and the social contract
1.3.3 Locke
1.3.4 Francis Bacon
1.3.5 René Descartes
1.3.6 Voltaire
1.3.7 Jean Jacques Rousseau
1.3.8 Natural contract

Chapter 2 - PROTECTION OF THE FAUNA IN THE EUROPEAN ECONOMIC COMMUNITY AND THE UNITED STATES 49
2.1 Protection of fauna in the European Economic Community.
2.1.1 Directive 92/43 / EEC of 5/21/1992
2.1.2.The primacy of European law
2.2.2. Animals subjects of law, a new conception that emerged in the United States Supreme Court.

Chapter 3 — A THEORY OF ANIMAL LAW IS BORN 61
3.1 New scientific theories and paradigms
3.2 Animal rights theory
3.3 Animals with fundamental rights holders in Brazil and Animal Law as an autonomous discipline
3.4 The teaching of animal law

3.5 Legitimacy of animal rights

Chapter 4- FAUNA LAW IN BRAZIL AND THE LEGAL NATURE OF ANIMALS 85
4 Wildlife in the Federal Constitution and State Constitutions
4.1. Wildlife Concept

4.2.Legal nature of fauna
Wild fauna in Brazilian legislation
4.4. Native fauna conservation breeding
4.5. Excotic Conservation breeding
4.6. Comercial exotic fauna breeding in Brazil
4.7. Conservacionist Scientific breeding
4.8. Breeding supervision
4.9. Import and export of Brazilian wildlife and exotic fauna
4.10. Hunting
4.11. Administrative Sanctions
4.12. Division of competences
4.13 Public Civil Action
4.14 Popular Action

4.5. THE LEGAL NATURE OF ANIMALS IN BRAZIL AND OTHER COUNTRIES
4.5.1. Brazilian Civil Code
4.5.2.1 Of the People
4. 5.2.2 Of Goods
4. 5.2.3. Goods and things and the advantage of animals ceasing to be things
4. 5.3 European legislation
4. 5.3.1 Austrian Law
4. 5.3.2 German Law
4. 5.3.3 Swiss Law
4. 5.3.4 French law, affirmative protection
4. 5.3.5 Portuguese LAW
4. 6 Brazilian Law
Chapter 5 — CRUELTY AGAINST ANIMALS 131
4. 1 Moral Codes and the Sacralization of Animals
5. 2 The first protective legislation for animals
5.3 Cruelty to animals under Brazilian law
5.3.1 Painful experience in animals

5.3.2 Alternative Methods
5.3.3 Police Inquiry
5.3.4 Criminal Action
5.4 History of the typification of animal cruelty as a crime in Brazil
5.5 20th Century Crimes
5.5.1 Cruelty in Cockfights and Canaries
5.5.2 Cruelty in rodeos and cowherds
5.5.3 Farra do boi
5.5.4 Bullfighting in Brazil?
5.5.5 Cruelty in dog racing
5.5.6 Cruelty in dogfights
5.5.6 Cruelty in Snake antivenom Production and the Horse Case 814

THE LEGAL GUARDIANSHIP OF ANIMALS 7
Chapter 6 - TRADE AND ANIMALS AND WILD ENDANGER (CITES) 245
6.1.1 Fundamental principles of the Convention
6.1.2 Regulation of trade in specimens included in Annex I
6.1.3 Regulation of trade in specimens included in Annex II
6.1.4 Regulation on trade in specimens included in Annex III
6.1.5 Licenses and Certificates
6.1.6 Exemptions and trade provisions
6.1.7 Obligations of the parties
6.1.8 Trade with States Not Parties to the Convention
6.1.9 Other provisions
6.2 Trade in fauna in the European Economic Community
6.2.1 Specimens born and bred in captivity or artificially propagated
6.2.3 Circulation of live specimens
6.2.4 The sanctions
6.2.5 The European Union and the conventions signed at the European Council and animal welfare
6.3 Eco-label, green seal, EEC comes out front
6.4 BATTERY CAGE SCHEME AND EGG MARKET, in EEC OUT IN VANGUARDA
6.4.1 Stress and illness
6.5. Fur industry
6.6.FUR INDUSTRY AND LEG-HOLD TRAPS
6.7 Cruelty free products
6.7.1 Cosmetics
6.8 THE MEAT MARKET IN EUROPE
6.8.1 Farming and farm animals
6.8.2 Pork trade and the methods usually adopted for intensive

farming in countries where there are no animal and consumer
protection legislation
6.9 TRADING OF MEAT IN CENTRAL AMERICA AND SOUTH
AMERICA
6.10 Slaughter methods used in Brazil - history
6.11 Mercosur and the amendment Decree 30.691 / 52
6.12 What is humanitarian slaughter according to the WORLD
HEALTH ORGANIZATION?
6.13 Fur Farms

Chapter 7 - ANIMALS AND MERCOSUR 277
7. 1 MERCOSUR
7. 1 Brazil X Argentina Integration and Economic Cooperation
Program
7.2. MERCOSUR
7.2.1. MERCOSUR POP structure
7.2.2. The environment in MERCOSUR

7.3. Principles
7.3.2. Goal
7.3.3. The thematic areas established by the Agreement are
7.3.4. Legal sources
7.4. The controversy and its solutions
7.4.1 MERCOSUR External Agenda
7.4.2. Conflict between MERCOSUR and third countries
7.4.3. Financial organizations
7.5. MERCOSUR Committee for Standardization - CMN
Chapter 8 - The Ecological State 291
8.1 The principles of the ecological state.
8.2 Solidarity as a principle of law
8.3 The principle of interrelationality, the law of other species
Chapter 9 - Conclusion. 319
9.1 Seeking a New Paradigm
9.2 The new ethics
9.3 The Cosmic Puzzle
9.4 The all-encompassing network
9.5 Recognition of animal rights

BIBLIOGRAPHICAL REFERENCES 327

Preface

The book “Tutela Jurídica dos Animais” (2018) is an updated edition of the seminal work of professor and lawyer Edna Cardozo Dias, a book first published in 2000, by publishing house Editora Mandamentos. It is the first doctoral thesis about Animal Law in Brazil, presented and defended by the author in 2000 in the Post-Graduate Law Program at the Federal University of Minas Gerais, under the guidance of Prof. Arthur Diniz.

Edna Cardozo Dias is one of the pioneers in Animal Law in Brazil, having dedicated all her career to public advocacy, animal rights activism, and to teaching Environmental Law in graduate and post-graduate degrees in Belo Horizonte. Among the positions she has held we can highlight her being the Coordinator of Defense of Animals in the county of Belo Horizonte, Solicitor in the county of Ouro Preto, having also worked in the Chamber of Deputies and in the Secretary of Science & Technology and of Environment in the state of Minas Gerais.

When talking about the author, we cannot forget her work in the third sector as the president and founder of the League for the Prevention of Cruelty Against Animals (founded in 1983), her performance as a representative of the NGOs from the southeast region in the Environmental National Council (CONAMA) (an advisory and deliberative agency of the National System for the Environment in Brazil), as well as her participation in the writing of a protective legislation for animals in Brazil.

It is also important to enhance the active participation of Prof. Dias in the Constitutional Assembly of 1987, as a representative of the animal rights movement of the state of Minas Gerais, in the writing of the chapter regarding the environment on the Constitution of 1988. In fact, during the Assembly of 1987, Deputy Fábio Feldman designated a representative from each state to make the defense of the articles within the chapter on the environment that were being debated in the Assembly, and it fell on Prof. Dias, then president of the League for the Prevention of Cruelty Against Animals (LPCA), to participate in the elaboration of Article 225, §1°, VII, which happened in the Auditorium Nereu Ramos, in Brasilia, on the 5th of June of 1987, before the rapporteur of the Assembly, Senator Bernardo Cabral.

Another position she held until very recently was that of president of the Animal Abolitionist Institute (IAA), the first abolitionist organization in favor of animals in Brazil, where she had meritorious results, organizing the IV Brazilian Congress in Bioethics and Animal Rights, which happened

in the headquarters of the Brazilian Bar Association (OAB/MG) in 2017, and the VI World Congress in Bioethics and Animal Rights, which took place in the Cultural Center José Lins do Rêgo, in the city of João Pessoa, in the state of Paraíba, in September, 2018.

2. Content:

The book is divided in nine chapters: Philosophy and animals; Fauna protection in the European Economic Community (EEC) and the United States; The birth of the animal rights theory; Fauna rights in Brazil and the legal nature of animals; Cruelty against animals; Animal trade and endangered animals; Animals and MERCOSUL; and the Ecological State.

At first, the book shows that, as a rule of thumb, the Law considers animals as property, a definition that is normally used in solving conflicts between the interests of humans and the interests of animals. Since property is considered to be a natural right, the book begins its approach with an analysis of jus-naturalism, showing that since Ancient History, the pre-Socratic Greek main belief was that, although man was a part of the Universe, he didn't posses any autonomy.

She also highlights that the moral and ethical crises of the V century A.C. was the starting point that began the concrete division between humans and animals, since it was from this crisis that the Sophists shifted the object of philosophy towards man (man being the measure of all things), and developed the kind of thought that culminated in the ideas of Socrates, Plato and Aristotle, ideas which ended establishing the foundation of the anthropocentric paradigm.

Heir to this tradition, Christianity, especially that developed by theologians Thomas Aquinas and Augustine of Hippo, developed a doctrine that considers man to be a being gifted with an immortal soul, whereas animals, the beasts, were deprived of any spirituality. Next, the author underlines how Modern Philosophy, which stemmed from thinkers such as Francis Bacon, Descartes, Hobbes and Locke, increased even more the gap that divides humans – subjects of property rights -, and animals, mere objects of such right.

It is important to show that, despite this hegemonic way of thinking of the time, other philosophers like Montaigne, Rousseau and Goethe already claimed for a more humane treatment towards animals and even Nature itself.

In the second chapter, the book broaches the matter of fauna protection within the EEC and the United States, analyzing the main EEC directives on the subject. Here, we will also find the dissection of important decisions made by the American courts on animal rights, decisions that deal with the problem of recognizing animals and nature as subjects of law, with a special focus to the dissenting vote by Judge *Douglas in the Sierra Club v. Morton case.*

This particular case refers to the annulment request for the U.S.

Forest Service decision that authorized Walt Disney to build a ski station inside Mineral King Valley, an area of environmental protection in the state of California. At the time, Judge Douglas, in his dissenting vote, argued that sometimes, inanimate objects can take part in litigation, and just like a ship has a legal personhood and a company is a person for legal purposes, so can animals and plants be considered subjects of law.

In chapter 3, this precious book discourses about the birth of an Animal Law theory that gains strength in the 1970s, propelled by the paradigm shift caused by the change in social values stemmed by the fight for different civil rights around the world.

This new legal discipline will be further developed in many Law Faculties across the world, based on works of authors such as Henry Salt, Humphry Primatt, Peter Singer, Tom Regan, Steven Wise, David Favre, among many others, like the author herself, Prof. Danielle Tetü Rodrigues, and prosecutors Laerte Levai and Luciano Santana.

Chapter 4 brings a detailed study of the Brazilian legislation regarding domestic, domesticated and wild fauna, analyzing the main legal tools available for the protection of these animals. It points out that one of the most important legal foundations for Animal Law is the Federal Constitution, for its Article 225 vehemently prohibits all practices that puts at risk the ecological role of a species, cause the extinction of species, or submits animals to cruelty.

In this chapter we'll also find an important analysis of the legal nature of animals, developed from the comparative study between Brazilian law and foreign laws, especially regarding to the Civil Codes of European countries that have already established a new legal status for animals, no longer considered as things, but as sensible beings with specific interests that must be protected by Law.

The chapter ends with a proposition that the Brazilian legislation should be altered so that it acknowledges this new legal status for animals, in which they would stop being considered as a legal good and object of property law, and be considered as sensitive beings with their own interests.

In chapter 5, after a thorough account on the cruel practices from humans towards animals, it presents the evolution of the moral philosophy and religion regarding the animal condition, passing through the analysis of the jurisprudence of the Federal Supreme Court regarding the Brazilian cultural manifestations that subject animals to cruel treatments, like cock fights, rodeos, dog races, etc. Additionally, it also seeks to describe the fight of the third sector to convince the Legislative Power that the mistreatment of animals should be typified as an environmental crime.

Chapter 6 discourses about the trade of animals within the context of community law and Brazilian law, facing the issue of the meat industry,

from the principle of historical moral continuity, which causes a slow evolution in habits and traditions towards the end of the institutionalized exploitation of animals. This chapter also touches on the matter of animal experimentation in Brazil, from the analysis of the mobilization process and the fight of the animal rights movement for the end of tests done on animals.

Chapter 7 studies the treatment of animals and the environment within MERCOSUL, whereas chapters 8 and 9 explain how philosophy and science have showed that there is a unity within the cosmos, and that in such unity there is no hierarchy. The author considers that the role of Heisenberg was vital for the understanding of the material world, by identifying an essential unity between all things and events, since no element is isolated.

After the study of ideas like the Gaia hypothesis, formulated by British scientist James Lovelock (to whom the Earth functions like a living creature, capable of self-regulating itself and its climate), the book concludes that we are returning to the holistic vision of the ancient Greeks that inhabit the logos; however, in order to recognize the rights of animals, we have to rethink many issues and change our relationship with the environment.

3. Conclusion:

Animals are beings that, like humans, are completely absorbed by the adventure of being alive, in such a way that he or she who do not feel compassion towards animals should not have the right to mention human tortures, since for the just and fair all that lives is sacred.

The animal rights movement demands a higher level of altruism than the feminist movement or civil rights movement, since animals themselves cannot fight for their own freedom. Therefore humans are the only beings capable of changing themselves and the world around them.

The book concludes that one day humanity will discover a power stronger than the atomic – the power of love, true love, the only power capable of transforming the world, and that on that day humans will be aware that they have a cosmic responsibility and then, only then, will they be able to say that humanity is the ruler of all creation and man is the son of God on Earth.

In this book, readers will find important foundations of Animal Law, and enjoy the beneficial and intellectual company of one of the most important authors on Animal Law of Latin America.

Heron Santana Gordilho

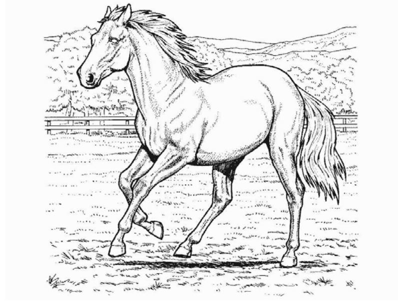
Presentation

"Legal guardianship of animals" is the reissue of the first doctoral thesis in Brazil regarding animal rights, published in 2000, now updated. This thesis was defended at the Federal University of Minas Gerais in February of 2000 by lawyer Edna Cardozo Dias, and had as her supervisor Prof. Arthur Diniz. This book aided the theory of animal rights to gain momentum in Brazil as well as the debate of recognizing animal law within the field of legal sciences. In its second edition, it presents different theories that have emerged in this field, and how they can be the basis and guidelines to elevate Animal Law to a higher standard, one in which effectively protects animals, safeguarding their rights. It also mentions the necessity to modify the legal nature of animals within the Brazilian Civil Code, and makes a comparative study with countries that have already changed their laws in order to recognize that it is necessary to establish a different category for the legal relationships that involve animals and humans, and promote special laws that preserve their dignity and integrity, distinguishing them from other goods. The book regards Animal Law in its philosophical, legal and ethical facets, discourses on the many kinds of cruelty practiced in Brazil and analyzes the Brazilian legislation as well as that of other countries, and broader, worldwide agreements. It ties academic issues with those of the legal field, and brings the reader to ponder about the

adoption of new legal paradigms and about the evolution of a theory of animal rights.

The author

Chapter 1



PHILOSOPHY AND ANIMALS

The Man's relations with the animal and nature in Western civilization have been governed by dominion. Widespread attitudes of mistreatment of animals arose, above all, from the biblical belief that God gave man dominion over all creatures and from a philosophical thought that developed on an ontological duality - which has legitimized all sorts of exploitation of animals. animals. Thus followed romanticism, humanism, and rationalism, which placed man at the center of the universe.

1.1 THE GREEKS

Greek thinkers taught that chaos is the prime creative and driving force of the universe. It was from chaos that the Shadow, in the form of Erebus, and the Night arose. And it was from the Shadow that Light came forth in the form of Ether; and from the Light, the Day. When Erebus separated from the Night, Eros emerged - Love, creator of all life. Eros enveloped the earth, and it gave birth to heaven, the sea, and the mountains. From the offspring of the earth emerged Themis - personification of law and universal order, immanent in the nature of all

things. Themis married Zeus, god of Olympus,and he gave birth at three o'clock: Eirene the peace; Eunomy, the discipline; and Dike, justice. This is the first ontological view of law.

In the poetic work of the Greek philosopher Hesiod we can read the genealogy of the gods, an outline of rational thought that paved the way for philosophical cosmogonies. In his *Theogony,* Hesiod already spoke of the separateness between a rational nature and an irrational nature in the universal order protected by Zeus. For him the irrational nature lacks rights, and irrational beings can therefore devour each other. This is your law. But men are granted the right - *Dike* - to which they owe obedience, and at the same time the greatest of goods. Thus there is an order for men and another for irrational animals. While for the irrational kingdom the vital necessity prevails, for the human kingdom justice prevails, law being one of the basic forces of the universe.

This was perhaps the first step that centuries later would exclude animals from a legal protection created for men only.

1.1.1 The Pre-Socratic

Echo historian Arthur Soffiati[1] teaches that the early Hellenics, *called pre-Socratic or physical,* saw nature embrace everything, including the gods, relativizing the importance of the human being. For them, among others, which constituted the Ionian, Italic, Elematic, and Atomic schools, the conception of natural justice stems from the cosmic order.

Early Ionic thinkers conceived of a static universe. Then this vision evolves into a worldview, the cosmos taking on a soul whose essence is becoming as the essence of things. Logos, the universal principle, is considered the soul of the world.

Heraclitus of Ephesus (540-497 BC) can be considered a paradigmatic symbol of the pre-Socrates. He held that being is one;

---

[1]SOFFIATI, Aristides Arthur. *A natureza no pensamento liberal clássico.* Campos dos Goitacazes: Datil, 1992, inédito.

the second is becoming, the fundamental principle. Everything flows, nothing persists nor remains the same. He affirmed nature as infinite, which never rests, and defined fire as the symbol of eternal movement. From the struggle between opposites is born all becoming. The difference is part of the harmony. (Our note: difference even between sexes, races and species of animals and vegetables). Heraclitus linked the whole and the not all (the part). This is the principle of unity among the entire universe.

Founded by Pythagoras of Samos (580-497 BC), the Italic School presupposes a fundamental identity of divine nature. This profound similarity between the various existents was felt by man in the form of an agreement with nature, which, especially after the Pythagorean Philolaus, will be described as harmony, guaranteed by the presence of the divine in everything. Naturally, within such a conception, evil is always understood as disharmony.

In this School we find, therefore, the conception of a unique and harmonious universe and the presence of the divine in everything, and not only in the human being.

By this time the Court of Amphictions (assembly of great initiates and supreme and arbitral parliament) meeting in Delphi already recognized the importance of the environment for city life. This is what we take from their oath that they pledged never to destroy the amphitheater cities and not to divert, either during peace or during the war, the springs necessary for their needs.

This was the Greece of the Orpheus thinker, who was already beginning to perish with the violation of Delphi's orders. There was a need to divide education into two sectors, one public and the other secret. Pythagoras emerged as the master of lay Greece. In the basic principles of his teachings he already preached that the universe is one and that there was therefore interdependence of all beings, justifying the maxims of today's ecology: evolution is the law of life; number is the law of the universe; and unity is the law of God.

In her hermetic teaching, she demonstrated that numbers contain the secrets of all things and that they are universal harmony.

The seven musical notes correspond to the seven colors, the seven planets and the seven ways of life. This melody should awaken the soul and make it harmonious. (Our note: in peace with all that lives, to vibrate in unison with the breath of truth).

Pythagoras, in preaching a love of family to the young, compared his mother to the generous and benevolent nature. He said that "the celestial Cybele produces the stars; Demeter, the fruits and the flowers of the earth. So too, as the mother feeds the child of all joys. Here you see that he saw the earth as a great mother. And for him this living, eternal Nature, this great Wife of God, is not only the earthly nature, but also the nature invisible to our eyes of the flesh - the Soul of the World, the primordial Light, alternately Mayan, Isis or Cybele, that Being the first to vibrate under divine impulse, it contains the essences of all souls, the spiritual types of all beings. It is then Demeter, the living earth and all the lands, with the bodies they contain, in which their souls come to incarnate: then is the woman, man's companion. "[2]

The recent GAIA theory, *The Living Earth,* by English biochemist James Lovelock, had its name suggested by Goulding, because it bears a resemblance to the Greek conception of GEA.

Pythagoras believed in reincarnation and metempsychosis. Regarding animals, he said that species were transformed not only by selection, but by the percussion of invisible forces. For him, as soon as a species disappeared from the globe, it was a sign that a superior race was incarnating in the offspring of the old species. And, according to him, this is how the man himself came about. And all of this presupposes, of course, an earlier kingdom of a heavenly humanity. Thus Pythagoras moved from physical cosmogony to spiritual cosmogony. It dealt with the evolution of the earth and the evolution of souls, a doctrine known as *the transmigration of souls.* The human soul was but a portion of the soul of the great world. The ascension doctrine of the soul undoubtedly places animals in the condition of our evolutionary brothers:

---

[2]SHURÉ, Edouard. *Os grandes iniciados*. São Paulo: Martin Claret, 1986, p. 68.

> “The spirit that works the worlds and condenses the cosmic matter in huge masses manifests with a different intensity and an increasing concentration on the successive kingdoms of nature. Blind and indistinct mineral force, individualized in the plant, polarized in the sensitivity and instinct of animals, always tends, in its slow elaboration, to the conscious monad; and the elemental monad is visible in the lowest animal. ”[3]

Pythagoras is said to be a vegetarian, and his and his disciples' frugal meal usually consisted of bread, honey, and olives.

At the Atomistic School we find the height of pre-Socratic natural science. For this school the basic element of the universe is the atom. With Abddera's Democritus (460-370 BC), the atomistic worldview is born, perhaps one of the earliest representatives of materialism. According to his theory, reality is composed of atoms and emptiness, and the combination of atoms would explain the formation of all phenomena. The man is a microcosm. These are his teachings:

> Unclassified Writings, Causes Relating to Animals, I, II, III - The good nature of animals is to the force of the body; that of men, the excellence of character. And underscores the good quality of animals: We may be ridiculous when we boast of teaching animals. Of them we are disciples in the most important things - the spider in weaving and mending, the swallow in building houses, the songbird, swan and nightingale in singing, through imitation. ” [4]

By examining the pre-Socrates we can conclude that in ancient Greek thought man was part of the universe, but without

---

[3]SHURÉ, Edouard. *Op. cit.*, p. 80.
[4]OS PRÉ-SOCRÁTICOS - vida e obra. São Paulo: Abril, 2ª ed., 1978, p. 317.

any autonomy. The justice of the state was confused with the laws of nature, since man, immersed in the totality of the cosmos, obeyed the physical or religious laws that governed it. This conception is cosmological jusnaturalism.

1.1.2 The Sophists

With the ethical and moral crisis of the fifth century BC, sophism developed. Sophist is one who knows, one who has a technique that enables him to take advantage of his application. With the Sophists the inquiries about the cosmic order give way to the inquiries about the human order. The sophists were walking teachers.

The Hellenic world in the sixth and fifth centuries BC thrives on this interesting conception of nature. Although they disagree with some of the principles that constitute and govern the universe, Tales, Anaximander, Anaximenes, Xenophanes, Heraclitus, Pythagoras, Almeon, Parmenides, Zenon, Melissus, Empedocles, Philolaus, Archites, Anaxagoras, Leucippus and Democritus share the view that everything is integral. nature: the human being, the society built by him, the outside world and even the gods.

Finally, from Thales to Democritus, the pre-Socrates, who were at the same time philosophers, scientists, poets, artists and mystics, affirmed the essential theme of unity. The tendency towards globalization and the defense of the planet retake this perspective, with a new foundation.

1.1.3 The Socratic Philosophy

It is from Socrates (470-399 BC), with the maxim you know *yourself*[5] that anthropocentrism begins.

Socrates has the merit of being the founder of ethics. For him, although happiness is a good to be attained, it must be conceived as the pleasure that flows from the spiritual balance, from which reason

[5]COELHO, Luiz Fernando. *Introdução histórica à filosofia do direito*. Rio de Janeiro: Forense, 1977. Pg. 59.

liberates man from the darkness of the passions. What he wanted to show is that moral laws originate in the structure of the individual. He also said that reason leads to unity and universality, identical to all men. There is a universality of man.

Regrettably, what has not been remembered is that ethical values ??must be conceived not for the isolated man, but in their universality, including in the surrounding environment. In this sense, we can say that the environment demands from us an ethic of respecting the laws of biodiversity, the completeness of matter and the programming of nature. If, as Socrates said, obeying the laws of the state is a requirement of human nature itself, it is also human nature to obey the laws of the earth and the universe.

1.1.4 Plato

Plato (428-348 BC) received from Socrates the great impulse, the active principle of his life: faith in justice and truth. He was most impressed that Socrates died for the truth. (Socrates died in 399 BC).

Plato completely rejected the atomists' conception of a universe with an indeterminate plurality of randomly created worlds. He devised a theory that made the divine spirit the primary cause of the natural world and put spiritual values ??at the heart of creation. The heavens, in his opinion, proclaim the rational purposes of its creator, whose work constituted a cosmos, a unique whole, orderly and beautiful, imbued with life and intelligence. Plato's world is an organic unity whose parts are intelligible by virtue of their mathematical structure. There is a soul of the world, which is the cause of regular movement, and the body of the world consists of the first four bodies: fire, air, water and earth. The soul of the world is inserted in the center of the sphere and permeates it completely, endowing it with movement, life and thought.

Plato gave great importance to politics, revealed in his works *The Republic and* the Laws, in which he occupied himself with the political man and the ideal cities. In *The Republic* he ends with the myth of Er, when he speaks of the transmigration of souls:

> “Er said he saw the soul that once went to Orpheus choosing a swan's life because, because of hatred for the sex that had given him death, he didn't want to be born of a woman. He had seen the soul of Tamiras choose the life of a nightingale, a swan change its condition for the soul of man and other song animals to do the same. The twentieth-named soul to choose chose the life of a lion: it was that of Ajax, son of Telamon, who did not wish to be born again in the state of man, for he had not forgotten the judgment of weapons. The next was the soul of Agamemnon. Also disliked by mankind because of past misfortunes, he changed his condition to that of an eagle and that of [...] the silly Tersites dressed in the shape of a monkey. human condition or that of other animals, the unjust in fierce species, the just in domesticated species; In this way, crosses of all kinds were made. ”[6]

In the dialogue of the *Laws*, book X, Plato also speaks of the soul, defining it as a moving substance, and declares that the world and the stars are animated and that divine revolution is directed by the supreme soul, principle of order of the world. Cosmos. He believes in the immortality of the soul, subject to rewards or punishments, and its elevation or demotion on the scale of living beings. That is, for him all living beings are endowed with soul.

Plato includes among the main privileges of man to communicate with animals. Thus, by questioning and studying them, he knew exactly their faculties, as well as their differences, which sharpened their reasoning, their prudence was more perfect, and their conduct in life was more efficient. He would ask, "Is there any greater folly in man wanting to judge animals?" He believed that the bodily form with which nature endowed animals met the prognosis of the time.

---

[6] PLATÃO. *A república*. Fundação Calouste Gulbenkian, 1949. Pg.. 477, 496-498, 620.

1.1.5. Peripathetism

Aristotle's philosophy (384-322 BC) is called *Peripatetic* because of the outpatient habit that the master spread among his disciples, teaching them in lovely lectures, walking the paths of Apollo's Gymnasium.

In Aristotle *Politics,* he argues that the dual union of man with wife and master with slave is first of all the family. And remember what Hesiod said, rightly so that the first family was formed of the woman and the ox made for the plowing. Indeed, the ox serves as a slave to the poor.[7] Thus, the family, constituted to provide for daily needs, is formed by the human being and the domesticated animal. For him many families form the burgos, and many burgos a complete city. For Aristotle, every city integrates with nature, for it was nature itself that formed the first societies. And the different beings integrate into nature when they reach every development that is peculiar to them. For him it is evident that the city is part of nature and that man is naturally a political animal. An individual who is no longer part of the city is greedy for fighting and, like birds of prey, unable to submit to any obedience. Obedience and submission are to him natural rules.[8]

Aristotle considers man a more sociable animal than other animals living in society, such as bees. He considers the animals different by their way of life, their actions, their customs and their dwellings. And see in the fact that man has the gift of the word a form of elevation, compared to other animals, which only has the voice to express pleasure and pain. Animals communicate, but only humans can discuss what is fair or unfair. For him nature has given animals the organs to express his voice, but we have knowledge of good and evil, useful and useless, just and unjust,

---

[7] ARISTÓTELES. *A política*. Julian Marias y Maria Araújo. Madrid: Instituto de Estudos Políticos, 1951. XLV e 12.

[8] VERNANT, Jean Pierre. *Los origenes del pensamento grego*. Trad. de Mariano Ayerra. Buenos Aires: Eudeba, 1965. Pg.. 105.

and we manifest it through the word. It is the trade of the word the link of every domestic or civil society.

In some ways, as we reflect on these philosopher's words, we have to take responsibility for beings who do not use language to express themselves and claim their liberation, as well as the fate of the planet. However, Aristotle sees as natural the dominance of man over the animal. In the same way, it is natural for him to master the man who has ideas about the one who only has the strength. Also, it postulates that the soul directs the body. It even considers it a privilege for the animal to live under the rule of man, arguing that the situation of the dominated animal is better than that of living in freedom, which he calls wild beast.

Thus, we conclude that the animal is conceived by him in society as a slave, as a useful commodity for food and daily use, and as a supplier of raw material for clothing and other objects. In his conception nature does nothing without purpose, and animals could have no other purpose than *to serve man*.

But Aristotle points out that even though the civilized is the best of all animals, the man who knows neither justice nor the law, man is the worst of all. For him hunting is an art of conquest, as warfare is an art which man uses against beasts, and other men, naturally destined to obey, refuse to submit.

This thought of Aristotle influenced European education until the seventeenth and eighteenth centuries. Moliérè, La Fontaine and Boileau took their concepts of morals from the philosopher. The phenomenon has become more striking in university Germany. Two great admirers of Aristotle are Hegel and Marx. We can say that he was the founder of the philosophy of law.

1.1.6 Epicureanism

With the advent of Alexander the Great's empire began the overthrow of the City-state political system of Greek culture.

The art administrative and tax authorities of the emerging monarchies succeeds the Greek State. This gives rise to a new awareness of nature. The doctrine of Epicurus (341-270 BC) was almost a religion, like that of Pythagoras. Morality, having as its object human happiness, objectified by peaceful pleasure, is a means of avoiding pain and never harming anyone.

Here we can see that Epicurus speaks of human happiness. But in truth, the man who is at peace and quiet does not want to harm man, nor any living creature. Man, therefore, did not achieve this sought happiness with these teachings, lacking the Platonic courage (act with the heart) and true love not to hurt the earth and its creatures.[9]

1.1.7 The Stoic Philosophy

Stoicism represents the heyday of pantheism in the traditional cosmological conception of a spiritual force animating the universe. The founder of this school is Zeno of Citium (344 BC - 262 BC).

For the Stoics the world is their homeland. The Stoic man is cosmopolitan, citizen of the universe. These ideas opened a feeling of charity, arousing pity for slaves and enemies. The Stoics touted the nature of the one identity of human nature and claimed that humanity is like a universal community.

We find in the Stoics the idea that natural law is common to men and animals. This idea that all living beings are subject to a law as well as to a God — *logos, ratio or pneuma* — is one of the fundamental principles of Stoicism. Living beings participate in the universal ratio. For them universal reason rules all things and is present in every man without distinction. As part of the cosmic nature, man is rational, from which he infers the existence of a natural right based on reason. But this right is not

[9]COELHO, Luiz Fernando. *Op. cit.*, p. 95-99.

confused with the right instituted by the state. In one of Zeno's fragments is the thesis that natural law is a divine law, which therefore has the power to regulate the just and the unjust.[10]

This mentality later spread among the Romans, but these jurisconsults did not recognize rights to animals. According to the Roman interpretation, the idea of ??natural law meant only that natural law is inherent in the order that governs all creatures. This idea was supported by the fact that the Stoics advocated the application of justice only to rational beings.

Stoicism, in a way, is a precursor to social contract theory.

1.2 THE BIBLICAL VISION — SAINTS AND ANIMALS

According to the widespread interpretation of the classical Bible, God has given man dominion over all living creatures, having created only man in his own image and likeness. In Genesis the creation of the world is related as follows:

> “And God said, Let the earth bring forth living animals after their kind, domestic animals and reptiles, and wild animals after their kind. And so it was done. And God made the beasts after their kind, and the beasts, and all the creeping things of the earth after their kind. And God saw that it was good, and (lastly) said, Let us make man in our image and likeness, and be bound unto the fishes of the sea, and the fowls of the air, and the beasts, and all the earth, and all. the reptiles that move upon the earth. ”[11]

The superiority of the human being constituted for Western society more than a belief, a dogma of faith. It was the foundation on which society was built and which justified man's elevated position in the universe.

[10]COELHO, Luiz Fernando. *Op. cit.*, p. 106.
[11]BÍBLIA sagrada. Primeiro livro de Moisés. *Gênesis,* 1, 24-26.

However, countless ecclesiastical currents today already accept a new interpretation of this biblical passage. Since man is the most conscious being in relation to others, God has delegated to him the responsibility of caring for the planet and protecting other creatures. After Darwin man was forced to admit that it is nothing more than the result of millions of years of evolution. Despite all its technological subtleties it is a newcomer here on Earth. Individuals and species come and go as life goes on. Individuals play their roles, but they are not the main object of the process. All beings are beings who, like man, are deeply absorbed by the adventure of living.

Carnivorism has found justification in the vision St. Peter had when he was hungry and experienced a sense of ecstasy. He saw the open sky and an object coming down like a large sheet, which contained all sorts of quadrupeds, earth reptiles and birds of the sky. That was when he heard a voice: "Arise, Peter, kill yourself and eat." To which he replied, "Not at all, Lord, because I have never eaten anything common and filthy." The second time the voice said to him, " Nothing that God has cleansed you do not consider common. "[12]

Elsewhere, however, the Bible seems to recommend vegetarianism:

> "Behold, I have given you every herb that gives seed, which is upon the face of the earth; and every tree with fruit of a tree that yields seed shall be unto you for food. And to all the beasts of the earth, and to all the birds of the sky, and to all the reptiles of the earth, where there is breath of life, every green herb will be for food. "[13]

In the apocryphal gospels we also find many passages where Jesus speaks in defense of nature and animals, such as the Gospel of Perfect Life, or Aramaic Gospel, found in Tibet, and the Essene

---

[12] BÍBLIA sagrada. *Atos dos Apóstolos*. 10, 9-16.
[13] BÍBLIA sagrada. *Gênesis*. 1, 29-30.

Gospel of Peace, found in the Vatican Library and the Royal Habsburg Library.

Within the new theology, the symbolism of Jesus nailed to the cross refers to the salvation of the whole person, not just the salvation of his soul, but the liberation of the human being within his community and the universe.

1.2.1 St. Thomas Aquino

For St. Thomas Aquinas (1225-1274), justice seeks to order everything that concerns others. Speaking of vice contrary to commutative justice gives his biblical interpretation of the sin of killing irrational animals and plants.

Says the Apostle to the Romans (12 2): “Those who resist the divine command of this withdraw their condemnation.” [14] But by ordination of divine providence all the living are kept: “He who produces hay on the mountain and gives eat the animals ”(146 8). According to Exodus 22, someone who kills the sheep or the other ox must be punished.

According to St. Thomas's interpretation, the commandment “Thou shalt not kill” does not refer to animals. He establishes an ontological dualism by stating in his *Treaty of Justice* that no one sins for using something according to the purpose for which it was made. He says that in the order of things there are the most perfect, and so does nature, from the most imperfect to the most perfect. It states that plants live by animals: and animals by men. Evokes Aristotle to conclude that if man uses plants for the good of animals and animals for the good of men, he does not commit illicit acts.

It also evokes St. Augustine in *The City of God,* book 1, chap. 20, to support his discriminatory view of species: "By the Creator's just order, the life and death of plants and animals are

[14]TOMÁS DE AQUINO (Santo). *Tratado de justiça*. Portugal, Coleção Resjurídica, p. 104.

subordinate to man." [15]

This dualistic thinking came to influence the ensuing thinkers and philosophical movements throughout Europe.

1.2.2 St. Francis of Assisi

Francisco Bernardone (1182-1226) was one of the greatest forerunners of modern ecological thinking. He was a great lover of animals and nature. It is said that in the city of Gubbio the inhabitants were frightened by a wolf. Francis set off into the woods to preach to the wolf, and found the dove of peace. He meditated in the woods and talked to birds and other animals. It is also said that the birds came daily for crumbs from the convent table where the friars of the Order of Beggars of Assisi, founded by Francis, lived. [16]

His love for animals led him to build nests for the turtledoves, or to drive a creeping critter out of the way, or to bring honey to the bees in winter. He joined the birds, which he believed were praising the Lord to sing the canonical hours. It is said that, being all created by the Word, each creature is an echo of that divine Word, and can become for us the step of a ladder that will allow us to reach the Cause, from creature to Creator. In the *Canticle of Creatures* it is evident that St. Francis' attitude toward animals illustrates a cosmic perspective, far from any vulgar or poetic sentimentality. He calls the animals brethren, indicating that his individual worldview has been surpassed by him, that he understands the animals' raison d'être and that he places them in their exact place in creation: “Praised be Lord with all your creatures. [...] Praise be Lord, for our sister the earth, who sustains and governs us, and produces diverse fruits and colorful flowers and herbs. ”[17] There are six fundamental symbols of the *Song of Creatures* - the earth, the air, the

[15]*Apud* TOMÁS DE AQUINO (Santo). *Op. cit.*, p. 104.

[16]BOFF, Leonardo e PORTO, Nelson. *São Francisco de Assis, homem do paraíso*. Petrópolis: Vozes, 1986, p. 67.

[17]BOFF, Leonardo. *Op. cit.*, p. 100 e 101.

water, fire, the moon and the sun — beyond Western cosmology, which has generally retained four alchemical elements. This makes Francis an example worthy of being followed by all humanity.

1.3 Liberal Philosophers and Animals

In Western culture, in its liberal and socialist aspect, natural law is reduced to human nature. The world has disappeared. The kingdom of man was proclaimed. And this movement became hegemonic notably after the French Revolution and the Industrial Revolution. The Declaration of Human Rights says: Every man. It was not until October 1978, almost two hundred years later, that *the Universal Declaration of Animal* Rights was proclaimed by UNESCO, which in its art. 1, records: *"All animals are born equal before life and have the same rights to existence."*

1.3.1 Montaigne

Montaigne (1533-1592), 18 in his essay book, 18 said that virtue is a different and nobler thing than the inclinations to goodness that are born in us, and that among the vices was one that he particularly hated: cruelty. By instinct or reflection, he considered this vice the worst of all. And he confessed that he had the weakness of not being able to see killing a chicken without being unpleasant, nor being able to hear a hare moan in the dogs' teeth; who could never see a persecuted and killed an innocent animal without defense, of which we have nothing to fear, such as deer hunting, which, when breathless, without strength and without possibility of escape, surrenders, as who begging our forgiveness and, with tears in his eyes, moaning, bloodied, asks for mercy. He compared the voluptuous hunt man feels when he marries his wife when pleasure approaches. He supposed that was certainly why the poets represented Diana indifferently.

[18]MONTAIGNE. *Vida e obra*. Da crueldade. São Paulo: Nova Cultural, 1996, p. 366-369 (Os Pensadores).

to the flames of love and Cupid's arrows. If he caught a trapped animal, Montaigne returned him to freedom. So did Pythagoras, who bought fish and birds to release. “It was, he said, with the blood of animals that iron was first stained.” 19 Those who are bloodthirsty with animals reveal a cruelty-prone nature. After humans became accustomed to the killing of animals in Rome, they went on to fight among the gladiators. To Montaigne, it seemed that the man was unable to be pleased to see the animals caressing himself, but rather excited by their fierce struggles. He justified this sympathy for animals in theology itself, which recommends benevolence. He believed that the Creator put us on earth to serve him and that animals are like our family. It preached respect not only for animals, but also for everything that contains life and feeling, including trees and plants.

Montaigne said that we owe men justice, but animals we owe solicitude and benevolence. For him the failure we have in communicating with animals can be as much attributed to us humans as to animals. He recognized that animals can find us as irrational as we do. Animals understand each other perfectly, and not only those of the same species, but also those of a different species. As for animals that have no voice, they use movements with specific meanings. In his view, most of the work done by animals is superior to that of humans, who cannot successfully imitate them. In Raymond Sebond's *Apology,* [20] Montaigne highlights the quality of animals and the respect we humans owe them. No one was more convincing in overthrowing the man from the throne he built for himself than Montaigne in the study of animal behavior.

Montaigne is also profoundly ecological in *The Spirit of the Laws,* in which he devotes several chapters to the relationship of laws to climate and soil. He argues that the spirit of the laws must be related to the characteristics of the climate and that bad legislators favor climate vices. Advocates that slavery is related

[19]MONTAIGNE. *Op. cit.,* p. 368.

[20]MONTAIGNE. *Op. cit.*, Apologia de Raymond Sebond, p. 382-483.

with the nature of the climate, as well as political servitude and civil law.

For him the nature of the soil influences equally the laws. The excellence of a country's land in it naturally establishes dependency. The fertile regions are plains, where nothing can be disputed with the strongest; soon we submit to it. And when we are subjected to it, the spirit of freedom cannot return. Countries are not cultivated because of their fertility, but because of their freedom ... And the people of the islands are more inclined to freedom than the peoples of the continents.

Montaigne teaches that laws must be related to other beings. It conceptualizes laws, in their broadest meaning, as the necessary relations that derive from the nature of things. And in this sense all beings have their laws: Divinity has its laws, intelligences superior to man have its laws, animals have their laws, man has its laws.

In short, he defines laws as the relations that exist between them and the different beings, and as the relations of these different beings to each other. It states that animals have natural laws because they are united by feeling; they have no positive laws, because they are not united by knowledge.

Man uses his intelligence to incessantly violate the laws of God and the laws of nature, derived from the constitution of our being.

Unlike Hobbes, Montaigne believes that in nature men are at peace, which is the first natural law, and only live in war after the establishment of society. Finally, it teaches that laws must be proper to the people, must be in relation to nature, and must be related to the physical nature of the country, the quality of the terrain and the order of all things.

1.3.2 Hobbes and the social contract

Despite belonging to the tradition of jus naturalism, Hobbes is considered the precursor of legal positivism. It adopts natural law to strengthen civil power. The naturalistic jus principles for him are

evoked to achieve subjectivist goals.

According to traditional natural justice, natural laws must be obeyed before that of a civil nature. For Hobbes, obedience to covenants as well as civil law is the obligation of all, perishing natural law. He dedicated his political works *De cive* (1642) and *Leviatã* (1651) to the study of natural law.

In De Cive he teaches that

> "Laws can be divided, first and foremost, into divine and human laws. Divine laws are of two kinds, according to the two ways God can manifest His will to men: natural (or moral) and positive. Natural is that which God has manifested to all men through His eternal, innate word, that is, through natural reason. Positive is that which God has revealed through the word of the prophets [...] All human laws are civil. [21]

Natural law is proposed to man by God through reason, and positive law is proposed by the state. For him natural laws are effective in nature, ceasing to be effective in civil society.

The continuing state of insecurity manifested by the state of nature leads man to desire to change it, creating the marital state. Then, with the exception of the right to life, man renounces the state of nature to institute security and its obligations, imposed by the sovereign through positive law. For him even the concepts of just and unjust depend on the sovereign's ordinance.

In the introduction *of Leviathan* Hobbes explains that this term, which is called a public thing or a state, is nothing more than an artificial man, though of a very tall stature and much greater force than the natural man, for whose protection and defense it was imagined.
.

We can say that Malmesbury's English philosopher Thomas Hobbes (1588-1679), with his book *Leviathan* (1651), was the

---

[21]HOBBES, Thomas. *De cive*. Petrópolis: Vozes, 1993, p. 181.

founder of the philosophy of modern individual law, the myth of the social contract, and the idea of ??the modern state. It is he who seeks an explanation for the constitution of civil society; His is the so-called monistic theory of sovereignty, which defends political absolutism. The theory of the absolute state, proposed by Hobbes, is intended to cancel the state remnants of nature, for which men live in permanent war. To a radical evil, a radical remedy: Hobbes's state of nature has no laws; It is a total anarchy.

Hobbes was a Christian, which justifies the fact that his thinking was imbued with Christian ontological dualism, exploring Christian morals, epicureanism, and stoicism.

In the Hobbesian image of the state of nature each of us is totally free, knows nothing but his own law, and is entitled to everything. This is how conflicts arise. For him the state of nature is one of perpetual warfare, of fear, of misery, in which man is constantly exposed to the violence of his neighbor.

Hobbes, influenced by Descartes, applies to the human being the mechanistic principles of the universe. In Leviathan's introduction he says that life is but movement and defines political organization as the realm of artificialism.

Indeed, he argues that human beings are equal in the state of nature and that the absolute rule and dominance of men over women do not in any way reflect the innate superiority of some individuals over others or males over others. the females, as Aristotle intended. These inequalities were instituted by the social contract.

Examining this thinker's work leads us to recognize his belief in the innate and conflicting instincts of aggression and self-preservation. The artificial political structure disciplines this wild nature, and does not eliminate it. He believes that only a strong government can control man's antisocial instincts.

In Hobbinian thought, *"jus naturale is* the freedom that every man has to use his own power, as he pleases, for the preservation of his own nature, that is, of his life; and consequently

to do whatever his own judgment and reason may indicate to him as appropriate means to that end. And as long as this right of every man to all things endures, there can be for no man (however strong and wise) the security of living as long as nature allows men to live. " But peace can only derive from the second law "which one man shall agree, when others shall, and insofar as it deems it necessary for peace and self-defense, to renounce his right to all things. contenting himself with other men with the same freedom as other men allows himself. "[22]

Hobbes said that men cannot live socially like ants, because they are always involved in competitions, and among other arguments, because irrational creatures, being satisfied, never take offense at their fellow men. The agreement between animals is natural, while for men it is artificial.

Hobbes imagined, as it turns out, the man in the state of nature acting purely on the instinct of conservation, at constant war with his fellow men.

Hobbes has a utilitarian view of human language as indispensable for the formation of the state. He also considers it a gift from God and says that language is the generator of the specifically human faculties that distinguish man from animal. Giving language the role of formator of social and political relations, he asserts that there would be "no men, no state, no society, no contract, no peace, as there are no lions, bears, and wolves." [23]

Thus, for the formation of the state, a pact is required, for whose adherence language is required. In this way Hobbes excluded the animals from the social pact. He claimed it was impossible to make pacts with animals because they do not understand our language and,

---

[22]HOBBES, Thomas. *Leviatã ou matéria, forma e poder de um estado eclesiástico e civil.* São Paulo: Abril Cultural, 1998, p. 78 (Os Pensadores).
[23]WOELMAN, Sérgio. *O conceito de liberdade no Leviatã de Hobbes.* 2. Ed., Porto Alegre: Edipucrs, p. 30 (Coleção Filosofia).

therefore, they can neither accept any translation of law, as they cannot transfer any right to another without mutual acceptance there is no possible social pact. This means that the state of nature and war remain between men and animals after the social contract. Thus an irrational animal is entitled to attack a human being, and vice versa. This Hobbinian paradigm explains the utilitarian views on classical liberal thinking about animals and nature.

1.3.3 Locke

Locke's theory of social contract, a precursor to bourgeois liberalism, is opposed to Hobbes's. He defends the idea that in the state of nature men were benevolent with each other: they helped each other and lived according to natural law; natural law was like a code set by God; they organized themselves in society to defend themselves against the possibility of threat to their property and their lives. In this hypothesis the role of the State is limited to the Police Power, the administration of justice, defending the freedom and property of the administrated.

Locke seeks to demonstrate that the state of nature has nothing to do with the state of war. However, it states that in the state of nature, once the state of war begins, it endures for lack of positive laws and an impartial judge. Locke assumes that a judge in his own case cannot be impartial, and that punishment tends to be revenge. The major drawback, therefore, is the lack of a judge to avoid conflict and the degeneration of the state of nature in a state of war. [24]

> "Where there is no such appeal (as determined by law), as in the state of nature, due to the absence of positive laws and competent judges with the authority to judge,

[24]BOBBIO, Norberto. *Locke e o direito natural.* Brasília: Editora da UnB, 1997. Pg. 177, Cap. "O Estado da natureza segundo Locke".

> once initiated the state of war, he continues, and the innocent party has the right to destroy the other when it can. "[25]

Recognition of the existence of natural laws presupposes recognition of their obligation. There is a source of obligations different from positive laws, derived from natural law.

Locke has made the state of nature a mixture of good and evil, and it is up to the marital status to maintain the good, which is expressed in freedom, equality and the right to property.

In his *Theory of Government,* Locke endeavors to demonstrate that the right to property is natural, in the specific sense that it is born and perfects itself in the state of nature, that is, prior to state planning. In his speech the term property means sometimes the power over things, sometimes the natural right that precedes other rights.

Locke's *Theory of Property* is an indirect refutation of Hobbes and Pufendorf theories. The Hobbesian state is instituted for the conservation of life, not property. Before the state no one had anything for himself; everything was common to all. Pendor defended the contractual foundation of property, that is, it is only effective for men; property does not derive directly from God (so much so that among animals there is no right to property, they consume and use goods with God's consent).

Locke disputes such theories with these comments in *Second Treaty on Civil Government:*

> "Perhaps it will be said that he (the man in the state of nature) was not entitled to the nuts and apples he appropriated in that way (that is, with his work) because he did not have the consent of all men? Was it perhaps a

[25]LOCKE, John. *Segundo tratado sobre governo civil*. Petrópolis: Vozes, Cap. III, § 20, p. 93.

> theft to take for himself in this way what belonged to all in common? "[26]

According to traditional doctrine the title of property was justified either by occupation, as possession of res nullius, or by specification, by the transformation of an object by the individual labor invested in it.

Locke contested the theory of occupation by considering things in the natural state as res communes, not res *nullius*. While not referring to the theory of occupation, Locke maintains that justification of property must be sought in the work.

> "Although the earth and all inferior creatures are common to all men, each is the owner of his own person, to which he has exclusive rights. We can say that the work of your body and your hands is yours. To all things taken from the state in which nature produced and released them he adds his work, giving them something that is their own, and thus they become their property and not strange, as perhaps it might seem at first sight that the property of labor can surpass the community of the earth, because it is precisely labor that makes the difference in value in all things. "[27]

Locke places man, in his origin, as lord of all *inferior* creatures, and can make them as he pleases. In principle, everything belongs to everyone. However, the labor force belongs to each one individually, which constitutes the first form of private property. With it man can take possession of the fruits of the earth and creatures. It belongs to whom to hunt or to fish the persecuted animal. So Locke took the

---

[27]LOCKE, John. *Segundo tratado sobre governo civil*. *Op. cit.*, Cap. V, § 27, p. 98.
[26]LOCKE, John. *Segundo tratado sobre governo civil*. *Op. cit*., Cap. VII, § 28, p. 98.

animal from nature, making itprivate property. Extrahuman nature has no wills or rights; constitutes resources available to all humanity. It belongs to whoever has the job of getting hold of it. By placing labor as a source of wealth and property, Locke anticipates Adam Smith and Marx.

So nature, after Hobbes and Locke was out of the social contract or subjugated.

1.3.4 Francis Bacon

Francis Bacon (1561-1626), in his *Novum Organum, defends the theory of induction*, whose idea is that the written experimentation is the most important starting point for science and for the constitution of the research board (core of all Baconian method). Once the goal of science is discovered, among them that of mastering nature, one should not only seek a much larger amount of experiments, but prepare a natural and experimental history. He defended an experimentalist attitude towards animals and the philosophy of domination and manipulation of nature. Bacon ended his days working the way he always recommended: researching experimentally, but did not discover anything in the realm of natural phenomena. [28]

Today, the new scientific paradigm rejects Baconian thinking. The view of nature is holistic, the properties of the part can only be understood from the dynamics of the whole. What we call part is merely a pattern in an inseparable web of relationships. Every web of relationships is dynamic. The new paradigm rejects the idea that descriptions of phenomena can be objective. Scientists do not deal with truths, but limited and approximate descriptions of reality.

1.3.5 René Descartes

Descartes (1696-1650), with his Cogito maxim, ergo I

[28]BACON, Francis. *Vida e obra*. São Paulo: Victor Civita, 1979. Novo Organum. Pg.. 38-40 (Os Pensadores).

think, therefore I am [29] has reduced man to his mind. It gave rise to an extreme formulation of spirit-matter dualism. In his Method Discourse, he creates the theory of the animal machine, inseparable from the dressing, therefore I am. In describing the nature of men and animals, he states that animals are not right and cannot speak to express their thoughts. Animal movements, for him, can be imitated by machines. The fact that there are animals that demonstrate more industry than us does not prove that they have spirit. It is nature that acts on them through their organs, just like a clock, which is made up of all springs. Man is never a machine, because he has a soul. And the only function of the soul is thought. Animals and plants only have a vegetative soul. And we should not call them souls because they are not rational souls.

Descartes advocated the experimental method, and he himself practiced the dissection of live animals. With Descartes rationalism reached its culmination. Reason has become the only complete organ for attaining knowledge and objective truth. This belief alienated man from nature and other human beings, leading to absurd economic disorder, an unfair division of goods, and a rising tide of violence.

On the one hand, we find in Galileo, Descartes, and Newton thoughts that formed the basis of the technological revolution; on the other, the line that begins with Montaigne, Voltaire, and Rousseau, who advocate non-manipulative thinking of nature.

1.3.6 Voltaire

Voltaire (1694-1778), in his *Philosophical Dictionary,* argues that the maxim Know Thyself is a good precept, but only God can put it into practice. The soul, for him, is what animates. We know no more than that, because our intelligence is limited. He criticizes the fact that some philosophers attribute a vegetative soul to plants and an instinctive soul to animals, for if in them there is a being there must be a form, which is life. No one You know what

[29] VILLEZ, Michel. *Philosophie de droit*. Paris: Dalloz, 1986, p. 125.

being called spirit is. For him, God has given us the intelligence not to penetrate the essence of things, but to lead us on the path of goodness.

Voltaire does not understand why the masters ask where the animal's soul is. The discussion about the existence or not of the soul of the animal makes no sense, since man has no basis for defining what soul is. For him, God is the soul that animates all life. If a tree is capable of receiving the sap that circulates in its fibers, blooming in buds and bearing fruit is sufficient proof of its soul.

Voltaire disputes Descartes's thinking about animals with these arguments:

> "What a fool to say that animals are machines deprived of knowledge and meaning, always acting in the same way, and that they learn nothing, do not perfect themselves, and so on. Is it only because I am gifted with speech that you think I have feeling, memory, ideas? Some barbaric creatures grab the dog that exceeds the man in the feeling of friendship, nail him to a table, dissect him still alive, to show you the mesenteric veins. You find in him all the organs of sensation that exist in you. Do you dare now to argue, if you are able, that nature has placed all these instruments of animal feeling so that it cannot feel? Do you have nerves to remain impassive? Let no such impertinent contradiction of nature occur to you. " [30]

1.3.7 Jean Jacques Rousseau

Rousseau (1712-1778), in his *Discourse on the Origin and Foundations of Inequality between Men*, says that homo sapiens, in its origin, is no different from nature. Live in harmony with her. It takes for granted the goodness of nature:

---

[30] VOLTAIRE. *Dicionário filosófico*. São Paulo: Abril Cultural, 1978, p. 96-98.

> “Nature usually treats all animals given to its care with a predilection that seems to show how jealous she is of this right. The horse, the cat, the bull, the donkey himself usually have the tallest build, a sturdier build, more vigor, more strength, and more courage when in the woods than in our homes; They lose half of these advantages when they become domesticated, and it would be said that all our care to treat these animals well and well can only feed them. The same is true of man: when he becomes sociable and a slave, he becomes weak, fearful, and abject; and her delicate and effeminate way of life eventually unnerves strength and courage. ”[31]

Rousseau, who was fascinated by the theme *of freedom,* thought that society was the source of all the evils and degeneracy of nature. To him, humans and animals in the state of nature were beautiful, healthy, and brave. He argued that from the moment someone surrounded a plot of land and declared it his own, instituting private property, the human golden age began to corrupt. For him, it was society that instituted inequalities and injustices.

> "Nature rules in all animals, and the beast obeys." Man suffers the same influence, but considers himself free to agree or resist, and it is above all in the awareness of this freedom that the spirituality of his soul is shown.[32]

Rousseau never believed that man's freedom consisted in doing what he wants, but in not doing what he does not want. This is the freedom he has always claimed.

Rousseau diverges from Descartes about animals, not agreeing

---

[31]ROUSSEAU, Jean Jacques. *Discurso sobre a origem da desigualdade dos homens*. São Paulo: Nova Cultural, 1997, v. II, p. 62.

[32]*ROUSSEAU, Jean Jacques.* Op. cit.*, p. 64.*

that they are automatons, but programmed by instinct. The difference between animals and man is that he is a free agent. One chooses by instinct and the other by freedom.

In recent years, Rousseau has written one of his most delicate works, *Daydreams of a Lonely Walker,* which contains descriptions of the harmony of nature and is a true hymn of love for animals and plants.

In his seventh walk he criticizes the experimental study in animals:

> "How to observe, dissect, study, know the birds in the air, the fish in the water, the quadrupeds lighter than the wind, stronger than man, and no longer willing to volunteer for my research than I am. run after them to subdue them by force? [...] The study of animals is nothing without anatomy. [...] I have neither the taste nor the means to keep them captive, nor the agility necessary to follow them on their walk when in freedom. It will therefore be necessary to study them dead, to tear them, to bon them, to dig their throbbing bowels at will! What a horrible set is an amphitheater of anatomy, fetid corpses, pasty, livid meats, blood, disgusting intestines, hideous skeletons, foul vapors! I give my word that this is not where J.J. will look for your amusements. [...] In fact, I never thought that so much science contributed to the happiness of life. "[33]

Rousseau also makes reference to plants, considering trees, shrubs and plants as ornaments of the earth:

> "Vivacious by nature and clad in her wedding dress in the midst of the watercourse and the singing of birds, the

---

[33]ROUSSEAU, Jean Jacques. *Devaneios de um caminhante solitário*. Brasília: UnB, 1995, p. 97.

earth offers man, in the harmony of the three kingdoms, a spectacle full of life, interest and charm, the only spectacle in the world that his eyes and his heart never tire [...] Greyhound the mountains, diving in the valleys in the woods to steal as much as possible from the memory of men and the attacks of the wicked. "[34]

For Rousseau, medicine has taken possession of plants and sees them as utilitarian goods, an idea that is not proper to make the study of botany pleasant, making the variety of flowers disappear, drying the freshness of the trees, making the vegetables and shadows tasteless and unpleasant. It shows how pleasant and enchanting plant shapes are of little interest to those who just want to crush them into a pestle. The material interest is that it seeks all things for profit, he says. And complete:

> "Nothing that concerns the interest of my body can truly interest my soul. I have ecstasies, inexpressible outbursts to the point of merging, as it were, into all beings, of identifying with the whole of nature. While men were my brothers, I did earthly happiness projects; As these projects were always relative to the whole, I could only be happy with a public happiness, and the idea of ??a particular happiness only touched my heart when I saw my brothers seeking their happiness only in my unhappiness. So in order not to hate them, it was really necessary to flee them; so taking refuge in the common mother, I sought in his arms to escape the attacks of his children, I became lonely, or, as they say unsociable and misanthropic, because the wildest loneliness seems to me preferable to the company of the evil ones, who only feed betrayal and hate ". [35]

---

[34]ROUSSEAU, Jean Jacques, *Op. cit.*, p. 93.
[35]ROUSSEAU. *Devaneios... Op. cit*., p. 95-96.

1.3.8 Natural contract

French philosopher Michel Serres defends the idea that the time has come *to replace Hobbes's Social* Contract *Theory with the Natural Contract Theory,* [36] arguing that because we are living in a global age, global history enters in nature and global nature enters in history. Nature has become a global goal and humanity has become a new total (global) subject upon planet Earth.

For Serres, history begins with war, and war is a rule of law, as it can be conceptualized as the closure and stabilization of violent involvement by legal decisions. War presupposes a prior agreement, and this agreement is confused with the social contract. To him, therefore, Hobbes was mistaken in saying that the war of all against all precedes the social contract. For Serres, on the contrary, it is war that protects us against the indefinite reproduction of violence. When all fight against all, what exists is deadly violence.

Man must seek the state of peace and love; To do so, he must renounce the primitive social contract, to make a new pact with the world: the natural contract.

Through Leviathan, Hobbes's study, we have so won the struggle for life against the other species of flora and fauna that, upon reaching a certain threshold, victory may turn into defeat.

To date, our fundamental relationship with the world has been based on war and property. The devastations that man has left in the wild correspond to the devastations that a world war would have left behind him. Humanity has turned against the world and the other species.

Property rights have an excremental origin. Like other animals, which urinate and defecate in their niche to mark their territory, humanity has made the planet a trash can. Filth has become the mark of humanity, the seal of the rulers, the human race.

---

[36] SERRES, Michel. *O contrato natural.* Rio de Janeiro: Nova Fronteira, 1991, p. 51-52.

The hominal species is excluding all others, preventing them from nourishing themselves because of the filth that has left the common house on the planet. But nature is not just a global being; it reacts globally to our local actions. The domain is temporary and eventually turns into servitude. Earth threatens to overpower us.

The *Declaration of Human Rights*, like the social contract, fell silent about the world and nature.

Serres advocates Locke's conceptual revision of natural law, whereby man is the only subject of law. The world that was seen as our master, then became our slave, then came to be seen as our host, and now we must admit that it is actually our symbiot.

Man, parasite of nature and the world, son of property rights, took everything and gave nothing. The host earth gave everything and took nothing. A right relationship will have to be based on reciprocity. All that nature gives to man he must give back. This means that we must add to the exclusively social contract a natural contract of symbiosis and reciprocity, in which our relationship with things would abandon dominance and possession by admiring listening, reciprocity, contemplation and respect, a contract in which knowledge would no longer suppose property nor action domination.

A symbiosis contract implies the recognition by humanity of the rights of the earth and the entire planetary family. The concept we make of society cannot stick to human society, but it must reflect the general context, including the environment, the animal, man, and the social phenomenon.

If no one has ever read the social contract, on the other hand, Earth speaks to us through its strength and interactions, which is enough to make a contract.

The natural contract is metaphysical, a result of the recognition of every collective that inhabits a global world, along with all other species. The natural contract is as global and as

worldwide as the social contract or scientific contract. The natural contract is as virtual as the others, which were not signed either. All this leads us to consider the point of view of the world in its entirety, the world with all that lives in it.

Chapter 2

FAUNA PROTECTION IN THE EUROPEAN ECONOMIC COMMUNITY AND THE USA

2.1 PROTECTION OF THE FAUNA IN THE EUROPEAN ECONOMIC COMMUNITY

After the 1970s nature conservation became a major concern of environmental policy in the European Union.

The European Union's policy for the conservation of nature over Community territory rests essentially on two pieces of legislation, Directive 2009/147 / EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. European Union directive adopted in 2009 replacing Council Directive 79/409 / EEC of 2 April 1979, which was previously amended several times and substantially. And Directive 92/43 / EC, adopted in May 1992, which deals with the conservation of natural *habitats* and wild fauna and flora — *Directive Habitats*.

The *Birds Directive and the Habitats Directive* have provided a significant legislative basis for the protection of rare species and their endangered *habitats*. Both form the legislative framework

protection and conservation of European habitats and wildlife.

The *Habitats Directive* established the *Natura 2000* Program, which provides for the ecological zoning of spaces protected by the European Union. It includes:

- Special Protection Areas (ZPS): for the conservation of the 182 bird species and subspecies listed in Annex I to the *Birds Directive*, as well as migratory species.
- Special Conservation Zones (ZCS): for the conservation of 253 habitat types, 200 animal species and 434 plant species listed in the Annexes to *the Habitats Directive*.

2.1.1 Directive 92/43 / EEC of 5/21/1992

Directive 92/43 / EEC, which deals with the conservation of natural habitats as well as wild fauna and flora, was drawn up in view of the need to prioritize the conservation of certain types of natural *habitats* and certain species, and Also, due to the cost of conservation measures to establish a common responsibility of all Member States, co-financing is often required. It applies along with the bird directive. This Directive declares endangered, vulnerable, rare and endemic species of Community interest.

Priority species are considered to be those over which the EEC has a particular responsibility because of the importance of its area of occurrence.

The main objective of this Directive is to ensure that biodiversity is preserved through the conservation of their natural *habitats* and wild flora and fauna in the European territory of the Member States, where the treaty applies.

The measures provided for in this Directive take into account economic, social and cultural requirements, as well as regional

and local.

In your art. 3, this Directive has constituted a European ecological network — *Natura 2000* — for the conservation of specially protected sites as set out in its annexes.

The implementation of the *Natura 2000* program, according to the *Habitats Directive*, should take place in three stages:

Step n. 1 — Preparation of national lists of *habitats* and their species. *Habitats* and species listed in Annexes I and II of the *Habitats Directive* are recognized as threatened throughout Europe. Meanwhile, their level of conservation in each Member State is different. For this reason, this stage of the process consists of an assessment of the *habitats* and species of each Member State at national level. Based on this research, sites requiring conservation are identified and submitted, in the form of a national list, to the European Commission. The choice of protected sites is based on the selection criteria set out in Annex III of the Directive.

Step n. 2 — The Community importance of the places included in the national lists shall be assessed. The European Community is home to six distinct biogeographic regions, each with its own characteristics and peculiarities as regards their *habitats* and species. The deadline for the demarcation of sites of Community importance was June 1998. The selection of these areas is carried out in collaboration with the Commission and with Member States according to the criteria in Annex III.

Step n. 3 — The establishment of *Special Conservation* Zones was foreseen. When a place is recognized as such by the Council, Member States will have six years to formalize this declaration, or by 2004 at the latest.

Following the adoption of the *Habitats Directive* in May 1992, the two objectives of socioeconomic cohesion and nature conservation

tend to get closer and closer.

The *Habitats Directive* establishes a legal framework for the protection of a set of sites by forming a branch of protected areas.

In *Special Conservation Areas,* the Member State is obliged to establish conservation measures in accordance with the ecological requirements of natural *habitats* (Annex I) and species (Annex II). The establishment of a site-specific management plan or integrated with other management plans, although not mandatory, appears as a means of implementing the directive.

Conservation measures are chosen by the Member States. They can be through regulation, with the creation of private reserves, through administrative measures, such as financing or signing contracts and agreements with landowners.

When proposing places which could be declared special zones, Member States shall inform the Commission, in addition to their needs, of the amount they consider necessary in the case of Community co-financing to enable them to fulfill the obligations inherent in their conservation and management. areas.

A management plan comprising co-financing by the *Life-Nature* Community Fund is already under trial.

The Commission, in agreement with the Member State concerned, shall assess the amount of financing required. Measures that are not covered by the action plan due to lack of resources, as well as those that, although integrated, have not received the necessary co-financing or have been funded only in part, will be reviewed every two years. These measures are preventive.

Another element of the directive in his art. 6.2, it is the obligation of Member States to avoid any deterioration of habitats and any significant disturbance of species occurring in protected sites.

In arts. 6.3 and 6.4, we find the third component of the protection system provided for in the directive.

Any project or plan not directly linked or necessary to the

Management of the protected site, but likely to affect this site significantly, individually or in conjunction with other plans and projects, should be the subject of an appropriate assessment of the impacts it may have on the site and the conservation objectives that protect it. If the project is to damage the integrity of the site, the competent national authorities may only license the project under the following assumptions:

First: If it is shown that there is no workaround, and this is convincingly demonstrated.

Second: If it represents a greater public interest, including the social and economic nature of the project, in which case the Member State should take the necessary compensatory measures to ensure that the overall coherence of Natura 2000 is protected by informing the Commission of the arrangements.

In the case where priority species occur, considerations of human health, public safety or the primary beneficial consequences for the environment may be invoked, with the Commission's opinion, or other overriding reasons in the public interest.

The Directive does not specify the content of the protected areas management plan, leaving it to the Member States. Its elaboration is not foreseen before the 3rd stage of the process. Once the protection zones have been chosen by the Member States and the Commission, the former will still have six years to set up a protection system and to draw up management plans. Although the management plan is not a legal requirement of the *Habitats Directive,* it will be useful and necessary for the conservation and restoration of future *Natura 2000* sites within a desirable state of conservation.

The directive states that Member States should endeavor to encourage the management of landscape elements of major importance for wild fauna and flora, those elements essential for migration, geographical distribution and genetic exchange of species. wild.

Species protection — It has been provided that Member

States Members shall take the necessary measures to put in place a system of strict protection for Annex IV animal species in their area of jurisdiction, prohibiting:

— any form of intentional capture or killing of individuals of the species of nature;
— the intentional disturbance of these species, especially during the period of reproduction, dependence, hibernation and migration;
— the destruction or intentional harvesting of eggs in the wild;
— deterioration or destruction of breeding sites or resting areas.

Members shall prohibit the possession, transportation, trade or barter, and offering for sale of specimens taken from the wild except those that were legally withdrawn prior to the *Habitats Directive.*

The plant species listed in Annex IV are subject to a protection scheme, the following being prohibited:

— harvesting, pruning or intentional destruction of these in the wild in their area of occurrence;
— possession, transport, trade or exchange and offer for sale of species of nature, except those that were legally withdrawn before the said Directive was in force.

Appendix V lists the species whose exploitation is permitted, provided it is compatible with their maintenance in a favorable state of conservation. Exploitation shall be regulated in relation to locations, periods, modes, and game rules, and shall be preceded by an authorization system listing species and setting quotas, captive breeding under controlled conditions, and an assessment of the measures taken.
.

These measures provided for in the *Habitats Directive* can be derogated in the following cases:

— in the interest of protecting wild fauna and flora and conserving natural *habitats;*

— to prevent damage, in particular to crops, livestock, forests, fish, waters and to some extent property;

— in the interest of public health and safety, or for other overriding reasons in the public interest, including social or economic nature, and for reasons which have primary beneficial consequences for the environment;

— for the purposes of research and education, restocking and reintroduction of these species and for the necessary breeding operations for the purpose of preservation, including artificial propagation of plants;

— to allow, under strictly controlled conditions, on a selective basis and within certain limitations specified by the competent national authorities, of certain species included in Annex IV.

States have to report to the Commission every two years on the derogations and control measures used, as well as on the results obtained.

Member States should adapt national legislation to the dictates of the Directive.

The EEC Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion is delivered according to the majority. The Commission finalizes the measures of the Committee.

2.1.2.The primacy of European law - European law plays an important role with the countries of the European Economic Community, which imposes strict rules on the field of

environment, regulations and directives.

The Member States of the European Community must respect the directives, because of the general principles of the *Treaty of Rome,* which aims to implement common policies, especially in the field of agriculture and the environment, and the similarity in European legislation.

The EEC Treaty, in its preamble (Articles 164, 189 and 192), sets forth the primacy of European law over national law. This gives European directives a binding character for all Member States.

The European Court of Justice is charged with ensuring that these principles are applied.

When the directives are violated, complaints may be addressed to the EEC, the European Parliament and the European Court of Justice.

The EEC exercises control over the application of its directives through its agents. The complaint is short-term and a letter is sent to the offending State and the Court of Justice, which is to be ordered to comply with the directive.

The exercise of the right to complain is simple: it is sufficient to send a handwritten or typed letter to the Commission in Brussels.

The Court may be brought directly through a lawyer registered in a court of one of the Member States. The European Court of Justice is based in Luxembourg.

The individual and associations may address their petitions to the European Parliament, the Petitions Committee or the EEC, and influence the establishment of the Directives.

2.2.2. Animals subjects of rights, a new conception that emerged in the United States Supreme Court

The animal as a subject of rights in the conception of the American Judge, Douglas, by vote cast in the *Sierra Club v. Morton* (Toward Legal Rights Objets, 445. S. Cal. I. Ver. 450 - 1972), in which there was an application for the annulment of a decision of the *US Forest Service,* which released to the *Mineral King Valley,* an almost wild area for the construction of a ski resort:

Judge Douglas in his vote argued that inanimate objects they are sometimes parties to the dispute. And just as the ship has a legal personality and the ordinary corporation is a person for legal purposes, so nature can be subject to rights:

"So this goes for valleys, meadows, rivers, lakes, estuaries, beaches, ridges, thickets, trees, swamps, and even the air that feels the destructive pressure of modern technology and modern life. The river, for example, is a symbol of all life that sustains or nourishes - fish, aquatic insects, otters, deer, elk, bears and other animals, including man, who depend on them or enjoy their contemplation, sound and your life. The river, as interlocutor, speaks of the ecological unity of life of which it is part. These people who have a significant relationship with this body of water - whether it's a fisherman, a canoeist, a zoologist, or a lumberjack - need to be able to talk about these values - that the river represents and are threatened with destruction. "

....

The voice of inanimate objects, however, should not be stifled. This is not to say that the judiciary ignores the administrative functions of the federal agency. This simply means that before this priceless piece of America (such as valleys, meadows, river or lake) is forever lost or transformed to be reduced to rubble from our urban environment, the voice of the existing beneficiaries of our environment would rejoice if it could. be heard ... "[1]

In the same vein, Professor José Alfredo Baracho Junior tells us in his book Civil Liability for Environmental Damage, Jurist Stone, in an article entitled "Should trees have standing" - (California Law Review, No. 45, pp. 450-481, 1972) supports the idea that environmental protection standards are a way of assigning subjective rights to animals and plants.

---

[1]STEWART, Richard B, KRIE James E. Environmental law and policy, 2 ed. Indianópolis: Bobbs Merriel, 1978, pgs. 812 a 820

claiming environmental protection are acting as their representatives.[2]

For Stone, although trees and plants are not human beings, they are individuals as they are uniquely recognizable. The recognition of animal and plant rights was an evolution of the process of declarations of rights, which extended from whites to blacks, Indians, women and other minorities.

Today, animal as a subject of rights is already conceived by most legal scholars around the world. One of the most common arguments for the defense of this view is that, just as legal or moral persons have personality rights recognized from the moment they register their constitutive acts in a competent body, and can appear in court to claim these rights, also animals become subjects of subjective rights under the laws that protect them. Although they do not have the capacity to appear in court to claim them, the Government and the community were given the constitutional mandate to protect them. The Public Prosecution Service has been given the express legal competence to represent them in court when the laws protecting them are violated. From this it can be clearly concluded that animals are subject to rights, although they must be claimed for substitutive representativeness, as are relatively incapable or incapable beings, who, however, are recognized as persons.

Those who are reluctant to recognize animals as subjects of rights have as their main argument the conviction that rights can only be applied to people. And therefore, only individuals or legal entities can be subject to rights.

But if we deepen our reflection on the so-called personality rights we will find that nothing else is what rights emanate from the person as an individual. They must therefore be understood as rights arising from the nature of the person as a living being from birth. A baby, before being registered, is already a person, at

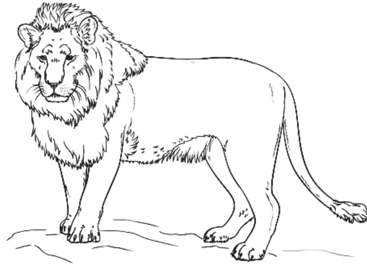
---

[2]BARACHO JUNIOR, José Alfredo de Oliveira. Responsabilidade Civil por dano ao meio ambiente. Del Rey. Belo Horizonte, 2000.

least from a scientific and human point of view. In terms of psychiatric medicine, an individual becomes a person when he becomes aware of his individuality. Valuing the person as a living being we have to recognize that life is not only an attribute of man, but a generic good, innate and immanent to all that lives. And from this point of view the person has his rights imbricated in his condition as an individual, not just an individual with a civil identity. We can only come to the conclusion that animals, although not human or legal persons, are individuals who have innate rights and those conferred on them by law, the former being above any legislative condition.

If we compare the rights of a human person with the rights of the animal as an individual or species, we find that both are entitled to the defense of their essential rights, such as the right to life, the free development of their species, the integrity of their organism and their rights. as well as the right to no suffering. From an ethical and scientific point of view it is easy to justify the personality of the animal. For Peter Singer, understanding the principle of equality applied here is so simple that it requires no more than understanding the principle of equality of interest. If we want to compare the value of one life with another we have to start by discussing the value of life in general.

Chapter 3



A THEORY OF ANIMAL LAW

3- Animal Law is a set of rules, laws and principles that regulate the protection of the animal in order to guarantee its physical and moral integrity, as well as its dignity with a non-human animal.

If previously the laws that protect animals were aimed at man himself and the right to property, from 2000 there was a paradigm shift and the animal began to be considered by itself.

Animal protection laws are not new, but their study from an autonomous and altruistic perspective is recent. As with all evolutionary processes, the change in the way humans relate to nonhumans is linked to the postmodern revolution, its new paradigms, and the emergence of new theories and new categories of rights.

The aim of this chapter is to contribute to strengthen the idea that animal law deserves to be part of an autonomous branch of law, not to continue to be treated indirectly by environmental law. It also seeks to present, as a basis for this autonomy, a theory of animal rights.

3.1 New scientific theories and paradigms

A theory arises when a new paradigm regarding a given knowledge or view of fact replaces the previous one. However, the transition from one paradigm to another does not happen immediately with the arrival of the new idea. Human thinking and science evolve day by day and generation after generation, gradually. And social dynamics does not necessarily lead to a paradigm shift. There is always a lot of resistance to change of any kind. And for a paradigm to be enshrined as new, its recognition by a group of scientists is necessary.

In the classic work "The Structure of Scientific Revolutions," physicist Thomas S. Kuhn conceptualizes paradigm as "what members of a community share, and conversely, a scientific community consists of men who share a paradigm."[1]

Max Planck believes that "a new truth scientifically does not triumph by convincing its opponents and causing them to see the light, but because their opponents finally die and a new generation grows familiar with it."[2]

According to Kuhn, the advancement and acceptance of the discoveries only occur because some previously accepted beliefs or procedures are discarded and simultaneously replaced by others.[3]

> If science is the gathering of facts, theories and methods, scientists are people who have contributed, with or without success, to this particular constellation. Development becomes the gradual process by which these items have been added, either alone or in combination, to the ever-growing stock that constitutes scientific knowledge and technique.[4]

---

[1] KUHN, Thomas S. *A estrutura das revoluções científicas.* São Paulo: Perspectiva, 2013. p. 281-282.

[2] PLANCK, Max. *Scientific autobiography and other papers.* Trad. Frank Gaynor. Nova York: Philosophical Library, 1949. p. 33-34.

[3] KUHN, *op. cit.,* p. 145.

[4] *Idem, ibidem.* p. 60.

In the field of law science, the new paradigm derives from the external social need. But, as in all fields of science, the new paradigm is always preceded by a crisis. For Khun, the crisis is an appropriate prelude to the emergence of new theories:

> The transition from a crisis paradigm to a new one, from which a new tradition of normal science may emerge, is far from being a cumulative process obtained through an articulation of the old paradigm. Rather, it is a reconstruction of the field of study from new principles, a reconstruction that alters some of the most basic theoretical generalizations of the paradigm.[5]

This transition from an old paradigm to a new one, Kuhn calls the scientific revolution. For the author: "We consider scientific revolutions to be episodes of noncumulative development, in which an older paradigm is totally or partially replaced by a new one, incompatible with the previous one."[6] He adds: "Scientific revolutions begin with a sentiment. also narrowly restricted to a small subdivision of the scientific community that the existing paradigm has ceased to function properly. "[7]

When doctrine and the academic world accept the new legal paradigm, new theories are created to explain the anomalies in men's relations to one another or between men and nature, and those that solve the problems badly solved by their predecessors are considered successful. . And if the new theory is not compatible with the old one, it must completely replace it.

Kuhn thus describes the formation of a theory:

> In principle there are three types of phenomena on which a new theory can be developed. The first type comprises the

---

[5] KUHN, Thomas S. *A estrutura das revoluções científicas.* São Paulo: Perspectiva, 2013. p. 169.

[6] *Idem, ibidem,* p. 175.

[7] *Idem, ibidem,* p. 178.

> phenomena already well explained by existing paradigms. Such phenomena rarely offer motives or a starting point for constructing a new theory. When they do, they are rarely accepted. A second class of phenomena comprises those whose nature is indicated by existing paradigms, but whose details can only be understood after further articulation of the theory. Scientists focus most of their research on these phenomena, but such research is aimed at articulating existing paradigms rather than inventing new ones. Only when these articulation efforts fail do scientists encounter a third type and phenomenon: scientific anomalies, whose characteristic trait is their stubborn refusal to be assimilated by existing paradigms. Only this kind of phenomenon gives rise to new theories.[8]

We can say that modern science began with stargazing. Only later did science turn its eyes to human affairs and, more recently, began to look at the environment and nonhuman animals. It took several crises - both ethical, social and political - for science to worry about the environment and animals.

Indeed, the mentors of thought between the sixteenth and seventeenth centuries ranged from Copernicus (1473-1543) to Isaac Newton (1642-1727). The Copernic Revolution developed the theory of the heliocentric model. Galileo Galilei (1564-1642) founded the science of motion. Francis Bacon (1661-1626) created the empirical method of inquiry. René Descartes (1596-1650) was the founder of modern Rationalism. And Isaac Newton formulated Newton's three laws, which underpinned Classical Mechanics.[9]

In the field of legal science, Rationalism and Empiricism are found in the works of Immanuel Kant (1724-1804): "Critique of Pure Reason" (1781), "Critique of Practical Reason" (1788) and "Critique of Judgment" (1790) .[10]

---

[8] *Idem, ibidem*, p. 183-184.
[9] MAGEE, Bryan. *História da filosofia*. São Paulo: Edições Loyola, 2001. p. 64.
[10] Idem, ibidem*, p. 132*.

Rationalism is humanistic and foundational, not concerned with other nonhuman beings. Humanism regards man as a differentiated and superior being on the planet. This paradigm was striking for technological progress with an emphasis on empirical rationalism and the unbridled control and exploitation of nature.

In the science of law, the Cartesian-Newtonian theory influenced the adoption of legal positivism, defended by Kant, and also reflected in all laws that governed the lives of human beings for centuries.

The science of law has been closely linked to this doctrine for many years, which, by distinguishing fact and value, has disassociated the application of justice from morality, in keeping with the provisions of the law. For legal positivism, it is only fair what is in the law; a strictly objective view of law.

The Cartesian-Newtonian paradigm is based on inductive and deductive logical reasoning and predictability. It is also based on objectivity from an impartial observation. Roberto Crema, psychologist and anthropologist at the International College of Therapists and Rector of the International University of Peace, Brasilia, refers to this paradigm:

> This concept derived from the Scientific Revolution, a movement that sprang from the rich and heuristic 17th century thought sphere that definitely surpassed the medieval scholastic model of thought. The main builders of this new conceptual building bound to prevail in the following centuries were Galileo, Bacon, and especially Descartes and Newton, which is why the vast modern paradigm can be called Cartesian-Newtonian.[11]

Crema states that "Descartes fractionated man into body and soul, establishing dualism in philosophy, which historically represented, according to Mess, 'radical metaphysical dualism'." [12]

---

[11] CREMA, Roberto. *Introdução à visão holística* – Breve relato de viagem do velho ao novo paradigma. São Paulo: Summus Editorial, 1988. p. 29-30.

[12] CREMA, Roberto. *Introdução à visão holística* – Breve relato de viagem do velho ao novo paradigma. São Paulo: Summus Editorial, 1988. p. 32.

The mechanistic paradigm has been seriously shaken by research into electrical and magnetic phenomena. This was thanks to the scientific revolution from the nineteenth century. It can be said that the first step was taken by Michael Faraday (1791-1867) and James Clerk Maxwell (1831-1879), whose studies gave rise to electromagnetism and replaced the concept of force with the field of force.[13]

In 1900 Max Planck (1858-1947) revolutionized physics with his theory of quanta, initiating quantum mechanics. Another decisive scientist for changing the paradigm of science was Albert Einstein (1879-1955), inaugurating modern physics, which is relativistic, atomic and quantum[14].

To solidify the new scientific paradigms, Werner Heinsenberg (1901-1976), a Nobel laureate in physics in 1932, introduced into physics the principle of uncertainty, influencing the paradigms of all other sciences, including applied humanities, including law.

Another researcher who contributed to paradigmatic changes in the scientific world was Charles Darwin (1809-1882). He launched the theory of evolution into the world, explaining that evolution would occur through natural and sexual selection. With that he removed man from the king's pedestal of creation to be the result of millions of years of evolution. In the field of law, where the principle that justice applies only to men applies, if the law was justice, there were no laws to protect the environment and animals.

The new paradigms of biology and physics gave rise to the systemic paradigm when science admitted that everything is interconnected. This has resulted in new worldviews such as ecocentric and biocentric. In ecocentrism, the ecosphere, not man, is the center of humanity's value. Ethics becomes ecocentric, planetary and systemic. The systemic paradigm recognizes the interconnectedness of all things and the interdependence of all that lives. From this paradigm came the idea of respect for nature and shared

[13]CAPRA, Fritjof. *O tao da Física*. São Paulo: Cultrix, 1983. p. 51.
[14]CREMA, *op.cit.*, p. 40.

responsibilities, making room for for Environmental Law to be established as an autonomous discipline.[15]

Biocentrism is an evolution of ecocentrism and is also part of the systemic view of the world. The biocentric view understands that all life is interconnected and that life is a value prior to all others. Understands that life has a generic value, it is not only right of man, but of everything that lives. Finally, for biocentrism, the right to life is the supreme right of all living. It was founded by physician Robert Lanza (2009), who assigns consciousness the fundamental and creative role of the universe - unlike the classical idea where the universe creates life.[16]

For Fritjof Capra, the new paradigm can be called holistic, ecological or systemic. Not only does it look at something as a totality, but also at how it is embedded within larger totalities.[17]

In the year 2000, in my doctoral thesis, the first in Brazil defended at a Faculty of Law dealing with animal rights, I expressed myself about the new scientific paradigm that was emerging, contributing to make Environmental Law an autonomous branch of Law. , including the study of animal rights and, consequently, allowing the discussion in the academic world to construct a theory of animal rights.

> The planetary crisis has given rise to a holistic paradigm, reoriented by a worldview. Holos, in Greek, means "all" and the holistic is concerned with uniting the whole in relation to its parts.
> In the new paradigm science must conceive of reality as a network of relationships. The field of action encompasses a web of relationships intrinsically dynamic, which does not deal with exact truths"[18]

---

[15]Ver MILARÉ, Édis. *Direito do ambiente*. São Paulo: Revista dos Tribunais, 2011. p. 119.

[16]LANZA, Robert. Biocentrismo. *Pensar Além*. Publicado em 21 de novembro de 2009. Disponível em: <http://pensaralem.wordpress.com/2013/11/21/biocentrismo-robert-lanza-2009/≥. Acesso em: 4 set. 2014.

[17]CAPRA, Fritjof. *Pertencendo ao universo*: explorações nas fronteiras da ciência e da espiritualidade. São Paulo: Cultrix, 1991. p. 11.

[18]DIAS, Edna Cardozo. *Tutela jurídica dos animais*. Belo Horizonte: Mandamentos, 2000. p. 344.

Thus, undoubtedly, it was the planetary crisis and the great ecological disasters that made possible the introduction in the legal world of the Environmental Law and, in a transversal way, the Animal Law. The possibility of destruction of the planet, the extinction of animal species and the destruction of the human species has brought up, in the scientific world, the discussion about the need to create laws and norms for the preservation of species in order to ensure the survival of the species. humanity and future generations.

The ethical and moral crisis of modern times has given rise to the need to establish new values to relate to the world and other nonhuman species. Violence has created the longing for a peaceful world and more respect. This ideal of respect and the awareness of one's individual and social responsibility has extended in general to all races, all beings. Thus, animal rights have come to be part of the moral values of society, being today recognized by laws and discussed in the courts, being part of the moral values ??of all nations.

Today animals are considered holders of supranational rights, provided for in international treaties and conventions, and are part of the domestic legislation of every civilized country.

3.2 Animal rights theory

Although the idea of recognizing the existence of an animal rights theory is recent, the first mention of the term “animal rights” was in Henry Salt's “Animals’ rights ”.

When the English theologian Humphy Primatt in 1776 wrote the book "A Dissertation on the Duty of Mercy and the Sin of Cruelty Against Animals," he spoke of the duty of compassion for men. It did not mention the expression “animal rights”, but used the capacity parameter to

[19]SALT, Henry. *Animals’ rights considered in relation to social progress.* Pennsylvania: Society for Animals Rights, 1980.

suffer as parameter to speak of moral consideration.[20]

The well-known English philosopher, Jeremy Bentham, in 1789, defended the same ideas in his book "An Introduction to the Principles of Morals and Legislation," stating that possession of sentience rather than rationality should give moral consideration to a ser.[21]

The theory of animal liberation, introduced by Peter Singer, was one of the pillars for the formation of animal rights theory. In his book Animal Liberation, originally published in 1975, Singer denounced the suffering of animals and demonstrates that the practices used by humans in their relationship with animals were unjust at the time. For him, being animals sentient beings, their interests should be taken into consideration as well as the interests of humans. For him, animals should be included in the moral consideration of humans.[22] Singer has introduced animals into the moral community, and the key to animal liberation for him is the consideration of interests. And the equal consideration of interests is due to the ability of animals to suffer.[23]

In "Practical Ethics," [24] Singer argues that animals, being endowed with sensitivity and conscience, should be treated with the same respect as humans. The principle of equal consideration of interests must be applied without distinction between the human and nonhuman animals. The ability to suffer and feel pain must be a prerequisite for measuring interests.

---

[20]PRIMATT, Humphrey. *A dissertation on the duty of mercy and sin of cruelty to brute animals.* London, 1776. *Animal Rights History*. Disponível em: <http://www.animalrightshistory.org/animal-rights-c1660-1785/enlightenment-p/pri-humphrey-primatt/1776-mercy-cruelty.htm≥. Acesso em: 16 set. 2014.

[21]LOURENÇO, Daniel Braga. *Direito dos Animais:* fundamentação e novas perspectivas. Porto Alegre: Sergio Antônio Fabris, 2008. p. 354.

[22]DIAS, Edna Cardozo. Bioética e direitos dos animais, *Fórum de Direito Urbano e Ambiental – FDUA*, Belo Horizonte, ano 8, n. 43, p. 16-21, jan/fev. 2009. p. 17-18.

[23]SINGER, Peter. *Libertação animal*. Porto Alegre: Lugano, 2004. p. 3.

[24]*SINGER, Peter.* Ética prática*. 3. ed. São Paulo: Martins Fontes, 2002.*

The theory of animal abolitionism has as its great proponent the American philosopher Tom Regan. Regan claims the extension to animals of the ethical principle and inherent value of each individual.[25] And presents animals as subjects of a life, preaching the end of all exploitation of animal life.[26]

Describing about abolitionism, Heron Gordilho, a scholar on the subject, complements:

> Jurists such as Steven Wise, Gary Francione and Jean-Pierre Marguenau, however, are more concerned with giving legal personality to animals in order to assure them the ability to acquire rights and defend them in court through their representatives.[27]

From 2000, the juridical conception of the animal as subject of rights expanded to all the planet. And around that was forming and strengthening the theory of animal rights. In my doctoral dissertation, defended in 2000,[28], I introduce to the academic world of Brazil the idea of the animal as a subject of rights, based on a sentence issued by the United States Supreme Court:

> The animal as subject of rights in the conception of the American Judge Christopher Douglas Stone, in vote cast in the Sierra Club V. Morton case (Toward Legal Rights Objets, 445. S. Cal. I. Ver. 450 - 1972), in which there was a Annulment of a decision by the US Forest Service, which cleared Mineral King Valley, an almost wild area for the construction of a ski resort.
>
> Judge Douglas Stone, in his vote, argued that inanimate objects are sometimes parties to litigation. And just as the ship has a legal

[25]REGAN, Tom. *The case for animal rights*. Berkeley and Los Angeles: University of California Press, 2004. p. 268.

[26]REGAN, Tom. *Jaulas Vazias*. Porto Alegre: Lugano, 2006.

[27]GORDILHO, Heron José de Santana. *Abolicionismo animal*. Salvador: Evolução Editora, 2009. p. 75.

[28]Defendida na Universidade Federal de Minas Gerais – UFMG, em fevereiro de 2000, tendo como orientador o Prof. Arthur Diniz, tese posteriormente transformada em livro. (DIAS, Edna Cardozo. *Tutela jurídica dos animais*. Belo Horizonte: Mandamentos, 2000. p. 84.)

personality and the ordinary corporation is a person for legal purposes, also nature may be subject to rights.[29]

The same line of thought adopts Professor José Alfredo Baracho Junior in his book "Civil Liability for Environmental Damage," quoting Douglas Stone, in an article entitled "Should trees have standing" [30] in which the American lawyer presents the idea that environmental protection standards are a way of giving subjective rights to animals and plants. Following this reasoning, the associations and public agents claiming environmental protection in court are acting as their representatives.[31]

For Stone, although trees and plants are not human beings, they are individuals as they are uniquely recognizable. The recognition of animal and plant rights was an evolution of the process of declarations of rights, extending from whites to blacks, Indians, women and other minorities.[32]

But American jurist Steven M. Wise, professor of Harvard University's Animal Rights Law discipline, the fundamental rights that must be recognized for living things must be linked to their capacity for autonomy and self-determination. It is autonomy and not the ability to suffer that ensures animals access to fundamental rights. According to him, the judges do not take into account the animals' ability to suffer when uttering their sentences, but the autonomy.

---

[29]DIAS, Edna Cardozo. *Tutela jurídica dos animais*. Belo Horizonte: Mandamentos, 2000. p. 84-86. Ver também STONE, Christopher. Should trees have standing? Toward legal rights for natural objects. *Law Review*, California, n. 45, p. 450-481, 1972. *apud* GORDILHO, Heron José de Santana. *Abolicionismo animal*. Salvador: Evolução Editora, 2009.

[30]STONE, Christopher Should trees have standing? Toward legal rights for natural objects. *Law Review*, California, n. 45, p. 450-481, 1972. *apud* BARACHO JUNIOR, José Alfredo de Oliveira. *Responsabilidade civil por dano ao meio ambiente*. Belo Horizonte: Del Rey, 2000.

[31]DIAS, Edna Cardozo. *Tutela jurídica dos animais*. Belo Horizonte: Mandamentos, 2000. p. 86.

[32]*Idem, ibidem*, p. 84-86.

For Wise,[33] a being has autonomy when:

- Has interests;
- Can intentionally try to satisfy them;
- Has a sense of self-reliance that allows him to understand, even to a minimum, that he is the one who wants something and that he is trying to achieve it.[34]

If one has this autonomy, says Wise, he must be guaranteed fundamental rights, which he calls "rights of dignity." Sentience and consciousness are implicit in the concept of 'practical autonomy'. Just as the law does not require full autonomy to recognize human rights, it cannot do so to grant rights to animals.

In our opinion, Wise's theory attempts to use human criteria for the recognition of animal rights.[35] But we have to agree with the fact that incapable human beings have rights and are considered people. And therefore animals as living beings deserve the same legal consideration.

American jurist advocate for abolitionist theory Gary Francione, Rutgers University professor of philosophy and law professor, ponders that the current *"legal welfarism"* system suggests confronting human interests with those of animals to conclude whether an animal's suffering It is justifiable. From this perspective, the interests of animals are always viewed secondarily. We always choose human rights as the most relevant. Welfarist legislation, while advocating for improvements, allows the animal to be liable to property rights and to be subjected to cruelty when it comes to economic exploitation. For Francione, the archaic notion must be revised that animals are things, resources or objects. In the Welfarist

---

[33]Para saber mais, ver WISE, Steven M. Animal thing to animal person – Thoughts on time, place, and theories. *Animal Law*, v. 5. p. 61-68, 1999.

[34]WISE, Steven M. Palestra proferida no I CONGRESSO MUNDIAL DE BIOÉTICA E DIREITO ANIMAL. Salvador: Universidade Federal da Bahia (UFBA), 8 de outubro de 2008.

[35]DIAS, Edna Cardozo. Bioética e direitos dos animais. *Fórum de Direito Urbano e Ambiental – FDUA*, Belo Horizonte, ano 8. n. 43, p. 18, jan./fev. 2009.

position we can use nonhuman animals if we do not inflict unnecessary suffering on them. So animals have only the values ??we wake them up. Regulation of animal use cannot protect it when it can be considered property.[36]

In Gary Francione's understanding, undoubtedly, the property condition limits the protection of the animal. He states that animal welfare legislation speaks of unnecessary suffering, and talking about necessary suffering is an indefensible thesis. It warns that the animal has its intrinsic value and property is an extrinsic value and that if we make it liable to property rights, we will always end up using it for economic, legal, social and political purposes. Francione concludes that, as a property, it is not possible to give equal consideration to the animal in relation to humans; therefore, it will be considered from the point of view of human interests.[37]

Francione is sparing no criticism of the brain similarity theory used for the recognition of the rights of the great apes and dolphins, the so-called "similar mind theory",[38] because he fears that more experiments will be conducted to prove brain similarity. Using these arguments, the author understands that those who advocate animal welfare legislation facilitate the legalization of animal exploitation, and preach extreme attitudes such as veganism, for moral and political reasons.[39]

In my view, the recognition of animal rights in Brazil has already gone beyond the moral standard, since the 1988 Constitution of the Republic (CR / 88) recognizes animal rights. It even contains a commandment of non-cruelty inc. VII of art. 225: “VII - protect

---

[36]FRANCIONE, Gary L. *Animals as persons*. New York: Columbia University Press, 2008. p. 153-169.

[37]*Idem, ibidem*, p. 97-105.

[38]FRANCIONE, Gary L. *Animals as persons*. New York: Columbia University Press, 2008. p. 124.

[39]*Idem, ibidem*, p. 108.

the fauna and flora are prohibited, in accordance with the law, practices that endanger their ecological function, cause species extinction or subject animals to cruelty ".[40]

What is most needed now is to adopt a legal theory that recognizes the intrinsic value of the animal as a living and individual being, as well as the need to change its legal status. Brazilian law classifies wild animals as a common good of the people, that is, an indivisible and unavailable diffuse good, while domestic animals are considered by the Civil Code may be subject to rights in rem. The legal nature of them in our legislation is a major obstacle to reasoning different from that rooted in popular consciousness, that is, or animal is good, property of the collective (in the case of wild animals), whether private property or res nullius (in the case of domestic).

In Brazil, the animal is always property, whether it is a public diffuse good, a common good of the people, or then it is a good. The difference is that in the case of the common good of the people, the law imposes stricter rules of use, as they are unavailable, unenforceable and inalienable, have imprescriptible rights. The movable or non-moving property is a passive object of an owner or proprietor who may use, enjoy, dispose of and claim it, or, if it is res nullius, appropriate it. It is quite true that there are limits provided by law for the ownership of an animal, and that guarantee the non-submission to cruelty and the right to welfare, limits much softer than those established for relationship with wild animals.

An animal rights theory in Brazil should be guided by the example of other countries like Switzerland, which classifies animals not as things, but as animals. We need to change our Civil Code so that domestic and exotic animals are not classified as things, but sensitive animals. The Civil Code of 2002, in its general part has a title "About people" – Book I, and another title "About Goods" – book III, including the movable property: "CC, Art. 82: The

---

[40]BRASIL. *Constituição da República Federativa do Brasil de 1988*. Disponível em: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm>. Acesso em: 25 maio 2013.

movable are those goods which are susceptible to their own movement, or to removal by alien force, without alteration of the substance or the social-economic destination."[41] And it is based on this a device that animals are considered to be 'goods susceptible to self-movement or removal by alien force'; in view incompatible with the new paradigm that is forming.

It is urgent to create a third category in our Civil Code, one specific to animals, recognizing them as sentient beings, distinct from people and goods. Undoubtedly, the minimum moral right and right to dignity that every animal deserves requires that the sensitive animal be treated legally as a living being, different from humans and goods, and capable of acquiring rights.

And it is precisely the fact that our Civil Code recognizes only two categories – people and goods – that leads many scholars to understand that the animal is the object of rights (a good) and not the subject of rights. However, if animals have supranational rights,[42] fundamental rights,[43] legal rights,[44] and in addition they can go to court for substitution[45] or representativeness,[46] there is no longer a question of whether or not they are subject to rights. Subject to law means that they may be entitled to rights under the law and that these rights may be claimed in court.

The theory we embrace is the "theory of rights and personality." Animals are beings with interests of their own, such as having security, not suffering, living according to the needs of their species, among others. And as rights holders, they deserve to be classified as animals, which is their own personality.

---

[41]BRASIL. *Lei nº 10.406, de 10 de janeiro de 2002*. Institui o Código Civil. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/2002/l10406.htm>. Acesso em: 13 set. 2014.

[42]Vide Declaração Universal dos Direitos dos Animais.

[43]CR/88, art. 225, § 1º, VII.

[44]Lei de Proteção à Fauna (Lei nº 5.197/67), Lei de Crimes Ambientais (Lei nº 9.605/98).

[45]SILVA, Tagore Trajano de Almeida. *Animais em juízo*. Salvador: Evolução Editora, 2013. p. 162.

[46]*Idem, ibidem*, p. 167.

To return animals to their dignity, we must remove them from the category of goods. In France, Bill 4.495 is already in Parliament, calling for the creation of a specific book to treat animals. A group of 24 French intellectuals signed a manifesto claiming that "animals benefit from a legal regime according to their nature of being alive and sensitive and that the improvement of their condition may follow its fair course, a category of its own must be introduced into the Civil Code. between people and goods."[47]

3.3 Animal rights holders in Brazil and Animal Law as an autonomous discipline

Animal rights recognized by Brazil in international treaties have been incorporated into our Constitution and are part of its petreas clauses of the law.

The provision that impose the irremovability of certain precepts are petreos. These are the provisions that cannot be abolished with amendments, constituting the irreformable core of the Constitution. These precepts have supremacy over other interests.

Item VII of § 1 of art. 225 of CR / 88 has made animals holders of fundamental rights.

Article 225. Everyone has the right to an ecologically balanced environment which is a common use of the people and essential to a healthy quality of life. The public authorities and the community are obliged to defend and preserve it for those present and future generations.

Paragraph 1. In order to ensure the effectiveness of this right, it is incumbent upon the public authorities:

[...]

[47]No original: "Pour que les animaux bénéficient d'un régime juridique conforme à leur nature d'êtres vivants et sensibles et que l'amélioration de leur condition puisse suivre son juste cours, une catégorie propre doit leur être ménagée dans le code civil entre les personnes et les biens". (MANIFESTE. *Pour une evolución du régime juridique de l'animal dans le code civil – Reconnaissant sa nature d'être sensible*. Disponível em: <http://www.30millionsdamis.fr/fileadmin/user_upload/actu/10-2013/Manifeste.pdf≥. Acesso em: 18 set. 2014.)

VII - to protect the fauna and flora, forbidden, according to the law, practices that endanger their ecological function, cause species extinction or subject animals to cruelty.[48]

When we speak of fundamental rights, we speak of the rights recognized and affirmed by the Constitutions of Nations. Fundamental rights uphold the fundamental values ??and principles of a country's legal order. They can be grouped into four broad categories, namely political rights, individual rights, social rights and diffuse rights.

This constitutional provision opened the door for establishing a new legal nature of the environment. Today, the CR / 88, in its art. 225, recognizes the environment as a common good of the people. And as part of the environment, Brazilian wildlife is a common good of the people, a diffuse good to be preserved for future generations. Anyway, it still remains a property of the nation and the community.

In the light of CR / 88, property is conditional on its social function and the protection of the environment. For Law No. 6,938 / 81,[49] fauna - including all animals - is considered an environmental resource (art. 3, V). Thus, Animal Law has been studied transversally in Environmental Law.

However, because it has its own object and principles, we understand that Animal Law has all the elements to become an autonomous discipline. Otherwise let's see:

The art. 225 of CR / 88 provides in its Paragraph 1, items I to VII, which is incumbent upon the Government to guarantee: the right to life and the ecosystem (item I); the right to preserve biodiversity (item II); the

---

[48]BRASIL. *Constituição de República Federativa do Brasil de 1988*. Disponível em: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm>. Acesso em: 25 maio 2013.

[49]BRASIL. *Lei nº 6.938, de 31 de agosto de 1981*. Dispõe sobre a Política Nacional do Meio Ambiente, seus fins e mecanismos de formulação e aplicação, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l6938.htm>. Acesso em: 13 set. 2014.

right preservation of species and animals from being subjected to cruelty (item VII).

These devices imply that animals are entitled to:

- Dignity (beyond humanity), when it is incumbent upon the Government and the community to guarantee life, respect for physical integrity, ecological balance and preservation of ecosystems and non-submission to cruelty;
- Equality (beyond humanity), in the sense of having life preserved in its ecosystem, respecting differences, concluding that laws exist that threaten practices that threaten their ecological balance, put them in danger of extinction and that submit to cruelty.

In order to achieve equality in the area of animal law, anti-specificism needs to be strengthened.

Coined by the British psychologist Richard D. Ryder in 1970, the term speciesism was used by him to describe the usual discrimination that is practiced by man against other species, and that such prejudice would be "based on morally irrelevant physical differences." Grease:

> The word speciesism as we know it today was first used in a pamphlet against animal experimentation written in 1970 by Richard Ryder, a professor of psychology at Oxford University, who repeated it later in his book Victims of Science.[51]

Thus speciesism is the discrimination of an individual because of his species, and antispecism is the recognition of equal rights according to differences.

---

[50]No original: "a prejudice based upon morally irrelevant physical differences", (RYDER, Richard. All beings that feel pain deserve human rights: Equality of the species is the logical conclusion of post-Darwin morality. *The Guardian.* Saturday 6 August 2000. Disponível em: <http://www.theguardian.com/uk/2005/aug/06/animalwelfare>. Acesso em: 23 set. 2014.)

[51]GORDILHO, Heron José de Santana. *Abolicionismo animal*. Salvador: Evolução Editora, 2009, p. 16.

n Freedom (beyond humanity), which means the animal lives in its habitat, with the ecosystem balanced, and in accordance with its biological needs and sensitivity.

● Legality (beyond humanity), which implies the enactment of laws to protect animals and their environment.

● Finally, the principle of the general and solidary duty of all – Public Power and collectivity – for these devices to be fulfilled and animals to be protected.

Is it up to the Government and the community to guarantee the rights to the balanced environment and to the healthy quality of life, and whether democracy is part of a state of rights and duties; We can conclude that animal rights become the general and solidary duty of all.

The principle of general and caring duty can be illustrated by the theory of David Favre, a professor at Michigan State University, who defends animals as *self-ownership.*

> In order to avoid unequal treatment of nonhuman animals, Favre states that living objects are self-owership. For him, certain animals would be free from human control and control, and may have their interests represented by guardians when necessary. Nonhuman animals possessing the ability to direct and control should be regarded as having self-ownership.

In addition to dealing with speciesism for years, Ryder developed and refined the theory of *painism,* using the term painience to mean the ability to feel pain that not only humans but animals possess. Your theory:

> [...] rejects the validity of the aggregation (the addition) of the pains

[52] FAVRE, David. Equitable Self-Ownership for Animals, 2000. p. 475-476. *apud* SILVA, Tagore Trajano de Almeida. *Animais em juízo*. Salvador: Evolução Editora, 2013. p. 185.

and pleasures of various individuals, as found in utilitarianism, instead emphasizing the moral importance of each individual and especially the “ultimate sufferer” .[53]

Ryder concludes that "the sensation of pain [painience] is the only convincing foundation for the attribution of rights or, indeed, the interests of others."[54]

3.4 The teaching of animal law

The Animal Law discipline has already been taught in Brazil in several legal education institutions, as follows: [55]

I – 2001 – Pontifical Catholic University of Minas Gerais (PUC-MG) – “Legal guardianship of animals”. Transdisciplinary discipline. Core of legal practice. Teachers: Prof. Edna Cardozo Dias (lawyer); Prof. Flávio Augusto Salim Nogueira (veterinarian) and Prof. Regina Bueno (veterinarian).

II – 2003 – Pontifical Catholic University of Paraná (PUC-PR) – “Relationship between Man and Nature” – module of the lato sensu specialization in Environmental Law. Prof Danielle Tetü Rodrigues.

III – Federal University of Bahia (UFB) – University Extension Course (*stricto sensu* postgraduate) “In-depth studies of bioethics and animal rights”. Study group linked to CNPQ at the “Interdisciplinary Research and Extension Center on

[53]DMARSKI. Devemos intervir na predação? Artigos Richard D. Ryder. Tradução Sônia T. Felipe. *Pensata Animal*, n. 20, set. 2009. Disponível em: <http://www.pensataanimal.net/index.php?option=com_content&view=article&id=329:richard-d-ryder&catid=138 >. Acesso em: 24 set. 2014.

[54]No original: “Painience [pain feeling] is the only convincing basis for attributing rights or, indeed, interests to others”. (RYDER, Richard. All beings that feel pain deserve human rights: Equality of the species is the logical conclusion of post-Darwin morality. *The Guardian.* Saturday 6 August 2000. Disponível em: <http://www.theguardian.com/uk/2005/aug/06/animalwelfare>. Acesso em: 23 set. 2014.)

[55]Ver SILVA, Tagore Trajano de Almeida. *Direito animal & ensino jurídico*. Salvador: Evolução Editora, 2014. p. 208-215.

Animals, Environment and Postmodernity - NIPEDA ". Prof. Heron Santana Gordilho.

IV – Since 2008 – Discipline "Animal Law and Deep Ecology" at the Federal University of Rio de Janeiro State (UNIRIO) and Research Group "Center for Animal Law and Deep Ecology" at the Federal University of Rio de Janeiro (UFRJ) . Profs Fábio Corrêa de Oliveira and Daniel Braga Lourenço.

V – 2009 – Postgraduate degree in Environmental Law at the Center for Studies of the Federal Legal Area (CEAJUFE), discipline "Animal Law", module of the *lato sensu* specialization in Environmental Law. Prof. Edna Cardozo Dias. Course Coordinator Leandro Eustáquio Matos Monteiro.

3.5 Legitimacy of animal rights

From the theory of the legitimacy of the right of the human species to the oppression and exploitation of inferior beings, even the new theories of animal rights went a long way. From the declaration of individual, social and economic rights to the recognition of diffuse rights, many decades have passed. Kantian philosophy in the field of legal science has contributed to the fact that for long years only human beings were considered to be themselves.

We have passed, and I believe we are still going through, the theory of the indirect duties of humans to animals. In this hypothesis the animal is not the object of direct moral consideration. Humans have a duty to preserve animal welfare as long as it is not against human interests. From this point of view, man's legal duty to comply with animal protection laws guarantees animals a reflex right.

Direct theories began to be delineated from the conception of the ethical defense of animals and the reflection on the duty of compassion and the duty not to practice cruelty, the theory of sentience and the theory of dormancy.

Although the law does not recognize animals as people, it is

There is no doubt that they have their own legal rights, different from persons, things or goods. If the laws guarantee them a different treatment from that given to things, an animal rights theory must be solidified and universalized in order to recognize that the animal must be respected for its individuality, and that it must be respected for itself. , how to be living and co-inhabitant of the planet.

Some people believe that Jürgen Harbemas's theory of discourse ethics would be best suited to make animal rights theory a consensus in the world of life, the legal world, and the political world. A communicative flow between citizens, based on the free and democratic discursive process, would increasingly support the recognition of animal rights as an autonomous discipline in the solidification of animal rights theory.

Animal law is not enough, animal justice must exist, and there is an administrative, procedural and legal system to ensure this and that justice. Without the strengthening of an animal rights theory, animal justice will hardly be realized. Without the recognition that animals are entitled to their rights recognized for their intrinsic value as living beings, animal justice is unlikely to materialize.

Specific laws should be applied to animals, not the law of things. Your life must be protected on an equal footing with human life; This is at the heart of the theory of animal rights. This theory must lead us to develop a moral and ethical statute for animals that allows us to conceive them as owners of themselves.

We cannot deny the importance of popular participation through government councils and participation in public policies.

Profound contributions have been given to academic study groups, linked or not to the CNPQ, doctoral dissertations, master dissertations, TCCs in undergraduate courses, as well as seminars, congresses and publications on the subject. However, without political will and improvement of legislation, we do not foresee decisive progress towards the consecration of an animal rights

theory. And without it animal rights will continue to be weakened.

Change requires a long and difficult road, but if we want a better world for all, we have to pay for that change to build it.

The time has come for legal scientists to direct the human mind and intelligence to fair progress, and to turn consciousness to the pursuit of equitable justice as its goal. There will be no justice if it does not extend to all beings. Jusanimalists across the globe are united so that legal science recognizes animal law as an autonomous discipline, and that it is grounded in the theory of animal rights, which is already a reality.

Chapter 4

FAUNA LAW IN BRAZIL AND THE LEGAL NATURE OF ANIMALS

4. THE FAUNA AND THE FEDERAL CONSTITUTION AND CONSTITUTIONS OF THE STATES

The Constitution of the Federative Republic of Brazil of 1988 (CR / 1988), in its art. 225, § 1, inc. VII turned animal protection into a constitutional precept, granting them fundamental rights.

As soon as the Constituent Assembly was sworn in, to draft the Constitution currently in force, the animal protection movement mobilized to include animal protection in its text.

The idea was embraced by the Federal Deputy and former President of the OAB-SP Environment Commission, Fábio Feldman, who acted as an articulator of the segments interested in participating in the drafting of art. 225, on the environment, in CR / 88.

It was the Animal Cruelty Prevention League (LPCA) (chaired by Edna Cardozo Dias), together with the Union of Earth Defenders (OIKOS), chaired by Fábio Feldman, and the San Francisco de Assis Animal Protection Association (APASFA).), chaired by D. Alzira, head the list of a petition for 30,000 signatures. Although only 11,000 signatures were obtained, animal protection was incorporated by CR / 88 in its art. 225, § 1, inc. VII.

By incorporating animal rights into CR / 88, constituents have

made animals holders of fundamental rights. When we speak of fundamental rights, we refer to rights recognized and affirmed by the Constitutions of States. Fundamental rights uphold the fundamental values and principles of a country's legal order. Regardless of category, all animals are protected in CR / 88, regardless.

The Constitution says in its art. 225, § 1, VII:

Art. 225, § 1: "It is incumbent upon the Government:

"VII – to protect the fauna and flora, forbidden, according to the law, the practices that endanger their ecological function, cause the extinction of species or subject the animals to cruelty".

After the Supreme Federal Court (STF) judge upheld the Direct Unconstitutionality Action (ADI) 4983, filed by the Attorney General of the Republic against Law 15.299 / 2013, of the State of Ceará, which regulated the vaquejada as a sport and cultural practice in the state. , National Congress approved Amendment 96/17 making such an event heritage culture. According to the Amendment, sports using animals are not considered cruel, as long as they are cultural manifestations, according to paragraph 1 of article 215 of the Constitution, registered as an immaterial property of the Brazilian cultural heritage. These activities should be regulated by specific law that ensures the welfare of the animals involved.

The Tables of the Chamber of Deputies and the Federal Senate, pursuant to § 3 of art. 60 of the Federal Constitution, promulgate the following Amendment to the constitutional text:

Art. 1 The art. 225 of the Federal Constitution becomes effective plus the following § 7:

"Art. 225.

....

....

Paragraph VII For the purposes of the final part of item VII of paragraph 1 of this article, sports practices using animals are not considered cruel, provided that they are cultural manifestations, according to paragraph 1 of art. 215 of this Federal Constitution, registered as an immaterial property that is part of the Brazilian cultural heritage, and must be regulated by a specific law that ensures the welfare of the animals involved. "(NR)

Art. 2 This Constitutional Amendment enters into force on the date of its publication.[1]

[1] *BRASIL. http://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc96.htm , cessado em 28 de outubro de 2019.*

The state constitutions were inspired by the Magna Carta to provide for the theme. Animals find constitutional protection in the following state constitutions:

Acre Constitution:

Art. 206, § 1, V: “protect the fauna and flora from predatory and devastating practices of species or subject animals to cruelty”.

Constitution of Alagoas:

Art. 171, VI: “To protect the fauna and flora, forbidden, in the form of the law, practices that endanger their ecological function, cause species extinction or subject animals to cruelty”.

Amazonas Constitution:

Art. 230, VIII: “To protect the fauna and flora, forbidden, according to the law, practices that endanger their ecological function, cause species extinction or subject animals to cruelty.”

Bahia Constitution:

Art. 214, VII: “To protect the fauna and flora, especially the endangered species, by supervising the extraction, capture, production, transportation, marketing and consumption of their specimens and by-products. that endanger their ecological function, cause their extinction or subject animals to cruelty. ”

Constitution of Ceará:

Art. 259, single paragraph, XI: “To protect fauna and flora, prohibited under the law, practices that endanger their ecological function, cause species extinction or subject animals to cruelty, overseeing extraction, capture , production, transport, marketing and consumption of their specimens and by-products.

Constitution of the Holy Spirit:

Article 186, single paragraph, III: “To protect the flora and fauna, ensuring the diversity of species, especially those endangered, overseeing the extraction, capture, production and consumption of their specimens and by-products, forbidding the practices that subject the species. animals to cruelty. ”

Constitution of Goiás:

Art. 127, § 1, V: “to control and supervise the extraction, capture, production, transportation, commercialization and consumption of animals, plants and minerals, as well as the activity of people and companies dedicated to the research and manipulation of genetic material. "
Article 128, VI, sole paragraph: “Predatory fishing and hunting and breeding periods, as well as the seizure and marketing of wild animals in the territory of Goiás, which do not come from authorized farms, are prohibited under the law. . ”

Constitution of Maranhão:

Art. 241, II: “Protection of fauna and flora, forbidding practices that subject animals to cruelty.”

Constitution of Mato Grosso:

Art. 263, single paragraph, IX: “To protect the fauna and flora, ensuring the diversity of species and ecosystems, forbidden, according to the law, practices that endanger their ecological function and cause species extinction or subject the animals to cruelty. ”
Art. 275: “It is forbidden, according to the law, fishing in the spawning period and predatory fishing in any period, as well as amateur and professional hunting, seizure and commercialization of wild animals in Mato Grosso territory, not coming from authorized by the competent body. ”
Art. 276: “The apprehended of the prohibited hunting, fishing or capture of the species of the fauna will have social destination and will not be mutilated, incinerated or in any way destroyed.”

Constitution of Mato Grosso do Sul:

Art. 222, § 2, XV: "To control and supervise the fishing activity, including that of the fish slaughterhouses, which will only be allowed through the use of adequate capture methods."

Constitution of Minas Gerais:

Art. 214, § 1, V: "To protect the fauna and flora, in order to ensure the diversity of species and ecosystems and the preservation of genetic heritage. or subject the animals to cruelty. "

Constitution of Pará:

Art. 255, III: "to ensure the diversity of species and ecosystems, in order to preserve the genetic, biological, ecological and landscape heritage and to define territorial spaces to be specially protected."

Constitution of Paraíba:

Art. 227, single paragraph, II: "to protect fauna and flora by prohibiting practices that endanger their ecological function, cause species extinction or subject animals to cruelty."

Constitution of Paraná:

Art. 207, § 1, XIV: "Protecting the fauna, especially rare and endangered species, forbidding practices that endanger their ecological function or subject animals to cruelty."

Constitution of Pernambuco:

Art. 210, III: "Preserve the wildlife that inhabits the transformed ecosystems and the rural and urban areas, prohibiting their hunting, capture and destruction of their breeding sites."
Article 213: "The State shall guarantee, in accordance with the law, free access to state public waters for human and animal desedentation."

Constitution of Piaui:

Art. 237, § 1, VIII: "To protect the fauna and flora, forbidden, according to the law, practices that endanger their ecological function, cause the extinction of species or subject animals to cruelty."

Constitution of Rio de Janeiro:

Art. 258, § 1, IV: "To protect and preserve the flora and fauna, the endangered species, the vulnerable and rare, forbidding practices that subject animals to cruelty, by direct action of man on them."

Constitution of Rio Grande do Norte:

Art. 150, § 1, VIII: "To protect the fauna and flora, forbidden, according to the law, practices that endanger their ecological function, cause species extinction or subject animals to cruelty."

Constitution of Rio Grande do Sul:

Art. 251, § 1, VII: "to protect flora, fauna and the natural landscape, forbidding practices that endanger their ecological and landscape function, cause species extinction or subject animals to cruelty."

Constitution of Rondônia:

Art. 219, I: “To ensure, at the state level, the diversity of species and ecosystems, so as to preserve the genetic heritage of the State.”
Art. 221, VI: "prevent and curb practice that submits animals to cruelty."

Constitution of Santa Catarina:

Art. 182, III: “To protect fauna and flora, forbidding practices that endanger their ecological function, cause species extinction or subject animals to cruel treatment.”

Constitution of Sao Paulo:

Art. 193, X: “To protect the flora and fauna, which includes all wild animals, exotic and domestic, forbidden practices that endanger their ecological function and cause species extinction or subject animals to cruelty, overseeing the extraction, production, rearing, methods of slaughter, transport, marketing and consumption of their specimens and by-products. ”
Art. 204: "Hunting under any pretext is prohibited throughout the state."

Constitution of Sergipe:

232, § 1, V: “to protect the fauna and flora, especially native and / or endangered species, by overseeing the extraction, capture, production, transportation, marketing and consumption of their species and by-products, forbidden. practices that subject animals to cruelty. ”

Constitution of Tocantins:

Art. 110, III: "Protection of flora and fauna, especially of endangered species, in accordance with the law, forbidding practices that subject animals to cruelty."

4.1. Fauna concept- Much of the doctrine conceptualizes fauna as the set of animals proper to a particular region, locality, ecosystem, or geological period of the planet.

In the words of Celso Antônio Fiorillo, "fauna is conceptualized as the collective of animals of a given region" .[1]

For Maria Luiza Machado Granziera:

> Fauna is one of the environmental resources defined in Law 6.938 / 81 and constitutes "all animal life in an area, habitat or geological stratum at any given time, with arbitrary spatial and temporal limits". (Glossary ecology, 2nd ed. São Paulo State Academy of Sciences. Publication ACIESP, No. 183, 1997, p.113). The set of animal life located in a given space at a given time characterizes the fauna, meaning that it is appropriate to indicate these two variables - time and space - to accurately identify which fauna it is referring to.[2]

The author continues: "Strictly speaking, all animal species constitute fauna. However, the legal protection of this environmental resource is more restrictive and applies primarily to wildlife - terrestrial or aquatic ".[3]

For Danielle Tetu Rodrigues:

> [...] the term fauna has been the subject of great discussion due to the lack of conceptual unity among the various laws as well. Note that besides the constitutional meaning Law 5.197 in its art. 1, defined the wildlife as "the animals of any species, at any stage of their development and living naturally out of captivity."

---

[1] FIORILLO, Celso Antônio Pacheco. *Curso de Direito Ambiental*. 14. Ed. São Paulo: Saraiva, 2013. p. 302.

[2] GRANZIERA, Maria Luiza Machado. *Direito Ambiental*. São Paulo: Editora Atlas, 2009. p. 121.

[3] Idem, ibidem, loc. cit.

> Already the art. 29, § 3 of Law 9.605 / 98, Environmental Crimes Law, provides that “wild species are all those belonging to native, migratory and any other aquatic or terrestrial specimens that have all or part of their life cycle occurring within boundaries of Brazilian territory, or Brazilian jurisdictional waters. ”It is worth remembering that this same law provides for the existence of the category of 'noxious' animals, when they are thus declared by the competent administrative authority.[4]

From a legal point of view, animals, without any category discrimination, are included in the Environment chapter of the Constitution of the Federative Republic of Brazil, whose precepts ensure their full protection by the Government and the community.

> Article 225. Everyone has the right to an ecologically balanced environment which is a common use of the people and essential to a healthy quality of life. The public authorities and the community are obliged to defend and preserve it for those present and future generations.
> Paragraph 1. In order to ensure the effectiveness of this right, it is incumbent upon the public authorities:
> [...]
> VII - to protect the fauna and flora, forbidden, according to the law, practices that endanger their ecological function, cause species extinction or subject animals to cruelty.[5]

The constituent, despite not having conceptualized fauna, made it clear that did not restrict this concept to wildlife, as Law n.

---

[4]RODRIGUES, Danielle Tetu. *O Direito & animais:* uma abordagem ética, filosófica e normativa. Curitiba: Juruá, 2003. p. 68.
[5]BRASIL. *Constituição de República Federativa do Brasil de 1988*. Disponível em: <http://www.planalto.gov.br/ccivil_03/constituicao constituicaocompilado.htm>. Acesso em: 25 maio 2013.

5,197 / 67 in his art. 1º.[6]

Positioning in accordance with that law has the renowned professor José Afonso da Silva, according to which "it is not to include domestic or domesticated animals, nor those of captivity, private breeding or zoos, duly legalized" in the concept of fauna.7

We can also find the concept of fauna in Ordinance no. 93 of the Brazilian Institute of Environment and Renewable Natural Resources - IBAMA - of 07.07.1998, which regulates the importation and exploitation of live specimens, products and by-products of Brazilian wildlife and exotic wildlife:

Article 2 - For the purposes of this Ordinance, it is considered:

> I - Brazilian Wild Fauna: are all animals belonging to native, migratory and any other species, aquatic or terrestrial, that have their life cycle occurring within the limits of the Brazilian Territory or Brazilian jurisdictional waters.
>
> II - Exotic Wild Fauna: are all animals belonging to species or subspecies whose geographical distribution does not include the Brazilian Territory and species or subspecies introduced by man, including domesticated animals in a raised or raised state. Also considered exotic are species or subspecies that have been introduced outside Brazilian borders and their jurisdictional waters and have entered Brazilian territory.
>
> III - Domestic Fauna: All those animals that through traditional and systematized processes of management and / or zootechnical improvement became domesticated,

[6]*BRASIL.* Lei n. 5.197, de 3 de janeiro de 1967. *Dispõe sobre a proteção à fauna e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l5197.htm>. Acesso em: 25 maio 2013.*

[7]*SILVA, José Afonso da.* Direito Ambiental Constitucional. *São Paulo: Malheiros, 1994. p. 129.*

presenting biological and behavioral characteristics in close dependence on man, and may present variable phenotype, different from the wild species that originated them.[8]

The Law of the National Environmental Policy (Law No. 6,938, dated 08.31.81) conceptualizes the fauna as an integral part of the environment, along with other environmental resources, making it clear that the laws protecting the environment apply to it. :

Article 3 - For the purposes provided for in this Law:

[...]

V - environmental resources: the atmosphere, inland, surface and groundwater, estuaries, territorial sea, soil, subsoil, biosphere elements, fauna and flora. (Wording given by Law No. 7804 of 1989)[9]

It is evident that all animals of all species are included in the word fauna, a term that designates all animal life.

Animals in their various categories - wild, native or exotic, domestic or domesticated - are part of the wide variety of living beings in the biosphere. The environment is made up of living (biotic) and non-living (abiotic) beings, which interrelate to maintain the balance of ecosystems. Among the biotic elements we have fauna as an integral part of the environment.

4.2. Legal nature of fauna

---

[8]BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis. *Portaria n. 93, de 7 de julho de 1998*. Disponível em: <http://servicos.ibama.gov.br/ctf/manual/html/042200.htm>. Acesso em: 23 maio 2013.

[9]*BRASIL*. Lei n. 6.938, de 31 de agosto de 1981. *Dispõe sobre a Política Nacional do Meio Ambiente, seus fins e mecanismos de formulação e aplicação, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/L6938compilada.htm>. Acesso em: 25 maio 2013.*

Regarding the legal nature of the fauna, we live with an overlap of concepts, because, while the Constitution considers it as a common good of the people, in the civilist conception domestic animals are subject to real rights.

Domestic animals may be the property of their owners and abandoned animals are subject to appropriation. In the case of injury to a domestic animal, its owner may claim compensation or compensation for damage, in Civil Court, to anyone who, through voluntary action or omission, negligence or imprudence, assaults your animal or cause harm.

In the light of the Constitution of the Republic, property is conditioned to its social function and the protection of the environment. As we have already said, for Law no. 6.938 / 81, fauna - including all animals - is the environment.

However, according to Civil Law, animals, being depersonalized, can, except wild animals, be classified as movable property, under the terms of arts. 82 and 83 of the Civil Code.[10] The same law, which provides for property in general (art. 1,228, § 1), limits the right to property to that determined in special laws on flora, fauna, natural beauty, ecological balance. and the historical and artistic heritage. However, do not prohibit property and other rights in domestic animals.

In relation to the Brazilian wildlife animals, previously considered res *nullius,* they became the property of the Union from Law no. 5,197, of January 3, 1967, the understanding that they constitute goods for the common use of the people. This understanding was consolidated with the promulgation of the 1988 Constitution, which now considers all animals "common goods of the people." (CR / 88, art. 225, caput).

Maria Sylvia Zanella Di Pietro defines the common good:

---

[10]BRASIL. *Lei n. 10.406, de 10 de janeiro de 2002*. Institui o Código Civil. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm>. Acesso em: 30 maio 2013.

> [...] as that belonging to all members of the community on equal terms, regardless of the express and individualized consent of the public administration, although the use is subject to police power, since it is up to the State to regulate it, to supervise it. apply it and enforce enforcement measures to ensure its conservation.[11]

Explains José de Santana Gordilho that:

> [...] in fact, every member of the community has a diffuse interest in the environment, and although this interest cannot be a private law - since not every protected interest can be a right - these rules of law protect the private interest reflexively.[12]

Luis Paulo Sirvinkas understands that "fauna is an environmental good and integrates the ecologically balanced environment provided for in art. 225 of CF. It is a diffuse good. This good is neither public nor private. It is in common use by the people. "[13]

The concept of diffuse good was born in the second half of the twentieth century, when it also began to talk about mass society. So we are talking about a good that is neither public nor private, but a diffuse good. Such is the interest of wildlife protection; belongs to one and all at the same time, and its holder cannot be identified.

Elucida Celso Antônio Pacheco Fiorillo that the gulf between public and private gave rise to meta-individual rights, from which emerged the so-called diffuse goods. Thus the author expresses himself on the theme:

---

[11] *DI PIETRO, Maria Sylvia Zanella*. Direito Administrativo. *São Paulo: Atlas, 1999. p. 451.*

[12] GORDILHO, José de Santana. *Abolicionismo animal*. Salvador: Evolução Editora, 2009. p. 136.

[13] SIRVINSKA, Luís Paulo. *Manual de Direito Ambiental*. São Paulo: Editora Saraiva, 2003. p. 210.

Thus, in contrast to the state and citizens, the public and the private, in Brazil, the Federal Constitution of 1988 began a new category of goods: the goods of common use of the people and essential to the healthy quality of life. .[14]

Édis Milaré introduces us to new subdivisions of fauna:

> Among the many subdivisions of fauna, we find the following specifications: terrestrial, which inhabits the solid surfaces of the Planet, including wildlife and winged fauna, or avifauna, which travels through atmospheric space; aquatic, the animal population whose habitat is the liquid environment (oceanic, fluvial and lacustrine), within which are the fishes, which constitute the ichthyofauna.[15]

The terrestrial and winged faunas are protected especially by Law no. 5,197, of January 3, 1967; water, by the Fishing Code, Decree-Law no. 221, of February 28, 1967, and by Law no. 7,643, and December 18, 1987, which prohibits fishing for cetaceans in Brazilian jurisdictional waters. The Environmental Crimes Act (Law No. 9,605 / 98) also protects all categories of terrestrial or aquatic fauna (whether wild, domestic, domesticated or exotic).

Currently, there is a growing number of Brazilian indoctrinators, including this author, who defend the idea that animals are considered subjects of constitutional and legal rights to be represented in court by the Public Prosecution Service, a doctrine that has been titled "abolitionism".

In this sense, Tagore Trajano de Almeida Silva states that:

> [...] based on the premise that animals are effectively subjects of rights, even if not personified, nothing more natural to which they are assured also active legitimacy ad cause to claim, in court, the guarantee and protection of their legal heritage. [16]

In the same sense Daniel Braga Lourenço says:

---

[14]FIORILLO, Celso Antônio Pacheco. *Curso de Direito Ambiental*. São Paulo: Saraiva, 2013. p. 154.

[15]MILARÉ, Édis. *Direito do ambiente*: A gestão ambiental em foco. São Paulo: Revista dos Tribunais, 2011. p. 301-302.

[16]SILVA, Tagore Trajano de Almeida. *Animais em juízo*. Salvador: Editora Evolução, 2012. p. 127.

[17]LOURENÇO, Daniel Braga. *Direito dos animais*. Porto Alegre: Sergio Antônio Fabris, 2008. p. 509.

> The theory of depersonalized beings, based on the conceptual distinction between "person" and "subject of law", as it turned out, therefore allows one to dispense with the qualification of the entity as a "person" in order to securitize subjective rights.[17]

4.3. Wild fauna in Brazilian legislation

Brazilian wildlife is protected by Law no. 5.197 / 67, which determines that the animals belong to the Union, regulates their possession and prohibits the use, stalking, destruction, hunting or gathering of wild animals without the permission of the competent body.

This law encourages the Government to authorize private breeding sites, in accordance with regulations by ordinances of the Brazilian Institute of Renewable Natural Resources (IBAMA). In addition to federal normative instruments, States may issue rules within their jurisdiction and competence, pursuant to Supplementary Law no. 140/11. This law established rules for cooperation between the federal entities of administrative actions related to the protection of the environment, and transferred the following competences on fauna - before the Union - to the State:

> Article 8. The administrative actions of the States are:
> XVIII - to control the collection of specimens of wildlife, eggs and larvae destined to the establishment of breeding sites and scientific research, except as provided in item XX of art. 7th;
> XIX - approve the operation of wildlife breeding sites; (our emphasis) .[18]

---

[18]BRASIL. *Lei Complementar n. 140, de 8 de dezembro de 2011*. Fixa normas, nos termos dos incisos III, VI e VII do **caput** e do parágrafo único do art. 23 da Constituição Federal, para a cooperação entre a União, os Estados, o Distrito Federal e os Municípios nas ações administrativas decorrentes do exercício da competência comum relativas à proteção das paisagens naturais notáveis, à proteção do meio ambiente, ao combate à poluição em qualquer de suas formas e à preservação das florestas, da fauna e da flora; e altera a Lei nº 6.938, de 31 de agosto de 1981. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp140.htm>. Acesso em: 30 maio 2013.

IBAMA has established three species of breeding sites (specially enclosed and enclosed areas with facilities capable of reproducing, breeding or recreating wildlife species): conservationists, scientists and commercials. Conservation and commercial breeding can be breeding sites for both native and exotic fauna, with different rules for each. Breeding sites must be authorized by the competent agency. It follows from the reading of the recently edited Complementary Law no. 140/11 that the approval of the breeding operation and the control of specimen collection include all species instituted by IBAMA.

4.4 Native fauna conservation breeding

Conservation breeding sites are regulated by Ordinance no. 139-N / 93, of IBAMA, transferring to the State the competence to approve its operation, according to Complementary Law no. 140/11. According to art. 1 of the Ordinance, conservationist breeding sites are “specially delimited and prepared areas, with facilities capable of enabling the rational creation of Brazilian wildlife species, with adequate assistance” .[19]

The aforementioned ordinance determines that only breeding breeds that fulfill the requirements set forth in the caput of art. 1, it is also necessary that interested parties meet the following requirements: to have the assistance of at least one biologist or a veterinarian; have facilities suitable for animal feed purposes; have at least one hired keeper

[19] BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Portaria n. 139-N, de 29 de dezembro de 1993*. Disponível em: <https:/www.google.com.brurl?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.ibama.gov.br%2Findex.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%3D1199%3Ap-_139_93.p%26id%3D49%3A_-_%26Itemid%3D331&ei=o9vBUdnJGYmI9QTVs4GwBA&usg=AFQjCNG1k7KeSUSt7sw8xJx-oHTVRv5kxQ&sig2=Ii8BpiJV7fIiFq69CuDWTQ>. Acesso em: 30 maio 2013.

full time; have a proven financial capacity; keep log file through individual records per animal; maintain laboratory contact for clinical analysis to assist in diagnosis and treatment of disease; present an animal marking system; sexing all specimens; necropsy all dying animals and record the information on the individual file.

Specimens from conservation breeding stock may not be sold, otherwise their registration may be canceled immediately.

4.5 Exotic fauna Conservation breeding

Exotic wildlife consists of all species that do not occur naturally in the territory, whether or not they have free populations in the wild.

According to the IBAMA concept, exotic animals are those whose geographical distribution does not include the Brazilian territory. Species or subspecies introduced by man, including domestic animals, in the wild are also considered exotic. Other species considered exotic are those that have been introduced outside Brazilian borders and their jurisdictional waters and that have spontaneously entered Brazilian territory.[20]

Ordinance no. 108/94 states that individuals or legal entities holding *panthera* felids; ursidae family; primates of the ponogidae and cercopithecidae families; *family hippopotamidae and prosbocid order* should be registered with IBAMA as maintainers of exotic wildlife. It also determines that registration will be given only after authorization by the municipal and state

[20]BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Portaria n. 93, de 07 de julho de 1998*. Disponível em: <http://servicos.ibama.gov.br/ctf/manual/html/042200.htm>. Acesso em: 30 maio 2013.

said possession and by presenting a sketch of the area and details of the nursery, in accordance with IBAMA normative instructions. The breeders of exotic fauna must maintain the permanent assistance of a veterinarian, sex all species, necropsy all animals and keep records of animals. [21]

4.6. Comercial exotic fauna breeding in Brazil

There is no ban on the marketing of exotic animals, but their breeding and maintenance are governed by IBAMA Ordinances no. 108/94 (regulates the obligation and registration in IBAMA of the maintainers of exotic wildlife) and n. 102/98 (standardizes commercial breeders of exotic wildlife) .[22]

Commercial breeding sites and specimens of Brazilian and exotic wildlife can be both individuals and companies.

---

[21]BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. Portaria n. 108, de 06 de outubro de 1994. Disponível em: <https:/www.google.com.brurl?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.ibama.gov.br%2Findex.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%3D1191%3Ap-_108_94.p%26id%3D49%3A__%26Itemid%3D331&ei=HuHBUbqmG5Ti8gTN1oC4DQ&usg=AFQjCNGGVp67zRF4P4xdtQBKW4VUHffH7w&sig2=drjfH1oHEw3aQGNw1YVF_g>. Acesso em: 1º jun. 2013.

[22]BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Portaria n. 102, de 15 de julho de 1998*. Normatiza os Criadores Comerciais de Fauna Silvestre Exótica. Disponível em: <https://www.google.com.brurl?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.ibama.gov.br%2Findex.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%3D5572%3A1998_portaria-102-98-Criador_Comercial_Fauna_Exotica%26id%3D77%3ALegisla%25C3%25A7%25C3%25A3o_Fauna&ei=YuDBUZzAMYvm8wSq4YHAAw&usg=AFQjCNGJOi_HVSFIoeNu2SfQBCg6wYEApA&sig2=_umW812Y6OOpoFuH55b6ww>. Acesso em: 1º junho 2013.

[23]BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Portaria n. 108, de 06 de outubro de 1994*. Disponível em: <https://www.google.com.brurl?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.ibama.gov.br%2Findex.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%

The donation, exchange, loan or sale of such animals may only be made between registered zoos, or in the process of registration, and wildlife keepers duly registered with IBAMA (IBAMA, Ordinance No. 108).[23] Registration of wildlife keepers depends on annual report, and public visitation is not allowed for this type of breeding site.

As for the importation of exotic fauna, it is also allowed, provided that according to Ordinance n. 93/98 do IBAMA.[24] For imports of live wild animals, products and by-products listed in Appendix I and II of the International Convention on Trade in Endangered Species of Wild Flora and Fauna (CITES),[25] prior issuance is required. license by that body, in addition to the export license of the country of origin and the license of the Ministry of Agriculture, Supply and Agrarian Reform as regards the animal health requirements of the country of origin.

Exemption from this import license shall be granted to species possessing biological and behavioral characteristics in close dependence on man. In the case of importation without proper authorization of exotic fauna species listed in the CITES annexes, the importer will be fined and the species will be returned to the exporting country.

4.7. Conservationist scientific breeding

Scientific breeding sites are both constituted to carry out experiments on the study of species, as for animal experiments, for proven scientific purposes. Brazilian wild animal breeding sites for

[24]BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis - IBAMA. *Portaria n. 93, de 7 de julho de 1998*. Disponível em: <http://servicos.ibama.gov.br/ctf/manual/html/042200.htm>. Acesso em: 23 maio 2013.

[25]Promulgada pelo Decreto n. 76.623/75 (BRASIL. *Decreto n. 76.623, de 17 de novembro de 1975*. Promulga a Convenção sobre Comércio Internacional das Espécies da Flora e Fauna Selvagens em Perigo de Extinção. Disponível em: <http://www.planalto.gov.br/ccivil_03/decreto/Antigos/D76623.htm>. Acesso em: 20 jun. 2013).

scientific research are regulated by Ordinance no. 16/94, of IBAMA,[26] as well as by Complementary Law no. 140/11. The legislation states that, in addition to the obligation of registration, the experimenters will have to maintain the animal leakage control system, provide information about the place, enter into a commitment term ensuring the animals' maintenance and send IBAMA a copy of the works to be published, arising from the research. At the end of the experiment, animals may be transferred to related institutions.

Collection of biological material for scientific purposes requires authorization from the Public Administration, in accordance with Complementary Law no. 140/11, and may only be granted to public or private scientific institutions accredited by it. The scientist who can obtain authorization to own a scientific breeding facility is the professional who carries out research using a scientific method.

Currently this authorization can be applied for *online* by the Biodiversity Authorization and Information System (SISBIO), an automated, interactive and simplified remote attendance and information system. By completing electronic forms *online*, researchers will be able to apply, via the Internet, authorizations for activities for scientific or didactic purposes (in the context of higher education).

4.8. Breeding supervision

IBAMA must maintain constant control of the breeding sites, requiring them to submit annual reports, as well as maintaining the duplicate invoices.

Regardless, the agency may inspect the breeding site at any time. If there are reports of irregularities in the breeding sites or in case of operational deficiency, IBAMA shall reformulate the project.

If the irregularities are not remedied within the legal deadline,

[26] BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis - IBAMA. *Portaria n. 16, de 04 de março de 1994.* Disponível em: <http://www.ibama.gov.br/fauna/legislacao/port_16_94.pdf>. Acesso em: 20 jun. 2013.

the Animal Seizure and Deposit Term will be drawn up and the Commitment Agreement will be signed granting a new term. Once this is exhausted, it will be possible to cancel the registration, in addition to civil and criminal sanctions, if the irregularities persist. The fate of the animals, in this hypothesis, will be the transfer to another breeding site, indicated by IBAMA.

4.9. Import and export of Brazilian wildlife and exotic fauna

The importation and exportation of Brazilian wildlife and exotic fauna are regulated by IBAMA Ordinance no. 29, March 24, 1994.[27]

It determines that only animals of Brazilian wildlife from commercial breeding grounds may be definitively exported.

IBAMA may, however, authorize the temporary departure of Brazilian wildlife species for participation in special exhibitions, for scientific and educational events, and in compliance with international conservation agreements. In the last two hypotheses, at the discretion of the agency, the imported animals and their descendants continue to belong to the Brazilian government.

---

[27]BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis - IBAMA. *Portaria n. 29, de 24 de março de 1994.* Disponível em: <http://licenciamento.cetesb.sp.gov.br/legislacao/federal/portarias/1994_Port_IBAMA_29.pdf>. Acesso em: 28 jun. 2013.

[27]Convention on International Trade in Endangered Species of Wild Fauna and Flora – CITES (em português: Convenção sobre o Comércio Internacional das Espécies da Fauna e da Flora Selvagens Ameaçadas de Extinção, ou Convenção sobre o Comércio Internacional das Espécies da Fauna e da Flora Silvestres Ameaçadas de Extinção no Brasil). Também conhecida por Convenção de Washington, é um acordo multilateral assinado em Washington DC, Estados Unidos, a 3 de março de 1973, agrupando um grande número de Estados, tendo como objetivo assegurar que o comércio de animais e plantas selvagens, e de produtos deles derivados, não ponha em risco a sobrevivência das espécies nem constitua um perigo para a manutenção da biodiversidade.(WIKIPÉDIA. *CITES* - Convenção sobre o Comércio Internacional das Espécies da Fauna e da Flora Selvagens Ameaçadas de Extinção, Disponível em: <http://pt.wikipedia.org/wiki/Cites>. Acesso em: 30 maio 2013.)

Exports of animals comply with CITES standards.28 In the case of exotic wildlife, there is no restriction on the quality of exports and re-exports, provided that the rules of this Convention are complied with.

IBAMA maintains a register for individuals or companies that regularly export. Importation depends on a license from IBAMA and the Ministry of Agriculture, regarding sanitary requirements.

Only animals of domestic fauna listed in the appendix of IBAMA Ordinance n. 29/94. All ports and airports must contain this posted list. Among the animals considered domestic for the purposes of the Ordinance are: dog, cat, rabbit, guinea pig, rat, mouse, chinchilla, horse, donkey, pig, cattle, Zebu cattle, buffalo, sheep, goat, mallards, goose , canadian goose, chicken, quail, colt pheasant, peacock, guinea fowl, turkey, domestic pigeon, llama, alpaca, camel, dromedary, black swan or white swan, partridge, nile goose , mandarin duck, carolina duck, japan nightingale, tadorna, *ring neck* parakeet or *agaponis,* amandine, beheaded, melba, granatina-violet or *purpur, cordon bleu,* celestial breast or *menister*, orange, *sparrow, phaecton, star finch,* modest or bichenovii or mandarin diamond, masqué or short-tailed or long-tailed treble, quadricolor, tricolor, bicolor, gould diamond, caulker or caulker-timor, manon, catarins, kingfisher, diamond dove, dove mask, cockatiel and budgerigar.

On June 25, 2013, Resolution CONAMA n. 457, which provides for the provisional deposit and custody of wild animals seized or rescued by the environmental agencies that are part of the National Environment System, as well as from spontaneous surrender, when it is justified the impossibility of the destinations provided for in § 1 of art. 25 of Law no. 9,605, of February 12, 1998.

The resolution, which has been causing a lot of protests in the environment, established the possibility for the environmental agency to sign a Wild Animal Deposit Term (TDAS), or a

Wild Animal Guard Deposit (TGAS), in the case of seized animal, spontaneously surrendered animal or rescued animal.

CONAMA Resolution no. 457/13 thus defines the TDAS and TGAS in its art. 2nd:

> [...]
> V - Wild Animal Deposit Term - TDAS: provisional term whereby the defendant voluntarily assumes the duty to properly maintain and handle the seized animal, object of the infraction, as long as there is no destination under the law;
> VI - Preliminary deposit term: provisional term, whereby the supervisory agent, at the time of drawing up the Notice of Infringement, by justification, exceptionally entrusts the animal to the defendant, until another destination, under the terms of this Resolution;
> VII - Wild Animal Guard Term - TGAS: provisional term by which the interested person, who did not hold the specimen, duly registered with the competent environmental agency, voluntarily assumes the duty of guarding the rescued animal, spontaneously delivered or seized, while not destination under the law; [29]

These hypotheses are only allowed in the case of the group of amphibians, reptiles, birds and mammals of the Brazilian fauna, or the specimens authorized for breeding and marketing as a pet in accordance with CONAMA Resolution no. 394 of November 6, 2007. Please note that the list of pets allowed as pets has not yet been prepared by IBAMA.

4.10. Hunting

The Law no. 5.197 / 67 encourages the creation of hunting clubs and parks hunting, and provides for three forms of hunting: sport or amateur, commercial and scientific.

[29] BRASIL. Conselho Nacional do Meio Ambiente – CONAMA. *Resolução n. 457, de 25 de junho de 2013*. Dispõe sobre o depósito e a guarda provisórios de animais silvestres apreendidos ou resgatados pelos órgãos ambientais integrantes do Sistema Nacional do Meio Ambiente, como também oriundos de entrega espontânea, quando houver justificada impossibilidade das destinações previstas no § 1º do art. 25, da Lei nº 9.605, de 12 de fevereiro de 1998, e dá outras providências. Disponível em: <http://www.editoramagister.com/legis_24562269_RESOLUCAO_N_457_DE_25_DE_JUNHO_DE_2013.aspx>. Acesso em: 28 jun. 2013.

Commercial hunting is prohibited (2nd). The others are regulated by law and may be authorized by the competent body, subject to the requirements of the law and ordinances.

This position of the Brazilian legislation led the jurist Anaiva Oberst Cordovil to say so:

> Our legislation regarding the preservation of fauna curiously does not have as its object protection. Its reason for existing lies in human anthropocentrism only, whether when it protects the good "shut up", so that the human being is not deprived of his leisure, when he makes a caricature of animal benestarist, making up his actions always harmful to nonhuman animals, creating rules, which are not even observed, for the purpose of seeming a worthy way to use and dispose of the lives of sentient animals.[30]

The hunt as defined in art. 7 of Law no. 5.197 / 67, is the use, pursuit, destruction, hunting or gathering of wildlife specimens, when consented to in accordance with that law.[31]

Amateur hunting is permitted when authorized by IBAMA. The law also provided for the formation of hunting clubs. IBAMA ordinances should establish the area where hunting may take place, the season of hunting season, the species that can be hunted, the location and the amount of animals to be hunted. All hunters must be registered with IBAMA. It is appropriate to mention the position of lawyer Luciana Caetano da Silva on amateur hunting:

---

[30] *OBERST, Anaiva.* Direito Animal. *Rio de Janeiro: Lumen Juris. 2012. p. XIII.*

[31] BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Lei n. 5.197, de 03 de janeiro de 1967*. Dispõe sobre a proteção à fauna e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/Leis/L5197.htm>. Acesso em: 28 jun. 2013.

[32] SILVA, Luciana Caetano da. *Fauna terrestre no Direito Penal Brasileiro*. Belo Horizonte: Mandamentos, 2001. p. 51.

Sport hunting, amateur or recreational, is a competitive or simply recreational practice to test the amateur hunter's ability to capture his prey, mainly with the aid of hunting instruments (weapons, arrows, traps), but without purpose. make profits from species capture.[32]

It should be noted that subsistence hunting is not expressly mentioned in that law.

Another type of hunting allowed with proper license is scientific hunting. This permission is provided for in art. 14 of the Law:

> Art. 14. A special license may be granted to scientists belonging to, or indicated by, scientific institutions, official or official, for the collection of material intended for scientific purposes at any time.[33]

Hunting should never be authorized without preliminary studies. This is the position of the consecrated environmental teacher Paulo Affonso Leme Machado:

> [...] the absence of these preliminary studies or their incomplete execution represent potential damage or injury to wildlife. Now, this natural public good can be defended by popular action, including the granting of an injunction, so as not to harm the public patrimony.[34]

The Law allows the "destruction of wild animals considered harmful" as control hunting, and this permission must be expressly motivated by the Government.

---

[33]BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Lei n. 5.197, de 03 de janeiro de 1967*. Dispõe sobre a proteção à fauna e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/Leis/L5197.htm>. Acesso em: 28 jun. 2013.

[34]MACHADO, Paulo Affonso Leme. *Direito Ambiental brasileiro*. São Paulo: Revista dos Tribunais, 1991. p. 414.

There are some restrictions on hunting provided by law. Also the trade of specimens of wildlife and products and objects that imply their hunting, persecution, destruction or capture is prohibited by the legal system, except in the case of specimens from duly legalized breeding (Law No. 5.197, art. 3, § 1st).

4.11. Administrative Sanctions

Administrative sanctions for wildlife offenses, whether wild, native, exotic or domestic, are provided for in Law no. 9.605 / 98, regulated by Decree no. 6,514 / 08, in its arts. 24 to 42 (Section III, Administrative Offenses Against the Environment, Subsection I, Offenses against the Fauna) .[35]

The administration's action prescribes in five years the purpose of investigating the practice of infractions against the environment, as from the date of the act, or, in the case of permanent or continuous infraction, of the day on which it ceased (art. 21 of Decree No. 6,514 / 08).

Environmental administrative infraction is considered any action or omission that violates the legal rules of use, enjoyment, promotion, protection and recovery of the environment.

Administrative responsibility has as its object the application of penalties, which are not part of criminal law, because they are applied by the State in its administrative function. The art. 72 of Law no. 9.605 / 98 lists the types of sanctions applicable to administrative offenses:

Art. 72. Administrative infractions are punished with the following sanctions, observing the provisions of art. 6th:

I - warning;

II - simple fine;

[35]BRASIL. *Decreto n. 6.514, de 22 de julho de 2008*. Dispõe sobre as infrações e sanções administrativas ao meio ambiente, estabelece o processo administrativo federal para apuração destas infrações, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/decreto/D6514.htm>. Acesso em 28 jun. 2013.

III - daily fine;

IV - seizure of animals, products and by-products of fauna and flora, instruments, supplies, equipment or vehicles of any nature used for the offense;

V - destruction or destruction of the product;

VI - suspension of sale and manufacture of the product;

VII - embargo of work or activity;

VIII - demolition of work;

IX - partial or total suspension of activities;

X - (Vetoed)

XI - Restrictive of rights .[36]

The competent authorities for issuing an environmental infraction notice and filing an administrative proceeding are the inspectors of organs of the National Environment System (SISNAMA). Anyone who finds the infringement may direct representation to these authorities, who, upon becoming aware, are obliged to promote immediate investigation, under penalty of co-responsibility.

The way to investigate the infractions is the administrative process, ensuring the right of broad defense. The offender has a period of twenty days to offer his defense, and another twenty from the condemnatory decision to the higher court of SISNAMA. The authority, on the other hand, has a period of thirty days from the date of issuance of the notice of infraction to judge the process, regardless of whether there is defense or impugnation.

When sentenced to a fine, the offender has five days to do so. The imposition of the fine is based on the unit, hectare, cubic meter, kilogram or other pertinent measure of the injured legal object, as well as the economic situation of the violator.

[36]BRASIL. *Lei n. 9.605, de 12 de fevereiro de 1998*. Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l9605.htm>. Acesso em: 28 jun. 2013.

The simple fine can be converted into environmental preservation, improvement and recovery services.

Restrictive sanctions are the suspension of registration, license or authorization; cancellation of registration; loss or restriction of tax benefits; loss or suspension of participation in credit lines in official credit establishments; and prohibition of contracting with the Public Administration for a period of up to three years. If the offender commits more than one offense, the penalties will be cumulative.

In the lesson of the jurist brothers Vladimir and Gilberto Passos de Freitas in a joint work:

> Law 5,197 / 67, known as the Wildlife Protection Act, brought to the legal system the form of protection of wild animals.
>
> There were many innovations. For example, the property became the property of the state (art. 1), and not of the hunter, as provided for in art. 595 of the former Civil Code of 1916, a device not repeated in the Civil Code of 2002. Professional hunting was prohibited (art. 3) and the activity of scientists was disciplined (art. 14). In art. 27 (now repealed by Law 9.605 / 98), in 1988 raised some conduct to the category of crime.[37]

4.12. Division of competences

The Constitution of the Republic defined in its art. 23, VII, that the material competence to protect the fauna is common to the Union, States, Federal District and Municipalities. Common competence means that bodies must act together. The private powers of the Union are provided for in art. 21 of CR / 88, those of the State in art. 25, § 1, and those of Municipality in art. 30

[37]FREITAS, Vladimir Passos de; FREITAS, Gilberto Passos de. *Crimes contra a natureza:* de acordo com a Lei 9.605/98. São Paulo: Revista dos Tribunais, 2006. p. 87.

The competence to legislate on fauna, hunting and fishing is concurrent, according to art. 24, VI ??of CR / 88.

In art. 225, § 1, the Constitution lists the responsibilities of the Government with the purpose of protecting the environment, including the protection of fauna (inc. VII).

The division of competences is regulated in Resolution no. 237, of December 19, 1997[38] and in Complementary Law no. 140, of December 8, 2011.[39]

The Complementary Law no. 140 establishes norms, pursuant to items III, VI and VII of the caput and the sole paragraph of art. 23 of the Federal Constitution, for the cooperation between the Union, the States, the Federal District and the Municipalities in the administrative actions resulting from the exercise of the common competence regarding the protection of the remarkable natural landscapes, the protection of the environment, the combat to the pollution in any their forms and the preservation of forests, fauna and flora; and amends Law no. 6,938, August 31, 1981.

In relation to fauna, the following is the Complementary Law 140/2011:

> Article 7 The following are administrative actions of the Union:
>
> XVI - elaborate the list of endangered species of fauna and flora and overexploited species in the national territory, through reports

---

[38]BRASIL. Conselho Nacional do Meio Ambiente – CONAMA. R*esolução n. 237, de 19 de dezembro de 1997.* Disponível em: <http://www.mma.gov.br/port/conama/res/res97/res23797.html>. Acesso em: 28 jun. 2013.

[39]BRASIL. *Lei Complementar n. 140, de 8 de dezembro de 2011.* Fixa normas, nos termos dos incisos III, VI e VII do caput e do parágrafo único do art. 23 da Constituição Federal, para a cooperação entre a União, os Estados, o Distrito Federal e os Municípios nas ações administrativas decorrentes do exercício da competência comum relativas à proteção das paisagens naturais notáveis, à proteção do meio ambiente, ao combate à poluição em qualquer de suas formas e à preservação das florestas, da fauna e da flora; e altera a Lei nº 6.938, de 31 de agosto de 1981. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp140.htm>. Acesso em: 30 maio 2013.

and technical-scientific studies, promoting activities that conserve these species **in situ;**
XVII - control the introduction into the country of potentially invasive alien species that may threaten native ecosystems, **habitats** and species;
XVIII - approve the release of specimens of exotic species of fauna and flora in fragile or protected natural ecosystems;
XIX - control the export of components of Brazilian biodiversity in the form of wild specimens of flora, microorganisms and fauna, parts or products derived from them;
XX - control the collection of wildlife specimens, eggs and larvae;
XXI - protect the migratory fauna and species included in the relationship provided for in item XVI;
XXII - exercise environmental control of fishing at national or regional level;
Article 8 The administrative actions of the States are:
XVII - elaborate the list of endangered species of fauna and flora in the respective territory, by means of reports e estudos

[40]"Art. 7º São ações administrativas da União: [...] VII - promover a articulação da Política Nacional do Meio Ambiente com as de Recursos Hídricos, Desenvolvimento Regional, Ordenamento Territorial e outras;" (BRASIL. *Lei Complementar n. 140, de 8 de dezembro de 2011*. Fixa normas, nos termos dos incisos III, VI e VII do **caput** e do parágrafo único do art. 23 da Constituição Federal, para a cooperação entre a União, os Estados, o Distrito Federal e os Municípios nas ações administrativas decorrentes do exercício da competência comum relativas à proteção das paisagens naturais notáveis, à proteção do meio ambiente, ao combate à poluição em qualquer de suas formas e à preservação das florestas, da fauna e da flora; e altera a Lei nº 6.938, de 31 de agosto de 1981. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp140.htm>. Acesso em: 30 maio 2013),

[41]BRASIL. *Lei n. 9.605, de 12 de fevereiro de 1998*. Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l9605.htm>. Acesso em: 28 jun. 2013.

> and technical-scientific studies, fostering activities that conserve these species in situ;
> XVIII - to control the collection of specimens of wildlife, eggs and larvae destined to the establishment of breeding sites and scientific research, except as provided in item XX of art. 7th; [40]
> XIX - approve the operation of wildlife breeding sites;
> XX - exercise environmental control of fishing at the state level;[41]

We highlight Paulo Affonso Leme Machado's teaching about the competence of the federative entities in relation to the fauna:

> Fauna: In specimen collection it is noted that the Union has the task of: "controlling the collection of wildlife, eggs and larvae (Art. 7th XX) and the states have the task of" controlling the collection of wildlife, eggs and larvae intended for the establishment of breeding sites and for scientific research, subject to the provisions of item XX 7 (art. 8, XVIII). "The Union's administrative task to control the collection of wildlife specimens has no limits and being limited, it may even encompass scientific research. Two specific purposes are indicated for the administrative action of the States: the control must aim the establishment of breeding sites and the scientific research.

Complementary Law 140/2011 imposed a restriction on the competence of the States, aiming at observing the broader competence of the Union. The restriction or limitation imposed has the function of alerting the state actions, so that I respect the actions already taken by the Union." [42]

---

[42]MACHADO, Paulo Affonso Leme. Legislação Florestal (Lei 12.651/2012) e Competência e Licenciamento Ambiental (Lei Complementar 140/2011). São Paulo: Malheiros, 2012. p. 68-69.

4.13 Public Civil Action

From the definition of environment and environmental resources of the Law of the National Environment Policy (Law 6.938, of 8/31/81) it is concluded that the Brazilian wildlife is environment and, therefore, is under the protection of public civil action. .

Art. 3, I, Law 6.938 / 81 – Environment – *The set of conditions, laws, influences and interactions of the physical, chemical and biological order, which allows, shelters and governs life in all its forms.*

Art. 3, V, Law 6.938 / 81 – Environmental Resources – *Atmosphere, inland, surface and groundwater, estuaries, territorial sea, soil, subsoil, biosphere elements, fauna and flora.*

Public Civil Action may be filed by the Public Prosecution Service, the environmental agencies, the Public Defender's Office and environmental protection entities. The ordinary citizen and the lawyer can use it, therefore, through the Public Prosecution Service, provoking his initiative through representation.

The main characteristics of the public civil action are that it is an action that aims the pecuniary and cominatory condemnation, ie, it has the possibility to determine the fulfillment of the obligation to do or not to do. On the other hand, it accepts the precautionary order to immediately stop any reputed act harmful to the purposes of the law itself.

4.14 Popular Action

Popular action may be proposed to invalidate any acts or administrative contracts harmful to wildlife. It should address the authority that performed the act.

The citizen able to propose the present action will have to be Brazilian, that is, be in full enjoyment of his civic and political rights. Only the individual with his or her electoral title may propose the action.

4.5. THE LEGAL NATURE OF ANIMALS IN BRAZIL AND OTHER COUNTRIES

5.1. Brazilian Civil Code

Most civil codes in force adopt the differentiation between persons and goods on the basis of their ability to be subject to rights and duties. Let's look at how homeland coding classifies them and where it inserts them.

4.5.2.1 People

The Brazilian Civil Code of 2002 (CC / 02) considers as individuals the natural or legal persons. Natural persons are those capable of acquiring rights and duties in the civil order, as determined by arts. 1st and 2nd of the Code. (BRAZIL, 2002).

On the other hand, legal entities may be of internal or external public law and of private law (art. 40). The legal entities of domestic public law are the Union, the States, the Federal District and Territories, the Municipalities, municipalities / public associations, and other public entities created by law (art. 41). Foreign legal entities are foreign states and other persons governed by public international law (art. 42). The legal entities under private law are associations, societies, foundations, religious organizations, political parties, individual limited liability companies (art. 44). (BRAZIL, 2002).

It follows from the foregoing that animals do not fall into any of the types covered by the concept of person, so such provisions do not apply to the relationship of men to animals.

However, a “animal rights theory” is already emerging that evolves in the sense that animals must be legally recognized as non-human persons (or sensitive living beings) as well as moral or legal persons and the incapable. For this to happen, however, a legal provision is needed, which depends on a legislative policy, apparently far from the current mentality of the Brazilian lawmakers.

The legal nature of animals depends on the legal policy adopted, as it can only be defined by law. The recognition that animals are subjects of rights and not objects of law, as is the case with the incapable and moral people, is a matter that must be consolidated by doctrine. It depends on the construction of a new legal paradigm, which we need and we can build with our speeches, opinions and jurisprudence.

A theory arises when a new paradigm regarding a given knowledge or view of fact replaces the previous one. Social dynamics must lead us to a paradigm shift. And for a paradigm to be enshrined as new, its recognition by a group of scientists is necessary. Therefore, we must continue to defend the idea that animals are subject to rights.

For a jusanimalist current, emerging all over the world, concomitantly being subject to rights means having the ability to acquire rights, regardless of the ability to acquire obligations. In addition to being rights holders for substitutive representativeness, animals, according to this new paradigm, must be recognized as subjects of rights. Most jusanimalists recognize the animal as a subject of depersonalized right. However, the Brazilian Civil Code has been a major obstacle in the evolution and acceptance of this new theory.

4. 5.2.2 Goods

Since animals are not recognized as persons, the legal regime for goods applies to them, whether wild, exotic or domestic animals. While the wild are considered common goods of the people and public goods, according to art. 225 of the Constitution of the Republic (CR / 88) and arts. 98 and 99 of CC / 02, the domestic ones, according to art. 82 of CC / 02, are considered movable property / things. (BRAZIL, 1988, 2002).

CC / 02 establishes three categories of goods, with subdivisions: i) goods considered in themselves (art. 79 to 91): furniture (art. 82 to 84), (Articles 79 to 81), fungible and consumables (art. 85 to 86), divisible and indivisible (art. 87 to 88), singular and

collective (art. 89 to 91); reciprocally considered goods: principal and accessory (arts. 92 to 97); according to ownership: public and private (arts. 98 to 103). (BRAZIL, 2002).

Movable goods, which currently include domestic and exotic animals, are regulated in Book II, Section II, of CC / 02, and are conceptualized as those susceptible to their own movement, or removal by force, without alteration of substance. or socioeconomic destination. As such, they are liable to rights in rem and are subject to the rules of property rights, often hindering judicial decisions that take into account the needs, biological nature and sensitivity of the animal.

Already in the case of wild animals, classified as public goods, common use of the people by CR / 88, have legal nature provided for in arts. 98 and 99 of CC / 02 and are assets specially protected by law.

4. 5.2.3. Goods and things and the advantage of animals ceasing to be things

The distinction between good and thing is established by doctrine in various ways.

For Fiuza (2007, p. 183), "Well is all that is useful to people. Thing to the right is all economic good, endowed with autonomous existence, and capable of being subordinated to the domain of the people ".

Already in the interpretation of Venosa (2013, p. 308), "In the legal field it must be what has value, abstracting from it the pecuniary notion of the term", and things "are the property appropriated by men".

She got Bevilacqua (1955, p. 152) that:

> [...] the word thing, although under certain relations it corresponds, in legal technique, to the term good, yet distinguishes itself from it. There are legal goods that are not things: freedom, honor, life, for example. And while the word thing is, in the realm of law, taken in a broader or lesser sense, we can say that it designates more particularly those goods which are, or may be, subject to royal law.

> For good, it is a utility, but to a greater extent than economic utility, because the economy revolves around three points: labor, land, and value; whereas the law has as its object other interests, both of the individual and of the family and society.

Not having economic character, goods have not necessarily patrimonial value. Also corroborating this distinction is Rizzardo (2008, p. 339-340):

> In the broad meaning good may or may not be included in a legal relationship, but it is not exhausted in economic appreciation. Juridically, the good constituted the material or immaterial thing, not necessarily with economic value.
> So there are economic goods and non-economic goods, and included in them some that are not included in the legal relationship.

In the lesson of João Baptista Villela (2006, p.13):

> In Brazilian law, animals, which the doctrine also calls semoventes, have always been considered things. The 2002 Civil Code, recent in time but old in ideas, missed an excellent opportunity to correct this distortion. Austria, Germany, and Switzerland, countries whose civil codes from the nineteenth century, have already modified them to establish what may be the beginning of a new categorization of the characters in the legal scene. Until now, the beings concerned with law were fundamentally divided into persons and things.

According to this understanding, materiality is what distinguishes it well from things. Goods may include life, honor, happiness, and other noneconomic values. That is, goods may have material or immaterial value, may or may not have pecuniary value.

The pioneer countries in changing the legal nature of animals are Austria, Germany, Switzerland, France and Portugal. The first three make it clear in their Civil Code that animals are not things or objects The French Civil Code

recognizes animals as sentient beings. Let's look at what each of these Codes presents in terms of moving towards legislation that is more in line with “animal rights theory”.

4. 5.3 European legislation

Some European countries have advanced their legislation and already amended their Civil Code expressly stating that animals are not things or objects, although governed, if there is no specific law, by the legal regime of goods. This symbolic measure can be considered an advance, a first step towards the evolution of the juridical status of animals, as it may result in the recognition that animals, although not recognized as persons, are not objects or things.

4. 5.3.1 **Austri**an law

The Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch - ABGB) of 1811 introduced art. 285A, which came into force on July 1, 1988, expressly stating that “animals are not things; they are protected by special laws, ”adding that the laws they have about things“ apply only if there are no divergent regulations ”[43]. (AUSTRIA, 1811, our translation).

Austria's pioneering initiative was of great importance as there was no legal limit to animal exploitation in any country when the issue involved property rights. The animal has always been considered an object in industry, agriculture and other economic areas. For the first time, the human-animal relationship was subjected at least to a principle fixed by law. This change did not prevent the economic use and exploitation of the animal,

---

[43]No original: “§285ª Tiere sind keine Sachen; sie werden durch besondere Gesetze geschützt. Die für Sachen geltenden Vorschriften sind auf Tiere nur insoweit anzuwenden, als keine abweichenden Regelungen bestehen”.

but established a limit to be respected by special laws.

4. 5.3.2 German Law

The German Civil Code (BGB) of 1896, as of September 1, 1990, now reads as follows:

> Division 2 - Things and Animals
> Section 90 - Thing Concept
> Only corporeal objects are defined by law as things.
> Section 90a - Animals
> **Animals are not things.** They are protected by special statutes. They are governed by the law applicable to things, with the necessary modifications, except as otherwise provided. (GERMANY, 1896, our emphasis, our translation).[44]

As can be seen, the BGB separates things from animals, which remain tied to the legal regime of goods if there is no special law. It is observed that it is a negative separation - "animals are not things" - and that there is no provision for differential treatment due to their characteristics.

4. 5.3.3 Swiss Law

Switzerland amended the status of animals in its 1907 Civil Code by introducing, on October 4, 2002, item II in art. 641a:

> Book Four: Real Rights.
> Part One: Of the Property.
> Title Eighteen: General Provisions
>
> Art. 641
>
> A- Elements of property rights
>
> I- In general
>
> [1]The owner of a thing has the right to dispose of it freely within the

[44]No original: "Division 2 - Things and animals
Section 90 Concept of the thing
Only corporeal objects are things as defined by law.
Section 90a Animals
Animals are not things. They are protected by special statutes. They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided."

limits of the law.

[2]He can claim it from the detainee and reclaim all usurpation.

Article 641a (Introduced October 4, 2002 and effective after April 2003).

II. Animals

1 Animals are not things.

2 Unless otherwise specified, the devices of things are equally valid for animals.[45]

(Switzerland, 1907, our translation).

The process of amending the Swiss Civil Code to change the legal status of animals began with the initiatives of parliamentarians François Loeb and Suzette Sandoz, respectively called 'L'animal, François Loeb and Suzette Sandoz, respectively named "L'animal, être vivant" (The animal, living being) and "Animaux vertébrés" (Vertebrate Animals), both presented at the National Congress of that country.

After being rejected in Congress, civil society mobilized by launching two initiatives. One of them, supported by the Swiss Animal Protection, the Society of Swiss Veterinarians, the Swiss Cynological Society, and the Foundation for Animal in Law, obtained 125,000 signatures. The other, proposed by Franz Weber, had over 100,000 signatures. (MOGINIER, 2000).

---

[45]No original: "Livre quatrième: Des droits réels. Première partie: De la propriété. Titre dix-huitième: Dispositions générales.
Art. 641 A. Eléments du droit de propriété I. En général[1]
[1] Le propriétaire d'une chose a le droit d'en disposer librement, dans les limites de la loi.
[2] Il peut la revendiquer contre quiconque la détient sans droit et repousser toute usurpation.
Art. 641a[1] A. Eléments du droit de propriété / II. Animaux
II. Animaux
[1] Les animaux ne sont pas des choses.
[2] Sauf disposition contraire, les dispositions s'appliquant aux choses sont également valables pour les animaux."

In January 2002, the Committee on Legal Affairs presented to the State Council a report containing the parliamentary initiative called Les animaux dans l'ordre juridique suisse, proposing, among other things, that legislation should not only stop animals as things and to treat them as a separate category (a provision that eventually came into effect in the Civil Code; as well as to provide for its ownership and mode of acquisition and to regulate its provision in the chapter on successions (COMMISSION DES AFFAIRES ..., 2002).

Although several propositions have been accepted in the Swiss Civil Code, it does not take into account the sensitivity of animals, an aspect that was accepted by the Portuguese Civil Code, as will be seen later.

4. 5.3.4 French law, affirmative protection

France was the country that most recently amended the Civil Code on January 28, 2015. The biggest merit of its legislation is that while Austria, Germany and Switzerland seek to protect animals using a negative, ie “animals are not are things, ”she introduces a affirmative protection, stating that animals are living beings endowed with affirmative protection by stating that animals are living beings endowed with sensitivity.

Book II: Goods and Different Modifications of Ownership
Article 515-14
(Created by Law No. 2015-177 of February 16, 2015, Art. 2)

> Animals are living beings endowed with sensitivity. Subject to the laws that protect them, animals are subject to the property regime.[46] (FRANCE, 1804, our translation).

Still in France, the Rural Code and Sea Fisheries of 2010

[46]No original: “Livre II: Des biens et des différentes modifications de la propriété
Article 515-14
(Créé par LOI n°2015-177 du 16 février 2015 - art. 2)
Les animaux sont des êtres vivants doués de sensibilité. Sous réserve des lois qui les protègent, les animaux sont soumis au régime des biens”.

already recognized animals as sentient beings, establishing in its general provisions, in Chapter 4, which deals with the protection of animals, the following:

Section 1 - General Provisions
Article L214-1

Every animal is a sentient being and must be placed by its owner under conditions compatible with the biological imperatives of its species.[47] *(França, 2010, our translation).*

The affirmative protection afforded by the French codification is the result of a process involving civil society, intellectuals and especially jurists, who in 2005 proposed a formula, which was eventually adopted by the French National Assembly. It is emphasized that for real effectiveness such protection will require specific laws designed to create obligations and prohibitions that are truly protective of animals.

History of the change in the French Civil Code

In 2013, the French NGO Fondation 30 million des amies launched a petition on social networks, to be delivered to the French National Assembly, which intended to collect 1 million signatures claiming the change in the legal status of animals in that country. The organization was able to collect 770,000 signatures, supported by 24 intellectuals, including Jean-Pierre Marguénaud[48], a professor at Limoges School of Law and Economic Sciences.

[47]No original: “Section 1: Dispositions générales
Article L214-1
Tout animal étant un être sensible doit être placé par son propriétaire dans des conditions compatibles avec les impératifs biologiques de son espèce”.

[48]Autor do livro *Animaux et droits européens au-delà de la distiction entre les hommes et les choses*, Editions A. Pedone/França/2009, diretor da *Revue Semestrielle de Droit Animalier*, Université de Limoges, Professor de Direito privado e de Ciências Criminais da Université de Limoges, Membro do l’Institut de Droit Européen des Droits de l’Homme-I.D.E.D.H. (EA 3976), Université Montpellier.

The French National Assembly eventually approved the suggested wording - “animals are living beings with sensibility” - known as the Glavany amendment, coming to France to become the leading nation in improving animal legislation.

In the article *La question du juridique statute de l'animal: the irréversible passage of l'étape du ridicule à l'étape de la discussion,* prof. Marguénaud cites opinions of various authors with differing views on the legal nature of animals, and questions the difficulty of applying the amendments mentioned in the French Civil Code. From the reading of his text, it is clear that the jusanimalists, including Marguénaud himself, understand that the creation of a sui generis category for animals that is in accordance with their nature is the most correct. Some scientists who oppose the wording as it stands in the French Code find it absurd to speak of sensitive mobile goods. (MARGUÉNAUD, 2013).

In another work, Marguénaud (2009, p. 50) explains that the protection of animals was born with the Criminal Law. According to him, in France, since the Grammont Law (1850) and subsequent criminal laws, animals are protected by their sensitivity and even against their owner who inflicts maltreatment.

The author asserts and concludes:

> [...] How could animals continue to be classified as movable or immovable, that is, goods subject to the right of property, if the absolutist prerogatives of the owner are limited in their own interests?
>
> [...] animal owners are not owners in the usual sense of the term, because these self-protected living beings are no longer rationally good.[49] (MARGUÉNAUD, 2009, p. 51-52).

---

[49]No original: “Comment ces animaux peuvent-ils continuer à êtrer qualifiés de meubles ou d’imeubles, c’est-à-dire de biens soumis au droit de propriété, si les prerogatives absolutistes de celui qui em est officiellement le propriéterais sont limitées dans leur propre intérêt?
[...] c’est peute-être qu”ils n’en sont plus véritablement propriétaires au sens habituel du terme et que ces êtres vivants protégés pour eux même ne sont plus rationellment des biens”.

> In May 2005, French lawyer Suzane Antoine, lawyer of the Honorary Chamber of the Court of Appeal of Paris and member of the French League for the Rights of the Animals (died March 2015), wrote the report Rapport sur le juridique de l ' Animal, published by the Ministry of Justice of France, the result of the joint proposal of several jurists to deal with the insertion in the Civil Code of a new concept of animal: how to be sensitive. (ANTOINE, 2005).

In this report, the author seeks a way to reconcile the peculiar legal nature of animals with the importance of their economic role for the commercial sector. Faced with the difficulty of creating a specific category for animals within the law, Antoine ponders and suggests:

> In the event that the legislature considers it inappropriate to create an animal category between persons and goods, the animal will continue to be tied to the law of goods. If the animal is to remain in the category of goods, it remains to be classified as "well protected".
>
> In order for an animal to fit into the law of goods, without obscuring its true nature, it must belong to a particularly protected category, especially created for it, within the goods chapter.
>
> The animal would be a suitable protected property, without legal personality, but having a precise legal definition. The term "well protected" would not refer to the protection of property but to the protection of the animal's self-interest. Civil law, in harmony with criminal law, would thus contain the fundamental elements of an animal's legal regime.[50] (ANTOINE, 2005, p. 29).

---

[50] No original: "Dans l'hypothèse où le législateur estimerait inopportun de créer une catégorie animale se situant entre personnes et biens, l'animal resterait alors attaché à celle des biens. Si l'animal devait rester dans la catégorie des biens, il faudrait au moins lui donner une qualification de "bien protégé".
Pour que l'animal reste intégré au droit des biens, sans occulter sa véritable nature, il devrait appartenir à une catégorie particulière, spécialement créée pour lui, dans le chapitre des biens.
L'animal serait un bien protégé appropriable, sans personnalité juridique, mais faisant l'objet d'une définition juridique précise. Le terme de bien protégé ferait référence, non pas à la protection de sa propriété, mais à la protection de son intérêt propre. Le droit civil, em harmonie avec les textes du droit pénal, comporterait ainsi les éléments fondamentaux d'um régime juridique de l'animal".

And it was based on this report that the French Civil Code was modified. The other countries analyzed in this article followed the same line of reasoning and idea. In their Codes, they made clear that animals are protected by particular laws. In addition, they have inserted them in the provisions relating to goods, providing that they are protected by particular laws, but stressing that such provisions apply to them insofar as there is no provision to the contrary.

According to Antoine (2005, p. 30):

> This means that animals are recognized as having a particular place in the legislation. In affirming that animals are not things, this device separates them from the ordinary Law of goods by referring to protective texts that govern them.[51].

4. 5.3.5 Portuguese law

More recently, Portugal, through Law no. 8/2017, of March 3, established a legal status of animals, amending, among other rules, the Civil Code and the Penal Code of that country. Effective May 1, 2017, this law no longer considers animals as "things", which are now recognized as "living beings endowed with sensitivity and object of legal protection". The new legislation covers all animals, especially pets.

> Article 1 Object
>
> This law establishes a legal status of animals, **recognizing their nature as living beings with sensitivity,** amending the Civil Code, approved by Decree-Law No. 47 344, of 25 November 1966, of the Code of Procedure Civil, approved by Law No. 41/2013, of June 26, and the Penal Code, approved by Decree-Law No. 400/82, of September 23.
> Article 2 Amendments to the Civil Code

[51] No original: “Cela signifie que les animaux sont reconnus comme ayant une place particulière dans la législation. En disant que les animaux ne sont pas des choses, ces dispositions les écartent du droit ordinaire des biens en rappelant l’existence des textes protecteurs qui les régissent”.

> Articles 1302, 1305, 1318, 1323, 1733 and 1775 of the Civil Code [...] are replaced by the following:
>
> "Article 1302
>
> [...]
>
> 1 - Corporeal, movable or immovable things may be object of the property right regulated in this code.
>
> **2-may also be subject to the right of property animals,** under the terms of this code and special legislation. (PORTUGAL, 2017, our emphasis).

With regard to pets ("pet animals" under the law), the law states that they must be "entrusted to one or both spouses, taking into account, inter alia, the interests of each spouse and the couple's children and also the welfare of the animal "(Article 1793-A), revealing the same concern given to the children of divorcing or divorcing spouses.

The characterization of "being sensitive" expressed in his art. 1 is a breakthrough in relation to the European animal coding addressed here and is a stimulus for the realization of jusanimalism.

4. 6 Brazilian Law

Current Brazilian animal legislation reveals a delay in relation to the legal provisions of Austria, Germany, Switzerland, France and Portugal on the same subject. In various provisions of our Civil Code, animals are treated as things. It is necessary to advance.

To date, there are two bills under consideration in Congress with proposals for recognizing animals as sentient beings: PL 6799/2013 and PL 351/2015.

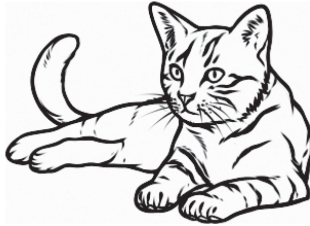
Regarding some European legislation and the bills that are being processed in Brazil, the fact that animals are recognized as “non-objects / things” or as “sentient beings”, even though inserted among goods, this is already a small step towards a change of legal paradigm in relation to Animal Law. Here in Brazil, wildlife already has a special law that protects it, making animals especially protected property, although animals of native wildlife are not assets subject to real rights.

Although CR / 88 grants animals fundamental rights and Law no. 5.197 / 67 regulate the protection of wild animals, with both species and ecosystem conservation being provided, in fact animals as individuals are only protected by criminal law. Property rights in relation to animals are currently limited only by criminal law, which protects them from abuse.

Thus, the legal recognition that animals are sentient beings with sensitivity, and / or the express recognition in the law that not things, and that they have a sui generis juridical nature, would undoubtedly boost the effectiveness of animal laws. animal protection. They would also encourage and support the judiciary to apply the laws from the animal point of view, creating new paradigms for interpretation in the field of civil law. Just as in the context of Environmental Criminal Law peculiar principles that differ from classical Criminal Law apply, it is time for classical Civil Law to wrap new principles in favor of animals. The interests of animals must be taken into account in interpreting and enforcing laws so that they address not only humanity but also biodiversity.

It is clear that changing the legal status of animals is urgent and necessary for them to be treated as living beings; either by affirmative protection, recognizing that animals are sentient living beings, or by negative protection, by stating that animals are not things and have sui generis legal nature. The legal recognition that animals are subjects of de-personalized law will definitively rule out the interpretation that animals are the subject of law. Science recognizes the sentience of animals and legal science must follow the evolution of other sciences.

Chapter 5



CRUELTY AGAINST ANIMALS

5.1 MORAL CODES AND THE SACRALIZATION OF ANIMALS

The earth, our mother

Ancestral religions viewed the universe as a great mother. The great goddesses represented the Mother Earth or the generating principle of life. The ability to conceive a new human life, to give birth, to produce milk, and to bleed through the phases of the moon, inspired fear and reverence. Only she had the power to produce and nourish life. Without it the new life would be extinguished.

In Babylon the great goddess is Ishtar, the mother of Tammuz. Astarte is worshiped by the Hebrews, Phoenicians, and Canaanites, according to the liturgy. In Egypt we have Isis. In Phrygia we have Cybele, later identified with the goddesses Rea, Gea, Demeter, and their Roman equivalents, Tellus, Ceres and Maia. But the most famous is Artemis, known by the Romans as Diana, goddess of hunting and the moon.

The worship of the Great Mother was the most widespread religion in primitive societies.

The domestication of plants and animals, the first step towards the construction of complex human societies, is supposed to have implied the fragmentation of the sacralized view of nature.

The increase in population led the human being to "tame" and nomadism brought advantage to man. With the discovery of the link

Between the sexual act and fertilization, a true cult of the phallus began, which resulted in the origin of patriarchy and the desecration of nature.

With the eruption of Hebrew monotheism and its unfolding in Christianity and Islam, the initial step was taken towards the desecration of nature and its conception as a great mother.

In the mystical world the feminine energy of the universe is represented by the Andes, while the masculine energy is represented by the Himalayas. , negative and positive poles of the planet and regions of large magnetic forces. This feminine energy so deeply touched the inhabitants of the Andes that this people (the Incas) identified our Earth as Pachamama, the mother of all life, the exalted deity of the world, the one who teaches us to love everything unconditionally, and shows us the I work as a very high virtue, because by loving everything and building with work we become wise.

Mircea Eliade, one of the greatest thinkers of our time and an expert in comparative study of religions, showed in "The Sacred and the Profane" that the peoples called primitives by evolutionists sacralized all aspects of reality: time, space, non-human nature, human societies and the individual himself. For them nature was an entity consisting of beings organically linked together and impregnated with particles of single deity (pantheism), or who had soul (animism) or even inhabited by deities (polytheism).[1]

Primitive peoples and shamanism

Shamanism is a generic name of Siberian origin to designate the practices of healers and sorcerers of archaic cultures - it is one of the areas that has received the attention of modern researchers from various fields. Shamanism is an extremely archaic cultural, social and spiritual phenomenon. The oldest shamanic manifestations date from the Paleolithic era (the hunting rituals in the paintings). He survives almost

[1]ELIADE, Mircea. O sagrado e o profano. Lisboa: Livros do Brasil, s/ d.

unchanged in Asia, Oceania, the Arctic (Eskimos) and mainly in Africa and the Americas.

The animal has always played a crucial role in shamanism. In the early archaic plan the animal and the human being did not differ, they were as one entity. This can be seen from cave paintings such as the cave Très Frères in France (25,000 ° C.) Here you can see a shaman dressed in the skin and head of a deer, the tail of the animal passing between the legs The innumerable representations of the great Goddess, Lady of the beasts and the legend of the first shaman, seal this communion between man and beast.

The worship of the Great Goddess is long before writing and we find cave paintings showing bison, horses, bears, deer and dozens of other animals. They are central to hunting rituals expressing thanks to the sacred animals that constitute a powerful source of life, the very life energy of the eater. At this stage there were also frequent representations of the Great Goddess as Lady of the Beasts (with their sacred animals), as Mother Owl Goddess, or as Madonna with her son on her lap.

The woman was believed to be pregnant with menstruation blood. That is why blood sacrifices were always offered to Mother Earth to ask for plenty of food. Until millions of years later the blood sacrifice was exchanged for self-sacrifice (guilt).

In archaic Greece, the image of the Great Animal Mother fed little Zeus as a snake, sow, or cow. Rhea - Cybele, to the Romans, is represented seated on a throne and flanked by animals.

The Siberian buriates and yachts tell us the legend of the emergence of the first shaman, which would have been generated by the eagle (symbol of conscience) and a woman (identified with freedom). Therefore, from the beginning the shaman is a mixture of divine, human and animal.

The power of shamans relates directly to their totems, or in other words, their animal allies. For a shaman a man is no better and no more conscious than an animal. The shaman offers the animal's spirit respect and devotion, while the animal offers guidance and assistance. The animals, as well as the stones, for the

Shamans have powerful spirits, each with their own talents, and are qualified to help people with specific tasks. One of the main gifts offered by the power of animals to the shaman in his tasks is protection and guardianship. They often discover their power animals by allowing them to surface during a spontaneous dance or by having a view of the animal.

For shamans, the crises of the world today are no surprise. They are the result of the imbalance caused by lack of respect, and this imbalance ultimately leads to the loss of power for a shaman.

Shamans teach that as one learns to communicate with stones and animals, one should keep in mind that the key to success is respect. To be successful, we need to cooperate with the environment.

For the Andean shamans of this end of the century, since 1992 a new era has begun for the world, with the arrival of the tenth Pachakuti. Pachakuti means "what transforms the earth." He heralds the beginning of a new era of transition and change. And it is characterized above all by the presence of the Mother. And, according to the Incas, this does not mean that the woman will dominate the world, but that the man will become increasingly aware of the need to bring the feeling of mother in his heart. . For indeed, man would need no other law than love, since he gives us the awareness of reciprocity and service, which must be the vice of being.

Sacralization of animals in Egypt

Although the earliest attempt to construct monotheism was attributed to Pharaoh Aquenaten in the fourteenth century, who as a result of the fusion of the gods Ra and Amon, both represented by the sun, attempted to impose the god Ato, the anthem on Ato, composed. In his view, he leaves no doubt that he was ecumenical and had a great love for nature: “Everybody does his task / All animals are satisfied with their pastures; / Trees and plants flourish./ Birds that fly from their

have their wings spread in praise of their Ka. / All animals jump on their feet / All that flies and shines / Live when you came to them./ Ships travel north and south / For all the way opens before you / The fish in the the river is cast before your face / Your rays are in the midst of the great green ocean. / How many things you have done! / They are hidden from the face of man./ O only God, no other is equal to you! / You yourself created the world according to your will, / While you were still alone: ??/ all men , cattle and wild animals, / everything that walks on the earth on its own wings. "[2]

In Egyptian civilization we find frescoes dealing with hunting on the Nile and feeding animals on farms. Among the members of Aegean civilization, bullfighting was common amusement, though practiced in a way that was more dangerous to man than to the bull.

But it is in Egypt itself that we find the sacralization of animals as happened with the cat. In Egypt the cat was considered a sacred animal, which received curious tributes after death. A temple was erected for the cat goddess Batest. She was depicted with a woman's body and a cat's head, and she held the ballerinas' musical instrument in one hand and the lioness's head in the other, which meant that at any time she could morph into one of the three lioness goddesses - Sekmet, Pekhet and Tefnut. . The law was very strict with those who attacked cats. The dead cats were embalmed and offered to Batest. Cat cemeteries were found by archaeologists on their excavations in Egypt.

The temple of Batest was described by the Greek historian Herodoto, who traveled to Egypt in 450 AD. This luxurious temple was located in the town of Bubasti, on an island surrounded by the Nile canals.

Some attribute this appreciation to the cat for its role as guardian of the granaries in Egypt. Others seek deeper reasons, giving the cat the power to exorcise the environment. The

---

[2]Apud Soffiati Arthur. As religiões da crise ambiental da atualidade. Datil. Inédito. Esta versão foi publicada em Pinski Jaime. 100 textos de história Antiga. São Paulo: Hucitac, 1971.

Egyptian temples were guarded by cats, to whom the sensitives attribute paranormal powers, which should be known to the Egyptian priests, who were well acquainted with the laws of physics and the art of magic.

The Egyptians worshiped animals and various figures of theriomorphic deities are found in the Egyptian temples. The pictures mean that power can be embodied in many ways. Semi-human representations of gods express a thought that accepts man without rejecting the animal.

The discovery of the "Book of the Dead" reveals elements that bring the ancient Egyptian ethical-legal order to morality and law. It contains several rules that require respect for everything that lives:

“As soon as he attains salvation, man, coming into the presence of the deities, should tell them that he did not cause suffering to others, did not use violence toward his family, did not substitute justice for injustice, did not cause hunger, did not kill, did not commit sins against nature with other men ”(El Libro de los Muertos, ed. Cast. Barcelona, ??1989, p. 147-151.

The animal in Hinduism

In India animals are considered sacred and Hinduism adopts the idea of ??a panentheism (God is in everything), unlike pantheism (God is everything).

“Those who worshiped the sun were no more primitive than those who believed in finding it in an idol of stone or gold. No longer were those who sought God zealously and worshiped the frog, by its sense of fertilization, the snake that has the poison, the life and gets its body in a circle, which is itself the infinite mandala of the universe. Those who worshiped the black panther, the wolf, or the white elephant are no more wrong than those who humanized him by revering the avatars, the prophets, and the saints. God is everywhere, in all forms, because He is the spirit of the earth and the only energy born out of nothing in the absence of the whole,

being itself life. "[3]

The Vedic Code of India is based on the unity of life. For Hinduism the only difference that exists between animals and humans is the degree of evolution. Avatars, incarnations of gods, come in animal forms: *matsya,* or fish, *kurma,* or tortoise, *vararha,* or boar, *narasimha,* or lion-man, *vamana,* or dwarf. Lord Ganesha is associated with the elephant, Shiva with the serpent, Durga with the Lion, Sarasvati with the peacock, and so on. Many animals are sacred, like the cow. The Vedic Code warns that anyone who kills and eats a cow will be reborn as a cow and will be killed as many times as the dead animal's hair. In its cosmic view, Hinduism presents itself as a way of salvation not only for human beings but for all living beings.

Bhagavad-Gita, another Hindu holy book, contains 250,000 verses, which describe the great war between the Kurus and the Pandavas for the possession of Hastinapu (a symbolism of the battle between good and evil). In it Krishna dialogues with Arjuna and presents himself as the father who gives the seed - the life that lives in everything.

The Vedic Code, *Manu-samhitã,* preaches that anyone who kills someone will have to be killed. Similarly, there are other laws that dictate that a person cannot kill even an ant without being held responsible for it. As we cannot create we have no right to kill any living entity. Therefore, the laws made by men that distinguish between killing a man or an animal are imperfect. According to God's laws, killing an animal is as reprehensible as killing a man.

The book of *Dharma*, which contains a set of moral laws, says that it is not enough to avoid evil to escape *samsara* (the law of action and reaction); it takes spiritual activism contained in sweetness, generosity, no lie. Merit is the product of commitment

---

[3]MOLINERO, (Yogakrishnanda). Terralogia, ecologia mágica. Mandala - livreiros/ editores importadores. Ltda. São Paulo, sem data, pg. 11.

man's totality with fellow beings and with all creatures. The book of *Manu* says that he who does not commit violence against another being has merit.

Still in India, in the 6th century BC, together with Buddhism, the Jain tradition was founded, founded by Mahavira Vardhamana. The members of the Jain movement, to which Gandhi belonged, base their lives on nonviolence, are vegetarians, and reverence nature to the extreme. In their oath they renounce the destruction of living beings:

> "I renounce all destruction of living beings, whether subtle or gross, walk or stand still. I will not kill living beings myself, nor will I induce others to this, nor consent to such acts. As long as I live, I will confess and blame myself, repent, and exempt myself from these threefold motorcycle sins, that is, acting, commanding, consenting, past, present, and future, in mind, in body, and in word. "[4]

There are several sanctuaries of Jainism where injured animals can be treated. In the village of Deshnoke, in the Karni Mata temple, rats roam freely while devotees pray. Temple priests and rats eat in the same bowls and drink water in the same place. Priests say that rats are messengers of the gods and that the priests of the temple, when they die, will reach liberation by being born like rats. When rats die, they will be reborn as priests.

In the light of Bhagavad-gita (16.1.3) *ahimsã,* or nonviolence, means not to hinder the progressive life of any being. Animals are also progressing in their evolutionary life, transmigrating from one category of animal life to another. The broadest foundation of the idea of ??ahimsã is that all creatures have an identity to each other as a form of one divine and cosmic reality. In this sense,

[4] JAIN, J.C. *Jainismo*. Vida e obra de Mahavira Vardhama. São Paulo: Palas Athena, 1982.

any violence against any creature breaks unity.

The animal in Buddhism

In the 6th century BC, Buddhism, based on the teachings of Siddhartha Gautama, the Hindu prince who lived in the 6th century BC, and became known as the Buddha, the Enlightened One, already preached compassion and mercy for all living beings. Buddha commanded to cherish in the heart boundless benevolence to all that lives. He said that he practiced benevolence in order to contribute to the happiness of all beings.

The five fundamental precepts of Buddhism are: not to kill or hurt anyone, not to indulge in lust, not to lie, not to steal, and not to be intoxicated with numbing drinks. Buddha always said that one should cherish in the heart boundless benevolence towards all that lives and that all beings seek their own happiness. He who mistreats violence seeking his own happiness will not enjoy after death. Here is an excerpt from the Pitakas, when Buddha was talking to Kutanga, prior of the Brahmins, when he asked the enlightened why he despised religious rites and sacrifices:

> “The sacrifice of personality is worth far more than the immolation of the people. Anyone who sacrifices to the gods their evil desires and vile passions understands the futility of bathing the altar's wings in blood of innocent animals [...] anyone can take life, but is unable to give. All creatures love life and fight for it. Life is a divine gift, dear and grateful to all, even the humblest; therefore it must be respected by every godly man, for godliness makes man tender with the weak and noble with the strong. Man begs the mercy of the gods and has no mercy towards the animals, for which he is like a god. All living things are bound together by kinship, and the animals that you kill have already given you the sweet tribute of milk, the soft wool, and put their trust in the hands of those who cut them off.

No one He can purify his spirit with blood, for if the gods are good, their blood cannot be pleasant to them, and if they are evil, it is not enough to bribe them. On the innocent head of an animal it is not possible to lay the weight of a single hair of the evils and errors to which each must respond personally, because each must be accountable to himself, according to the unchanging arithmetic of the universe. It distributes good for good and evil for evil, giving each one its measure according to his actions, words and thoughts, and vigilant, accurate, unchanging, makes the future the fruit of the past. the earth if all beings were united by the bonds of benevolence and fed only on pure food without bloodshed. The golden grains that are born for all would feed and give abundance to the world. "[5]

The essence of Buddha's teachings is written in three books, called *Tripatakas Buddhist Canons*, which were written by his disciples. The various Buddhist sutras emphasize the cosmic view of the universe, as evidenced by the Diamond Sutra, in which Buddha talks to his disciple Subhuti:

"I must guide all living beings, those born from eggs, those born from the womb, those born spontaneously, those who have form and those who have no form, those who have the ability to abstract and those who have no ability. to abstract, and all living beings imaginable, finally, to the state of eternal tranquility and without suffering. "[6]

The animal in Christianity

Two thousand years have passed since a man named Jesus taught a law to Western civilization that provided for the protection of Mother Earth and animals. Some manuscripts dating from the 3rd

[5]SING, Chiang. *Mistérios e magias do Tibet*. Rio de Janeiro: Freitas Bastos, p. 169 e 170.
[6]TEXTOS budistas e zen-budistas. São Paulo: Cultrix, 1967.

century AD were found in the secret archives of the Vatican in Aramaic and the Royal Archives of the Habsburgs in Slovenian, containing teaching of the Essenes. They were translated and published in 1928 by Edmond Bordeux Szekely, entitled The Essene Gospel of Peace. The author has a doctorate in philosophy at the University of Paris and obtained other degrees at the universities of Vienna and Leipzig. He was also professor of philosophy and experimental psychology at Cluj University, one of the main cities in Transylvania. The book speaks of the law that governs the fellowship garden and the duty to protect animals:

> “Jesus said, 'Honor your Heavenly Father and your Earthly Mother, and obey his commands, that your days may be long upon the earth.' 'And immediately afterwards was commanded,' Thou shalt not kill, for life is. given to all by God, and what is given by God no man can take away. For verily I say unto you, From one Mother proceedeth all that liveth upon the earth. Therefore, who kills, kills his brother. And the Earthly Mother will leave him and deny her her life-giving breasts. And he will be shunned by his angels, and Satan will dwell in his body. And the flesh of dead animals in your body will become your own grave. For verily I say unto you, he that killeth killeth himself, and he that eateth the flesh of dead animals eateth the body of death. For in their blood every drop of their blood becomes a poison; He will stink in their breath. in their flesh shall their flesh boil; in their bones their bones will whiten; in their intestines their intestines will rot; in their eyes their eyes will scale; In their ears their ears will be filled with wax. And their death will be their death. For only in the service of your Heavenly Father are your seven-year debts forgiven in seven days. Satan, however, forgives you nothing and you will have to pay him everything. An eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot; burn by burn, wound by wound; life for life, death for death. For the wages of sin is death. Do not kill or

eat the flesh of your innocent prey, so that you do not become slaves of Satan. For this is the path of suffering that leads to death. But do the will of God, that his angels may serve you in the way of life. Obey therefore the words of God: See, I have given unto you all the seed-producing herbs on the face of the earth, and all the trees, wherein is the fruit of a seed-giving tree; and it shall be your flesh. And to all the beasts of the earth, all the birds of the air, and all that creeps upon the earth, and where there is a breath of life, I give all the green herbs to be food. And the milk of all things that move and live upon the earth shall be food unto you; and as I gave them the green herbs, so will I give you the milk. But you shall not eat the flesh nor the life-giving blood. I will ask, surely of your spouting blood, the blood in which your soul is; I will demand accounts of all the murdered animals, and of the souls of all the murdered men. For I, the Lord thy God, a strong and jealous God, I visit the iniquity of the fathers that is upon the children unto the third or fourth generation of them that hate me; and I show mercy to thousands who love me and keep my commandments. Love the Lord your God with all your heart, with all your soul and with all your strength: this is the first and greatest commandment. And the second is like him: Love thy neighbor as thyself. No other commandment is greater than these. '

And after these words all fell silent, except one of them who shouted, "What shall I do, Master, if I see a fierce animal tear my brother to pieces in the forest?" Will I let my brother perish, or kill the ferocious beast? Am I not thus breaking the law? '

And Jesus answered, ‘It was said before: all the beasts that move upon the earth, all the fishes of the sea, and all the birds of the air, are given to your power. Verily I say unto you, Of all creatures that live upon the earth, God He

created only man in his own image. Therefore beasts to man, and not man to beasts, You will not be breaking the law if you kill a fierce animal to save your brother's life. For verily I say unto you, man is more than animal. But whoever kills an animal for no reason, though the animal has not attacked, just for the sake of killing, or for its flesh, or for its skin, or even for its prey, will be doing a wrongdoing, for it itself has become an animal. fierce. That is why its end will be the same as the end of ferocious animals. '

Then another said, 'Moses, the greatest in Israel, allowed our ancestors to eat the flesh of clean animals, and only forbade the flesh of unclean animals. Because of this, why do you forbid the flesh of all animals? Which of the laws comes from God? Moses' or yours?

And Jesus said, God gave Moses ten commandments through your forefathers. These commandments are hard, your ancestors said, and they could not keep them. When Moses realized, he had compassion on his people and did not want him to perish. [...] So Moses broke the two tablets of stone on which the ten commandments were written, and gave the people ten times ten instead.

Jesus continued: 'God commanded your elders, Thou shalt not kill. 'But they had a hardened heart and they killed. Moses then wished that they would at least not kill men, and allowed them to kill animals. And the hearts of your elders hardened even more, and they killed men and beasts alike. But I say unto you, Kill not men, neither beasts, nor the food that goes into your mouth. For if you eat living food, it will give you life, but if you kill your food, the dead food will kill you too. For life comes from life, and from death only death comes. Whatever kills your food kills you the

body too. And everything that kills your body kills your soul. And your body becomes what your food is, as your spirit becomes what your thoughts are. "[7]

The *Essene Gospel of Peace*, although not adopted by the Roman Apostolic Catholic Church, remains stored in the Vatican library. It is a testimony that back then the protection of the environment and animals was part of the moral rules. In the introduction to the book, Edmond Szekely explains that the existence of both versions of this gospel is due to the Nestorian priests, who under the pressure of the hordes of Genghis Khan were forced to flee from the East to the West, taking with them all the ancient scriptures. and all icons.

The ancient Aramaic texts date from the 3rd century AD, while the old Slovenian version is a translation of these texts. Archaeologists have not yet been able to reconstruct the exact manner in which the texts came out of Palestine into the hands of Nestorian priests in the interior of Asia.[8]

The animal in Islam

Around the 500s, Islam, based on the holy book Quran dictated by Mohammed Muhammad, also spoke of animal protection. The Arabs say that Archangel Gabriel appeared to Muhammad in dreams and told him that he was an envoy of God. He came to live in meditation and prayer, and convinced himself that he was indeed a predestined to bring justice to men. Muhammad came to receive revelations that were called in Arabic recitations, or quram. Altogether they were called Al Quran and hence the name of Quran or Quran. It comprises a total of 114 surates, with 6262 verses. The Koran has become the common reference point of Islamic thought. It contains the following animal protection precepts:

[7] SZEKELY, Edmond Bordeaux. *O evangelho essênio da paz.* São Paulo: Pensamento, 1981, p.40-43, excertos do prefácio.

[8] SZEKELY, Edmond Bordeaux. *Op. cit.*, p 13.

“The great Prophet Muhammed was asked by his companions whether kindness to animals would be rewarded in later life. He replied: Yes, there is a meritorious reward for kindness to every living creature (Bukari). ”

Animal Status - Quran 6:38: 'There is no animal on earth, or a bird that flies with its wings - but they are communities like you.'

Holiness of life — Quran 6: 152 and 17: 3: (Al-Tormidhi and Al-Nasai) — The Holy Prophet said: he who kills even a sparrow or a minor being without a justifiable reason will be responsible to Allah: 'when Asked what would be a justifiable reason, he replied: 'shoot down - food - not kill and discard the corpse.'

General Treatment — Santo The Holy Prophet told a prostitute that on a hot summer day, he saw a thirsty dog prowling around a waterhole with his tongue sticking out. She bent down, took water from the well and gave the dog a drink. Allah has forgiven all his sins for this one act of charity (Muslim). ’

'The Holy Prophet recounted the vision in which he saw a woman being punished after death because she confined a cat during her life on earth without giving him food and water, or even leaving him free to go out for food (Muslim) .

Physical Injury — Santo The Holy Prophet forbade the beating of animals as well as branding them. He once saw a horse marked on his face, and said, May Allah condemn the one who marked the animal.

Beasts of burden — 'The Holy Prophet passed a camel that was so wan that his back was almost in the womb, and said: Fear God in this animal — ride him in good health and free him from work while he is not. in good health (Abu Dawud). ’

Captivity — ‘The holy Prophet said: It is a great sin for

man to imprison the animals in his power. '

Vivisection - 'There are many Islamic laws prohibiting experiments (Al muthla) on a live animal. Ibn Umar said that the holy prophet condemned those who mutilated any part of an animal's body while alive (Almad and other authorities).'[9]

The animal soul and spiritism

Although the attempt to communicate with the dead dates back to ancient times, it was Allan Kardec who formulated the essential principles of scientific spiritist doctrine. His birth name and Leon Hippolyte Denizar Rivail, born in Lyon in 1804, possessed of a vast culture, was a teacher and pedagogue. He became the doctrinal chief of a science dictated by spirits, and whose teachings he published in 1857 in the "Spirits' Book," which he signed with the name of Allan Kardec. He wrote other books, such as the "Mediums' Book" and "Gospel According to Spiritism".

Spiritism believes in the law of karma and the gradual evolution of the spirit. He is defined in his gospel as "a new science that comes to reveal to men, by undeniable proof, the existence and nature of the spirit world and its relations to the corporeal world."[10] According to Kardec, spiritualism offers us the possibility. to communicate with the dead, who through the mediums, impart knowledge to the living.

In the book of spirits Kardec says that there are three kingdoms: minerals, plants, animals and men. He confirms that animals, besides instincts, possess intelligence of material life and their own language. Kardec states that the animal survives the body, although its soul is different from man's soul, retaining its individuality,

---

[9] Fragmentos do Alcorão selecionados por Al-Hafiz B. A-Masri. The (Sunni) ex-Iman-Sha Jehan Mosque, Woking, Surrey, England. Datil, inédito.

[10] KARDEK, Allan. O evangelho segundo o espiritismo. Livraria Allan Kardec Editora. São Paulo, pg 3.

but without self-awareness. Dead the animal, its soul is in a kind of erraticity, is then classified by forces of things and that is why for him there is no atonement (not subject to the law of Karma). For Kardec, however, the spirit does not retroact and man could not reincarnate into an animal body.[11]

Vast is the literature describing the telepathic and premonitory powers of animals and their appearance after death. In your book Do animals have souls? Ernesto Bozzano reports 130 cases from magazines and scientific books of metaphysical and psychic studies of animal materialization, postmortem vision, telepathic hallucinations collectively perceived by animal and man, numerous appearances of animals in symbolic and premonitory form, and supranormal phenomena. with animals.

In telepathic phenomena animals not only appear to play the role of percipients, but also of agents. This leads us to conclude by the existence of an animal subconsciousness, depositary of the same supernormal faculties of the human subconsciousness.

Appearances of animal forms are generally identified with those of animals that lived and died in the locality, and often the precipitators were unaware that these animals, seen on those occasions, had ever existed.

Bozzano concludes that life as it manifests itself in an animal is but the outward expression of a spirit that is incarnated therein in potency, and identical in essence to the spirit manifested in the lowest human races, past or contemporary, as well as in the most civilized races today.

There are several books that report apparitions of animals in spiritist sessions in which their owners were present, or appear in the company of the dead owner. There is also talk of the appearance of the soul of animals in photos. Many seers describe visions they have had on the spiritual plane where animals go after disembodiment. In

---

[11] KARDEC. Allan, op., cit, pg. 255 a 264.

visions, achieved in offshoots (exiting the physical body), domestic animals are seen in the field (cows, oxen, sheep, horses, donkeys, tigers, lions, jaguars, giraffes, dromedaries, camels, and birds) living in peace and harmony. not only among themselves, but with other spiritual entities.

If the vision of human souls is a good demonstration in favor of human survival, it can only be a good demonstration of animal survival.

"In his book" The Genesis "in the chapter" Destruction of Living Beings for Each Other "Kardec states that" this struggle is waged for overriding material satisfaction - nourishment. "In man, material need and moral feeling are counterbalanced, and he then fights not for nourishment but for the satisfaction of his pride, his ambition and need to dominate, and then destroys it. But when the moral sense prevails he loses the need to destroy and man goes on to fight only intellectually, against difficulties and no longer against other beings. "[12]

5.2 FIRST PROTECTIVE ANIMAL LEGISLATIONS

The intellectual progress developed during the eighteenth century resulted in the emergence of some protective laws of animals in the nineteenth century. It was from Britain that the first laws to that effect came out.

The first bill that came into being was to prevent the fighting between bulls and dogs, introduced in the House of Commons in 1800. George Canning, Minister of Foreign Affairs, deemed it absurd and she was rejected on the grounds that it would have to be banned. then boxing.[13] The subject deserved an editorial in The Times, which condemned the law's intrusion into property rights and the way people had their time.

[12] KARDEC, Allan. Op. Cit. pg. 67 e 68.
[13] SINGER, Peter. *Liberation animal*. México: Cuzamil, 1985, p. 318.

In 1821, Richard Martin made a bill to prevent horse mistreatment. This proposition was equally rejected.

Only in 1822 did Martin triumph with the passage of the first animal protection law. It prohibited anyone from mistreating the animal owned by someone else. For the first time cruelty to animals became a punishable offense.

As major stakeholders, animals could not postulate in court, the law was not being fulfilled. The first animal protection society, the *Royal Society for the Prevention of Cruelty to Animals*, was founded in England under the auspices of Queen Victoria. It arose to postulate in law the fulfillment of the law.

But it was mainly in the twentieth century that the term subject of law has broadened its scope, and countries have passed successive animal protection laws.

The pilgrim, the slave, the servant, the bastard, the citizen, all became subjects of rights. The law makes the distinction between blacks and whites disappear. The woman emancipated herself. The children were protected.

It is natural, then, that the same man who became sympathetic to his fellow men had sympathized with the suffering of animals and passed laws for their defense.

Since the end of the last century, and especially the beginning of this century, the legislation of several countries has come to include the protection of animals. The first references to the subject, which did not stop evolving, were:

- Lebanese Republic (under French mandate) — Decree of 2 March 1925, regulating animal protection.

- Italy — Law of June 12, 1913: regulating animal protection confirms and expands the provisions of the Penal Code, providing for cruelty, overwork, torture, scientific experiment, pack animals, hunting migratory birds and mistreatment.

● Belgium — Law of 2 March 1929: which deals with cruelty, ill-treatment, blind singing birds, painful and superior work, animal fighting, vivisection.

Belgian Penal Code — arts. 557, § 6, which provides for maliciously killing and injuring animals:

— "Royal Decree of June 28, 1929, which provides for the transportation and slaughter of animals.

— "Royal Decree of October 25, 1929, which deals with insectivorous birds."

— "Royal Decree of November 20, 1931, which provides for the carriage of horses by rail.

● Luxembourg — Penal Code, arts. 538 to 541 and 557 to 561, which deals with animal poisoning and river pollution, animal slaughter, vehicle drivers, cruelty, mistreatment, animal fighting, cruel shows.

● Spain — Royal Order of December 26, 1925, which considers that in every civilized country efforts should be made to treat animals well:

● Portugal — The Decree of 16 September 1886, which was incorporated into the Penal Code, on poisoning, pack animal, consumable animal, killing and injuring animals.

- Decree 5,864, of June 12, 1919, which refers to excessive work.

● Argentina — Since 1891, Law 2,786 of August 3, which protects animals.

England — Since 1809, Lord Erskine has tried with Parliament to obtain justice in favor of animals, but it was in 1822 that Richard Martin obtained the first act in favor of animals.

The first acts in England were 1849 (domestic animals), 1854 (dogs), 1876 (vivisection), 1906 (prohibiting the use of dogs and cats for scientific experiments), 1921 (pigeon shooting), act 1925 (imprisonment of bird in insufficient cages).

● Germany — The first law, on May 26, 1926, punishes with imprisonment and fine those who treated the animal cruelly.

● Austria — The punishment for those who mistreat animals in public dates from 1855.

Hungary — Fundamental Law XI of 1879, in § 86, punished with imprisonment and fine anyone who subjected animals to abuse.

● Sweden - Since 1988 he has been at the forefront of animal protection with *The Animal Protection* Act of 2 July. Swedish law deals with the welfare of consumer animals, in addition to pet animals, animals used for running and exhibition, and animals for scientific purposes.

This achievement is largely due to child writer Astrid Lindgren, who published a series of satirical allegories revealing the plight of farm animals. In one story, God visits the earth after a prolonged absence and is deeply disappointed by what he sees.

With the new Act, flocks are given the right to graze, chickens are not given hormones and drugs, and breeders are given 10 years to release them from prisons. Kills must be humanitarian. Anyway it's one of the best animal laws in the world.

● Switzerland — Some cantons have been punishing animal abuse since the end of the last century.

Today, the Federal Law of March 9, 1978 is one of the most advanced on the planet. It deals with the scientific experiments involving animals, the animal housing system, the animal detention

trade, animal transport, animal transport and slaughter.

Criminal provisions concern animal maltreatment, neglect, cruel slaughter, the promotion of animal fights and the conduct of painful experiments, which are crimes punishable by imprisonment and a fine. Criminal proceedings and trials are the responsibility of the cantons. This Law was regulated by the decree of May 27, 1981.

- France — The Grammont Law of July 2, 1850 and the Criminal Code of 1791, which characterize as a crime the poisoning of animals belonging to third parties and attacks on beasts and watchdogs in another's territory, can be cited. France currently recognizes animals as sensitive living beings.

Since then the protective legislation of animals has continued to evolve and improve every planet.

5.3 CRUELITY AGAINST ANIMALS IN BRAZILIAN LEGISLATION

The first Brazilian legislation regarding cruelty to animals was Decree 16.590 of 1924, which regulated the Houses of Public Amusement. It prohibited the racing of bulls, claws and bulls, and roosters and canaries, among other amusements that caused suffering to animals.

On July 10, 1934, at the inspiration of the then Minister of Agriculture, Juarez Távora, President Getúlio Vargas, head of the Provisional Government, promulgated Federal Decree 24,645, which established animal protection measures. It had the force of law, since the Central Government called to itself the legifiable activity. On October 3, 194l, Decree-Law 3688, Law of Criminal Misdemeanors (LCP), which, in its art. 64, prohibited cruelty to animals. At the time, a controversy arose over whether or not the LCP revoked Getúlio's decree. The case law has been firmly

that "in short, the precepts contained in art. 64 comprise almost all of those animal cruelty modalities contained in art. 3 of Decree 24.645 / 34. "

With the upward march of culture and progress in Brazil, and animal protection being linked to various ministries, new laws became necessary, such as the Fisheries Code (Law 221, February 28, 1967), Fauna Protection Law (Law 5,197 of January 3, 1967, as amended and Law 7,653 of February 12, 1988), Vivisection Law (Law No. 11,794 of October 8, 2008), Law of Zoos (Law 7,173 of 14 Law of Cetaceans (Law 7,643 of December 18, 1987), Law of Inspection of Animal Products (Law 7,889 of November 23, 1989), Law of Environmental Crimes (Law 9,605 of February 12, 1998,).

In the criminal sphere, the law makes no distinction between wildlife, exotic or domestic, when establishing its scope of protection:

The Law no. 9,605, of February 12, 1998,[14] subdivided environmental crimes into five sections, namely: crimes against fauna (arts. 29-37); crimes against flora (arts. 38-53); pollution and other crimes (arts. 54-61); crimes against urban planning and cultural heritage (arts. 62-65); and crimes against the Environmental Administration (arts. 66-69).

The active subject of environmental criminal offenses may be any natural or legal person. The taxpayer is currently all collectivity, after the Superior Court of Justice has canceled Precedent no. 91 / 93.[15]

---

[14] BRASIL. *Lei n. 9.605, de 12 de fevereiro de 1998*. Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l9605.htm>. Acesso em: 28 jun. 2013.

[15] BRASIL. Superior Tribunal de Justiça. *Súmula n. 91, de 21/10/1993*. Compete à Justiça Federal processar e julgar os crimes praticados contra a fauna. DJ 26.10.1993 - Cancelada em 08/11/2000. Disponível em: <http://www.dji.com.br/normas_inferiores/regimento_interno_e_sumula_stj/stj__0091a0120.htm>. Acesso em: 28 jun. 2013.

The criminal action is the exclusive initiative of the Public Prosecution Service, as it is the offense of public criminal action.[16]

The main references to fauna in Law no. 9,605 / 98 are in the following articles:

▪ Aggravating penalty application

Art. 15: Are circumstances that aggravate the penalty, when they do not constitute or qualify the crime:

[...]

m) employing cruel methods for slaughtering and capturing animals.

---

[16] No Conflito de Competência 114.798/RJ, o Superior Tribunal de Justiça assim decidiu em relação à competência para crime contra a fauna. Eis o voto da Rel. a Min. Maria Thereza de Assis Moura: Primeiramente, conheço do conflito, eis que nos termos do art. 105, I, "d", da Constituição Federal, compete ao Superior Tribunal de Justiça julgar, originariamente, os conflitos de competência entre juízes vinculados a tribunais diversos, como ocorre no caso em questão. O presente conflito versa sobre a competência para processar e julgar o crime tipificado no art. 29, § 1º, III, da Lei nº 9.605/98, em razão da apreensão, na casa do autor do fato, de um espécime da fauna silvestre (oryzoborus angolensis , nome vulgar: curió). O Juízo de Direito do Primeiro Juizado Especial de Nova Iguaçu/RJ determinou o encaminhamento dos autos ao Juizado Especial Federal com fulcro no disposto no enunciado nº 91 da Súmula desta Corte. No entanto, mister destacar que, conforme decisões reiteradas da Terceira Seção desta Corte, o mencionado enunciado, editado com base na Lei 5.197/67, foi cancelada com a entrada em vigor da Lei nº 9.605/98. [...]Afastado o disposto no citado enunciado, resta definir, à luz do caso concreto, a competência para processamento e julgamento do feito em questão. [...] Diante do exposto, conheço do conflito para declarar competente o Juízo do Primeiro Juizado Especial Criminal da Comarca de Nova Iguaçu/RJ, ora suscitado. (BRASIL. Superior Tribunal de Justiça. *Conflito de Competência 114.798/RJ*. Suste: Juízo Federal do Primeiro Juizado Especial de Nova Iguaçu - SJ/RJ. Susdo: Juízo de Direito do Primeiro Juizado Especial Criminal de Nova Iguaçu – RJ. Rel. Min. Maria Thereza de Assis Moura. J. 14.03.2001. Disponível em: <https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp? sLink=ATC&sSeq=14442727&sReg=201002032280&sData=20110321&sTipo=91&formato=PDF>. Acesso em: 26 jun. 2013.)

■ Crimes against wildlife

Art. 29: Killing, stalking, hunting, catching, using native or migratory specimens of wildlife, without the proper permission, license or authorization of the competent authority, or in disagreement with that obtained.

Penalty: detention from six months to one year, and fine.

Paragraph 1: Incurs the same penalties:

I – who prevents the breeding of the fauna, without license, authorization or in disagreement with the obtained:

II – who modifies, damages or destroys nest, shelter or natural breeding;

III – who sells, exhibits for sale, exports or acquires, keeps, has captives or deposits, uses or transports eggs, larvae or specimens of wildlife, native or migratory route, as well as products and objects derived from them, from breeding. unauthorized or without the proper permission, license or authorization of the competent authority.

Paragraph 2. In the case of a domestic guard of wild species not considered endangered, the Judge may, considering the circumstances, fail to apply the penalty.

Paragraph 3 - Specimens of wild fauna are all those belonging to native, migratory and any other species, aquatic or terrestrial, which have all or part of their life cycle occurring within the limits of Brazilian territory, or Brazilian jurisdictional waters.

■ Increased penalty

§ 4: The penalty is increased by half, if the crime is committed:

I – against species rare or considered threatened with extinction, even only at the place of infringement;

II – in a period prohibited to hunting;
III – at night;
IV – with license abuse;
V – in conservation unit;
VI – employing methods or instruments capable of causing mass destruction.

§ Paragraph 5. The penalty is increased to three times if the crime is the result of professional hunting.

§ Paragraph 6: The provisions of this article shall not apply to fishing acts.

In the view of Passos de Freitas, § 2 of art. 29 of Law no. 9.605 / 98, has given rise to some liberality of case law with the domestic guard:

> Paragraph § 2 of art. 29 of Law 9.605 / 98 is directly related to the caput. It admits, in case of domestic guard of specimen (law mistakenly uses the word species) wild, not considered endangered that the judge no longer applies the penalty. The legislature sought to solve the old problem: that of thousands of animals, especially birds, that are used in homes as pets.[17]

In the opinion of Luiz Régis Prado:

> The expressions "without the proper permission, license or authorization of the competent authority" and "in disagreement with that obtained" constitute normative elements of the type, concerning the absence of a cause of exclusion of illegality that, present, make the conduct lawful.[18]

---

[17] FREITAS, Vladimir Passos de; FREITAS, Gilberto Passos de. *Crimes contra a natureza*: de acordo com a Lei 9.605/98. São Paulo: Revista dos Tribunais, 2006. p. 99.

[18] PRADO, Luiz Régis. *Direito Penal do ambiente*. São Paulo: Revista dos Tribunais, 2005. p. 231.

The Environmental Police can only charge the offender if it has a delegation of power from the environmental agency, otherwise it can only issue the Police Report (BO). When it has a delegation of power, it prepares the Notice of Infraction (AI), imposes the corresponding fine, and, as the case may be, may leave the owner as a faithful depositary of the animal, given the difficulty of a place to house the seized animal or proceed to release.

Environmental indoctrinators Passos de Freitas tell us that:

> It is not uncommon for the agent to be caught practicing firearm hunting without having the necessary authorization. In this case, in addition to environmental crime, the offender incurs the sanctions of art. 14 of Law 10,826, dated 12.22.2003, that is, illegal possession of a firearm, a crime that cannot be guaranteed. [19]

Regarding the incidence of the cause of increase, decision of the Federal Regional Court of the 4th Region:

> Penalty CRIME AGAINST THE FAUNA. ART 29 OF LAW 9.605 / 98. WILDLIFE HUNTING. BATTLE RATONS. FULL PROOF. AUTHORITY DEMONSTRATED. MAJORANT. Paragraph § 5 PROFESSIONAL ACTIVITY. PROFIT ONLY. CONDENATORY SENTENCE FULLY MAINTAINED.
> 1. The evidence set showed that the defendants promoted predatory hunting when they were caught by environmental control in possession of 36 carcasses of plated mice, 96 skins extracted from animals, 22-caliber ammunition and 14 traps. 2.

[19] FREITAS, Vladimir Passos de; FREITAS, Gilberto Passos de. *Crimes contra a natureza*: de acordo com a Lei 9.605/98. São Paulo: Revista dos Tribunais, 2006. p. 97.

> No doubt regarding the authorship of the offense, given the abundant documentary and testimonial evidence. 3. Remaining evidenced that the activity aimed to obtain financial profit, correct the incidence of the cause of increase provided for in § 5 of art. 29 of Law 9,605 / 98. 4. Appeal devoid.
>
> ■ Export and introduction of animals
>
> Art. 30: Exporting raw amphibian and reptile skins and hides, without the permission of the competent environmental authority:
>
> Penalty: imprisonment, from one to three years, and fine.
>
> Article 31: Introduce animal specimens into the country, without favorable technical opinion and license issued by the competent authority.
>
> Penalty: imprisonment from three months to one year, and fine.[21]

The term "raw" means skins and hides not yet manufactured by the industry. Luiz Régis Prado teaches that this crime "prevails over the offense provided for in article 334 of the Penal Code, due to its specificity".[22]

The introduction into the country means introduction within the national jurisdiction, either on land surface, such as territorial waters and space by air, by boat or aircraft.

---

[20] BRASIL. Tribunal Regional Federal da 4ª Região. *Apelação Criminal 2003.04.01.030669-0/RS.* Apte: Antonio Renato Martins Costa. Apdo: Ministério Público Federal. Rel. Élcio Pinheiro de Castro. DJU 12.11.2003, p. 606. Disponível em: <http://www2.trf4.jus.br/trf4 controlador.php?acao= consulta_processual_resultado_pesquisa&txtValor=200304010306690&sel Origem=TRF&chkMostrarBaixados=&todasfases=S&selForma=NU&todaspartes= &hdnRefId= a3649b0c95657ea707fe622614745c1d&txtPalavraGerada =hzwd&txtChave=>. Acesso em: 26 jun. 2013.

[21] BRASIL. *Lei n. 9.605, de 12 de fevereiro de 1998.* Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ ccivil_03/leis/l9605.htm>. Acesso em: 28 jun. 2013.

[22] PRADO, Luiz Régis. *Direito Penal do ambiente.* São Paulo: Revista dos Tribunais, 2005. p. 243.

■ Mistreatment

The first animal protection legislation, already mentioned Decree no. 24.645 / 34, defined 31 typical figures of abuse in his art. 3rd The Law of Criminal Offenses, in its art. 64 (repealed), speaks of cruelty and excessive work without, however, defining them. Decree no. 6,514 / 08, which regulated the Environmental Crimes Law (Law No. 9,605 / 08), did not define *abuse or abuse.* For this reason, I defend the idea that Decree no. 24.645 / 34 has been repealed only in part, and we must seek in its art. 3º these definitions. Although the Planalto website reports that this decree is repealed, I disagree with that repeal on the grounds that law (decree with force of law) cannot be repealed by decree (this occurred in the Collor era - see footnote).[23]

In the criminal sphere, the Law makes no distinction between wildlife, exotic or domestic, when establishing its scope of protection, when speaking of cruelty. This was expressed in the law.

---

[23] Inicialmente, os atentados contra os animais eram tipificados como contravenção penal, e, geralmente, ficavam impunes, protegidos que estavam pelo Decreto 24.645/34 e pelo art. 64 da LCP.

O Decreto 24.645/34, único diploma legal regulamentador da crueldade contra os animais, sempre teve existência polêmica e nunca teve a força necessária para coibir os delitos. Inicialmente, era alegada a sua revogação pelo art. 64 da LCP, tese rechaçada pela doutrina. Posteriormente, foi revogado pelo ex-Presidente Collor, no infeliz Decreto 11, de 18 de janeiro de 1991. Apesar de esse decreto ter sido revogado pelo Decreto 761, em 19 de fevereiro de 1993, o § 3º, do art. 2º, do Código Civil suscita dúvidas sobre a sua vigência. Apesar de entendermos que o mesmo argumento que levou a jurisprudência e a doutrina a concluírem que o art. 64 da LCP não revogou o decreto 24.645/34, uma vez que uma lei não pode ser revogada por um decreto, tornou-se cada vez mais urgente um novo diploma, cuja vigência fosse pacífica e que estabelecesse penas mais eficazes. Hoje temos a lei 9.605/98.

Quando, por fim, o Congresso Nacional aprovou a Lei de Crimes Ambientais — Lei 9.605, de 12 de fevereiro de 1998 —, acolheu-se a proteção indistinta dos animais, em seu art. 32, além de manter a proteção dos animais silvestres.

Art. 32. To practice an act of abuse, mistreatment, to injure or mutilate wild, domestic or domesticated, native or exotic animals: Penalty - detention, from three months to one year, and a fine.

§ 1 The same penalties apply to anyone who performs a painful or cruel experiment on a live animal, even if for educational or scientific purposes, when alternative resources exist.

§ 1-A When dealing with a dog or cat, the penalty for the conduct described in the caput of this article will be imprisonment, from 2 (two) to 5 (five) years, fine and prohibition of custody. (Included by Law No. 14.064 , 2020)

§ 2 The penalty is increased from one sixth to one third if the animal dies.[24]

On October 8, 2008, the law on the use of animals in experiments, Law no. 11,794, which regulates the VII of § 1 of art. 225 of the Federal Constitution, establishing procedures for the scientific use of animals and repealing Law no. 6,638, of May 8, 1979. The breeding and use of animals in teaching and scientific research activities throughout the national territory must comply with the criteria established in this Law.

According to Law no. 11,794 / 08, scientific research activities are those related to basic science, applied science, technological development, production and quality control of drugs, medicines, food, immunobiologicals, instruments, or any other animal tested, as defined in regulation. own. Thus, in order to bring a criminal action in the case of animal experiments, it is necessary to describe the experiment and prove the existence of corresponding alternative methods.

In a pioneering decision, in Public Civil Action no. 5009684-86.2013.404.7200 / SC, filed by the Animal Abolitionist Institute, represented by lawyer Danielle Tetu Rodrigues, the University of

---

[24]*BRASIL. Law 9605 of 1998. Accessed on December 20, 2020.* Provides for criminal and administrative sanctions derived from conducts and activities harmful to the environment, and other measures. Available at: <http://www.planalto.gov.br/ccivil_03/leis/l9605.htm>. Accessed on: 28 jun. 2013.

Federal de Santa Catarina (UFSC) will not be able to use animals in practical classes of the medical course, under penalty of $ 100,000 fine for misuse of animals. The decision is made by Judge Marcelo Krás Borges, from the Federal Environmental Court of Florianópolis. The judge ruled that UFSC cannot claim lack of resources to acquire and employ alternative means.

According to Judge Krás Borges, “The principle of the reserve of the possible can only be applied when there is a legal asset to be preserved” (ruling issued on 5/27/2013). For him "in this case, the university is saving its resources to, in turn, give cruel treatment to animals, using them in scientific or therapeutic experiments." The judge also cited case law regarding cockfights and circus shows with animals.[25]

In its defense, the UFSC claimed that it would be replacing the animals with other equipment, but would depend on a budget allocation. In the Interlocutory Appeal filed by the University at the Federal Regional Court of the 4th Region (TRF4), in Porto Alegre, Rel. Fed. Vivian Josete Pantaleão Caminha decided that:

> Thus, attentive to budgetary rules, but sensitive to the need to promote wildlife protection, in its broadest aspects, **I maintain the determination that the use of live animals be replaced by alternative methods in practical and pedagogical classes in the Medical Course. , but I define the period of 90 (ninety) days to comply with the court order, after which will focus**

---

[25] SANTA CATARINA. Justiça Federal do Estado de Santa Catarina. Vara Ambiental Federal de Florianópolis. *Ação Civil Pública 5009684-86.2013.404.7200/SC.* Autor: Instituto Abolicionista Animal. Réu: Universidade Federal de Santa Catarina – UFSC. Juiz Federal Marcelo Krás Borges. D. 27.05.2013. Disponível em: <https://eproc.jfsc.jus.br/eprocV2/controlador.php?acao=acessar_documento_publico&doc=721369689470923160240000000001&evento=721369689470923160240000000001&key=899e7e741429d9ff52b7f88c924b3e14a18d81bfe188f049444072e609432656>. Acesso em: 26 jun. 2013.

> **fine of R $ 5,000.00 (five thousand reais) for each animal improperly used, since the amount previously arbitrated was excessive.** (emphasis in original) .[26]

Another occurrence that is becoming common in colleges is to require the right of conscientious objection to release oneself from animal experiments in various courses that practice them. Conscientious objection is one's right not to fulfill obligations or to perform acts that conflict with one's conscience.

The first lawsuit filed on conscientious objection (Ordinary Action No. 2007.71.00.0198820) was filed by a biology student at the Federal University of Rio Grande do Sul. This was the decision, on appeal. Federal Regional Court of the 4th Region:

> SUMMARY: COURSE OF BIOLOGICAL SCIENCES. PARTICIPATION IN PRACTICAL CLASSES WITH USE OF ANIMALS. Conscientious objection.
>
> It is unreasonable that, in the biological sciences course, the University should give differentiated treatment to academics who have conscientious objection in the course in which they are enrolled, and adapt the curriculum according to the students' personal convictions, otherwise the institution of especially when there is no news of animal abuse for academic use,

[26] SANTA CATARINA. Tribunal Regional Federal da 4ª Região. *Agravo de Instrumento* 5012997-24.2013.404.0000. Agte: Universidade Federal do Rio Grande do Sul (UFRS). Agdo: Instituto Abolicionista Animal. Rel. Des. Fed. Vivian Josete Pantaleão Caminha. D. 21.06.2013. Disponível em: <https://eproc.trf4.jus.br/eproc2trf4/controlador.php?acao=acessar_documento_publico&doc=41372263488859941110000000358&evento=41372263488859941110000000202&key=4f6f36050b30621160e45d0f5d151e7c3985b1f500d94943dee02c0c81fc742a >. Acesso em: 27 jun. 2013.

only the legal obligation of the competent teaching, research and training of professional graduates of renowned university classes such as the applicant.[27]

The most famous jurisprudence on cruelty was not given in criminal court. Among those that have become historic are the Supreme Court (STF) rulings on cockfighting and the bullfight:

Cockfight

SUMMARY: DIRECT UNCONSTITUTIONAL ACTION - **COCKWRITING** (FLUMINENSE LAW No. 2.895 / 98) - STATE LEGISLATION THAT, WITH RESPECT TO EXPOSURE AND COMPETITION, BETWEEN THIS PRACTICE DURING THE CRIPLOSIS WITH WHICH OF CRUELITY AGAINST BRIGAS ROOSTS - ENVIRONMENTAL CRIME (LAW No. 9.605 / 98, ARTICLE 32) - ENVIRONMENT - RIGHT TO PRESERVE ITS INTEGRITY (CF, ART. 225) - QUALIFIED PRERROGATORY BY ITS METAINDIVIDUALITY RIGHT (Or of a DIMENSION) CONSULTING THE POSTULATE OF SOLIDARITY - CONSTITUTIONAL PROTECTION OF THE FAUNA (CF, ART. 225, § 1, VII) - DECARACTERIZATION OF THE ROOSTER CULTURAL

[27] SANTA CATARINA. Tribunal Regional Federal da 4ª Região. *Apelação/Reexame necessário n. 2007.71.00.019882-0*. Apte: Universidade Federal do Rio Grande do Sul (UFRS). Apdo: Róber Freitas Bachinski. Rel. Des. Federal Jorge Antonio Maurique. 4ª Turma. DE. 08.11.2010. Disponível em: <http://www2.trf4.gov.br/trf4/processos visualizar_documento_gedpro.php?local=trf4&documento=3787484&hash=5a4c520b588edee3326da5a69b57478f>. Acesso em: 24 maio 2013.

MANIFESTATION - ACKNOWLEDGMENT OF THE UNCONSTITUTIONALITY OF THE IMPOSED STATE LAW - PROCEDURE DIRECT ACTION. STATE LAW AUTHORIZING EXHIBITIONS AND COMPETITIONS BETWEEN COMBATING BREEDS - THE INSTITUTIONALIZATION OF CRUELITY PRACTICE AGAINST THE FAUNA - UNCONSTITUTIONALITY.

Decision

The Court unanimously, and pursuant to the Rapporteur's vote, rejected the preliminary objections and, on merit, also unanimously, upheld the direct action to declare the unconstitutionality of Law No. 2,895, of March 20, 1998, of the State of Rio de Janeiro. The President, Minister Cezar Peluso, voted. Justifiably absent, Mrs Ellen Gracie. Plenary, May 26, 2011.28

Bullfight

CULTURE - CULTURAL MANIFESTATION - STIMULATION - REASONABILITY - PRESERVATION OF FAUNA AND FLORA - ANIMALS - CRUELITY. The obligation of the State to guarantee to all the full exercise of cultural rights, encouraging the valorization and the diffusion of the manifestations, does not dispense with the observance of the norm of item VII of art. 225 of the Federal Constitution, which prohibits the practice of eventually subjecting animals to cruelty. Discrepant procedure of the constitutional norm denominated "ox spree."

---

[28]BRASIL. Supremo Tribunal Federal. *Ação Direta de Inconstitucionalidade 1856/RJ*. Reqte: Procurador-Geral da República. Intdo: Governador do Estado do Rio de Janeiro. Intdo: Assembleia Legislativa do Estado do Rio de Janeiro. Rel. Min. Celso de Mello. Tribunal Pleno. J. 26.05.2011. Dje 14.10.2011. Disponível em: <http://www.stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=%281856%2ENUME%2E+OU+1856%2EACMS%2E%29&base=baseAcordaos&url=http://tinyurl.com/c7orrln >. Acesso em: 30 jun. 2013.

Judgment

Having seen, reported and discussed these records, the Ministers of the Federal Supreme Court, in the second class, agree, in accordance with the minutes of the judgment and the shorthand notes, by majority vote, to hear the appeal and grant it, in accordance with the vote of the rapporteur, defeated Minister Mauricio Corrêa. Brasilia, and June 1997. Neri da Silveira.[29]

Another decision worth mentioning is related to the case of the Belo Horizonte Zoonoses Center - MG, accused of killing the animals collected with suffocating gas. At the time, the Public Prosecution Service of Minas Gerais filed a Public Civil Action. In the case of a Special Appeal, brought before the Superior Court of Justice, the following decision was obtained:

> ADMINISTRATIVE AND ENVIRONMENTAL CENTER – ZOONOSIS CONTROL CENTER – SACRIFICE OF DOGS AND Stray Cats Seized by
>
> ADMINISTRATION – POSSIBILITY WHEN INDISPENSABLE FOR PROTECTION OF HUMAN HEALTH – PROVIDED FOR THE USE OF CRUDE MEDIA.
>
> 1. The request must be interpreted in accordance with the claim made in the exordial as a whole, since the acceptance of the request extracted from the logical-systematic interpretation of the initial play does not imply extra petita judgment.
>
> 2. The decision in the infringing embargoes did not impose a greater burden on the appellant, but merely clarified and exemplified methods by which the obligation could be This

[29] BRASIL. Supremo Tribunal Federal. *Recurso Extraordinário* ***153531/SC***. **Recte: APANDE-Associação Amigos de Petrópolis Patrimônio Proteção aos Animais e Defesa da Ecologia e outros. Recdo: Estado de Santa Catarina. Rel. Min. Francisco Rezek. Rel. p/ Acórdão: Min. Marco Aurélio. Segunda Turma. J. 03.06.1997.** Disponível em: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=211500>. Acesso em: 29 maio 2013.

was the reason why there was no breach of the principle of prohibition of reformatio in pejus.

3. The primary and priority goal of zoonosis control centers is to eradicate diseases that can be transmitted from animals to humans, such as rabies and leishmaniasis. Therefore, measures to control the reproduction of animals, either through hormone injection or sterilization, should be a priority, because, according to the 8th World Health Organization Technical Report, they are more effective in the field of zoonoses.

4. In extreme situations, where the measure becomes indispensable for the protection of human health, the extermination of animals should be allowed. However, in such cases, the use of cruel methods is prohibited, under penalty of violation of art. 225 of the CF, of art. 3 of the Universal Declaration of Animal Rights, arts. 1 and 3, I and VI of Federal Decree no. 24,645 and art. 32 of Law no. 9,605D 1998.

5. It cannot be accepted that on the basis of discretion the administrator engages in unlawful practices. It is even possible to have freedom in choosing the methods to be used, if there are equivalent means among the less cruel, which is not the possibility of exercising the discretionary duty that implies in violation of the legal purpose.

6. In casu, the use of asphyxiating gas in the zoonosis control center is a measure of extreme cruelty, implying a violation of the animal protection regulatory system and cannot be justified as an exercise of the discretionary duty of the public administrator.

Special feature improvised.[30]

---

[30]BRASIL. Superior Tribunal de Justiça. *Recurso Especial n. 1.115.916-MG*. Recte: Município de Belo Horizonte. Recdo: Ministério Público do Estado de Minas Gerais. Rel. Min. Humberto Martins. 2ª Turma. J. 01.09.2009. Disponível em: <https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp?sLink=ATC&sSeq=5764421&sReg=200900053852&sData=20090918&sTipo=91&formato=PDF>. Acesso em: 1º jun. 2013.

The criminalization of fishing is provided for in Law no. 9.605 / 98, in the following cases:

Art. 33. To cause, through the emission of effluents or the carriage of materials, the perishing of specimens of aquatic fauna existing in Brazilian rivers, lakes, dams, lagoons, bays or waters:

Penalty - imprisonment of one to three years, or fine, or both cumulatively.

Single paragraph. Incurs the same penalties:

I - those that cause degradation in public domain ponds, ponds or aquaculture stations;

II - who exploits natural fields of aquatic invertebrates and algae, without license, permission or authorization from the competent authority;

III - who anchor boats or throw debris of any kind on shellfish or coral banks, duly marked in a nautical chart.

Art. 34. Fishing in a period when fishing is prohibited or in places prohibited by the competent body:

Penalty - imprisonment from one year to three years or fine, or both penalties cumulatively.

Single paragraph. The same penalties apply to those who:

I - fish species to be preserved or specimens smaller than allowed;

II - fishing for quantities greater than permitted, or through the use of equipment, equipment, techniques and methods not allowed;

III - transports, markets, benefits or industrializes specimens from prohibited collection, catching and fishing.

Art. 35. Fishing using:

I - explosives or substances which, in contact with water, produce a similar effect;

II - toxic substances or other means prohibited by the competent authority:

Penalty - imprisonment from one year to five years.[31]

By fishing is meant (art. 36, Law No. 9.605 / 98) any act tending to withdraw, extract, collect, catch, seize or capture species from the groups of fish, crustaceans, molluscs, hydrobic vegetables. It does not matter whether or not they are economically advantageous.

In accordance with the provisions of art. 2nd of Decree no. 221/67, Fisheries Code, fishing may be commercial, sporting or scientific. Commercial fishing is for the purpose of commercial acts. The sport is that practiced with hand line, diving or other allowed means; the scientific one is solely for research purposes by institutions or authorized persons.

The penalties for fishing with explosives and toxic substances are more severe as these crimes can destroy wildlife and human health due to the serious environmental consequences.

Luiz Régis Prado cites the following case law on fishing crimes:

Crimes against the environment - art. 34 of Law 9,605 / 1998. Accused that, in a forbidden period, using tarrafa, and surprised with only five fish equivalent to half a kilo. Configuration. Recognition of the principle of insignificance - Impossibility: - configures the offense of art. 34 of Law 9.605 / 98, the conduct of the accused who, using a net, is caught in a prohibited period, with only five fish equivalent to half a kilo, being impossible to recognize the principle of insignificance, since in such a case practices the crime agent against the environment,

[31] BRASIL. *Lei n. 9.605, de 12 de fevereiro de 1998.* Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l9605.htm>. Acesso em: 28 jun. 2013.

no matter how many fish are caught, not even the catch. (TACrimSP-AC 1334243/5 - 2nd Cam. Rel. Oliveira Passos - j. 30.01.2003) .[32]

In addition to fishing crimes, the following:

> Penalty ENVIRONMENTAL CRIME. PREDATORY FISHING FOR A PROHIBITED PERIOD AND LOCATION. ART 34, CAPUT, AND PARAGRAPHS I AND II. SINGLE, OF LAW NO. 9,605 / 98. TERRITORIAL SEA. COMPETENCE OF FEDERAL JUSTICE. PRINCIPLE OF INSIGNIFICANCE. INAPPLICABILITY.
> 1. Crimes perpetrated at the Barra de Rio Grande Jetty / RS, which are located in the Brazilian territorial sea coast, since they affect the Union well, are within the jurisdiction of the Federal Justice, pursuant to art. 109, IV, of CF / 88 and art. 1 of Law No. 8,617 / 93.
> 2. Predatory fishing practiced at a prohibited time and place is independent of the quantity of specimens caught, ie, of the relevance of the result, given that environmental damage cannot be quantified, and the Principle of Insignificance is inapplicable.33

Slaughter of the animal is not considered a crime in the following cases:

> Art. 37: It is not a crime to slaughter an animal when

---

[32]PRADO, Luiz Régis. *Direito Penal do ambiente.* São Paulo: Revista dos Tribunais, 2005. p. 287.

[33] RIO GRANDE DO SUL. Tribunal Regional Federal da 4ª Região. *Apelação Criminal 200471010027670/RS*. Apte: Ministério Público Federal. Apdo: Marco Antonio Fagundes de Araújo. Rel. Luiz Fernando Wowk Penteado. 8ª Turma. DJU 29.06.2005, p. 831. Disponível em: <http://www2.trf4.gov.br/trf4/processos/visualizar_documento_gedpro.php?local=trf4&documento=669020&hash=bc58f927ec5eda7cd8bfee16c209836d>. Acesso em: 25 maio 2013.

accomplished:

I – in a state of need, to satisfy the hunger of the agent or his family;

II – to protect crops, orchards and herds from predatory or destructive action of animals, provided that legally and expressly authorized by the competent authority;

III – vetoed

IV – because the animal is harmful, as long as it is characterized by the competent body.[34]

■ Animal mortality

Art. 54: Cause pollution of any kind to such a degree that results in or may result in harm to human health, or cause the death of animals or significant destruction of the flora.

Penalty: imprisonment, from one to four years, and fine.

Guilty Crime:

Penalty: detention from six months to one year and fine.

n Disseminate disease or pest

Art. 61: Disseminate disease or pest or species that may cause damage to agriculture, livestock, fauna, flora or ecosystems.

Penalty: imprisonment, from one to four years, and fine.

5.3.1 Painful experience in animals

Law 9,605, of February 12, 1998, in its art. 32, § 1, typifies as a crime the conduction of painful or cruel experience in a

[34] BRASIL. *Lei n. 9.605, de 12 de fevereiro de 1998.* Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l9605.htm>. Acesso em: 28 jun. 2013.

live animal, even for didactic or scientific purposes, when alternative resources are available.[35]

The realization of painful experience in living animals is called vivisection, which consists of the use of living beings, mainly animals, to study life processes and diseases, and all kinds of manipulation suffered by living beings in various types of tests and experiments. . Some practices are:

● *Draize Eye Irritancy Test* – Shampoos, pesticides, herbicides, cleaning products and the chemical industry are tested on the eyes of conscious rabbits. This test has been in existence since 1944. The substances are tested on the eyes of albino rabbits trapped in a containment device that do not receive pain relievers, and the test lasts for several days during which the cornea and iris are examined for damage. check for ulceration, bleeding, irritation, swelling, and blindness. The Draize Test is also scientifically condemned, as rabbits' eyes are structurally different from human eyes.

● *LD 50, 50% lethal dose* – Introduced in 1927, it consists of administering to animals a dose of certain products such as pesticides, cosmetics, drugs, cleaners to check for toxicity. Death occurs in 50% of applications. The common form is forced oral intake using a tube that goes to the intestine. Other forms include injections, forced inhalation of vapors and application of substances to the skin. Signs of poisoning include tears, diarrhea, eye and mouth bleeding, seizures. No medicine is given to alleviate the suffering of animals. Results vary from one species to another and from individual to individual.

● *Alcohol and Tobacco Toxicity Tests* – Even though you already know the harmful effects of alcohol and tobacco on your body,

● *Alcohol and Tobacco Toxicity Tests* – Even though they are already aware of the harmful effects of alcohol and tobacco on

---

[35]Lei 9.605/98, art, 32, §§ 1º e 2º.

the body, animals are forced to inhale smoke and get drunk for later dissection.

● *Psychology Experiments* – Many of the cruelest experiments are conducted in the field of psychology in behavioral study. Such experiments include deprivation of maternal protection and social deprivation in the infliction of pain to observe fear; the use of aversive stimuli, such as electric shocks, for learning; and in the induction of animals into stressful psychological states. The animals are also submitted to operations to remove part of the brain to observe behavioral changes. Electric shocks, pain, food deprivation and water are used for learning. Stress induction is used to test known drugs such as antidepressants, sleep aids, sedatives, stimulants and tranquilizers.

● *Armament experiments* – Animals are subjected to radiation from chemical and biological weapons as well as traditional weapon discharges. They are also exposed to gases and are shot in the head to study the speed of the missiles. The excuse is that such tests are done for defensive reasons, but in reality they can always be used for offensive purposes. And there is no justification for the use of war animals, whose sole responsibility lies with the human species. It is not justified to inflict pain on the animal for the purpose of destroying ourselves.

Other absurd tests are those that claim to demonstrate known facts, using modern methods such as computer and video. The use of curare as an anesthetic is also very cruel as the animal is paralyzed but fully conscious and sensitive. It is also common to use the same animal for more than one experiment, as well as for prolonged experiments, which is inadmissible.

● *Dental research* – Animals are forced to maintain a harmful diet with sugars and erroneous eating habits to eventually get cavities and have detached gums and the dental arch removed. This is all after

we know that prevention and hygiene are the foundation for dental health.

- Crash test - Even without being able to get a driver's license, animals are thrown against concrete walls. Pregnant female baboons and other animals are broken and killed in this practice. Testing with state-of-the-art dolls, coupled with driver common sense, can offer much better results.

- Dissection - Animals are dissected alive at universities and the same experiment is repeated thousands of times when videos and other audiovisual methods are available today.

- Medical and surgical practices - Although the head of the patient is the best school, millions of animals undergo surgery in medical schools. The zoonosis service usually supplies these colleges with dogs and cats, which will be used by students in the surgical training of splits, sutures and organ resection. Many die during surgery (if they bleed too much or because of student incompetence), others receive an insufficient dose of anesthesia and suffer all the pain of the operation.

5.3.2 Alternative Methods

When alternative methods exist, vivisection becomes a crime under Law 9.605 / 98.

Alternative techniques are those that use chemistry, mathematics, radiology, microbiology and other means to avoid the use of live animals in laboratory experiments.

After it was found impossible to adjust to man the information obtained from experiments on live animals, due to species specificity, he strove to find more effective methods of experimentation. The methods that replace vivisection use a large number of disciplines, including

These include biogenetics, mathematics, virology, biochemistry, radiology, microbiology, and gas chromatography and mass spectrometry. We can emphasize; among the developed methods: tissue culture, use of microorganisms and inferior invertebrates, elaboration of mathematical models, public surveys and epidemiological studies. Computer models, genetic engineering, chicken eggs, human placenta, mechanical models, mathematical models, and visual audio are alternative methods available to science.

- *Cell culture* – Cell cultures are increasingly used by industrial and research laboratories (especially for vaccines) at the stage of early trials. *Cell culture* is called the technique of cultivating isolated cells outside their normal environment. These cells come from human, animal and plant sources. Human tissues can be obtained during surgical operations, biopsies and autopsies, or taken from fetuses or placentas. Animal tissues can be fetched from slaughterhouses or humane slaughtered laboratory animals. Cells can live, grow and multiply by receiving nutrients outside their natural environment. Some have a limited life potential, others may live indefinitely, allowing for studies of several months. A single donor is required. Cell culture is also less costly and produces more reliable scientific results. The drawback is that the artificial culture medium can cause structural and biochemical transformations in cells or the loss of some specific function. Further research is needed to address this obstacle.

- *Combined Use of Tests* – A second technique that involves living tissue culture is *organic culture*. As the name implies, it requires the conservation of part or all of an organ in glass in order to safeguard its fundamental structure and biochemical characters. Organic crops are harder to conserve and are only usable for a few weeks.

Bacteria and unicellular organisms are often used as experimental instruments.

Using these tests in combination with other methods such as chemical testing, mathematical modeling, and epidemiological surveys will not only reduce the unacceptable number of animals employed in schools, industrial laboratories, and universities in research centers, but will be beneficial to students, men of science and the general public.[36]

Quantum pharmacology can use quantum mechanics and, through understanding molecular structure and computerization, seek explanations of drug behavior based on their molecular properties.

- *Epidemiological research* – The main alternative, no doubt, is the study of human disease in infected individuals or specific populations. This type of research uses volunteers, clinical case studies, autopsy reports and statistical analysis combined with more accurate observation. It allows observing the environmental factors linked to the disease, which is not possible in confined animals.

- *Noninvasive Imaging Techniques* – The development of noninvasive techniques such as CAT, MRI, PET, and SPECT has

[36] Carta mundial dos estudantes por uma ciência e uma biologia sem violência
1. Como estudante, ser-me-ão reconhecidos o direito e a possibilidade de estudar e exercer uma ciência que não implique nenhuma violência.
2. Ser-me-á dada a possibilidade desta escolha materialmente, intelectualmente e moralmente.
3. Eu terei direito a uma cláusula de consciência para recusar práticas experimentais violentas que me sejam impostas e que infrinjam a Declaração Universal dos Direitos dos Homens e a Declaração Universal dos Direitos do Animal.
4. Não se poderá exercer sobre mim, em um estabelecimento de ensino, sanções disciplinares ou administrativas, porque eu invocarei esta cláusula de consciência.
5. Ser-me-á, também, reconhecido o direito de objetar contra aplicações violentas da Ciência nas quais tentem me implicar.
6. Eu agirei com dignidade na minha reivindicação do direito ao estudo e ao exercício de uma ciência não violenta.
7. Eu invocarei a presente Carta contra práticas experimentais violentas sobre o homem e sobre o animal que me sejam impostas nos meus estudos ou na minha profissão.
8. Eu defenderei e divulgarei o espírito desta Carta para que a Ciência seja um caminho de compreensão, de simpatia e de paz para a humanidade, o animal e a natureza.

revolutionized clinical research. These devices allow the evaluation of human diseases in patients. For example, these scanners have been used to make early diagnosis in the evaluation of Alzhheimer disease, Huntington's disease, musculoskeletal tumors, Parkison's disease, and cerebrovascular diseases. They have also contributed to the knowledge of the body in basic science.37 CAT uses computers to reconstruct three-dimensional images of the human body through x-rays. *Magnetic Resonance Imaging* (MRI) allows you to view detailed images of the interior of the body. human without injection of radioactive substances. *Positron Emission Tomograph* (PET) and *Single Photon Emission Computerized Tomograph* (SPECT) are used in studies of cerebrovascular disease and psychiatric disorders.

● *AMES Test* – Invented by Dr. Bruce Ames of the University of California, Berkeley, this in vitro test checks for carcinogens using salmonella bacteria, which produces cancer in humans and other mammals. The test lasts about 2-3 days and is much less expensive than the animal model.38

● *Placenta* –The human placenta, which is usually discarded after the birth of a child, can be used for microvascular surgery and for the toxicity testing of chemicals, drugs and pollutants. It has no cost, and the material is 100% human.[39]

● *Quanta Pharmacology* – It is a computerized technique used in the theoretical chemistry of the study of the molecular structure of drugs and their receptors in the body. Using existing knowledge, it is possible to predict through the structure of the drug which effect on the human organ above.

---

[37] BASTOS, Rosely Acosta. *Frente brasileira da abolição da vivissecção*. Rio de Janeiro, 1999. mimeo., Inédito.

[38] BASTOS, Rosely, *Op. cit*.

[39] BASTOS Rosely, *Op. cit.*

● *Eyetex* – In place of the *Draize eye irritancy test*, it provides for the use of a liquid protein that mimics the reaction of the human eye.

● *Chromography and spectroscopy* – It is used to separate drugs at the molecular level to identify their properties and can detect the trajectory of drugs and their damage to humans.

● *Corrositex* – This is an *in vitro* test to evaluate the dermal corrosivity potential of various chemicals. Developed by *In Vitro International Inc.*, the technique makes it possible to test a chemical or several (drugs) on an artificial skin barrier made of collagen. Below that layer is a liquid containing a PH indicator dye, which changes color when it comes in contact with the chemistry being tested. Chemical corrosivity is determined by the time it takes to penetrate artificial skin and cause color change.

In Brazil, in 2014, the National Council for Animal Experimentation Control (CONCEA), linked to the Ministry of Science and Technology, made 17 alternative methods recognized. In 2012 the National Network of Alternative Methods was created.

Alternative methods need to be validated, and in Brazil the responsible entity is the Brazilian Council of Alternative Methods-BraCVAM.

The Brazilian Center for Validation of Alternative Methods (BraCVAM) is an institution the result of the partnership between Fiocruz and the National Health Surveillance Agency (Anvisa). It is the first in Latin America to validate and coordinate studies to replace, reduce or refine the use of guinea pigs in laboratory testing.[40]

---

[40] https://www.incqs.fiocruz.brindex.php?option=com_content&view=article&id=1152:concea-recebe-recomendacoes-do-bracvam-para-reconhecimento-de-metodos-alternativos-ao-uso-de-animais-emlaboratorios&catid=114&Itemid=166. Acessado em 20 de julho de 2018.

Declaration on Experimental Ethics – The International Institute of Human Biology of Paris and the International League of Animal Rights of Genoa proclaimed, during the International Congress, held in Genoa from June 12 to 20, 1981, a Declaration on the experimental ethics.

The document proclaims that all living beings are born equal. Inequality between species or specimens, between races or racism constitute crimes against life. The man of science must devote himself to respect for human or non-human life and that substitute technology is the only one compatible with the rights of the living being.

5.3.3 Police Inquiry

In the crimes committed against the fauna, proceeds as foreseen in the Law of Environmental Crimes and in the art. 6, II, of the CPP, apprehending the instruments and all objects that relate to the fact. This seizure may be made prior to the action of the judicial authority by the agents of the administration, supported by art. 25 of Law 9.605 / 98:

> "Law 9.605 / 98, art. 25: Once the infringement has been verified, its products and instruments will be seized and the respective records drawn up. "

Once the infringement is verified, its products and instruments will be seized and the respective records will be drawn up. Legal support of the seizure can be sought in art. 25 of Law 9.605 / 98 and in art. 245, § 6 of the CPP:

> "Art. 245, § 6, CPP: Discovering the person or thing sought, will be immediately seized and placed in the custody of the authority or its agents.

The animals will be released into their *habitat* or delivered to zoos, foundations or similar entities, provided

responsibility of qualified technicians. Perishable products will be donated to scientific, hospital, criminal and other charitable institutions. Non-perishable wildlife products and by-products will be destroyed or donated to scientific, cultural or educational institutions. The instruments used in the practice of the infraction will be sold, guaranteed their decharacterization through recycling (Law 9.605 / 98, art. 25 and paragraphs).

If the seizure is not made immediately, proceed in the form of art. 240 et seq. Of the CPP, seeking home or personal search to seize weapons, ammunition and instruments used in the commission of crime or intended for criminal purposes; find necessary proof objects; gather elements of belief, etc.

If it is impossible to release the animals in their natural habitat or to surrender them to zoos, environmental foundations or similar entities, the animals may be entrusted to the trustee, in the form of art. 2, § 6, a, of Decree 3,179, of September 21, 1999, which regulates the Environmental Crimes Law.

In the case of fishing, the consumption of your product is not prohibited, and the seized product can be donated. However, the donation should only be made after the material has been sent for criminal examination. Disposal of equipment, equipment, instruments and equipment seized (by IBAMA's inspection or associated agencies) in the use of illegal fishing follow the norms of Ordinance / IBAMA n. 44-N, of April 12, 1994, for the following purposes: alienation, return, destruction, donation or release. The return will be applied when the period of temporary seizure of the seized goods upon return terms has elapsed. The auction (if administrative) will follow Law 8.666 / 93, as applicable, and will be applied if the seized instruments were used in non-prohibited fishing and if they constitute products of non-prohibited trade, after 180 days without being sought. , and are not in administrative or judicial action. The destruction of the instruments will be performed by drawing up in each case the detailed term of the occurrence. Only in peculiar situations can it occur on the spot. In Minas Gerais, besides the

supervision IBAMA and its member, the Forest Police, the fisheries inspection is exercised concurrently by the State Forest Institute and the Civil Police.

Evidence in the determination of illegal acts provided for in environmental legislation, in general, obeys the rules of the CPP (arts. 155 to 250).

5.3.4 Criminal Action

In the crimes provided for in Law 9.605 / 98 the criminal action is public and unconditional.

In crimes of lesser potential offense (imprisonment up to one year) the proposed immediate application of the restrictive penalty of rights or fine, provided for in art. 76 of Law 9,099, of September 26, 1995, can only be formulated as long as there has been prior composition of the damage referred to in art. 74 of the same law, except in case of proven impossibility. When the penalty does not exceed one year in prison the competent judgment is that of Small Causes. Here it is necessary to be aware of the fact that in the case of extinction of the punishment, provided for in Law 9,099 / 95, this, in cases of environmental crimes, will depend on compensation for the damage, except for impossibility. A report will be made confirming the damage, and the deadline may be extended. The declaration of extinction of the punishment will also depend on the said report of finding compensation for the damage.

When the penalty is foreseen for more than one year, the State or Federal Court will have jurisdiction, as the case may be.

As soon as they become aware of the fact, the Civil Police shall draw up a detailed term of the incident and immediately refer the Small Claims Court, if this is the case, with the plaintiff and the victim, requesting the necessary expert examinations. The composition of civil damages may also be homologated in this Court and will be effective as a title to be executed in the competent Civil Court.

Because it is cruelty to animals of unconditional public action, any citizen may resort to the Public Prosecution Service, which is the holder of the Criminal Action, through a representation. You can also

Directly seek the Small Claims Court (where available) to present oral representation, which will be reduced to term. The materiality of the crime can be substantiated by medical report, witnesses, photos or equivalent evidence. It is noted that in cases of unconditional public action the authority is required to act independently of a complaint.

5.4 History of the typification of animal cruelty as crime in Brazil

Initially, attacks on animals were typified as a criminal lower potentiality, and generally went unpunished, protected by Decree 24.645 / 34 and art. 64 of the LCP.

We can say that the modernization of animal protection legislation is due to the commitment of the third sector, which, through civil associations, established frequent contact with legislative agents aiming to include such protection in the legal system.

The Animal Cruelty Prevention League (LPCA), since its founding in 1983, has been involved with the advancement of environmental legislation in Brazil. Noting that, as a rule, the punishment of animal maltreatment and aggression against wildlife was not realized in practice, the goal of modernizing the legislation has now occupied the front line of the LPCA. To achieve its goals, the League worked continuously with the media, authorities and other environmental entities in Brazil.

In 1984, as a result of the reform of the Penal Code, we sought Professor Jair Leonardo Lopes, then chairman of the Criminal and Penitentiary Policy Council, to hand him a proposal for criminalization of animal attacks. However, on this occasion, the Penal Code was only changed in its general part, which is why the proposal could not be used.

In 1988, the attacks on native wild animals typified in arts. 27 and 28 of Law No. 5.197 / 67, until then as a misdemeanor, had their wording changed to turn them into a crime and, by provision of art. 34, in an unenforceable crime (BRAZIL, 1967).

In 1989, the LPCA issued a bulletin with the proposal for a bill for criminalization of animal injury practices, which was delivered personally in Brasilia to one hundred deputies from various parties and to the Minister of Justice Bernardo Cabral.

When, in 1993, a commission was set up at the Ministry of Justice to study again the reform of the special part of the Penal Code, once again the LPCA project was handed over to its members - Jair Leonardo Lopes, Evandro Lins e Silva , Wanderlock Moreira, Francisco Assis Toledo, Renée Ariel Dotti - and the counselors of the Brazilian Bar Association (OAB) subsections, as well as the OAB Federal Environment Committee.

Subsequently, environmental lawyers argued that because environmental law is a peculiar branch of law, environmental violations should be listed in their own legislation. Thus, an interministerial commission was formed composed of the most distinguished environmentalist and penalists lawyers, linked to the Ministries of Environment and Justice. Under the chairmanship of Judge Gilberto Passos de Freitas, the rapporteur was the Minister of the Superior Court of Justice, Antônio Hermann Benjamin.

The proposal to include animal crimes in law was forwarded in 1996 by the LPCA to the Chief Judge of the Commission. He promptly complied with the request, bringing the idea to discussion in the aforementioned Commission. As the endorsement of Des. Gilberto Passos de Freitas, attended by Dr. Sônia Fonseca, as representative of the LPCA, and Dr. Vanice Orlandi, from the International Union for the Protection of Animals (UIPA-SP).

The first barrier to be overcome was to offer elements of conviction to the members of the Commission, who were against the inclusion of animal protection in the Environmental Crimes Law. The movement promoted a large lobby and the LPCA edited the book Animal Liberticide, containing reports of animal crimes committed with over one hundred illustrative photographs with explanatory captions. This material was distributed not only to the legal committee, but also

to the Deputies and Senators, who would later vote on the bill. The victory came with art. 32 of the Environmental Crimes Law - Law 9605 of February 12, 1998:

> Article 32 - Practicing abuse, mistreatment, injury or mutilation of native or exotic wild animals, domestic or domesticated:
>
> Penalty - detention from three months to one year and fine.
>
> § Paragraph 1. The same penalties apply to those who perform painful or cruel experiments on live animals, even for didactic or scientific purposes, when alternative resources exist.
>
> § 2 - The penalty is increased from one sixth to one third, if the animal's death occurs. (BRAZIL, 1998)

We can say that legal protection of animals originated in criminal law. In this branch, animals are protected even against their owners if they are treated badly. Its sensitivity is taken into account.

Regarding wildlife, in 1988, with the creation of the *Our Nature* program, attacks on wild animals were considered as unaffordable crimes. The program criminalized hunting and illegal trade in wild animals, leaving wild animals defined as those living in freedom. The law abandoned wild animals during migration, as well as exotic and domestic animals. The law did not have the intended effectiveness. As it was not applied, animal trafficking was used to cover up drug trafficking and money laundering.

In fact, rarely have the amendments introduced by Law 7,653 / 88 and Law 5,197 / 67 been complied with, as the typical figures created have brought profound revolt to society, which has led to jokes and denial of jurisdiction by many judges. Prosecutors were the first to be sensitive to the animal cause and the environment in general.

From 1988 to 1998, due to a criminal policy criterion established by the discretion of the Brazilian legislator, different penalties were provided for the mistreatment of animals, according to their classification: native, exotic or domestic. This was unified by Law 9.605 / 88.

5.5 20TH CENTURY CRIMES

In Brazil and around the world, millions of animals are attacked by man. Primitive man attacked the animal by hunting or defending itself. Today forms of cruelty have become increasingly refined, with the help of technology and science, and with the complacency of religions.

Thousands of animals are fraudulently tortured in laboratories, where they are subjected to all kinds of physical and psychological embarrassment for testing weapons, cosmetics, pesticides, drugs, medicines, electroshock and all kinds of deprivation and punishment for behavioral studies.

Thousands of animals are sentenced to life imprisonment in circuses and zoos, being forced to execute numbers incompatible with their biological nature.

Thousands of birds and wild animals are caught in their home country and deprived of their liberty for the sole purpose of profit.

Thousands of animals are hunted, killed or injured, slowly suffering and dying, trapped or struck by man's weapon, thirsty, hungry, pained and gangrene, in the forests.

Millions of domestic and wild animals are raised in confinement systems, never seeing sunlight except on the day of their death, when man will use his flesh or skin.

Millions of animals are transported over long distances in overcrowded, poorly ventilated convoys and cages, living the daily lives of stress, hunger, fear and death.

Millions of animals are slaughtered, bled and fleshed all the

days for consumption entirely conscious by brutal methods. The horses have their feet sawn off so that the flesh loses its odor with pain-induced sweating, and is then slaughtered.

Millions of animals die in bloody fights such as cockfighting, canary fighting, and dogfighting, or are tortured in rodeos, cowherds, and other events just for the amusement of man. In pigeon shooting, animals are killed, for the sole purpose of man exercising his aim.

In Santa Catarina, every year the oxen are begged to death in a ceremony called *Farra do Boi.*

There are countless barbarities committed by man. We have selected some of them for our study: cockfights, canaries and dogs, rodeos and cowherds, bullfighting, bullfighting, *greyhounds* dog racing and the use of animals for whey production and the horse case 814 .

5.5.1 Cruelty in Cockfights and Canaries

In Brazil, since 1934, with the issue of Federal Decree 24.645, cockfights were prohibited. Article 3, XXIX, of that decree reads:

> “Art. 3rd: The following are considered mistreatment:
> XXIX: Perform or promote fights between animals of the same or different species, bullfighting and bullfighting simulacrum, even in a private place. ”

Decree 24.645 / 34 was born with force of law as it was written down by the Provisional Government. Decree 19,398 / 30 says in its art. 17:

> "The acts of the Provisional Government will be contained in Decrees issued by the head of the same Government."

As it turns out, the then head of the Provisional Government called upon himself the legifferent activity during the period of time in

which the situation prevailed.generated by Decree 24.645 / 34. What happens, it seems to us, is that at the time of its appearance it was still unusual to use the *nomen juris* decree-law, whose figure emerged with the 1936 Constitution, so much so that in its text the word law appears in its art. 18, item XVII of art. 3rd, art. 8th, 10th, 13th, 14th, 16th, and 17th.

To confuse the lesser Galician scholars, in bad faith, they invoked Decree 1.233 / 62 (supported by then Prime Minister Tancredo Neves) to say that this diploma had repealed the cockfight. It turns out that the decree repealed by Decree 1.233 / 62 was Decree 50.620 / 61 (decree of the then President Jânio Quadros that prohibited cockfighting). It could not revoke, as it did not revoke Decree 24.645 / 34. So, let's look at art. 1st of Decree 1.233 / 62:

“Decree 50.620 / 61 is hereby repealed.”

The more a law cannot be repealed by a decree.

The Law on Criminal Misdemeanors did not revoke Decree 24.645 / 34 at the time, *since its provisions did not collide.*

With the same argument that a law cannot be repealed by a decree, we understand that until Law 9.605 (Environmental Crimes Law) has its art. 32 regulated, that is, enumerate that the cruelties are protected by this article, the art. 3 of Decree 24.645 / 34, which lists 31 typical maltreatment figures in its bulge.

On October 26, 1970, attorney Sérgio Nogueira Ribeiro[41] went to the Brazilian Institute of Lawyers - RJ reporting that on 28/2/70 the police had banned the headquarters of Centro Esportivo Carioca, located at Rua Chantecler 76, in São Cristóvão, in Rio de Janeiro, after arresting and indicting in the act people who promoted cockfights and cash bets. However, in referring the case to court, which received no. 51,402, and ran down the

[41] RIBEIRO, Sérgio Nogueira. *Crimes passionais e outros temas.* Rio de Janeiro: Itambé,1975, p. 83-88.

17th Criminal Court, the Judge, in a judgment issued on 8/29/70, dismissed the accusation and acquitted the defendants for understanding that cockfights do not constitute cruelty to animals. And requested an opinion from that Institute.[42]

---

[42] Honored by the appointment of Dr. Otto Vizzeu Gil, who chaired the meeting of this Veneranda House on the 15th of this year, I will now refer to the nomination presented by lawyer Sérgio Nogueira Ribeiro, dated 1st of August and signed by our colleague Laércio Pellegrino and Othon Sidou.
According to the proponent, from July 7th to 9th of this year, in the street of the Alcântara Sports Center, São Gonçalo, Rio de Janeiro, - despite the protests of animal protection associations, with the State Governor, Raymundo Padilha - a national cockfighting tournament that would have been attended by about two thousand competitors.
Developing with erudition and at length the foundations of his proposal, to the foundations of his proposal, Dr. Sérgio Nogueira Ribeiro has drawn on high ethical, doctrinal, jurisprudential and legislative precedents to conclude that the so-called cockfighting is illegal in Brazil. and therefore calls on the Brazilian Bar Association to forward to the Minister of Justice a letter requesting His Excellency to recommend to all governors the immediate and definitive closure of cockfights, in compliance with the law and the sense of pity that must characterize every human being. '
In the light of the debates that the proposal aroused when approved by majority in a meeting of the current day and although this approval already shows that it is statutory, I still understand that it is my duty as Rapporteur to clarify, PRELIMINARLY, that in item 2 of § 1 of art. . 1, includes among the purposes of the Institute, that of 'collaboration with the public authorities in the improvement of the legal order, by means of representations, indications, requests, suggestions', etc.
It is clear from the mere reading of that provision that the proposal in question is provided for in the Statutes of this House. That said, let's move to the merit of the proposal:
It is not the first time that this Institute has come up with matters based on the Juarez Távora Law, so named because it was at the time when he was Minister of Agriculture and inspired by this illustrious Brazilian, that President Getúlio Vargas, then head of the Provisional Government, promulgated the Decree 24,645 of July 10, 1934, establishing measures to protect animals.
Indeed the precedent occurred when the signatory requested and obtained the protection of this House against the intended attempt to partially repeal that law, so that bullfighting could be legalized. It was then our president the late colleague Justo Mendes de Moraes, being Mayor of the city of Rio de Janeiro (then Federal District), his cousin, or General Ângelo Mendes de Moraes, very committed to conduct the so-called "bull races. It seemed to him that this would make the commemorations of this city's Fourth Centenary brighter.
The draft derogation from part of the cited law had already been approved by the House of Representatives (number 763, 1950) and it was thanks to the massive support of this House that in a letter sent to Senator Melo Viana, then in the Presidency of the Senate, that The matter was reconsidered and the Senate of the Republic was not allowed to accept the House of Representatives' point of view in a memorable session that took place on July 27, 1950.

Brilliantly reported by Senator Luiz Tinoco and with the support of the other members of the Committee, namely Senators Waldemar Pedrosa, Augusto Meira, Atílio Vivacqua, Joaquim Pires, Aluísio de Carvalho and Ferreira de Souza, the latter eminent Professor of Law and member of this House , was the project rejected on the basis of our proposal, thus mentioned in the presentation of Senator Rapporteur, in the following passage:

'It is also important to pay attention to the important decision taken by the Brazilian Institute of Lawyers, which, as a member of the Legislature, decided to send to the Senate its contribution on the matter.

The plenary of that respectable Sodalicius approved, by expressive majority, the opinion of its Standing Committee on Criminal Law, contrary to bullfighting in Brazil.

Any rule that imposes punishment or penalty must be called legally criminal! However, the indication of bullfighting was forwarded by the Institute of Lawyers to its Committee on Criminal Law, in accordance with good doctrine. Behold, this specialized and technical body offers the plenary its opinion against those games, an opinion reinforced by the components of the highest body of Brazilian lawyers. '

The Senator Rapporteur continued:

'We have received calls from every corner of the country to know the proposition. If legal conviction and humanitarianism were not enough, the sincerity of these exhortations would necessarily have to be taken into account. They are animal protection associations; they are other entities; They are anonymous and unknown patricians who appeal to our understanding and balance.

We are disgusted to conceive of the simple hypothesis that man can himself serve as an object by awakening from lower instincts, dormant by civilization and suffering by culture. '

In conclusion, the Commission decided:

'The upward march of Brazil's culture and progress cannot be hampered by such initiatives, which constitute the malpractice of the principles of generosity and nobility inherent in our people. And as a representative of this people, from whom we have received the legislative mandate, we prefer to stand by their wishes. We thus respond to calls that have been and are still addressed to us through a considerable number of messages.

Accordingly, for legal and moral reasons, we offer an opinion contrary to the Project.

For the rejection.

Ruy Barbosa Hall on July 27, 1950. '

Annex, as an integral part of this report, p. 6,071 of the *National Congress* Diary of August 2, 1950, containing the opinion of the Senate Committee, transcribed above.

The story was then also widely publicized by the press, as seen from 2nd p. From *the Diário de Notícias* of July 22, 1950, under the title: The *Institute of Lawyers of Brazil* is *against bullfighting*, which transcribes the proposal of the signatory, strengthened with the support he then received from our late colleagues Baltazar da Silveira , Pena e Costa, Letacio Jansen and others, who also received the favorable opinion of the Criminal Law Commission, which was then composed of lawyers Serrano Neves, Dario Almeida Magalhães and Dyonisio da Silveira, having voted the lawyer Evandro Lins e Silva, subsequently Minister. of the Supreme Court. Attached is also a copy of this publication as an integral part of this.

My archives contain dozens of publications, including a delicious charge by Pericles (The Friend of Oz), in the magazine O Cruzeiro, August 5, 1950 (Appendix 3).

Letters and expressions of support from animal protection associations and people from all walks of life, angry about the possibility of bullfighting in Brazil, were sent to me by the dozens.

Of course, although there is an analogy between this old case of bullfighting and that of cockfighting, sometimes raised, there are differences that must be stressed. In the case of bullfighting, we have a man (or a group of men) who fight against an animal with all the advantages that gives them rationality and with all the refinements of malice that give them so-called melee weapons to bleed and pet the poor animal. trapped, driven into a desperate attitude of aggression, in a futile struggle for survival, for his death is certain.

In the case of roosters we have two birds of the same species that fight for instinct, stimulated by the illusion of the prize that is not given to them, that is, the possession of the ideal female, as it happens in most of the zoological scale where the male fights for the female. Nothing resembles bullfighting, which is an artificially provoked fight without the slightest reward or illusion of sexual reward for the poor bull. In addition we must also consider that bullfighting was a distinctly anti-Brazilian habit. It contradicted our traditions and tried to infiltrate it into the sporting habits of Brazil, with all the refinements of its typical perversion and sadism. The cockfighting, while also ethically objectionable, does not, in my view, achieve the finesse of cruelty that bullfighting music and staging are not enough to dispel. The cockfight, however, is widely implanted as an addiction and a habit of our people - especially the rural man with a lesser choice of fun than the urban man - and such that President Jânio Quadros, who in a minimum of time managed to reach a ridiculous, he was mockingly criticized for having, as our three colleagues who sign the related Proposal recall, promulgated Decree 50.620 of May 18, 1961, unnecessarily forbidding the functioning of cockfights. " This decree was repealed by n. 1. 233 of 6/22/62, given the pressure exerted by the so-called Galistas on the parliamentary government of the time. But this revocation in no way changed the art. 3 of the aforementioned Decree 24.645, of 10/7/34, on animal protection, which considers cockfighting to be mistreated.

Thus this Institute, summoned again to speak out in defense of the animals and this time provoked by the sensibility of an illustrious, talented and dignified patrician, Ms. Lya Cavalcanti, President of the Animal Protection Association, which - by the way of late thanks - so much has cooperated with us when the episode of bullfighting occurred, can not, in my view, but come to the following

CONCLUSION:

Since the so-called Juarez Távora law is in force, the aforementioned Decree no. 24,645, of July 10, 1934, which places all existing animals in the country under the tutelage of the State (art. 1), and, consequently, assisting them in court by representatives of the Public Prosecution Service, their legal substitutes and members. the animal protection societies (§ 3 of art. 2); defining the law as mistreatment (art. 3), a series of acts, such as:

‘I, perform an act of abuse or cruelty on any animal;

: ....

IV, voluntarily striking, injuring or mutilating any saving organ or tissue other than castration for domestic animals only, or other operations performed solely for the benefit of the animal and those required for the defense of man, or in the interest of science;

....

VI, not to give rapid death, free from prolonged suffering, to any animal whose extermination is necessary for consumption or not;

....

XXIX, conduct or promote fights between animals of the same or different species, bullfighting and bullfighting simulacrum, even in a private place;

....

XXX, throwing birds and other animals into concert halls and displaying them for luck or stunts. '

Also establishing the Law on Criminal Infringements (Decree-Law No. 3,688 of October 3, 1941):

‘Art. 64 – Treating an animal cruelly or subjecting it to excessive work:

Penalty – Simple imprisonment, from ten days to a month, or a fine of ten to fifty cents.

....

§ Paragraph 2 – The penalty shall be applied with a half increase if the animal is subjected to excessive work or cruelly treated, on display or public show.

All of this demonstrates to the contrary that cockfighting is illegal and of course also anti-charitable.

Accordingly, it seems to me to be well founded and, therefore, I give all my personal support to the proposal of the three colleagues mentioned above, accepting as good, valid and timely the final suggestion of the indication that they request the House to forward their letter to the Honorable Minister. Justice, asking him, with the support in the legal texts cited, for a recommendation to all the Governors of the States (and I would add to His Excellency the Governor of the State of Rio de Janeiro, in particular, for the “National Tournament” being held there. of Cockfighting ”), the immediate and definitive closure of cockfighting throughout the National Territory, in compliance with the law and respect for the feeling of pity, without which homo sapiens, besides losing its wisdom, ceases to be human and transforms - in this mode of worship and appreciation of the lust of violence and evil - the most dangerous and vile being on the zoological scale.

Rio de Janeiro, August 17, 1973. Thomas Leonardos - Rapporteur. ”

In 1990, the Municipal Law 4.149 / 90, which allowed the execution of cockfights in that municipality, was approved for a period of time in Salvador.

Such law frontally hurt the art. 214, item VII, of the State Constitution of Bahia, as follows:

> "The State (of Bahia) and municipalities are obliged, through their direct and indirect administration bodies:
>
> VII – protect the fauna and flora, especially endangered species, by overseeing the extraction, capture, production, transportation, marketing and consumption of their specimens and by-products, forbidding, under the law, practices that put their risk at risk. ecological function, cause their extinction or subject animals to cruelty. "

If it is the obligation of the State and Municipalities to protect animals so that they are not subjected to cruelty, it is forbidden to issue laws that encourage just the opposite.

With these arguments, the League for the Prevention of Cruelty against Animals directed representation to the Attorney General's Office of that State, and then Attorney General Dr. Carlos Alberto Dutra Cintra filed an ADIn with the Court of Justice of that State, on 30/30. 1/91, for the declaration of unconstitutionality of the municipal law of Salvador 4.149 / 90.

The ADIn was upheld in the Full Court of the Bahia Court of Justice. Jatahy Fonseca, and the following menu:

"Direct action of unconstitutionality. Cockfights. Provenance

The municipal law that rules cockfighting is unconstitutional because it submits animals to cruelty (art. 214,

VII, of the State Constitution and art. 225, § 1, item VII, of the Federal Constitution). "[43]

[43] Bahia Court of Justice
Full Court.
Direct Action of Unconstitutionality 880-8 (Salvador)
Applicant – Prosecutor
Required – Salvador City Council
Rapporteur – Des. Jatahy Fonseca

Direct Action of Unconstitutionality. Cockfight. Provenance

The municipal law that rules cockfighting is unconstitutional because it subjects animals to cruelty (art. 214, VII, of the State Constitution and art. 225, § 1, item VII, of the Federal Constitution).

JUDGMENT

Having seen, examined, reported and discussed the present case of the Direct Action of Unconstitutionality no. 880-8 (Salvador), where the public prosecutor is the applicant and the city of Salvador is requested,

AGREE the Judge members of the high court of the State of Bahia, in Plenary Session, unanimously, to declare unconstitutional the Municipal Law no. 4,149 / 90.

The Public Prosecution Service of the State of Bahia, in the exercise of its legal attributions, by its Attorney General, has filed before the egregious Court of Justice this Direct Unconstitutionality Action of Municipal Law no. No. 4,149 / 90 which "permits cockfighting and other arrangements".

This law was approved by the Salvador City Council, passing the sanction of the Municipal Executive for a period of time.

The applicant stated that the referred Municipal Law frontally injured art. 214, item VII, of the State Constitution and art. 255, § 1, item VII of the Federal Constitution.

The applicant argued that, by such constitutional provisions, it is the obligation of the State and the Municipality to act in the protection of animals, so that they are not subjected to cruelty, therefore, it is forbidden to issue laws that encourage the opposite, ie , cruelty to animals.

He also added that the aforementioned Municipal Law also hurts art. 64 of the Criminal Offenses Act and art. 3, XXIX, of Federal Decree no. 24,645 / 34.

In conclusion, the applicant said that the practice of cockfighting is illegal and unconstitutional, deserving the repudiation of all, because it is nothing other than the encouragement of cruelty and easy gain.

Accompanying the initial, came the administrative process n. 380/91 - PGJ, which contains several documents of Animal Protecting Societies sent to the Attorney General's Office, denouncing the contraventional practice of the Galician Society, supported by the Law said as unconstitutional and requesting appropriate measures.

An injunction was granted for suspension of said Law.

The Salvador City Council provided the requested information (pages 18/35 v.).

The City Hall did not provide the requested information.

The Attorney General's Office ruled that this action was well founded (pages 37/38).

Examined, the records were included in the trial agenda.

It is the report.

As seen, the Attorney General's Office ruled that the action was well founded (see pages 37/38).

The Attorney General of the State of Bahia has proposed the present Unconstitutionality Direct Action of Municipal Law No. 4,149 / 90, approved by the Salvador City Council.

The applicant affirmed that such law frontally injures a device inserted in the State (art. 214, item VII) and Federal (art. 225, § 1, item VII) Constitutions that oblige States and Municipalities to give protection to fauna and flora, prohibiting practices that endanger their ecological function, cause their extinction and subject animals to cruelty.

The applicant is right to say that the practice of cockfighting is illegal and unconstitutional and deserves everyone's repudiation as it encourages cruelty and easy gain.

However, it establishes art. 214, item VII, of the State Constitution, in repetition of that already established in art. 225, § 1, item VII, of the Federal Constitution that:

The State and Municipalities undertake, through their direct or indirect Administration bodies, to: VII protect the fauna and flora, and endangered species by overseeing the extraction, capture, production, transportation, marketing and consumption of their specimens. and by-products, forbidden under the Law, practices that endanger their ecological function, cause their extinction or subject animals to cruelty. '

Contrary to the aforementioned constitutional precept, Municipal Law No. 4,149 / 90 allows cockfights to take place (art. 10) and, further, naively attempts to modify the moral and legal concept by establishing in art. 2) that 'gambling on cockfights is not a game of chance, nor does it mean cruel animal treatment'.

Now, a law which is head-on contrary to constitutional precept cannot stand. Similarly, constitutional norms, when necessary, will be made explicit, regulated by a complementary law that can never be confused with a simple Municipal Law.

Thus, the Constitution prohibits practices that subject animals to cruelty. Therefore, Municipal Law no. 4.499 / 90 cannot claim that cockfighting is not cruel treatment of animals or that gambling on bets is not a gamble.

The unconstitutionality of this Municipal Law is so blatant that the City Council itself, in its information fls. 18/19, recognizes it by saying that it will be responsible for resolving the unconstitutionality alleged by the Public Prosecution Service.

For these reasons, the action is taken to declare Municipal Law No. 4,149 / 90 unconstitutional.

Chamber of Sessions of the Court of Justice of the State of Bahia, in Plenary Session, on the 12th day of June of 1992. ”

In 1998 the State Governor of Rio de Janeiro sanctioned a similar law, intending to release cockfights in that state.

The ecologists protested and sent representation to the Attorney General, requesting the Declaration of Unconstitutionality of that law.[44]

---

[44] The League for the Prevention of Cruelty against Animals, a civil environmental protection entity, signed in fine is before you. to expose and require the following:

On March 20, 1998, the Governor of the State of Rio de Janeiro, Marcello Alencar, sanctioned Law no. 2,895, authored by Deputy José Godinho Sivuca (PPB) -RJ, authorizing the creation and holding of exhibitions and competitions between combatant birds throughout the territory of that state.

Now, cockfights and canary fights are implicitly prohibited by the Federal Constitution, in its art. 225, § 1, item VII, which prohibits practices that subject animals to cruelty, giving the Government and society the task of protecting flora and fauna.

The referred law also hurts the State Constitution of Rio de Janeiro in its art. 258, § 1, IV, which imposes on everyone and the Government a duty to 'protect and preserve flora and fauna, endangered species, vulnerable and rare species, and practices that subject animals to cruelty are prohibited, for example. man's direct action upon them. '

Under the ordinary laws, Law 2,895 / 98 violates Federal Law 9,605 of February 12, 1998, which provides for criminal and administrative sanctions arising from conduct that harms the environment.

In your art. 32 Law 9 605/98 typifies as a crime "to commit an act of abuse, maltreatment, injury or mutilation of native or exotic native or domesticated wild animals."

We are also facing a Crime against Environmental Administration (art. 67 of Law 9.605 / 98), which is the granting of authorization by a public official, in disagreement with environmental standards.

According to Kelsinian theory, a legal norm finds its foundation of validity in the immediately superior norm, forming a vertical chain whose top is the Constitution, which is the ultimate foundation of every positive order.

The incompatibility of State Law-RJ 2.895 / 98 with the Federal Constitution and the State Constitution of Rio de Janeiro is evident.

In addition to being unconstitutional, it is illegal because it violates Federal Law 9.605 / 98, as all laws must conform to higher categories. Thus, two fundamental principles of law were injured: constitutionality and legality, constituting the direct and indirect unconstitutionality of the law in question.

The cruelty of the cockfight is evident. Let's see: (description of cockfighting as above).

That said, and demonstrated to the extent of the unconstitutionality and illegality of Law 2,895 of March 20, 1998, it is warranted that you. to file a direct action of unconstitutionality of said law with the Federal Supreme Court. ”

WHY COCK COCK FIGHTING IS CRUEL

By one year the rooster is ready for the fight and will go through 69 days of dealing. In the treatment the animal is pelted - meaning that it has cut the feathers of its neck, thighs and under the wings - has its barbs and eyelids operated. He began a life of suffering with basic training. The trainer, holding the animal with one hand in the chat and the other in the tail, or holding it by the wings, throws it up and drops it to the ground to strengthen its legs. Another procedure is to pull it by the tail, dragging it in the shape of eight, between its separate legs. Then the rooster is suspended by its tail to strengthen its nails in the sand. Another exercise is to push the animal around its neck, making it spin in a circle like a top. Then the animal is brushed to develop muscle and brighten the color of the feathers, is bathed in cold water and placed in the sun to open the beak, so tired. This is to increase resistance.

Then comes the time of collation training, when the rooster is put to fight with another, just for training, using spore bushings and rubber toecaps on its beak. The toecap that holds the two nozzles is for foot training, and the toecap that holds the upper nozzle is so that the rooster can trap its opponent without hurting it. The toe cap is removed for yield, but at this stage the animals are separated before injury.

The rooster spends his life imprisoned in a small cage, only circulating in larger space during training seasons, when it is put on the treadmill, which is 2m long and 1 meter wide.

The time has come for the rooster to be taken to the fighting. After the pair (choice of pairs) comes the top, which is the bet between the two owners. Then the bets and the dicks are opened. The roosters enter the squeegee with shoes made of metal spurs and silver spouts (the silver spout serves to hurt more or replace the already lost spout in the fight). The fight lasts 1h15, with four 5m refreshments. If the rooster *is touched* (deadly hit) or half *touched* (knockout), the hysterical audience bets licks, which are advantageous bets for the If

the rooster is dropped for 1 minute, the judge authorizes the owner to figure the rooster (try to stand it up). If he can stand for 1m the fight goes on. Lying down is a loser. The rooster can get scared when it takes a very painful blow and abandons the fight.

If the fight lasts 1h15 without one of them falling, there is a tie, and the top loses its validity. Bets are even placed on refreshment.

Career cockerel is the one who runs the squeegee running until tired the other who is running after him, and then slaughter it. A yoke is one that crosses his neck with the other's neck, forcing downward until the opponent loses the fighting stance. The rogue rooster is the one who, in the middle of the fight, enters under the opponent's feathers when being attacked and then ambushes him.

All this proves that cockfights are cruel and can only be enjoyed by perverse, sadistic individuals.[45]

Also, it is appropriate to explain why the canary fight is cruel. The main argument of the ranchers to justify these disputes is the fact that the canaries fight spontaneously in the wild.

The bird has, in fact, the sense of ownership of the earth, which manifests itself through song. The territory will be larger the length of the chant. The song of the canary has wide range and consequently, in nature lives in wide territory and in couples. In the wild state these birds only fight to defend the territory where they will mate and have their offspring. Never by instinct to fight. Thus, the fights only happen at the time of reproduction, from August and September, and end by the inevitable escape of the loser. During late fall and winter, they live in packs with no territory, and there is nothing that makes them fight.

Moreover, when there is invasion of territory the fight does not always happen. The animals have a communication code that allows a dialogue before the dispute. The birds raise their feathers to intimidate the adversary, who can also make signs of appeasement and leave the territory, ending the dispute.

---

[45] DIAS, Edna Cardozo. *SOS Animal*.Belo Horizonte: Liga de Prevenção da Crueldade contra o Animal, 1996.

Another argument used by the ranchers is that competitions are intended to refine the breed and defend the species from extinction.

Quite the opposite of what they say, in nature the animal is better preserved, because a canary that escapes or loses its territory can be a new and a good breeder, regardless of being good fight or not. Considering that not all canaries are for fighting and that captivity is not necessary to preserve the species, what are the farms improving? No one enhances a captive breed for the good of the breed itself. Deep down, this is always done for man's profit. One of the most difficult things is to breed a captive species and reintroduce it into the wild, not only because of the difficulty of adapting the species but because of the lack of appropriate areas.

Fighting canaries are fed with cannabis seeds and the Melhoral remedy dissolved in water. In addition, sexual stimulation, caused by the presence of the female and the massage of the animals' chest, is used to stoke the animals against another bird. The loser has no forgiveness: if he survives the wrath of his adversary he dies crushed at the hands of the creator, angry at his defeat; and if he wins, he does not stay with the female, because he is saved for another dog.

In fact, the purpose of the fighting is to make money from gambling and marketing birds, a multi-million dollar business where canaries are a cruel instrument of financial exploitation.[46]

Examining the etymological meaning of the word *cruelty,* we can deduce that in any case cockfighting and canary fights are illegally:

- CRUEL: person who delights in causing harm to another being; one who is insensitive to the pain that causes others. (Hailing Encyclopedia of Law, v. 22 p. 14).
- CRUELTY: quality or character of what is cruel, which delights in doing evil, tormenting or harming.[47]

That said, and demonstrated to the unconstitutionality and The

---

[46] DIAS, Edna Cardozo. *SOS Animal. Op. cit.*

[47] FERREIRA, Aurélio Buarque de Holanda. *Novo Dicionário da Língua Portuguesa.* 1.ed., Rio de Janeiro: Nova Fronteira, 1986

illegality of Law 2,895 of March 20, 1998 requires that you of filing a direct action of unconstitutionality of said law, before the Federal Supreme Court.

P.D.
Edna Cardozo Dias
OAB / MG 10 450
Attorney General's Office
SGAS – Q 603, Lot 23
70 200-901 – Brasilia - DF

The *law was declared unconstitutional by the STF*. State laws of Santa Catarina and Rio de Janeiro have been declared unconstitutional. In Direct Action of Unconstitutionality No. 2,514 / SC, rapporteur Minister Eros Grau, judged on June 29, 2005, was declared unconstitutional law of the State of Santa Catarina for authorizing "practices that subject animals to cruelty." In Direct Action of Unconstitutionality No. 1,856 / RJ, of the Rapporteur of Minister Celso de Mello, assessed on May 26, 2011, the Court again restated the unconstitutionality of the rule - Law No. 2,895 / 98 - which allowed the “galactic competition.

5.5.2 Cruelty in rodeos and vaquejdas

The practice of rodeo began on farms in the American West, when workers, after reading, showed off and disputed that they had more agility. The settlers carried cattle south after the United States conquered Mexico and made rest stops. In their free time at work, cowboys played horseback riding and lasso. What was just a joke later became an amateur and later professional dispute (DIAS, 2000).

In Brazil, this practice has been reported since the 1950s, and it started in the city of Barretos / SP, whose main activity is agriculture and where several refrigerators are located. While pedestrians were transporting cattle from the farms to the freezers, they decided to compete among themselves by riding.

The first event of national repercussion was the Festa do Pião, held in Barretos / SP, in 1956:

> [...] the party was held in 2 days, with performances of Catira, Brazilian Folk Dances, Violeiros Sets, Garlic Burning and typical Parade with ox carts and folk ensembles and Pau de Sebo. There was no election for the Queen, the club chose a girl from the city to be the party's representative. The first parties were held in rented circuses, Patativa and Fubeca (circus owners). This decade the Rodeo, which replaced the “Cavalhadas” that symbolized the struggle of Christians against the Moors, was already the main attraction of the party that excited the spectators who identified with the event that mixes sport with daily work on the farms.
>
> [...]
>
> The internationalization of the rodeo came with the beginning of bull riding in 1983. The 30th edition of the party, 1985, was held in the new space and took thousands of visitors from all over the country. In 1989, the Oscar Niemeyer Rodeo Stadium was inaugurated, with a capacity of 35,000 seated spectators (INDEPENDENTES, 2014).

The Festival of Pawn Boiadeiro of 1956 became a model for all the parties since then in the country. To this day Barretos remains one of the main places for rodeos, and is where is located the Park Pawn Boiadeiro, designed by Oscar Niemeyer.

DESCRIPTION

The rodeo of Brazil is slightly different from the American. Here a modality called cutian was invented. In the cutian, the pawn also needs to stay on the horse for 8 seconds, but what counts point are the spurs he gives the animal. Each of the judges, who are three, gives scores from 0 to 100, and the middle score is the one that is valid for classification. Pedestrians claim that spurs have no tips and therefore do not hurt animals. As for the sedem (rope made with the hair of the mane or tail of the ox and used to manage the animal), attached to the groin of the animal, is the same type used by Americans (DIAS, 2000, p. 198).

The oldest mode of rodeo practiced in the United States is saddle bronc, where the pedestrian rests on the stirrups, sitting on a saddle, holding a 1.20 m long cable (DIAS, 2000, p. 199).

Already the *bareback* is a test without stirrups, having the pawn as support a single handle. It is almost lying on a small saddle with one arm in the air and yet it cannot stop spurring the animal (DIAS, 2000, p. 199). In the end, the pawn is saved by the godfather (or godmother), a kind of pawn that has a lifeguard-like function; Their mission is to enter the arenas to ensure the safety of pedestrians, preventing them from falling and speeding the return of animals. In addition to the mission of freeing the pedestrian from falling, these professionals are also responsible for speeding the return of animals to bretes (SPECTACULAR SPORT RODEO , 2007).

The most dangerous event is bull riding, the one that replaced the horse with the ox. The pawn has to hold for 8 seconds on a hovering animal to gain a score from 0 to 100. The more the hunt bull and the pawn spur, the higher the score. The ox has its sexual organs tightened by the sedem, causes him to jump. A nylon rope is tied to the bull so that the pawn holds it with one hand. The spurs cannot have points. Muscle strains in pedestrians and animals are frequent, and may even occur fractures. At the end of the race, the pawn chooses the best time to jump, while a godmother, often dressed as a clown pawn, distracts the animal after the pawn dismounts (DIAS, 2000, p. 199).

The most commonly used horse breeds in rodeos are Arab, Creole, Mango, and Quarter-mile. The most used oxen are the Nelore, Dutch, Caracu and *Red Bull* breeds (DIAS, 2000).

There is also proof of the calf loop, which is captured by the neck, or *calf roping*. The horse-mounted looper crosses the gate chasing a calf just three or four months old. The pawn loops the animal's head, pulls it back and stops running. Then

get off the horse and lift the puppy to waist heightand with the rope in his mouth he binds three of his paws. Three judges timed the race time, and is worth the intermediate mark. They cannot be exceeded 2 (two) minutes. The shooter cannot leave the box before the calf, otherwise he will be penalized with five (5) seconds more in the final time count (DIAS, 2000, 199-200).

A variant of this mode is *two against one*, or *roping*. It's two knights chasing a young ox. The looper is the headboard, and must take the head of the animal. It's the first one out. The weighing machine has the task of lacing the hind feet of the animal. With the loops facing each other, the animal is tied and pulled by its head and feet. When the race is over, both pawns raise their arms (DIAS, 2000, p. 2000).

The loop test, as described by Anaiva Oberst, was incorporated into the rodeos of Barretos / SP:

Barretos rodeo recently incorporated new attractions into the "party": the calf loop and the double loop. In the first test, a calf loop, a poorly detached calf weighing less than 60 kg is looped around the neck, tied and dragged by a pawn, while in the second test, a double loop, two pawns, one on each side, loop the ends of a heifer, pulling the animal in opposite directions at high speed. The consequences are bruises, fractures, strains, paralysis and sometimes even death (OBERST, 2012, p. 64).

There is also proof of speed, *bulldogging.* As an assistant surrounds the ox to constrain him to follow the planned route, the pedestrian approaches mounted and jumps on the ox, holding him by the head. Twist the animal's neck until it is completely immobilized. The race ends when the ox is knocked down. (Dias, 2000, p. 200).

For females, there is the three-drum test. The drums are arranged in the triangle-shaped arena. After the referee starts, the rider goes around the first drum, after the second and third in succession. Then run to the finish line. The victory is the one who accomplishes the challenge in less time.

The drum cannot be dropped, otherwise 5 seconds will be added to the competitor's final time mark (Dias, 200).

According to rodeo promoters, rodeos do not involve cruelty and animals are treated well. They claim that non-pointed spurs do no harm, but that is not the case. With or without tips, the spurs are intended to deliver strikes that hurt the animal. The breastplates usually cause injury to animals. In some rodeos, nails and stones and other sharp objects are placed under the saddle, or electric and mechanical shocks are applied to the sensitive parts of the animal before entering the arena. Sedem is applied to the groin area, which is very sensitive because it is thin-skinned, but mainly because it is the area of ??localization of the genital organs. Add to that the transportation in poor conditions and the stress on confinement in the brete before the races.

Veterinary studies have argued that in addition to the physical pain suffered by animals, the noise, lights and ropes used cause stress. They also affirm that the repetition of the impacts of the pedestrian falling on the animal's spine can put pressure on the gel disks that separate the vertebrae, especially in the lower back. In this regard, the technical opinion of Julia Matera, Chairman of the Ethics Committee of the Faculty of Veterinary Medicine and Zootechnics of the University of São Paulo:

The use of sedem, calipers, electric or mechanical shocks and spurs generates stimuli that produce physical pain in animals, corresponding to the intensity of the stimuli. In addition to physical pain, these stimuli also cause mental distress to animals, since they have the neuropsychic ability to assess that these stimuli are aggressive to them, that is, dangerous to their integrity.

[48]"descorna: o chifre dos bovídeos, para a realização de determinadas provas, é "aparado" com a utilização de um serrote, sem anestésico, e causando sangramentos e dor aos animais;" (MARTINS, 2009, p. 372).

(MATERA, 2009 apud MARTINS, 2009, p. 377).

This is the same understanding expressed in a technical report by Dr. Irvênia Luiza de Santis Prada, Emeritus Professor of Anatomy at USP's Faculty of Veterinary Medicine and Zootechnics:

> The sedem is applied in the groin area, quite sensitive already because it is thin-skinned, but mainly because it is the area of localization of genitals. In the case of cattle, the sedem passes over the penis and, in horses, at least compromises the most anterior portion of the foreskin.
>
> [...]
>
> As for the possibility of producing physical pain through the use of the sedem, the identity of organization of pain neural pathways in humans and animals is quite suggestive that they do, in fact, feel physical pain. The opposite is that it cannot be said, that is, there is nothing in science to prove that animals feel no pain with such a procedure.
>
> [...]
>
> "The identity of morphofunctional organization that exists between the nervous system of man and animals is highly suggestive that animals experience physical and mental suffering when undergoing the procedures of so-called complete rodeo." (PRADA, 2000 apud MARTINS, 2009, p. 377).

Confirming the maltreatment and suffering attributed to animals in the loop tests, more than 100 (one hundred) veterinarians gave their opinion in the technical opinion entitled "Technical evaluation of the loop test - evaluation of potential damage in calves used in tests. "(Martins, 2009, p. 378).

> Vânia Tuglio teaches that:
>
> A recent study entitled "Methodological and Neurofunctional Bases of Pain / Suffering Occurrence

Assessment in animals "states that despite the complexity of the subject, given that the experience of pain is subjective and that animals, like human babies, do not verbalize their feelings, it is possible to make an assessment based on parameters established by LASA - Laboratory Animal Science Association.

Thus, as there is evidence of similarity of morphofunctional organization between humans and animals, particularly mammals, it is possible to apply the principles of homology and analogy (TUGLIO, 2006, p. 234).

Demonstrated to the possibility of the occurrence of pain and suffering to the animals in rodeos, rigorous supervision is necessary so that Law no. 10.519 / 2002 fulfills its purpose, namely to ensure the full welfare of animals used in rodeos.

LEGALITY

At the beginning of the practice in Brazil, the rodeos took place in an amateur way and there was no legislation about who practiced the practice or the animals involved in it.

The first step towards the legalization of rodeos in Brazil was taken in 2001, under the government of Fernando Henrique Cardoso, when Law no. 10.220, which classified the rodeo pedestrian activity as a professional athlete, thus regulating the profession. The law establishes the right to contract and remuneration. In addition to compensation, pedestrians are now entitled to life and accident insurance, reimbursement of medical and hospital expenses in the event of accidents, as well as therapies that are necessary for the recovery of the injured. The Law prohibits the work of the minor without authorization from the guardian and establishes a maximum workday of 8 (eight) working hours for the pedestrian, but does not establish limits to the working hours of the animals (BRAZIL, 2001). It was

the first step towards legalizing rodeos throughout the country.

The Law considers a pawn to perform dexterity tests on the back of equine or bovine animals in tournaments attended by public or private entities. It also includes among the activities the cowboys and tie tests (art. 1 and sole paragraph).

The vaquejadas are of Brazilian origin, having been born in the Northeast states. A genuinely Brazilian show, the vaquejada was born in the city of Santo Antão, Pernambuco. Two cowboys, a so-called *puller* and the other *horse-mounted* conveyor, accompany an ox from the exit of the bleed (Box made for the start of the defendant) to the trial track. There they must fall the ox to the ground, dragging it brutally until it shows all four legs. If you want to increase the points with the feat, at the time of felling the ox must fall on its feet (DIAS, 2000, p. 201).

The so-called *apartaments,* which were made until the middle of the twentieth century in the northeastern backlands, were witnessed by crowds, who traveled from great distances to see the atrocities imposed on animals. This was done at the time when cattle were raised in open fields. After the wintry seasons, breeders would gather and herd cattle to make proper recognition of the ownership of the animal by the farmer's trademark (made with hot iron). The felling was done at the end of the operation, when calves had already been recognized through their mothers. Each month that was mutilated in the fall was sacrificed to serve as a meal for the participants. *Apartaments* no longer exist today after cattle were raised on land surrounded by landowners. However, the vaquejadas continue to be performed, more frequently with each passing year (DIAS, 2000, p. 201).

Animals used in cattle are dislocated and internally hemorrhaged due to rough handling and tumbling. There is even the bad habit of some northeastern pedestrians to carry a blade or piece

of bone biting, hidden in the glove to cut off the ox's tail as it falls. And it is not only the backcountry who participates in the overthrow of the ox. These events are attended by businessmen, professionals and other professional categories (DIAS, 2000, p. 201).

On July 17, 2002, Law no. 10.519, which "provides for the promotion and supervision of animal health protection when rodeoing is carried out and other measures.". The law conceptualizes rodeos as:

> Article 1 [...]
>
> Single paragraph. Animal rodeos are considered riding or timing activities and looping events, in which the athlete's ability to master the animal with skill and the animal's own performance are evaluated. (BRAZIL, 2002).

The Law created the following obligations for rodeo promoters:

> Article 3. The rodeo promoter shall, at its expense, provide:
>
> I - complete infrastructure for medical care, with ambulance on duty and first aid team, with mandatory presence of general practitioner;
>
> II - qualified veterinarian, responsible for ensuring the good physical and sanitary condition of the animals and for complying with disciplinary rules, preventing abuse and injuries of any kind;
>
> III - transportation of animals in appropriate vehicles and installation of infrastructure to ensure their physical integrity during their arrival, accommodation and feeding;
>
> IV - arena of competitions and bretes surrounded with resistant material and with sand or other material

> padding, suitable for cushioning the impact of any fall of the cattle pedestrian or mounted animal. (BRAZIL, 2002).

Aduz Fiorillo that

> [...] rodeo professionals, namely cowboy pedestrians, madroniros, lifeguards (also known as clown pedestrians), tamers, porters, judges and announcers, have some benefits, that should be supported economically by rodeo organizers / promoters, within a legislative vision that consolidates alluded activities not only culturally but mainly economically (FIORILLO, 2014, p. 321).

The law prohibits the riding and harnessing equipment used from causing injury or injury to animals. It establishes that the straps, girdles and bellies are made of natural wool in order to avoid discomfort to animals. It also prohibits the use of pointed rosette spurs, shock-causing appliances, and injury-causing instruments. Loop ropes should contain devices to reduce the impact to the looped animal (BRAZIL, 2002).

In case of violation of the Law, the penalties of warning, temporary and definitive suspension to be applied by the competent administrative body are established.

Prior to the approval of this law, several municipalities of the State of São Paulo had prohibited, by municipal laws, rodeos, supported by art. 225, § 1, inc. VII of CR / 88, considering them a practice full of unconstitutionality. With the promulgation of Law no. 10.519 / 2002, the defenders of rodeos relied on it to argue the unconstitutionality of said municipal laws prohibiting the activity, since the rodeos were authorized by federal law.

> [...] with the advent of Federal Law No. 10.519 of 07/17/02, which provides for the promotion and supervision of animal health protection when performing rodeos, which even added Federal Law 10.220 of 11/11. 1/4, it became clear that the practice of rodeos, provided that performed under the law is lawful activity that can not be prohibited by Municipal Law (CNAR, 2014a)

Nevertheless, for Anaiva Oberst, the Law came to put an end to the cruelty practiced against animals. For the author, just watch a rodeo or see photos attached to the technical advice to conclude that such rules are not met (OBERST, 2012, p. 66).

With the regulation of the pedestrian profession, in 2001, the National Rodeo Confederation (CNAR) was founded, with the purpose of representing the national rodeo with the Ministry of Sport and the Federal Government. The entity aims to organize, direct and encourage throughout the national territory, the practice of rodeo, overseeing and promoting events and national and state championships in all modalities of rodeo, performing a work in conjunction with their State Federations of Rodeo (CNAR, 2014b).

The Attorney General of the Public Prosecution Service of the State of São Paulo, Dr. Vânia Tuglio, talking about rodeo, shows us that:

> [...] most of the animals used in rodeos are tame and need to be stung and tormented to demonstrate a savagery they do not possess, but which is actually an expression of despair and pain. To falsify reality and show a non-existent violent spirit, pedestrians use various devices that, linked to animals or the pedestrian that mount them, or not, cause pain and discomfort to animals, revealing cruel and intolerable human insensitivity (TUGLIO, 2006, p. 237).

Among the instruments capable of causing suffering, Tuglio (2006) mentions the sedem, girths, belts or belts, pointed or blunt spurs, breastplates. Electric shocks are also applied to animals to stimulate their bravery. The author understands that, in addition to this direct suffering, the animals also suffer indirect suffering, as they arrive long before the public to the venue and suffer injuries when they are unloaded or pushed out of the vehicle that transports them. They usually wait every night without water or food. She reports that they are kept in tight spaces, are subjected to the noise of the party microphone and fireworks (TUGLIO, 2006, p. 237-238).

The lawyer from São Paulo Renata de Freitas Martins, in an opinion drawn up on June 30, 2009, in the city of Santo André / SP, about the use of animals in rodeos, describes the most used instruments for animals to hump:

> Sedem: A kind of girdle, horsehair and fur that ties into the animal's groin and makes it jump.
>
> Spurs: pointed or not objects, coupled to the pedestrian boots, serving to strike the animal.
>
> Breastplate: Rope or leather strap tied and strung around the animal's body, just behind the armpit.
>
> Polish: bells are placed in the breastplate, which make an annoying noise to the animal, making it even more intense with each jump.
>
> Electrical and mechanical shocks: applied to the sensitive parts of the animal before entering the arena;
>
> Turpentine, pepper, and other abrasive substances are introduced into the animal's body before they are placed in the arena so that they become enraged and bounce.
>
> Descorna: The cattle horn for certain tests is trimmed with the use of handsaw.

> Brete – is where they are confined before the race and where they are prepared for riding (MARTINS, 2009, p. 312).

Tuglio (2006, p. 317) adds that “during all mounts the pawn incessantly strikes the spurs on the animal's neck, with the constant risk of reaching the animal's eyes and injuring or blinding it”.

> However, the National Rodeo Confederation (CNAR) claims that

> The animals used in the rodeo work only 8 seconds a day and less than 5 minutes a year. They are paid from 500 to 1000 reais for their presentation. In some cases they are worth 100 thousand reais in its marketing, while in the slaughterhouse are sold around 75 reais a arroba, reaching about 1,500 reais per animal. They have star treatment with the right to swim, balanced diet, veterinary monitoring and retirement with shade and fresh water. (CNAR, 2014a)

They use as an element of persuasion the fact that no owner who pays so dearly for an animal would allow him to be subjected to mistreatment, and that they carry as their motto “love rodeo that does not mistreat animals” (CNAR, 2014a)

About the sedem, says CNAR:

> Animals that hunch are born with this instinct, are not made to be so, and the sedem cannot simply turn a meek animal into a hunchback. Sometimes in a selection of 1000, less than 1 percent are called jumpers. For the animal naturally inclined to hump, the sedem simply stimulates this reaction,

encouraging the horse or bull to kick the hind legs high in the air to get rid of a foreign object on its loin, the so-called indomitable animals (CNAR, 2014a).

In order to gain public approval and aiming to speed up the actions of guidance, supervision and control of its activities, CNAR created the Green Seal RODEO LEGAL Certification - "YOUR RODEO WITHIN THE LAW", to be granted according to regulations. The objective would be to guarantee to sponsors and local governments the application of the law and the adequacy to the sanitary defense rules (CNAR, 2014c).

For Tuglio (2006), contrary to what CNAR claims, animals do suffer humiliation and pain during daily training and shows. According to the author, young animals are used in the loop test, often 40-day-old animals, and in addition to the minutes in the arena, training hours have yet to be considered (TUGLIO, 2006, p. 238). When it is contained by the tail at the exit of the brete, the animal may suffer injuries and fractures of the coccygeal vertebrae, which may result in a condition called "equine tail syndrome" (TUGLIO, 2006, p. 238).

In the loop test, according to Tuglio (2006, p. 239):

> [...] the bone structure of the neck is reached, inside which houses a portion of the spinal cord, which may cause dislocation and fracture and consequent tetraparesis (partial loss of motor function) or tetraparalysis (total loss of motor function) or even in occurrence of "spinal shock" and death.

From Law no. 10.519 / 2002 the organizers were allowed to promote the rodeos, but subject to the conditions established by law, including those set out in the CR and the Environmental Crimes Act, which typified the crime of animal abuse. THE

description / visualization of rodeos and the numerous technical reports lead us to suspect that, often, rodeos fall into the punitive norm of Brazilian law.

LAW

The fact is that if cruelty is proven in a rodeo, it is clear that the crime provided for in art. 32 of Law no. 9,605 / 1998, known as the Environmental Crimes Law.

> Art. 32: Practicing abuse, mistreatment, harming or mutilating native or exotic wild animals, domestic or domesticated:
> Penalty: imprisonment, from three months to one year, and fine (BRAZIL, 1998).

With great propriety Minister Herman Benjamin states that:

> [...] if the Criminal Law is, in fact, the ultimate ratio, in the protection of individual assets (life and patrimony, for example), its presence is more rightly imposed when it comes to values ??concerning all collectivity, since they are closely connected to the complex biological equation that guarantees human life on the planet (BENJAMIN, 1998, p. 391).

Individuals or legal entities that cause damage to animals may respond administratively (art. 7, I to III, of Law No. 10.519 / 2002), criminally (art. 32 of Law No. 9.605 / 1998), regardless of liability. (art. 225, § 3 of the CR / 1988).

It is important to stress that the civil liability imposed by Law no. 6.938 / 1981, which includes rodeo-promoting entities and individuals, is objective, as it is in relation to other environmental damage. This is also the understanding of the renowned indoctrinator Fiorillo:

> Therefore it is important to note that the so-called civil liability of rodeo promoters, especially in relation to the professionals responsible for the activities indicated in the sole paragraph of art. 1, is objective, as a result of taking care of matters related to Brazilian environmental law (FIORILLO, 2014, p. 323).

From the perspective of the Constitution of the Republic of Brazil (BRAZIL, 1988), which prohibits practices that subject animals to cruelty (art. 225, § 1, VII), before numerous technical opinions and veterinary reports that prove cruelty in rodeo, it can be said that Law no. 10,519 / 2002 is unconstitutional. This without forgetting the principle of the prohibition of legal retrogression, provided for in inc. XL of art. 5 of CR / 1988.

Dr. Vânia Márcia Nogueira believes that "the most active and well-known state agent for implementation in the defense of animals is the Public Prosecution Service. With an ever-constant performance, this institution establishes itself as an important spokesperson for life" (NOGUEIRA 2012 , p. 325). Citing Promoter Vânia Tuglio, Public Defender Vânia Nogueira raises some issues that could optimize the work of the prosecutor.

> For her (Vania Tuglio), would be lacking specialized sectors (prosecutors and police stations) acting in animal defense. Vânia explains that there is environmental prosecution in the civil area, but that it should also exist in the criminal area, so that the instruments to combat organized crime could be used in crimes of less potential offense (NOGUEIRA, 2012, p. 333).

In the northeastern states a similar party is adopted, the vaquejada, a genuinely Brazilian spectacle, which was born in the city of Santo Antão, in Pernambuco. Two cowboys, a so-called puller and the other horse-mounted conveyor, follow an ox from

bleed out (Box made for the start of the ground) until the judgment range. There they must fall the ox to the ground, dragging it brutally until it shows all four legs. If you want to increase the points with the feat, at the time of felling, the ox must fall on its feet.

The so-called *apartaments,* which were made until the first half of this century in the northeastern backcountry, were witnessed by crowds that traveled from great distances to see the atrocities imposed on animals. This was done at the time when cattle were raised in open fields. After the winters, breeders would gather and herd cattle to make proper recognition of the animal's property by the farmer's trademark (made with hot iron). The felling was done at the end of the operation, when calves had already been recognized through their mothers. Each month that was mutilated in the fall was sacrificed to serve as pasture for the participants. The apartments no longer exist today after cattle were raised on mangoes of land surrounded by landlords.

However, the cowherds continue more frequently with each passing year. In Ceará there is an official calendar on the part of the state government, according to journalist Dutra Oliveira, from Tribuna do Ceará, in the article *Panorama das vaquejadas,* published on 26/6/96.

The animals used in cowherds suffer dislocations and internal bleeding due to the fall. And it is not only the backcountry who participates in the overthrow of the ox. Nowadays, entrepreneurs, liberal professionals and other professional categories are already entering the scene, as if this practice were a sport. All this torment suffered by the animals is to win prizes from apportionment paid by the cowboy. In 1991 the first prize for the 250 competing doubles at the *XIV Vaquejada of Parque Napoleão Bonaparte Viana*, held at Fazenda Garrote, in Caucaia, was R $ 1.5 million.

According to the environmentalist lawyer Dr. Geuza Leitão de Barros, in Ceará are the municipalities themselves that promote the vaquejadas with the sponsorship of large companies.

A bad habit of northeastern pedestrians is to carry a blade, or bit of sharp bone, hidden in the glove to cut off the ox's tail as it falls.

The Federal Constitution and Law 9.605 / 98 forbid practices that subject animals to cruelty, which concludes that rodeos and cattle are illegal practices.

Already in 1934 the rodeos and rodeos had been prohibited by Federal Decree 24.645 / 34, which says verbatim in his art. 3rd:

"It is considered cruelty:

"XXIX: Conduct or promote fights between animals of the same or different species, bullfighting and bullfighting simulacrum, even in a private place."

The rodeos and the rodeos undoubtedly constitute bullfighting simulations that violate Article 225, *VII of the Constitution of the Republic. Thus decided the Supreme Court in ADI 4923 In October 2016, the Supreme Court ruled as unconstitutional the law of the state of Ceará that recognized the vaquejada as sport and cultural heritage (ADI4983). Val remember that the action of unconstitutionality was caused by Dr. Geuza Leitão, who directed representation to the PGR, against Ceará law 15299/ 2013, which intended to regulate and authorize the vaquejada in that state.*[2]

ADI had as rapporteur Minister Marco Aurélio who added in his vote:

Alongside moral issues related to entertainment at the expense of animal suffering, far more serious compared to those involving scientific and medical experiments, intrinsic cruelty to the cowgirl does not allow the prevalence of cultural value as a result of the Charter's fundamental rights system. 1988. The meaning of the term "cruelty" in the final part of item VII of paragraph 1 of Article 225 of the Higher Diploma undoubtedly extends to torture and ill-treatment of cattle during the contested practice. if intolerable, if not powerless, the human conduct authorized by the attacked state norm. Within the framework of the composition of the fundamental interests involved in this process, the claim to environmental protection should be highlighted. In the light of the foregoing, I consider the request made in the initial to declare unconstitutional Law No. 15,299, of January 8, 2013, of the State of Ceará. It's like a vote.[3]

---

[2]JANOT, Rodrigo. ADI n. 227.175/2017. Revista Brasileira de Direito Animal, [*S.l.*], v. 12, v. 3, 2017. Disponível em: <Disponível em: https://portalseer.ufba.br/index.php/RBDA/article/view/24399/15025>. Acesso em: 26 mar. 2018. [Links

[3]*SENADO FEDERAL; http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADI4983relator.pdf, /\cessado em 25 de outubro de 2019*

The cruelty and mistreatment of these events was enshrined in a technical opinion of USP veterinarians, issued at the request of environmental entities.[50]

---

[50] Request for opinion
REF: Technical opinion on the use of sedem in rodeos and the type of stimulation provoked by this instrument in animals.
Mr. Rector.
The environmental entities listed below hereby request from you. To promote the necessary procedures so that the competent professionals of USP give technical opinion on the use of sedem in rodeo activities, answering the questions:
1) Does the use of sedem cause torment to the animal?
2) What is the nature of the stimulus that sedem causes?
3) We take the liberty of sending photos taken at the rodeo of the São Paulo Festival Country held last January, at Ibirapuera Gymnasium, so that your observation can help these professionals to form an opinion about it.
International Union Protecting Animals
TUCUXI - Button Protection Group
SEIV - Seiva Ecology Group
LPCA - Animal Cruelty Prevention League
Greater ABC Life Defense Movement
São Francisco de Assis Animal Protection Association
Air Rescue and Ecological Protection Service
SOZED - Educational Zoophile Society
CAEETE - Santo André Ecological Group
SOS Animals Association
Animal Support Association
The opinion
'At the request of the Rector of the University of São Paulo, and in response to your inquiry, through your letter of February 20, 1991, we present to you the following answers recommended by the Technical Administrative Council of this Faculty.
1) Does the use of sedem cause torment to the animal?
A. Yes.
2) What is the nature of the stimulus that sedem causes?
R. Causes painful stimulation.
ASS. Prof. Dr. João Palermo Neto. April 29, 1991 "
Opinion of the USP Faculty of Veterinary Medicine
"In response to your request, the use of sedem in animals is intended to promote stimuli, which are painful, thus determining changes in their behavior."
Prof. Dr. Julia Maria Matera.
Sao Paulo, October 15, 1996.

5.5.3 Farra do boi

Farra do Boi is one of the largest atrocities committed against animals in Brazil. It caused a national commotion, mobilized the press, was the subject of several master's theses in different disciplines, and to this day has been a major social and legal problem.

Every Holy Week in the state of Santa Catarina, descendants of Azoreans, associating the ox with pagan entities, begged this animal to death, lynching the victory of Christianity over the Moors.

Armed with sticks, stones, whips and knives, men, women, old men and children participate in the party. As soon as the ox is released, the multitude chases after him and strikes him incessantly. The first target is the horns, broken to pounding. Then the eyes are pierced. The torture only ends when the animal, hours later, already with several broken bones, no longer has the strength to run blindly, being definitely slaughtered and fleshed for a barbecue.

> "The animal jumps and screams, tries to corn the nearest, but the sharp blade of a thousand knives and even pocketknives turn it into a piece of blood. Making way, he runs ... and trips and falls. The most savage cudgels, the wildest, already smeared with the victim's blood, work out until the helpless's death. The 'Bull's Bite' is finished. "[51].

Farra takes place in at least 12 coastal municipalities near the Santa Catarina capital: Garoba, Paulo Lopes, Palhoça, Santo Amaro da Empress, Biguaçu, Governor Celso Ramos, Tijucas, Porto Belo, Itapema, Caboriu, Penha, Barra Velha.

It all came to public with a letter from writer Urda Klueger to the newspaper *O Globo* in 1986, a copy of which came to journalist Dagomir Marquezzi of *O Estado de São Paulo* by Renata Cruelty Prevention League partner Renata Maria Perez Dagomir Marquezzi spearheaded a campaign in his column

[51]Descrição de João Manito, *Revista de Brasília. Apud* MARQUEZZI Dagomir, Campeões de sadismo, *O Estado de S. Paulo:* Caderno 2, 30/3/1987.

Ecological, which has reached international prominence. This question is difficult to solve, because behind this national tumor, as Dagomir Marquezzi rightly called it, there is a mafia of cattle breeders (at that time the price of the ox increases), the owners of restaurants on the coast of Santa Catarina (buy ox and deliver to fishermen in exchange for preferential supply of fish), entrepreneurs (who offer the ox as a toast to the party) and refrigerators (who rent the ox for the ordeal).

With the great campaign that developed against the *Farra do Boi,* then Governor Pedro Ivo banned it in 1988. He found, however, that he had no power over this mafia: he turned back and released the Farra in the Mangueirões.

In 1988 an entourage of environmentalists[52] went to Santa Catarina, together with deputies Fábio Feldman and jurist Adilson Abreu Dallari, in order to bring the Governor to release Farra. At the hearing, Governor Pedro Ivo, under pressure, again banned it, even in the Mangueirões.

Military Police suppressed a Spree in the Hook Colony, a bloody battle between fishermen and soldiers, with injuries on both sides. In Porto Belo the fishermen threatened to stone the houses of vacationers who denounced the party.

An entourage made up of ecologists, journalists and authorities went to the Ganchos Colony in the municipality of Celso Ramos after the clash with the police for a dialogue. The delegation was joined by Congressman Fernando Gabeira and artist Lucélia Santos. The group visited the localities of Swamp South, Armação and Lagoa, where was the *Farra do Boi.* In Mangueirões, which is open to the press, the adventure was to stoke the ox with slaps and bumps to save itself from its fury. In an exercise of machismo and perversity, the fishermen practiced bullfighter's footsteps and faced the animal for up to three meters. The ox drooled, snorted, lowered its trunk, and started it. The farmer deviated, climbed the fence and even kicked the animal in the head.

---

[52]Liga de Prevenção da Crueldade contra o Animal-MG, Sociedade Zoofila Educativa-RJ, Liga de Direito dos Animais-RJ e várias entidades de Santa Catarina.

Representative Fernando Gabeira, saying he was remembering the times when he was tortured in prisons, changed the purpose of the trip, which was to defend the oxen, and took advantage of the prisoners who were imprisoned. He climbed onto a roof / terrace of a house to give a speech and asked for the release of the imprisoned revelers. The crowd, in delirium, wanted to carry the deputy in his arms, almost dragging the truck he was in. Governor Pedro Ivo, confused and under pressure from all sides, ordered the ostensible policing to be removed, and the Farra happened in full swing. This occurred in 1988, with the death of several animals.

The *Spree* didn't stop, but the ecologists didn't discourage the press either.

The Globo Network's *Fantastic* program has repeatedly shown scenes from Farra: a desperate ox fleeing to the sea from where it was dragged back into the beating; an ox jumping off a cliff to escape the torment; dead and wounded men; houses invaded by frightened animals ... And the animals continued to be tortured and killed.

On November 25, 1988, the League for the Prevention of Cruelty against Animals sent a petition to the Santa Catarina State Prosecutor's Office for a precautionary measure and a Public Civil Action against the Santa Catarina Government, as well as a petition to the Legislative Assembly to that the Governor should be tried for a crime of liability. No action has been taken.

It was on April 26, 1989 that the Government of Santa Catarina was triggered by the Rio de Janeiro entities – Friends of Petrópolis Association, Heritage, Animal Protection and Ecology Defense (APANDE), Animal Defense League, Society for Educational Zoophilia and Animal Protection Association (SOZED) –, which filed a Public Civil Action, upheld, in an Extraordinary Appeal by the Federal Supreme Court, since it had no favorable decision in Santa Catarina. The Minister Rapporteur Francisco Resek gave a favorable opinion to the ban on *Farra do Boi,* but left the Federal Supreme Court, to be representative of Brazil in the International Court of The Hague. Minister Mauricio Corrêa requested views of the process,

which delayed judgment. In the end, the Supreme Court considered Farra do Boi a cruel event and ruled on its ban.[53]

---

[53]Jusrisprudence Service
EXTRAORDINARY APPEAL NO. 153531-8
Rapporteur for the judgment. Minister Marco Aurelio
Recte.: Apande – Friends of Petrópolis Association Heritage Animal Protection and Defense of Ecology and Others
Adv.: José Thomaz Nabuco de Araújo Filho and Others.
Recdo.: State of Santa Catarina
Adv .: Ildemar Egger.

Custom – Cultural Manifestation – Stimulus Reasonableness - Preservation of Fauna and Flora – Animals – Cruelty. The obligation of the State to guarantee to all the full exercise of cultural rights, encouraging the valorization and diffusion of the manifestations, does not dispense with the observance of the norm of item VII of art. 225 of the Federal Constitution, which prohibits the practice that ends up subjecting animals to cruelty. Discrepant procedure of the constitutional norm denominated "ox spree".

A C OR R D

Having seen, reported and discussed these records, the Ministers of the Supreme Court, in the second class, agree that the minutes of the trial and the shorthand notes, by majority vote, agree on the appeal and grant it, in accordance with the vote of the Rapporteur, defeated Minister Mauricio Corrêa.

***

3/6/97 - Second Class
Extraordinary Appeal no. 153531-8 Santa Catarina

VOTE

Mr Marco Aurélio - Mr President, one thing is the formal aspect; another is the custom transported from the Azores to Brazil. I confess to you. I have no way of examining whether this custom - discrepant or otherwise, of reasonableness – is anything other than the Brazilian reality, as we have witnessed in recent years by the media about the practice perpetrated in Santa Catarina.
If, on the one hand, as the eminent Minister Mauricio Corrêa pointed out, the Federal Constitution reveals that it is up to the State to guarantee everyone the full exercise of cultural rights and access to the sources of cultural manifestations – and the Federal Constitution is a large whole -, on the other hand. hand, in Chapter VI, under the title 'Of the Environment', item VII of art. 225, we have a prohibition, a duty assigned to the state:
'Art. 225 (...)
VII - to protect the fauna and flora, forbidden, according to the law, the practices that endanger their ecological function, cause the extinction of species or subject the animals to cruelty.

On April 12, 1990, the Union for the Defense of Nature forwarded a complaint to Dr. Romeu Tuma, then Federal Revenue Secretary and Federal Police Director, regarding tax evasion crimes related to *Farra do Boi,* with the statement of use. of box 2 for the purchase and donation of oxen by Santa Catarina politicians.[54]

On March 23, 1992 the organizations Quintal de San Francisco, International Union Protecting Animals (UIPA), Association Protecting Animals São Francisco de Assis (APASFA), (TUCUXI) Button Protection Group, Friends Association of Petrópolis Heritage Protection of Animals and Defense of Ecology, League for the Prevention of Cruelty to Animals (APANDE), Union in Defense of Nature, Association of Animal Protection, North American Mining Society for the Protection of Animals, addressed a complaint to Dr. Aristides Junqueira, then Attorney General of the Republic, requesting legal provisions from the Public Prosecution Service.

Congressman Fábio Feldman proposed a bill specifying as a crime the celebration of animal death celebrations, which does not

---

Mr President, it is precisely cruelty that we see year by year, in what happens as seasonal joy. Cultural manifestation should be encouraged, but not cruel practice. Admitted to the so-called 'ox binge', in which a mad mob goes after the animal for terrifying procedures, as we have seen, there is no police power that can curb this procedure. I don't see how to get to the middle position. The distortion has reached such a point that only a measure that completely hinders the practice can prevent what we see this year 1997. Jornal da Globo showed a bloodied and cut animal invading a home and causing injury to those inside.
I understand that the practice has reached a point to really attract the incidence of the provisions of item VII of art. 225 of the Federal Constitution. This is not a cultural event that deserves the warmth of the Charter of the Republic. As I said at the beginning of my vow, it takes care of a practice whose cruelty is unique and stems from the circumstances of people engaging in reprehensible passions at all costs seeking their own sacrifice.
Mr President, I bow to Minister Mauricio Corrêa to accompany Minister-Rapporteur Francisco Rezek, knowing and providing the appeal.
It's my vote (DJ, 3/13/97).

[54] PINHEIRO Archive Ana Maria, President of the Union in Defense of Nature.

he has just gone through all his regimental procedures.

There were several trips made by ecologists to Santa Catarina and Brasilia in order to curb *Farra.* In April 1997, the Santa Catarina plastic artist Maria Cristina de Oliveira had her house invaded by a 500 kg ox, all bloodied. She was having breakfast with her family when the ox came in, followed by a crowd that buffeted the animal so that it died slowly of pain and tiredness. His house was destroyed and his children were bruised because the ox rolled over them pushed by the crowd. Someone suggested cutting the ox's feet right there so that it would not run away.

In view of this fact, Maria Cristina personally went to Brasilia to talk with the ministers of the Federal Supreme Court, before the trial of the *Farra do Boi* case, having played an important role in its decision.

In the same year the gaucho Márcio Jucewics had his car smashed by an animal. I was doing tourism in Santa Catarina. Leaving the hostel where he was staying, on Bombinhas beach, on the main avenue, an ox, followed by party workers, came towards his car. The animal, desperate, threw its head against the windshield, climbed the

---

[55]Draft Law no. 607 - B, 1991.
"It defines the act of injuring, maiming or killing an animal for entertainment purposes as a criminal offense, criminal penalties for violators and other measures.
The National Congress decrees:
Art. 1. It is a crime to injure, maim or kill an animal at popular competitions or parties for entertainment purposes:
Penalty - detention from 1 (one) to 6 (six) months and payment of 10 to 50 days fine.
Art. 2 The same penalty applies to those who:
I - being the owner or keeper of the animal, has provided it for such purpose;
II - is responsible for the area where the crime was consumed;
III - having by law the duty of care, protection of animal surveillance, by action or omission, consents or concurs for the practice of the infraction.
Article 3 This law shall enter into force on the date of its publication.
[56]Plastic artist calls for an end to the ox's spree. Zero Hora, Porto Alegre, April 1, 1997, p. 38

car and slipped. Márcio filed a complaint with the police, but it was no use.[57]

To date, even the Supreme Court ruling has not been able to stem the fury of the bloodthirsty crowd and the latent sadism in man. The Government of Santa Catarina created a Study Commission that considered *Farra do Boi* as a cultural movement. Even the Mangueirões for the performance of the show was not enough to make police surveillance efficient.

Criminal acts of vandalism and atrocious martyrdom are practiced against harmless animals, all with the consent of the authorities, rulers, and religious, who have bestowed this savagery on culture: the national shame par excellence, the passport of the moral and intellectual inferiority of a people. Can we call them peaceful citizens who, for fun, kill kicked, stoned, razor-bound oxen and cows? Can we call peaceful rogue demagogues that release the right to torture animals in violation of the law? Can a civilized country continue to ignore these crimes and attacks on the rights of any living being? We can classify Farra do Boi as the Brazilian neo-culture in all its glory, a celebration that the Santa Catarina government, which claims to be democratic, described as a manifestation of Santa Catarina popular culture ...

An authentic concept of culture is only that which raises man above instinct and leads him to live in harmony with ethics, rejecting from the past anything that atavistically keeps him in brutality and rudeness.

5.5.4 Bullfighting in Brazil?

The first attempt to introduce bullfighting in Brazil was on the occasion of the celebrations of the 4th centenary of Rio de Janeiro. It was intended to repeal part of Decree 24.645 / 34, which expressly prohibits bullfighting. But the project, which received number 763 /

[57]Gaúcho teve carro amassado por animal. *Zero Hora,* Porto Alegre, p. 38 1º de abril de 1997.

50, was defeated in the Senate, under pressure from the Rio de Janeiro Brazilian Bar Association, animal protection associations and people from all walks of life.

In July 1984, Tomazeli Industria e Comercio de Novidades Ltda., Headquartered in Lisbon, intended to hold a Portuguese bullfight also in Rio de Janeiro, with the aim of spreading this type of Iberian national entertainment in the country.

The claim was overturned, by means of a legal opinion of the Attorney General's Office and the Attorney General's Office of the State of Rio de Janeiro, which concluded that, even under the guise of bullfighting, this event is expressly forbidden in our positive law (Decree 24.645 / 34, art. 3, XXIX). [58]

---

[58]Office Attorney General RJ.
Case no. E-12/1176 / 8L
Seem
Tomazeli Industria e Comercio de Novidades Ltda., Based in Lisbon, Portugal, intends to perform in this city, on the 8th and 10th of June next coming, a show of "Bullfighting à Portuguesa", with the aim of spreading this type in the country. of hiberic national fun. With this would be the promoter of the event celebrating the Day of Portugal and giving the Brazilian people and the Portuguese colony rooted in this state the knowledge of a show mentioned as unique in the World. A broader appreciation of the content of the project is unnecessary, given the clarity of the terms of the proposition, as well as the needless further analysis of the hypothesis in the face of the positive law in force in the country, for exhaustive and slurred the placement of the matter in the proficient and conclusive opinion of pgs. . 11/19, the mining of the lucid State Attorney Dr. Eugênio Noronha Lopes, with the approval of the eminent State Attorney General.
There is nothing to add, from the criminal-legal point of view, to this manifestation of the consultative body of the State Government. The very hearing of this Attorney General's Office, at the suggestion of the judge, would have merely constituted deference to the state body that owns the criminal proceeding, by way of news of the fact that it would eventually affect its functional area in court. Nothing else, not only for the unequivocal value of the legal pronouncement issued in the advisory area of ??the Administration, but also for the very reason that it is that organ, in the organizational structure of our State, which holds and performs, with proclaimed proficiency, the attribution of issuing abstract judgments of its own. value on the application of legal rules within the scope of government administrative activity.
For these reasons and considering the urgency with which the manifestation of this Attorney General's postulation has been postulated, we simply endorse the legal pronouncement referred to above, even thinking that in Maracanãzinho or Passarela do Samba, as imagined by applicant, the soul of the people of Rio de Janeiro would not vibrate in tune with the best Portuguese traditions, when watching the little edifying spectacle of bullfighting, albeit under the guise of

In 1996, the Spanish Colony in São Paulo tried to bring bullfighting to Brazil, holding, in São Paulo, *the First Hispano-Brazilian Tauromaquia Meeting.*

São Paulo hosted, from February 23rd to 25th, the I Hispano-Brazilian Tauromaquia Meeting. The event was intended to be the starting point for the creation of the Brazilian Association of Bravo Bull Aficionados and Breeders, today with five hundred members. The Spanish colony in Brazil and, mainly, bullfighter Fernando Marselhas intends to bring bullfighting to Brazil, with clear intentions of profit, with the excuse of spreading their culture in our country.

● *Bullfighting and its main characters* – Considered a national festival in Spain, bullfighting is a struggle that originated in the classical and eastern ages, including the Paleolithic era, as shown by cave paintings. In Portugal and France, it develops with its own modalities. In Spanish America, Mexico dominates the bullfighting movement. Colombia, Ecuador, Peru and Venezuela are the South American countries where bullfighting is also practiced. Sometimes the races take place in the village's *Plazas Mayores*, whose exits are obstructed, but the most used places are the *Plazas de Toros.* The one from Seville dates from 1707, and the first one built in Madrid is from 1743. The arrangement of the ring, or redondel, is similar to that of a Roman circus, with a circular space of sand in the center, where the fight takes place, surrounded by a more or less tall grandstand for the killers. Horseback bullfighting was first practiced by aristocratic characters, aided by pages. Then it was practiced by rude people. Each bullfighter has the mincer, who comes on horseback, and the *banderillos.* Bullfighters pray before

fake or simulation engendered by the applicant. The spectacle would, in fact, hurt the spirit of Brazilian law, since it would, at the very least, be an incitement or suggestion to the actual practice of the fact defined as a criminal offense, and that, even under the guise of bullfighting, is expressly forbidden in our law. positive (Decree No. 24. 645/34, Art. 3, XXIX)
It is the opinion sub censorship.
For the appreciation of the Attorney General
On April 23, 1984, Roberto Bernardes Baroso.

a private altar before enter the arena. The miners and other underlings go down the streets in open cars, the bugles announce the entrance of the squadron, and the circus is armed, from which the ox only leaves dead.

● Preparation – Before the race, the ox is prepared as follows: tufts of wet paper are placed in its ears, its horns are cut so that it becomes disorientated, petroleum jelly is placed in its eyes to cloud its vision, Cotton is placed in your nostrils, to obstruct your breathing, irritating solutions are passed on your legs to stumble, needles are inserted into your genitals. Its horns are sanded to make it more defenseless. Once drugged, is confined in dark cubicle, the chiquero; in order to instill terror in him. Strong laxatives are given the day before, so that it fades and sandbags are placed at the height of the kidneys. This is how a bull is prepared for the brave fight.

Horses also undergo grooming. His vocal cords are cut, his ears covered with wet paper pads, and his eyes are blindfolded.

The brave fight – When the bull is released, and on the way to the arena, the first harpoon is already nailed to it. The animal enters the disoriented arena, looking for a way out. The mincer strikes the bull's neck with a spear. Theoretically, it should only penetrate the 3-centimeter steel tip, but always also nail the 11-centimeter, which runs to the base of the stem, which represents a wound 14 centimeters deep and up to 40 centimeters long. Some mincers twist the spear to increase penetration, lean on the handle or injure the side to cause heavy bleeding or injure the lung. Each bull receives an average of 3 to 4 spear strikes.

The *banderillos* bury sharp metal harpoons 5 centimeters or more in tip and cables adorned in the same wounds opened by or near the spears. The *flags* swing as that the animal runs and

charges against the mincers, further increasing the injured area. These wounds and banderillas attached to the neck prevent the bull from raising its head. If the bull kept his head up, the killer would have to climb a ladder to kill him, which would not be very practical.

The killer stabs the five-foot sword so as to try to injure the heart or some major blood vessel. This almost never occurs. In fact, the lung is always hit, and the animal falls, vomiting blood, suffocated in its own bleeding. By now the bull is almost dying, urinating wildly, with its vital functions collapsing. Fiercely harassed, the terrified beast falls not only bleeding, but crying. Finally, a blow is struck to sever the spinal cord. If the marrow is not sectioned but only damaged, the animal becomes semi-paralyzed, still alive. This does not prevent your ear from being cut off, your tail cut off and dragged while still alive to be quartered.

• *The heifers* – In Spain comical bullfights are held, in which dwarves and clowns replace the killers and calves enter the place of the bull. Babies suffer a prolonged and agonizing death. In some events chimpanzees are dressed as killers. This is one of the most depressing spectacles on earth.

In Mexico calves are used in bull schools, where students aged 14 to 20 slaughter the poor animal. This cowardly ritual is more for voodoo and hitlerism than for sport or culture. [59]

The event that was intended to be the first step in importing bullfighting into Brazil was a failure. Although the Brazilian Association of Taurus Bravo Aficionados and Breeders was created,

---

[59]Participated in this campaign: Animal Support Association, San Francisco Backyard Charitable Association, San Francisco Assisi Animal Protection Association, SOS Bichos Association, Animal Cruelty Prevention League, World Animal Protection Society, Educational Zoophile Society, Union in Defense of Nature and the International Union Protecting Animals.

the Brazilian society, the press and the authorities rejected the idea, and the plan of the Spaniards residing here, so far, has not succeeded.

5.5.5 Cruelty in dog racing

In September 1992, the Brazilian Greyhound Dog Breeders Association was founded in Belo Horizonte. The following month, thirty greyhounds, dogs used for racing, arrived in Brazil from the United States and were taken to the buyer's site. Days later, was held at Shopping Del Rey, by the association, the *Greyhound Formula,* a dog race demonstration.

● *Running to save life* – The term *greyhound racing* is deeply misleading, giving the reader the impression of agile *greyhounds* doing what they like best – running on a track. However, the facts behind the image that the *greyhound* industry is trying to project indicate another ominous side. It is estimated that at least 90% of greyhound trainers in the United States believe that the use of live bait is necessary to teach their animals to pursue track mechanics. Each year thousands of small animals are repeatedly used as bait until they are slaughtered by the greyhounds who are learning to run. *Jack-a-lure* artificial bait inventor *Keith Dilon* himself has stated that some *greyhounds* need real rabbits to be good at racing.[60]

The number of *greyhounds* killed annually in the United States ranges from 30 to 50,000. In addition to the unknown number of dogs killed at birth, 50% of born animals are destroyed even before they reach the tracks, as they do not show potential for the race. Thousands of others are destroyed when they stop winning on the tracks. Also retired dogs are killed or abandoned to the starvation.

[60]THE ANIMALS Agenda. *Revista da Royal Society for the Prevenction of Cruelty to Animals, Londres,* maio 1986.

Saved for brief periods of extreme physical exhaustion as they run, these dogs in the First World spend most of their short lives in cages or crates that barely give them room to stand, walk or lie down. They run once every four days throughout their careers and are subject to a huge range of injuries. In addition, they spend their lives gagged. When retired, the undead are sold to research laboratories.

● *The intervention of ecologists* – On February 10, 1993, sixty-three entities from Brazil and abroad, represented by the Union for the Defense of Nature, the League for the Prevention of Cruelty against Animals and the Metropolitan Society for the Protection of Animals, delivered them to the Public Prosecution Service. a dossier proving that greyhound racing in countries where it is the most percussive practice involves confinement, starvation, indiscriminate sacrifice and the use of live bait for training. In the same document they reported that they were about to be perpetrated in Brazil and that the Brazilian Greyhound Dog Breeders Association had already promoted dog races on makeshift racetracks.[61]

---

[61]This is the whole dossier:

"Considering the existence, in Belo Horizonte, of the Brazilian Greyhound Dog Breeders Association - ABCCRG, founded on September 18, 1992, headquartered at Rua Rio Grande do Norte, n. 1,164, store 2, in this Capital (xerox of the Statutes and clipping of the newspaper O Globo of 4/10/91 included);

Considering that Greyhound dogs are bred for the sole purpose of running, and the first event of its kind was held in Belo Horizonte from 17 to 25 October last year at Shopping Del Rey, according to Xerox leaflets and clipping from Jornal de Casa, 11-17 / 10/92;

Considering that in other countries where similar races are held, it is public and notorious that the vast majority of trainers (90%) use live bait (usually rabbits) in training, believing that 'bloodying' is a condition sine qua non to condition the Greyhound to pursue the mechanical bait on the track;

Considering that only dogs that excel at speed are used every litter, and in the United States of America it is estimated that 30,000 to 50,000 dogs are killed each year for the practice of this sport as waste;

Whereas animals, although conditioned on movement and speed, are kept at the same time in tight cages, from where they leave for training or competition, leading a miserable life of confinement and often with a muzzle (average daily cage stay 22: 00h);
Considering the problem of the frequent abandonment, without food, water or basic care, sometimes even in confinement, of these dogs, as shown by the included videotape, a fact that in itself already represents extreme cruelty;
Whereas large numbers of running dogs, after decreasing performance, are sent to experimental laboratories, where they are brutally tortured to death (supporting evidence included);
Considering the failure of an adoption program for these dogs when considered useless, given the disproportion between the large number of litters of the unfortunate animals that this industry produces, adding the adult animals in the discarding phase, and the infinitely smaller number of individuals. willing to adopt them;
Considering the possibility of the formation of a collective passion around large bets, to the detriment of society and the formation of a culture aiming at respect for nature and animals, a theme of this end of the century;
Considering the harmfulness of importing harmful entertainment, cruel gambling in which the animal is a mere slot machine, which has no educational aspect, quite the opposite and is not part of the Brazilian culture;
Considering that the included video material (The Canine Connection, the National Geographic Explorer, aired on US television on January 3, 1993 and others), as well as the enclosed texts translated from English by Dr. Marcello Augusto de Oliveira Borges , Sao Paulo - The Spokane Review, Spokane, WA, October 13, 1989, The Animal's Agenda, May 1986, and The Animals Agenda, March 1992, demonstrate that Greyhounds racing subject animals to cruelty not only against Greyhounds themselves as well as against the small animals (100,000 killed per year in the United States) that are used as live bait, practices that are prohibited by the Federal Constitution, in its art. 225, § 1, item VII, as well as by ordinary legislation, such as article 64 of the Law on Criminal Infringements and Federal Decree 24,645, of July 10, 1934 (docs. Included);
Considering the Greyhound Breeders Association's intention to hold races across the country, its real goal;
The entities below signed and related, for the reasons of fact and law set forth above, request that the Attorney General's Office of the State and Minas Gerais, propose a Judicial Interpellation, so that said association give up its intentions for the holding of new races. , under penalty of filing a Public Civil Action and a Counterclaim (64 entities have signed). ”

The Prosecutor in charge of the case considered it appropriate to sign a Commitment Agreement to adjust the conduct with that association, which was obliged, among other things, to present a record of all dogs acquired by it, as well as the negotiating terms regarding the Cited dogs.

The race-promoting businessman, feeling threatened in his intentions, has filed a Criminal Interpellation against the Presidents of the Union for the Defense of Nature and the Cruel Prevention League. Among other explanations, he asked the ecologists to confirm whether the animals he imported were discarded from the country of origin and whether he promoted bets. As the environmentalists presented as evidence of the alleged own statements of the businessman, in an interview given to *The Boston Globe,* on 11/11 1992.62 the dispute died with the interpellation.

We transcribe the questions contained in the Interpellation and their answers:

The complainant alleging that interviews given by ecologists to Minas Gerais newspapers were rebelling against him, asks if the respondents confirmed the interviews.

The respondents confirm the content of the initial part of the dossier delivered to the Attorney General of the State of Minas Gerais, Dr. Castellar Modesto Guimarães, on 10/02/93, (attached document, filed under No. 001165, whose copy they delivered to the press to write their reports).

The questioner asks if he is the president of the Brazilian *Greyhound* Breeders Association.

"Who can best answer is the questioner himself." The respondents have never claimed to be the questioning president of the Brazilian *Greyhound* Dog Breeders Association. But, according to an article in the newspaper O Globo, dated 4/10/92 (attached document), the interpelante is one of the directors of the referred entity and, based on reports in the national and international press

[62]TYE Larry e MILLER Rick Concerns follows dogs to Brazil. *The Boston Globe*, Boston, USA, 1992, p. 83, 10 nov. 1992.

(attached document), the your spokesperson and leader. This probably led public opinion to infer that the chairman of the above entity was the speaker.

The questioner asks if the imported animals belong to the Brazilian Greyhound Dog Breeders Association and who imported them:

“Who can also respond with confidence is the questioner himself, but the report published in O Globo on 4/10/92 (attached doc.) States that 30 greyhound dogs were brought from Boston by the Brazilian Dog Breeders Association. Greyhound breed, and were taken to the kennel owned by the interpelante in Brumadinho. ”

In an interview with The *Boston Globe* on 10/11/92, in the report Concerns follow dogs to Brazil, by *Larry Tye and Rick Miller,* (attached doc.), The speaker says he became totally bewitched by *greyhound* racing eight years ago when he worked for trainers and breeders in California and Pennsylvania. His interest was renewed during a visit to the United States last summer when he met kennel breeder and operator Jerry Olson. Also, according to the report, Olson persuaded dog breeders from Green Mountain, Seabrook and Ebro to give up 30 dogs. As it turns out, what is known is what comes from the speaker's own statements. ”

The questioner asks if the imported animals were all discarded by their country of origin, leading to the understanding that they are not fit for the purpose for which they were imported.

Once again the respondents use the report “Concerns follow dogs to Brazil”, from *The Boston Globe* newspaper, where respondents respond to this issue, including the interpellant himself.

Mr. Olson said in her that "he will not make money unless the gambling venture takes off." It goes on to say that the dogs Olson sent to Brazil would almost certainly have been killed, "partly because they are so slow, that there is nowhere else for them to run."

Another citizen interviewed, Mr. Kuper, stated that he did not object to the arrival of his *Hot Jet* dog to Brazil because he “could not compete with the fastest dogs here” (United States).

Of the same opinion was Michael Repole, referring to the dog *Run Away Kat*. In the report, he said he saw no problem with the dog coming "because he does not like to see a dog sacrificed because it is not good for running in the United States." It thus confirms that dogs not fit to run are really dead.

The questioner himself answers his question in this article, when he acknowledges that “Jerry was honest with him and warned him that his money was not enough to buy first-rate dogs, but medium dogs, sufficient for showing and introducing the greyhound breed into the Brazil."

As *Darren Rig of Greyhound Pets of America,* an American adoption group, says, "It's unfair for American trainers to use Third World countries as trash."

It is Mr. Randazzo, another interviewee, who adds, saying that sending low quality dogs to start a “Brazilian racing industry” is a huge mistake. Whenever they send this kind of dog to new countries, they are trying to dump their trash. ”

The questioner asks if the mistreatment that ecologists claim to be subjected to dogs is committed by him or his staff.

By simply reading the opening piece of the dossier addressed to the Attorney General of the State of Minas Gerais (doc. Annex) it can be concluded that at no time did the accused make any accusations to the interpellant. It is clear that the abuse file is reputed to US breeding sites, where such acts are routine, according to the abundant material attached.

In order to corroborate the truth of the allegation, the respondents have to attach a Statement of Declaration with the Public Prosecutor in Belo Horizonte, where they highlight the preventive nature of alert that guides their conduct. The evidence of the alleged is contained in the retro Declaration Term, which in itself dispenses further inquiries.

The questioner asks if in the kennel where the imported dogs are housed live bait is used for their training.

The respondents did not claim that the challenger would use live bait in training their dogs. However, in the United States, as reported in magazines (attached doc.), Photos (attached doc.), 90% of animals are trained with live bait. According to a report, “Running to not die,” published in The Animals Agenda, May 1986 (attached doc.), “It is estimated that at least 90 percent of *greyhound* trainers believe that the use of decoys or live bait is necessary to Teach your animals to chase the mechanical lures on the tracks. Trainers believe that animals that are not trained with live bait cannot compete with those who are trained with live bait. ”Even *Jack-a-lure's* inventor of artificial bait, *Keith Dillon,* thinks“ some greyhounds need rabbits. really become good dogs. ”Thus, it seems that in Brazil, in the future, it will hardly be different. Hence the initiative of the respondents to alert the dignified Public Prosecution Service.

The questioner asks if the ecologists confirm that the questioner is promoting, in their presentations, bets and thus enjoying advantages.

The respondents did not claim that the challenger had made betting races, but that in the countries where such races take place bets were concerned with the importation of this fashion (see Declaration Term).

Moreover, it is the challenger himself, once again, who can answer this by presuming himself to be true statements of his to *The Boston Globe* (attached doc.), Where it is read that the challenger and Jerry Olson planned the boarding of dogs for the Brazil, first to hold shows and running tests, such as the one it promoted at Shopping Del Rey (Belo Horizonte), and then, “if Brazil legalizes betting, to form a pari-mutual betting structure (*pari-mutuals* are bets involving a certain type of apportionment), as America's model will go to the stakes. ”

Incidentally, with reference to the betting betting, we urge you to transcribe a leaflet from the United States Institution Washington County Citizens Against the Greyhound Races on the topic: "FBI Directors Webster and Sessions warned of the attraction that betting parututes have for organized crime. It is the largest source of income for organized crime and leads to illegal gambling and bookmaking. *"(American Legion Magazine 1/85 and Dallas News Conference* 11/87).

The American newspaper goes on to say that the speaker has big plans for his new *greyhounds.* First, he will go to Brasilia, then to the northeast coast, until dog racing takes root in the national psyche. Twenty-one more dogs could have come at the end of last year or early this year, and, "if gambling is legalized," which the speaker says "expects to happen in 1993," he will ask Olson to board. about two hundred greyhounds. The questioner further states that better dogs will be imported "after gambling is OK" and that he dreams: "one day I will send a dog born in Brazil to earn a buck in the United States" (Criminal Interpellation filed at 10th Rod Belo Horizonte, February 16, 1993).

The action of ecologists was able to stop in time the importation of another barbarism to our country.

5.5.6 Cruelty in dogfights

A dog bred for a fight lives sheltered in the dark, lying on its own droppings. To discharge the constant tension, he bites the strap that binds him. His training is terrible: First of all, he is forced to run for hours, long runs or on treadmills. He is forced to overcome obstacles and, to strengthen his jaw muscles, to pull with his 800-pound iron buggy teeth. This for hours. This is the life of a *pit bull* trained for fights.

Its food is made up of injured but still alive animals, which serves to make it more ferocious. Most of the time the victim is a

purposely injured cat. The dog receives it as a reward after daily training. This dog is trained to assault and kill after receiving certain signals, such as having an unlit cigarette butt on its forehead.

Combat training subjects the dog to various tortures, such as electric collars. Each time he does not satisfy his instructor is punished with an electric discharge.

A dog fight consists of placing two previously trained *pit bull terrier* dogs to confront each other in a bloody fight. The rule is simple: beat the animal that survives 30 minutes of assault. If both give up the judge decides who won. A fight lasts from two to three fights. The champion dog, after being sewn, is prepared for another fight, which is usually fatal, as the pit bull attacks the victim by biting his jugular and releases it after death, if there is no intervention. The ability to never back down from fear, developed in the breed through breeding selection, prepares a well-bred specimen to keep fighting for two or more hours, regardless of dehydration, exhaustion, muscle fatigue, or any other sense of wear. Depending on your determination to fight a dog can be worth thousands of dollars. The criteria for selecting a dog is always testing it in combat.

In the first half of the last century, fights between dogs and bulls were common in Europe. That is why the English *bull terrier breed* – the crossbreed of the *bulldog,* the old white *English terrier*, and the Spanish pointer – gave birth to this new dog, which may have its aggression instigated and is brave enough to die rather than drop its prey. According to the breeders, his bite can amount to a ton, and he is capable of shredding any animal.

In Asia, fights between these dogs and bears are common. The fun is to tie a bear to a rope and then release the *bull terriers* to attack him. Because the teeth and claws of bears are torn out, they cannot defend themselves against dogs that bite and tear at pieces. A single bear can go through this terrible trial three times a day and hundreds of times throughout his life.

The first bill in defense of these animals was in 1822, in England. Authored by *Richard Martin* intended to ban *pit bull-bull* fights. You did not get approval. These fights grew mainly after 1835, when the bull arena was banned.

It is known that in Brazil dog fights, although prohibited, are carried out underground and that the promotion of these dogs has already reached Minas Gerais and, especially, Bahia, taking place in private homes. They are illegal and leave no trace of organized existence in Brazil, although there is news of them throughout the Northeast and South of the country.

Most of the time, when a *pit bull* is adopted as a pet, it becomes docile. At the slightest show of aggression, however, his owners are frightened, condemning him to live in short currents and cubicles or disposing of him. They give it back to the creators or donate it to servants who lead them into the difficult life of the favela.

In our understanding, breeding dogs for fights and promoting dog fights typify crime situations that can be framed in Law 9.605 / 98.

5.5.6 Cruelty Snake antivenom Production and the Horse Case 814

In 1990, *Jornal do Brasil* reported the sad and moving story of a horse from the Butantã Institute used for whey manufacturing. Like everyone else, he had no name but only a number: 814.

The history of 814 so shocked public opinion that the newspaper received hundreds of letters, and the subject deserved a series of reports and numerous measures from the ecologists, even reaching the Regional Council of Veterinary Medicine.

When 814 was discovered, it was already being used by the Butantã Institute for fourteen years for the production of venomous venom.

The average life span of these animals in serum-making institutes is four to five years, but 814 withstood much longer than that, no one knows how. His back was bleeding continuously, he had already lost an eye, suffered terrible liver cramps, and yet he was poisoned and

bled, like everyone else.

Representatives of various entities, such as the Animal Cruelty Prevention League, the Tucuxi Humanitarian Group, APASFA and UIPA, visited São Joaquim Farm, hoping to seize the animal and take it to a farm. But he was so weak when they got there that he couldn't resist the trip.

The environmentalists amicably tried to remove the horse from the Institute and take it to a farm where it could retire in peace. The experimenters did not accept the dialogue and did not admit to subjecting the animal to abuse.

For this reason, ecologists turned to the Regional Council of Veterinary Medicine for their intervention.[63] This was the only time scientists seemed to be intimidated into accepting the dialogue.

---

[63]Belo Horizonte, March 29, 1990

Dear Counselors,

With our compliments, we forward to this Egregious Council the following complaint:

On 11/1/90 *Jornal do Brasil* published the article "Horses bleed to produce vaccines", where it announced that in the São Joaquim Farm, belonging to Butantã Institute, the horse known as 814 had been used for 14 years in the manufacture of antiphid serum. , when the average life of the animal under these conditions is 4 years. His back was bleeding continuously, he had already lost an eye and was suffering from terrible liver cramps. It also reports the terrible living conditions of the animals used by Vital Brasil, in Niterói.

Representatives of various entities sought Butantã to rescue the animal, which would live free on a farm in the state of São Paulo.

The institute's leaders not only prevented the animal from being rescued, but also claimed that horse 814 was producing satisfactory specific antibodies.

Surprisingly, on 3/26/90, the directors of Butantã reported that horse 814 had died, without reporting on the whereabouts of the body and the *cause of death.*

Considering that the event hurts the art. 1 of Resolution no. 332 of 1/15/81, which approved the Code of Ethics and Professional Ethics of the Veterinarian, which states that the veterinarian must exercise his duties with dignity and conscience, and in compliance with current legislation;

And that hurts art. 22 of the same Code, which states that the veterinarian is liable civilly and criminally for professional acts, which through malpractice, recklessness, negligence or ethical infractions harm the animal;

That the Code of Ethics in question states that collective or team work does not diminish the responsibility of each professional for their acts or functions, and the deontological principles that apply to the individual are

The Federal CRMV referred the case for examination of the CRMV / SP, which called the Butantã Institute to provide clarifications, which motivated the OF .: 05/90, of March 13, 1990, of Butantã, providing clarifications on the state of the horse. 814, where they were justified in saying that there was no other effective method for producing sera and that the health condition of the horse was good, well fed, and not economically viable to retire.[64]

---

superior to those governing the institutions;

Considering, above all, that the fact that occurred with horse 814 injures Decree 24.645 / 34, in his art. 3, item X, which prohibits use in service of blind animal, injured, sick, weak, exhausted;

That horse 814 is just a symbol of all others being tortured in the production of serums, we request:

1. Regulations for the use of animals for the production of sera, with a maximum period of one year for the use of each animal. We suggest an agreement with the horse breeders and farmers associations that would lend the animals for one-time use. The animals would be immune and would cheapen the cost of the serum.
2. An incentive from this body to research the use of plants to cure venomous bites, to search for vaccines and synthetic serum.
3. Officiate the Butantan Institute and the veterinarians who work in it requesting that they explain the disappearance of 814 and the conditions of the Institute's animals.
4. To officiate the other establishments that manufacture serums, reminding them about their duties in compliance with ethics and the law, and requesting information about the condition of the animals.

Sig. League of Cruelty Prevention against the Animal. ”

[64] Clarifications on the retirement of serum producing horses

We should initially inform you that horse no. 814 has been in serum production service for 4 years, as shown by its control sheet, and not for 14 years as serving. With the abovementioned service time, the animal is in a satisfactory specific antibody production phase. Some acquire horses of fine breeds to undergo intense training, carrying heavy lashing men upon their bodies, forcing them in various ways to win races on the track, and thus financially satisfy their owners and rejoice. or even truly grieve masses of spectators. Others buy them to sacrifice them and to feed man. Are race-trained animals not injured by their own training? Yes, of course. Tendon ruptures, limb fractures, cardiac dilations, various abrasions caused by falls, and others that could be enumerated by veterinary specialists.

Worldwide, institutions for the production of anti-venom sera, anti-tetanus serum, anti-diphtheria serum, anti-biotin serum and others used for prophylaxis as well as in the treatment of these human diseases, all deadly if not treated with the specific serum, are valid. for his productions, the horse as a donor animal. There are no products pharmacists, whether antibiotics or otherwise, who are active in neutralizing the venom of animals such as snakes,

However, on March 22, strangely, the Institute announced the death of 814 and two more animals, diagnosing “an advanced degenerative state.” With the death of 814 silence was expected, but 814 will always be a symbol of human evil.

Antiophidic serum is currently the only drug for snake venom. The production of ampoules in the country is made by three research institutes: Butantã – SP, Ezequiel Dias Foundation – MG and Vital Brasil Institute – RJ.

The sera manufacturing process consists of injecting snake, scorpion or spider venom into horses for the reproduction of antibodies. The impact of the poison is so strong that it needs to be

---

or the toxins produced by the tetanus, diphtheria, botulism germs. What to do then? Simply let approximately 25,000 Brazilians, mostly farm workers, die each year when victimized by snake bites, for example?

In a letter constituting sheet no. 1 the president of the League for the Prevention of Cruelty to Animals, refers to the provision of a "humanitarian treatment" to the serum producing horses. All animals in Fazenda São Joaquim, whether or not they are serum producers, are under veterinary control exercised by four specialized professionals for 365 days a year. Feeding is rich and comparable to that given to animals that play sports or to animals of refined breeds that are in the breeding phase.

The loss of an eye of the horse mentioned in that letter may not necessarily have been caused by the service to which the animal has been subjected but by an accident. Accidents of this nature occur relatively frequently even in noble breed breeding farms. As for the aforementioned 'cramps', they may not be of liver origin, but only intestinal cramps, pathology is very common in horses, especially among those richly fed, as happens with the serum-producing animals of this Institute.

Given the above, we believe that unfortunately, for a long time to come, animals should be used for the benefit of man. We agree that serum-producing animals should be considered as chronically ill and thus properly cared for as they are at this institute. Early retirement of these animals would inevitably lead to a production crisis, as it is economically unviable to meet the need for these immunobiologicals in the country using each horse for a limited time. However, their retirement is always determined when the animal, even on a strengthened diet, fails to maintain adequate immune response capacity or enters a state of general physical weakness.

Best regards,

Ass. Dr. Isaias Raw.

Coordinator of the Hyperimmune Soros Production Commission. ”

received in three strengths. The horses are tied to a trunk with no chance of defense and receive poison doses every other day. Filled with pain, they crawl to the enclosure, where they rest for a few days and return to the trunk to be bled. A few days of rest and martyrdom begins, which only ends with the death of the animal.

a) The Vital Brasil Institute - In 1991, the Vital Brasil Institute was denounced by *Jornal do Brasil:*

"The Vital Brasil Institute in Niteroi, the only laboratory in the country that manufactures anti-rabies serum, stopped its production a year and 10 months ago due to financial problems." Money is missing to buy substances and vials for the production and storage of serum. and also to acquire the sheep needed to obtain the antigen.

Horses on which the antigen, which will generate the antibodies against rabies, is being thinned and dying for about a year have not received adequate food or medication. "In April 1990, they were 80; today there are only 35. "(Jornal do Brasil, 10/19/1991).

This news prompted a representation by several animal protection entities, which were received by the Public Prosecutor of the State of Rio de Janeiro, but whose proceedings were unsuccessful.[65]

---

[65]Hon. Prosecutor of the Environmental Prosecution
The League for the Prevention of Cruelty against Animals, a non-profit civil entity, declared of public utility at the municipal and state levels, respectively, by Laws no. 3,926 / 85 and 9,217 / 86, represented by his lawyer *in fine*, hereby claims that you should: propose an unnamed precautionary measure, pursuant to art. 4 of Law 7.347 / 85, combined with art. 796 et seq. Of the CPC, against Instituto Vital Brasil for the reasons of fact and law that it now sets forth:

FACTS AND GROUNDS

1. On October 18, 1991, *TV Globo* reported in its newspaper RJ / TV that the horses used for the production of serums at the Vital Brasil Institute are not being fed. For this reason they are ingesting even paper and cardboard in an attempt to survive.

Despite the numerous research being done to treat snake bites with plants, the situation has not evolved, and horses are still being sacrificed for the production of serums. Perhaps in the distant future, the replacement of serotherapy with chemotherapy in the cure of

---

According to press reports, the abuse of horses at Instituto Vital Brasil has been occurring since 1987, when the Institute bought a farm in São Gonçalo for the production of serums.

He reported to the Jornal do Brasil on February 11, 1991 (attached document) that the animals were abandoned and living in tiny stables. In addition, the establishment's technicians have found that the land is not suitable for breeding because it is mountainous, with moist soil and high salinity.

2. Cruelty to animals is a prohibited practice under our positive law and the Federal Constitution, which reads:

'Art. 225, § 1, item VII: It is incumbent upon the Government to protect the fauna and flora prohibited, under the law, practices that endanger their ecological function, cause the extinction of species or subject animals to cruelty. '

Cruelty to animals is also typified in art. 64 of the Criminal Offenses Act.

3. Thanks to the publications of the specialized literature today it is known that the use of horses for the production of serums is an expensive and complicated process and can already be considered surpassed.

Several Natural Product scientists, pioneered by Dr. Walter Mors, from the UFRJ Natural Product Research Center, have already proven that at least six Brazilian plants are effective as an antidote to the bite of venomous animals (attached document).

APPLICATION

Considering that Instituto Vital Brasil has been practicing cruelty to animals, which is a repeat offender in violation of the prevailing rules of positive law, it is worthy of your honor. to take steps to institute Public Civil Action with precautionary measure to fulfill the obligations to do, and to fail to do, as well as Contraventional Action.2

Requires more,

1. Obligation to feed animals until final decision, under penalty of immediate seizure of them.
2. Stalling of the production of serums until the construction of a suitable animal facility.
3. In the event of non-compliance by the entity or the impossibility of carrying out the above determinations, the immediate appointment of a depositary to guard the animals.
4. The citation, in accordance with the law, of the Vital Brasil Institute, located at Av. Vital Brasil Filho, 64, in Niterói, RJ.

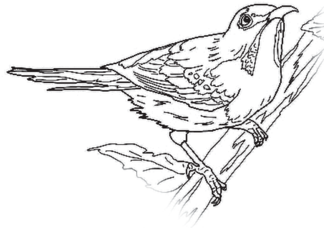
In these terms,

P.D. "

poisoning by venomous animals is envisaged.

Legally, these judicial measures have not been as effective as they have been, but since then a dialogue has started between environmentalists and scientists, and there are numerous forums for discussion of professional ethics and animal welfare.

Chapter 6



TRADE AND ANIMALS
INTERNATIONAL TRADE

6.1 CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED WILD SPECIES OF FLORIDA AND FAUNA (CITES)

The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) sets out measures to be observed by importing and exporting countries. It foresees the obligations for the administrative and scientific authorities that must manifest themselves whenever there is a commercial transaction.

The scientific authority must always speak up to declare whether or not the transaction will harm the survival of the species concerned.

The administrative authority of the exporting State shall verify that the exportation has taken place in accordance with the legislation in force in its country and to ensure the condition of the packaging in order to ensure safety and protection for the live specimen.

Trade for Cites means export, re-export, import and introduction from the sea.

Re-exportation is the exportation of any specimen previously imported.

Introduction from the sea is the transport into a state of specimens of species caught in the marine environment outside the jurisdiction of any state.

The convention distinguishes the specimen species. Species comprise all species, subspecies or any geographically isolated population. The sense of specimen is much broader, encompassing every living or dead animal or plant.

6.1.1 Fundamental principles of the Convention

The Convention has established three annexes which discriminate against protected specimens and adopts the following fundamental principles:

– Annex I includes all endangered species that are or may be affected by trade. Trade in these species is subject to strict regulations, so that the threat of extinction does not increase only in exceptional circumstances is their trade authorized.

– Annex II includes species which, although not currently threatened with extinction, are at risk of reaching such a situation if their trade is not tightly controlled and their exportation does not endanger their survival.

– Annex III includes species which the signatory countries declare to be subject to regulation and which therefore require the cooperation of other countries to control their trade.

6.1.2 Regulation of trade in specimens included in Annex I

The export license for specimens contained in Annex I shall be issued only on the advice of a scientific authority, to the extent that it will not impair their survival.

The administrative authority has three topics to check: whether the specimen was not obtained in violation of applicable law; if the

conditions of transport of the animal are appropriate in order to avoid health risks and cruel treatment; and if there is an import license for the specimen.

Importation requires the grant and prior presentation of an import license and an export license or export certificate.

The import license will only be issued after certain requirements have been met. The first step is to obtain an opinion from a scientific authority of the importing state stating that the transaction will not be detrimental to the survival of the species. The scientific authority will also have to verify that the recipient of the live specimen has appropriate facilities for the treatment.

The administrative authority of the importing State must verify that the specimen will not be used for commercial purposes.

The re-export certificate may only be issued once, and will comply with Cites requirements.

Introduction from the sea requires a certificate issued by an administrative authority of the State of introduction, in addition to the other requirements of CITES.

6.1.3 Regulation of trade in specimens included in Annex II

Export licenses for specimens listed in Annex II shall be granted only if they comply with the same requirements laid down in Annex I as regards the scientific advice and diligence of the administrative authorities. Same, the re-export and introduction certificate from the sea.

In the case of introduction from the sea certificates may be granted for periods not exceeding one year, for total quantities of specimens to be introduced during such periods and with the prior advice of national and international scientific authorities.

6.1.4 Regulation on trade in specimens included in Annex III

An export license may be granted only after the (exporting) State's administrative authority ascertains that the specimen has not been obtained in violation of applicable law and that the live specimen is well conditioned.

Importation will require presentation of a certificate of origin of the specimen. If the State of origin has placed it in Annex III, an export license must be presented.

In the case of re-exportation, a certificate from the administrative authority of the re-exporting State proving that the specimen has been transported in or is being re-exported and will be accepted by the importing State is required.

6.1.5 Licenses and Certificates

Licenses and certificates shall bear the title of the Convention and the identification stamp of the issuing administrative authority. The copy will contain specification that it is a copy and may not be used in place of the original.

The export license shall be valid for six months from the date of issue.

The export license and the re-export certificate supporting the importation shall be canceled and retained by the administrative authority of the importing State as well as the importation license.

6.1.6 Exemptions and trade provisions

While the specimens are in transit or transhipment within the territory of a Party, the opinions and permits referred to in the Convention shall not be required.

Specimens purchased prior to Cites are not subject to to your devices.

Household specimens and personal effects are not subject to the Convention unless the owner acquired the specimen outside the State of residence or when the specimen was removed from the wild in a State where prior export licensing is required.

Commercial captive-bred animals and commercially artificially bred plant specimens shall follow the standards set out in Annex II, even when included in Annex I.

The loan, non-commercial exchange and donation between scientists registered with the Administrative Body do not need the advice and licenses provided by Cites for herbarium specimens and other preserved, dried or encrusted museum specimens, and live plant material, provided they receive labels to identify these characteristics.

States are allowed to permit movement without proper permits when the specimens are part of a walking zoo, circus, zoo collection or botanical park. To this end, the importer will have to record all details of these specimens with the administrative authority and ensure that the packaging and conditions of carriage do not cause harm to health, injury and cruel treatment.

6.1.7 Obligations of the parties

CITES signatory countries have undertaken to prohibit trade in violation of the Convention by establishing sanctions and providing for the confiscation and return to the exporting State of specimens involved in illegal transactions.

Each State will have to designate the ports of entry and exit at which dispatch specimens are to be presented, and will be responsible, within its territory, for safe transportation to them.

A State seizing a specimen shall notify the exporting State and return it at the expense of the second State.

Each country will have to keep a record of trade in the specimens listed in Annexes I, II and III and will report periodically to the Cites Secretariat.

This Secretariat is subordinate to the United Nations Environment Program. The function of this Secretariat is to organize Conferences between the Parties, to render services to them, to undertake scientific and technical studies, to study Parties 'reports and to draw the Parties' attention to matters relating to the purposes of the Convention. The Convention also provides for the Secretariat to publish informative journals about protected specimens and make recommendations to States, among others.

6.1.8 Trade with States Not Parties to the Convention

In the event that imports, exports and re-exports take place with States that are not parties to the Convention, the licenses and certificates referred to therein may be replaced by comparable documents which substantially comply with their requirements.

6.1.9 Other provisions

The Conference of the Parties shall be held every two years, convened by the Secretariat. There will also be regular meetings every two years and extraordinary meetings at any time.

Whenever a species is affected by trade or whenever the Convention is violated, the Secretariat shall notify the States concerned.

Each country has the right to adopt its own stricter legislation regarding trade, capture, possession and transportation, including the power to prohibit trade and capture of species not included in the CITES Annexes.

Obligations derived from other treaties, conventions or

international or regional agreements are not affected by CITES.

6.2 FAUNA TRADE IN THE EUROPEAN ECONOMIC COMMUNITY

The European Economic Community was established by the *Treaty of Rome* on March 25, 1957. Initially, it brought together the following countries: Belgium, Germany, France, Italy, Luxembourg and the Netherlands. In 1972, they joined England, Ireland, and Denmark; in 1979, Greece; in 1985, Portugal and Spain.

In its preamble, the Treaty of Rome states that the EEC was created, among other purposes, to lay the foundations for an ever closer union between the peoples of Europe; to establish a common commercial policy; and to confirm the solidarity that connects Europe and overseas countries.

According to the Treaty, the mission of the EEC is to establish a common market and to promote the progressive approximation of the economic policies of the Member States, promoting the harmonious development of economic activities throughout the Community and closer relations between the Member States. .

The action of the EEC involves, among other actions, the establishment of a common policy in the field of agriculture and the approximation of national laws to the extent necessary for the functioning of the common market.

The International Convention on Trade in Wild Species (CITES) has been in force in the European Economic Community since 1 January 1984, approved by Regulation no. 3626/82.

Trade is characterized when introduction into the Community (including introduction from the sea), export and re-export outside the Community, use, movement and disposal within the Community and within a Member State of specimens protected by the Regulation.

Specimen, for the regulation, is any animal or every plant, living or dead, that is listed in one of the Annexes of the Regulation

(A to D), as well as all or part of the product and its derivatives, whether or not incorporated in other goods, when the occurrence of such animals and plants can be identified in a supporting document, packaging or label.

Only products, animals or plants that are expressly specified in the Regulation are released for trade. When dealing with hybrid specimens, the most stringent standard should be applied, ie, the attachment in which the animal or plant receives the most stringent protection should be sought.

The introduction of a specimen into the EEC is subject to an import permit issued by the competent body of the Member State to which it is intended.

The importer must provide proof that the specimen was purchased in compliance with the legislation in force in his country.

If the species is protected by Cites, an export license must also be issued by the competent authority of the exporting country.

The certificate from the scientific authority must specify that the specimen is properly housed to allow proper handling and treatment and to prevent disease or injury.

Export and import requirements are stricter or less stringent, as per the annex to which they are listed.

Exports and re-exports are also regulated, requiring a scientific report certifying the legality of the purchase and ensuring that the packaging is made in a way that avoids the risk of injury and abuse.

Re-exportation is the export of a specimen previously introduced into the EEC out of it.

Where a Member State rejects an application or a certificate from the EEC, it shall notify the competent Commission and justify the refusal. It shall also notify all incoming or outgoing specimens.

Notification by the importer, his agent or his representative at the time of introduction into the Community of a specimen included in Annexes C and D shall be made on a form prescribed by the Commission and shall be binding.

An authorization to export specimens depends on a certificate from the competent scientific authority certifying that their capture or collection does not adversely affect the specimens or the territory occupied by them.

The importer must also show proof that the specimens were acquired in accordance with the regulations in force in their own territory. In addition, you must first prove that you can ensure good transport conditions so as not to cause damage or abuse to animals.

An export certificate may be released only on condition that specimens:

Control becomes stricter or less stringent as per the annex listing the specimen in question.

6.2.1 Specimens born and bred in captivity or artificially propagated

Captive-born specimens, if listed in Annex A, follow the rules applicable to Annex B.

Exports for non-commercial purposes, such as donations and scientific exchanges to institutions registered with their own governing body, are subject to exclusive rules.

6.2.3 Circulation of live specimens

All movement of live specimens within the Community shall be subject to authorization by the competent body of the Member State in which the specimen is located or to import authorization where appropriate. This authorization is waived when the animal must undergo urgent veterinary treatment.

Without prejudice to the most restrictive measures which Member States may adopt or maintain, authorizations and certificates issued by the competent authorities of the Member States shall be valid throughout the Community.

Each Member State shall establish an office within its customs and designate a management body. The management body is therefore a designated administrative authority in a Member State for matters relating to the protection of fauna and flora.

Each State shall also designate one or more qualified scientific authorities to deliver opinions, which shall not belong to the retro administrative body.

Scientific authority is therefore the authority designated in a Member State to issue opinions on the importation, exportation, sale and movement of specimens in the EEC.

The managing body's authorities are responsible for monitoring compliance with EEC rules and for notifying serious infringements, confiscations and seizures.

In the Commission there is an Implementation Group of the Regulation, made up of representatives of the authorities of each Member State, which is responsible for ensuring that the regulatory provisions are applied. The group examines all technical issues related to this subject and transmits the decisions taken to the Committee on Trade in Flora and Fauna.

Member States and the Commission shall communicate to each other and shall provide each other with the necessary information.

6.2.4 The sanctions

Failure to comply with the provisions of the Regulation, misrepresentation, use of false authorization, transport of ill-conditioned animals, use of authorizations for purposes other than those set out in each Annex, trade in violation of the Regulation, transport of specimens without proper authorization and the use of a certificate for a specimen other than that specified are infringements that should be punished by Member States.

In the Commission, a Scientific Examination Group was set up, composed of representatives of the scientific authorities of each Member State and chaired by a representative of the latter. It is an

organ consultation to examine all scientific questions. Group decisions are referred to a committee.

The Committee is assisted by this Committee, made up of representatives of the member states and chaired by a representative of the committee.

The Chairman of the Committee submits to the members of the Committee the projects to be studied and the measures to be taken. The chairman of the Committee has no voting rights.

The Committee is responsible for any modification of the Attachments, provided that Cites is not violated.

6.2.5 The European Union and the conventions signed at the European Council and animal welfare

On February 28, 1986, the Single European Act, which brought together twelve countries, was signed and joined the European Community with a view to deepening common policies and building a common future by law and the market. safeguard peace and social progress in Europe. The European Union operates in economic and trade activities.

The *Treaty of Rome* identified animals as goods or agricultural products. It does not empower the creation of animal protection legislation. The baby seal protection and leg hold directives first appeared as an exception.

The situation improved in 1992, when the Treaty on *European Union* was signed at Maastricht, which was annexed to the Treaty of Rome, although it is not part of it. He recommends that the European Institutions take animal welfare into account when drafting their legislation in the areas of research, transport, agriculture and international markets.

The *Amsterdam Treaty*, signed on June 16, 1997, included an animal welfare protocol to the Amsterdam Treaty:

> "Wishing to ensure due protection and respect for the welfare of animals, as sentient living beings,

It is agreed that the following measures will be annexed to the treaty established by the European Community:
In formulating and implementing the Community's agricultural policy, transport and internal market, Member States shall pay full attention to the welfare of animals, subject to the laws and administrative rules of the Member States, their customs, religious rites, cultural traditions and regional heritage. ”

Key areas affected by EU-level animal welfare protection legislation include: transport, slaughter for consumption, battery hens, calves (veal) and pigs, animal testing or vivisection.

The policies adopted by the Union are coordinated by the Council of Europe, which sets out the general guidelines to be followed by the member countries.

The Council of Europe was founded in 1949. It is considered the bulwark of human rights in Europe. Its main objectives are: to work for the union of Europe; strive for the adoption of parliamentary democracy and human rights; and strive for the implementation of conditions capable of promoting human values.

The Council of Europe has engaged in the protection of animals on the grounds that the dignity of humanity is not dissociated from the environment and animals. Man has moral responsibility to other less fortunate creatures, which must be taken into account in treaties.

These conventions, to take effect, need to be ratified. Ideally, they should be transposed into existing national legislation to reinforce its implementation. The obligations arising from the European Council are more moral than legal. European Union Regulations, on the other hand, create general obligations and have the force of law before their members.

6.3 ECO-LABEL, THE GREEN SEAL, EEC GOES OUT

The European Economic Community, based on its program

Considering the importance of developing a clean product policy, the Eco-Label scheme was set up in 1992 to assess the impact on the environment of a product throughout its life cycle. It started operating in 1993, when the first product group was established. It is proposed to certify the good quality of the design, the production, the marketing and the use of the products that have reduced their environmental impact during their life cycles.

Whereas Ecolabel had been in use for almost 20 years, in November 2009 an update of Regulation (EEC) No 880/92 was carried out by Regulation (EC) No 66/2010 to correct its deficiencies and to extend the scope of the said standard.

6.4 BATTERY CAGE SCHEME AND EGG MARKET, EEC GOES OUT IN VANGUARDA

Intensive poultry farming is a recent revolution. He is less than 50 years old, and began shortly before World War II in the US, when breeders strove to raise birds and produce eggs for the government and the army. By giving vitamin A and D to the birds, they found that large numbers could be raised within large facilities. With the addition of vitamins, they determined that animals would no longer need sun or exercise for eggs to develop.

With these theories, they began to build large facilities for large-scale production. With the discovery of antibiotics, they thought that these birds could live without succumbing to the diseases that such an unhealthy life imposed on them. Thus massive doses of antibiotics were added daily to their water and food.

6.4.1 Stress and illness

Free-range chickens can live for 15 to 20 years, but those housed in industrial farming only live for about a year and a half. Your ability

to produce eggs is diminished by the stress and monotony that causes their confinement. When it is no longer useful to keep them, they are removed from their cages and forcibly thrown into other crates and taken in a truck for a long and painful journey to poultry where they will be slaughtered. If they are lucky, a special cleaver will numb them before they are introduced into a cauldron of boiling water and finally converted into processed food for animals and people.

Confined birds suffer aggression from other birds. There are fights between them, and the least aggressive cannot show submission, as nature dictates to them. Some live so frightened that they cannot even move to eat or drink; they shrink and die. Others remain in continuous neurotic motion and panic. There are cages in which birds cannot even stretch their wings and heads but have to crouch in an unnatural posture.

The beak of laying birds is cut twice: first, when they have a week; later on the 12th or 20th week. To lower the cost, the breeder recommends grouping 15 birds per minute. A very hot cutter causes sores on their beaks, a very cold cutter causes ulcers in the root of the beak. In addition, cut or burnt tongues are very common. Some breeders also cut their toes so that they cannot use their claws.

The environment of poultry in industrial farming is a den of contamination and microbes. Birds suffer from the strong ammonia gases emanating from the tons of feces that attract rats and insects. They develop problems in their paws and legs due to the fact that they are standing on wire floors that deform their natural anatomy.[1]

How to raise chickens in the *Battery* cage scheme involves many mistreatment of birds. The chickens are kept in small cages for more than two years, where they cannot move their wings, without any deformed foot rest, stress causes them to move assault

[1] DIAS, Edna Cardozo. *SOS animal.* Belo Horizonte: Liga de Prevenção da Crueldade contra o Animal, 1996, p 21/22.

each other, have their beak cut with a hot knife to prevent mutual injury. Subsequently, specific regulations were approved for the theme. To curb these abuses, the EEC has taken a number of measures to protect chickens raised for egg production. Laying sizes were established for laying hens cages, obligatory drinking water channel and food container; a floor that allows the toenails to fully support; ventilation, daily inspection and veterinary care.

Increasingly consumers refuse to buy polluting products and products that subject animals to cruelty. This pressure from society obliges producers to respect environmental rules, otherwise they will have their products outside the domestic and foreign markets.

Regional bodies such as the EEC, MERCOSUR and NAFTA set increasingly stringent environmental rules, gradually banning products that degrade nature from the market.

6.5. SKIN INDUSTRY

All animals that have a terrible end to the making of coats are in the sights of the *European Commission for the Protection of Seals and Other Animals,* which limits their capture: astrakhans, for example, are shot to the head when they are newly born. born, and in the sight of the mother; for the killing of the coyotes, the hunters chase after them by jeep; wolves receive bullet showers from the plane; foxes are decimated on the pretext of anger, etc.

The nocturnal animals, the felines, are drawn towards a trap, thanks to a bait, usually goat. They are caught by a steel wire so that they are immobilized. Trapped by the neck die immediately. If they hang from a paw, they suffer terribly until the hunter arrives and strikes a fatal blow.

And there are countless other animals that are trapped, like beavers, ermine and mink.

It is for these reasons that the green seal has become mandatory in all countries that import, export and sell animal skins.

6.6 SKIN AND LEG-HOLD TRAPS INDUSTRY

On 4/11/1991, the European Parliament adopted Regulation 3254, which prohibited the use of the pointed-toothed steel trap to catch the animals, holding them by their paws, to be effective from January 1995.

Regulation EEC 3,254 / 91 prohibited the use of tooth traps and the introduction of furs and manufactured articles from wild animals originating from countries using non-humanitarian traps as a method of capture.

From 1 January 1995, only animal skins from countries banning such traps and using standardized traps recognized as humanitarian could enter the EEC.

The Regulation provided for the suspension of the ban only if exporting countries were conducting humanitarian capture studies on their territories.

On 19 July 1994, the European Parliament, by Regulation 1,771 / 94, postponed until 1 January 1996 the entry into force of the ban on the introduction of hides and manufactured articles of specimens listed in Annex II to Regulation 3.254 / 91 .

On 10 January 1997, Regulation EC 35/97 established that skins and manufactured articles of specimens could only transit in or leave the EEC if caught in a Member State, required to comply with current legislation, and born in captivity or from countries which comply with the rules of Regulation 3254/91.

The first step hunters took after these new regulations was to look for the Geneva-based *International Organization for Standardization* (ISO) for a new model of *leg-hold* traps with rubberized teeth, which they called humanitarian. . (ISO is a worldwide federation, composed of standardization bodies from various countries, in charge of developing technical standards. It is a non-governmental organization established in 1947.)

Technical Committee 191 was formed to reach consensus on humane trap standards, ie humanitarian trap standards.

If hunters' traps were approved, the EEC would reverse the ban on the importation of skins of dead animals. The interest in forming a Committee to set non-cruel traps began at the 1983 CITE Conference in Gambie.

The worldwide spread that traps that hold animals by their paws can fracture this limb or its ribs, or slowly starve it, gangrene and cold has caused a negative reaction in the fur market.

The Canadian government has begun testing pointy toothless traps with less powerful springs, but these modifications have not solved the animal's suffering problem. Researchers found that a beaver caught in a submerged trap fought 18 minutes before drowning.

To escape suffering, an animal is able to gnaw itself to the point of separating its leg from its paw, to break free of its traps. Another factor that justifies banning these pitfalls is that they are not selective; capture any animal that steps on it. Several domestic animals have been mutilated by them.

Under US law, trapped animals are the property of the trap owner. Within this conception, the one who saves a trapped animal commits theft.

When a trapped animal attacks the trap, in a defense instinct, it breaks its teeth and tears its gums. [2]

At its 1994 meeting, ISO refused to give in to the pressure from the fur industry and denied the *humanitarian* trap the hunters proposed. In the meantime, the hunters succeeded in extending the deadline (January 1995) for the entry into force of the rules of Regulation 3.254 / 91. Since then, countless

---

[2] CROSS, Hilary. The blacklash. *Animals International,* p. 12-13, autumn 1993. Londres. Revista publicada pela World Society for the Protection of Animals.

Meetings are being held around the topic, and the European Parliament has met several times to establish new agreements and new rules.

The main fur producing countries are: Russia, Canada and the United States.

On January 26, 1998, the European Parliament approved the agreement between the European Community, Canada and Russia on humanitarian traps.

In the agreement with Canada, *humane trapping methods* were conceptualized as being certified by the competent authority in accordance with the trap model described in Annex I.

The purpose of the agreement with Canada was to establish standardized models of humanitarian trapping methods; implement information exchange and cooperation between the parties; and facilitate trade between the parties. In addition to the rules agreed in this document, the parties are subject to World Trade Organization rules.

In the act of importing fur, the country could require a certificate stating whether the fur is from a humane-caught animal or from a farm on the territory of the Agreement.

The main objective of trap standardization would be to ensure the welfare of the captured animals.

At that time, the Government of Canada undertook to prohibit the use of leg-hold traps for the following species: martes americana, mustela erminea, beaver canadensis, onddatra zibe tricus, martes pennanti, taxidea taxus and lutra canadensis. In October 1999, it undertook to ban the use of traps for species: *canis latrans, felis rufus, procyon lotor, canis lupus and Lynx canadensis.*

In December 2007 a decision of the European Parliament (regulation 1523/2007) prohibits the placing on the market and Community import and export of cat and dog fur and products containing them.[3]

---

[3] https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A32007R1523, acesso 20 de julho 2018

Even though fur coats are fading, there are still many stores selling the product.

6.7 CRUELTY FREE PRODUCTS

With consumer awareness of animal cruelty in making cosmetics, people have turned down animal-tested products.

Manufacturers abandoning animal testing began to display the cruelty free product warning on their products to indicate that they had not been tested on animals.

6.7.1 Cosmetics

To satisfy his narcissism, man has inflicted suffering on thousands of creatures in the production of superfluous articles for their transient pleasures. Behind the history of thousands of beauty products is suffering and cruelty. According to the New York-based *American Fund for Alternatives to Animal Research*, it is estimated that over one million animals die each year in testing of cosmetics and beauty products. Manufacturers hide obscene methods from the public.

The main methods used are: skin irritation, eye irritation and ingestion of the product.

- Skin irritation test or *drape patch test* – Reports to the *American Fund for Alternatives to Animal Research* that guinea pigs are used for testing astringent and aftershave lotions. The method of preparing the skin for the test is very painful. First, your fur is shaved. Then a tape is pressed in place and pulled brutally. The operation is repeated until the skin becomes supersensitive. Then the chemical irritant is put on, which is covered with bandages and left for a day or two when examining the condition of the skin

skin. (Needless to say, burns are the frequent result). This procedure was developed in the USA by dr. J.H. (Draize and Food & Drugs Administration), today routine and known as Draize patch test.

- Eye irritation test or *draize eye irritancy test* – Concentrated shampoo substances dripping into the eyes of albino rabbits result in corneal inflammation, swelling, blindness and destruction. Often the substance is dripped for several days, and the lesion is assessed by the extent of the injured area. To prevent animals from moving, they are immobilized in restraint devices so that their head is out of the apparatus, stuck in a hole, and cannot move. The eyes are kept open with paperclip or tape. The animals do not receive treatment afterwards. Rabbits are used because their eyes do not tear and so the product does not drip.
- Forced Ingestion – Forced ingestion is commonplace in lipstick, face powder and *make-up* tests. Animals are forced to ingest large amounts of material and their organs often burn or rupture. The goal is to check if the product kills 50% of the animals. The test is called LD 50 (50% lethal dose). The animal convulses and is shocked when material is introduced through tubes into its stomach. He suffers to death, as any intervention would impair the test result. It is a failed test that varies from individual to individual.
- Mice used for antiperspirant testing –The rat is placed on its back and its paws are wrapped in tight, tube-like shoes to prevent evaporation of wet discharge. The antiperspirant is placed on one foot for comparison with the foot that did not receive the product.[4]

The pressure was so popular that England abolished animal testing for the manufacture of cosmetics and other products. A law published in November 1998 banned the use of animals for cosmetic testing in England.

---

[4]DIAS, Edna Cardozo. *SOS animal. Op. cit.*, p. 39.

In Brazil, several states have banned animal testing for cosmetics. In São Paulo and Minas Gerais, animal testing for the manufacture of cosmetics is prohibited.

6.8 THE MEAT MARKET IN EUROPE

The Council of Europe Member States meeting in Strasbourg on 10 May 1979 signed the European Convention for the *Protection of Animals for Slaughter*. In the international order its validity began in 1982.

The Convention recommends that animals slaughtered in signatory countries should not be subjected to suffering or stress during slaughter or in previous procedures. They should be kept in places where they are protected from the weather, be cared for by people with the proper knowledge, receive water as soon as they reach the slaughterhouse and moderate amount of food if they stay there for more than 12 hours, and be transported carefully and with equipment. suitable. Slaughterhouses must provide them with the necessary protection, with bridges, ramps and downhill corridors constructed to prevent any injury or injury from occurring. They must not be terrified or excited. When they are taken for slaughter they must be immediately numb. Your health conditions should be checked in the morning and in the afternoon. They must be numb before slaughter. In the case of slaughtering of cattle according to Jewish or Muslim religious ritual, they should be given medication to prevent pain, suffering, agitation, injury or injury.

The Convention is open to accession by states that are not members of the Council of Europe and the EEC. Within the territory of the EEC, meat from animals slaughtered outside the methods laid down in the Convention may not be marketed for humanitarian or health reasons.

In Brazil, every slaughterhouse that exports meat to the EEC has adopted modern so-called slaughter methods for many years.

6.8.1 Farming and farm animals

The member countries of the *Council of Europe have signed the European Convention for the Protection of Livestock for Agriculture (Kept for Farming Purposes)*, in force with the amendments of the Lisbon Treaty of 2009.

Since the Treaty of Lisbon, animals have been considered by the European Union as sensitive beings, and when devising policies in different fields such as transport and agriculture, this new status of sensitive animals needs to be taken into account.

The Convention applies to intensive and extensive rearing of animals for the production of food, wool, leather or fur, including genetically modified animals.

Intensive breeding is one that uses automatic processes, in artificial conditions and in small spaces, where the animal cannot move freely. The animal is artificially inseminated. Stimulants and hormones are applied to it. He is chained, imprisoned, separated from his offspring and castrated before being transported to death. More and more non-governmental organizations were forming which, by spreading leaflets and marching on the streets, showed the public the cruel truth that lies behind the intensive breeding of animals.

On the other hand, groups of doctors have teamed up with lay people to spread the harm of meat from artificially bred animals and to say that meat kills: it causes heart disease and cancer, and that too much dairy causes osteoporosis.

For this reason, the Convention provides that animals raised for agriculture must be provided with food, water and care, so that the needs of their species and their degree of evolution, adaptability and domestication are considered. It demands that all its biological and etiological needs be met, according to the scientific knowledge of the time.

In the 1992 additive it was agreed that no animal may be subjected to intensive rearing if it affects its health or welfare

animals slaughtered on farms shall not be subjected to suffering at or prior to slaughter.

All of these demands have been the result of heavy pressure from consumers who refuse to buy products that are harmful to their health or come from cruelty.

Mad cow disease in Europe was the motivation for promulgating numerous regulations on the marketing and importation of meat on that continent. This disease was caused by the wrong feeding of animals. Intensive rearing cattle are fed with ration made from slaughtered sheep and goats with a disease *(scrapie)*, which causes brain deformities. Cows and calves, which are herbivorous in nature rather than grazing, are imprisoned in stables and fed meat from sick animals. According to an exhaustively published version of the press, this is how the mad cow disease was born: *spongiform bovine encephalography.*

6.8.2 Pork trade and methods usually adopted for intensive farming in countries where there are no animal and consumer protection legislation

For millennia, man had a close association with animals. He tamed them and lived with them. This human / animal relationship has changed radically in recent decades with the development of technology. The lives of consuming animals have changed completely. They no longer enjoy pasture and freedom of movement, they cannot run, clean themselves, feel the earth in their paws, nor care for their young. Life is denied them and the air they breathe is addicted and annoying. They are kept in small, arid cages where they are artificially conceived, grown, toothless, fattened and sent to their destination: the slaughterhouse. This total confinement system is a concentration camp where it is possible to breed, for example, many pigs in little space. Everything is automatic, saving manpower, enabling one man to watch the animals.

To save labor and time, sows are artificially inseminated and driven into a narrow cage where they are fastened with short chains and kept in the dark to calm down. The food is served every two or three days, and they are given half their ration to increase their profits. After 16 weeks, just before the pups are born, they are taken to another cage, where there are more restrictions. There they are required to stay in one position so that their teats are exposed to the piglets. At three weeks, the piglets are separated, toothless and sent to another facility when they are and put in collective cages. They cut their tails, canine teeth and castrate them, and then lead them to individual cages. Two or three weeks after delivery, the mother returns to the insemination area, where she receives massive doses of hormone to enter heat again.

- Stress – Animals have no relief from boredom and lack of movement. When there is a fight between them, the less aggressive cannot escape nor show their aggressors the signs of submission. Many are so afraid that they dare not move, others even bite the iron bars of the cages. Their flesh is pale and gelatinous, contains plenty of water and adrenaline, and is not likely to bleed well after slaughter and decomposes rapidly. The animals' paws, confined to concrete floors, develop painful injuries, causing pressure on the muscles of the legs, knees and shoulders, which causes arthritis. In addition, the enclosed environment can be a focus of contamination by microorganisms. Animals in full confinement have little resistance to bacteria, which leads to the administration of antibiotics in food and water. To eat more, they give them arsenic and fatten them hormones.

The pig is not a dirty and listless animal. In freedom, is absolutely active during the day, keeps your bed clean and has great maternal instinct. It is harmless, adaptable and interested in everything around it. You can even learn your name. It is therefore much more that flesh is capable of conscious sensations and aspires to a life according to the laws of its kind.

6.9 TRADING OF MEAT IN CENTRAL AMERICA AND SOUTH AMERICA

In Central and South America, the meat industry has been destroying rainforests. Agroindustry has forced millions of birds, monkeys and other species to leave their habitat with the clearing of forests. Many of the species are being wiped out with the destruction of the ecosystem.

Slaughterhouses are major polluters of rivers and lakes, spilling poisonous waste and animal debris onto them. Raising livestock and other animals requires more time, land, energy and water than is needed to produce equivalent food in vegetables. A pure vegetarian diet would make it possible to feed a larger population than today. However, with a purely carnivorous diet it would be impossible to feed the entire population of the earth. In 1984, 40% of the world's grain was used to feed intensively farmed animals in developed countries. If the same grains had been destined for human consumption, they would have been sufficient to feed the entire Earth, without forgetting that Brazil has been exporting large quantities of grain while its people are starving. Social injustice and environmental destruction go hand in hand.

Cattle breeding in Brazil has been responsible for hunger, unemployment and desertification. The soil is calcined by fire during the dry season. Since the pasture is not considered a crop, its soil is not fertilized or maintained. Burned pastures are susceptible to soil erosion, losing productivity and quality, impairing livestock feed and health. The use of fire and the lack of livestock management lead to unemployment, rural exodus and the destruction of forests, fauna and water and soil resources.

Modern livestock confines the animal in small spaces and stimulates its growth with massive doses of hormones. Apart from the cruelty to which animals are subjected, this system contaminates the product with residues of antibiotics and carcinogens.

In order to raise cattle without harming the environment, natural pastures such as the pampas gauchos and the cerrados of the Midwest of the country should be used.

– Clandestine slaughtering and health: Clandestine slaughtering takes place at all times in the open, anywhere - pasture, corral, road – by the butchers themselves. To cover the floor, use banana leaves or cloths. The ox carries an ax to the head, becomes dizzy, shifts his legs and falls. A machete is tucked into his neck, and the magarefe jumps over his loin to make the blood come out faster. On the side is a tank, where the faeces run, the slurry, a green broth of excrement. The slurry flows under the slaughtered ox, and the mosquitoes, prowling everywhere, land in the pools of blood. The animal is gutted and quartered on the floor without any hygiene. Sick animals are slaughtered and quartered others already killed.

The carcass is transported in butchers' own cars, being exposed to the weather. In clandestine slaughter there is no *antimortem* sanitary inspection of the animal, nor in the transport of the carcass and in the commercialization. Neither is *post mortem* examination of the animals, exposing the consumer to the risk of zoonoses such as cysticercosis, tuberculosis, etc ... Thus, the butcher does not pay ICM, and the consumer buys a dirty and contaminated meat.

– Abuses in the modern procedure:

- *transport:* poor conditions, lack of space; shortage of competent employees; lack of cooperation in the provision of food and water; poor measures for safe discharge; n market: infection caused by contact with other sick animals, brutal treatment of employees; lack of clean water and adequate food; colic from excess food before transport to the market, to obtain greater weight;
- *slaughterhouses:* lack of space; lack of efficient employees; inadequate separation; poor food and water; disturbances caused

for noise or negligent treatment; inadequate protection against weather extremes; and

● *anti-death examination:* poor inspection due to lack of experts; lack of time for a detailed exam.

– Archaic and cruel slaughter methods:

● *bleeding:* internal bleeding by delaying bleeding; imperfect bleeding because the animal was conscious; microbes-infected sites, particularly in clandestine and bush-killing areas (where animals are killed and dropped on faecal droppings and meat is infested with flies);

● *abuses in killing processes:* fully conscious animals fall with ropes or chains before killing; they live live animals fully conscious by one leg, bleeding without numbness.

6.10 SLAUGHTER METHODS USED IN BRAZIL - HISTORY

In Brazil, the following killing methods were used prior to MERCOSUR requirements:

– **Great vessel sectioning without any numbness:** Small animals are suspended upside down by one leg and have the vessels of the neck or the base of the heart cut with the knife. The fully conscious animal is tense with dread at the brutal treatment and the scent of its companions' blood. If it falls into the pool of blood, it is hung again. They struggle with dislocations of the hip, joints, etc .;

– **numbness before bleeding:** in the case of large animals, for employee safety, the sledgehammer, an ancient instrument, is commonly used. Because the animal's brain is small in size, the precision-demanding blow is flawed, striking the horn, eye and

Snout. In practice, it has been found that a sledgehammer needs to strike two to six blows to bring down the ox. The Bulb Soup consists of the sectioning of the elongated medulla at the neck of the animal (atlantoocipital space) by means of a spear-like instrument. This method reduces the breathing rate and impairs bleeding. The cruel jugulation, Israelite method, is very cruel. The ox is cut off, sticking its fingers in its eyes or nostrils to twist its neck. It is hung, conscious, for bleeding. It has to support hundreds of pounds in intense suffering and pain caused by the throat cut and the position to which it is subjected, until death comes.

● *Hygienic considerations* – For the experts of the World Health Organization the physical and mental state of the animal at the time of slaughter influences the quality of the meat. They state that stress should be abolished at the time of death because it causes a decrease in muscle glycogen rate, which is important in the formation of lactic acid, which, in turn, is necessary to obtain the optimal pH of meat (5,6 to 6; 2), and thus slow down the growth of bacteria responsible for putrefaction. Prolonged agony will accumulate toxins, which deposit in the end product, causing certain cancers in the consumer. We can not fail to mention the contamination of blood and bleeding caused by bleeding, caused by the rejection of stomach materials and droppings.

● *Economic Considerations* – Humane slaughter decreases product loss and work-related accidents and accelerates the pace of production of slaughter establishments. Studies in the US have found that bleeding from conscious animals causes an economic loss of $ 1.50 per head as a result of condemning part of the injured meat to the detriment of thousands of dollars annually. Accidents at work occur twice, at a rate of 26.7 men / hour instead of 13.4. With modern techniques, there are also more animals slaughtered per hour.

● *Conclusion* – Animals should be rested, relaxed and

relaxed not only at the time of slaughter, but in the hours before his death. They should be handled correctly by properly selected and trained people in order to spare them fear, suffering and excitement.

6.11 MERCOSUR AND AMENDMENT TO DECREE 30.691 / 52

Due to the accession to the Asuncion Treaty, which created the Southern Common Market, Brazil amended the Industrial Inspection Regulation of Animal Products, approved by Decree 30,691 / 52, amended by Decree 1,255 / 62, and Decree 2,244 / 77. , which gave Article 135 the following wording:

> "Art. 135. The slaughter of butchers is only permitted by humanitarian methods, using prior sensitization based on scientific principles, followed by immediate bleeding. "
>
> Paragraph 1 The methods employed for each species of butcher animal shall be approved by the competent official body, the specifications and procedures of which shall be governed by technical regulations.
>
> Paragraph 2 "The sacrifice of cattle according to religious precepts (bloody jugulation) is allowed, provided that they are intended for consumption by the religious community that requires them or for international trade with countries that make this requirement."

With these innovations, all municipalities are obliged to adopt modern and humanitarian methods when organizing the food supply of the population and the promotion of agriculture.

In Brazil, this modernization occurred first in the state of São Paulo and then in the state of Ceará. In Minas Gerais, there were two failed attempts to introduce these measures. Today, modern methods are general norms at the federal level.

6.12 WHAT IS HUMANITARIAN SLAUGHTER ACCORDING TO THE WORLD HEALTH ORGANIZATION?

It is the one that makes animals unconscious, is performed prior to bleeding and whose numbness is instantaneous and effective.

We can divide modern numbing methods into three types:

– Chemical (Gas – CO2);
– Electric (Electric Shock); and
– Mechanical percussion.

The chemical and electrical methods are best suited for small animals such as pigs, sheep, goats and calves.

Densitization by CO2, or carbon dioxide (which is a colorless, odorless, non-flammable gas), is a highly effective method, judging from man-made experiments, loss of consciousness is rapid and total (Prof. BHC studies Matheus – The Physiological Laboratory, Downing Street, Cambridge 7/1/53).

The electrical method predicts the passage of electric current through the brain of the animal.

Mechanical percussion is the use of special weapons with a cartridge that propel a central plunger that instantly penetrates the animal's brain. The weapon is always placed against the head at the indicated point. The hog immediately goes into a cerebral coma and is ready to be bled

6.13 FUR FARMS

On fur farms animals are usually slaughtered with electrocution or poison administration. These farms are multiplying as the public, with the Eco-Label, or Green Seal, granted by the *Eco Management and Audit Scheme,* refuses to buy dead animals with leg-hold traps, dubbed the Death's footprint. In them the animals are trapped in small

cages, where they spend their whole life, until death. Trapped in tight spaces, the boredom and stress of captivity drive us crazy. They often hit their heads on the screens desperately, howling and moaning, with no one coming to their aid.

Regulation, in fact, attempts to save an industry that has been bankrupted by ecologists' campaign and propaganda. All over the world the most beautiful specimens of human mannequins have been posing entirely naked under the snow, carrying a banner that reads: "It's better to be naked than to cover yourself with animal skin."

The animal industry continues to sell its harmful but profitable products. Fortunately, the public is beginning to be aware, which has motivated the signing of agreements, treaties and the enactment of laws to regulate this dangerous and cruel trade.

Chapter 7

ANIMALS AND MERCOSUR

7. 1 Brazil X Argentina Integration and Economic Cooperation Program

The globalization of the economy has led to the emergence of economic blocs and the desire for policy integration in the Americas.

The first step towards the formalization of MERCOSUR was the signing of the Iguaçu Minutes in November 1985, aimed at increasing trade relations between Brazil and Argentina.

In 1986, twelve bilateral protocols were signed as part of the PICE. Former Presidents José Sarney and Alfonsin signed in Buenos Aires the Minutes for Integration, which envisaged the creation of a common market by 1 January 2000.

The integration process only evolved with the signing of the Treaty of Buenos Aires on November 25, 1988, which entered into force on August 23, 1989.

The following year, with the signing of the Buenos Aires Minute providing for the formation of the Common Market by the end of 1994, the previously agreed deadlines were shortened.

The Common Market Group was set up at the time to harmonize the two countries' trade policy,

fiscal, monetary, industrial, agricultural, land and maritime transport.

Uruguay and Paraguay soon sought to integrate. Today, this sub-regional bloc is composed of Argentina, Brazil, Paraguay and Uruguay and Venezuela. Its associated countries are Chile, Bolivia, Peru, Colombia and Ecuador.

7.1.1. Difference between free trade zone and common market1

Free trade zone is the stage or type of integration in which, in addition to free trade between group members, there is the application of a Common External Tariff - TEC

TEC, to trade with third countries.

Common External Tariff – TEC is a common tariff charged by a group of partner countries that require the same tax for the entry of goods from third countries.

In the Common Market, in addition to TEC and free trade in goods. There is the free commercialization of factors of production (capital and labor).

7.2. MERCOSUR

MERCOSUR came into existence with the signature of the Asuncion Treaty on the constitution of a common market between Argentina, Brazil, Paraguay and Uruguay, on March 20, 1991. The Treaty formally entered into force on November 29, 1991. The text This treaty comprises the Preamble and six chapters, entitled Purposes, Principles and Instruments, Organic Structure, Term, Adherence, Denunciation, and General Principles.

To adapt MERCOSUR's institutional structure to change, on December 17, 1994, States Parties signed an Additional Protocol called the Other Black Protocol - POP.

This Protocol established the international juridical personality of MERCOSUR (articles 34 and 35), the obligation of legal norms

[1] www.mercosul.gov.br, acessado em 20/07/2018

elaborated, and regulated the manner of incorporation of these norms in the internal legal system. MERCOSUR is therefore an autonomous legal body, distinct from its member countries.

7.2.1. MERCOSUR POP structure

MERCOSUR Trade Commission - CCM: is the body responsible for assisting the Common Market Group in the implementation of the common commercial policy instruments;

- MERCOSUR Joint Parliamentary Committee: is the representative body of the Parliaments of common commercial policy;
- MERCOSUR Economic and Social Advisory Forum: is the representative body of the economic and social sectors. Has executive function and takes recommendations to the GMC.
- MERCOSUR Administrative Secretariat - SAM: is the operational support body responsible for providing services to other MERCOSUR bodies. It has its permanent headquarters in the city of Montevideo.

The structure established by the POP established an intergovernmental organization.

Decisions in MERCOSUR are taken by consensus and with the presence of all States Parties. Decisions are mandatory in nature, although they have no direct application, they need to be internalized.

Ownership of MERCOSUR's legal personality is exercised by the Common Market Council (SOP, Art. 8, III).

The Common Market Group may negotiate, by express delegation from the Common Market Council, agreements on behalf of MERCOSUR with third countries, groups of countries and international bodies (MAGP Art. 14, VII).

7.2.2. The environment in MERCOSUR.

In the preamble to the Treaty of Asuncion we note that the

Expansion of markets through integration must observe the protection of the environment:

"Considering that the expansion of the current dimensions of its national markets through integration was a fundamental condition for altering its economic development processes with social justice;

Understanding that this objective must be achieved through the most effective improvement of available resources, the preservation of the environment, the improvement of physical interconnections, the coordination of macroeconomic policies of the different sectors of the economy based on the principles of graduality, flexibility and balance. "

Article 2 of the Asuncion Protocol, which added a sectoral agreement, states that "the preservation and improvement of the environment, research and development of technology for products and processes, increased external competitiveness, as well as human resources training and education promotion. "

In addition, the four countries, together with Chile, signed the Cinnamon Declaration, which makes the following reference to the environment:

"Business transactions must include the environmental costs caused at the production stages without transferring them to future generations."

On the occasion of the signing of the Other Black Protocol, the REMA - Specialized Environmental Meeting was created within MERCOSUR to take recommendations to the Common Market Group which, once approved, would become resolutions.

At the third REMA meeting, in Brasilia, the "Basic Guidelines

---

[2] Declaração de Canelas

on Environmental Policy", a document that, after approval by the Common Market Group, became resolution 10/94.

The MERCOSUR Framework Agreement on Environment, approved on 22/1/2001, also highlighted the importance of environmental issues in its agenda, as well as the need for a legal framework to regulate environmental protection and conservation actions. MERCOSUR natural resources.

The MERCOSUR Framework Agreement on the Environment has been signed by the Republics of Argentina, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay.

This Agreement stressed in its preamble the need to cooperate for the protection of the environment and the sustainable use of natural resources with a view to achieving improved quality of life and sustainable economic, social and environmental development.

On the other hand, it acknowledged the need for cooperation among States Parties to support and promote the implementation of their international environmental commitments, in accordance with current national laws and policies.

7.3. Principles

The States Parties, in outlining the principles of environmental policy for MERCOSUR, reaffirmed their commitment to the principles already set forth in the 1992 Declaration of Rio de Janeiro on Environment and Development.

- promoting environmental protection and making more effective use of available resources through policy coordination based

[3]Acordo Quadro sobre Meio Ambiente no MERCOSUL. 2001. http://www.ecolnews.com.br/PDF/Acordo_Quadro_sobre_Meio_Ambiente_do_Mercosul.PDF, acessado em 20/07/2018

on the principles of graduality, flexibility and balance;

- Incorporation of the environmental component into sectoral policies and inclusion of environmental considerations in MERCOSUR decision-making to strengthen integration;
- promoting sustainable development through reciprocal support between the environmental and economic sectors, avoiding the adoption of measures that arbitrarily or unjustifiably restrict or distort the free movement of goods and services within MERCOSUR;
- priority and comprehensive treatment of the causes and sources of environmental problems;
- promoting the effective participation of civil society in addressing environmental issues; and
- fostering the internalization of environmental costs through the use of economic and regulatory management instruments.

7.3.2. goal

The objective of the Agreement is the sustainable development and protection of the environment through the articulation between the economic, social and environmental dimensions, in ways that contribute to a better quality of environment and life of the populations.

States' cooperation in complying with international treaties may include the adoption of common policies for the protection of the environment, the conservation of natural resources, the promotion of sustainable development, the presentation of joint communications on topics of common interest and the exchange of information. information on national positions in international environmental fora.

To further analyze the environmental problems of the subregion, with the participation of the competent national bodies and civil society organizations, the States Parties have committed to

implementar, entre outras, as seguintes ações: [4]

n incrementar o intercâmbio de informação sobre leis, regulamentos, procedimentos, políticas e práticas ambientais, assim como seus aspectos sociais, culturais, econômicos e de saúde, em particular aqueles que possam afetar o comércio ou as condições de competitividade no âmbito do MERCOSUL;

- incentivar políticas e instrumentos nacionais em matéria ambiental, buscando otimizar a gestão do meio ambiente;
- buscar a harmonização das legislações ambientais, levando em consideração as diferentes realidades ambientais, sociais e econômicas dos países do MERCOSUL;
- identificar fontes de financiamento para o desenvolvimento das capacidades dos Estados Partes, visando a contribuir com a implementação do presente Acordo;
- contribuir para a promoção de condições de trabalho ambientalmente saudáveis e seguras para, no marco de um desenvolvimento sustentável, possibilitar a melhoria da qualidade de vida, o bem-estar social e a geração de emprego;
- contribuir para que os demais foros e instâncias do MERCOSUL considerem adequada e oportunamente os aspectos ambientais pertinentes;
- promover a adoção de políticas, processos produtivos e serviços não degradantes do meio ambiente;
- incentivar a pesquisa científica e o desenvolvimento de tecnologias

n limpas;

- promover o uso de instrumentos econômicos de apoio à execução das políticas para o desenvolvimento sustentável e a proteção do meio ambiente;
- estimular a harmonização das diretrizes legais e institucionais to

[4]Acordo Quadro sobre Meio Ambiente no MERCOSUL. 2001. http://www.ecolnews.com.br/PDF Acordo_Quadro_sobre_Meio_Ambiente_do_Mercosul.PDF, acessado em 20/07/2018

prevent, control and mitigate environmental impacts on States Parties, with particular regard to border areas;

- provide timely information on environmental disasters and emergencies that may affect other States Parties and, where possible, provide technical and operational support;
- promote formal and non-formal environmental education and foster knowledge, conduct and the integration of values oriented to the transformations needed to achieve sustainable development within MERCOSUR;
- consider cultural aspects, where relevant, in environmental decision-making processes; and
- develop sectoral agreements on specific topics as necessary to achieve the objective of this Agreement.

For the implementation of these actions, work agendas must be agreed, covering the thematic areas to be developed in line with the MERCOSUR environmental work agenda.

7.3.3. The thematic areas established by the Agreement are:

- Sustainable management of natural resources
- wild fauna and flora
- forests
- protected areas
- biological diversity
- biosafety
- water resources
- fish and aquaculture resources
- soil conservation
- Quality of life and environmental planning
- sanitation and drinking water

[5] Anexo do Acordo Quadro sobre Meio Ambiente no MERCOSUL. 2001.

- urban and industrial waste
- hazardous waste
- hazardous substances and products
- Atmosphere / air quality protection
- land use planning
- urban transport
- renewable and / or alternative sources of energy

- Environmental policy instruments
- environmental legislation
- economic instruments
- environmental education, information and communication
- environmental control instruments
- environmental impact assessment
- environmental accounting
- environmental management of companies
- environmental technologies (research, processes and products).
- information systems
- environmental emergencies
- valuation of environmental products and services

- Environmentally sustainable productive activities
- ecotourism
- sustainable agriculture
- business environmental management
- sustainable forest management
- sustainable fishing

7.3.4. Legal sources

MERCOSUR's legal sources under the Additional Protocol to the Treaty of Asuncion on the Institutional Structure of the

MERCOSUR (12/17/1994), Protocol of Other Black, are6:

- Treaty of Asuncion, its protocols and additional or complementary instruments;
- Agreements concluded under the Treaty of Asuncion and its protocols;
- The Common Market Council Decisions, the Common Market Group Resolutions and the MERCOSUR Trade Commission Guidelines, adopted since the entry into force of the Asuncion Treaty.

Although the Asunción and Ouro Preto Treaties establish a series of legislative instruments, such as Decisions and Resolutions, these norms do not have immediate applicability in national order nor higher hierarchy in relation to national law.

These norms need to be incorporated into the national order, ie internalized. Decisions adopted by the Council shall enter into force only after their incorporation into the four member countries. Decisions made in treaties must be approved by the National Congress and ratified by the Executive.

From a legal point of view, MERCOSUR legislation is not externally coercive to individuals, nor does it find supranational legitimacy in the Brazilian Constitution. It is only coercive as public international law, as an obligation assumed by the Union.

MERCOSUR normative acts are published in the MERCOSUR Official Bulletin, issued by the MERCOSUR Administrative Secretariat with Spanish and Portuguese versions.

---

[6]Protocolo de Ouro Preto. 1994. http://www.sice.oas.org/trade/mrcsrp/ourop/ourop_p.asp, acessado em 20/07/2018

7.4. The controversy and its solutions

MERCOSUR's dispute settlement system is based on the 1991 Brasilia Protocol and the 1994 Ouro Preto Protocol Annex, which was regulated by Decision CMC 17/98. The Treaty of Asuncion contained, in its annex III, a provisional and diplomatic system of dispute settlement, which became definitive by the Brasilia Protocol and the Ouro Preto Protocol.

To settle conflicts, a diplomatic dispute settlement system was created. Negotiations are held in three phases:

- Direct negotiations between the parties to the dispute (15 days);
- Intervention by the GMC ("mercosulization" of the controversy) (30 days) and
- Ad Hoc Arbitral Tribunal (60 to 90 days)

The procedure must begin at the Trade Commission, be processed by a Technical Committee (composed of government representatives), return to the CCM, go to the GMC and then culminate in the arbitration phase (Chapter IV of the Brasilia Protocol).

Complaints by individuals about legal or administrative measures taken by States Parties that violate MERCOSUR rules depend on the endorsement of the National Section.

The arbitrators are chosen from lists previously deposited with the MERCOSUR Administrative Secretariat in Montevideo.

The arbitration awards, according to art. 21 of the Brasilia Protocol, are "non-appealable, binding on the States Parties to the dispute upon notification thereof and shall have res judicata in their regard."

The time limit for compliance is 15 days unless the Court sets another time limit. The arbitration award applies directly to MERCOSUR States Parties, without any other internal act.

MERCOSUR law is therefore intergovernmental rather than supranational.

Neither the 1991 Treaty of Assumption nor the 1994 Ouro Preto Supplementary Protocol provide for supranational bodies. The Brasilia Protocol was widely criticized for not having created a MERCOSUR Tribunal. The Ouro Preto Protocol included a semi-judicial Commission, in addition to the Common Market Group.

Only after diplomatic negotiations are exhausted can MERCOSUR call the three ad hoc arbitrators (ad hoc Arbitral Tribunal).

We have already seen that the decision-making governmental bodies in MERCOSUR are the Common Market Council, by means of Decisions (art. 9), the Common Market Group, by means of Resolutions (art. 15) and the Trade Commission, by means of guidelines or protocols (Article 20). These bodies are made up of representatives of the governments of the member countries.

MERCOSUR's political decision-making bodies, responsible for enforcement and legislative decision-making (Council, Group and Commission), and even conflict decision-making (Group and Trade Commission), are dependent on national policy.

As executive body there is the Economic-Social Advisory Forum, the only institution that has a representative of society.

7.4.1 MERCOSUR External Agenda

MERCOSUR's external agenda includes:

- negotiating free trade agreements between MERCOSUR and the other members of ALADI – Latin American Integration Association;
- Implementation of the International Framework Agreement for Economic and Trade Cooperation, signed between MERCOSUR and the European Union;
- coordination of positions in the context of negotiations for the formation of the Hemispheric Free Trade Area.

7.4.2. Conflict between MERCOSUR and third countries

Any controversy arising between a MERCOSUR country and a third country will be settled within the World Trade Organization – WTO. In the case of Chile and Bolivia, conflicts must be resolved under free trade agreements with MERCOSUR.

7.4.3. Financial organizations

IDB - The Inter-American Development Bank, a regional financial institution established in 1959 and headquartered in Washington DC, aims to contribute to the economic and social progress of Latin America and the Caribbean by channeling its own capital, funds obtained in the financial market and other funds under its administration to finance development in the recipient countries.

IBRD-Inter-American Bank for Reconstruction and Development (World Bank) was created in 1945. Its objective is the economic and social promotion of member countries through project financing. Only members of the International Monetary Fund - IMF may be part of IBRD.

The IMF was created in 1945 and aims to ensure the stability of the international financial system.7

7.5. MERCOSUR Committee for Standardization - CMN8

It is a non-profit, non-governmental civil association recognized by the Common Market Group – (GMC) through Resolution N. 2/92 of 11.1.1991.

By the agreement signed in 2000 with the Common Market Group, it became the only body responsible for voluntary management

---

[7]www.mre.gov.br

[8]www.amn.org.br

in the MERCOSUR.

The Association is formed by the National Standards Organizations of the member countries: Argentine Institute of Standardization – IRAM, Brazilian Association of Technical Standards – ABNT, Brazil, National Institute of Technology and Standardization – INTN of Paraguay, and Uruguayan Institute of Technical Standards – UNIT.

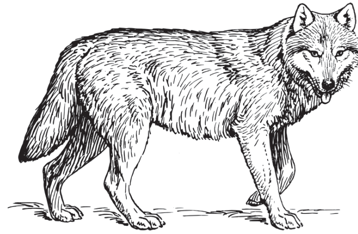
Environmental certification has been one of the requirements of the importing market. There are three main certification modalities: agricultural, forestry and industrial.

Because the laws of the States Parties are well differentiated, the intended integration in environmental protection has not yet been achieved.

On the other hand, this situation may lead to the massive rush of companies to less restrictive countries in applying environmental rules, leading to unfair competition and environmental destruction. This may also lead to environmentally-friendly dumping by third countries, which is to block the importation of a product when it is established that it is being imported at prices lower than those charged on the market due to non-environmentally sound measures.

Countries need to harmonize their environmental legislation with the most restrictive paradigm. And that they respect the international commitments made at the various United Nations - UN Summits, which were motivated by environmental protection and sustainable development.

Chapter 8



THE ECOLOGICAL STATE

Democracy is a method of management, but it is not the bottom. The background consists of the bill of rights. The more the human being evolves and increases his knowledge, new rights statements emerge. The passage of rights to the constitutions of countries is one of democracy's greatest achievements.

The Bill of Rights began with the *Magna Carta* in 1215, evolved with the *Declaration of Human and Citizen Rights*, enacted by the French Assembly in 1789, and later with the *Universal Declaration of Human Rights, adopted by the United Nations General Assembly*, 1948, the *Stockholm Declaration on the Environment*, 1972, the *Hague Declaration on the Atmosphere*, 1989, the Rio *Declaration*, 1992.

The declaration of rights is an ongoing process, and today the *Universal Declaration of Animal Rights* was proclaimed at UNESCO headquarters in 1978. Our Constitution, in its art. 225, § 1, VII, made the protection of animals a constitutional precept.

A postmodern state requires, in addition to political change, a conscientious reform of its citizens so that a participatory democracy can meet its social goals, targeting not only present and future generations.

This consciential reform, the basis for a modernization of the state, cannot come from passing revolutions, such as the 1917 Russian Revolution or the 1918 German and Austro-Hungarian Revolutions. suffering. We are witnessing the Hunger Revolution, but it is urgent that the freedom revolution takes place.

These transformations in the postmodern state must embrace the world of social relations, culture, politics, economy, geopolitics, demanding above all a transformation of values:

– the transition from an unethical science to an ethically responsible science;

– the shift from a technocracy that dominates people to a technology that serves humanity and the entire planetary family;

– the shift from an environmentally destructive industry to an industry that promotes people's well-being and a harmonious life of the human being with the environment.

A free state needs free men, because laws cannot dominate the facts. But we cannot think of a free man outside his environment. Human beings, society and the state can only be conceived within a planetary system, together with the animals, plants and all life that make up the human family.

Man can only be liberated as a whole together with all beings.

The guarantee of individual rights depends on the destiny of all and the social and natural environment. The true foundation of the postmodern state must recognize man as an intellectualizable bipedal animal that shares space and food with other beings and as such has the duty to preserve and protect them. Individualism must be overcome so as not to damage the integrity of creation and the planet in favor of private interests.

Since 1972, the *Stockholm Declaration*, issued by the UN General Assembly, has alerted humanity to the dangers of natural resource depletion. We can only consider a regime that

takes into account the rights of other species when making their decisions and drafting their laws, that is, an Ecological State.

The Modern State that privileges positivism and technocracy is outdated. A postmodern state will have to turn to heterogeneity, otherness, pluralism and discontinuity.

This new state will have to be the product of socio-biological relations and be able to implement concrete changes in the existing social structure to achieve sustainable development.

The new state model should aim for the future evolutionary sustainability of the earth and the change of legal paradigms that presuppose the ethics of survival.

Arthur J. Almeida Diniz comments that "one of the urgent tasks of law is to restore the ethical health of humanity" 1 and that this search for ethical principles must be "not by abstract idealism, but by mere survival expediency no more than a people but of humanity. "2" Without a deep and lasting commitment to a planetary ethic, involving all peoples, all races, all religions, cultures, policies, languages, civilizations, governments, baldness will be our efforts for viability. of peace. "[3]

The concept of sustainable development for Diniz implies a dreamed decentralization; that is, economic dependence must be mitigated so that "each member of what can be described as the world's economy can follow his own profile, his cultural tradition, which underlies the economy along the axis of the concept of value." Sustainable development , because integrated and fruit of the vocation of each economy in what it has specific, truly regional.4 Still according to Diniz, this would require the construction of a new paradigm – that of justice in economic relations – with

[1] DINIZ, Arthur J. Almeida. Novos paradigmas em direito internacional público. Porto Alegre: Sérgio Antônio Fabris, 1995, p. 79.

[2] DINIZ, Arthur J. Almeida. *Op. cit.*, p. 80.

[3] DINIZ, Arthur J. Almeida. *Op. cit.*, p. 189.

[4] DINIZ, Arthur J. Almeida. *Op. cit.*, p. 164-165.

consequent elimination of the paradigm of profit,[5] and a world pact for a new humanity that rejects the paradigm of differences[6] and builds a society where the state has merely instrumental functions in the service of the human person.

The concept of sustainable development proposed by the *Our Common Future* report, and officially accepted by the United Nations Assembly and the Rio conference, was born from the confluence of the currents of developmental, environmentalist and human thinking.

The report conceptualizes sustainable development as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

At Rio-92, the largest international conference ever (more than 100 heads of state or government, about 8,000 delegates, 3,000 representatives from non-governmental organizations and 9,000 reporters), the nations accepted the challenge of holding, in practice, the sustainable development.

The conception of sustainable development must therefore be based on sound ethical principles – an ethic of the earth.

Hans Küng, in his book *Project of World Ethics, an ecumenical morality in view of human survival*, preaches planetary responsibility as a form of survival. According to him, we have to abandon the ethics of success and mentality as the only survival of the species and the planet. That is: "responsibility of world society for its own future! Responsibility to the environment, both today and in the future. "[7] For him, this ethic requires responsibility for the environment, the human person must be more humane in order to build a more humane society and to maintain a healthy environment. Therefore ethics in postmodernity must have a public purpose

[5] DINIZ, Arthur J. Almeida. *Op. cit*., p. 163.
[6] DINIZ, Arthur J. Almeida. *Op. cit*., p. 187.
[7] KÜNG, Hans. *Projeto de ética mundial, uma moral ecumênica em vista da sobrevivência humana*. Edições Paulinas, 1993, p.52.

of first magnitude. Küng completes his idea by saying that there will be no world order without a world ethics.

Agenda 21, also known as the *Earth Summit Strategy*, is a document on sustainable development. The success of this strategy depends largely on the role of the Public Administration in controlling and overseeing the use of natural resources, in repairing past mistakes and in defending full citizenship. Sustainable development will not occur spontaneously; depends on state intervention. The success of such interference requires the abandonment of unethical science, omnipotent technology, the environmentally damaging industry, and purely formal democracy.

The minimum policy agenda for the practical realization of sustainable development must provide institutional reforms that are in line with the realization of sustainable society.

The practical realization of sustainable development will depend on political acts capable of transforming the current reality, stopping the process of unbridled exploitation of natural resources. Modern scientific and technological thinking has proved unable to substantiate ethical standards, universal values ??and rights for other species.

The political-administrative act of sustainable society will depend on our freedom (including the dignity of all beings), but above all on our responsibility (understood as an expression of our solidarity, born of the awareness of our unity with all that lives).

The Ecological State, manager of biological diversity, will have to incorporate in its foundations three basic principles: respect, solidarity and cooperation.

8.1 THE PRINCIPLES OF THE ECOLOGICAL STATE

The modernization and transformation of political forms begins

---

[2] KÜNG, Hans, *Op. cit*., p. 65.

of people's awareness. The principles must be inscribed in the human consciousness. Voltaire, Montaigne, Rousseau and Diderot worked in the world of abstract ideas, but gave life to the revolutionary process. Ideas are inspired by facts, but they make history.

Victor Hugo stated that "there is something more powerful than all the armies of the world: an idea whose time has come".

And very peculiar was this statement by Margaret Mead: "Let us never doubt that a small group of attentive and committed citizens can change the world. In fact, that's the only thing that has always changed it. "[9].

The principles are permanent and obligatory rules of observation for the legislator and the administration, constituting an element of validity of public activity and private activity.

The principles evolve in parallel with the evolution of human thinking. Every revolution begins in the world of ideas and the principles derive from the philosophical values ??emanating from the community at a given time. However, they are dynamic and must accompany the evolution of science and the ethical improvement of races.

At the time of Roman law, the resources of nature were regarded as *res comuni*, things of the community, except the right over small individual portions. Everyone had the right to use and abuse natural resources.

The abuse of the right to use natural resources was resumed by the French Revolution, based on liberal ideology.

Ecological disasters showed that the legal framework adopted until then was beginning to show signs of obsolete and inoperable. This is how a new law and principles emerged, the *principles of environmental law.*

This new branch of law is founded on several principles, which, however, are far from exhausting the principles that must be adopted. That is why, alongside the principles already embraced and solidified in the Constitutional Charter and other norms, we are suggesting a the

[9]Apud *MULLER, Robert.* Op. cit., *p. XV.*

adoption of new principles: the principle of solidarity, the principle of interdependence and the principle of the right of other species, which must be sought and enforced from an international and worldwide perspective, to inform the protection of animals, plants and the environment.

As quality of life and environmental protection emerge at the forefront, the following statements should give birth to an Ecological State, founded on the collective right of all species and on national and global solidarity. .

8.2 SOLIDARITY AS A PRINCIPLE OF LAW

The scientific and technological revolutions we have been through have contributed to major social and legal transformations.

Environmental protection requires a conceptual evolution of the international legal universe. New principles emerge in our law, such as the common good of humanity, sustainable development, differentiated responsibilities, *erga omnes* obligations and equitable world partnership.[10]

Since the *Club of Rome* has declared that it is up to us to advance the idea that world solidarity represents the supreme ethic of survival, the principle of solidarity has become a priority over the sovereignty of nations.

In 1990, the document Our Own Agenda, published by various working groups with representatives from all Latin American countries, was published. It was sponsored by the United Nations Development Program (UNDP) and the Inter-American Development Bank (IDB), in collaboration with the United Nations Environment Program (UNEP) and the Economic Commission for Latin America and the Caribbean (ECLAC). It is a document that sought

---

[10] TRINDADE, Antônio Augusto Cançado. *Direitos humanos e meio ambiente, paralelo dos sistemas de proteção internacional.* Porto Alegre: Sérgio Fabris Editor, 1993, p. 198.

make an analysis of environmental issues in Latin America and the Caribbean and make suggestions for the future. It warns that the broad participation of civil society is essential to achieve development with equity and to strengthen the legal order in order to protect citizens from environmental damage. Sustainable development requires social mobilization, participatory democracy, with the goal of joint responsibility of the state and society.

We all have the right to solidarity, development, the healthy environment, peace, education, information and planetary citizenship; we have the right not to kill and not to be killed; We have the right to non-violence. But we cannot forget the rights of other species and the rights of Earth, our planetary home. The realization of these rights expresses the interest and common goal of humanity.

At the meeting of the *United Nations Environment* Program, jointly organized by the United Nations Environment Program (UNEP), the Ministry of Foreign Affairs and Justice of Malta and the University of Malta in December 1990 in Malta, the *common interest Common concern of makind* has been conceptualized as the concentration of efforts on issues truly fundamental to all humanity, according to the notion *commonness,* especially global environmental issues. All countries and societies have an obligation to engage in issues of common interest. The common interest has a long-term temporal dimension and covers future generations. The reasons for *ordre public* predate reciprocity. Responsibility for the preservation of the environment is preventive and subsequent to damage, and this sharing of responsibility between states must be equitable. All the duties of states derive from these principles.[11]

The first round of discussions dealt with human rights and self-determination of peoples. This issue, until then, was reduced to the domain of the domestic jurisdiction of states. That Since

[11]TRINDADE, Antônio Augusto Cançado. *Op. cit.,* Anexo VI, p. 276-281.

the Treaty of Barcelona (1970), this teaching has evolved to the recognition that certain issues concern all states and create erga omnes obligations.[12]

Mankind's current concept of common interest encompasses issues that take on a global and social dimension, and must seek solutions that are truly fundamental to *all humanity.*

In the second round13 it was suggested that the concept of humanity's common good could approach a new legal perspective. It was clear that all countries should contribute to the protection of the environment and that there should be a division of costs and benefits. This division must be equitable, which means that countries must make a greater or lesser contribution in proportion to their historical and present responsibility for air pollution and the excessive per capita level of emissions of polluting gases. Account should also be taken of the economic and technical capabilities of each country in providing preventive and corrective solutions. Countries must not only stop emitting gases, but transfer technologies to developing countries and financial assistance. Obligations should be divided according to the capacity of each country. Equity, or *fair sharing of burdens*, appears in response to *humanity's concept of common interest.*

In the third round14 the relationship between human rights and the environment was discussed. It was concluded that the issue of survival is a fundamental human right to live in a clean, healthy and healthy environment, and that the evolution of human rights and environmental rights must go hand in hand.

In the fourth round[15], the discussions were centered on the Climate *Convention and the Biodiversity Convention*, to be signed, as they were, at Rio / 92. These expert conclusions at the Malta meeting were reflected not only in these conventions but also in the

---

[12] TRINDADE, Antônio Augusto Cançado. *Op. cit.,* p. 277.
[13] TRINDADE, Antônio Augusto Cançado, *Op. cit.*, p. 279.
[14] TRINDADE, Antônio Augusto Cançado, *Op. cit.*, p. 280.
[15] TRINDADE, Antônio Augusto Cançado. *Op. cit.*, p. 281.

Earth Charter, which, while lacking legal force, embodies the principles to be followed by nations in drafting their environmental laws and policies, so much so that the expression common interest of humanity was used (1991) in the Protocol on Environmental Protection at Antarctic Treaty, which considered the development of a comprehensive regime for the protection of the Antarctic environment and associated dependent ecosystems of common interest of humanity as a whole.[16]

The Convention on Climate Change and the Convention on Biological Diversity, both emanating from the United Nations Conference on Environment and Development (Rio-92), embraced the expression common concern of makind. The preamble to the Convention on Climate Change states that climate change on Earth is in the common interest of humanity, and the Convention on Biological Diversity states that the conservation of biological diversity is a common interest of humanity.

Equitable responsibility is translated into the performance of obligations according to each country's capabilities *(equitable burden-sharing)*. Due to this concern, the common interest of humanity establishes common but differentiated responsibilities, which has been generating resistance from developed countries for its realization.

It must be acknowledged that a participatory democracy demands a new paradigm for social democracy, according to the discovery of our interdependence, and including every terrestrial community. In this social democracy, subjects of law must be not only human beings, but all beings that inhabit the planet and make up the human social world.

The S*eville Appeal against Violence*, issued by the International Meeting held at the University of Seville under the auspices of UNESCO in 1986, acknowledges that

[16] TRINDADE, Antônio Augusto Cançado. *Op. cit.*, p. 218-219.

"It is scientifically incorrect to say that war or any other form of violence is genetically programmed in human nature. [...] It is scientifically incorrect to say that in the course of human evolution a selection has taken place in favor of more aggressive behavior toward other types [...] Biology does not condemn man to war. [...] Humanity can liberate itself from a pessimistic vision brought by biology and in the years to come, make the necessary transformations of our societies. [...] And that this task relieves collective responsibility."[17]

The document Our *Common Future*, prepared by the United Nations Environment Program Development Commission, Nairobi-based, approved by the United Nations in 1987, reads in its *Summary of Legal Principles*, item 14: "All States they shall cooperate in good faith with each other in order to make optimum use of natural resources across borders and the effective prevention or mitigation of cross-border environmental interference. "[18]

Along the same lines, the Declaration of *Porto Novo was signed by a Solidarity* Contract at a meeting held between October 31 and September 3, 1989, between Africa and Europe, organized by the World Social Perspective Association in cooperation with the Council of Europe and the Organization of African Unity:

"It takes a new way of being and thinking, a new ethic." This new ethic must aim at the change of man an

[17] DESSART, Francis. *Une meme terre une meme vie*. Suiça: Atra, 1993, p. 23.

[18] COMISSÃO MUNDIAL SOBRE MEIO AMBIENTE E DESENVOLVIMENTO (PNUMA). *Nosso futuro comum*. Rio de Janeiro: Fundação Getúlio Vargas, 1991, p. 390.

absolute priority. We think that the only cause that is worth is that of man. It is the whole man who needs to be saved and developed. He is an integral man who needs to be put on his feet. It is finally your spirit that needs to be changed.

This new ethic must extend to all civil society."[19]

Also in 1989, the St. Joseph Conference took an important step in designing an idea of universal responsibility as the center of planetary attention. In early 1989, the *Government of Costa Rica proposed to present a draft Declaration of Human Responsibilities* for Peace and Development to the United Nations General Assembly. A committee was set up to prepare a text that would complete the *Universal Declaration of Human Rights*. This text affirms the responsibility of the present generation to ensure the development and survival of future generations, to be aware of one world, a just and peaceful world, a world grounded in cooperation with nature. In your art. 1st emphasizes:

"Everything that exists is part of an interdependent universe. All beings depend on each other for their existence, welfare and development. "

And in art. 3rd: "... Every manifestation of life on earth is unique and necessary, and therefore has the right to respect and care whatever its apparent value to human beings."

"Art. 6th: Responsibility is an inherent aspect of every relationship in which the human being is engaged. "[20]

The concepts of *equity and responsibility,* alongside the concept of democracy, invite us to build a new model of civilization with new values, such as harmony, balance and an ethic of life whose emphasis is solidarity.

Milton Rokeack, in his book The *Nature of Human Values,* referring to political values comments that:

---

[19]DESSART, Francis. *Op. cit.*, p. 35-37.
[20]DESSART, Francis. *Op cit*., p. 38-42.

"The values ??of freedom and equality are divided into various political currents. While communism values ??equality and despises freedom, capitalism, on the contrary, values ??freedom but despises equality. Fascism has a low index for freedom and equality. Socialism places great importance on both freedom and equality. "[21]

What is needed, however, is undoubtedly the restoration of the unity of the freedom-equality-fraternity trilogy, a condition for the realization of a democracy. This trilogy was fragmented, and the fraternity was relegated to religions. This attitude has led to a divided world that is incapable of achieving social justice. The forgetfulness of brotherhood has resulted in the exacerbation of the lust for profit and power, selfishness, violence, inequality, social injustice, oppression and destruction of the Planet. Justice must defend triunity, our laws be inspired by the principle of solidarity, or all life will perish.

Unesco has, prior to the UN *Conference on Environment and Development* (UNCED), obtained more than nine million signatures in favor of protecting the Planet to make Earth a safe and hospitable home for present and future generations. These signatures were collected in an Earth defense campaign launched by the secretary of CNUMAD.

The *Earth Pact* is known as a vehicle for mobilizing public opinion around CNUMAD and as a starting point for a popular movement to support the Earth Summit.

As soon as the UNCTAD secretary requested UNESCO assistance for the campaign, Frederico Mayor, its director-general, wrote to member states inviting them to organize seminars and thus gain popular engagement.

The *Earth Covenant* says in substance:

[21] *Apud* WEILL, Pierre. *A nova ética*. Rio de Janeiro: Rosa dos Tempos, 1994, p. 54.
[22] DESSART, Francis. *Op. cit.,* p. 110.

"Aware that the behavior of our planet's inhabitants in relation to nature and each other is increasingly a source of harm to survival and development, I strive to contribute the best of my means to make the earth a safe and hospitable home for present and future generations. "[23]

The *Earth Pact* has been publicized in countless countries by the press.

There can be no development without solidarity, declared Eduardo Portela,[24] a UNESCO spokesperson: "Another sustainable and solidary development is needed."[25]

Taking *care of Planet Earth* (UNEP, IUCN and WWF) recognizes:

"If our goal is to achieve sustainability on our planet, a solid alliance must be formed by all countries. This strategy implies the respect and care we owe each other and Planet Earth. "He further recognizes" the interdependence of human communities and the duty of each to care for their fellow men and the environment. "He claims "Our responsibility for the ways of life with which we share the planet... that the need to defend individual rights is greater than ever. At the same time, joint action is needed to protect and preserve the needs common to all and shared resources. The obligations of individuals should be emphasized as much as their rights. "[26]

---

[23] DESSART, Francis. *Op. cit.*, p. 110.
[24] *Apud* DESSART, Francis. *Op. cit.*, p. 111.
[25] DESSART, Francis. *Op. cit.,* p. 111.
[26] PNUMA, UICN, WWF. *Uma estratégia para o futuro da vida*. São Paulo, 1991, p. 14 e 15.

And it created the following framework for world ethics:

ELEMENTS OF A WORLD ETHICS FOR SUSTAINABLE LIVING

“Every human being is part of the community of living beings. This community links all human societies - present and future generations, as well as humanity, with the rest of nature. It encompasses both cultural and natural diversity.

Everyone has the same fundamental rights, including: the right to life, liberty, personal security; freedom of thought, conscience and religion; questioning and free expression; to free assembly and association; participation in government; the education; and, within the limits of Planet Earth, to the resources needed for a decent standard of living. No community or nation has the right to deprive any other of their livelihoods. Each individual and each society must respect these rights and be responsible for their protection.

Each form of life must be respected regardless of its value to man. Development should not threaten the integrity of nature or the survival of other species. People should treat all creatures with dignity and protect them from cruelty, avoiding unnecessary suffering and death.

Everyone must be responsible for their own impact on nature. People must conserve ecological processes and the diversity of nature. Resources should be used only at the necessary and efficient levels, ensuring that the use of renewable resources is sustainable.

All should aim to share the benefits and costs of resource use among communities and stakeholders, between poor and wealthy regions, and between present and future generations. Each generation must leave to its substitute a world that is so diverse and productive

as the one who inherited. The development of one society or generation should not limit the opportunity of other societies or generations.

The protection of human rights and the rest of nature is a worldwide responsibility that transcends cultural, ideological and geographical boundaries. Responsibility is both collective and individual. "

Finally, we recall the *New Earth Charter*, which began in 1997 at Rio + 5 when a *Earth Charter* commission was formed, with members from all faiths. A first draft was made for consultation. At the beginning of 1999, the second draft reference came out, which is the prevailing basis for discussion.

Consensus has been reached that it should be a statement of fundamental principles, a call to action, a letter from the peoples. By the time of its UN seal in 2002, it will be in constant improvement and dissemination. It is coordinated worldwide by a nine-member Steering Committee, with the support of the *Earth Charter* Commission, composed of twenty world-renowned people, such as Mikhail Gorbachev, Mercedes Sosa, Maurice Strong, Amadou Toumani Toure and Kamla Chowdry, each representing your continent. But in fact this document is being written by people all over the world, through the intermediation of their representative groups and via the internet. It states:

"In solidarity with all and with the community of life, we, the peoples of the world, commit ourselves to action guided by the following interrelated principles:

Respect the earth and all life. Recognize the intrinsic value of all beings. It is the duty of the community to take care of life in all its diversity, accepting that the earth is a responsibility to be shared by all (among the general principles).

Treat all beings with compassion and protect them from cruelty and unnecessary destruction (among the principles of integrity

item II, 7)
Create a culture of peace and cooperation (between the principles of democracy and peace – IV, 16).
A New Beginning: As never before in history, common destiny calls us to redefine our priorities and to seek a new beginning. [...] Such a renewal is a promise to realize the principles of the Earth Charter, which are the result of a worldwide dialogue in search of a common foundation of shared values. [...] We can, if we will, take advantage of the creative possibilities between us and usher in an era of new hope. May our time be remembered as the awakening of a new reverence for a lifetime, for a firm commitment to restoring the earth's ecological integrity, the revival of the struggle for justice ["... and for the joyous celebration of life,"

From all of the above, we can deduce that the path of social justice leads us to an ecological ethic. Through it, we express the right behavior and the right way for human beings to relate to other living beings, the Planet and their fellow beings. It is a conscious commitment to the creation of a society founded on respect, harmony and solidarity. Being ethical means having unlimited responsibility for everything that lives and exists.

Solidarity is the awareness of our unity with all beings and the universe. Through it we assume our personal and collective responsibility in the eternal stream of time.

The new emerging political system must follow the new paradigms of science, built on the discovery of our interdependence. The new political-legal paradigm to be adopted must be based on the principle of solidarity, alongside freedom and interdependence.

The discoveries of our interdependence and solidarity must be one of the pre-law principles, one of the foundations of the state.

The question of solidarity was addressed by Léon Duguit

(1913) Duguit defended the idea that nations were organized in state by the notion of social solidarity. In Les transformations du droit public, Duguit (Colin, 1913, p. XVII) explains:

> "The small family group can no longer assure the fulfillment of their human needs, but by vast organisms, which extend all over the national territory and demand the competition of a large number of individuals, who can satisfy the mass of their elementary needs. .
> With successive scientific discoveries and industrial progress, relations between men became so complex and numerous, social interdependence became so close that the fact that some did not satisfy their needs affected all others. "[27]

Hence the need for social solidarity.

The school called *solidarity* was also embraced by Leon Bourgeois, Gide and others. It preaches the action of the state to spread the notion of solidarity, which, as it dominates the universe, the kingdoms and forces of nature, must be brought to the social and economic terrain, to replace competition and competition in human relations. fight. The present generation owes to the precedent all the welfare it has found ready and must pay this debt to the future generation.[28]

The calamitous situation in which humanity finds itself, with a quarter of the population without access to basic needs, makes us recall the final conclusions of the 1995 *Copenhagen Declaration*, which considered our challenge to establish a model of social development centered on in the people who guide us, today and in the future, in building a culture of cooperation and solidarity in order to meet the immediate needs of the most

---

[27] *Apud* WALIME, Marcel. *Traité élémentaire de droit administratif*. 6. ed., Paris: Recueil Sirey, p. 3.

[28] MASAGÃO, Mário. *Curso de direito administrativo*. 6. ed.. São Paulo: Revista dos Tribunais, 1997. p. 14.

affected by human misfortune.

Incorporating these new principles into our law requires the adoption of an international convention that will result in an integrated legal framework for current and future environmental and development legislation and policies.

8.3 THE PRINCIPLE OF INTERRELATIONALITY - THE RIGHT OF OTHER SPECIES

The earth, human beings, and other life forms form a single entity. Everything is on. Everything is related.

In Ernst Haeckel's (1834-1989) understanding, ecology is the study of the interrelationship of all living and nonliving systems with each other and with their environment. No living thing can be seen as a mere representative of its kind. It can only be seen in relation to the set of vital conditions that constitute it and in the balance and harmony of all other representatives of living species. In this sense, ecology is the study of the civilization we have built.

The discovery of our interrelationship has brought us new values, which demand new legal norms, new principles of law. It asks us for a new way of relating to ourselves, the environment and other beings, a new paradigm for action on the surrounding reality. We are entering a new era, also in the field of law, which brings to light new values ??and new principles of law, new declarations of rights.

James Lovelock[29] justifies his designation of the Earth as Gaia because it presents itself as a complex entity that encompasses the biosphere, the atmosphere, the oceans, and the soil. In their entirety, these elements constitute a cybernetic, or feedback, system that seeks an optimal physical and chemical environment for life on this planet.

---

[29]Sobre a Teoria de Gaia, formulada por James Lovelock ver seus dois livros mais conhecidos: *Gaia – um novo olhar sobre a vida na Terra* (Lisboa: Edições 70, s./d.) e *As eras de Gaia* – a biografia de nossa Terra viva (Rio de Janeiro: Campus, 1991).

The human being and the universe are dynamic totalities. All beings are interconnected and reconnected with each other. One needs the other to exist. Everyone lives in a web of relationships, and there is nothing outside of it.

If we carry this knowledge into the legal field, we have to admit that the common good is not only of the human being, but of the entire planetary and cosmic community. The particular common good requires synergy with the universal common good. Hence one begins to recognize the rights of other species and the rights of other beings.

UNIVERSAL DECLARATION OF ANIMAL RIGHTS

The *Universal Declaration of Animal* Rights was proclaimed at UNESCO headquarters in Paris.

Its text was written after several international meetings, by scientific, legal and philosophical personalities, and by representatives of animal protection associations. It constituted a philosophical stance towards establishing guidelines for man's relationship with the animal. This new philosophy is supported by recent scientific knowledge that recognizes the unity of all life and demands an egalitarian attitude towards life. His articles propose a new biological ethic, a new attitude of life and a respectful attitude towards animals.

It is biology that shows us the unity between man and animal. The same fundamental needs are met in man and animal, especially to feed, to reproduce, to have a *habitat*, and to be free. Each fundamental need corresponds to a fundamental right inherent in the set of living beings. All beings have biological and psychological rights. Man must grant animals the same rights as legitimately conferred. Granting equal rights to animals means that when we create norms about animals we must take into account their morphological nature, social instincts and sensitivity.

The recognition by science of the interrelationship of man with the whole universe and all that lives resulted in the promulgation of the Declaration Animal Rights on January 27, 1978,

which creates obligations for signatory states, like all other international pacts. In your art. 1 she states that the right to life extends to animals: "All animals are born equal in the face of life and have the same right to existence." In her last article I stated that "the rights of the animal must be defended by laws, such as the of men. "

The document Our *Common Future*, in its summary of legal principles on state responsibility, proposes:

> "States must maintain the ecosystems and ecological processes essential to the functioning of the biosphere, preserve biological diversity and abide by the principle of sustainable optimum productivity when utilizing living ecosystems and natural resources."

Undoubtedly, ecocide is one of the greatest violations of human rights and the rights of other species, and entails for the State the duty to protect human rights and that of other species, as well as the duty to prevent or prevent irreparable damage.

This conduct which the *Universal Declaration of Animal* Rights proposes to man does not mean to forget the fight against misery, the moral suffering of humanity, torture, political domination or racism. On the contrary, the protection of animals is part of human protection, so much so that the respect of men for animals is linked to the respect of men among themselves.

This document is an invitation for man to renounce his current conduct of exploitation of animals and, progressively, his way of life and anthropocentrism, to go against biocentrism. For this reason, it represents an important stage in the history of man's evolution.

Levi Strauss, in The *Distant Look,* in the chapter *Reflections on Freedom,* defends the idea that the definition of man as being moral must be replaced by that of man as a living being.

"If man begins by having rights to the title of being alive, it follows immediately that those rights, recognized to humanity as a species, find their natural limits in the rights of other species. The rights of humanity thus cease at the precise moment when their exercise endangers the existence of another species.

The right to life and free development of living species still represented on Earth may be the only one to declare imprescriptible, for the simple reason that the disappearance of any species creates an irreparable void on our scale in the system of creation. "(Levi Strauss) "[30]

UNIVERSAL DECLARATION OF ANIMAL RIGHTS

Proclaimed at the Unesco headquarters, in session held in Brussels on 27 January 1978.

Preamble: Whereas each animal has rights; whereas the discovery and contempt of these rights have led and continue to lead man to commit crimes against nature and animals; whereas the recognition by the human species of the right to the existence of other animal species forms the basis for the coexistence of species in the world; whereas genocides are perpetrated by man and still others can occur; whereas respect for animals by man is linked to respect for men among themselves; whereas education should teach children to observe, understand and respect animals.

Article 1

All animals are born equal before life and have the same right to existence.

[30]LÉVI-STRAUSS, Claude. O olhar distante. Edição 70: Lisboa, 1983. p. 390.

Article 2
The. Each animal has the right to respect.
B. Man, as an animal species, cannot give himself the right to exterminate or exploit other animals in violation of this right. He has a duty to place his conscience at the service of other animals.
W. Each animal has the right to consideration, healing and protection of man.

Article 3
The. No animal will be subjected to mistreatment and cruel acts.
B. If the death of an animal is necessary, it must be instantaneous, without pain or anguish.

Article 4
The. Each animal belonging to a wild species has the right to live free in its natural terrestrial, air and aquatic environment and has the right to reproduce.
B. Deprivation of liberty, even for educational purposes, is contrary to this right.

Article 5
The. Each animal belonging to a species, which habitually lives in the environment of man, has the right to live and grow according to the rhythm and conditions of life and freedom that are unique to its species.
B. Any modification of this rhythm and conditions imposed by man for mercantile purposes is contrary to this right.

Article 6
The. Each animal that man chooses as a companion is entitled to a life span according to its natural longevity.
B. The abandonment of an animal is a cruel and degrading act.

Article 7
Each working animal has the right to reasonable limitation of time and intensity of work, adequate food and rest.

Article 8
The. Animal experimentation, which implies physical suffering, is incompatible with animal rights, whether it be medical, scientific, commercial or otherwise.
B. Substitute techniques should be used and developed.

Article 9
If the animal is bred for food, it must be nourished, housed, transported and killed without anxiety or pain.

Article 10
No animals should be used for man's enjoyment. Animal displays and animal shows are incompatible with the dignity of the animal.

Article 11
The act that leads to the death of a needless animal is a biocide, that is, a crime against life.

Article 12
The. Every act that leads to the death of a large number of wild animals is genocide, a crime against the species.
B. Annihilation and destruction of the natural environment lead to genocide.

Article 13
The. The dead animal must be treated with respect.
B. Scenes of animal violence should be banned in the movies and on television unless they are intended to show an attack on animal rights.

Article 14
The. Animal protection and safeguard associations should be represented at government level.

B. Animal rights must be upheld by laws, such as human rights.

In 1989, the 200th anniversary of the Declaration of Human Rights, a new document on animal protection was drafted by the German Green Party and adopted by various protectionist bodies around the world. The second document contains principles far more advanced than the first: presents as innovations the condemnation of the classification of animals according to human interests, generating different categories of rights; recommends that animal custody should be radically restricted; condemns the killing of animals for consumption; advocates the abolition of experiments on live animals; and preaches the guarantee of animal rights by the Constitutions of Nations.
Let us examine the document in its entirety:

PROCLAMATION OF ANIMAL RIGHTS – APRIL 1989 *

Article 1
The most basic principle of justice requires that equals be treated equally and unequal to be treated unequally. All living creatures must be treated equally, with respect to the aspects in which they are equal.

Article 2
Since animals, just like men, strive to protect their lives and those of their species, and which show an interest in living, they also have a right to life. That said, they cannot be classified as objects or moving, legally.

Article 3
Whereas animals are equal to men in their capacity

* Tradução livre de Edna C. Dias — Documento distribuído, via correio, pelo Partido Verde da Alemanha.

In suffering, in pain, in interest and in gratification, these abilities need to be respected.

Article 4
Since animals are capable of experiencing anxiety and suffering, they should not be mistreated or frightened. The right to protection of men is a fundamental right of animals.

Article 5
The differences between man and animal in intelligence and speaking ability do not justify disregarding the great similarity of their basic vital functions.

Article 6
The classification of animals as pets, hunting, and work, according to human interests and preferences, generating different categories of rights, needs to be eliminated, otherwise it violates the principles of justice set out in Article II.

Article 7
Evolutionary animal species have the right to exist as such, that is, they cannot be exterminated or genetically manipulated.

Article 8
Every animal species that lives in the wild has the right to live in appropriate space. Animals may only be killed in self-defense and under no circumstances by sport or commercial exploitation.

Article 9
Animals living in the wild must be strictly protected against the interference of society and human civilization.

Article 10
Custody should be restricted to the maximum, as it does not offer animals the opportunity to live in an environment appropriate to their species and is linked to cruelty.

Article 11
The production and sale of animals and their products for (apparent) satisfaction of human needs such as companionship, prestige, lust, must be stopped.

Article 12
Every animal has the right to act according to the standard of conduct of its species and its own rhythm of life. Your environment needs to be adapted in such a way that it can meet your needs for food, movement, motivation and social life.

Article 13
Animals should not be killed for consumption. Your creation, accommodation. Food and other care should not subject them to stress, suffering or injury. Transportation should not cause them any suffering or anxiety.

Article 14
Animal experimentation is the extreme expression of violence against animals and a part of science that is based on a model of violence that violates both human and animal rights.

Article 15
The display of animals for fun or pseudo-instructional purposes is not compatible with the dignity of the animal as a sensitive living being. They should be prohibited because they constitute an exaltation of violence, the fight between animals or between men and animals.

Article 16

The realization of fundamental animal rights must be considered a national objective in the Constitutions of Nations. It is the duty of governments to promote the enforcement of these rights at national and international level.

Article 17
In order to promote and enforce compliance with fundamental animal rights, persons should be designated to whom the relevant legal mandates and powers will be conferred. Animal and nature protection authorities should be delegated powers to bring legal proceedings in defense of animals.

Chapter 9

CONCLUSION

9.1 SEEKING A NEW PARADIGM

Paradigm is a model, a pattern of appreciation and explanation to guide the description and understanding of the surrounding reality. The paradigm shift occurs when we awaken our consciousness and are able to recognize the flaws and misconceptions of current thinking. It is not easy to convert scientists. They are often rooted in what is wrong. The planetary crisis has given rise to a holistic paradigm, reoriented by a worldview. *Holos*, in Greek, means "all" and the holistic is concerned with uniting the whole in relation to its parts.

There were several scientific discoveries that gave rise to the holographic model: Faraday Maxwuell's *Electronic Theory; Max Plank's Theory of Quanta; Albert Einstein's Theory of Relativity;* and Werner Heisenberg's Uncertainty Principle.

In Newton's time, the universe resembled a kind of solar or stellar monarchy, where the solar and stellar systems gave orders of repulsion and attraction, and these obeyed solar authority, in a regime of authority and obedience. In our day, Einstein saw in the universe a fascinating cosmocracy, whose sovereign has no definite location, no central radiance, but is present and acting,

simultaneously within each atom.[1] The concept of a central mechanical force has been replaced by the view of organic presence.

Fritjof Capra[2] discusses the thinking of the new paradigm in science. For Capra, the new paradigm can be called holistic, ecological or systemic. Not only does it look at something as a totality, but also at how it is embedded within larger totalities. He states that the worldview that emerges today from modern science is an ecological one, and that ecological perception at its deepest level is spiritual or religious perception. And that is why the new paradigm, within and outside science, is accompanied by a new increase in spirituality centered on the Earth. The discovery of global interdependence leads us to distinguish between deep ecology and superficial ecology. In superficial ecology humans are placed above or outside nature, and of course this perspective is in keeping with nature's domination. It gives nature a use value. She is concerned with the defense of nature only for the use and enjoyment of man. As for deep ecologists, they see human beings as an intrinsic part of nature, as nothing more than a fabric on the thread of life. The new paradigm recognizes first of all that the world is alive, a living system.

In the new paradigm science must conceive of reality as a network of relationships. The field of action encompasses a web of intrinsically dynamic relationships that does not deal with exact truths.

In the new paradigm, it is recognized that all discoveries are limited and approximate, and that science can never provide a complete and definitive understanding of reality.

The time has come to return to the whole of things and the scientific community, adopting this new paradigm for the social sciences as well. What we need to recover now is the science of wisdom, as an art of living and surviving.

---

[1] ROHDEN, Huberto. *Sabedoria das parábolas*. 3.ed., São Paulo: Alvorada, p. 181.

[2] CAPRA, Fritjof. *Pertencendo ao universo*. São Paulo: Cultrix, 1991, p. 11.

We must seek the reunion of science with wisdom to set norms for a survival partnership. The essentiality of the other and nature demands that the social sciences, like the exact sciences, adopt a new paradigm, the holistic paradigm. This new paradigm demands the development of a holoepistemology that can sustain the creative evolution of knowledge, along with a harmony of being.

Science must aim at building a more peaceful, fairer, and more hospitable world, not just for man, but for all who live in it. Universities must work for the growing awakening of a large number of individuals. Every professional must learn to be an integral man. The integral man is a cosmic man and must learn to balance his interior with human peripheries. It is cosmic because it is governed by the same laws that govern the outer world. Man was able to sophisticate his machines, but now he has to expand his heart, his feelings, his love, and his soul to every human family, every being, the planet, and the universe.

9.2 THE NEW ETHICS

The crisis of values ??leaves its mark not only on the destruction of nature but on social structures. Therefore, ethical commitment cannot be detached from justice. Social injustice is linked to the destruction of nature and violence against animals. Restoration of justice and protection of animals will have to come together.

Studies show that animal cruelty is an initial step for a potential criminal. The lives of mass murderers and violent criminals show that as children they inflicted abuse on animals.

Albert Desalvo, the Boston rapist, in his youth would lock dogs and cats in crates of oranges and shoot arrows across the boards.[3]

[3] TRENT, Neil. *Crueldade animal*. Passos iniciais de um potencial criminoso. Conferência proferida no dia 15/10/98, em São Paulo. *In*: *Anais do II Congresso Brasileiro do Bem- Estar Animal*, p. 37.

In 1973, Desalvo was found dead in his cell, stabbed in the heart.

Jeffrey L. Dahmer, a serial killer and sexual deviant, confessed to having cannibalized seventeen men and boys. As a child she impaled frogs, beheaded dogs, and pegged cats in trees in her backyard. In February 1992 he was convicted and in 1994 killed by another intern. [4]

Ted Bundy, *serial killer* and rapist (1973 to 1978), was executed in 1989. During his childhood he tortured animals and witnessed his father's brutality against animals.[5]

In 1998 there was a slaughter in Arkansas, United States, which horrified the world. Mitchel Johnson, 13, and Andrew Golden, 11, killed several people at Jonesboro Public School two days after a violent massacre by boys in that state. In an interview with CNN television, which was broadcast on channels around the world, the boys' parents confessed that they taught children how to shoot early and took them hunting with adults.[6]

As long as we keep animals in cages, our prisons are always full; as long as we kill animals, homicides will proliferate; as long as there is animal slaughter, there will be wars. Everything that happens to animals happens to men. There is a relationship in everything. Good and evil are in the hearts of men. It is in the minds of men that wars begin.

To recognize animal rights, man needs to rethink many things, change their habits, change their relationship with the environment. Few people are interested in doing this or see reason to do so. But the new paradigms of theoretical physics give us reasons to reevaluate the way we think and interact with everything that lives in the world.

---

[4] TRENT, Neil. *Ibidem*.
[5] TRENT, Neil. *Ibidem*.
[6] Jornal *Estado de Minas*. Belo Horizonte, 27 de março de 1998, p. 20.

9.3 THE COSMIC PUZZLE

Today philosophy and science already admit the unity of the cosmos. And in this unit there is no hierarchy. The components of atoms and atomic particles are dynamic patterns that do not exist as isolated entities but as parts of an inseparable network of interactions. Modern physicists show us that all matter – both on Earth and in outer space – is engaged in a continuous cosmic dance. Everything in space is connected to everything else, and no part of it is fundamental. The properties of any part are determined not by some fundamental law, but by the properties of all other parts. Physicist Heisenberg, in studying the material world, has shown us the essential unity of all things and events. The world is involved in one great unity; no element is isolated, either in present extent or in history. Atoms and worlds are carried by one impulse, and the result is life.

Modern physicists believe that the apparent world is merely a projection of the mental world and that, in a sense, every object constitutes an indivisible whole. This makes the division between mind and matter indefensible. George Wald, Nobel Prize in Physics / 1967, believes that the material universe was generated by a consciousness that brought life into its various forms of consciousness.

Eastern philosophy has always held that space and time are constructions of the mind. Space and time apply only to our particularizing idea. Mystics associate the notions of space and time with particular states of consciousness.

Relativity theory has found that all measures of space and time are relative and depend on the observer. Enstein said that time is relative. Present, past, and future information is superimposed on the now, in a continuous space curvature. This implies that an atom, regardless of being in a set of atoms, is not just a part of it, but a microcosm of the whole, and contains all unlimited potential. just like the universe where he resides.

9.4. THE ALL-ENCOMPASSING NETWORK

Modern physicists have also shown us that movement and rhythm are essential properties of matter.

The content of the universe is a mathematical vibrational force. The genetic system that makes a bird or a child is a mathematical and chemical formula. The rhythm of our heart is a number. Thus our hearts beat at their own rhythms. Also the sun, in its cycle, drives the energy that circulates in the solar system. This is why one part of the equation cannot be nullified without its other parts being impacted. All the harm man does to nature will eventually hit man himself.

We are all part of the universe, all brothers and sisters, from elementary particles, quaks, stones to slugs, animals, humans, stars, to galaxies. All life forms on earth are related. We have common organic chemistry and evolutionary heritage. If we go back in time, we might find a common ancestor, so man's chemistry looks like plant chemistry. If we investigate the molecular machinery of life, we will see that we are essentially identical to trees. Like them, we use nucleic acids as genetic material, we use proteins to control cell chemistry, and most importantly, we use the same code to translate nucleic acid information into protein information. We are all of us - trees, people, fish, worms and bacteria - descended from a single convenient instance of the origin of life billions of years ago in the early days of the planet.

We all came from the original sphere, where we were all together. We also have a common structure with the elements that, with the exception of hydrogen, were all produced in stars billions of years ago, with the same genetic code as all living beings: oxygen (65%), carbon (18%), hydrogen (10%), etc. We form a cosmic community, with common origin and common destiny. So to be fine

with us, we have to be fine with everything. We have to be fine with Earth, our mother, and all that inhabits it to be similar. Our physical body is a mini nature that has all that Mother Earth has.

The life and death of the stars seem impossibly remote from human lives, yet we are very closely linked to their lives. The very stuff we were made of was created long ago in a giant red star. The formation of the earth may be due to a supernova star. After the sun turned on its ultraviolet light and entered our atmosphere, its heat generated lightning, and these sources of energy sparked life. Life on earth comes from the warmth of the sun and its light. Sunlight, traveling 300,000 km per second, reaches us in eight minutes in the form of electromagnetic radiation. Plants harvest sunlight and turn them into chemical energy. We and the other animals are plant parasites; therefore we are all solar powered. So our ancestors worshiped the sun. We are his children.

It is the same conclusion that mystics come from the inner realm, while physicists come from the outer realm.

This new way physicists show us the Universe is the essence of Tao, founded by Lao Tzu, and Zen, which teaches us not to cling to the thought of opposites, opposites. Being, in its fullness, is united with all that lives. This unit abolishes all differences. The teaching of unity is the essence of Zen and Tao.

This is also the worldview of the pre-Socrates, who gave the cosmos a soul: logos, the principle is the soul of the world.

The difference from the pre-Socratic worldview to that of Eastern societies is that they sacralize nature while the Greeks questioned its nature to discover its secret.

This theory was reborn under the name of *Gaia, the living earth,* through the English biological James Lovelock, for whom the earth is a living being, capable of regulating itself and its own climate.

We are returning to the holistic view of the legendary Greek who inhabited the logos.

9.5 RECOGNITION OF ANIMAL RIGHTS

To recognize animal rights, we have to rethink many things and change our relationships with the environment. Animals are beings that, like man, are deeply absorbed by the adventure of living. He who has no compassion for animals has no right to speak of human torture. To the hands of the righteous, everything that lives is sacred.

The animal liberation movement will demand greater altruism than any other (feminism, racism ...), since animals cannot demand liberation itself. As conscious beings, we have a duty not only to respect all forms of life but to take steps to prevent the suffering of other beings.

Humans are the only beings who are in a position to help and guide the less developed, setting an example of cooperation and help. They are the only beings capable of transforming themselves and the world.

One day man will discover a power greater than atomic power – that of love. True love, the only one capable of transforming the world. On that day man will realize that he has a cosmic duty, and then only then can he say that he is the king of all creation, the son of God on earth.

REFERÊNCIAS BIBLIOGRÁFICAS

ALEMANHA. BGB – German Bürgerliches Gesetzbuch. 18 August 1896. [Civil Code in the version promulgated on 2 January 2002]. Disponível em: <https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf>. Acesso em: 4 abr. 2018.

ALVAREZ Fernando D. “Derecho del Mercosur y la integracional”. Revista de Derecho Internacional y del Mercosur, n.º 1, fevereiro de 2003, Síntese Editora, pg.51.

ANASTASIA, Antônio Augusto. Projeto de Lei do Senado n° 351, de 2015. Acrescenta parágrafo único ao art.82, e inciso IV ao art. 83 da Lei nº 10.406, de 10 de janeiro de 2002 (Código Civil), para que determinar que os animais não serão considerados coisas. 10/06/2015a. Disponível em: <https://legis.senado.leg.br/sdleg-getter/documento?dm=581805&disposition=inline>. Acesso em: 16 maio 2018.

ANASTASIA, Antônio Augusto. **Projeto de Lei n° 351, de 2015.** Acrescenta parágrafo único ao art.82, e inciso IV ao art. 83 da Lei nº 10.406, de 10 de janeiro de 2002 (Código Civil), para que determinar que os animais não serão considerados coisas. Tramitação no Senado Federal. Disponível em: <https://www25.senado.leg.br/web/atividade/materias/-/materia/121697>. Acesso em: 16 maio 2018.

ANASTASIA, Antônio Augusto. **Projeto de Lei n° 3670, de 2015.** Altera a Lei nº 10.406, de 10 de janeiro de 2002 (Código Civil), para determinar que os animais não sejam considerados coisas, mas bens móveis para os efeitos legais, salvo o disposto em lei especial. Apresentado na Câmara dos Deputados em 18/11/2015b. Disponível em: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=2055720>. Acesso em: 16 maio 2018.

ANASTASIA, Antônio Augusto. Projeto de Lei n° 3670, de 2015. **Parecer da Comissão de Constituição e Justiça e de Cidadania da Câmara dos Deputados.** Aprovado em 8 ago. 2017. Disponível em: <http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=1519300&filename=Parecer-CMADS-20-12-2016>. Acesso em: 16 maio 2018.

ANASTASIA, Antônio Augusto. Projeto de Lei n° 3670, de 2015. **Parecer da Comissão de Meio Ambiente e Desenvolvimento Sustentável da Câmara dos Deputados.** 30 nov. 2016. Disponível em: <http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=1519300&filename=Parecer-CMADS-20-12-2016>. Acesso em: 16 maio 2018.

ANTOINE, Suzanne. ***Le droit de l’Animal.*** *Paris: Legis-France, 2007.*

ANTOINE, Suzanne. ***Raport sur le regime juridique de l’animal****. Paris: Ministère de la Justice, 10 mai 2005. Disponível em: <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/054000297.pdf>. Acesso em: 25 abr. 2018.*

ANTUNES, Paulo de Bessa. Curso de direito ambiental. *Rio de Janeiro: Renovar,1992.*

ARISTÓTELES, A política**.** *Marias Jullien y Araujo Maria. Madrid: Instituto de Estudos Políticos, 1951.*

ARISTÓTELES. Politique. *Paris. PRÉLOT Marcel, Presses Universitaires de France, 1950.*

ÁUSTRIA. ***ABGB – Allgemeines bürgerliches Gesetzbuch.*** *1. Juni 1811. Disponível em: <https://www.jusline.at/gesetz/abgb>. Acesso em: 4 abr. 2018.*

BACON, Francis. Novo organum, São Paulo: Abril Cultural, 1979 (Os Pensadores).

BARACHO JUNIOR, José Alfredo de Oliveira. Responsabilidade civil por dano ao meio ambiente. Belo Horizonte: Del Rey, 2000.

BARLOY, OJEIH-BON DE BROWER, COLEMAN, FEDI-MATHIEU, NUSSBAUMER BUCHWALD, ANDEREGG. La parole du medicins de la Limav. Suíça: ATRA, 1990.

BOBBIO, Norberto. Locke e o direito natural. Brasília: UnB, 1997.

BOCQUET, Edmond. La protection des animaux dans législations française et étrangères. Paris: L'Institut de Criminologie de l' Université de Paris, 1933.

BOFF, Leonardo e PORTO, Nelson Francisco de Assis. Homem do paraíso. *Petrópolis: Vozes, 1986.*

BOFF. Ecologia, grito da terra, grito dos pobres. *São Paulo: Ática, 1996.*

BOFF. Nova era: a civilização planetária. *São Paulo: Ática, 1994.*

BOHM, David. A totalidade e a ordem implicada*: uma nova percepção da realidade. São Paulo: Cultrix, 1992.*

BON DE BROWER, BUCH WALD-FRANKEN, COLEMAN, KRUMBIEGEL, DESSARAT, LEVIN, MECHERI, FEDI, NOTO, NUSSBAUMER, SCHALLER-TARRO, CHOUKOWSKI. Medici per labolizione della vivisezione. *Suíça: ATRA, 1990.*

BORNHEIM, Gerd. Os filósofos pré-socráticos. *São Paulo: Cultrix, 1971.*

BRANDÃO, Dênis e CREMA, Roberto. O novo paradigma holístico*: ciência, filosofia, arte e mística. São Paulo: Summus, 1991.*

BRASIL. Lei n. 10.519, de 17 de julho de 2002*. Dispõe sobre a promoção e a fiscalização da defesa sanitária animal quando da realização de rodeio e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/Leis/2002/L10519.htm>. Acesso em: 20 dez. 2014.*

BRASIL. Conselho Nacional do Meio Ambiente – CONAMA. *Resolução n. 237, de 19 de dezembro de 1997*. Disponível em: <http://www.mma.gov.br/port/conama/res/res97/res23797.html>. Acesso em: 28 jun. 2013.

BRASIL. Conselho Nacional do Meio Ambiente – CONAMA. Resolução n. 457, de 25 de junho de 2013. *Dispõe sobre o depósito e a guarda provisórios de animais silvestres apreendidos ou resgatados pelos órgãos ambientais integrantes do Sistema Nacional do Meio Ambiente, como também oriundos de entrega espontânea, quando houver justificada impossibilidade das destinações previstas no § 1º do art. 25, da Lei nº 9.605, de 12 de fevereiro de 1998, e dá outras providências. Disponível em: http://www.editoramagister.com legis_24562269_RESOLUCAO_N_457_DE_25_DE_JUNHO_DE_2013.aspx>. Acesso em: 28 jun. 2013.*

BRASIL. Constituição da República Federativa do Brasil de 1988. *Disponível em: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm>. Acesso em: 25 maio 2013.*

BRASIL. Constituição da República Federativa do Brasil de 1988*. Disponível em: <https://www.planalto.gov.br/Ccivil_03/Constituicao/Constituicao.htm>. Acesso em: 10 out. 2014.*

BRASIL. *Constituição de República Federativa do Brasil de 1988*. Disponível em: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm>. Acesso em: 25

maio 2013.

BRASIL. *Decreto n. 6.514, de 22 de julho de 2008*. Dispõe sobre as infrações e sanções administrativas ao meio ambiente, estabelece o processo administrativo federal para apuração destas infrações, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/decreto/D6514.htm>. Acesso em 28 jun. 2013.

BRASIL. *Decreto n. 76.623, de 17 de novembro de 1975*. Promulga a Convenção sobre Comércio Internacional das Espécies da Flora e Fauna Selvagens em Perigo de Extinção. Disponível em: <http://www.planalto.gov.br/ccivil_03/decreto/Antigos/D76623.htm>. Acesso em: 20 jun. 2013).

BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Portaria n. 29, de 24 de março de 1994*. Disponível em: <http://licenciamento.cetesb.sp.gov.br/legislacao/federal/portarias/1994_Port_IBAMA_29.pdf>. Acesso em: 28 jun. 2013.

BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. Portaria n. 93, de 7 de julho de 1998. *Disponível em: <http://servicos.ibama.gov.br/ctf/manual/html/042200.htm>. Acesso em: 23 maio 2013.*

BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Portaria n. 102, de 15 de julho de 1998*. Normatiza os Criadores Comerciais de Fauna Silvestre Exótica. Disponível em: https://www.google.com.br/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.ibama.gov.br%2Findex.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%3D5572%3A1998_portaria-102-98-Criador_Comercial_Fauna_Exotica%26id%3D77%3ALegisla%25C3%25A7%25C3%25A3o_Fauna&ei=YuDBUZzAMYvm8wSq4YHAAw&usg=AFQjCNGJOi_HVSFIoeNu2SfQBCg6wYEApA&sig2=_umW812Y6OOpoFuH55b6ww>. Acesso em: 1º junho 2013.

BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Portaria n. 108, de 06 de outubro de 1994*. Disponível em: <https://www.google.com.brurl?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.ibama.gov.br%2Findex.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%3D1191%3Ap-_108_94.p%26id%3D49%3A__%26Itemid%3D331&ei=HuHBUbqmG5Ti8gTN1oC4DQ&usg=AFQjCNGGVp67zRF4P4xdtQBKW4VUHffH7w&sig2=drjfH1oHEw3aQGNw1YVF_g>. Acesso em: 1º jun. 2013.

BRASIL. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA. *Portaria n. 139-N, de 29 de dezembro de 1993*. Disponível em: <https://www.google.com.brurl?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.ibama.gov.br%2Findex.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%3D1199%3Ap-_139_93.p%26id%3D49%3A__%26Itemid%3D331&ei=o9vBUdnJGYmI9QTVs4GwBA&usg=AFQjCNG1k7KeSUSt7sw8xJx-oHTVRv5kxQ&sig2=Ii8BpiJV7fIiFq69CuDWTQ>. Acesso em: 30 maio 2013.

BRASIL. Lei Complementar n. 140, de 8 de dezembro de 2011. *Fixa normas, nos termos dos incisos III, VI e VII do* ***caput*** *e do parágrafo único do art. 23 da Constituição Federal, para a cooperação entre a União, os Estados, o Distrito Federal e os Municípios nas ações administrativas decorrentes do exercício da competência comum relativas à proteção das paisagens naturais notáveis, à proteção do meio ambiente, ao combate à poluição em qualquer de suas formas e à preservação das florestas, da fauna e da flora; e altera a Lei nº 6.938, de 31 de agosto de 1981. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp140.htm>. Acesso em: 30 maio 2013.*

BRASIL. Lei n. 10.220, de 11 de abril de 2001. *Institui normas gerais relativas à atividade de peão de rodeio, equiparando-o a atleta profissional. Disponível em: <http://www.planalto.gov.br/ccivil_03/Leis/LEIS_2001/L10220.htm>. Acesso em: 20 dez. 2014.*

BRASIL. Lei n. 10.406, de 10 de janeiro de 2002. *Institui o Código Civil. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm>. Acesso em: 30 maio 2013.*

BRASIL. Lei n. 10.406, de 10 de janeiro de 2002. Institui o Código Civil. **Diário Oficial da União**, 11 jan. 2002. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/2002/l10406compilada.htm>. Acesso em: 4 abr. 2018.

BRASIL. *Lei n. 5.197, de 3 de janeiro de 1967*. Dispõe sobre a proteção à fauna e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l5197.htm>. Acesso em: 25 maio 2013.

BRASIL. Lei n. 6.938, de 31 de agosto de 1981. *Dispõe sobre a Política Nacional do Meio Ambiente, seus fins e mecanismos de formulação e aplicação, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/L6938compilada.htm>. Acesso em: 25 maio 2013.*

BRASIL. *Lei n. 9.605, de 12 de fevereiro de 1998*. Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l9605.htm>. Acesso em: 28 jun. 2013.

BRASIL. Lei n. 9.605, de 12 de fevereiro de 1998. *Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l9605.htm>. Acesso em: 10 dez. 2014.*

BRASIL. Lei nº 10.406, de 10 de janeiro de 2002. *Institui o Código Civil. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/2002/l10406.htm>. Acesso em: 13 set. 2014.*

BRASIL. Lei nº 5.197, de 3 de janeiro de 1967. *Dispõe sobre a proteção à fauna e dá outras providências. Disponível em: < http://www.planalto.gov.br/ccivil_03/leis/l5197.htm>. Acesso em: 13 set. 2014.*

BRASIL. Lei nº 6.938, de 31 de agosto de 1981. *Dispõe sobre a Política Nacional do Meio Ambiente, seus fins e mecanismos de formulação e aplicação, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l6938.htm>. Acesso em: 13 set. 2014.*

BRASIL. Lei nº 9.605, de 12 de fevereiro de 1998. *Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l9605.htm>. Acesso em: 13 set. 2014.*

BRASIL. Superior Tribunal de Justiça. *Conflito de Competência 114.798/RJ*. Suste: Juízo Federal do Primeiro Juizado Especial de Nova Iguaçu - SJ/RJ. Susdo: Juízo de Direito do Primeiro Juizado Especial Criminal de Nova Iguaçu – RJ. Rel. Min. Maria Thereza de Assis Moura. J. 14.03.2001. Disponível em: <https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp?sLink=ATC&sSeq=14442727&sReg=201002032280&sData=20110321&sTipo=91&formato=PDF>. Acesso em: 26 jun. 2013.)

BRASIL. Superior Tribunal de Justiça. *Recurso Especial n. 1.115.916-MG*. Recte: Município de Belo Horizonte. Recdo: Ministério Público do Estado de Minas Gerais.

Rel. Min. Humberto Martins. 2ª Turma. J. 01.09.2009. Disponível em: <https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp?sLink=ATC&sSeq=5764421&sReg=200900053852&sData=20090918&sTipo=91&formato=PDF>. Acesso em: 1º jun. 2013.

BRASIL. Superior Tribunal de Justiça. *Súmula n. 91, de 21/10/1993*. Compete à Justiça Federal processar e julgar os crimes praticados contra a fauna. DJ 26.10.1993 - Cancelada em 08/11/2000. Disponível em: <http://www.dji.com.br/normas_inferiores/regimento_interno_e_sumula_stj/stj__0091a0120.htm>. Acesso em: 28 jun. 2013.

BRASIL. Supremo Tribunal Federal. *Ação Direta de Inconstitucionalidade 1856/RJ*. Reqte: Procurador-Geral da República. Intdo: Governador do Estado do Rio de Janeiro. Intdo: Assembleia Legislativa do Estado do Rio de Janeiro. Rel. Min. Celso de Mello. Tribunal Pleno. J. 26.05.2011. Dje 14.10.2011. Disponível em: <http://www.stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=%281856%2ENUME%2E+OU+1856%2EACMS%2E%29&base=baseAcordaos&url=http://tinyurl.com/c7orrln >. Acesso em: 30 jun. 2013.

BRASIL. Supremo Tribunal Federal. *Recurso Extraordinário* ***153531/SC***. **Recte: APANDE-Associação Amigos de Petrópolis Patrimônio Proteção aos Animais e Defesa da Ecologia e outros. Recdo: Estado de Santa Catarina. Rel. Min. Francisco Rezek. Rel. p/ Acórdão: Min. Marco Aurélio. Segunda Turma. J. 03.06.1997.** Disponível em: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=211500>. Acesso em: 29 maio 2013.

BRASIL. Tribunal Regional Federal da 4ª Região. Apelação Criminal 2003.04.01.030669-0/RS. *Apte: Antonio Renato Martins Costa. Apdo: Ministério Público Federal. Rel. Élcio Pinheiro de Castro. DJU 12.11.2003, p. 606. Disponível em: http://www2.trf4.jus.br/trf4 controlador.php?acao=consulta_processual_resultado_pesquisa&txtValor=200304010306690&selOrigem=TRF&chkMostrarBaixados=&todasfases=S&selForma=NU&todaspartes=&hdnRefId=a3649b0c95657ea707fe622614745c1d&txtPalavraGerada=hzwd&txtChave=>. Acesso em: 26 jun. 2013.*

Brasil
https://www.incqs.fiocruz.br/index.php?option=com_content&view=article&id=1152:concea-recebe-recomendacoes-do-bracvam-para-reconhecimento-de-metodos-alternativos-ao-uso-de-animais-em-laboratorios&catid=114&Itemid=166. Acessado em 20 de julho de 2018.

CANÇADO, Trindade. Meio ambiente e desenvolvimento*: formulação, natureza jurídica e implementação do direito ao desenvolvimento como um direito humano. Fortaleza: Revista da PGE, 1992.*

CAPRA, Fritjof. O tao da Física*. São Paulo: Cultrix, 1983.*

CAPRA, Fritjof. Pertencendo ao universo. *São Paulo: Cultrix, 1991.*

CAPRA, Fritjof. Pertencendo ao universo*: explorações nas fronteiras da ciência e da espiritualidade. São Paulo: Cultrix, 1991.*

CAPRA. O ponto de mutação**.** *São Paulo: Cultrix, 1986.*

CAPRA. O tao da física. *São Paulo: Cultrix, 1996.*

CAPRA. Sabedoria incomum**.** *São Paulo: Cultrix, 1993.*

*CARRERA, Francisco José. Uma visão jurídica da biodiversidade***,** *In:* 5 anos após a Eco-

92, Anais do II Congresso Internacional de Direito Ambiental.

CASTRO, Rodrigo. **Parecer da Comissão de Constituição e Justiça e de Cidadania da Câmara dos Deputados.** Projeto de Lei nº 3.670, de 2015. 2017a. Disponível em: <http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=12518823FBDBBFDC8C292DE225321C89.proposicoesWebExterno2?codteor=1575309&filename=Parecer-CCJC-04-07-2017>. Acesso em: 6 out. 2017.

CASTRO, Rodrigo. Parecer da Comissão de Constituição e Justiça e de Cidadania da Câmara dos Deputados. Projeto de Lei nº 3.670-B, de 2015 (Do Senado Federal). **Diário da Câmara dos Deputados**, p. 260-262, 11 ago 2017b. Disponível em: <http://imagem.camara.gov.br/Imagem/d/pdf/DCD0020170811001360000.PDF#page=260>. Acesso em: 6 out. 2017.

CERCEL, Sevastian. **The juridical regime of animals according to the new romanian civil code.** Faculty of Law and Administrative Sciences, University of Craiova, Romania, 2011. Disponível em: <https://www.law.muni.cz/sborniky/dny_prava_2011/files/prispevky/03%20ZVIRE/CERCEL_SEVASTIAN_%286999%29.pdf>. Acesso em: 4 abr. 2018.

CHENIQUE, François. O Yoga espiritual de São Francisco de Assis. *São Paulo: Pensamento, 1978.*

COELHO, Luiz Fernando. Introdução histórica da filosofia do direito. *Rio de Janeiro: Forense, 1977.*

COLATTO, Valdir et al. **Recurso contra apreciação conclusiva pelas Comissões do Projeto de Lei nº 3670, de 2015**, que altera a Lei nº 10.406, de 10 de janeiro de 2002 (Código Civil), para determinar que os animais não sejam considerados coisas, mas bens móveis para os efeitos legais, salvo o disposto em lei especial. 15/08/2017. Disponível em:<http://www.camara.gov.br/proposicoesWebprop_mostrarintegra;jsessionid=12518823FBDBBFDC8C292DE225321C89.proposicoesWebExterno2?codteor=1587148&filename=Tramitacao-PL+3670/2015>. Acesso em: 8 out. 2017.

COLEMAN Vernon . Experimentation animale. *Arbedo, Suíça: Atra, 1992.*

COMISSÃO INTERMINISTERIAL PARA PREPARAÇÃO DA CONFERÊNCIA DAS NAÇÕES UNIDAS SOBRE MEIO AMBIENTE E DESENVOLVIMENTO. O desafio do desenvolvimento sustentável. *Relatório do Brasil para a Conferência das Nações Unidas sobre Meio Ambiente e Desenvolvimento. Brasília: Imprensa Nacional, 1991.*

COMMISSION DES AFFAIRES JURIDIQUES DU CONSEIL DES ETATS. **Initiative parlementaire "Les animaux dans l'ordre juridique suisse" -** Rapport de la Commission des affaires juridiques du Conseil des Etats, du 25 janvier 2002. Disponível em: <https://www.admin.ch/opc/fr/federal-gazette/2002/3885.pdf>. Acesso em: 19 maio 2018.

CONFEDERAÇÃO NACIONAL DE RODEIOS – CNAR. Histórico da Lei do Rodeio. *Revista Rodeo Country. Notícias. Disponível em: <http://www.revistarodeocountry.com.br/MATERIA-2.asp>. Acesso em: 8 dez. 2014a.*

CONFEDERAÇÃO NACIONAL DE RODEIOS – CNAR. Institucional – A CNAR. *Revista Rodeo Country. Notícias. Disponível em: <http://www.cnar.org.br/institucional/>. Acesso em: 13 out. 2014b.*

CONFEDERAÇÃO NACIONAL DE RODEIOS – CNAR. Selo verde – *Certificação Rodeio Legal. Disponível em: <http://www.cnar.org.br/selo_verde/>. Acesso em: 10 dez. 2014c.*

CONZENDEY, Márcio. "Incorporação das normas emanadas dos órgãos decisórios do Mercosul à ordem jurídica interna de seus mercados" *texto preparado para o seminário sobre Incorporação das Normas do Mercosul à Ordem Jurídica Interna. www.mercosul.gov.br*

COOPER, J.C. Taoísmos: *o caminho do místico. São Paulo: Martins Fontes, 1984.*

COOPER. Yin e yang*: a harmonia taoísta dos opostos. São Paulo: Martins Fontes, 1989.*

CREMA, Roberto. Introdução à visão holística – *Breve relato de viagem do velho ao novo paradigma. São Paulo: Summus Editorial, 1988.*

CREMA, Roberto. Introdução à visão holística**.** *São Paulo: Summus Editorial, 1988.*

CRETELLA JUNIOR, José. Comentários à Constituição brasileira de 1988. *Rio de Janeiro: Forense Universitária, 1991.*

CRETELLA JÚNIOR, José. Dos bens públicos no direito brasileiro. *São Paulo: Saraiva, 1969.*

CUSTODIO HELITA. Código de Proteção ao Meio Ambiente. São Paulo, Boletim de Direito Administrativo*, jul. 1991.*

CUSTÓDIO, Helita Barreira, Condutas lesivas à fauna silvestre. Revista de Direito Civil*,* Imobiliário, Agrário e Empresarial*, p. 87, ano 17, p. 87-107, abr./jun. 1993.*

D'AMBROSIO UBIRATAN, Conferência proferida no Seminário, ÉTICA ECOLÓGICA E EDUCAÇÃO PARA O ECO-DESENVOLVIMENTO, em 29 de setembro de 1998, em Belo Horizonte.

DAMIEN, Michel. L'animal, l' homme et Dieu. *Paris: Du Cerf, 1978.*

DE MALAFOSSE, Jehan. Le droit de la nature**.** *Paris: Montchrestien, 1973.*

DESCARTES, René. Discurso do método. *São Paulo: Abril Cultural, 1979 (Os Pensadores).*

DESSART, Francis. Une même terre, une même vie. *Arbedo, Suíça: Atra*, *1993.*

DI BIASI, Francisco. O homem holístico: a unidade mente-natureza**.** *Petrópolis: Vozes, 1995.*

DI PIETRO, Maria Sylvia Zanella. Direito administrativo**.** *2. ed., São Paulo: Atlas, 1991.*

DI PIETRO, Maria Sylvia Zanella. *Direito Administrativo*. São Paulo: Atlas, 1999.

DIAS, Edna Cardozo. Animais são protegidos por lei. Jornal do Advogado*, Belo Horizonte, jan. 1993, p. 17.*

DIAS, Edna Cardozo. Chegou a hora da farra do boi. Revista Tudo, Comércio e Indústria*, Belo Horizonte, p 12, mar. 1990.*

DIAS, Edna Cardozo. A tortura não é tradição nem cultura. Meio Ambiente em Jornal. *Belo Horizonte: Edirel, p 23, mar.1993.*

DIAS, Edna Cardozo. Atentado à fauna é crime. Revista Tudo, Comércio e Indústria, *Belo Horizonte, p. 41, fev. 1988.*

DIAS, Edna Cardozo. Briga de canários. Revista Tudo, Comércio e Indústria*, Belo Horizonte, n. 258, p. 15, set. 1989.*

DIAS, Edna Cardozo. Briga de galo. Jornal O Povo*, Fortaleza, 16 abr.1995, p. 9.*

DIAS, Edna Cardozo. Centenas de bois sacrificados. Revista Tudo, Comércio e Indústria*, Belo Horizonte, n. 244, p.16, abr. 1988.*

DIAS, Edna Cardozo. Devolução ao habitat. Revista Tudo Comércio e Indústria, *n. 261, p. 30, maio 1990.*

DIAS, Edna Cardozo. Farra do boi. Jornal Folha do Taquara,*: Campinas, 4 abr.1997, p. 8.*

DIAS, Edna Cardozo. Nova lei de crimes ambientais. Meio Ambiente em Jornal*. Belo Horizonte: Edirel, p. 14, mar. 1998.*

DIAS, Edna Cardozo. O animal nas principais religiões do mundo. SOS Animal, *Belo Horizonte: Liga de Prevenção da Crueldade contra o Animal, n. 39, 1991.*

DIAS, Edna Cardozo. O cão de combate, e sua história. Jornal O Povo*, Fortaleza, 25 abr.1999, p. 5.*

DIAS, Edna Cardozo. O liberticídio dos animais. *Belo Horizonte, editado pela Liga de Prevenção da Crueldade contra o Animal,: 1996.*

DIAS, Edna Cardozo. O ser humano faz parte da proteção dos animais. Estado de Minas*, 13 mar. 1998, Cad. Estado Ecológico, p. 7.*

DIAS, Edna Cardozo. Proteção para a fauna exótica. Revista Tudo, Comércio e Indústria*. Belo Horizonte: n. 246, jul.1988.*

DIAS, Edna Cardozo. Rodeio é contravenção. Revista Tudo, Comércio e Indústria*: Belo Horizonte, n. 224, out. 1985.*

DIAS, Edna Cardozo. A defesa dos animais e as conquistas legislativas do movimento de proteção animal no Brasil. Fórum de Direito Urbano e Ambiental. – FDUA*, Belo Horizonte, Fórum, n. 17, p. 1918-1926, set./out. 2004.*

DIAS, Edna Cardozo. A questão da fauna na nova lei de crimes ambientais. Tribuna do Ceará*, Fortaleza, 26 fev.1998.*

DIAS, Edna Cardozo. A tutela jurídica dos animais. Mandamentos. Belo Horizonte, 2000 .

DIAS, Edna Cardozo. Bioética e direito dos animais. *Fórum de Direito Urbano e Ambiental – FDUA*, Belo Horizonte, Fórum, ano 8, n. 43, p. 16-21, jan./fev. 2009.

DIAS, Edna Cardozo. Bioética e direitos dos animais, **Fórum de Direito Urbano e Ambiental – FDUA**, Belo Horizonte, ano 8, n. 43, p. 16-21, jan/fev. 2009.

DIAS, Edna Cardozo. Briga de galo é sadismo, Jornal O Povo,*. Ceará, 8 jan.1995, p. 23.*

DIAS, Edna Cardozo. Canários de guerra, uma luta de morte. Jornal O Povo, *Fortaleza, 7 maio 1995, p. 2.*

DIAS, Edna Cardozo. Discurso de paraninfia*, proferido na entrega de carteira de DIAS O advogado do novo milênio***.** Jornal do Conselho Federal da Ordem dos Advogados do Brasil*, Brasília, n. 61, ano IX, 1998, p. 27.*

DIAS, Edna Cardozo. Ecologistas processados por defenderem direito à vida. Meio Ambiente em Jornal*, Belo Horizonte: Edirel, abr. 1993, p. 15.*

DIAS, Edna Cardozo. Fundamentalidade dos direitos dos animais. *Fórum de Direito Urbano e Ambiental – FDUA*, Belo Horizonte, ano 10, n. 55, p. 41-45, jan./fev. 2011.

DIAS, Edna Cardozo. O animal e o Código Civil brasileiro. ***Fórum de Direito Urbano e Ambiental – FDUA****, Belo Horizonte, ano 14, n. 81, p. 9-15, maio/jun. 2015.*

DIAS, Edna Cardozo. Os animais como sujeitos de direito. *Fórum de Direito Urbano e Ambiental – FDUA*, Belo Horizonte, ano 4, n. 23, p. 2745-2746, set./out.2005.

DIAS, Edna Cardozo. *Tutela jurídica dos animais*. Belo Horizonte: Mandamentos, 2000.

DIAS, Edna Cardozo. Tutela jurídica dos animais*. Belo Horizonte: Mandamentos, 2000.*

DIAS, Edna Cardozo. Tutela jurídica dos animais*. Belo Horizonte: Mandamentos, 2000.*

DIAS, Edna Cardozo.. Quando o cavalo é escravo. Revista Tudo, Comércio e Indústria, *Belo Horizonte: Revista Tudo, n. 231, jul. 1986.*

DIAS, Edna Cardozo.. Farra do Boi. Revista Tudo, Comércio e Indústria*, Belo Horizonte, n. 237, julho/1987.*

DIAS, Edna Cardozo.. Lei de Proteção à Fauna e Crueldade contra os Animais. *Conferência proferida na Escola de Advocacia da OAB, 1997, Datil, inédito.*

DIAS, Edna Cardozo.. Manual de crimes ambientais. *Belo Horizonte: Mandamentos, 1999.*

DIAS, Edna Cardozo.. SOS animal**,** *Belo Horizonte: Liga de Prevenção da Crueldade contra o Animal, 1996.*

DIAS, Edna Cardozo.. Tourada, involução humana. Jornal O Povo*, Fortaleza, 28 abr. 1996, p. 2; e jornal* Guaypacaré*, Lorena-SP, 24 abr.1996, p. 5.*

DINIZ, Maria Helena. **Curso de Direito Civil Brasileiro.** *28. ed. São Paulo: Saraiva, 2011.*

DMARSKI. Devemos intervir na predação? Artigos Richard D. Ryder. Tradução Sônia T. Felipe. Pensata Animal*, n. 20, set. 2009. Disponível em: <http://www.pensataanimal.netindex.php?option=com_content&view=article&id=329:richard-d-ryder&catid=138 >. Acesso em: 24 set. 2014.*

DOLAN JR., Edward F. Animals rights**.** *New York, London, Toronto, Sydney: Franklin Walts, 1986.*

DOLAN, Edward F. Jr. *Animals rights*. New York, London, Toronto, Sydney: Franklin Warrs, 1986.

DOTTI, René A. Ecologia (proteção penal no meio ambiente). In: *ENCICLOPÉDIA Saraiva*

de Direito, São Paulo: Saraiva, 1977, v. 29.

ÉTICA ANIMAL. ***Declaração sobre a Consciência de Cambridge.*** *Disponível em: <http://www.animal-ethics.org/declaracao-consciencia-cambridge/>. Acesso em: 18 maio 2018.*

FELDMAN, Fábio. Guia da ecologia*. São Paulo: Abril Cultural, 1992.*

FIORILLO, Celso Antonio Pacheco. *Curso de Direito Ambiental*. 14. ed. São Paulo: Saraiva, 2013.

FIORILLO, Celso Antônio Pacheco. Direito processual ambiental brasileiro. *Belo Horizonte: Del Rey, 1996.*

FIORILLO, Celso Antônio. Curso de Direito Ambiental Brasileiro*. 15. ed. São Paulo: Saraiva, 2014.*

FIUZA, César. ***Direito Civil:*** *Curso Completo. 10. ed., rev., atual. e ampl. Belo Horizonte: Del Rey, 2007.*

FRANÇA. ***Code Civil.*** *21 mars 1804. (Dernière modification: 3 janvier 2018). Disponível em: <http://www.legifrance.gouv.fr affichCode.do?cidTexte=LEGITEXT000006070721&dateTexte=20150402>. Acesso em: 4 abr. 2018.*

FRANÇA. ***Code rural et de la pêche maritime.*** *Selon l'ordonnance no 2010-462, du 6 mai 2010. (Dernière modification: 29 avril 2018). Disponível em: <https://www.legifrance.gouv.fr affichCode.do?cidTexte=LEGITEXT000006071367&date Texte=20150402 >. Acesso em: 4 abr. 2018.*

FRANCIONE, Gary L. Animals as persons*. New York: Columbia University Press, 2008.*

FRANCIONE, Gary L. Animals, property and the law*. Philadelphia: Temple University Press, 1995.*

FREITAS, Gilberto Passos de e FREITAS Vladimir Passos de Crimes ambientais**.** *São Paulo: Revista dos Tribunais, 1995.*

FREITAS, Vladimir Passos de. Direito administrativo e meio ambiente**.** *Curitiba: Juruá 1993.*

FREITAS, Vladimir Passos de; FREITAS, Gilberto Passos de. *Crimes contra a natureza*: de acordo com a Lei 9.605/98. São Paulo: Revista dos Tribunais, 2006.

GAGLIANO, Pablo Stolze; PAMPLONA FILHO, Rodolfo. Parte Geral. In: _____. Novo ***Curso de Direito Civil.*** *8. ed. São Paulo: Saraiva, 2007. v. 1.*

GARD, Richard. Budismo*. Rio de Janeiro: Zahar, 1964.*

GASPARINI, Diógenes. Direito administrativo**.** *São Paulo: Saraiva, 1989.*

GIRA, Dennis. Budismo — *História e doutrina*. *Rio de Janeiro: Vozes, 1992.*

GLOWKA, Lyle et al. *1996.* Guia del Convenio sobre la Diversidade Biológica. *IUCN: Glande Cambridge, 1996.*

GORDILHO, Heron José de Santana. Abolicionismo animal*. Salvador: Evolução Editora, 2009.*

GORDILHO, José de Santana. *Abolicionismo animal*. Salvador: Evolução Editora, 2009.

GOSWAMI, Amit. O universo autoconsciente: *como a consciência cria o mundo material. Rio de Janeiro: Editora Rosa dos Tempos, 1992.*

GOVERNO DO BRASIL. CIMA: O desafio do desenvolvimento sustentável. *Relatório para a Conferência das Nações Unidas sobre Meio Ambiente e Desenvolvimento, Brasília: Imprensa Nacional, 1991.*

GRANZIERA, Maria Luiza Machado. *Direito Ambiental*. São Paulo: Editora Atlas, 2009.

HABERMAS, Jürgen. Consciência moral e agir comunicativo. *Rio de Janeiro: Tempo Brasileiro, 1989.*

HOBBES, Thomas. Leviatã ou matéria, forma e poder de um estado eclesiástico e civil. *Tradução de João Paulo Monteiro e Maria Beatriz Nizza da Silva, São Paulo: Abril Cultural, 1988, v. I e II (Os pensadores).*

HOBBES, Thomas. De cive**.** *Petrópolis: Vozes, 1993.*

HUNGRIA, Nelson. Comentários ao Código Penal. *2 ed., Rio de Janeiro: Forense, 1958.*

IBAMA. *Lei n. 5.197, de 03 de janeiro de 1967*. Dispõe sobre a proteção à fauna e dá outras providências. Disponível em: <http://www.planalto.gov.br/ccivil_03/Leis/L5197.htm>. Acesso em: 28 jun. 2013.

IBAMA. *Portaria n. 16, de 04 de março de 1994*. Disponível em: <http://www.ibama.gov.br/fauna/legislacao/port_16_94.pdf>. Acesso em: 20 jun. 2013.

INDEPENDENTES. Festa do Peão. História. *Disponível em: <http://www.independentes.com.br/festadopeao/historia>. Acesso em: 15 dez. 2014.*

IZAR, Ricardo. **Projeto de Lei n. 6.799-C, de 20 de novembro de 2013.** *Acrescenta parágrafo único ao art. 82 do Código Civil para dispor sobre a natureza jurídica dos animais domésticos e silvestres, e dá outras providências. Tramitação. Disponível em: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=601739>. Acesso em: 15 maio 2018.*

JAIN, J.C. Jainismo, vida e obra de Mahavira Vardhamana**.** *São Paulo: Palas Athena, 1982.*

JORDY, Arnaldo. ***Substitutivo ao Projeto de Lei n. 6.799-C****, de 20 de novembro de 2013. Acrescenta parágrafo único ao art. 82 do Código Civil para dispor sobre a natureza jurídica dos animais domésticos e silvestres, e dá outras providências. 08/04/2014. Disponível em: <http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=F0FA5BDA670AEFB739050B30EA9E6174.proposicoesWebExterno1?codteor=1386381&filename=Tramitacao-PL+6799/2013>. Acesso em: 18 abr. 2018.*

JOURNAL OFFICIEL DES COMMUNAUTÉS EUROPÉENES, Législation, L 61, 40ª anné, 3 mars, 1997.

JOURNAL OFFICIEL DES COMMUNAUTÉS EUROPÉENNES, L1, 38ª année, 1ª janvier, 1995.

KALMAR Jacques M. La vivisection de l'animal au foetus humain. *Suíça, Genève: Les Bardes, 1987.*

KEOHANE, Robert & HOFFMAN Stanley. The new European Community**.** *Oxford, 1991.*

KUHN, Thomas S. A estrutura das revoluções científicas*. São Paulo: Perspectiva, 2013.*

KUPSINEL, Roy. Vivisection, science or sham**.** *USA: People for Reason in Science and Medicine, Woodland Hills: Atra, s./d.*

LANZA, Robert. Biocentrismo. *Pensar Além*. Publicado em 21 de novembro de 2009. Disponível em: <http://pensaralem.wordpress.com/2013/11/21/biocentrismo-robert-lanza-2009/≥. Acesso em: 4 set. 2014.

LAURO FILHO, Luiz. Parecer da Comissão de Meio Ambiente e Desenvolvimento Sustentável. Projeto de Lei nº 3.670-A, de 2015 (Do Senado Federal) - PLS nº 351/15 - Ofício nº 1.762/15 – SF. ***Diário da Câmara dos Deputados****, p. 31-32., 7 fev. 2017. Disponível em: <http://imagem.camara.gov.br/Imagem/d/pdf/DCD0020170207000180000.PDF#page=31>. Acesso em: 21 maio 2018.*

LEVAI, Laerte Fernando. *Direito dos animais*. 2. ed. Campos do Jordão: Editora Mantiqueira, 2004.

LEVAI, Laerte Fernando. Direito dos animais**.** *Campos do Jordão: Mantiqueira, 1996.*

Ligue Suisse contre la Vivisection. The replacement of animals in biomedical research**.** *Coletânea de conferências realizadas no Congresso Internacional, em Geneva, Suíça, de 19 a 20 de junho de 1981.*

LOCKE. Ensaio acerca do entendimento**.** *São Paulo: Nova Cultural, 1997.*

LOURENÇO, Daniel Braga. Direito dos animais*. Porto Alegre: Sergio Antônio Fabris, 2008.*

LOURENÇO, Daniel Braga. Direito dos animais: *fundamentação e novas perspectivas. Porto Alegre: Sergio Antônio Fabris, 2008.*

LOURENÇO, Daniel Braga. ***Direito dos Animais****: Fundamentação e novas perspectivas. Porto Alegre: Sergio Fabris Editores, 2008.*

LOVELOCK, James Segundo tratado sobre direito civil e outros escritos. *Tradução de Magda Lopes e Marisa Lobo Costa. Petrópolis: Vozes, 1994, (Clássicos do pensamento político).*

LOVELOCK, James. *Gaia*: um novo olhar sobre a vida na Terra. Lisboa: Edições 70, 1989.

MACHADO, Paulo Affonso Leme Estudos de direito ambiental**.** *São Paulo: Malheiros, 1994.*

MACHADO, Paulo Affonso Leme. Direito ambiental brasileiro**.** *São Paulo: Revista dos Tribunais, 1991.*

MACHADO, Paulo Affonso Leme. *Direito Ambiental brasileiro*. São Paulo: Revista dos Tribunais, 1991.

MACHADO, Paulo Affonso Leme. Legislação Florestal (Lei 12.651/2012) e Competência e Licenciamento Ambiental (Lei Complementar 140/2011). São Paulo: Malheiros, 2012.

MAGEE, Bryan. História da filosofia*. São Paulo: Edições Loyola, 2001.*

MANCUSO, Rodolfo de Camargo. Ação civil pública. *São Paulo: Revista dos Tribunais, 1989.*

MANIFESTE. Pour une evolución du régime juridique de l'animal dans le code civil – Reconnaissant sa nature d'être sensible. *Disponível em: <http://www.30millionsdamis.fr/fileadmin/user_upload/actu/10-2013/Manifeste.pdf≥. Acesso em: 18 set. 2014.*

MARANHÃO, José. ***Texto Final do Projeto de Lei do Senado nº 351, de 2015****, na Comissão de Constituição, Justiça e Cidadania. 21 out. 2015. Disponível em: <https://legis.senado.leg.br/sdleg-getter/documento?dm=3530630&disposition=inline>. Acesso em: 21 maio 2018.*

MARGUÉNAUD, Jean Pierre. ***L'Animal en Droit Privé.*** *Limoges: Presses Universitaires, France, 1992.*

MARGUÉNAUD, Jean Pierre. **La personnalité juridique des animaux.** *Paris: Dalloz, 1998.*

MARGUÉNAUD, Jean Pierre. La question du statut juridique de l'animal: le passage irréversible de l'étape du ridicule à l'étape de la discussion. ***Revue semestrielle de droit animalier****, p. 157-179, 2/2013. Disponível em: <http://www.unilim.fr/omij/files/2014/03/RSDA-2-2013.pdf>. Acesso em: 14 maio 2018.*

MARGUÉNAUD, Jean Pierre. Les animaux sont-ils encore des biens? Prendre au sérieux la sage réponse du droit Suisse. In: DUBOS, Olivier; MARGUENAUD, Jean Pierre. ***Les Animaux et les droits européens*** *– au-delà de la distinction entre les hommes et les choses. Paris: Editions A. Pedone, 2009. p. 49-56.*

MARQUES Cláudia Lima. "O direito do Mercosul: direito oriundo do mercosul, entre direito internacional clássico e novos caminhos de integração". Pg. 61

MARTINS, Renata de Freitas. Parecer. Utilização de animais em rodeios. Revista Brasileira de Direito Animal*, Instituto de Abolicionismo Animal, ano 4, n. 5, p. 367-394, jan./dez. 2009.*

MEIRELLES, Hely Lopes. Direito administrativo brasileiro**.** *São Paulo: Revista dos Tribunais, 1991.*

MILARÉ, Édis. A ação civil pública e a tutela jurisdicional dos interesses difusos**.** *São Paulo: Saraiva, 1984.*

MILARÉ, Édis. Direito do ambiente. *São Paulo: Revista dos Tribunais, 2011.*

MILARÉ, Édis. *Direito do ambiente*: A gestão ambiental em foco. São Paulo: Revista dos Tribunais, 2011.

MOGINIER, David. L'animal ne sera jamais une personne. Mais il pourrait ne plus être une chose. ***Le Temps, Societé****, 21 Sept. 2000. Disponível em: <https://www.letemps.ch/societe/lanimal-ne-sera-jamais-une-personne-pourrait-ne-plus-une-chose>. Acesso em: 18 maio 2018.*

MONTAIGNE Michel Eyquem de, Ensaios. *Tradução de Sérgio Miliet. São Paulo: Abril Cultural, 1980, p. 198 a 279 (Os Pensadores).*

MONTEIRO, Washington de Barros. Direito das coisas. In: _____. ***Curso de direito civil.*** *42. ed. São Paulo: Saraiva, 2009. v. 3.*

MUKAI, Toshio. Direito ambiental sistematizado. *São Paulo: Forense Universitária, 1992.*

MULLER, Robert. O nascimento de uma civilização global. *São Paulo: Aqüariana, 1993.*

NACONECY, Carlos Michelon. Ética & animais: *um guia de argumentação filosófica. Porto Alegre: EDIPUCRS, 2006.*

NATURA 2000. Lettre D'Information Nature Comission Europeenne. Le point sur gérer les sites Natura 2000, qu'est-ce que ça signifie? *Bruxelles, DG XI, n. 3, Avril, 1997.*

NOGUEIRA, Vânia Márcia Damasceno. Direitos fundamentais dos animais. *Belo Horizonte: Arraes, 2012.*

NOSSA Própria Agenda. (1990). Relatório da Comissão de Desenvolvimento e Meio Ambiente da América Latina e do Caribe.

O ALCORÃO. Tradução de Mansour Challita. Rio de Janeiro: Associação Cultural Internacional Gibran, s./d.

OBERST, Anaiva. Direito Animal. *Rio de Janeiro: Lumen Juris, 2012.*

OBERST, Anaiva. *Direito Animal*. Rio de Janeiro: Lumen Juris. 2012.

OS UPANISHADES. São Paulo: Pensamento, 1987.

PAIVA, Marcelo Whately. O pensamento vivo de São Francisco de Assis. *São Paulo: Martin Claret, 1985.*

PASTERNACK, Denise. Supprimons la vivissection, voici pourquoi et comment. *Geneve Ligue Suisse contre la Vivisection, s./d.*

PEREIRA, Caio Mário da Silva. Introdução ao Direito Civil. Teoria geral de Direito Civil. In: ____. ***Instituições de direito civil.*** *23. ed., de acordo com o Código civil de 2002. Rio de Janeiro: Forense, 2009. v. 1.*

PESSANHA, José Américo Motta. Os pré-socráticos — *Vida e obra. São Paulo: Abril Cultural, 1978.*

PLANCK, Max. *Scientific autobiography and other papers*. Trad. Frank Gaynor. Nova York: Philosophical Library, 1949.

PLATÃO. O banquete. *Tradução e notas de José de Cavalcante de Souza, São Paulo: Abril, 1979 (Os pensadores).*

PORTAL DO ASTRÔNOMO. A revolução heliocêntrica. *Disponível em: <http://www.portaldoastronomo.org/tema_pag.php?id=38&pag=4>. Acesso em: 3 set. 2014.*

PORTUGAL. Lei n. 8/2017, de 3 de março. Estabelece um estatuto jurídico dos animais, alterando o Código Civil, aprovado pelo Decreto-Lei n.º 47 344, de 25 de novembro de 1966, o Código de Processo Civil, aprovado pela Lei n.º 41/2013, de 26 de junho, e o Código Penal, aprovado pelo Decreto-Lei n.º 400/82, de 23 de setembro. ***Diário da República****, n.º 45/2017, Série I de 2017-03-03. Disponível em: <https://dre.pt/home/-/dre/106549655/details/maximized>. Acesso em: 15 maio 2018.*

PRABHUPADA Karma, a justiça infalível. *São Paulo: The Bhaktivedanta Book Trust, 1997.*

PRABHUPADA, C. Bhaktivedanta. Bhagavad-Gitã, como ele é. *São Paulo: The Bhaktivedanta Book Trust, 1995.*

PRABHUPADA. Retornando. *São Paulo: The Bhaktivedanta Book Trust, 1997.*

PRADO, Luiz Regis. Crimes contra o ambiente. *São Paulo: Revista dos Tribunais, 1998.*

PRADO, Luiz Régis. *Direito Penal do ambiente*. São Paulo: Revista dos Tribunais, 2005.

PRIEUR, M. Droit de l´environnement. *2. ed., Paris: Précis Daloz, 1991.*

PRIMATT, Humphrey. A Dissertation on the Duty of Mercy and Sin of Cruelty to Brute Animals. *London, 1776.* Animal Rights History. *Disponível em: <http://www.animalrightshistory.org/animal-rights-c1660-1785/enlightenment-p/pri-humphrey-primatt/1776-mercy-cruelty.htm>. Acesso em: 16 set. 2014.*

REALE, Giovanni, ANTISERI Dario, História da filosofia — *Antigüidade e Idade Média. São Paulo: Editora Paulus, 1990, v. I.*

Referências

REGAN, Tom. Jaulas Vazias. *Porto Alegre: Lugano, 2006.*

REGAN, Tom. The case for animal rights. *Berkeley and Los Angeles: University of California Press, 2004.*

REIS, Sérgio Nogueira. Uma visão holística do direito. *Belo Horizonte: Nova Alvorada, 1997.*

RIBEIRO, Sérgio Nogueira. Crimes passionais. *Rio de Janeiro: Itambé S.A., 1975.*

RIO GRANDE DO SUL. Tribunal Regional Federal da 4ª Região. *Apelação Criminal 200471010027670/RS*. Apte: Ministério Público Federal. Apdo: Marco Antonio Fagundes de Araújo. Rel. Luiz Fernando Wowk Penteado. 8ª Turma. DJU 29.06.2005, p. 831. Disponível em: <http://www2.trf4.gov.br/trf4_processosvisualizar_documento_gedpro.php?local=trf4&documento=669020&hash=bc58f927ec5eda7cd8bfee16c209836d>. Acesso em: 25 maio 2013.

RIZZARDO, Arnaldo. ***Parte Geral do Código Civil:*** *lei n. 10.406 de 10.01.2002. 6. ed., rev. e atual. Rio de Janeiro: Forense, 2008.*

RODEIO ESPORTE ESPETACULAR. Madrinheira ou madrinhador. *Publicado em 18 de setembro de 2007. Disponível em: <>. Acesso em: 15 dez. 2014.*

RODIS-LEWIS, Geneviève. Descartes e o racionalismo. *Porto: Ré,1979.*

RODRIGUES Horácio Wanderley. " As insuficiências existentes e suas possíveis soluções". *Fonte: www.plannerbrasil.com.br/mercosul, em 3/4/04.*

RODRIGUES, Danielle Tetu. *O Direito & animais:* uma abordagem ética, filosófica e normativa. Curitiba: Juruá, 2003.

ROHDEN, Huberto. A sabedoria das parábolas. *3. ed., São Paulo: Alvorada.*

ROUSSEAU, Jean-Jacques Les rêveries du promeneur solitaire. *Paris: Éditions Garnier Frères.*

ROUSSEAU, Jean-Jacques, Do contrato social, e discurso sobre política. *Tradução Márcio Pugliesi e Norberto de Paula Lima. São Paulo: Hemus, 1981, p. 11.*

ROUSSEAU, Jean-Jacques. Discurso sobre a origem e os fundamentos da desigualdade entre os homens. *São Paulo: Nova Cultural, 1997, v. II (Os Pensadores).*

ROUSSEAU, Jean-Jacques. Os devaneios de um viajante solitário. *3. ed., Brasília: Editora da UnB.*

ROYAL SOCIETY FOR THE PREVENCTION OF CRUELTY TO ANIMALS. Inglaterra Revista *Today.* Summer 83.

RUECH, Hans. Les bêtes qu'on torture inutilement. *Suíça: Éditions Pierre Marcel — FAVRE, 1980.*

RUECH, Hans. Vivisection is scientific fraud. *Suíça: Civis, 1985.*

RUECH, Hans. Les faussaires de la science. *Suíça: Civis, 1979.*

SALT, Henry. Animals' rights considered in relation to social progress. *Pennsylvania: Society for Animals Rights, 1980.*

SANTA CATARINA. Justiça Federal do Estado de Santa Catarina. Vara Ambiental Federal de Florianópolis. *Ação Civil Pública 5009684-86.2013.404.7200/SC*. Autor: Instituto Abolicionista Animal. Réu: Universidade Federal de Santa Catarina – UFSC. Juiz Federal Marcelo Krás Borges. D. 27.05.2013. Disponível em: <https://eproc.jfsc.jus.br/eprocV2/controlador.php?acao=acessar_documento_publico&doc=721369689470923160240000000001&evento=721369689470923160240000000001&key=899e7e741429d9ff52b7f88c924b3e14a18d81bfe188f049444072e609432656>. Acesso em: 26 jun. 2013.

SANTA CATARINA. Tribunal Regional Federal da 4ª Região. *Agravo de Instrumento 5012997-24.2013.404.0000.* Agte: Universidade Federal do Rio Grande do Sul (UFRS). Agdo: Instituto Abolicionista Animal. Rel. Des. Fed. Vivian Josete Pantaleão Caminha. D. 21.06.2013. Disponível em: <https://eproc.trf4.jus.br/eproc2trf4/controlador.php?acao=acessar_documento_publico&doc=41372263488859941110000000358&evento=41372263488859941110000000202&key=4f6f36050b30621160e45d0f5d151e7c3985b1f500d94943dee02c0c81fc742a >. Acesso em: 27 jun. 2013.

SANTA CATARINA. Tribunal Regional Federal da 4ª Região. *Apelação/Reexame necessário n. 2007.71.00.019882-0*. Apte: Universidade Federal do Rio Grande do Sul (UFRS). Apdo: Róber Freitas Bachinski. Rel. Des. Federal Jorge Antonio Maurique. 4ª Turma. DE. 08.11.2010. Disponível em: <http://www2.trf4.gov.br/trf4/processos/visualizar_documento_gedpro.php?local=trf4&documento=3787484&hash=5a4c520b588edee3326da5a69b57478f>. Acesso em: 24 maio 2013.

SANTANA, Luciano Rocha; OLIVEIRA, Thiago Pires. Guarda responsável e dignidade dos animais. Revista Brasileira de Direito Animal*, Salvador, Instituto de Abolicionismo Animal v. 1, n. 1, p. 67-104, jun./dez. 2006. Disponível em: <https://www.animallaw.info/sites/default/files/Brazilvol1.pdf>. Acesso em: 20 set. 2014.*

SANTOS, Soraya. ***Subemendas 01 e 02 ao Substitutivo ao Projeto de Lei n. 6.799-C****, de 20 de novembro de 2013. 11/10/2016. Disponível em: <http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=1618236&filename=Tramitacao-PL+6799/2013>. Acesso em: 17 abr. 2018.*

SCHURÉ, Edouard. Os grandes iniciados. *São Paulo: Martin Claret, 1986*

SERRES, Michel. O contrato natural. *Tradução de Beatriz Sidoux. Rio de Janeiro: Nova*

Fronteira, 1991.

SHAR MANZOLI Apocalypse ebola*. Suíça: Atra, 1995.*

SHAR MANZOLI Guida ai farmaci e vaccini. *Suíça: Grupo Editoriale Muzzio, 1989.*

SHAR MANZOLI Holocausto. *Traduzido para o português por Maria Stella Scaff Glycerio, da Associação Brasileira de Tecnologia Alternativa na Promoção da Saúde — TAPS. Suíça: ATRA, 1995.*

SHAR MANZOLI Manuale di defesa immunologica*. Suíça: Grupo Editoriale Muzzio.*

SHAR MANZOLI, Milly. Le tabou des vaccinations. *Arbedo, Suíça: Atra, 1994.*

SILVA, José Afonso da. Direito ambiental constitucional . *São Paulo: Malheiros, 1994.*

SILVA, José Afonso da. *Direito Ambiental Constitucional*. São Paulo: Malheiros, 1994.

SILVA, José Afonso da. Direito urbanístico brasileiro*. 2. ed., São Paulo: Malheiros, 1995.*

SILVA, Luciana Caetano da. *Fauna terrestre no Direito Penal Brasileiro*. Belo Horizonte: Mandamentos, 2001.

SILVA, Tagore Trajano de Almeida. *Animais em juízo*. Salvador: Editora Evolução, 2012.

SILVA, Tagore Trajano de Almeida. Animais em juízo*. Salvador: Evolução Editora, 2013.*

SILVA, Tagore Trajano de Almeida. Direito animal & ensino jurídico*. Salvador: Evolução Editora, 2014.*

SINGER, Peter. Animal liberation. *Edição revisada, New York: Avon Books, 1990.*

SINGER, Peter. Ética prática*. 3. ed. São Paulo: Martins Fontes, 2002.*

SINGER, Peter. Liberación animal. *México: Cuzamil S., 1985.*

SINGER, Peter. Libertação animal. *Porto Alegre: Lugano, 2004.*

SINGER, Peter. **Libertação animal.** *Porto Alegre: Lugano, 2004.*

SIRVINSKA, Luis Paulo. *Manual de Direito Ambiental*. São Paulo: Editora Saraiva, 2003.

SKELY, Edmond Bordezux. O evangelho essênio da paz. *São Paulo: Pensamento, 1981.*

SOCIETÉ PROTECTRICE DES ANIMAUX. Paris. Revista *Animaux Magazine,* n. 119, mar/abr.

SOFFIATI, Aristides Arthur. A natureza no pensamento liberal clássico. *Campos dos Goitacases, 1992. Datil, inédito.*

STILLER, Herbert e STILLER, Margot. Vivisection et vivisecteurs. *Suíça, Arbedo: 1986.*

STONE, Christopher D. Should trees have standing? Toward legal rights for natural objects. California Law Review*, n. 45, p. 450-481, 1972.*

SUÍÇA. ***Code Civil Suisse****, du 10 décembre 1907 (Etat le 1er janvier 2018). Disponível em: <http://www.admin.ch/ch/f/rs/c210.html>. Acesso em: 4 abr. 2018.*

SUZUKI, D. T. Introdução ao Zen-budismo. *Rio de Janeiro: Civilização Brasileira, 1971.*

TELLES JÚNIOR, Godofredo. O direito quântico. *São Paulo: Max Limonad, 1985.*

THE ANIMAL WELFARE INSTITUTE . Beyond the laboratory door. *USA, 1985.*

THE CAMBRIDGE DECLARATION ON CONSCIOUSNESS. University of Cambridge, Cambridge, United Kingdom, July 7, 2012. Disponível em: <http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>. Acesso em: 19 maio 2018.

THOMAS, Keith, O homem o mundo natural. *São Paulo: Companhia das Letras, 1988*

TOMAS DE AQUINO (Santo), Tratado de justiça. *Tradução de Fernando Couto. Portugal: Rés (Texto constante da Summa Theologica).*

TRINDADE, Antônio Augusto Cançado. Direitos humanos e meio ambiente. *Porto Alegre: Sérgio Antônio Fabris, 1993.*

TRIPOLI, Ricardo. ***Parecer da Comissão de Meio Ambiente e Desenvolvimento Sustentável.*** *Projeto de Lei nº 3.670, de 2015. 30 nov. 2016. Disponível em: <http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=12518823FBDBBFDC8C292DE225321C89.proposicoesWebExterno2?codteor=1519300&filename=Parecer-CMADS-20-12-2016>. Acesso em: 6 out. 2016.*

TUGLIO, Vânia. Espetáculos públicos e exibição de animais. Revista Brasileira de Direito animal*, Instituto de Abolicionismo Animal, ano 1, n. 1, p. 231-247, jan./dez. 2006.*

UICN, PNUMA, WWF/ FAO, OMM, IRM. Cuidando do planeta Terra — *Uma estratégia para o futuro da vida. São Paulo, 1991.*

VENOSA, Silvio de Salvo. Parte Geral. In: _____. ***Direito Civil.*** *13. ed. São Paulo: Atlas, 2013. v. 1.*

VILLELA, João Baptista. Bichos: uma outra revolução é possível? ***Revista Del Rey Jurídica****, Belo Horizonte, ano 8, v. 16, p. 12-13, 2006.*

VILLEY, Michel, Philosofie du droit. *Paris: Dalloz, 1986.*

VOLTAIRE Dicionário filosófico. *Tradução de Marilena de Souza Chauí, São Paulo: Abril Cultural, 1978 (Os Pensadores).*

VOLTAIRE, François Marie Arouet de. O filósofo ignorante. *São Paulo: Abril Cultural, 1978.*

WEIL, Pierre. Holística: uma nova visão e abordagem do real. São Paulo: Palas Athenas, 1990.

WEIL, Pierre. A nova ética. *Rio de Janeiro: Rosa dos Tempos, 1994.*

WEIL, Pierre.. Organizações e tecnologias para o terceiro milênio: *a nova cultura organizacional holística. Rio de Janeiro: Rosa dos Tempos, 1993.*

WEIL, Zoe, Animals in society . *Jenkintown: Animalearn, 1991.*

WIKIPÉDIA. *CITES* - Convenção sobre o Comércio Internacional das Espécies da Fauna e da Flora Selvagens Ameaçadas de Extinção, Disponível em: <http://pt.wikipedia.org/

wiki/Cites>. Acesso em: 30 maio 2013.

WISE, Steven M. Animal thing to animal person – Thoughts on time, place, and theories. Animal Law*, v. 5. p. 61-68, 1999.*

WISE, Steven M. Palestra proferida no I CONGRESSO MUNDIAL DE BIOÉTICA E DIREITO ANIMAL. Salvador: Universidade Federal da Bahia (UFBA), 8 de outubro de 2008.

WISE, Steven M. Rattling the cage*: toward rights for animals. Cambridge, Massachusetts: Perseus Books, 2000.*

WOELMANN, Sérgio, O conceito de liberdade no Leviatã de Hobbes*. 2. ed., Porto Alegre: Coleção Filosofia, 1994.*

Edna Cardozo Dias is a Brazilian lawyer specialized in Public, Environmental and Animal Law.

Has a Bachelor degree in Law by PUC – Faculdade Mineira de Direito – Belo Horizonte.

Has a Doctorate in Law by the Law Faculty of the Federal University of Minas Gerais.

Specialized in Criminology by the Civil Police Academy of Minas Gerais – Belo Horizonte.

Postgraduate in Public Law by the Monsenhor Messias Educational Foundation, Law Faculty of Sete Lagoas – MG

She is the author of the first doctoral thesis on animal rights in Brazil, defended at the Law Faculty of the Federal University of Minas Gerais (UFMG), titled "**The legal guardianship of animals"** (1st ed. 2000; 2nd ed. 2018, updated), bringing to the Brazilian academic world the first input for the creation of a theory of animal rights.

She also was the first jurist in Brazil to teach the issue on Animal Law, at PUC/MG, in 2001.

She was the first coordinator of Defesa dos Animais (Animal Defense), in the municipality of Belo Horizonte, in 2016.

Author of the books "SOS Animal" (1983 – Out of print); "O Liberticídio dos Animais" (The Liberticide of Animals) (1997); "Crimes Ambientais" (Environmental Crimes) (1998 – Out of print); "The legal guardianship of animals" (1st edition 2000, 2nd edition 2018); "Manual de Direito Ambiental" (Guide for Environmental Law) (2003 – Out of Print); and "Direito Ambiental no Estado Democrático de Direito" (Environmental Law in a Legal Democratic State) (2013).

She was a sectional counselor of the OAB/MG (2013-2015; 2016-2018).

Founding president of the Animal Rights Commission (2013-2018) and of the Urban Right Commission (2006/2013) of the Brazilian Bar Association (OAB). Surrogate member of the Environmental National Council (CONAMA), representing NGOs in the southeast region for one mandate. Member of the Environmental Commission of the Brazilian Bar Association, Minas Gerais section (1993-1994 and 2001-2003). Member of the Deliberative Council of the Brazilian Association of Women in Legal Careers, in 2001. Member of the Extraordinary Commission of Animal Rights and Defense of the Federal Council of the OAB (2015, with mandate in 2019-2021). President of the Animal Abolitionism Institute – IAA (2016-2017).

Kick-started the campaign that ended with the criminalization of mistreatment of animals in 1984, which culminated in the inclusion of Art. 32 in Law 9.605/1998. Participated in the approval of the environmental chapter of the Federal Constitution of 1988, and was the representative of the animal protection NGOs in the public consultation on the 5th of June 1988, in the Chamber of Deputies, where the chapter on the environment was delivered to the Senator rapporteur. Since then, she has been working to change the Brazilian Civil Code so that the legal status of animals is no longer that of "things".