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ANIMAL RIGHTS AND ENVIROMENTAL RIGHTS IN BRAZILIAN SUPREME COURT

The subject. The article analyzes the arguments of the Federal Supreme Court of Brazil, used in the consideration of disputes concerning animal rights, in comparison with the developments of theorists in this field.
The purpose of the article is to justify the necessity of respect for the rights of animals and the "animal dignity" by the courts.
The methodology includes formal-legal analysis of courts' decisions, comparative-legal analysis and synthesis as well as formal-logical analysis of scientific researches in the field of animal rights.
The main results and scope of application. It is wrong to claim that the Brazilian Supreme Court decision in "Vaquejada" case (or even in 'Farra do Boi" or cockfights cases) would be an increase in the process of a supposed recognition of animal rights in the Brazilian constitutional jurisdiction. In such cases, most of the Judges who participated in the trial pondered and reinforced the prevalence of *environmental law*, including it wildlife protection (and non-submission of the animals to cruelty), pursuant to article 225, § 1, VII, of the Brazilian Constitution. In this way, it would have been disregarded the categorical difference between environmental law and animal rights. The Constitution itself encourages confusion between those categories when dealing with the prohibition of animal cruelty in a chapter on the environment (chap. VI). This article argues that the focus on the statement of environmental law, the Supreme Court allows them to be strengthened arguments considered as obstacles to the defenders of animal rights, particularly the anthropocentric argument that the balanced environment is important to make possible to human beings more quality of life. Analyzing the decisions, especially in of Vaquejada and Farra do Boi cases, it appears that points many important analyzed in the theoretical debate about animal rights, such as the notions of "animal dignity" and "flourishing life" are totally neglected. The article uses widely the arguments presented by Martha Nussbaum in her text *Beyond "Compassion and humanity": Justice for Nonhuman Animals*, particularly to show that the approach of "capabilities" developed by it can provide a better theoretical orientation of the approaches Kantian contractualism and utilitarianism to the animal rights, mainly because it is able to recognize the breadth of the concept of "animal dignity". It is considered that the central point to be faced in order to recognize the rights of animals is the one raised by the High Court of Kerala in the case of *Nair v. India Union* (June 2000), which Nussbaum highlights as the epigraph of the her text: "Therefore, it is not only our fundamental duty to show compassion to our animal friends, but also to recognize and protect their rights [...] If human beings have a right to fundamental rights, why not animals?".

Conclusions. Understanding the prohibition of animal abuse as a measure of environmental protection for the benefit of present and future generations is incorrect and does not take into account the basic principles that form the core of animal rights.

Brazilian law will go a long way towards protecting animal rights when (and if) it expressly recognizes that animals (at least some of them) are creatures created for a decent existence"; when, for example, it permits the trial of habeas corpus filed in favour of a bull locked up in a farm or slaughterhouse.

Key words: animal rights, environmental rights, Brazilian Supreme Court, Brazil, approach of "abilities", approach of "capabilities", Martha Nussbaum.

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Introduction

At the beginning of October 2016, the Federal Supreme Court of Brazil issued Decision No. 4.983 stating that the law of the Ceará state, which governed the "vakezhad"[1], was declared unconstitutional. According to the judges (the verdict was passed by six votes to five), the legalization of this practice, which is considered the cultural heritage of many states of the Northeast of Brazil contradict provisions of Part VII § 1 Art. 225 of the Brazilian Constitution: "Everyone has the right to use an environmentally balanced environment [...] To ensure the effectiveness of this right, state authorities are authorized: [...] to store fauna and flora; in accordance with the requirements of the law prohibits the practical activities, [...] is *subjected animals to abuse".*

After the decision many scientists hurried to conclude that the Supreme Federal Court forces the state to officially recognize the rights of animals [1; 2]. T.L. Silva and Vieira have even said that "the Supreme Federal Court not only positions that have long been formed on similar issues, but also a genuine violation of installations for the protection of animals as P equal constitutional guarantees" [2, p. 56].

However, the purpose of this article is to show that the accepted the solution, like the others, adopted earlier on similar issues (for example, about "Farra do boi"[2] and about cockfight battles), in fact do not protect the rights of animals in due measure.

In a sense, the decisive point in the question of "vakezhade" was the opinion of Judge Marco Aurelio de Mello, who insists on the key importance for the case of issues of protecting the *right to an environmentally balanced environment as an environmental right.* Such a position develops Kant's opinion on animals as simple instruments, used by a man, and this is the view against which the stink of animal rights struggle camping in the first place [4, p. 3].

[1] Vaquejada is a sport typical of the northeastern regions of Brazil: two cowboys ("vaqueiros") on horseback pursue the bull, striving to enclose it between two horses (usually holding it by the tail) and tumbling within the bounds outlined on the ground .

[2] Farra do boi is a typical ritual in the coastal areas of the Brazilian state of Santa Catarina, during which a group of people control the pursuit of the bull, causing it to damage all targets until the animal is completely depleted. It has been considered illegal since 1998, when the decision of the Human Rights Court of June 3, 1997, No. 153.331-8 / SC came into force; RT 753/101 on its prohibition.

In this article we will cover and consider some important issues that do not face the courts, based in SIC m solutions Federal Supreme Court of Brazil "Vakezhade" and "Farra do boi". The article by Martha Nussbaum, 2004 "Compassion and humanity: justice for animals will be used as a basis to show that the issue of legal recognition of animal rights is not only a question of maximization "as traditionally been utilitarian underline. As result we confirm that approach of "measuring capability", developed by M. Nussbaum, can provide more adequate theoretical basis for the constitutional judicial protection of the rights of animals than contractual (Kantian) and utilitarian approach, mainly, because he can give impetus to recognition concepts of "the dignity of the animal".

2. Forensic anthropocentrism

Position of the referring judge Marco Aurelio de Mello by cause of "Vakejadi", accompanied by a majority of the remaining judges, shows the position of the Federal The Supreme courts on matters relating to practices and which are considered cruel in relation to the animals. While vakezhada is described as unimaginable violent action in which "a couple of riders on horseback, with three knock down a bull within the bounded box, dragging it by the tail", principles, accessed by the Judge-Rapporteur, referring to the unconstitutional practice, directly and exclusively related to the protection of the right to a healthy environment.

In the context of surrounding fauna environment is only one of the elements contained therein, comparable with flora [6, p. 93]. Extracting the principles of decision-making from these cases, especially speaking about race of bulls and cockfights, that in general is associated with the "practices, expose animal cruelty," the judge formulates the following position: "The Court examines the conflict between the norms of basic rights - even if it is confirmed as cultural significance of the situation and, implying her unequivocal cruelty against animals, is more effective and will interpret it in the context of the assessment of rights, rules and facts are more favorable in relation to the protection of the environment, *showing great concern over its preservation for present and future, and the creation of environmentally sustainable conditions for a healthy and safe life*.

Firstly, it is difficult to link the preservation of ecological balance of life's conditions of future generations with the fact that in the "vakezhade" the bull is caught by the tail and thrown all four legs up. One might ask whether it is used udet in any way compromising the environment encircling guide: endangers or is likely to threaten the safety of vakezhada this kind of cattle for future generations?

It is more important to consider, whether to recognize the rights of the animal's abused, in accordance with the conditions and the final hour. V II § 1 Art. 225 Constitution of Brazil . Are these rights restricted, if any, guaranteed absence I badly of handling animals, or other rights of the constitutional norms can be derived? It should be noted that in its conclusion the judge-rapporteur refers, without questioning his words, to "health of cattle". The author has collected technical reports that demonstrate the adverse *health* effects *of cattle* because of the forced draft of the tail, the consequences of falls, such as broken legs, torn ligaments and blood vessels, injury and displacement of the tail joint or expulsion, which leads to dysfunction of the spinal nerves and spinal cord, physical pain and mental suffering m pits. "Can you talk about the right to health of animals", which is beyond the scope of these questions remain open, and the answer to them depends on the legal recognition of the "dignity" of animals, and this recognition, in order to have a right to exist , depeds on an analysis that should separate the right of animals from their environmental rights and from the and anthropocentrism.

Even outside the Brazilian law can be seen as problems of character and the interrelation between environmental and human s and animal rights. It should be recalled that at the international level in March 2014, the Hague Court examined *the Whaling case in Antarctica* (Australia v. Japan and: with New Zealand participation [7]). It should be noted that in this case the destruction of the international animal species is more specifically, much more tangible risks, but even in this case, the main argument in the framework of the Intern-discharge jurisdiction was not all right whale s on to the existence of, but rather the importance of preserving the ecosystem, and for future generations [8].

3. Animal rights: closer to the central position

Among possible definitions of animal rights is one that says that animals deserve themselves and should command respect, and that one should always act in interests of the animals themselves, "regardless of how they are perceived mi people as "sweet" or useful, and how much they are worried about people" [8, p. 132].

Animal rights should not be seen as a collective or diffuse right (in the second or third dimension), which are generally owned by people, aimed at the protection of the fauna and the environment. They should be considered as individual (in the first dimension) rights, which are owned by separate, not necessarily human-like animals. These rights, once recognized, will undoubtedly be more important than the simple right of animals - the right not to be subjected to ill-treatment.

Animals can be subjects of individual rights, many believe that it is necessary to imagine that they must be able, like people, make commitments and be held accountable for their actions. From the point of view of Kant, the holder of subjective rights should be people who know themselves and their place in the world, and be capable of high moral in the so-called "world of life» *(Lebenswelt).*

However, the truth is that people usually have basic individual rights, although it cannot be said that *everything* human individuals are self-conscious and morally able to understand and take responsibility for their actions - such as children and people with mental disabilities. Elizabeth Anderson recalls that one of the central arguments of the defenders of animal rights and their dignity the fact that people deprived of their rational faculties and consciousness. This is the so-called "unclear case argument".

4. Dignity, prosperity and approach of opportunities

The approach of opportunities (capabilities) was formulated in the 1990s, first as an economist Amartya Sen, Martha Nussbaum and then to link the idea of developing the concept of freedom [11]. Although some translate *capabilities* as "abilities " into this article, it is preferable to use " opportunities ", noting data neologism is a feature of the Nussbaum concept and September . A similar view has Alessandro Pintsani: "[...] the concept of *ability* , which I translate here as" possible ", because it is not simply points to the apparent ability" [12, p. 105].

The author's concept emphasizes that skills are special abilities that can be developed by people and allow them to perform certain functions that depend on both internal (physical, mental and moral) and on external circumstances (conditions of social or material possibilities). The goal governments will provide people the pits after x capability it : " The main focus on the opportunities in quality social objectives is closely related from emphasis on equality between people " [13, c . 86] .

The question is how the concept of possibilities, which places the responsibility of adults at the center of responsibility and makes them responsible for the course of their own lives, can be used in relation to (not anthropoid) animals? In his first work in 2004, "Compassion and humanity", "Justice for non-human animals", M. Nussbaum believes that its approach can be applied more widely: " The approach of abilities in its current form is a part of n The concept of human dignity and life appropriate to him. However, I now argue that this approach can be extended to provide a more adequate basis for animal rights [...]. Aristotle and Marx insisted that there are flaws and tragedy in such an approach when a living being has a certain innate ability, or "basic", for some functions that are considered important and good, but he never has the ability to perform data function. Failure to educate women, provide adequate medical care, give more freedom of thought and conscience to all citizens - can be considered the cause of premature death, death of prosperity [14, p. 305].

Speaking of the intuitive starting point contained in the concept and dignity, Nussbaum suggests that for the respect that we feel for people, there is something more common. She believes that it is necessary to criticize Kantian ethics, because according to her statements, only humanity and rationality would point to Kant's potential worthy of respect and admiration, and the rest of nature would be considered just a set of tools at the disposal of people.

Faced with this Kantian anthropocentrism (although, according to A. Gillespie, the origins of the anthropocentric world view include the philosophy of Plato [15]), M. Nussbaum refers to the "biologist of Aristotle," who criticized the contempt with which some of his pupils studied animals, and pointed al that they could not understand that there was something charming, beautiful, inspiring in all the complex forms of animal life. However, M. Nussbaum points out that the approach of opportunities beyond the scope of Aristotle's theory: the charm of the existence of complex 's living organisms and the process the fulfillment of one's natural vocation must be accompanied by an ethical concern that the harmful actions of other beings are not deliberately hampered in the development of the "functions" of these organisms (including nonhuman animals) [13; 14].

The approach of the possibilities clearly shows that different beings (complex life forms) as such should flourish, and actions against this prosperity will lead to an attack on beautiful natural processes and an obstacle in the development of the worth of complex living beings. T Which approach potentially is more inclusive than utilitarianism in terms of the ability to protect various species of animals, including wild and non-human .

How widespread is this sensitive perception of dignity as "prosperity" , so much is it a problem in terms of applied ethics. In any case, the Cree Theurillat contained in the approach of "opportunities" seem more resistant to criticism, rather than the usual arguments. As was the case, from the point of view of possibilities, the dignity of animals will be much more distinct : any complex organism will have dignity in its natural course of life, as a living being. Studying the work in the field of comparative jurisprudence, one can conclude that this point of view is actually not so lonely as it seems [18].

4. Indian law: so far away, and so close

At the beginning of M. Nussbaum's article (pp. 299-300), quotes Pliny and tells us that the Roman figure Pompey liked to arrange performances in which men fought with elephants. At one of the performances in 55 BC. e . and the animals found themselves in the arena in a trap, and then began to express reactions of fear and despair, and began to roar. The public sympathized with the animals, and Pompey was cursed because of such an unpleasant spectacle. According to

Cicero (also quoted by her), at the moment of solidarity with the public, she seemed to recognize that the elephants integrated into the "Commune" with the human race.

Millennia have passed, and already in 2016 the Supreme Court of India said that those who hold the elephants in captivity in Kerala, including religious temples cannot be ill-treated with these animals under any circumstances, and that they must strictly observe the Law on the Prevention cruel treatment of animals. In Kerala, there is also a lively discussion about whether to prohibit the use of elephants for skiing tourists. While speaking about the latter case, one could argue that there is a clear difference between the assessment of whether animals can die as a result of "representation", and deciding whether they can be used as a vehicle for people. Such a difference, however, may be small. In both cases, there is a general circumstance that people can dispose of animal animals to satisfy their desires (from desires that are painful for animals to more tolerant ones).

However, there are some things that bring together the Supreme Court of Brazil with the Supreme Court of India and the High Court of Kerala. Last, in the example, but in 2014 it decided to prohibit performances with the participation of a large horn atogo cattle and bulls in the popular sports representation D Jallet ikattu originating yaschem festival P Ong, in which people are trying to overcome the bull s without killing them. Cockfights as a population very rny in India, and they also discussed a two on me up to date Mi judicial mi instance mi for the rule of law, as long dormancy and were not officially banned. The urgency of the first Aspe KTA discuss disputes on the legal protection of animals - whether the animals are subjected to violence and that can be considered cruel for some lively tnyh - is common for Brazilian and Indian law .

Perhaps the significant difference between them is that in the High Court of the State of Kerala there is a rather bold and positive case, affecting the basis of animal rights [18, c . 350] - *Nair v. The Union of India* , June 2000. This remarkable case could not bring a revolutionary reaction to the settlement subsequent years after publication , but, nevertheless , has put forward a very important arguments that Martha Nussbaum took as an epigraph for his article: "Therefore , our primary responsibility - not only to show compassion to our friends - animals, but also to recognize and protect their rights ... If people have the right to wasps novopolagayuschie rights, why they are not animals?". That , of course, does not diminish the importance of environmental protection for the benefit of future generations.

Conclusion

The position of the Federal Supreme Court of Brazil in cases of "Vakejad" and "Gon Bulls" should not be considered a precedent in the Brazilian constitutional jurisdiction with regard to the recognition of animal rights.

For the recognition of the legal position of the judiciary precedents in the field of animal rights, it is necessary to define , whether there was the necessary distinction in it between the rights of animals and ecologically pure place them right. Understanding the prohibition of ill-treatment from animals at quality measures of protection of environmental protection for the benefit of present and future generations is wrong and does not consider constituent core of the rights of animals .

Martha Nussbaum’s approach to protection of animals suggests that all complex organisms should develop their natural functions, and the obstruction can disturb this inherent development dignity. This approach, in our view, offers a more convincing s criteria to legalize non-human animals as subjects of rights, than Kantian approach (concentrated on rationality of the subject) and a utilitarian approach (based on the subject's feeling).

Brazilian legislation significantly move forward on the issue of the protection of animal rights, when (and if) recognizes the right that the animals (at least some of them) are creatures.

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