

Habea(r)s Corpus: Some Thoughts on the Role of Habeas Corpus in the Evolution of Animal Rights

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Earlier this year, a [spectacled bear](#) named “Chucho” was given his proverbial day in court, in the Supreme Court of Colombia (Civil Chamber of Appeals). On behalf of Chucho, who is held in the zoo of Barranquilla, a citizen invoked the constitutional right and action of habeas corpus ([article 30](#) of the Colombian Constitution) to challenge the legality of his confinement. In a [ruling](#) on 26 July 2017, Judge Luis A. Tolosa granted habeas corpus relief to the bear and ordered his release from the zoo and relocation to a more species-appropriate habitat.

Succeeding the landmark case of [Cecilia the chimpanzee](#) – who was granted a writ of habeas corpus by an [Argentinian court](#) in November 2016 – the Chucho case has yielded yet another extraordinary court decision resulting not only in a ruling to free an animal from captivity in a zoo, but more fundamentally, in an (as of now still isolated) act of judicial recognition of animals’ legal personhood and rights. This sheds some light on the possible role that habeas corpus may come to play in the still nascent evolution of legal animal rights.

Background: Animal Rights and the Means of Habeas Corpus

The emergence of animal rights is, arguably, a reality. Its avant-garde and unworldly resonance with legal scholars and the general public notwithstanding, the idea of animal rights is gradually seeping into law and presently crystallizing in first singular instances of judicial recognition of animal rights. Such legal recognition has been a longstanding goal of animal rights advocates. As a [recent series](#) of (partly successful, partly unsuccessful) habeas corpus actions on behalf of animals in the USA, Argentina and now also Colombia illustrates, habeas corpus has become a relevant but also controversial instrument for the advancement of this agenda.

Habeas corpus is a centuries-old, deeply rooted fundamental right to judicial review of the legality of detention (guaranteed, for example, by Article 9 [ICCPR](#), Article 7 [ACHR](#) and Article 5 [ECHR](#)). It is also a legal remedy by which anyone deprived of liberty (or someone on their behalf) may immediately take proceedings before a court and request their release. Moreover, the procedural right and legal action of habeas corpus protects the background substantive right to liberty and thus functions as an essential safeguard of freedom.

Now, habeas corpus has traditionally been thought of as an (exclusive) human right – a right of the (human) person. The novel phenomenon of habeas corpus actions brought on behalf of animals thus raises two distinct sets of questions for courts:

1. The preliminary formal issue of whether animals have the right of habeas corpus or, respectively, whether the remedy of habeas corpus is available to them. This inevitably forces the more general question of whether, and to what extent, animals are legal subjects/persons and holders of legal rights.
2. The substance of the case concerns the issue of whether the requested legal protection is warranted in the concrete case and whether or not the animal should be rightfully released from captivity.

The Chucho Case

In the present case, the plaintiff was Chucho, an (endangered) spectacled bear who had lived in Río Blanco

Nature Reserve for 18 years before being transferred to Barranquilla zoo. The petitioner, part-time law professor and lawyer Luis D. Gómez, claimed that Chucho's current circumstances of captivity amount to permanent imprisonment and challenged their legality by initiating habeas corpus proceedings. The court of first instance dismissed the case on the grounds of its unreasonableness (given that animals are not recognized as legal subjects) and having regard to the availability of other legal actions suited to protect the interests of the bear. The Supreme Court of Justice (Civil Chamber of Appeals), sitting as the court of second instance, came to a different finding.

Concerning the preliminary questions, the Court concluded that animals are indeed legal subjects possessing, inter alia, a right to liberty. In his reasoning, Judge Tolosa addressed several key issues shaping the current legal debate on animal rights. Notably, referring to the legal reality of juridical persons, who are inanimate entities and yet afforded legal personality and certain procedural rights, the judge asked why the same logic should not be applied to animals, who are animate sentient beings. Furthermore, while [US courts](#) have essentially dismissed the idea of animal legal personhood [on the grounds of the contractarian notion of reciprocity between rights and duties](#), the judge explicitly departed from this reciprocity paradigm and called for a "flexibilization" of the traditional view of right-holders as concurrent duty-bearers. According to this modified conception of the legal subject, animals are clearly right-holders but not duty-bearers, that is, legal subjects without duties ("sujetos de derechos sin deberes"). On this basis, the Court concluded that the constitutional right and action of habeas corpus, which serves to ensure the "supralegal" guarantee of liberty of the person, may be, appropriately so, extended to animals as legal subjects, in order to safeguard their respective right to liberty.

Regarding the main issue of Chucho's captivity in the zoo, the Court decided that the legal protection sought after by means of habeas corpus should be granted and consequently ordered that Chucho should be transferred back to the previous, more spacious, dignified and species-appropriate habitat.

However, this bold decision of Judge Tolosa of the Supreme Court (Civil Chamber of Appeals) was challenged by the zoo's lawyers, alleging a violation of the fundamental right to due process and the principle of legality. It was subsequently revoked by judge Fernando Castillo of the Supreme Court (Labour Chamber of Appeals) via a "tutela" action.

Whether the Chucho case will end up in the Constitutional Court remains to be seen. The Chucho case does raise important constitutional questions of a fundamental nature, and even if the reasoning rendered by Judge Tolosa (perhaps due to the limited time available for drafting a habeas corpus decision) may seem underdeveloped and in parts incoherent (as pointed out by Carlos Contreras [here](#)), the conclusions he ultimately reached can be based on conceptually sound arguments. The Constitutional Court would certainly offer an appropriate forum to revisit and re-evaluate the controversial formal and substantive issues of this case in a more comprehensive manner and in compliance with more dialogic and democratic mechanisms such as public audiences and the opportunity for amicus curiae interventions.

While some courts from the global north have already spoken against animal rights – in a rather formalistic and legalistic manner – it may now be the turn for one of the most proactive courts of the global south to join the conversation.

Habeas Corpus as Impetus in the Evolution of Animal Rights?

In conclusion, the Chucho case marks one of so far only few instances in which a judge accepted a habeas corpus claim on behalf of an animal and, by that very act, acknowledged the possibility – or reality – of animal legal personhood and rights. Habeas corpus thus appears to be not only an expedient right for challenging the legality of the captivity of an individual animal, but also a procedural gateway to the judicial recognition of animals' legal personhood and rights in broader terms.

This suggests that habeas corpus may come to play a pivotal role for the consolidation of legal animal rights – as a driving force facilitating and pushing the question of animal rights before courts. Incidentally, this may not be surprising, considering the place of the ancient right of habeas corpus in the development and preservation of human rights. With respect to animals, too, habeas corpus (a right against arbitrary confinement) may very well be the first milestone on the long road towards fundamental rights.

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