Tercer Juzgado de Garantías
JUDICIAL POWER
MENDOZA

FILE NO. P-72.254/15
"PRESENTED BY A.F.A.D.A ABOUT THE CHIMPANZEE "CECILIA"- NON HUMAN INDIVIDUAL"

MENDOZA, November 3, 2016.

HAVING REGARD to case no. P-72.254/15, above captioned, filed before this court, Tercer Juzgado de Garantías, in order to decide the habeas corpus action in favor of the Chimpanzee Cecilia, presented by Dr. Pablo Buompadre, the President of A.F.A.D.A., represented by the attorney Dr. Santiago Rauek.

FACTS:

I.-That on page 01/07 Dr. Buompadre argues that Cecilia has been illegally and arbitrarily deprived from her freedom of movement and a decent life by the authorities of the zoo of Ciudad de Mendoza, Argentina. That her health, physical, and emotional state is extremely deteriorated and worsens each day with an evident risk of death, being the duty of the State to urgently order to free this non human person, who is not a thing, therefore cannot be subjected to the legal status of property that anyone has the power to dispose of.

Dr. Buompadre petitions the liberation of Cecilia the chimpanzee, who has been illegally and arbitrarily deprived from her liberty of movement at the Mendoza Zoo and her immediate transfer and final relocation to the Chimpanzee Sanctuary of Sorocaba located on the Estado de Sao Paulo, Brazil or another that is duly established to that effect with the previous evaluation of specialist of the species. All this, following article 43 of the National

Constitution, article 17, 19, 21 and cc of the Constitución Provincial de Mendoza, article 440 and ss of the Código Procesal Penal de Mendoza or, as subsidiary, as stated on the Ley Nacional no. 23.098 or other laws and international treaties with constitutional hierarchy, article 75, section 12 of the Constitución Nacional applicable to the case.

Plaintiff refers that Cecilia is a female chimpanzee, scientifically denominated "Pan troglodytes", of around 30 years of age, that almost all her life has lived in captivity in the Mendoza Zoo in a cement cage that is truly aberrant, in other words, she is illegally deprived of her freedom of movement, being a clear prisoner and slave for more than 30 years in the Mendoza Zoo only by the arbitrary decision of its authorities, affecting in this way at least two of her basic fundamental rights: her freedom of movement and her right to a decent life, and they are trying to end this situation through these means.

Dr. Buompadre argues that the chimpanzee is living in deplorable conditions, in a cage with cement walls and floor, extremely small for a non human animal of that species with a much reduced living space. That it does not have blankets or hay to lie down, that she doesn't have shelter from inclement weather of from even the wind, to which chimpanzees are very scared from, or from the noise and screams of the constant school visits and the general public that visit this place and from the things that are thrown to her as mere jokes. A place that barely gets sunlight a few hours a day, exposing the primate to high temperatures that during summer go higher than 40°C heating the cement floor and walls, and during winter temperatures are lower than 0°C, even snowing several times and freezing the surfaces, with a total lack of hygiene and full of excrement that is not cleaned daily.

He adds that after the death of her cage companions "Charly" (July, 2014) and Xuxa (January, 2015), the chimpanzee Cecilia is living in absolute solitude without any company of her species, being chimpanzees extremely "social", without any green space or trees to exercise, or any environmental enrichment like instruments and games for entertainment and without a water dispenser of her own so that she can drink water whenever she is thirsty. These conditions have aggravated her situation putting in evident risk her life and

physical and emotional health, in relation to her age, the characteristics of her species and fundamentally for the stress she is living with in captivity.

Plaintiff states that since the accommodation of this chimpanzee in the zoo for more than three decades nothing has been done by this establishment and its authorities on behalf of the wellbeing of this Great Ape, they have kept her enslaved, deprived of her freedom of movement in an arbitrary and illegal manner without any other purpose than to be exhibited to the public as a circus object. This never improved, not even at the end of 2013 with the great social pressure and relevance of the events that exposed the serious situation of this "animal prison".

Dr. Buompadre considers that Cecilia, despite having a 99.4% genetic identity with any human being, was and is a real slave of the Mendoza Zoo, discriminated because of her species, victim of what philosophy and ethics call "anthropocentric speciesism", so that she is treated as a slave, unfairly and illegally deprived of her liberty of movement, like many other non humans. Cecilia has not committed any crime in order to be enduring an unnecessary suffering of this nature in an extreme confinement situation that is nothing more than a sine die illegal and unjustified confinement of a sentient being, who is not a thing and should not be treated as one, and without an order for such confinement from a competent authority, a judge.

Plaintiff understands that the captivity conditions for this species, like the one Cecilia is at the Mendoza Zoo, are truly aberrant, not only because of the circumstances before mentioned, but also because of the ethological characteristics of these hominids that are sentient beings, they organize in social groups, are gregarious animals that live in big family groups with a determined hierarchy, they also possess self-consciousness, they have specific abilities like being able to recognize themselves, make tools and they even have a "culture" concept with education that is passed from parents to children.

He adds that the proximity of man with chimpanzees is so that a chimpanzee could be a blood donor to humans and vice versa, they are individual and unique beings, they have emotional needs, they are rational and emotional beings.

Dr. Buompadre points out that a chimpanzee is neither a pet, nor it can be used like a mere entertainment object, used like a guinea pig for experiments or for mere exhibition. They think, feel, are affectionate, hate, suffer, learn, and even pass on what they learn.

Plaintiff states that they do not pretend to consider chimpanzees, gorillas, orangutans, and bonobos humans, which they are not, but hominids, which they are.

The President of the A.F.A.D.A. points out that to keep animals in captivity in artificial and inadequate environments, and especially for this species in particular, it is a clear abuse by the authorities that have her in this situation of extreme isolation and confinement, being these clear and true violations of the animal abuse and cruelty law (Ley Nac. 14346) and the conservation of wild fauna law (Ley Na. 22.421) that are in force in our country, which will inevitably bring Cecilia to the loss of her identity and surely to a deadly destiny that they are trying to prevent.

Finally Dr. Buompadre states that Cecilia is a non human person, innocent, that has not committed any crime and has been convicted to living in confinement, arbitrarily and illegally, without legal and valid due process, ordered by a public authority that is not a judge, the Mendoza Zoo, where she actually serves a prison sentence (a place that does not guarantee minimum conditions of “animal wellbeing”) and that she did not have the slightest possibility of being free and to live freely, not even during the last days of her life.

Next, the A.F.A.D.A. President explains about the precedents of the habeas corpus of great primates and about the admissibility of the habeas corpus action. Then, he makes a detailed analysis of the extension of the basic fundamental human rights extended to great primates. Finally, Dr. Buompadre does an analysis about the legal personhood of the chimpanzee and about the zoos as prisons for animals.

III.-<u>WHEREAS:</u>

That on page 35/79 a report by Mr. Pedro Pozas Terrados about chimpanzee Toti at the Bubalcó Zoo was attached.

On page 99/103 Dr. Fernando Simón, State Attorney of the Mendoza Province, answered the claim presented by A.F.A.D.A. and requested the dismissal of the petition. The State Attorney stated that the claim lacks the most important element which is the existence of a human person and not an animal, which for purposes of the present legislation is still a thing, as established by article 227 of the C.C. In spite of understanding that animals deserve protection, they do not share the assimilation that is made of them to a person as having legal personhood and as receiver of the protection of the guarantee of habeas corpus.

The State Attorney stated that with the noncompliance with the basic requirements, there is not a real detention as the petitioner tries to demonstrate since it would have to be an individual cautionary measure that consists of the temporary privation of liberty ordered by a competent authority. He adds that the freedom of movement is a very personal right that only human people can enjoy and not animals or the so-called non human person, as it is tried to be asserted trough this claim in a dogmatic manner lacking any legal grounds. That we are not before an illegal act since the zoo of the province was created on May 18, 1897, which was settled by the enactment of Law No. 30 of 1897, which intends to hold different animals which will remain inside the facilities and for the safety of other property and human people they are kept inside cages built especially for each of the species.

The State Attorney argues that the A.F.A.D.A. lacks legal standing since it has no accreditation to exist and to have legal capacity. He also states that there is a substantial active inadmissibility since the plaintiff would be an animal (thing) and not a human person and conceptually to have standing is the recognition the legal system makes in favor of an individual (human person) which confers the possibility to effectively exercise the

legal power based on the existent relation between the individual and the rights and legitimate interests of which the individual claims jurisdictional protection.

On page 87 there is a minute which records that on July 7, 2015 the personnel from this court, Dr. María Alejandra Mauricio, Judge, Dr. Gerardo Manganielloi, Ad Hoc Secretary, and Dr. S. Amalia Yornet, went to the Mendoza Zoo where they held a visual inspection.

On page 112/147 there is a certified copy of the administrative file no. 332-D-2.015-18010 from the Parks and Zoos Administration.

On page 150/153 there is a report sent by the Vet. Med. Gustavo Pronotto, the Zoo Director at the time.

On page 158 there is a minute which records that Dr. Pablo Buompadre, AFADA President, attorney Dr. Santiago Rauek, Dr. Claudio SarSar and Dr. Cristian Thompson, State Attorney, Dr. Alejo Guajardo, Government Consultant, Dr. Gustavo Pronotto, Director of the Mendoza Zoo, and Dr. Raúl Horacio Vicchi from the Public Policies of the Judicial Power of the Mendoza Province appeared before this court in order to hold the hearing about the chimpanzee Cecilia.

On page 161/165 Dr. Fernando Simon, State Attorney of the Mendoza Province presented a proposal to transfer Cecilia to the Bubalco Zoo, in compliance with the hearing of September 2, 2015.

On page 184/210 there is an expert report by … (left incomplete in the original document in Spanish)

On page 214/234 there is an expert report by the veterinary Dr. Jennifer Ibarra.

On page 235/240 there is an expert report by veterinary Dr. José Emilio Gassull.

On page 244 there is a minute which records that the personnel form this court went to the Mendoza Zoo and confirmed that on the enclosure next the cage where Cecilia is there is a construction that was started with private money.

On page 246/247 there is a report rendered by the Land, Environment and Natural Resources Department of the Mendoza Province.

On page 275/281 there is a report from SENASA.

On page 284 there is a minute which records the hearing before this court which was attended by the A.F.A.D.A. attorney Dr. Santiago Rauek, Dr. Claudio SarSar and Dr. Cristian Thompson, State Attorneys, Dr.Alejo Guajardo, Government Consultant, Engineer Mariana Carm as the Mendoza Zoo Director, Dr. Paula Llosa, advisory attorney, and Mr. Humberto Mingorance, Secretary of Environment and Territory Order, Lic. Eduardo Sosa, Chief of Staff. During this hearing the parties agreed that the best option is to send the chimpanzee Cecilia to the Brazil Sanctuary.

On page 287/309 Magister Mariana Caram, Zoo Director, Administration of Parks and Zoo, architect Ricardo Mariotti, General Administrator, and Lic. Humberto Mingorance, Secretary of Environment and Territory Order noted that the transfer of Cecilia to the Brazil Sanctuary is feasible. The procedures necessary to do the transfer would require between three to six months, approximately.

On page 310 this court granted Magister Mariana Caram, Zoo Director, Administration of Parks and Zoo, architect Ricardo Mariotti, General Administrator, and Lic. Humberto Mingorance, Secretary of Environment and Territory Order a maximum time of six months to finish all necessary procedures to transfer the chimpanzee Cecilia to Sorocaba, Brazil.

IV.-To decide the issue brought before this court I understand that the following factors should be considered.

First, and taking into consideration the arguments brought by the State Attorney, I shall refer to the standing of the A.F.A.D.A. President and next to this court's competence to decide the present actions.

a.-The procedural course elected by plaintiffs does not hold this court. I must respect the congruence principle (article 18 CN). A factual situation was reported and it was requested to cease.

As a judge, I am responsible for the legal qualification of the claim and of the proved facts, even more so since the decision I will make is not a criminal imputation, therefore the principles of "nullumcrimen", "nullapena", etc. will not be affected. This is how the judge in the famous "Kattan" case proceeded (the case about the "dolphins").

In that case plaintiffs requested the judge to prohibit the hunting or capture of the dolphins in our seas "until there were finished studies about the impact of hunting on the fauna and the environment". The claim was based on two authorizations by the Executive Power to capture 14 dolphins.

The judge held that "the strict requested measure supposes a sentence in the future that, for said reason, it is not viable". He added: "Nonetheless, in accordance to the principle of "iuranovit curia" I consider that I can void the permissive resolutions that have caused the issue". (Juzgado de 1ª Instancia en lo Contencioso Administrativo Federal N° 2, 10.05.83, "Kattan Alberto E. y otro c./Poder Ejecutivo Nacional sobre amparo"
(firme), MJ-JU-M-8640-AR/MJJ8640)

As you will see, I understand the present case involves the protection of a collective good or value that later I will identify, and I also consider that given the particular base and procedural characteristics of the case, I am not only authorized, but obliged to issue a decision.

The National Constitution expressly recognizes since 1994 a new category of rights: the "rights of collective impact" (article 43, second paragraph, CN), referring to the right to the environment, among others, established by article 41 CN. The right to the environment was incorporated expressly in article 41 CN with the following text, which I allow myself to reproduce to facilitate the reading of the argument that I will develop.

"All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education. The Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions…"

The "right to the environment" is a right of collective impact. Without a doubt, this is what is stated on article 43 CN which establishes the "collective protection" in the following terms: "…This summary proceeding against any form of discrimination and about rights protecting the environment, competition, users and consumers, as well as about rights of general public interest, shall be filed by the damaged party, the ombudsman and the associations which foster such ends registered according to a law determining their requirements and organization forms…"

The notion of the "right of collective impact" or "diffuse right" was recognized in our province even before the 1994 reform of the National Constitution. Remember our ground-breaking Law 5961 of 1993 about "environment preservation".

In its Title IV (jurisdictional defense of the environment) there is regulation of a system of actions destined to the jurisdictional defense of the rights and interests that today, with the terminology of article 43 CN we would call "of collective impact".

Article 16 establishes that the jurisdictional defense is granted to "the diffuse interests and collective rights, protecting the environment, the conservation of the ecological balance, the esthetic, historical, urban, artistic, architectonic, archaeological, and the landscape values" and to "any other goods that respond in an identical manner to the common needs of the human groups in order to safeguard the quality of the social life" (article 16, Law no. 5961).

Let us continue.

Article 41 CN incorporates a broad notion of "environment", which includes, together with the natural patrimony, the cultural values and the quality of social life. Regarding the first one, have in mind that orangutan Cecilia is part of the wild fauna of our country and therefore she is within the scope of the national law 22.421 for the protection of wild fauna, which was adopted by our province through law 4602.

Let us move forward to remember that article 3 of law 22.421 states that "wild fauna" means animals "that are untamed or wild that live controlled by man, in captivity or semi-captivity".

Well, article 1 of the law declares as "public interest" the protection and conservation of wild fauna. It is important to point out that article 1 states that "all inhabitants of the Nation have the duty to protect wild fauna", a rule that, as I will state later, strengthens the recognition of procedural legitimation in actions and initiatives oriented to enforce that protection.

Tawil warns that "supporting a broad conception of the concept of the environment… the constitutional clause has given the authorities the duty to provide the preservation of the natural and cultural patrimony…"(Tawil, Guido S."La cláusula ambiental en la Constitución Nacional", in Estudios sobre lareforma constitucional, Cassagne, Juan Carlos (dir), Buenos Aires,Depalma, 1995, page 21, on page 50).

Mariana Valls says that "adhering to a broad conception of the environment permits the State to regulate in the matter of… b) historical and cultural places, zoos and botanical gardens, among other things", referring to the passage where article 41 CN imposes a duty for authorities to protect the natural and cultural patrimony. (Valls, Mariana, Derecho Ambiental, Ciudad Argentina, 1999, p. 40)

The broad notion of the environment is confirmed by law no. 25.675, known as the General Law of the Environment (the publication on the Boletín Oficial named it the "National Environmental Policy Law") which is one of the "rules of minimum protection standards" that article 41 CN established as a new sort of rules ("the Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them…).

Article 2 of Law 25.675 sets some of the following objectives of the "national environmental policy": "… a) Assure the preservation, conservation, recovery, and improvement of the quality of the environmental resources, both natural and cultural…; b) Promote the improvement of the quality of life, for present and future generations, making it a priority"

Article 27 of Law 25.675 states the following: This chapter establishes the rules that will regulate the legal facts or acts, legal or illegal, which by action or omission, cause an environmental damage of collective impact. An environmental damage is defined as any relevant alteration which negatively modifies the environment, its resources, the balance of the ecosystems, or the collective goods or values."

Article 31 of Law 25.675 states that the person responsible for a collective environmental damage is responsible "towards society", while article 32 of the same law, grants broad faculties to the judge who intervenes in the procedure for a collective environmental damage "in order to effectively protect the general interest".

Therefore, the right to the preservation of the natural and cultural patrimony and the right to the quality of life are part of the "right to the environment" (Art. 41 CN), they constitute

the “collective impact rights” and are essentially connected to the general interest of society.

Bustamante Alsina has said that article 41 CN “incorporates to the National Constitution the two universally recognized postulates, quality of life… and “sustainable development”(Bustamante Alsina, Jorge, Derecho Ambiental. Fundamentación yNormativa. Abeledo-Perrot, Buenos Aires, 1995, p. 64).

This same author recalls that the notion of quality of life “expresses the will of the search for a quality beyond what is measurable, which is the level of life. In other words, the environment concerns not only Nature, but also the social relations of men…”

Meanwhile, Lorenzetti points out: “One of the most important values that are introduced in legislation is the one of quality of life. Section b) of article 2 of law 25.675 establishes as an objective “to promote the improvement of the quality of life of present and future generations, making it a priority”. (Lorenzetti,Ricardo L. “Teoría del Derecho Ambiental”, 1ª. Ed. Buenos Aires, La Ley, 2008, p. 59).

In a ground breaking judgment before the National Constitution reform of 1994 it was stated that the custody of the environment “coincides with the protection of the physical-emotional balance of man…”(Juzgado de PrimeraInstanciaen lo Civil, Comercial y MinasN° 4, 02.10.86, “Morales Víctor H. y otro c. Provincia de Mendoza”, ED
123-537, p. 543).

In this case the judge declared void the provincial decree that had lifted the ban on sport hunting and fishing in the fauna reserve of the Llancanelo lagoon. The judge stated that “the contested decree… orders the end of the ban… without a previous and indispensable study about the environmental impact… Such measure puts us… in front of the possibility of a certain degree of degradation of the surroundings and the decay of natural resources. Consequently, this compromises directly the quality of life of the inhabitants”(considerando 4°, ED 123-537, en p.542).

When the 1994 reform was already in force it was decided that quality of life was a postulate included under article 41 CN (cf. CámaraNacional de Apelaciones en lo Civil Sala H, 01.10.99, "Subterráneos de Buenos Aires S.E. c/Propietario de la Estación de servicio Shell calle Limaentre Estados Unidos e Independencia" (J.A. 1999-IV, p.308, on p. 315).

The enjoyment of a park was considered an integral element of the value of the "quality of life", protected by article 41 CN (Supremo Tribunal de Justicia de Entre Ríos, Sala 1 en lo Penal,23.06.95, "Moro Carlos Emilio y otros c. Municipalidad de Paraná" E.D.167-69).

The Supreme Court of the Province of Buenos Aires protected the "right to landscape" of the Cariló community. The case claimed that the Municipality was ignoring the law that declared a provincial interest that landscape since it continued to enforce decrees that authorized acts such as the extraction of sand dunes, the modification of the original levels of streets, the destruction of aged trees, etc.

The court ordered the Municipality to enact a decree to effectively protect the local landscape, effectively regulating the provincial law. (SCBA, 29.05.02, "Sociedad de Fomento de Cariló c. Municipalidad de Pinamar" La Ley Buenos Aires -2002- page 923).

The deprivation of the esthetic enjoyment provided by a traditional sculpture group built on the public road of the city of Tandil which was destructed by the impact of a crowd was compensated as a "moral collective damage" suffered by the inhabitants of that city (Cámara Civil y Comercial de Azul, Sala II, 22.10.96, "Municipalidad deTandilc./TransportesAutomotores La Estrella y otro s/daños y perjuicios",Microiuris MJ-JU-E-12493-AR/EDJ 12493).

The Supreme Court of Justice of the Province of Buenos Aires stated that the damage to the architectonic and cultural patrimony of the inhabitants of the La Plata City "would affect the public interest implicated with the constitutional protection of the environment"(SCBA,

24.05.11,causa I.71-446 “FundaciónBiósfera y otros c./Municipalidad de La Platas/ inconst. ord. N° 10.703” Microiuris MJ-JU-M-65229-AR | MJJ65229| MJJ65229).

It is interesting that in the landmark case of “Kattan”, which I mentioned above, the judge cleverly pointed out that the defendant State in arguing the similitude of the capture of the dolphins with what happens with “cows, pigs, sheep, etc.” and with the commercial fishing of other species” has confused the concept of a natural resource with a cultural resource” (aforementioned judgment, whereas III). Namely, the judge perceived that in the protection of the species of the dolphin not only was the protection of the fauna involved (the decision has extensive considerations of law 22.421), the “cultural” dimension was also at stake.

Now, in our case, which is the collective good or value within the ample right to the environment and which is the “general interest” that a judge is called to effectively protect (Arg. Art. 32 law 25.675)?

I understand that in the present case the collective good and value is embodied in the wellbeing of Cecilia, a member of the “community” of individuals of our zoo. This because Cecilia is part of the natural patrimony (law 22.421), but also her relation with the human community –in my opinion– makes her part of the cultural patrimony of the community.

For one reason or another, her wellbeing has to do with the protection of a collective patrimony. Likewise, it is part of the quality of life of the community, the protection of that patrimony is part of the physical-emotional balance (aforementioned judgment “Morales, Víctor H.”), which is the same as Cecilia’s wellbeing.

I point out in advance that I will decide following the proposal of the Government of the Province to transfer Cecilia to a better destination, outside of our country. I do not find that decision contrary to the protection of the natural and cultural patrimony and the quality of life of our community.

It has been proven that today our community cannot provide Cecilia the wellbeing that plaintiffs and the Government of the Province intend to protect.

Within those particular circumstances, the transfer beyond our borders represents the ideal way so that the one that today is part of "our" patrimony can continue her life in better conditions.

The spiritual bond that connects a community with the elements of its patrimony does not depend on the physical proximity, it depends on the intensity with which the relations is experienced and strengthen through time, independent of the element of ownership or the jurisdiction to which it is subject to.

In terms of our quality of life, I am convinced that if the community is duly informed and educated (art. 41 CN: "the authorities shall provide for… environmental information and education") about the circumstances that result in my decision, it will feel the satisfaction of knowing that acting collectively as a society we have been able to give Cecilia the life she deserves.

Cecilia's present situation moves us. If we take care of her wellbeing, it is not Cecilia who will owe us; it is us who will have to thank her for giving us the opportunity to grow as a group and to feel a little more human.

I will now address the issue of standing.

The initiator of the process invoked he represented an association, the State Attorney objected. The broadness to recognize legal standing in these types of causes makes it impossible for the initiator to ignore it, independent of his condition as a representative.

Standing should be recognized by virtue of the direct or similar application, as the case may be, of various factual and procedural rules, as we will see.

The party is “damaged” according to the meaning in article 43 CN. The party has standing as stated in art. 1 of law 22.421 for the protection of fauna, applied to our Province by law 4602 (according to the aforementioned judgments in “Kattan” and “Morales”). It is the “affected party” according to article 30 of law 25.675 of National Environmental Policy. That same article 30 enables “any person” to “request the cease of activities that generate a collective environmental damage”.

Article 1712 of the Civil and Commercial Code gives standing to any person that “proves a reasonable interest” to “demand” as provided under article 1711 to prevent the “continuance” of a damage.

Article 10 of the Criminal Procedure Code of our province grants standing as a “particular claimant” to “any person” in relation to crimes that injure “diffuse interests”.

b.-After analyzing the standing issue, I will continue on to point out the grounds for the course of action I feel obliged to.

Dr. Pablo Nicolás Buompadre, President of the Association of Officials and Lawyers for Animal Rights, with the support of attorney Dr. Santiago Rauek, request through an action of habeas corpus the freedom for the chimpanzee named “Cecilia” because she was arbitrarily and illegally deprived of her freedom of movement. As a result, they request the immediate transfer and relocation of the chimpanzee to the Chimpanzee Sanctuary of Sorocaba, Brazil.

However, in an effort to bring a jurisdictional resolution in accordance to the desired outcome, I deem necessary to analyze if the presentation of the Habeas Corpus action, art. 43 of the National Constitution, articles 17, 19, 21, and cc of the Province Constitution of Mendoza, art. 440 and ss of the Criminal Procedure Code of Mendoza and National Law 23.098, is in order with the treatment and attainment of the intended purposes.

Quoting the constitutionalist Bidart Campos, the doctrine states that the habeas corpus action is an urgent and "supreme" guarantee "via which the affected party, or even by any other person on his behalf, demands to the judicial authority the party's freedom, if the detention was not issued by a competent authority or has not followed the applicable procedure or lacks a legal cause. (FALCON,Enrique M.; "TRATADO DE DERECHO PROCESAL CONSTITUCIONAL. TOMOII", Ed. Rubinzal- Culzoni, Santa Fe, 2010, p. 531). The habeas corpus is the ideal constitutional mechanism to protect the freedom of movement.

This guarantee is provided by article 18 of the National Constitution when it states that "Nobody may be… arrested except by virtue of a written warrant issued by a competent authority" and by article 43, after the 1994 reform, which states that " When the right damaged, limited, modified, or threatened affects physical liberty, or in case of an illegitimate worsening of procedures or conditions of detention, or of forced missing of persons, the action of habeas corpus shall be filed by the party concerned or by any other person on his behalf, and the judge shall immediately make a decision even under state of siege." Also, article 21 of the Constitution of the Province of Mendoza establishes that "Any detained person, or any other person on his behalf, shall request to be brought immediately before a judge, and if the decree was issued by a competent authority, the person shall not be detained more than twenty four hours against his will, without being notified by an also competent judge the cause of his detention.

Article 440 of the Criminal Procedure Code of Mendoza provides that: "Any detained or confined person in violation of articles 17, 19, 21, and correlative of the Mendoza Constitution, or that considers imminent his arbitrary detention, shall file a habeas corpus to attain the end of the restriction or the threat. The same provisions are afforded to any other person to assert this right on behalf of the affected party, no order is necessary. When the habeas corpus is based on the aggravated prison conditions imposed by the competent judicial authority, the proceeding will be according the National Law no. 23.098…"

Studying constitutional rights protected by the Habeas Corpus, Néstor Pedro Sagués states that there are two positions: "TESIS RESTRICTIVA. A traditional Argentinean doctrine that

holds that the fundamental law, in allowing the habeas corpus action, only sets it for the protection of physical freedom, the *iusmovendi et ambulandi* from the Roman law, or the power of locomotion from the Anglo-Saxon law… TESIS AMPLIA. Nonetheless, certain areas of the doctrine and the case law (followed also by some rules from provincial public law) supported the impact of the habeas corpus to guarantee all constitutional freedom rights… LAW 23.098. This norm came to modify in part the regime supported by law 16.986, while it is true that section 1 of article 3 enabled the habeas corpus to offset any limitation or threat to freedom…, it also sets it up to repair the illegitimate aggravation of the process and conditions to achieve the deprivation of liberty… CONSTITUTIONAL REFORM OF 1994. The new article 43 of the National Constitution states that the protected right is the physical liberty, although it keeps being the mold of law 23.098, it also deals with the cases of illegitimate aggravation of the process and conditions of a detention…"(SAGÜÉS, Néstor, DERECHO PROCESALCONSTITUCIONAL. HÁBEAS CORPUS. Ley 23.098 Comentada y concordada con la Constitución Nacional y Normas Provinciales. 3° Edición Actualizada y Ampliada. Editorial Astrea de Alfredo y Ricado Depalma. Buenos Aires. 1998. P. 135/138).

Furthermore, he adds: "The elements of urgency that qualify the habeas corpus are not legally incompatible with the consideration and analysis of all the judgment elements necessary to consider its purpose and decide. Such doctrine emerges also from the Supreme Court stating that within the habeas corpus all facts and causes should be heard, all that serve as grounds, whichever they are… Finally, the Court concludes that if a habeas corpus is filed, the existence or non existence of an act or omission which affects personal liberty must be determined, which involves that all reasonable advisable judicial procedures must be carried out." (the aforementioned work, p. 344/345).

Therefore, to consider the principal elements of the action of Habeas Corpus, physical liberty and liberty of movement, the fundamental characteristics that arise are its summary nature, in which issues of previous impact are not heard; and urgency, which translates into the procedures expected for the habeas corpus action.

Specifically, the purpose of the habeas corpus consists in the protection of physical liberty illegally restricted, as well as correcting the procedures or conditions in which detentions of a person are served, this according to the regulations mentioned in the previous paragraphs. The habeas corpus is set to consider the violation of a right or guarantee of physical liberty of a person by the act of an authority that has exceeded the setting of its competence or that has gone too far apart from the reasonableness of its acts.

The habeas corpus complaint can be filed by the person that alleges to be illegitimately detained or that the conditions of his detention are aggravated or by anyone on his behalf, which means family, friends or any third party.

Dr. Buompadre points out that chimpanzee Cecilia is arbitrarily and illegally detained in the Mendoza zoo since there is no order from a competent authority that allows said detention.

I dissent from the affirmation of plaintiffs' attorney. There is an obligation to place legal and administrative acts carried out by the Provincial State within the historical moment they happened, without issuing a judgment of moral value or blame about said acts.

The Zoo of the Province of Mendoza was created on May 18, 1903 by the enactment of Law no. 1897. In other words, more than a century ago the authorities anticipated the inclusion of different animal species in the facilities and cages of the provincial zoo. Therefore, species of bears, tigers, monkeys, chimpanzees, birds, elephants, etc. were gathered in the zoo facilities.

Nonetheless, we cannot deny that as a rule of undeniable experience, societies evolve in their moral conducts, thoughts, and values, and also in its legislations. More than a century ago most of the individual rights that are expressly recognized today in the constitutions of the different countries and by the Human Rights International Treaties were ignored and in some cases they were even overlooked, or worse, insulted like the rights related to gender perspective.

At present, we can see an awareness of situations and realities that although are have been happening since unmemorable times, they were not recognized by social figures. That is the case of gender violence, marriage equality, equal voting rights, etc. There is an identical situation with the awareness of animal rights.

It cannot be considered as illegitimate the legal act executed by the authorities in 1897 creating the provincial zoo, seeing as said act, as well as the inclusion of the chimpanzee Cecilia, followed the conditions of the applicable legislation and with standards typical of that time with respect to the exhibition of different animal species.

After stating briefly the principles that inspire the Habeas Corpus action we must solve if the procedure attempted by plaintiffs is correct.

This is about an issue, as it almost always happens; with a series of normative elements that all combined allow us to arrive to a definition. Let us see what Article 5 of the Criminal Procedure Code states: "Art. 5. Conflict resolution. Courts should solve conflicts that arise from facts, following the principles stated by the laws, contributing to restore the social harmony between the parties."

In cases where it is in jeopardy the collective right to the preservation of the natural and cultural patrimony, the judge will "protect effectively the general interest" (arg. art. 32 of law 25.675).

In the well-known "Mendoza" case (contamination of the Matanza-Riachuelo river), in relation to the express recognition of the right to the environment on art. 41 CN, the Supreme Court of Justice of the Nation asserted that "the recognition of the constitutional status of the right to enjoy a healthy environment, as well as the express and typical outlook regarding the duty to repair the environmental damage are not part of a mere expression of good and desirable purposes for future generations, its efficiency dependent on a discretional authority of the public, federal, or provincial powers, it is instead the precise and positive decision of the constituent of 1994 to numerate and set a pre-existent

right holding a supreme rank within the hierarchy...” (CSN, 20.06.06, “Mendoza, Beatriz Silvia y otros c/Estado Nacional and others s/torts (derivative damages from the environmental contamination of the Río Matanza-Riachuelo”, Fallos: 331:1622).

In the same precedent the Court stated that “The improvement or degradation of the environment benefits or harms all because it belongs to the social and transindividual sphere and from there comes the particular energy judges must use to implement the constitutional mandates” (whereas 18).

It also stated that in the protection of the collective environmental wellbeing “the prevention of future damages has an absolute priority” and it pointed out the relevance of that conception to the case solution in which it was argued that it was about “continuing damages” (aforementioned whereas 18, first paragraph).

In our case, the factual situation makes it imperative to issue a judicial resolution which protects the collective value that is at stake.

An activity which deteriorates or damages the core of the collective values and goods within the ample notion that is the environment, must cease as soon as possible.

The Supreme Court of the Province of Buenos Aires stated that prevention in the environmental field has a superior importance compared with other fields since the attack to the environment is manifested in acts that by its mere perpetration cause a certain and irreversible damage, so to allow its advancement and continuation brings a perceptible degradation of the quality of life of human beings, therefore, its culmination is a measure that cannot be postponed (SCBA, 19.05.98, “Almada, Hugo N. c.Copetro S.A.”, JA 1999-I-p.259, vote by Dr. Pettigiani, point 6).

Consequently, it is not possible to postpone or deny a decision that solves the conflict and that contributes to restore the social harmony between its participants (art. 5 CPP aforementioned).

c.-It is necessary to deal with the great question: are the great apes –orangutans, bonobos, gorillas, and chimpanzees–non human legal persons?

In analyzing this topic it is essential to refer to the applicable civil legislation. Article 227 states: "Personal property are things that can be transferred from one place to another, by themselves or moved by an external force, with exception of the ones that are accessory to real estate." As noted by the applicable doctrine, this precept includes three different categories: things that can move by themselves can be animals, the ones referred to as semi moving, or inanimate things that have propulsion mechanisms that can be started by men or machines, like cars. (RIVERA, Julio César; MEDINA, Graciela; "CÓDIGO CIVIL YCOMERCIAL DE LA NACIÓN. COMENTADO. TOMO I", Ed. La Ley, Buenos Aires, 2014, p. 505)

The traditional rule considering animals as personal property, since they can move by themselves, is affirmed in the new article 227 of the aforementioned C.C.C. Nonetheless, in the analysis of the classification of personal property, the doctrine says nothing about the present discussion, assuming that the State, as well as individuals can own animals as personal property, given their condition as things.

The recent Civil and Commercial Code added in article 240 limits to the exercise of individual rights over property and established that "The exercise of individual rights over the property mentioned in sections 1 and 2 must be compatible with the rights of collective impact. It must follow administrative national and local law rules issued for public interest and it must not affect the functioning, or the sustainability of the ecosystems: flora, fauna, biodiversity, water, cultural values, the landscape, among others, following special law." This rule has a strict relation and coherence with the General Environment Law no. 25675 of 2002. The article diminishes the exercise of individual rights in relation to the protection of the rights of collective impact which are the ones that guarantee humanity a decent and sustainable life for the future.

I am aware that for more than one decade our society has started a slow process of awareness and learning about the impact of the excessive and illegitimate use of property that is part of the patrimony of private or public legal persons, so that there has been a strong enforcement of the idea of the protection and preservation of the environment.

In spite of this advancement, men have not questioned enough what happens with animals within the natural scope of society. Even less have judicial authorities asked about the present topic: are animals legal persons?

For Llambías it is not necessary the definition of what a human person is since if "there is something that does not require definition… is the human itself". (RIVERA, Julio César, MEDINA, Graciela, Op.Citada, p. 114). Nonetheless, I differ from the prestigious author since the category of a person must be necessarily defined because within the legal scope the concept of a person is identified with the concept of a legal person. This premise is followed by: is the human being the only one that can be considered as a legal person? Is man the only one that can have legal capacity?

Following the great thinkers of philosophy like Aristotle, it has been said that human beings are different form animals because they have the capacity of a political relation, in other words, the capacity to create societies and organize life in cities. Namely, men and animals would be of the same species different only by the political capacity of men.

To classify animals as things is not a correct standard. The essential nature of things is to be inanimate objects in contrast with a living being. Civil legislation sub classifies animals as semi moving giving them the "unique" and "enhanced" characteristic of a "thing" that can move by itself.

Animals are sentient beings insomuch as they understand basic emotions. Experts agree unanimously about the genetic proximity of chimpanzees with human beings and they add that chimpanzees have the capacity to reason, they are intelligent, are conscientious of themselves, they have culture diversity, expressions of mental games, they manifest grief,

use and construction of tools to access food or to solve simple problems of daily life, abstraction capacity, skills to handle symbols in communication, conscience to express emotions such as happiness, frustration, desires or deceit, planned organization for intraspecific battles and ambush for hunting, they have metacognitive abilities, they have a moral, psychic, and physical status, they have their own culture, they have affectionate feelings (they caress and groom each other), they are capable of lying, they have symbols for human language and use tools. (See p. 200/209, 214/234. 235/240)

It is undeniable that great apes, like the chimpanzee, are sentient beings and therefore they have non-human rights. Such category in no way distorts the concept put forward by the doctrine. A chimpanzee is not a thing, he is not an object that can disposed of like a car or a building. Great apes are legal persons, with legal capacity but incompetent to act as it is corroborated by the evidence in this case that chimpanzees reach the intellectual capacity of a 4 year old child.

Great apes are legal persons and owners of the inherent rights of sentient beings. This affirmation seems contrary to the applicable positive laws. But this is only an appearance that comes out only in certain doctrine sectors that are not aware of the clear incoherence of our legal system that states that animals are things while it also protects them from animal cruelty, legislating for this even within criminal law. Legislation about animal cruelty means that there is a strong presumption that animals "feel" such cruelty and that suffering must be avoided, and in case it happens, it must be punished by criminal law.

The doctrine illustrates the two theory lines that justify the recognition of animal rights: "First, there is the utilitarian theory which is based on Bentham, who states that a moral person is any being that is able to feel pleasure or pain, and states that a legal person is whoever fulfills this condition, even individuals within the animal kingdom. Along the same line, Salt argues in favor of the recognition of rights for animals of inferior breeds. This theoretical development culminates with the work of Peter Singer who defines suffering as a vital characteristic that should be used for the attribution of the condition of legal person. He proposes an "anti-speciesism" standard, requesting equal treatment for all legal persons

irrelevant of their species… The second line of theory is the one we can call deep ecology and is based on the work of Zaffaroni who is quoted in the ruling of the C.F.C.P. Part of the basis of the Gaia hypothesis of the theologist Leonardo Boff who states that "Earth is a living organism, is the Pachamama of our native people, the Gaia of the contemporary cosmologists. In an evolutionary perspective, the human beings, born from the humus, we are a unique complex reality. There is an interrelation within the living and inert beings, between the atmosphere, the oceans, the mountains, the surface of the earth, the biosphere and the anthroposphere. There is no addition of all those parts, but an order between them. This nature or Pachamama as a live organism is for this theory a legal person…"(MUÑIZ, Carlos M., "Los animales ante la Ley. De Objetos y Sujetos", Ed. La Ley, AR/DOC/594/2016)

The aforementioned author criticizes both postures because of the legal void they create. However, I consider that the legal void is not reasonable or sufficient to avoid the initial kick to the controversy about if animals are considered things or legal persons. It not a dogmatic and superabundant declaration to determine that great apes have non-human legal personhood because civil and commercial law expressly determines they are things. Protections against animal cruelty and animal preservation are not enough. The human apathy towards the omission of the study and analysis about the quality of great apes as non-human legal persons is a behavior contrary to the concept of human dignity because humans must pay attention to their own future preservation which is dependent primarily to the surrounding ecosystem. And there, clearly, great apes are included with whom we share between 94 and 99% of DNA and possess similar characteristics with human beings.

Human dignity is the product of a construction and not something imposed, and this is based on the capacity of humans of being rational. So much so, for example, that not so long ago homosexuality was considered a deviation of sexual order, a discussion that today is absolutely defeated. I must point out that the animal cruelty crime regulated by Law no. 14.346 the protected legal value is the animal's right to not be an object of human cruelty. The interpretation of the purpose of the legislator implies that the animal is not a thing; instead it is a sentient being. The only conclusion is that animals have legal personhood,

that they have fundamental rights that should not be violated because they have metacognitive abilities and emotions mentioned in the paragraphs above.

The moral and ethical construction of men and their dignity is in permanent evolution. The recognition of men as social individuals, with learning aptitude, has lead him to understand that nature must protected and animals should not be mistreated, without prejudice that said evolution/learning is determined by the environmental dilemma of the last decades.

Dr. Pedro David, commenting about the ruling by the Cámara Federal de Casación Penal of the Republic of Argentina, courtroom II, stated the following: "Well, never before have humans encountered this historical crossroad where their lifestyle in the most economical and technological advanced societies is destroying the planet, and with it risking his own life, water, climate and the survival of the species.

For that reason, today, through the values of solidarity and caring for the creation, they are extended, by way of legislation and case law, from the international scope and in many countries, to the best legal protection to those species like orangutans and bonobos, dolphins, and other protected species that must be effectively cared for with the legal guarantees of the rights afforded to humans. Not in the totality of its protection, but in the most effective procedures for their own care and survival. This is not about avoiding circumstantial protection patches that appear as protections in front of the squandering of the planet which national legislation still tolerates, when they are not supporting it…"(DAVID, Pedro, "NOTA SOBRE EL CASO DESANDRA, SUJETO DE DERECHO NO HUMANO", Revista El Derecho Penal, El Derecho, ISSN 1667-1805)

Therefore, in the present case we are not stating that sentient beings-animals- are the same as human beings, and we are not raising to a human category all existent animals or flora and fauna, we are recognizing and confirming that primates are non-human legal persons and they possess fundamental rights that should be studied and listed by state authorities, a task that exceeds the jurisdictional scope.

Animals must have fundamental rights and the applicable legislation in accordance with such fundamental rights to protect the particular situation they encounter, following the evolutionary degree that science has determined they can reach. This is not about granting them the same rights humans have, it is about accepting and understanding once and for all that they are living sentient beings, with legal personhood and that among other rights; they are assisted by the fundamental right to be born, to live, grow and die in the proper environment for their species. Animals and great apes are not objects to be exposed like a work of art created by humans.

We cannot evade that that a great sector of the doctrine is against the recognition of animals as legal persons, so that some do not understand how is it possible for animals to exercise their rights, while understand that is human genes are the ones that determine legal personhood (excluding speciesism).

I understand that the first argument must be rejected since at present incompetence does not exclude at present those human beings that lack the capacity of language. Such is the case of deaf mutes that do not possess the capacity for audible language but they can communicate through sign language. Likewise, we can include as human beings that are incompetent the mentally ill. Even if a conduct cannot be assigned to a human being, it does not mean his condition as a person is not recognized, such is the case of newborns.

The rights of incompetent persons are exercised by their legal representatives, that in the case of animals they could be represented by a NGO or by any State organism o by any person who claims collective or diffuse interests.

In terms of the second argument, excluding speciesism, I consider that scientific studies challenge this argument since human genes and the genes of great apes are shared between 94% and 96%, questioning if our genes are selective and exclusive.

Guillermo Borda states that "… In other words, the person is not a product of the law, it is not born by the grace of the State, it is the flesh and bones man who is born, suffers and

dies-specially dies- eats and drinks and plays and sleep and thinks and loves". Even with a "juridical person" the ultimate and true recipient of the rights and obligations is always man because the law only happens between men. That is why the law does not create those persons, neither could it ignore them and even less could it arbitrarily create others that are not men or the entities among which he develops his activities and rights. For example, it could not recognize the character of persons to animals or inanimate things."(BORDA, Guillermo A., "TRATADO DE DERECHO CIVIL. PARTEGENERAL", Vol. I, Ed. La Ley, Buenos Aires, 2008, p. 243)

I agree with the affirmation stated by the aforementioned author ut supra when he points out that a person-a human being- is not born by the grace of the law or because the State decides it. The human being is a person, a legal person, since he is flesh and bones, is born, suffers and dies, drinks and plays and sleeps and thinks and loves.

Most animals and specifically the great apes, are also flesh and bones, they are born, suffer, drink, play, sleep, have abstraction capacity, love, are gregarious, etc. Thus, the category of an individual as the center of the attribution of rules (or "legal person") would not include only human beings, it would also include the great apes-orangutans, gorillas, bonobos, and chimpanzees.

I insist that it is not about granting great apes the rights listed in civil and commercial law. Neither is it the purpose of this authority to create a catalog of the rights of great apes. This is about setting them in the category of non human legal persons, where they really belong.

Edgardo I. Saux commenting about the abovementioned ruling of the Cámara Nacional de Casación Penal, quoting Picasso, he explains: "And finally the question-and we share it: The personification of animals, isn't it precisely to put man in the center of the world and rise him as owner of nature? Isn't it a narcissist illusion? Why can't we think that to respect them means leaving them in peace as much as we can and avoid unnecessary cruelty against them instead of making them involuntary actors in the theater of Human Law? **Irrefutable"**. (my emphasis)(SAUX, Edgardo. I, "PERSONIFICACIÓN DE LOS ANIMALES.

DEBATE NECESARIO SOBRE EL ALCANCE DE CATEGORIASJURÍDICAS", Ed. La Ley, Tomo La Ley 2016-B, YEAR LXXX N° 64, Buenos Aires, 2016, p. 1/5)

This court asks if in front of an argument qualified as irrefutable, isn't the animal already an involuntary actor in the theater of human law? The question is immediately answered by any social individual. Zoos are the stage where great apes are exposed to the visits of human beings who pay a sum of money to access these institutions. Great apes born free are captured and sold for large amounts of money, that is, they are involuntary objects of the law. Consequently, animals are involuntary actors in the theater of human law. Recognizing great apes as legal persons is the best act of inclusion as involuntary parties in the legal system human beings can do, not as a narcissist being but following the dignity of human beings, who rise as beings that know man can feel and think, and as a thinking being that reacts and acts in front of this big observable phenomenon and even more evident that animals are not things.

Later Saux points out that "… That biological-legal correlation, indestructible and unswerving, relates to sides of the human condition that is unknown to the "non human" animal world, freedom and will. Law rules conduct and conducts are typical of humans. Animals follow instincts, needs, or habits, but their supposed conducts are not judicable".

This argument, I reaffirm it, loses convincing power and logic since some human beings lack will and for that we do not stop considering them humans. Even more, to say that freedom is not inherent to the animal world is a mistake since "the privation of freedom" to which animals are subjected is not given by nature, it is man who rationally captures, hunts and puts in captivity animals, but they are born free and it is man who deprives them of it.

"Man has a nature that puts him beyond his own nature: he is a limited being that constantly tends to exceed his own limits, he is organized in time and space which his intentional conscience captures and transcends. He is a historic being. It is in history that he is constantly made and remade. Human history, on the other hand intertwined with the world. The realization of men through the transformation of the world. This is why must

be reconsidered always, society must be reformed in each moment: the incessant search of the goal of liberation, of humanization, of being more. The historic condition of man makes education to be called to insert in the task on conquering human form which presents itself always beyond of actual factuality. The "learning to be" of education will be a constant process of liberation of man that will result also in the re-creation and transformation of the world. (DAVID, Pedro, aforementioned)

It is indispensable to point out that the Universal Declaration of Animal Rights, issued in 1977 by the UNESCO and approved by the United Nations Organization, recognizes animal rights and specifically in its article no. 4 states that: "a) All wild animals have the right to liberty in their natural environment, whether land, air or water, and should be allowed to procreate. b) Deprivation of freedom, even for educational purposes, is an infringement of this right."

This way, at international level it is expressly recognized that great apes, among other species, have the right to live free.

What concerns us here is that in the Province of Mendoza Zoo chimpanzee Cecilia, who is 20 years old, resides in a cage of small dimensions where there is sunlight few hours a day during winter and extreme heat besets during summer. This court made a surprise inspection to the Mendoza zoo and confirmed that Cecilia was in a corner of the facilities since there was sunlight only there, the water dispenser was empty and Cecilia had few elements for her entertainment like balls, rope, car tires, etc. However, it was observed the sad and sorry image that in the cement walls there were drawings of trees and bushes, awkwardly trying to imitate the natural habitat of the ape. And we say awkwardly, not because the zoo hasn't cared for the animal, but because it is beyond this city's financial and administrative possibilities to give Cecilia a really appropriate environment.

Having said that, there is a new question: is a cage, even with big dimensions, a suitable place? The negative answer immediately arises. What is suitable and correct is that men, with the degree of reason that assists us, cease with animal captivity for exhibition and the

entertainment of people, since they are non human legal persons and as such they have an inalienable right to live in their habitat, to be born free and preserve their freedom.

Cecilia was born in captivity and for that we have appropriated the right to dispose of her and keep her in captivity for exhibition. Nonetheless, I must point out that the authorities of the Province of Mendoza have recognized the reality that not because man is an intelligent and sentient being-knowing that he feels- he can inflict suffering to other living beings who lack that characteristic which is purely human (sentient intelligence).

The present authorities of the Province of Mendoza in a committed collaboration with the issue that concerns us, have dealt with the imperative need to end Cecilia's captivity by relocating her to the Sorocaba Sanctuary, and have taken the necessary steps to establish contact with the Brazil authorities and obtained the necessary certificates to proceed with her transfer to Sorocaba.

In conclusion, clarifying and explaining the opinion of this court, which has been reflected in the totality of the arguments presented in this decision, since great apes are non human legal persons, I understand that it is appropriate to grant the petition of Dr. Pablo Buompadre, the A.F.A.D.A. president, represented by attorney Dr. Santiago Rauek.

Finally, we have to reiterate the question that started this resolution: is it the habeas corpus action the applicable procedure? I consider the answer to be in the affirmative.

Since neither the procedure regulation of the province, nor any national law specifically contemplates a procedure to evaluate the situation of animals in captivity in zoos o any captivity situation contrary to the basic needs and natural habitat of the animal in question, I consider that the habeas corpus action is the applicable procedure, adjusting the interpretation and decision to the specific situation of an animal deprived of his essential rights while these are represented by the essential needs and conditions of the existence of the animal in whose favor the action is presented.

Under these circumstances, the habeas corpus action, in the present case, has to adjust strictly to preserve Cecilia's right to live in an environment and conditions appropriate for her species.

JUDGMENT:

I.- GRANT THE HABEAS CORPUS ACTION presented by Dr. Pablo Buompadre, President of the Association of Officials and Lawyers for Animal Rights, A.F.A.D.A., represented by attorney Dr. Santiago Rauek.

II.- Declare chimpanzee Cecilia, who lives in the Province of Mendoza zoo, a non human legal person.

III.- Order the transfer of chimpanzee Cecilia to the Sorocaba Sanctuary in the Republic of Brazil, which must be done before the start of fall, as agreed by the parties.

IV.-Point out the collaboration for the decision on this case of Magister Mariana Caram, del Zoológico, Adm. de Parques y Zoológico, Arq. Ricardo Mariotti, Administrador General, Lic.Humberto Mingorance, Secretario de Ambiente y Ordenamiento Territorial, and Lic. Eduardo Sosa, Jefe de Gabinete de Secretaría deAmbiente.

V.- Request the members of the Honorable Legislatura de la Provincia de Mendoza to provide to the competent authorities the necessary legal resources to cease the serious captivity situation in inappropriate conditions of the zoo animals like the African elephant, the Asian elephants, lions, tigers, bears, among others, and of all exotic species that do not belong in the geographical and climate area of the Province of Mendoza.

VI.- Remember the following expressions: "We can judge the heart of a man by his treatment of animals" (Immanuel Kant). "*Until one has loved an animal a part of one's soul remains unawakened* (Anatole France). "When a man has pity on all living creatures, only the he is noble" (Buda). "*The greatness of a nation* and its moral progress can be judged by the way its animals are treated" (Gandhi).

SO ORDERED. NOTIFY. REGISTER.

CERTIFICATION

I, Ana María Hernández Martí, J.D., M.A. Translation, with office in San Juan Puerto Rico, do hereby certify that I am fully competent to translate from Spanish into English and that this is a true and accurate translation of the originals that were presented to me, done to the best of my knowledge and abilities.

_____

Ana María Hernández Martí

Affidavit of Translator Ana María Hernández

Affidavit No. _____

Sworn and signed before me by ANA MARÍA HERNÁNDEZ of legal age, single, lawyer and translator, and a resident of San Juan, Puerto Rico; of the aforementioned circumstances and whom I know personally.

In_____, Puerto Rico, today, December _____, 2016.

_____

PUBLIC NOTARY