



Judicial Power of the Autonomous City of Buenos Aires

Criminal, Felony, and Misdemeanor Jurisdiction

2022 - Year of the 40th Anniversary of the Malvinas War. In tribute to the veterans and fallen in defense of the Malvinas Islands and the South Atlantic

Court Of First Instance in Criminal, Felony, and Misdemeanor Matters No. 1 Secretary No. 1

NN, NN on 128 – Keeping animals in inappropriate places

Number: IPP 42081/2022-0

CUIJ: IPP J-01-00042081-2/2022-0

Proceeding No: 2179828/2022

The Autonomous City of Buenos Aires.-

As received, the request made by the Prosecutor is considered and, consequently, the case is decided,

FILE AND HEARING:

To resolve case No. 42.081/2022, about the potential commission of the crime punishable under Section 3 - subsection 7 - of Law 14.346: of the registry of this Court of First Instance in Criminal, Felony, and Misdemeanor Matters No. 1, Secretary II;

WHEREAS:

The proceedings have arrived on the occasion of the request introduced by the Public Prosecutor, asking for the declaration of the totality of the fifty-five (55) specimens of the 'dachshund' canine breed as subjects of law; that total freedom be granted, free of any legal measure or restriction concerning said specimens and, consequently, their definitive judicial custody to the persons in charge of the 'NGO Callejeros Casa Quiere' represented by Mrs. Norma Macchi (thirteen specimens) and to the 'NGO Pichichos al Rescate' represented by Mrs. Paula Storni (forty-two specimens).

According to the prosecutor's report, it was established that the purpose of the present case is to determine the materiality of the fact that arises from the results obtained within the framework of the search carried out on June 14, 2022, on the domicile located at

560/562 Campichuelo Street of this city and, in the end, to determine the responsibility of Mrs. Ana Cingolani -who resides in the property mentioned above and is in charge of the custody of the dogs-, who is accused of operating an illegal kennel for dogs which is legally prohibited by Ordinance 41831/87 and article 4.13.1 of the CABA¹ Code of Licenses and Permits, where a total of fifty-five (55) canines of the 'dachshund' breed commonly known as 'perros salchichas'² were found inside, divided into forty-seven (47) females and eight (8) males, ten (10) of them being lactating puppies.

Likewise, the Prosecutor pointed out that after a veterinary medical evaluation, it was determined that the so-called 'five freedoms' were violated, affecting the conditions of the animal's welfare and, consequently, causing unnecessary suffering.

These facts were preliminarily qualified as constituting the crime of animal cruelty and mistreatment, punished by section 3, paragraph 7 of National Law 14.346.

The case brought to my attention, and the specific request sought by the prosecutor basically deals with two issues, which I will analyze separately.

On the request for a declaration as a subject of rights.

To recapitulate, the Prosecutor requested that the 55 non-human animals of the canine species 'dachshund' be declared subjects of rights because they are sentient beings.

In this sense, we must consider that the recognition of sentient beings in the local sphere as subjects of rights is not expressly established. However, what is certain is that the provisions that ensure their life, freedom, and protection lead us to the conclusion that they deserve special recognition to provide them with effective judicial protection, and this, then, allows us to infer, as the prosecution asserts, that they should be recognized as subjects of rights.

First of all, we can see that the protection of environmental rights has constitutional roots since the legislators expressly recognized it. Indeed, section 41 of the National Constitution established that all inhabitants enjoy the right to a healthy environment and have the duty to preserve it. In addition, the Constitution of the City of Buenos Aires, in section 27,

¹ T.N. CABA is the acronym of Ciudad Autónoma de Buenos Aires.

² T.N. 'Perros salchichas' in English means 'sausages dogs.'

paragraph 5, promotes the protection of urban fauna and respect for its life: it controls its health, avoids cruelty, and controls its reproduction with ethical methods.

Thus, we can comprehend that it was the will of the legislators, although not explicitly, to provide special protection to the rights of urban fauna (in CABA) and ecological-environmental (at the national level) in a broader manner.

Not only is it a supra-legal recognition, but it must also be considered that National Law No. 14.346, which punishes acts of animal cruelty, precedes the Constitution of the Autonomous City of Buenos Aires, which, in my opinion, broadens the local sphere or, strictly speaking, it raises its protection to other levels of interpretation that are notably more specific, that is to say, it denotes a legislative policy that reaffirms the recognition of the protection of animal rights.

In addition, we must not lose sight of the wide range of international regulations that recognize them as sensitive beings, proclaim respect for their welfare, consider them as sentient beings and, of course, recognize them as subjects of rights, such as: *the Universal Declaration of Animal Rights*; *the Cambridge Declaration (7/7/2012)*; *the Charter of the Law of the Living (26/5/2021)*; *the Amsterdam Treaty of 1997 and the Lisbon Treaty of 2007 (European Union)*.

Now going into National Law No. 14,346, it was enacted in our country in 1954 with the purpose of punishing mistreatment and acts of cruelty to animals; being that in the parliamentary debate it was argued that this law had the objective, among others, of achieving that the legal conscience is gradually affirmed and growing on this matter. Also, this law sought to protect the moral and ethical sentiment of the Argentinean community in the defense and protection of animals.³

In this regard, it has been understood that the legislative will would have been to recognize that animals could be subjects of rights. This is -somehow- in line with various contemporary movements that proclaim this theory based mainly on the idea that animals are, like humans, living beings vulnerable to suffering.⁴

According to Zaffaroni, concerning non-human subjects (in the case at hand, animals), such legal goods would be the preservation of the existence and conservation of the

³ D'ALESSIO, Andrés, "Código Penal, Comentado y Anotado, Coord. Divito", Volume III, Buenos Aires, La Ley, 2011, p. 250.

⁴ D'ALESSIO ANDRES, Ob. Cit, p. 253.

species; which facilitates the understanding of some types of ecological crimes, in addition to allowing an unsophisticated interpretation of the mistreatment of animals. This idea is repeated in his work 'La Pachamama y el Humano,' where he states that *"the legal good of the crime of mistreatment of animals is none other than the right of the animal itself not to be the object of human cruelty, for which it is necessary to recognize it as a subject of rights."*

It is because of these appreciations that I understand that it seems correct to affirm that animals are subjects of rights since it is an affirmation based on a legislative interpretation, which also has constitutional roots and is based on a series of treaties and laws (in addition to international custom), which allow sustaining that animals are holders of rights, and it is more than clear that the domestic law, guided in spirit by the higher wills, must ensure the effective judicial protection of those rights.

This position has been sustained in different academic works. In this sense, it has been understood that the animalist current has decidedly reached the law through the civil branch, and today there is a widespread European tendency to free animals from the condition of things and grant them an intermediate place between humans and things, as entities capable of feeling and suffering. In short, it is understood *that this situation is not alien to criminal law and has important implications regarding the situation of animals as passive subjects of crimes. Indeed, the new current of animal rights movements argues that it is not enough to treat animals well or to ensure their welfare but that animals, regardless of their species, are subjects of right, a category that has historically been reserved for natural and legal persons, i.e., human beings.*⁵

Having recognized this, it is appropriate to reaffirm the legal status of the dogs as subjects of rights.

On the request for total freedom and definitive judicial custody.

The Prosecutor requests total freedom, free of any legal measure or restriction concerning the seized animals and, consequently, their definitive judicial custody to the 'NGO Callejeros Casa Quiere' - 13 specimens - and 'NGO Pichichos al Rescate' - 42 specimens.

⁵ MAGGIO Facundo and PUIG, Rocío M. "La protección penal contra el maltrato de los animales en el proyecto de Código"; Published in: Sup. Esp. - Comentarios al Proyecto de Código Penal 2019 (June), 15/06/2019, 753; TR LALEY AR/DOC/2051/2019.

First, in the strict sense of criminal procedure, I must clarify that there is no legal measure or restriction that conditions the dogs' freedom, and therefore, the request for total freedom does not be deserving of treatment.

However, some preliminary considerations should be made on the issue of definitive custody.

Under the results obtained during the search carried out on June 14, 2022, at the domicile located at 560/562 Campichuelo Street of this city, a total of fifty-five (55) canine specimens of the breed 'dachshund' commonly known as 'perro salchicha,' discriminated in forty-seven (47) females and eight (8) males, being ten (10) of the puppies still lactating animals, have being found.

From the reading of the various reports attached to the present proceedings, their conclusions coincide with each other. In the first place, the testimonial statement of the specialized professional Veterinarian Marcelo Gastón Giancreco (M.N. 9471) of the Environmental Protection Agency of the Ministry of Environment and Public Space, from which it is noted *"...the existence of 55 canines of the dachshund breed (salchicha) aged between two months and eleven years, of which 47 are females and 7 males; 7 females have mammary tumors, good nutritional status, shiny coat, body score 3 (ideal) and four are overweight. Water and food were available, and no vaccination certificates were presented; the keeper declared to have given the vaccines herself, there was a lack of hygiene, and ammonia scent (urine and fecal matter) was perceived in different areas of the house. It is advisable to seize the animals, castrate those that are not castrated, veterinary control, blood profile to rule out diseases, and the different entities should carry out a six-fold anti-rabies vaccination and interior and exterior deworming"*.

In the same sense, the veterinarian Constanza Georgiadis stated in the expert report dated June 14, 2022, that *"Inside the domicile in different rooms there are 55 Dachshund dogs (Salchicha), 47 females and 8 males in age ranges between 2 months and 12 years old approximately (...) At the time of the inspection, the general hygiene is deficient, and there is the presence of urine and fecal matter in the inspected enclosures"*.

On the other hand, from the report issued by the General Directorate of Environmental Control -subscribed by General Director Yamil Minakowski- (Report No. 21964405- DGCABA-DGCCONT/2022), the staff who intervened in the search and who wrote the respective inspection report verified the following irregularities: *"Dog Breeding Activity*

was found and 2) Animal Mistreatment was established due to lack of hygiene. By virtue of the irregularities indicated in the preceding paragraph, the inspectorate proceeded to immediately and preventively close the activity "Kennel for Dogs" carried out in the establishment mentioned above, making the measure effective by placing 1 (one) interdiction band identified with No. 003669. At the same time, according to the respective inspection report, fifty-five (55) dachshunds (47 females and 8 males) were seized, and the corresponding confiscation act was drawn up, and the dogs were sent by order of the Prosecutor's Office to the NGOs: Callejeros Casa Quieren (13 dogs) and Pichichos al Rescate (42 dogs) ...".

In the same order, from the reading of the report of the Operative Management of Pet Health belonging to the Environmental Protection Agency incorporated into the proceedings, it can be seen that "As a result, it was possible to verify the presence of fifty-five (55) dogs of the Dachshund breed, among them forty-seven (47) females and eight (8) males, whose approximate ages are estimated between three (3) months and eleven (11) years old, with shiny hairy coats with short coats of black and tan, brown and harlequin colors. Body conditions ranged from 3 (IDEAL) to 4 (OVERWEIGHT). Three (3) specimens presented alopecia, presumably due to genetic conditions or endocrinological pathology. Seven (7) females were observed with mammary neoplasia (tumors) of various sizes. No physical lesions were present externally".

Likewise, concerning the habitat, it was described that "...the property consists of a large dwelling, an old house with an internal patio and rooms on both sides. The hygienic conditions of the place were poor, with wet urine floors, the presence of long-standing feces, and ammoniacal odors compatible with the product of canine urine. To identify zoonotic diseases among the population, whether endemic or sporadic, it is suggested that blood samples be taken to make an adequate diagnosis of the health status of the existing population and to determine whether there are chronic consumptive diseases. According to the above, it can be inferred that the animals live in overcrowded conditions and that the physical space in which the population interacts is reduced and inappropriate for the correct development of their behavioral needs. These living conditions make the group's coexistence unhygienic, difficult, and even dangerous, preventing the free expression of their behavior and depriving them of freedom of movement. It is suggested to reduce the animal population and provide an environment and space adequate to the needs of each specimen to promote a better quality of life".

Then, by virtue of the considerations made, it is suggested to take the following measures "... *To reduce the animal population preferably through responsible adoption. Anti-rabies and sextuple vaccination. Internal and external deworming. Veterinary care and pertinent studies, especially for females with mammary neoplasia. Complementary blood tests*".

Finally, they stress, "*It is important to emphasize that to guarantee animal welfare, the following five freedoms must be fulfilled: 1- Freedom from thirst, hunger, and malnutrition. 2- Freedom from discomfort. 3- Freedom from pain, injury, and disease. 4- Freedom to express normal behavior. 5- Freedom from fear and distress. Failure to comply with any of them denotes the absence of animal welfare*".

Lastly, the prosecutor's office added a report from the NGO "Pichichos al Rescate," informing the general condition of the seized specimens, indicating several medical pathologies that coincide with the various reports contained in the proceedings.

Having established the situation, and prior to continuing with the solution applicable to the case, it is appropriate to point out that at the time of the introduction of the request under analysis, Dr. Cipriani, a lawyer who until then was acting as Mrs. Cingolani defense attorney, resigned from his appointment; therefore, before the resolution and to preserve the right of defense of the defendant, she was requested to appoint a lawyer of her confidence; finally, Dr. Claudio Nitzcaner assumed the position (T°46 F° 973 CPACF) after which the parties agreed to suspend the trial on probation, and expressly renounce the possession of the animals.

Based on the foregoing, then, taking into account both the coincident and incontrovertible reports, as well as what was agreed by the parties, it is proper to treat the prosecutor's request in this instance of the process -and in the absence of opposition or objection-, I will admit the request of the Prosecutor and I will grant the definitive custody of the fifty-five (55) dogs to the 'NGO Callejeros Casa Quiere' and 'NGO Pichichichos al Rescate,' represented by Mrs. Norma Macchi and Mrs. Paula Storni, respectively, who may, if deemed necessary and when the physical conditions of the animals allow it, relocate them preferably through responsible adoption.

This judge recognizes several of the animals found at the time of the search were pregnant, without knowing with certainty how many animals were born alive. For this reason, I will declare them as subjects of rights -notwithstanding the fifty-five (55) animals for which

I have already ruled-; and I rule their definitive custody to the NGO that has overseen the temporary care of the pregnant dogs.

Last, considering the agreement reached by the parties, it is appropriate to set a hearing for OCTOBER 20, 2022, at 10:30 a.m., to analyze whether the conditions are met to suspend the trial on probation in favor of Mrs. Ana Virginia Cingolani (concerning arts. 76 bis of the CP and 217 of the CPPCABA).

It is for all the foregoing reasons that **I RESOLVE:**

I. TO DECLARE SUBJECTS OF RIGHTS the 55 non-human animals of the '*dachshund*' breed, and to also declare subjects of rights all the puppies born after the search, in virtue of being sentient beings;

II. TO GRANT DEFINITIVE CUSTODY of the animals to NGOs 'Callejeros Casa Quiere' represented by Mrs. Norma Beatriz Macchi and 'Pichichos al Rescate' represented by Mrs. Paula Storni, who may, if deemed necessary and when the physical conditions allow it, relocate them preferably through responsible adoption; and,

III. TO SET a hearing for **OCTOBER 20, 2022, at 10:30 a.m.**, to be held by videoconference through the application 'Cisco Webex' (according to Resolutions CMCABA 57/21 and 109/21) to analyze whether the conditions are met to suspend the trial on probation in favor of Mrs. Ana Virginia Cingolani (according to arts. 76 bis of the CP and 217 of the CPPCABA).

Let this decision be known, notified to the parties, and, once this decision becomes final, notify the NGOs 'Callejeros Casa Quiere' and 'Pichichichos al Rescate' through the intervening prosecutor's office and stay at the hearing set, requesting the prosecution to send the fingerprint records of Mrs. Cingolani.



Judicial Power of the Autonomous City of Buenos Aires

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DIGITALLY SIGNED

17/08/2022 18:39



Rodolfo Ariza Clerici

JUDGE

1ST INSTANCE COURT
IN CRIMINAL
CONTRAVENTIONS
AND MISDEMEANORS
NO. 1