

THE CONSTITUTIONAL COURT OF COLOMBIA RULED THAT A WRIT FOR *HABEAS CORPUS* IS NOT THE PROPER MECHANISM TO RESOLVE THE CONTROVERSY REGARDING THE PERMANENT HABITAT OF THE ANDEAN BEAR NAMED CHUCHO IN A ZOO TO THE EXTENT THAT THIS INSTRUMENT SERVES TO PROTECT THE FREEDOM OF HUMAN BEINGS, AND THIS RIGHT CANNOT BE PREDICATED TO ANIMALS.

CASE FILE T-6.480.577 - SENTENCE SU-016/20 (January 23)

Luis Guillermo Guerrero Pérez, Presiding Magistrate

I. Facts

1. Chucho is an Andean Bear born at the *Reserva Natural La Planada* [La Planada Nature Reserve] in the Department of Nariño and is currently between 22 – 24 years old.

2. When [the bear] was four years old, he was transferred to the *Reserva Forestal Protectora del Rio Blanco* [Rio Blanco Protected Forest Reserve] in Manizales, under the care of Corpocaldas. Once the *Fundación Botánica y Zoológica de Barranquilla* [Barranquilla Botanical and Zoological Foundation] (Fundazoo) stated its willingness to shelter an Andean bear, Corpocaldas granted [Fundazoo] the custodianship of Chucho on June 16, 2017.

3. On that same date, Mr. Luis Domingo Gómez Maldonado filed a writ of *habeas corpus* for the bear arguing that his transfer to the Barranquilla Zoo represented permanent captivity under inappropriate conditions for this species.

This writ was denied by the Civil and Family Courtroom of the Superior Court of the Judicial District of Manizales. The Court ruled that a writ of *habeas corpus* was not the proper mechanism to demand protection for animals since they do not have fundamental rights. Furthermore, the plaintiff was relying on a popular approach used for controversies associated with the defense of environmental and natural resources, and this could include a petition for adopting protective measures. Taking into consideration the aforementioned, together with the absence of conclusive evidence regarding the endangerment of the bear's life and the impossibility of transferring the animal to a natural habitat given [the bear's] advanced age, health and that he had lived his entire life in captivity, the Court ruled that the writ for *habeas corpus* was inadmissible.

At the appellate level, the Civil Court of Cassation of the Supreme Court of Justice, overruled the lower court's ruling and granted *habeas corpus*. Furthermore, the Court ordered Fundazoo, Corpocaldas, Aguas de Manizales and the Special Administrative Unit of the National Natural Parks and the Ministry of Environment to arrange the transfer of the bear named Chucho to a more suitable location that would meet his needs and one in which the bear could live in semi-captivity. The abovementioned Court ruled that although the principle of *habeas corpus* was designed to guarantee the freedom of persons, this does not exclude its use for the protection of animals as sentient beings and as subjects entitled to rights.

4. The previous ruling was reversed through a petition for guardianship by the *Fundación Botánica y Zoológica de Barranquilla* [Barranquilla Botanical and Zoological Foundation], and therefore evaluated in the Labor Court [Lower Court] and the Criminal Court of the Superior Court of Justice [Higher Court], respectively. Both courts granted constitutional protection, and the rulings adopted within the framework of the writ for *habeas corpus* were declared null and void.

II. Ruling

[This Court] **CONFIRMS** that based on the grounds presented in this petition, the right of due process of the *Fundación Botánica y Zoológica de Barranquilla* [Barranquilla Botanical and Zoological Foundation] was constitutionally protected under the sentences handed down by the Labor Appeals Court [lower court] of the Superior Court of Justice on August 16, 2017, and the Criminal Appeals Court [higher court] of the Superior Court of Justice on October 10, 2017.

III. Summary of Legal Grounds

The Plenary Court decided to confirm the sentences from the Labor Appeals Court and the Criminal Appeals Court of the Superior Court of Justice which granted the constitutional protection plead by Fundazoo, and overruled the decision to grant *habeas corpus* to the Andean bear called Chucho.

In their petition for guardianship, the plaintiffs argued violation of due process based on three defects: absolute procedural, factual and substantive. The first for having used a writ of *habeas corpus* to decide an issue that cannot be resolved using this procedural method. The second, for having adopted the decision without the required trial materials and elements, especially those related to Chucho's alleged deterioration upon having been transferred to the Barranquilla Zoo; and third, upon comparing animals to human beings and thus adjudicating the former as subjects entitled to rights and thus framing the judicial dispute within the concept of *habeas corpus*.

Regarding the *absolute procedural defect* alleged by the plaintiffs, the Court agreed with the opinion of the lower court judges pertaining to the inadmissibility of a writ of *habeas corpus* given that this is not the appropriate procedural instrument to address the dispute surrounding the bear named Chucho. On one hand, the Court emphasized the importance of *habeas corpus* as a fundamental right that protects persons against unlawful deprivation of freedom, and therefore said instrument is inapplicable to resolve the situation faced by the bear named Chucho. On the other hand, [the Court] added that the controversy had certain distinct connotations, including the fact that the return of the bear to his natural habitat had not even been considered, given that this was not viable due to [the bear's] advanced age, health and length of captivity which currently prevented him from living autonomously. Following this trend of ideas, what [the plaintiffs] were petitioning the courts was to define the conditions in which the bear should live in keeping with standards of animal well-being. The Court then noted, that not only from the perspective of the nature of *habeas corpus* and its finality linked to the defense of freedom of human beings, but also from the point of view of its procedural structure, the courts in charge of resolving the case should have summarily ruled that a motion for *habeas corpus* is not the appropriate mechanism to resolve issues such as these which supposedly deal with technical, factual and applicable legal controversies, and are therefore distinct from those raised when the unlawful deprivation of freedom of persons is at issue.

Furthermore, the Court concluded that once the inadmissibility of *habeas corpus* was established, the analysis of the factual defect alleged by the petitioner was moot given that this examination requires the viability of the preceding legal action for constitutional protection. In this scenario, it was not up to the Court to determine if the decision adopted by the judge was based on sufficient factual and evidentiary grounds.

Finally, with respect to the *substantive defect*, the Plenary Court stated that legal precedents have developed a Constitutional mandate for animal protection. [The Court] further stated that both the legal precedents of this Court as well as current legislation have concluded that certain animals are sentient beings, resulting in the progressive advancement of the identification of the consequences derived from

-- this classification. However, the possibility of resolving the situation presented in this case by using the mechanism of *habeas corpus* cannot be based solely on this circumstance. The Court emphasized that both legislation and legal precedents had advanced the configuration of the prohibition of abuse and the responsibility to provide for the well-being of animals. Furthermore, [the Court] stated that in our legal system there are specific instruments established to implement these mandates. The Court further noted that it is important to continue improving the identification and improvement of those instruments that permit an efficient manner to deal with actions or omissions that are contrary to the imperatives derived from the Constitution, particularly, those that allow for debates related to the confinement and captivity of wild animals by institutions authorized by the Government, in keeping with standards for animal well-being.

Furthermore, in the case at hand, in view of the concerns that prompted the plaintiff to file a writ of *habeas corpus* for the well-being of the animal, at the proper time, [the plaintiff] could have: (i) filed a petition before CORPOCALDAS requesting the intervention of environmental authorities; (ii) filed a citizen's legal action, and (iii) made use of all the other instruments provided in legislation to comply with the mandate for animal protection which was considered infringed, and properly channel the debates that could arise in this context.

IV. Dissenting Opinions and Vote Clarifications

Magistrate DIANA FAJARDO RIVERA dissented on this occasion because in her opinion, the protection of the bear named Chucho under the Constitutional Policy implies the acknowledgement that the bear has rights, specifically, animal freedom. The majority of the Plenary Court abstained from endorsing this type of opinion. Therefore, she determined that an writ such as *habeas corpus* for protection of this type of property regarding the specific case of the bear named Chucho, was not unreasonable, and as such the legal precedent that granted such a benefit to this animal was not arbitrary, but rather its intent was to solve a legal problem that has not been precisely addressed in our legal system. Finally, she determined that even according to the thesis propounded by the majority, based on (i) the evidence presented in the file and (ii) the authority of the Guardianship Judge, in order for Chucho to remain at the Zoo, measures should be adopted and his current conditions should be reviewed and adjusted according to the mandates for animal well-being which are unquestionably within the framework of legal precedent. She explained her position in the following terms:

What issue should have been resolved by the Constitutional Court?

According to the dissenting Magistrate, the Plenary Court should have determined whether or not the judicial decision of granting *habeas corpus* to the bear named Chucho was reasonable or not within our current Constitutional framework, taking into consideration two fundamental aspects: (i) the reasons stated by Magistrate Luis Armando Tolosa Villabona (Civil Cassation Court, Superior Court of Justice), in granting the writ of *habeas corpus* and (ii) the arguments propounded that had made said decision an arbitrary one, according to the *Fundación Botánica y Zoológica de Barranquilla* [Barranquilla Botanical and Zoological Foundation] "FUNDAZOO." In this respect, the study of the defects suggested by the Foundation (factual, substantive and procedural) caused the Court to question whether it was reasonable to consider Chucho as the recipient of a right called "freedom." Prior to this however, we must ask the following: Do animals, like Chucho, have rights?

Animals are entitled to rights

The Plenary Court extensively deliberated on the argument presented that animals are entitled to judicially relevant interests in our legal system, interests that could be called *rights*. This position is based on (i) existing legal precedents regarding the statement that animals, ***as sentient beings, have intrinsic value***; (ii) democratic legislative progress such as the issuance of Law 1774 of 2016 that embraces the category of sentience and incorporates the mandates of animal well-being; (iii) the experiences of comparative law, such as *habeas corpus* granted in Argentina to the orangutan named Sandra and the chimpanzee named Cecilia; (iv) the human commitment to environmental conservation, as expressed in various international instruments such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and (v) theoretical, philosophical and scientific contributions. On the one hand, the preceding items endorse the fact that legal categories must allow us to understand and provide answers to real constitutional problems such as the treatment of animals; and, on the other, we must consider the wealth of life experiences found in other species as well as the similarities between certain animals and humans. The Magistrate concluded that taking this step is a necessary legal issue.

An Andean bear, like Chucho, has the right to animal freedom

In view of the above, and keeping in mind the specific case being examined by Court, according to the Magistrate the following question must first be answered: Does Chucho have the right to freedom? And if so, to what extent? Magistrate Fajardo's concept is that Chucho does have the right to *animal freedom*, to be understood *as those conditions that allow him to express his vital patterns of behavior in best way possible*. Based on this objective, as was propounded in the motion denied, [the Court] must take into account that Chucho: (i) belongs to a wild species, that is, that his prevalent status is that of freedom; and that (ii) his freedom, in Natural Parks, for example, is relevant to the conservation of the environment, since Andean bears fulfill an important function in reforestation and the care of water resources. Therefore, given his intrinsic value, and moreover the function that bears like Chucho play in the environment, then yes, this species could claim an interest that we might identify with freedom, within the specific framework of animal considerations. In this case, the scope of the right to animal freedom requires deciding whether [the bear] should be left at the Barranquilla Zoo or be returned to semi-captivity, that is, to a facility like the one he had enjoyed at the Rio Blanco Reserve in Manizales.

Habeas corpus is an appropriate means to protect Chucho's interest for animal freedom

In conclusion, then, Chucho is entitled to rights and, specifically, the right to animal freedom. For the Magistrate, the question that should be resolved was: Is it reasonable to uphold that a mechanism like *habeas corpus* is appropriate to protect Chucho's best interests given the specific conditions of his species and his life in view of the non-existence of effective legal mechanisms in the Legal System aimed at animals?

Regarding the aforementioned, one must take into account that the Legal System did not foresee an express solution for the issue presented to the Judge hearing the writ for *habeas corpus*, despite the fact that the legal system does contain mandates that allow for a constitutional approach aimed at complying with the public duty of the administration of justice. Therefore, the solution of these new types of issues demands the analysis of whether the "*what if*" procedure could be extended to these new scenarios.

In the opinion of the dissenting Magistrate, in answering the question as to whether *habeas corpus* is admissible, she responds affirmatively: *habeas corpus* is a recourse that **seems to have been** designed for this case, keeping in mind the history of this instrument and its inseparable relation with overcoming injustice. Therefore, what the Court should have resolved was if there was any constitutionally justified motive — in spite of being a wild animal and the benefits for the protection of the ecosystem— to consider whether it would be appropriate for Chucho to remain at the Barranquilla Zoo, without losing sight of the fact, of course, that he is an animal that was born in captivity and that he requires humans to care for him in order to survive given his advanced age.

This assessment was made by the Judge hearing the case of *habeas corpus*, and together with the evidence that was produced in this case, this led said judicial official to conclude that there was no proven reason for Chucho not to remain at a Reserve and be transferred to a Zoo with greater restrictions of his freedom. Thereupon, the Judge ordered that Chucho should be returned to a Reserve. In the opinion of Magistrate Fajardo, said conclusion was neither unreasonable nor even arbitrary. In this sense, moreover, it should be emphasized that the *habeas corpus* Judge opined that Mr. Luis Domingo Gómez Maldonado, through his petition, requested the protection of the freedom of the bear named Chucho given that he went from a space of more than 2,500 square meters (m²), in the Rio Blanco Reserve in Manizales, to a cage of approximately 200 m² at the Barranquilla Zoo. Therefore, the discussion had to do with greater or lesser freedom for an animal that was accustomed to a much larger space than that to which he was transferred. Consequently, the claim did not focus on a general petition regarding the conditions of Chucho's well-being, but rather on the animal's freedom, so that he could return to a space that was more in accordance with his needs of mobility.

Thus, the dissenting Magistrate in her report stated that the *habeas corpus* Judge did not incur in the defects alleged by FUNDAZOO, given that there are reasons to justify the claim that Chucho does have relevant legal interests which could be called rights including animal freedom. Therefore, he [Chucho] could be the beneficiary of a writ such as *habeas corpus*.

Furthermore, she stated that as an additional motive, this legal mechanism allows for the speedy resolution of issues that deserve a timely answer, taking into consideration the harm that could be caused to an animal with a short life expectancy, and therefore [this issue] must be quickly dealt with.

Need for additional constitutional remedies

However, the dissenting Magistrate further stated that in view of the two years that it took to resolve the writ of *habeas corpus* based on the probatory evidence that was compiled at the appellate court, the decision of immediate freedom was not sufficient. In her opinion, the Plenary Court did not have the necessary elements to decide whether the bear named Chucho was better off at a reserve or in a Zoo. Thus, in her report she proposed the creation of a Technical Committee to evaluate the situation, with the guarantee that if Chucho had to remain at the Zoo and that the necessary measures to protect his right to life as an animal would be implemented. Based on the latter, even in accordance with the opinion of the majority, the dissenting Magistrate wrote that the Constitutional Court must adopt measures, within the framework of its competency as a Constitutional Judge, to verify that Chucho was duly protected at the Zoo in accordance with the mandates of animal well-being, a legal precedent duly reiterated by this Court.

The proposal put forth by the dissenting Magistrate took into consideration the fact that Chucho had been transferred to the Rio Blanco Reserve for the purpose of reproduction, but upon confining him with his sister, this goal was never achieved. Later, when his sister died, he lived alone for several years. The bear's

-- situation, within the scope of the of the **Política Pública de Protección del Oso Andino** [Public Policy for the Protection of the Andean Bear], which was comprehensively drawn up in 2001, clearly showed that Chucho's treatment was not justified. Therefore, in view of the above, additional measures must be adopted to allow the competent authorities to adjust said Policy and ensure that in the future, confinement situations like that of Chucho would not be repeated.

Furthermore, the situation evidenced during the appellate process, prevents the Court from upholding, as proposed by the lower court judges and in the majority opinion of the Court, that writs of **habeas corpus** would be adequate in these cases, despite the existence of injunctive measures. However, it must be noted that the goal of this constitutional measure is to protect the environment as an asset of collective ownership. Under this parameter, it is not evident that the situation of an animal -- or that of its freedom -- could be an issue that has such an impact on the environment to the extent that same is affected. Using this mechanism, only one animal becomes an object of protection for the benefit of the entire community. For this to be possible, a re-assessment must be made, for example, of the use of writs of **habeas corpus** as a people's legal action, for the purpose of affirming that this mechanism really serves to protect animals entitlement to rights, as part of wildlife, and the majority of course did not affirm this. The Court also did not consider that after several years, writs of **habeas corpus** as a people's legal action could be completely inadequate.

Final Clarifications

In her opinion, Magistrate Fajardo did not compare human beings to animals; beyond a matter of *dignity*, [she] did not support the rights of animals as the justification for legally protected interests; she also did not consider that animal rights were fundamental [rights], or that the scope of animal rights had the same reach as a person's right to freedom; she did not support [the idea] that there is an interest for animal freedom for each and everyone of the existing species on the planet; she also did not suggest that a Judge could determine a list of interests that could be assigned to animals; and, finally she did not try to order the freedom of the bear so that it could be transferred to an environment where it could not survive without human companionship.

[The dissenting Magistrate] considered that the Constitutional Court was locked into a formalistic labyrinth of procedural law, that prevented it from developing effective protective mechanisms for animal protection. In her opinion, this was an historical moment for the consolidation of national protection standards, not only under the parameters of sentience and the prohibition of unjustified mistreatment. To this end, she promoted a broad discussion of this matter, for example, by means of a public hearing. Furthermore, she stated that the Court should commit to continued collective reflection [on this matter] and involve governmental authorities and civil society and thus encourage human beings, since they are also an animal species, to demonstrate their high morals and recognize the intrinsic value of each species. In this regard, John Stuart Mill stated that the greatest changes in society pass "through three stages: ridicule, controversy and acceptance." She concluded stating that the discussion is still polemical and that it will remain controversial until society and its institutions, including the legislature, deliberate the issue until it reaches the stage of acceptance.

Once the intrinsic value of dignity for all human beings is acknowledged, it is important to remember Gandhi's statement: "... *the greatness of a nation and its moral progress can be judged by the way its animals are treated.*"

In turn, Magistrate ALBERTO ROJAS RÍOS partially dissented from the opinion of the majority. He stated that opposition to the constitutional protection arose from a limited reading of the concept of person that is found in Article 86 [of the Political Constitution of Colombia]. In this sense, he pointed out that the concept of person is not synonymous with human being and that personality is not merely a biological concept to the extent that law has established legal fictions to adjudicate rights and duties to entities that are called judicial [artificial] persons, regarding which constitutional jurisprudence has adopted a doctrine to establish what types of guarantees they have and what mechanisms make them effective.

Based on the above, [the Magistrate] noted that certain rights are derived from the nature of a non-human animal, to wit: (i) not being hungry, thirsty or malnourished; (ii) not being afraid or anguished; (iii) not suffering physical pain; (iv) not being subjected to damages, injuries or illnesses; and (v) freedom to express one's natural patterns of behavior and possess the judicial category of person. This is due to the fact that we are dealing with sentient beings and that animals are at an intermediate point between subjects and objects of law, as the legislature itself has recognized. Thus, the discussion should have focused on determining what types of guarantees are enjoyed by animals and what are the mechanisms for representation and vindication on a neo-constitutional plane that transcends anthropocentrism to finally attain biocentrism.

[The Magistrate] stated that life as an expression of well-being and the absence of barbarism and pain is predicated on sentient beings and that as Nussbaum explains it, all lives deserve respect; thus, there is no opposition between the idealized rationality of the human being and animality. Arguments about species, particularly those that sustain that only the human species is entitled to rights, are restrictive, and it is incorrect to consider, in any discussion whatsoever, the hope of adjudicating the same rights to non-human animals. Rather, a reevaluation of the anthropocentric and eco-centric positions attempts to understand that [animals], according to their autonomy, should have basic rights which can be protected.

However, [the Magistrate] further noted that having concluded the discussion on ownership, it was not possible to resort to the mechanism of *habeas corpus*, and in this sense, he believed that the issue was indeed limited to a procedural defect, but given the superior and expedient authority of the constitutional court, even when hearing cases of guardianship against sentences, the acknowledgement of certain rights and the protection thereof through guardianship actions was feasible for the discussion and guarantee of sentient beings.

Magistrates ANTONIO JOSÉ LIZARAZO OCAMPO, GLORIA STELLA ORTIZ DELGADO, CRISTINA PARDO SCHLESINGER AND JOSÉ FERNANDO REYES CUARTAS announced the filing of vote clarifications relative to the fundamental aspects of the preceding decision. In turn, Magistrate ALEJANDRO LINARES CANTILLO reserved the possibility of clarifying his vote regarding some aspects of the grounds of this ruling.

GLORIA STELLA ORTIZ DELGADO

Presiding Magistrate