EL ESPECTADOR

Habeas corpus para 'Chucho', el oso

Por: Andrea Padilla Villarraga*

Translation: Javier Salcedo

A writ of habeas corpus granted to Chucho, the bear
By Andrea Padilla Villarraga[i]

The verdict issued by the Supreme Court on July 26, by which Judge Luis Armando Tolosa Villabona granted a writ of habeas corpus to Chucho, a spectacled bear, adds to the recent Colombian jurisprudence protecting animals' interests and their well-being. Including this one, there are ten rulings by the Colombian Constitutional Court, the State Council and, now, the Supreme Court, regarding the constitutional protection due to non-human animals. These rulings deal with one of the most interesting debates in contemporary legal theory: the extent to which some non-human animals are subjects or holders of rights, and the basis for such a hypothetical entitlement.

The case at issue is that of Chucho, the male Andean bear who was moved from the Río Blanco wildlife refuge, where he lived 'freely' for 18 years, to the Barranquilla City Zoo, where he was meant to live in captivity and in conditions that would jeopardize his emotional and physical well-being.

Corpocaldas, the institution in charge of Chucho's relocation, argued that its decision was prompted by the observation of several changes in the bear's behavior after his sister passed away. However, the judge deemed such a decision to be scientifically unwarranted and, in virtue of the legal framework aiming at protecting non-human animals that prevails in Colombia and in the international arena, he conceded the protection entitled to Chucho by writ of habeas corpus. That is, the Judge granted to a non-human animal a right and an action that shields a person's freedom when confined in unconstitutional or illegal ways. In other words, he considered the unjustified captivity of Chucho as a case of [unlawful] deprivation of one of the five liberties that typify a non-human animal's welfare.

The main novelty of this verdict lies in the inclusion of the habeas corpus as a valid legal mechanism to safeguard the rights of a non-human animal unlawfully held captive in Colombia. Until now, these mechanisms extended to class actions, petitions for compliance and, of course, criminal complaints in cases of animal abuse.

Legal decisions such as this one, that appends to the verdicts of Argentinian and Brazilian Judges—pioneers in granting writs of habeas corpus to great apes confined in zoos—, but also to those of Chilean, Costa Rican, Mexican and Colombian judges, are enthralling and promising because they reveal the beginnings of a process of juridical change and doctrinal innovation in Latin America in favor of non-human animals.

It suffices to read some rulings to acknowledge the sophisticated nature of the ethical arguments that these judges extract from scientific data concerning the capabilities of non-human animals, or the novelty of the categories, such as 'non-human persons', with which they defy legal orthodoxy and the objectification of non-human animals. In this respect, the concept of 'sentience', the capacity of non-human animals to feel, undeniably occupies a central place, since it is the categorial property that determines the expansion of the legal and moral community that has begun to include them.

In his verdict, the judge rightly asks: "if legal fictitious entities are subjects of rights, what reason is there for denying that beings that are alive and capable of sentience might also hold rights?" The idea that some animals are to be understood as bearers of rights is, as a matter of fact, beginning to consolidate.

But which rights? "Those which correspond, or are fitting to or suit their species, rank and group." Not others. Not those that are suitable for human persons, but the adequate ones, the rights required to guarantee the welfare that under no circumstance should we snatch away from them. Even less so under the pretext that because they have no obligations, non-human animals should equally have no rights. Non-human animals are, indeed, subjects of rights with no obligations. Our duty to protect and respect them is the only one that rises as a safeguard of their welfare.

In no more than 30 days, Chucho, the bear, must be relocated to a worthy place that fully secures his life, well-being and freedom. Ideally to the reserve, his home, the place he never should have left.

---

[i] PhD in Law candidate at the University of Los Andes. Spokeswoman for AnimaNaturalis International. @andreanimalidad