



**Advancing the Legal Status of
Animals in Latin America:
*An Exploration of Emerging Jurisprudence
and Pertinent Case Law***

Diego Plaza
Founder of CEDA Chile and
Justicia Interspecie

31ST ANNUAL ANIMAL LAW CONFERENCE



I) The Case of Toti, the Chimpanzee

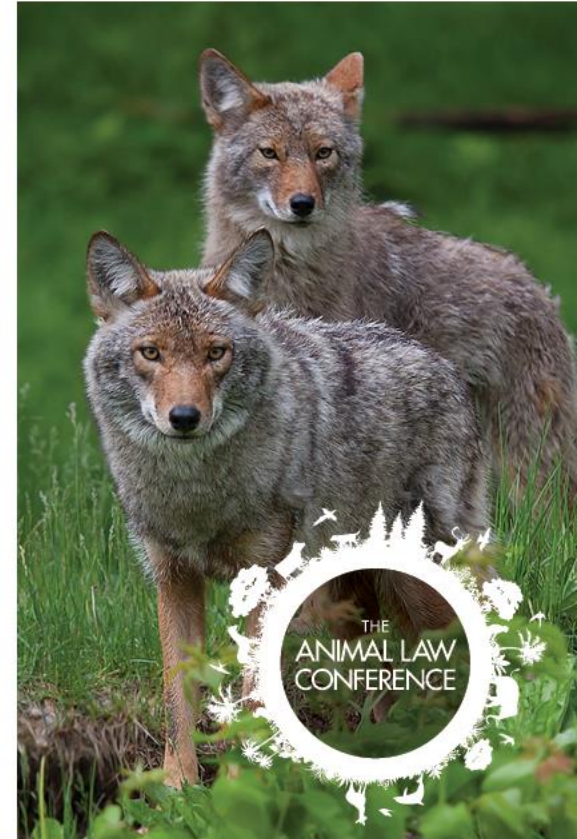
Argentina (2023)



Introduction to Toti's Case

A Fight for Freedom

- **Background:** Toti, a chimpanzee, experienced a life in captivity across various zoos in Argentina.
- **Legal Struggle:** Persistent efforts since 2003, involving habeas corpus and formal requests for freedom.
- **2023 Ruling:** Judge Ángela Sosa mandates Toti's transfer to a Great Ape Sanctuary.



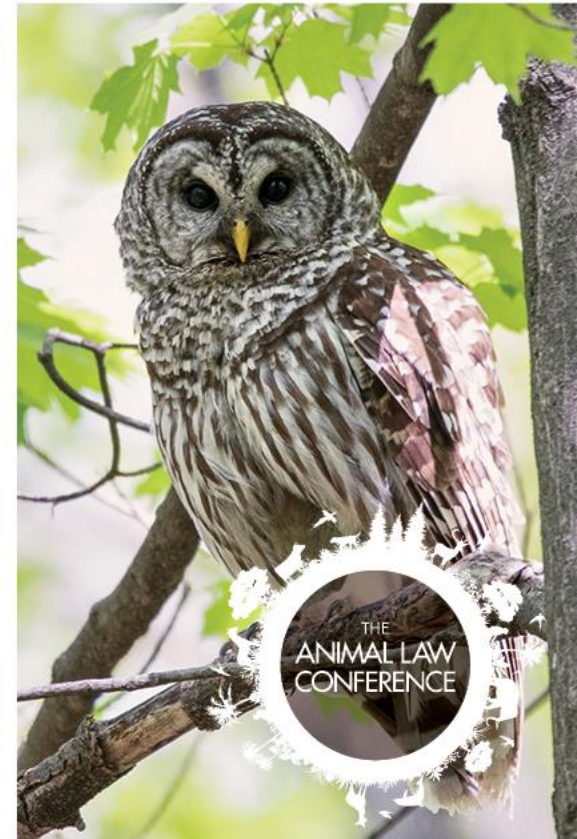
Legal Standpoint and Critique

Evaluating the Legal Framework and Judicial Reasoning

- **Legal Nature of Animals:** Avoided by the judge, focusing on environmental rights.
- **Constitutional & Environmental Rights:** Cited as the foundation for protecting Toti.
- **Critique:** Lack of depth in argumentation and omission of defining Toti's legal status

I find it impossible within the framework of a protection process to determine what the legal nature of animals is or to reduce them to the category defined by the negative of the human (non-human animals) based on their evolutionary proximity, or (...) to define the rights of the animal from a kind of "biological extension" of human rights.

(...) since Toti is a chimpanzee included in the species in extinction, the compromised and protected constitutional rights are the environment, biodiversity, and endangered fauna (...), it is evident that the procedural mechanism for their protection is the protection action.



Appeal, Implications, and Future Prospects

Appeal Outcomes and Moving Forward

- **Appeal:** Rejected by the Supreme Court of the Region in May 2023.
- **Implications:** Recognition of suffering yet with weak legal argumentation for animal rights.
- **Looking Ahead:** Awaiting for the extraordinary appeal and for Toti's transfer.

If the legislator's intention had been to turn animals into subjects of law, it would have been expressly stated, but that aforementioned civil precept did not depart from the same guidelines contained in the Civil Code (...). Therefore, being animals legally things, it is not possible to assign them the status of subjects of rights.



II) The Case of Sandai, the Orangutan

Chile (2022)



Sandai's Legal Struggle

Legal Battle for an Orangutan's Right to Freedom

- **Background:** Sandai, the only Bornean orangutan in South American captivity, subject to release campaigns for over a decade.
- **Legal Move:** First habeas corpus filed for a non-human animal in Chile, July 2022, by the Inter-Species Justice Foundation.
- **Key Support:** Notable animal rights advocates, including Peter Singer, Eugenio Zaffaroni and Leif Cocks, backed the case with expert reports and amicus curiae.



Court Decisions & Contradictions

Dissecting the Complexity and Contradictions in the Rulings

- **Initial Rejection:** The Court of Appeals of San Miguel declared the habeas corpus inadmissible, July 2022.
- **Supreme Court's Stance:** Upheld. Denied Sandai's personhood, acknowledged his deprivation of freedom, and mandated welfare measures

That article 19 of the Political Constitution of the Republic refers to 'The Constitution ensures to persons:', and in accordance with what is established in the dictionary of the Royal Spanish Academy, a person is 'every individual of the human species'

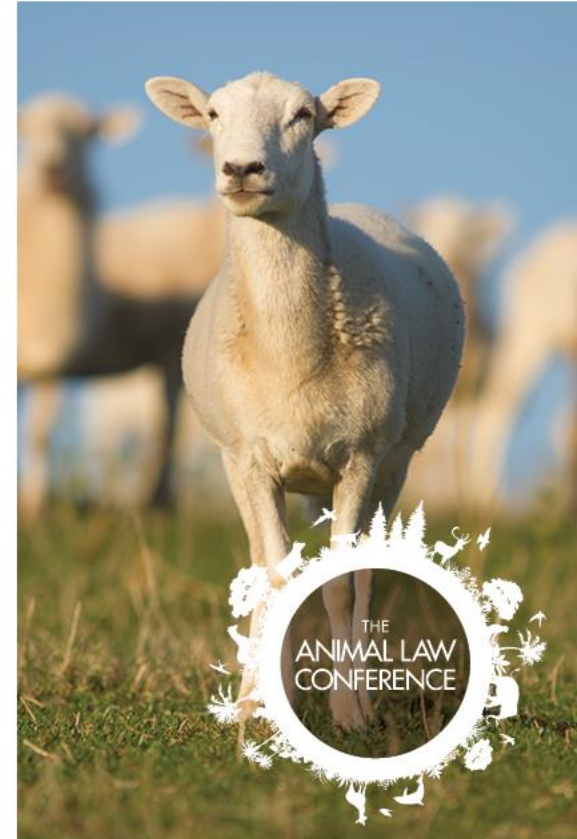
*"Without prejudice to the resolution, and in accordance with what is established in articles 3 and 5 of Law 20,380, it is arranged that **the SAG must adopt all appropriate measures** to safeguard compliance by Buin Zoo with the legal regulations regarding the Bornean orangutan primate known as 'SANDAI,' specifically, that **the deprivation of his freedom** does not cause him suffering and alteration of his normal development, verifying that there are adequate facilities for his species, avoiding all mistreatment and deterioration of his health."*



Critique and Implications

Analyzing the Legal Reasoning and its Potential Impact

- **Critique:** Leveraging a lexicographic definition of “person” limits the scope of legal and ethical discussions.
- **Contradictions:** While denying “person” status to Sandai, the court recognized his *deprivation of freedom* and enacted *protective measures*.
- **Implications:** This opens a discussion on "*deconstitutionalized constitutional guardianship*" and may influence future animal rights litigation.



III) The Case of the 55 Dachshunds

Argentina (2022)

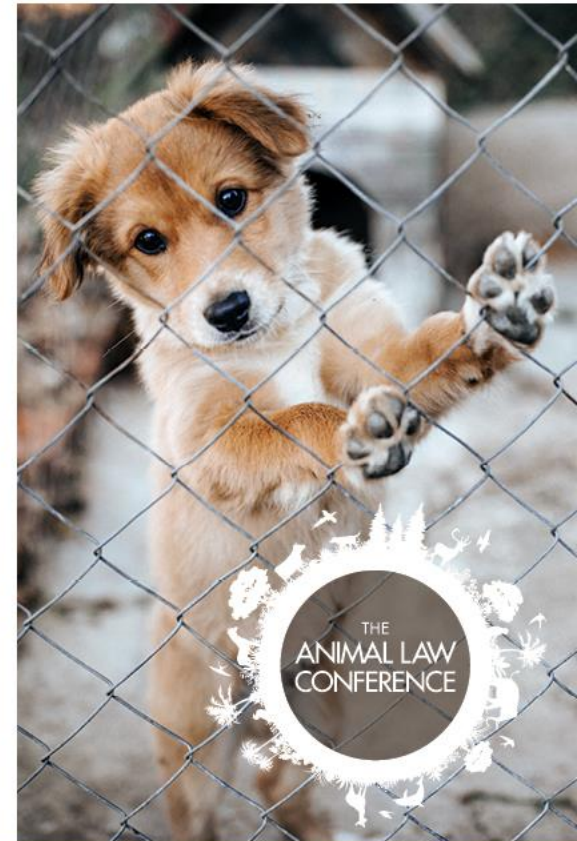


A Legal Stride for 55 Dachshunds

Acknowledging Animals as Subjects of Rights

- **Context:** 55 dachshunds from an illegal "puppy mill" considered in a criminal procedure of animal cruelty.
- **Request:** Prosecutor sought declaration of the dogs as subjects of rights and their total freedom and definitive custody.
- **Legal Basis:** Not explicit at the local level but inferred from national, city, and international norms and declarations.
- **Ruling:** The court declared the dogs, and any puppies born post-raid, as subjects of rights, recognizing them as sentient beings.

*"I RESOLVE: I) DECLARE AS **SUBJECTS OF RIGHTS** the 55 non-human animals of the canine species, 'dachshund' breed, in addition to those puppies that have been born after the raid, **in their capacity as sentient beings;**"*



Legal Critique & Implications

Critiquing Legal Bases and Envisioning Future Advocacy

- **Critique:**
 - Utilization of potentially unsound and non-definitive declarations/sources.
 - Predicating rights upon sentience, prompting possible sentientism.
- **Significance:**
 - Bases resolution partly on positive law.
 - Prosecutorial entities' paradigm shifting toward recognizing animal legal personality.
 - Implicit acknowledgment of animals' right to freedom.
 - Recognizing unborn animals' rights.



IV) The case of Mateo, the Labrador

Argentina (2023)



Revolutionary Legal Recognition for Mateo

Advocating for the Legal Representation of Animals

- **Case Context:** Mateo, an ownerless Labrador, suffered animal abuse, prompting an NGO to seek legal representation for him as a “private prosecutor” in court.
- **Legal Grounding:** The court acknowledged animals as subjects of rights, citing local and national jurisprudence. It also recognized their incapacity to represent themselves, necessitating advocacy, a role can be fulfilled by an animal NGO.
- **Critique & Impact:** The innovative approach, while not majority, reflects a crucial advancement in Argentina’s animal jurisprudential development, nurturing future dialogues and legal considerations for animal rights and representation.



V) Pet Custody in the Multispecies Family

Argentina and Chile (2022)



Popeye & Kiara (Argentina)

Embracing Multispecies Families in Divorce

- **Background:** Divorcing couple creates a Custody Agreement for their dogs, Popeye and Kiara, proposing a flexible “communication regime”
- **Legal Insight:** Judge Diana Sica asks to clarify what is meant by "parental responsibility", leading to the term "multispecies family"
- **Key Ruling Elements:** Acknowledgement of animals as sentient beings, reliance on international jurisprudence, and application of art. 439 of the Civil and Commercial Code.

(...) III.- Approve the agreement reached by the parties regarding the distribution of marital assets and how they will handle their two pets POPEYE and KIARA, as agreed in the presentation on 16/8/2022.



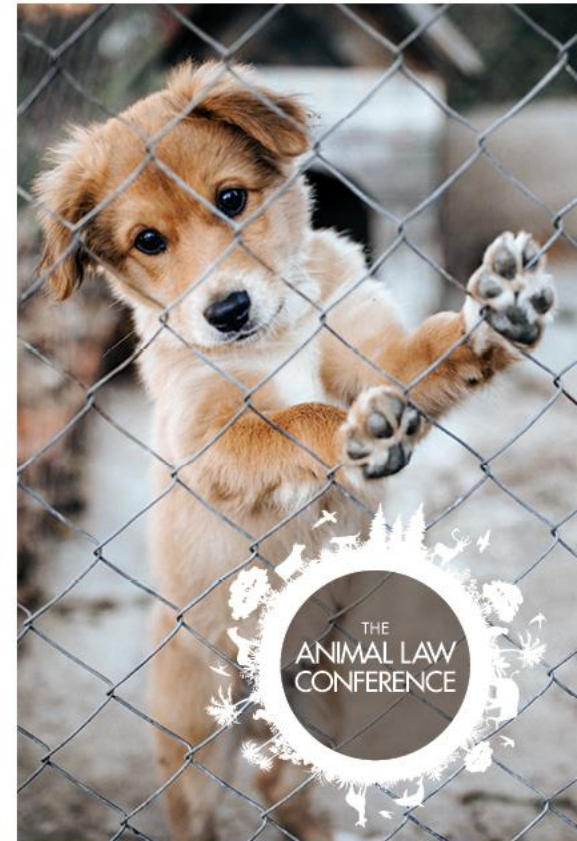
Igor & Bamboo (Chile)

A Civil Court's Perspective on Shared Ownership of Pets

- **Background:** After a relationship ended, a dispute over the custody of Igor and Bamboo, emerged, leading to a lawsuit for shared ownership.
- **Legal Insight:** Emphasis on registration not confirming ownership and recognizing shared expenses and care as indicative of co-ownership.
- **Key Ruling Elements:** Acknowledgement of emotional and companionship aspects in “free enjoyment”, and recognition of pets as emotional beings and family members, not mere property.
- **Conclusion:** Advocates for satisfying property rights through shared ownership, recommending alternating possession to safeguard the mutual emotional bonds and shared care responsibilities between humans and their pets.

“The relationship between human beings and companion animals is similar to a parent-child relationship. The responsible party for the companion animal considers their animals to be family members, almost like children or best friends, rather than considering them personal property, and describes the role of the animal in the family as ‘very important.’”

“It is equitable that both parties retain them [the dogs] under their joint protection and care (...) with each co-owner maintaining possession for three-month intervals, commencing with the party currently without them, namely, the plaintiff.(...)”





Thank you!

Let's keep in touch

diego.cedachile@gmail.com

www.cedachile.cl

www.justiciainterrespecie.cl

