

VICENTE DE PAULA ATAIDE JUNIOR  
CAPACIDADE PROCESSUAL DOS ANIMAIS:  
A JUDICIALIZAÇÃO DO DIREITO ANIMAL NO BRASIL  
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**ABSTRACT**

The book, written by Vicente de Paula Ataide Junior, brings together four chapters dedicated to formulating a systematization of the legal subjectivation and procedural capacity of animals in Brazil, through an external approach to a legal reflection that aims to strengthen Animal Law, doctrinally and dogmatically, based on the proposition of the Theory of Animal Legal Capacities.

**KEYWORDS**

Brazilian animal law; legal capacity of animals; procedural capacity of animals; judicialization of animal law.

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**RESUMEN**

El libro, escrito por Vicente de Paula Ataide Junior, reúne cuatro capítulos dedicados a formular una sistematización de la subjetivación jurídica y capacidad procesal de los animales en Brasil, a través de un acercamiento externo a una reflexión jurídica que apunta a fortalecer el Derecho Animal, doctrinal y dogmáticamente, basado en la proposición de la Teoría de las Capacidades Jurídicas Animales.

**PALABRAS CLAVE**

Derecho animal brasileño; capacidad jurídica de los animales; capacidad procesal de los animales; judicialización del derecho animal.

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Animal Law was inaugurated as an autonomous norm in the Brazilian Federal Constitution, promulgated in 1988, which expressly establishes the prohibition of cruelty to animals (Article 225, § 1, VII). Considering the scientific fact of animal sentience, the Constitution establishes that animals have the right not to suffer, being considered as individuals, bearers of their own dignity, regardless of their ecological, economic or scientific functions.<sup>1</sup>

Based on the aforementioned constitutional provision prohibiting cruelty to animals, a series of infra-constitutional laws at the federal, state and municipal levels have been and are being implemented in the Brazilian legal system with the aim of guaranteeing animal rights, positioning Brazil as a country with a significant animal normative framework, whose provisions deal with the legal protection of animals, from the criminal scope (Article 32 of Federal Law 9,605/1988) to the civil and procedural scope (Article 5, XXXV of the Federal Constitution and Decree 24,645/1943).

However, Brazil has a framework in which, at the same time that animals are constitutionally granted the status of subjects of rights and the recognition of their intrinsic dignity, the same legal order authorizes the exploitation of some groups of animal species for human and cultural purposes. (Art. 225, § 7, Federal Constitution), sports (Federal Law 5,197/1967), economic (Art. 23, VIII, Federal Constitution) and scientific (Federal Law 11,794/2008), following the “tangle of contradictions and positions that cancel each other out”<sup>2</sup> in capitalist-type social relations, whose legal and state political forms correspond to the regulation of such relations.<sup>3</sup>

In this panorama, Dr. Vicente de Paula Ataide Junior,<sup>4</sup> assistant professor of Civil Procedural Law and Animal Law in the undergraduate, master’s and doctoral courses at

<sup>1</sup> ATAÍDE JUNIOR, V. Capacidade Processual dos Animais: A judicialização do Direito Animal no Brasil (São Paulo/RS/Brasil, 2022) 79.

<sup>2</sup> PACHUKANIS, E.B. Teoria Geral do Direito e Marxismo (São Paulo/SP/Brasil, 2017) 154.

<sup>3</sup> MASCARO, A.L. Estado e Forma Política (São Paulo/SP/Brasil, 2013) 39.

<sup>4</sup> Furthermore, Dr. Ataide Junior is leader of the Animal Law Research Center (ZOOPLIS) of the Postgraduate Program in Law at the Faculty of Law of the Federal University of Paraná (UFPR), Collaborating Professor of the Postgraduate Program in Legal Sciences from the Federal University of Paraíba, Doctor and Master in Civil Procedural Law from the Federal University of Paraná (UFPR), Post-doctorate in Animal Law from the Federal University of Bahia, Federal Judge in Curitiba – Para-

the Faculty of Law of the Federal University of Paraná (UFPR), carries out a powerful work that is dedicated to producing a systematization of the various regulations on animal rights and their material limitations, offering an eminently dogmatic literature that Brazilian positive Animal Law can call its own.

After a detailed description of the categories and main normative sources of Animal Law, the book, in its first chapter, presents the so-called Theory of Animal Legal Capacities, which appears as a theoretical proposal to unfold the systematization of the complex of Brazilian animalistic norms to which Dr. Ataíde Junior is committed.

As the author reveals, the essential hypothesis of the dogmatic proposition of the aforementioned theory is that “any attempt at a systematic organization of normative sources, considering animals as a universal and abstract category, is doomed to failure<sup>5</sup>” because, although all are subjects of rights,<sup>6</sup> not all have the same rights, as is the case with animals exploited in agriculture and fishing. Moreover, in addition to the material recognition of the different legal treatment that positive law gives to the different species of animals, the content of the theory in conception also starts from the consideration that “positive law does not grant legal personality to animals”, which means that the Brazilian legal order does not have a set of rights and duties previously guaranteed to animals, as guaranteed to Brazilian citizens in Article 5 of the Federal Constitution, so that animals are depersonalized subjects of law from a dogmatic point of view.<sup>7</sup>

Since legal capacity is about the number of rights one has, Ataíde Junior develops the systematization of animal rights based on the most important premise of positive law, which is the right to life, and on this basis classifies the theory of animal legal capacity into three levels of animal legal capacity: a) Full animal legal capacity, which is the capacity in relation to animals to which the legal system guarantees the right to life as an inviolable right (dogs, cats and whales); b) Full reducible animal legal capacity, whose possessors are the groups of animal species to which Brazilian law grants the right to life, but not in an inviolable way, since the right can be reduced or suppressed for ecological or scientific reasons (wild animals); and finally, c) Reduced legal capacity, which refers to animal species to which the legal system does not guarantee the right to life, but only their dignified existence while alive (animals exploited in livestock farming and fishing).

As an objective corresponding to the dogmatic dimension itself, the work points out that the Theory of Animal Legal Capacities aims to support the formulation of a main

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ná and served as Consultant Member of the Commission of Jurists to review and update the Brazilian Civil Code (CJCODCIVIL) of the Federal Senate.

<sup>5</sup> ATAÍDE JUNIOR, V. *Capacidade Processual dos Animais: A judicialização do Direito Animal no Brasil* (São Paulo/RS/Brasil, 2022) 202.

<sup>6</sup> *Ibid.* p. 203 [*Teoria das capacidades jurídicas animais*].

<sup>7</sup> *Ibid.* p. 206 [*Animais são sujeitos de direitos despersonalizados*].

theory, which is the procedural capacity of animals, a topic to which the author focuses, dedicated in the following chapters.

If in the second chapter Dr. Ataide Junior promotes a broad theoretical excursion on the procedural capacity in the theory of national and international civil procedure, in the third chapter the author provides a detailed study on the procedural capacity of animals or “animal procedural law<sup>8</sup>”, announced as a new specialization of civil procedural law. On this occasion, the book discusses the normative foundations of the procedural capacity of animals, with emphasis on the provisions contained in Article 2, § 3 of Decree 24,645/1934, which establishes that “animals shall be assisted in court by representatives of the Public Ministry, their legal substitutes and by members of animal protection societies”, as well as in Article 5, XXXV of the Federal Constitution, which establishes the principle of access to justice.

Therefore, by elaborating the important normative assimilation on animal rights based on the theory of animal legal capacity, which provides support for the study of animal procedural capacity, the work directly provides a robust contribution to the judicialization of animal law, which is dealt with in the fourth chapter of the book, and which concerns the phenomenon of judicialization, in which “in the court, non-human animals are at the center of the procedural relationship, claiming their subjective rights, just like natural and legal persons, in addition to depersonalized entities<sup>9</sup>”, represented in the form of the aforementioned Decree 24.645/1934.

A phenomenon that has occurred in Brazilian Courts of Justice since 2020, Dr. Ataide Junior lists all cases of judicialization of Animal Law in progress in Brazil until 2022, highlighting the first and most emblematic jurisprudential precedent of the judicialization of Animal Law that, until the At the moment, this is the case of Spike and Rambo, dogs who were victims of abuse and who sued their own owners, represented by an NGO in the Court of Justice of the State of Paraná.

In the decision of the appeal, the aforementioned Court decided to keep the dogs as the active center of the legal action, considering their constitutional quality as subjects of rights (Article 225, § 1, VII, Federal Constitution), their constitutional right of access to justice (Article 5, XXXV, Federal Constitution) and the capacity to be in court granted by Decree 24,645/1934 (Article 2, § 3), thus assimilating the existing animal procedural rules in the Brazilian legal system.

As can be seen, Dr. Vicente de Paula Ataide Junior offers an important contribution to the construction of the dogmatics of Brazilian animal law, allowing a better understanding of its mutual theoretical implication with the civil process in our legal

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<sup>8</sup> *Ibid.* p. 281 [*A capacidade processual dos animais*].

<sup>9</sup> *Ibid.* p. 348 [*Primeiras demandas de judicialização terciária no Brasil*].

order. In the state of legal-animalist and civil procedural art, the work already takes its place in history as a true classic.

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