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Animal Structural Protection: From the Inefficacy of Ordinary Jurisdiction to the Implementation of Gradual Transition Plans

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Abstract

This article analyzes the inefficacy of traditional civil procedure in addressing systemic violations of non-human animal rights and proposes the application of structural litigation as a mechanism for institutional reorganization. Despite the consolidation of the constitutional prohibition against cruelty (Art. 225, § 1, VII, of the 1988 Brazilian Constitution), the ordinary procedural model—grounded in bipolarity and binary remedies requiring immediate compliance—has proven incapable of resolving ongoing, complex unlawful states maintained by economic chains and state omissions. As an alternative, structural litigation replaces the "all-or-nothing" logic with the formulation of gradual transition plans (*multistage decrees*), driven by procedural flexibility, institutional dialogue, and interim safeguards. The feasibility of this procedural engineering is demonstrated through a case study on the transoceanic maritime transport of live animals (live exports), an activity characterized by severe animal suffering and frequent judicial paralysis. The article concludes that establishing a binding schedule for the deferred phase-out of live exports, combined with redirecting incentives toward the processed meat industry and the implementation of independent monitoring committees, represents a viable path to reconcile economic transition with the effective enforcement of the constitutional mandate protecting animals.

Keywords

Animal Rights, Structural Litigation, Gradual Transition Plan, Live Animal Export, Constitutional Protection

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1. Introduction

The legal protection of nonhuman animals (de Medeiros, 2013; Rammé et al., 2025), whose theoretical framework most frequently cited in its dissemination is the work of Peter Singer (Singer, 2000), has undergone profound changes in recent decades, driven by the scientific recognition of their sentient (de Sousa & Cinque, 2025) nature and by the consolidation of the constitutional prohibition against cruelty[1] (Art. 225, § 1, VII, of the Federal Constitution)[2]. The legal system now requires the State and society to take active measures to preserve the physical and psychological well-being of animals, with Bill 4/2025 advancing the inclusion of animals as part of the social and family unit[3]. However, progress in substantive law has faced a severe bottleneck in terms of effectiveness at the procedural level: violations of animal rights often do not stem from isolated or individual unlawful acts, but from entrenched institutional practices, chronic regulatory failures, and complex economic dynamics. The procedural capacity of animals and their protection have also been a major focus in legal scholarship (Ataíde Jr., 2022), which, together with legislative and judicial advances, reinforces concern for animal welfare[4].

In this context, the ordinary civil court system—characterized by the dogma of bipolarity (plaintiff versus defendant) and the logic of binary rulings ("all or nothing") (Osna, 2022)—has proven structurally incapable of addressing the reality of systemic wrongs. Traditional judicial decisions, based on immediate and generic orders to act or refrain from acting, tend to lead to administrative paralysis, ongoing noncompliance, or severe socioeconomic instability, without, in practical terms, alleviating animal suffering. This reflects the inapplicability of classical or traditional civil procedure in the face of polycentric (Fuller, 1978)[5] litigation, in which a mere declaration of the illegality of an activity and isolated remedies

[1]This study was written for the Brazilian constitutional and case law context, although references to other countries are included.

[2]Art. 225. Everyone has the right to an ecologically balanced environment, which is a common good of the people and essential to a healthy quality of life; the government and the community have a duty to defend and preserve it for present and future generations. § 1 To ensure the effectiveness of this right, the government is responsible for: VII—protecting fauna and flora; practices that endanger their ecological function, cause the extinction of species, or subject animals to cruelty are prohibited by law.

[3]If Bill 4/2025, which proposes new Brazilian civil law, is approved, the wording of Article 19 will be: "Human affection is also manifested through expressions of care and protection for the animals that are part of a person's social and family environment."

[4]The final version of this article was written by the author with the assistance of the DeepL application. The summary was partially constructed based on the author's interaction with generative artificial intelligence and LLM (Large Language Model) tools.

[5]About the expression: "We may visualize this kind of situation by thinking of a spider web. A pull on one strand will distribute tensions in a complicated pattern throughout the web as a whole. Doubling the original pull will, in all likelihood, not simply double each of the resulting tensions but will rather create a different complicated pattern of tensions. This would certainly occur, for example, if the doubled pull caused one or more of the weaker strands to snap. This is a 'polycentric' situation because it is 'many centered'—each crossing of strands is a distinct center for distributing tensions." The topic of structural proceedings requires a new procedural framework. To understand the scope of this statement, we recommend reading the following work: Duarte (2024). Procedural Endocentricity: The Grammar of the Structural Process. Thoth.

such as injunctions are insufficient to sever the chain of causation leading to harm.

As an alternative to dogmatic rigidity, the concept (Roque et al., 2024)[6], based on a new legal-procedural grammar, of the Structural Process (Arenhart et al., 2025; Arenhart et al., 2026; Vitorelli, 2026) and institutional reorganization (Fiss, 2004) oversight has emerged. Based on procedural flexibility, consensus-building, and the participatory development of provisions, structural oversight replaces drastic, one-off solutions with cascading (Arenhart, 2013) or structural phased decrees (Vitorelli, 2024; Didier et al., 2021) orders and the formulation of gradual transition plans. Instead of demanding the abrupt shutdown of complex structures, the structural process establishes progressive goals, interim safeguard rules, deadlines for market readjustment, and deferred monitoring mechanisms, ensuring that the cessation of unlawful conduct occurs in a feasible, sustainable, and legally binding manner[7].

It is precisely at this intersection between the need for effective protection and the complexity of economic and institutional arrangements that the issue of maritime transport and the export of live animals (live cargo) arises. This is one of the most problematic activities from the perspective of animal welfare today: long-distance transoceanic voyages subject thousands of cattle and sheep to extreme conditions of confinement, water and heat stress, injuries, and high mortality rates, all supported by a model of tax incentives and outdated regulations. Given the practical impossibility of bringing such vessels into compliance with minimum standards of animal dignity without immediately disrupting the foreign trade sector, the case of live cargo presents the ideal scenario for the application of structural process engineering. It should be noted that this phenomenon is not unique to Brazil but is present in several countries and involves problems similar[8] to those occurring on Brazilian soil.

Methodologically, the study adopts a doctrinal approach based on descriptive analysis and inductive reasoning, combined with the collection and selection of

[6]Given the relevance of this topic in Brazil today, it is already fair to say that we are living in the era of structural litigation.

[7]All of these characteristics are included in Bill 3/2025, which addresses the issue of structural reform in Brazil. The full text of the bill is available at: https://legis.senado.leg.br/sdleg-getter/documento?dm=9889348&disposition=inline.

[8]THE TIMES OF ISRAEL. Welfare activists petition High Court in bid to end live animal shipments. Matéria disponível em: https://www.timesofisrael.com/welfare-activists-petition-high-court-against-continuation-of-live-animal-shipments/amp/. Acesso 30/09/2026. Among the entries in the text, the following stand out: "Animal welfare activists are once again petitioning the High Court to stop the transport of live animals by sea to Israel for fattening and slaughter on the grounds of severe animal cruelty"; "Freedom for Animals, which is behind Israel Against Live Shipments, on Thursday submitted a nearly 500-page document that includes the harrowing testimonies of three individuals with experience in the industry"; and "The petition demands the gradual cessation of such live transports over three years, with interim regulations to stipulate that conditions for animals in sea transport should not be worse than the minimum animal welfare standards established under Israeli law. It also seeks an immediate halt to maritime transport lasting over 10 days." The article concludes by listing the countries that have already completely or partially banned the practice: "Since the 2017 High Court petition, New Zealand has banned live animal exports, as have Britain (except for Northern Ireland), Australia (by 2028), and India."

legal precedents obtained directly through searches on the courts' own websites. Based on an empirical overview of lawsuits already filed in Brazil regarding the transport of live cargo, this study assesses, in theory, the feasibility of implementing future structural measures, investigating how replacing the traditional emergency injunction with a gradual transition plan can reconcile constitutional protection against animal cruelty with the necessary economic and regulatory adjustments.

Thus, this essay aims to analyze the feasibility and urgency of applying structural protection to the animal rights cause, demonstrating how the implementation of gradual transition plans—through the immediate limitation of provisional harm and the deferred cessation of live animal exports—represents a path capable of reconciling the strictness of the constitutional prohibition against cruelty with the transitional period necessary for the reorganization of public policies and the global market.

2. The Constitutional Prohibition against Cruelty (Art. 225, § 1, VII of the 1988 Federal Constitution) and the Inadequacy of Binary Injunctive Relief ("All or Nothing")

The 1988 Constitution marked a qualitative leap in the legal protection of wildlife by enshrining, in Article 225, paragraph 1, subparagraph VII, an express prohibition against subjecting animals to acts of cruelty. This provision, as settled by the Federal Supreme Court in a series of landmark rulings (such as the "Farra do Boi"[9], "Vaquejada"[10], and "Brigas de Galo"[11] cases (Sarlet & Fenterseifer, 2025: p. 299)[12]) and, even including rulings recognizing animal dignity by the Superior Court of Justice[13], has granted non-human animals the status of subjects of au-

[9]In 1997, in its ruling on Extraordinary Appeal (RE) 153531, the Second Panel of the Federal Supreme Court (STF) held that the State's obligation to guarantee to all the full exercise of cultural rights—by encouraging the appreciation and dissemination of cultural expressions—does not exempt it from complying with the constitutional provision that prohibits subjecting animals to cruelty. The decision resulted in the prohibition of the "Farra do Boi", an ancient tradition in Santa Catarina.

[10]The Full Court of the Federal Supreme Court (STF) upheld, by a majority vote, regulations authorizing the practice of vaquejada in the country, provided that minimum criteria for animal welfare are met—with the possibility of administrative and criminal penalties in the event of noncompliance. The decision was made during Thursday's session (5), in the ruling on the merits of Direct Action of Unconstitutionality (ADI) 5772.

[11]The Supreme Court struck down state regulations in Santa Catarina (ADI 2514), Rio Grande do Norte (ADI 3776), and Rio de Janeiro (ADI 1856) that governed cockfighting. The first decision was handed down in 2007 and served as a precedent for the others. In ADI 1856, decided in 2011, the reporting justice, Justice Celso de Mello, emphasized that the practice is inherently cruel, as birds of fighting breeds are subjected to mistreatment during competitions, and rejected arguments that cockfighting constitutes a sport or a cultural or folkloric tradition.

[12]"The prohibition of cruel practices against animal life has found strong support in the jurisprudence of the STF [Brazilian Federal Supreme Court] since the 1990s. The Court ruled, respectively and repeatedly, on the unconstitutionality of a state law authorizing the practice of the '*farra do boi*' [ox festival] in the State of Santa Catarina and the unconstitutionality of a law from the State of Rio de Janeiro regulating '*briga de galo*' [cockfighting], among other similar rulings. The constitutional basis for these decisions has consistently been the provision of item VII, paragraph 1, of Article 225, cited above."

[13]As seen in the case 1.797.175/SP.

tonomous fundamental rights with regard to their integrity, decoupling their protection from mere ecological function or economic utility for the human species. This constitutes the legal recognition of sentience, which imposes on the State and society a duty of abstention and active protection against abusive practices.

However, the practical implementation of this constitutional principle clashes with the model of judicial adjudication inherited from the liberal and individualistic tradition of the Code of Civil Procedure. The structure of classical civil procedure was conceived under the dogma of bipolarity and simple intersubjective conflict: on one side, a plaintiff whose right has been violated; on the other, a defendant who has failed to fulfill a legal duty (Osna & Arenhart, 2024)[14]. Under this dogmatic framework, injunctions or remedies aimed at removing an unlawful act operate within an all-or-nothing binary logic. The court's ruling is limited to issuing an imperative and immediate order to refrain from a certain practice or to cease a certain conduct.

This procedural response proves inadequate for the protection of animal rights when those rights are violated by complex and ongoing practices. In high-impact disputes—in which animal suffering and degradation are ingrained in the routine operations of industries, public services, or supply chains—the mere issuance of a traditional injunctive relief order resulting in a final ruling mandating immediate cessation typically leads to two equally dysfunctional outcomes: either the decision faces institutional resistance, becoming a "token measure" devoid of substantive effectiveness, or its abrupt and forced enforcement disrupts the social and economic fabric to such an extent that the judiciary itself is compelled to back down, restoring the status quo of illegality.

This essay draws a fundamental distinction between the constitutional obligation to prohibit cruelty (Art. 225, § 1, VII, of the 1988 Federal Constitution) and the dogmatic assertion that the courts have already established animals as holders of autonomous fundamental rights. While the duty of environmental protection imposes on the State an ethical-ecological obligation to refrain from mistreatment, Brazilian case law remains divided on whether to fully and uniformly recognize legal personality for animals. There are isolated decisions in state courts[15]—such as the admission of dogs as plaintiffs in civil and reparatory actions—that signal progress toward the status of legal subjects.

2.1. The Inability of Ordinary Judicial Orders to Act or Refrain from Acting on Ongoing and Bureaucratic Violations

Beyond its binary nature, ordinary civil procedure is based on the premise that a

[14]They write: "Individual proceedings, certainly, by their very nature, are not part of this debate. The narrow focus they impose on the conflict—which comes to be reduced solely to the claim brought by the plaintiff against the defendant—causes any discussion of public policy to become merely a debate between a particular individual's 'subjective right' and the State."

[15] CONJUR. Available at: https://conjur.com.br/2025-jan-30/juiz-do-rs-reconhece-que-animais-podem-demandar-em-juizo-como-autores/. "A JUDGE IN RIO GRANDE DO SUL RECOGNIZES THAT ANIMALS CAN FILE LAWSUITS AS PLAINTIFFS."

violation of a right stems from a specific, identifiable act, the elimination of which depends, in practice, almost entirely on the defendant's willingness to comply with a court order. However, the most severe violations of animal dignity in contemporary times take the form of ongoing, institutional, and bureaucratic wrongs. These are not isolated acts of abuse committed by a single individual, but rather an illegitimate state of affairs maintained by complex networks of regulatory acts, regulatory oversight failures, and economic interdependence.

Faced with this scenario of polycentric litigation, ordinary court orders—such as those requiring an inspection or the retrofitting of facilities within "X" days, or prohibitions on the operation of establishments under penalty of a fine—prove structurally ineffective. The atypical coercive measures provided for in Article 139, IV[16], of the Code of Civil Procedure (Jobim, 2016)[17], while useful in individual property-related disputes, fail when attempting to compel state agencies or large industrial conglomerates to restructure public policies or entire industrial processes.

The attempt to address a systemic violation through ordinary administrative measures fails to consider bureaucratic inertia and the time required to readjust operational routines. A court order that simply mandates the strict application of minimum animal welfare standards to an activity that is structurally in violation—without outlining transition phases, without redefining budget allocations, and without establishing feasible deadlines for reforming practices—inevitably results in the proliferation of enforcement incidents, repeated noncompliance with court orders, and the covert perpetuation of animal suffering.

By ignoring the institutional dynamics of the parties involved, the ordinary courts limit themselves to addressing the symptoms of illegality, leaving untouched the mechanisms that produce and perpetuate it.

2.2. The Unconstitutional State of Affairs in the Management of Public Policies for the Protection and Management of Wildlife

The vulnerability of nonhuman animals is not limited to their biological inability to assert rights in court or to physically defend themselves against direct aggression; it is compounded by institutional and structural factors. The state apparatus, shaped by history, has become accustomed to treating wildlife protection as a secondary concern, relegating the enforcement of animal welfare laws and the management of animal populations to a marginal role in the budget and in administrative operations. This pattern of chronic neglect and systemic regulatory failure characterizes what procedural and constitutional doctrine identifies as a truly un-

[16]Art. 139. The judge shall conduct the proceedings in accordance with the provisions of this Code, and shall be responsible for: IV—ordering all investigative, coercive, injunctive, or subrogatory measures necessary to ensure compliance with a court order, including in actions concerning monetary payments.

[17]I wrote about the inclusion of structural measures or techniques in the Code of Civil Procedure (CPC) in the article.

lawful (or unconstitutional[18]) state of affairs in the management of public policies on animal protection.

In this context of institutionalized illegality, the problem does not lie in the absence of regulatory statutes—since the prohibition against cruelty is an express constitutional mandate—but in the government's inability or refusal to translate the law into effective administrative practice. The management of zoonoses, the population control of domestic animals, the inspection of slaughterhouses, the regulation of animal facilities, and the monitoring of live animal transport operate, to a large extent, through flexible sub-statutory regulations, inspection routines, and tolerance of unacceptable levels of suffering. Violations of animal welfare have become the operational norm rather than the exception, transforming the very structure of the state into an agent that perpetuates illegality.

Because this is an essentially polycentric conflict, a change in one of the variables involved in the problem has immediate repercussions on a web of other interconnected interests. Visually, Lon Fuller's classic spider web metaphor accurately illustrates the polycentric nature and interconnected variables of this structural dispute.

A one-off court ruling that requires a municipality to collect and shelter all abandoned animals, for example, without considering the physical capacity of shelters or the available veterinary infrastructure, tends to turn public animal shelters into centers of confinement and disease proliferation—transferring cruelty from the streets to the state-run system. This inadequate state of affairs, therefore, is immune to simplistic judicial interventions, as it stems from a structural deficit in planning, governance, and resource allocation that requires a restructuring approach to the administrative apparatus itself. For these reasons, it must first be recognized that we are dealing with a structural dispute requiring structural intervention or protection, as in the decision stemming from the case file of Public Civil Action No. 5117657-73.2024.8.21.0001/RS[19], pending in the General Courts

[18]Regarding this term, which has been widely used by the Colombian Supreme Court and in Brazil since ADPF 347, the following is recommended: CAMPOS, Carlos Alexandre de Azevedo. Estado de coisas inconstitucional. 2nd ed. Salvador: JusPodivm, 2019 (Campos, 2019). The decisions of the Colombian Supreme Court can also be found in (Jobim, 2026a, 2026b).

[19]Judiciary, Court of Justice of the State of Rio Grande do Sul, Regional Environmental Court. PUBLIC CIVIL ACTION No. 5117657-73.2024.8.21.0001/RS. PATRICIA ANTUNES LAYDNER, Judge, on July 9, 2025, at 4:23:54 p.m. The judge states: "I find that the situation described by the plaintiff in Exhibit 151, PRELIMINARY INJUNCTION_ANT TUTE1, is supported by the information presented at the meeting held on July 3, 2025 (Event 153, TERMOAUD1), which was attended by representatives of the Public Prosecutor's Office, the State of Rio Grande do Sul, the Municipality of Porto Alegre, and the Public Defender's Office of the State of Rio Grande do Sul. On that occasion, the gravity of the situation was acknowledged, with reports of hundreds of homeless animals, and the need to allocate public funds to the cause and to centralize the debate on the animal issue in this lawsuit was noted. Furthermore, it was ordered that the Civil Defense of the State of Rio Grande do Sul be summoned and that the municipalities of Porto Alegre, Canoas, Eldorado do Sul, São Sebastião do Caí, and Guaíba be included as interested third parties in this case," and concludes: "The case at hand clearly meets the criteria for a structural proceeding, as defined by the CNJ1, as evidenced by the ongoing nature of the harm, the institutional complexity involved, the multiple responsible entities, and the need for coordinated and monitorable action to ensure the effectiveness of the rights guaranteed to animals."

of Rio Grande do Sul and involving animals affected by the 2024 floods, which is as important as—or even more important than—one-off palliative measures.

2.3. Economic, Cultural, and Budgetary Resistance as Obstacles to Compliance with Immediate Judicial Decisions

The attempt to enforce immediate compliance with court decisions regarding animal welfare clashes head-on with complex networks of economic interests, deep-rooted cultural traditions, and budgetary constraints in both the public and private sectors. Animal exploitation generates billions and supports jobs and significant tax revenues. For this reason, provisional or final court orders that mandate the abrupt cessation of an economic activity with the aim of ending mistreatment face fierce institutional resistance, manifested through dilatory appeals, political pressure, and allegations of the sector's financial collapse.

From a budgetary and operational perspective, the immediate retrofitting of infrastructure to meet minimum animal welfare standards requires substantial capital investments and a period of technical development that cannot keep pace with the speed of ordinary court proceedings. The conversion of slaughter methods, the restructuring of captive habitats, the replacement of animal-drawn transport with mechanical means, or the adaptation of transoceanic transport vessels requires logistics plans, environmental permits, the hiring of specialized personnel, and financial contributions that are not feasible under the threat of daily fines (astreintes)[20]. Given the practical impossibility of immediate compliance, the monetary penalty is absorbed by the company as a mere "cost of doing business," while animal suffering continues unabated.

Furthermore, when a judicial ruling involves changing established cultural habits or social dynamics, a repressive, binary order tends to generate a backlash of clandestine noncompliance and social resistance. By ignoring the economic and cultural factors that underpin the illegal act, the ordinary courts create an illusion of legal protection: the judgment "resolves" the case on paper, but practical reality remains resistant to judicial orders. The persistence of these variables demonstrates that the end of cruelty cannot be achieved through mere normative voluntarism alone, requiring the judiciary to adopt strategies that address economic incentives (nudges[21]) and offer viable paths for market transition and readjustment.

3. The Replacement of Immediate Final Relief with the Establishment of Progressive Targets and Transition Plans (Multistage Decrees)

Given the ineffectiveness of the two-tier judicial system in addressing systemic violations, the structural approach redefines the role of judicial protection: the judicial decision ceases to be an isolated act of applying the law and becomes a continuous process of institutional reorganization. In the protection of animal

[20]On the topic of penalty payments, the following is recommended (Pereira, 2017).
[21]See some of these incentives in (de Abreu, 2020).

rights, where violations result from complex economic and bureaucratic mechanisms, the immediate prohibition of an economic activity or a generic order for instantaneous rectification gives way to the establishment of gradual transition plans. Judicial relief is now formulated through deferred rulings, in which the judge establishes the desired final outcome—the absolute cessation of cruelty or the termination of a degrading activity—but divides its implementation into chronologically defined phases.

This model of transitionality makes it possible to break through the decision-making paralysis that often afflicts the judiciary when faced with disputes that have a high socioeconomic impact. Instead of confronting a government agency or the private sector with an unworkable order requiring immediate compliance, the judge granting structural relief sets progressive milestones that must be achieved successively. The transition plan functions as a binding roadmap for eliminating the unlawful act: it establishes timelines for the gradual reduction of exploitation targets, deadlines for the rescheduling of private investments, and stages for the readjustment of sub-statutory regulations. The aim is to replace the utopian ideal of immediate relief with the pragmatic approach of progressive transformation, ensuring that animal rights are upheld without causing the collapse of the social structures surrounding them.

3.1. Procedural Flexibility, Interim Safeguard Regulations, and the Limitation of Damages during the Transitional Phase

The implementation of a gradual transition plan does not imply complacent tolerance of illegality, nor does it grant a "blank check" for the perpetuation of animal suffering. On the contrary: the viability of the transition rests on the introduction of strict interim safeguards. During the time required to restructure the sector or public policies, a judge may, in theory, order provisional measures to contain and immediately limit harm. Such safeguards establish provisional minimum standards for animal welfare that must be strictly observed during the transition phase, reducing pain and mortality while the final ruling proceeds toward its conclusion.

The legal basis for postponing the cessation of an activity classified as constitutionally prohibited cruelty rests on the very nature of the structural process and on the need to ensure maximum effectiveness of the constitutional provision set forth in Article 225, paragraph 1, subparagraph VII. It is necessary to distinguish, from a legal theory perspective, between the technically permissible implementation period—during which judicial relief establishes a binding and mandatory timeline for the dismantling of the illegitimate economic or public chain—and cases of gross ongoing harm that require immediate intervention and summary suspension. Temporary deferral does not imply complacency toward cruelty, but rather constitutes the appropriate legal technique to immediately mitigate the most serious harms during the adjustment phase and to ensure, upon completion of the plan, the definitive and feasible elimination of the unconstitutional practice.

Managing this transition period requires a high degree of procedural flexibility[22], guided, for example, by Article 139, VI[23], of the Code of Civil Procedure. The rigidity of the deadlines and formalities of ordinary proceedings proves incompatible with the dynamics of reorganizing institutional structures. The judge presiding over structural relief proceedings must have the authority to adapt the procedure to the specific circumstances of the case, extending procedural deadlines upon presentation of sound technical justification, revising stages of the original timeline, or strengthening safeguards if the defendant is found to be recalcitrant or unjustifiably delaying the proceedings. The flexibility of the procedure, far from creating legal uncertainty, ensures that the plan will remain viable and responsive to practical realities throughout its entire implementation process.

3.2. Consensus and Polycentrism: The Role of NGOs, the Public Prosecutor's Office, and Technical Experts in Monitoring the Plan

The complexity, polycentrism[24], and forward-looking nature inherent in structural litigation[25] prevent the drafting and monitoring of the transition plan from being restricted to the judge's unilateral decision. The legitimacy and feasibility of the structural decision depend on the incorporation of consensus and institutional dialogue. The development of the decommissioning timeline and safeguard rules must result from a participatory and dialogic process, in which the Public Prosecutor's Office, civil society organizations dedicated to animal protection (NGOs), state regulatory agencies, and representatives of the affected productive sectors work together to formulate technical alternatives, without excluding other interested parties who can demonstrate their standing in the process.

In this democratic framework, monitoring compliance with the plan requires the establishment of deferred oversight mechanisms. The role of the judge is not

[22]Even though the CPC/2015 has expanded the scope of procedural flexibility, the topic needs to be revisited from its very origins. In Brazil, the following is recommended (Gajardoni, 2008).

[23]Art. 139. The judge shall conduct the proceedings in accordance with the provisions of this Code and shall be responsible for: VI—extending procedural deadlines and altering the order in which evidence is presented, adapting them to the needs of the case in order to ensure more effective enforcement of the law.

[24]For a more comprehensive examination of the characteristics of structural litigation, see the work by (Hellwig, 2025).

[25]These characteristics were also identified by the committee of legal experts for Bill 03/2025 on structural proceedings, which lists some of them by way of example in Article 1, which reads as follows: Art. 1 This law governs public civil actions intended to address structural problems. § 1 Structural problems are those that cannot be adequately resolved through the traditional techniques of ordinary proceedings, whether individual or collective, and that are characterized by elements such as: I—multipolarity; II—social impact; III—perspectivity; IV—the incremental and long-lasting nature of the necessary interventions; V—complexity; VI—the existence of a serious situation of continuous and permanent irregularity, whether by action or omission; and VII—intervention in the operations of a public or private institution. § 2 The structural proceeding is governed by the provisions of Law No. 7347, of July 24, 1985, and, on a supplementary and subsidiary basis, by Law No. 13,105, of March 16, 2015 (Code of Civil Procedure). § 3 Structural measures may also be established through a conduct adjustment agreement and other collective self-regulation mechanisms, with the provisions of this law applying as appropriate.

that of a field inspector; it is up to the judiciary to appoint impartial experts, monitoring committees, or judicial masters with specific technical expertise in animal welfare, veterinary medicine, and logistics. These auxiliary bodies of the judiciary are responsible for periodically auditing the facilities, analyzing performance reports, assessing compliance with interim goals, and reporting any misconduct directly to the court. The coordinated effort between the specialized knowledge of organized civil society and independent technical auditing provides the process with the evidentiary weight necessary to prevent the manipulation of results and ensure that the plan remains faithful to its constitutional objectives.

3.3. Budgetary Reorganization and Harmonization between Judicial Intervention and the "Reserve of the Possible" without Violating the Separation of Powers

One of the main obstacles to structural protection is the defense argument that the Judiciary is unduly interfering in the Executive Branch's allocation decisions, under the guise of the principle of separation of powers and the doctrine of the reserve of the possible[26]. However, the constitutional guarantee against cruelty to animals is not merely a programmatic guideline, but an irrevocable legal duty. When the State remains in a state of chronic inaction or maintains public policies that are structurally illegitimate, judicial intervention does not constitute a usurpation of administrative functions, but rather the legitimate exercise of constitutional and legal oversight over state activity (Jobim, 2026a, 2026b)[27].

This impasse is overcome precisely through the use of the structural plan. Rather than having a judge unilaterally dictate where the administrator should allocate public funds, the structural decision requires the administrative agency itself to draft and submit a plan for budgetary readjustment and revenue reallocation. The judiciary establishes the constitutional guidelines for animal protection and sets a deadline for the executive branch and private entities to adjust their financial and fiscal priorities—including by revising tax incentives or exemptions that finance illegal practices. By granting the public administration discretion to design its own funding and transition plan, the structural injunction harmonizes the requirement for effective protection of vulnerable groups with respect for institutional competences, thereby legitimizing the judicial ruling within the legal framework.

Under current legislation—supported by the constitutional provision of Article 225, paragraph 1, subparagraph VII, and by the powers of administrative health and environmental enforcement (federal, state, and municipal laws, administrative acts, and many other forms of regulating conduct provide legal backing for this constitutional provision)—therefore, the courts have legitimate grounds to impose administrative restrictions on the licensing of live animal exports and to suspend specific tax incentives or exemptions granted to activities proven to be

[26]On this topic, see (Sarlet & Timm, 2013).

[27]I wrote about the democratic legitimacy of the judiciary while pursuing my doctoral degree.

operated in a manner that is unconstitutional or cruel. On the other hand, measures involving an absolute and definitive ban on the activity throughout the national territory, the permanent cancellation of general tax regimes, or the creation of new subsidy and incentive programs for the processed protein industry necessarily depend on legislative reform (such as bills currently pending in the National Congress). Thus, the structural process acts as a legitimate catalyst by requiring the Executive Branch to adapt and redirect its fiscal and regulatory public policies within the scope of its discretion and current legislation, without usurping the primary legislative function.

4. The Anatomy of Animal Suffering on Long-Distance Transoceanic Routes

The maritime export of live animals for slaughter and fattening abroad represents one of the most severe forms of animal vulnerability and suffering in the modern world. The transport of thousands of cattle and sheep on specially adapted vessels subjects these animals to conditions of extreme confinement for weeks on end. During transoceanic voyages, which can last more than 20 or 30 days, the animals are kept in severely overcrowded pens, deprived of even minimal mobility and exposed to caustic levels of ammonia resulting from the continuous accumulation of feces and urine. This unsanitary environment causes burns to the mucous membranes of the eyes and respiratory tract, severe heat stress, dehydration, fractures due to the motion of the sea, and the accelerated spread of digestive and pulmonary diseases[28].

Despite the existence of administrative guidelines for good agricultural and livestock practices and formal pre-shipment veterinary requirements, the operational reality of maritime transport reveals that it is, in fact, impossible to ensure animal welfare on the high seas. The scarcity of veterinarians on board relative to the thousands of animals being transported makes it difficult to identify and isolate sick animals. Mortality[29] rates and the routine disposal of carcasses into the ocean demonstrate that cruelty does not stem from isolated incidents but is inherent in the very logistics of the activity. This is a production chain in which physical and psychological harm to non-human animals is treated as a tolerable operational cost, constituting a flagrant violation of the constitutional prohibition against cruelty (Art. 225, § 1, VII, of the 1988 Federal Constitution).

It should be noted that this study falls strictly within the scope of legal analysis of constitutional law, constitutional procedure, structural remedies, and their

[28]The list of problems is merely illustrative. Others can be found in the article available at: G1. Amid reports of animals living in feces and with little space, live cattle exports have doubled in Brazil over the past three years. https://g1.globo.com/economia/agronegocios/noticia/2026/02/19/exportacao-de-gado-vivo-dobra-em-3-anos-mesmo-com-criticas-de-ambientalistas-ao-transporte.ghtml. Accessed September 30, 2026.

[29]News article available at: INSTITUTO HUMANITAS UNISINOS. https://ihu.unisinos.br/categorias/653999-2-3-mil-bois-morreram-em-exportacao-de-gado-vivo-desde-2020. Accessed September 10, 2026.

precedents and doctrine; it does not constitute research in veterinary medicine or animal science. The empirical basis regarding the harm caused to animals is supported by data documented in popular science articles, institutional reports, and news articles; it is not backed by veterinary analyses, as this is not the subject of the article's analysis. On this more scientific topic, the analysis proceeds on the basis that, as with almost all other structural disputes, it arises from the observation of an inadequate state of affairs.

4.1. The Bottlenecks of Traditional Jurisdiction in Combating the Live Cattle Supply Chain

The history of legal challenges involving the maritime transport of live animals clearly illustrates the collapse of the standard procedural model. The Judiciary's approach to this activity has been marked by a back-and-forth between provisional orders for immediate suspension[30]—which prohibit the shipment of live cargo from specific ports—and the subsequent overturning of these orders by Federal Regional Courts[31] or Higher Courts, on the grounds of their impact on the trade balance, harm to exports, and violation of the economic order.

The standard judicial ruling, based on the binary logic of "all or nothing" (either fully permitting the activity or instantly prohibiting it), proves incapable of resolving the dispute. On the one hand, a decision that simply prohibits shipment overnight creates a crisis of backlog and shortages in pre-shipment quarantine areas, exacerbating the suffering of animals confined in trucks or on-land holding facilities. On the other hand, unrestricted authorization perpetuates the unconstitutional state of affairs on the high seas. Traditional jurisdiction, when addressing a polycentric dispute through ordinary injunctions, fails to transform the material reality and ultimately normalizes the entrenchment of illegality.

4.2. The Architecture of the Transition: Deadlines for Phasing Out the Market and Incentives for the Export of Processed Protein

Overcoming the impasse in the transport of live cattle requires replacing the order for an immediate halt with a structural decision based on a gradual transition plan. Given the practical impossibility of retrofitting maritime vessels to eliminate cruelty without requiring the outright cessation of long-distance transport, the structural remedy must establish a binding timeline for the phased phase-out of the live animal market. Drawing inspiration from international legislative trends and bills currently pending in the National Congress, the judiciary can establish a reasonable deadline for the definitive cessation of the issuance of licenses and authorizations for the shipment of live animals for slaughter abroad.

This transition period allows for the economic reorganization of the entire ag-

[30]News article available at: VEJA. Judge issues a preliminary injunction suspending the export of live cattle nationwide. Read more at: https://veja.abril.com.br/economia/juiz-suspende-liminarmente-exportacao-de-gado-vivo-em-todo-o-pais/. Accessed September 20, 2026.

[31]For example, the stay of preliminary injunction or provisional relief No. 5001511-93.2018.4.03.0000, 3rd Regional Federal Court of Appeals (TRF), was decided by Federal Appellate Judge Cecília Marcondes.

ribusiness chain and the adaptation of the foreign consumer market. The structural plan should provide for the gradual redirection of private investments, government incentives, and subsidies toward the domestic meat slaughter and processing industry. Instead of exporting live animals subjected to suffering, public policy is restructured to encourage international trade in chilled and frozen meat—generating added value within the country, preserving jobs at meat-processing plants, and eliminating the need for transoceanic shipping of live cargo.

It is a fact: the structural process takes time. The legal battle waged in Brown v. Board of Education I in 1954 and in Brown II in 1955—which lasted for decades—illustrates that orders issued simply to adopt one-off measures are not compatible, today, with the structural process. For this reason, the feasibility of a three- to five-year timeframe for phasing out the export of live cargo is based on a concise implementation sequence inspired by comparable precedents of progressive transition, such as the phased elimination of animal-drawn vehicles in urban centers and the gradual ban on the export of live animals by countries such as New Zealand. It is reasonable to assume that any timeframe is illusory and could extend over many years.

4.3. Interim Regulation and Monitoring by Technical Committees during the Transitional Phase

During the transition period leading up to the permanent ban on the activity, the structural injunction requires the implementation of interim safeguard regulations aimed at immediately mitigating damages. The judge presiding over the structural injunction establishes temporary rules that must be observed while the market is restructured, such as: an immediate ban on voyages with an expected duration exceeding a certain limit (to avoid excessively long routes); a reduction in the maximum stocking density per pen on vessels; a ban on loading during periods of seasonal temperature peaks; and a requirement for auditable ventilation systems, water desalination, and continuous real-time veterinary monitoring.

Ensuring compliance with this provisional regulation cannot depend solely on the declarations and reports produced by the exporters themselves or on the random and bureaucratic inspections conducted by traditional regulatory agencies. The structural process must provide for the creation of an Independent Monitoring and Audit Committee, composed of animal welfare experts, independent veterinarians, representatives of the Public Prosecutor's Office, and representatives of civil society nongovernmental organizations. Empowered to inspect port facilities and monitor shipping conditions, this auxiliary body reports periodically to the court overseeing the structural relief. In this way, it ensures that the flexibility of the transition period does not lead to negligence, guaranteeing a legally sound, economically viable, and ethical path toward ending cruelty in the maritime transport of animals.

5. Concluding Remarks

The consolidation of protection for nonhuman animals as an ethical and consti-

tutional imperative (Art. 225, § 1, VII, of the 1988 Federal Constitution) has revealed a profound asymmetry between the evolution of substantive law and the operational capacity of the traditional judicial system. As demonstrated throughout this study, the civil procedure model inherited from the liberal tradition—based on bipolarity, an "all-or-nothing" logic, and the issuance of ordinary injunctions—has proven structurally incapable of addressing violations of a systemic, institutional, and bureaucratic nature. Ordinary judicial action, in attempting to curb ongoing unlawful acts through immediate and reactive injunctions, invariably results in continued noncompliance, administrative paralysis, or the overturning of decisions on the grounds of economic impact, thereby perpetuating the unconstitutional state of affairs in wildlife management.

The structural process and institutional reorganization relief emerge as a procedural framework capable of overcoming this dogmatic rigidity. By replacing the utopian ideal of immediate relief with the pragmatism of gradual transformation, structural litigation—properly addressed through structural relief—allows for the implementation of judicial decisions to be broken down into gradual transition plans (multistage decrees). Through institutional dialogue, consensus-building, procedural flexibility, and the establishment of auditable goals, the judiciary ceases to act as a mere enforcer and becomes a catalyst for sustainable reforms. The introduction of interim safeguard regulations and deferred monitoring by technical committees and civil society ensures that the transitional period will not degenerate into complacent inaction, but rather into a structured process aimed at eliminating illegality.

The urgency and feasibility of this approach are evident in some cases involving the export of live animals on transoceanic routes. The extreme severity of the mistreatment inflicted on cattle and sheep during long-distance transport contrasts with the history of inconsistency and ineffectiveness of traditional provisional judicial injunctions issued in this matter. To definitively address this chain of cruelty, we must overcome this binary stalemate by enacting a structural plan that establishes a gradual and phased ban on the activity (within a reasonable timeframe of three to five years), accompanied by the redirection of tax incentives toward the domestic slaughter industry and the export of processed meat, coupled with strict interim safeguards during the transition period.

It follows, therefore, that structural animal protection is not merely an academic luxury or a violation of the separation of powers, but rather an indispensable and effective tool for giving practical substance to the constitutional prohibition against cruelty. Only through a responsive, dialogical, and structured judiciary will it be possible to harmonize the demands of market reorganization and public policy with the ethical and legal duty to ensure the dignity, integrity, and effective protection of nonhuman animals.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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