



## ANIMAL CRUELTY AND INFORMATION SOCIETY

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### **Abstract**

It investigates the possibility of using videos of people mistreating animals spread in the internet in lawsuits, due to the development of the information society. The criminalization of animal cruelty constitutes an implicit recognition by criminal law of the intrinsic value of animals. As a result, it concludes that the available audiovisual material can be used in lawsuits, although it is necessary to carry out the expertise to assure the accuracy of the footage.

### **Keywords**

Animal cruelty. Criminal proceedings. Proof. Videos on the internet. Information society.

### **CRUELDADE ANIMAL E SOCIEDADE DA INFORMAÇÃO**

### **Resumo**

Investiga-se a possibilidade de utilização de vídeos de pessoas maltratando animais divulgados na rede mundial de computadores em processos judiciais, em virtude do desenvolvimento da sociedade da informação. A criminalização dos maus-tratos a animais configura-se como um reconhecimento implícito, pelo Direito Penal, do valor intrínseco de animais. Em virtude disso, conclui-se pela plena capacidade de utilização desse material audiovisual disponível, embora seja necessária a realização de perícia para asseverar a veracidade da filmagem.

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## Palavras-chave

Maus-tratos com animais. Processo Penal. Prova. Vídeos na internet. Sociedade da informação.

## 1. INTRODUCTION

This chapter aims to demonstrate that videos shared on the Internet showing people perpetrating cruel acts against animals can be used as proof in lawsuits.

As a result of the easy access to video cameras, especially the ones available in cell phones, plenty of people are filmed — when they are not making their own videos — doing cruel deeds against animals. Those videos are then shared on social networks.

It so happens that both the Police and the Public Prosecution Department often face difficulty in identifying the author of cruelty and prove the materiality of those felonies. Moreover, it is not easy to establish the competence for judging such crimes, since the fact, as a general rule, takes place in uncertain or unrecognizable locations either in Brazil or abroad.

Since there is no need for identification or any kind of control in the access to the Internet, any citizen can deliberately access it, many times using pseudonyms, thus turning the crimes broadcasted in the digital environment difficult to prove, either for the establishment of the legal jurisdiction, or for the identification of the authorship and proof of materiality.

Notwithstanding, due to the lack of a specific type and a law that establishes the competence and the means of proof for this kind of crime, resorting to the Criminal Code, to the extravagant criminal laws, and to the Lawsuit Code become the only alternatives for the punishment of cyber-criminals.

This article investigates how the information society allows the proliferation of digital crimes against the environment, among which are the crimes of cruelty against animals.

Then an analysis of the crimes against animals committed in the digital environment will be carried out, identifying their characteristics, and the violated legal asset.

Finally, the article will demonstrate that the images shared on the Internet may serve as proof for the conviction of crimes of cruelty against animals.

## 2. THE INFORMATION SOCIETY AND THE EMERGENCE OF NEW CRIMES COMMITTED IN THE CYBER-SPACE

The post-modern society, according to Bauman (2013, p. 16), seeks to dissolve all that is solid, liquefying the old social forms without substituting them with new forms, thus perpetuating a state of constant inconstancy.

According to some theorists, including Sérgio Rouanet (1987), the modern world is already old fashioned because there is a new social structure: post-modernity<sup>1</sup>, which replaces the machine with information, and the personal contact with the virtual one whose limits reach the fascination of commodities in the digital environment.

The issue is not an easy one, once authors such as Gaudêncio Frigotto (1992), suggest that there may be at most a state of neo-modernity, that is, modernity characterized by exclusion and alienation, since there was neither an economic rupture with the productive model, nor a revolution, one cannot refer to it as a “new era”.<sup>2</sup>

In any case, this new paradigm gave birth to a new kind of society: the information society, or knowledge society, based on figures, calculations, flow of communication, and information speed. It is important to point out that in this new kind of society, the privileged individuals have a broader access to sources of knowledge, data, information and commercial transactions, which, according to many theorists, take away from this new paradigm the ethic, formative, historical and emancipative senses.

Indeed, the technical, organizational, and administrative transformations, based on input resulting of technological advances of microelectronics and telecommunication turn information into raw material, and make it rule over the logics of the networks based on the flexibility and on the convergence of technologies (computers, biology), and give birth to a new kind of environment: the digital environment, that changes the classic concepts of territory and borders.<sup>3</sup>

As for the environment, we paraphrase Marco Aurélio de Castro Jr. when he says that the ethic challenge due to the overcoming of the human (*pós-humanis*), the devirtualization of the necessary media is proportional to

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<sup>1</sup> For a more complete analysis of the term, see *Indústria Cultural, Pós-Modernidade e Educação: Análise crítica da sociedade da in formação* (BARRA & MORAES, 2007).

<sup>2</sup> FRIGOTTO, Gaudêncio. **Cidadania, tecnologia e trabalho**: desafios de uma escala renovada. Tecnologia Educacional, Rio de Janeiro, v. 21, n. 107, p. 04-10, jul/ago, 1992.

<sup>3</sup> According to Celso Fiorillo “The concept of territory is closely related to a new idea, the Web, which, like the territory, is characterized by the location of information. Therefore, the information on the Web becomes an element that identifies the territory on cyberspace.” (2013, p. 15).

the virtualization of life, the deterritorialization and dematerialization of the relations and instruments (CASTRO JR., 2013, p. 107), as well as the substitution of cheap energy supplies with information.

The Internet, for instance, was created by the *Advanced Research Projects Agency* (ARPA) funded by the United States Department of Defense in the decade of 1960, during the days of the Cold War. By the end of the project, they managed to connect the college centers of the Universities of California, in Los Angeles and Santa Barbara, as well as the University of Utah, which made up the first form of online electronic communication between computers.<sup>4</sup>

The cyberspace is a worldwide network of computers that exchanges information in the form of text, sound, and digital images, mail etc., making up a true post-humanistic parallel universe.<sup>5</sup>

One must take into account that such new type of society, which Ulrich Beck (1988) calls “risk society”, may cause unlimited, global and irreversible damage to the whole community, for, although it produces and exponential technological advance and improves the individual welfare, it constantly threatens the citizens with direct and indirect risks derived from new techniques used by the industry, such as the digital technology industry (p. 44).

In addition to improving the social production of risks, the wealth production and the advance in the development of new productive forces cause, as an obvious consequence, the systematic production of damage. The risk resulting from those new production sources embodies a conceptual content that is subject to the process of definition, resulting from causal interpretations presented by the knowledge of new damage possibilities experienced throughout the stages of social modernization (BECK, 2011, p. 23- 27).

According to Márcia Elayne Berbich de Moraes (2004, p. 26-27), with such changes brought in the end of the 19<sup>th</sup> century, and in the beginning of the 20<sup>th</sup> century, humankind ceased to work having the land as a referential, and started to operate having light as a referential. As a consequence, a new order of distance/time arose, with particular features and speed of action, which substantially restrict the vigilance of the State.

With the decrease of the power of vigilance, the virtual space has been presented on one hand as a means of dissemination of crimes such as larceny

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<sup>4</sup> A more detailed account is given on *Direito e Pós-Humanidade*: “In the beginning of the 90’s, the Internet received its maximum push towards popularization. The English programmer Tim Berners-Lee, from the European Laboratory of Particles Physics of Geneve, developed a system, which he called World Wide Web Hypertext (WWW). With the development of some softwares of easy use and acquisition, expanded to the point of becoming the computers international network, as we know it nowadays.” (CASTRO JR, 2013, p. 13-14).

<sup>5</sup> According to Tagore Silva in *Direito animal e ensino jurídico: formação e autonomia de um saber pós-humanist*, the post-humanism evinces the human artificiality, when it Works with the technical, biological, genetic, cybernetic and economic development. (2014, p. 34).

by fraud, pedophilia, racism, insulting, libel, eulogy, and incitement to crimes among other frequent ones on the social networks.

Furthermore, the increase in the flow of communication and speed of information make many people use the Internet as an instrument to practice and share many types of crime.

It is possible to find on the social networks a large number of videos that portray the suffering and death of animals, which is largely spread, due to the shortening of the distance caused by this new relational space of the information society, thus compelling the State to take on new functions of investigation and vigilance, as Heron Gordilho well points out (2009, p. 61-62).

Indeed, such new crimes have been raising the concerns in the Legislative Power, resulting in the enacting of the Laws 12.735/12 and 12.737/12 (Law Carolina Dieckman), which alter articles 154, 266 and 298 of the Criminal Code, and Law 2.965/14 (Internet Civil Milestone), which regulates the use of the Internet in Brazil.<sup>6</sup>

It turns out that although the Internet Civil Regulation (*Marco Civil da Internet*) has set principles, warranties, rights and duties in the virtual sphere, it has lost the chance to criminalize the many types of actions that make use of the Internet to violate essential legal social assets, apparently leaving that function to specific regulations, such as the Statute of Infants and Adolescents, when it comes to pedophilia.<sup>7</sup>

### 3. THE CRIME OF CRUELTY AGAINST ANIMALS AND THE DIGITAL ENVIRONMENT AS A PENAL LEGAL ASSET

According to Celso Fiorillo (2015, p. 615-621), the legal custody of the digital environment aims to interpret articles 220 to 224 of the Federal Constitution as compared to articles 215 and 216, and the particularities of the so-called “digital culture”, in order to establish legal protection for the forms of

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<sup>6</sup> According to Luziane Leal e José Roberto de Anselmo (LEAL & ANSELMO, 2015), had as one of the origins of the law of the Internet Civil Milestone resulted from an intense discussion with society through the Internet itself, between October 2009 and May 2010, and it took place in a blog hosted in the platform Digital Culture, of the Ministry of Culture and the National Teaching and Research Network, allowing the participation of more than 2, 300 people in the making of the first version of the bill. Although the initiative was innovative, one could notice that the amount of people involved in that was quite small, if one takes into account the amount of people with access to the Internet.

<sup>7</sup> Law 11.829/08 states: “Art. 241-A: Offering, exchanging, sharing, transmitting, distributing, publishing or sharing by any means, including information or telematics system, photograph, video or another kind of register that contains pornographic or explicit sex scenes involving children or adolescents: Penalty — imprisonment, 3 to 6 years and a fine. ”

expression and artistic creations, scientific and technological developments performed through computers and other electronic means.

The crimes committed in the digital environment could be classified as pure, mixed and common. Under the first type are those committed exclusively on the Internet, such the invasion of a computer by a hacker; the second one includes those that use electronic media to commit crimes such as illegal transference of money in an electronic transaction. Finally, the common crimes are those in which the Internet is used only as a means of quick and efficient dissemination of crimes, which are already typified in our environment.<sup>8</sup>

The effects of the crimes in the digital environment, even those considered pure, are easily perceived in the so-called “real world”, making it currently impossible to distinguish their definitions of “virtual” or “real” crime, since every virtual crime has a large social effect.

The Draft Law 730/15, going through analysis in the Federal Senate, defines the cybernetic, digital or virtual crimes, as offences committed through electronic means or through the Internet that can be framed in the Brazilian Criminal Code.

One has to wonder if this very virtual space might become an ally in the criminal prosecution in the face of cruel practices against animals, whose material traces are not at the reach of the State power of vigilance.

As everyone knows, reports of cruelty against animals, as a general rule, start from childhood, with clear signs of wickedness that might not be noticed by the parents. Frequently the child simply reproduces a pattern of domestic violence and bad examples that foster a continuous cycle of violence against the ones that are in a vulnerable situation.

Some of those videos condemn and aim to reproach the behavior of the criminals, but a great part of them is recorded by the criminals themselves, who share images of their own cruelty, images that can bring important elements to prove the authorship and materiality of such type of crime.

In April 23, 2012, an Italian judge from Milan, A. Pellegrino, sentenced Anna Biancone to 4 months in prison, later replacing the penalty with a fine of EU 4,400.00, for sharing on the Internet a video in which she is shown semi-nude, smashing animals such as cockroaches, mice, rabbits, even chicks, a phenomenon known as crush fetish.

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<sup>8</sup> For an overview of this typology, see the article “A internet e os tipos penais que reclamam ação criminosa em público” (CASTRO, 2003).

An Animal Protection Society represented the fact in Milan at the Attorney's Office, when a member of the Public Prosecution filed charges that resulted in the conviction of the defendant for the crime referred to in the article 544 of the Italian Criminal Code.

The natural environment, a legal asset protected by Law 9605/98, holds a constitutional seat, and there is no doubt about the legitimacy of the offence, both in light of its source and of its criminalization injunction for the ordinary legislator, and in light of the value attributable to the preservation of the ecological heritage.

For that reason, it becomes impossible for the ordinary legislator the interpretation or the activity that may oppose the set of values, which grant a unified meaning to the legal framework. Such notion is essential so that the extension of the legal protection granted to the legal assets protected by the Law of Environmental Crimes is appropriately interpreted.

The comprehension that life is intertwined in all its elements and that the preservation of a species implies preservation and defense as a whole, was, indeed, a prevailing element for this new normative pattern. The environment started to be protected in a single legal text, differently from what happened until then, when different laws regulated the crimes against different elements that composed it, hindering the knowledge of prohibited actions and the effectiveness of the legal protection.

Thus, the banned conducts within the norm under the form of the penal types as per Law 9605 are those negatively valued by the Constitution for hurting the ideals of an era. It is under such understanding that the analysis of the penal types therein contained shall be analyzed.

In the penal sphere, the legal asset — value, interest —, which is the object of the protection of the norms, is different from the object of the lawsuit, according, for example, to Regis Prado (2013, p. 105), who claims that this is the real object upon which the agent's punishable suit rests.

In turn, Luis Greco (2004, p. 104) believes that those expressions can be used as synonyms, when the legal asset is only taken in its dogmatic dimension. As a matter of fact, according to this author, such notion can be of interests only when it can fulfill its critical or political-legal function, serving as a guideline for the legislator, not as a resource capable of legitimating the expansion of the criminal law. Nevertheless, according to the principle of subsidiarity, not all that is sheltered by the Constitution must be protected by the criminal law because of the seriousness of its sanction but only the assets that need legal protection, and for which the protection granted by other branches of the law is not enough.

One of the several discussions on legal assets, protected by Law #9605, is closely articulated with the topic in analysis herein, and it concerns the exclusion of the legal scope of values whose importance is related to the collectivity, not to a specific individual, although they are constitutionally referred to. Therefore, it means to admit or not that the assets beyond the individual belong to the criminal law, and need its sanction. According to Hassemer (1999), the Criminal Law has neither suitability nor the intention to concern the trans-individual legal assets. Such task rests on the so-called Law of Intervention, which for him mean: the kind of law, which is less guarantee-based in material and procedural terms, and with lighter sanctions than the ones existing in the traditional Criminal Law.

Individual legal assets would be tutored by the Criminal Law, although under expressive decriminalization of practices, whereas the universal legal assets, on the other hand, would be managed by that new Law which would lie between the Traditional Criminal Law and the sanctioning Administrative Law, and would be geared towards prevention rather than the personal reproach, and the imposition of penalties of freedom deprivation.

Other authors, such as Figueiredo Dias (2001, p. 49), believe that the importance of some trans-individual legal assets justify the protection of the criminal law, being the environment an example, upon which the destiny of the upcoming generations depends. Such argument seems to be final to attest the acts of the national legislator, without disregarding the considerations of Luis Regis Prado about the topographic location of the penal types in the scope of the Criminal Code, in a proper chapter of the Criminal Code. According to Bernd Schunemann (1989, p. 335), to defend the protection of the environment means to confuse the instruments of protection with the very object of protection.

#### 4. LEGAL ASSET AND MATERIAL OBJECT OF THE SUIT

The difference between a legal asset and the object of the suit is essential for the analysis of the types that comprise Law 9605/98, because its systematization occurs according to those elements. In Chapter V, of the law that addresses crimes against the environment, the legislator begins the listing of the typical acts, starting from the crimes against the fauna, i. e., the crimes whose material object is the fauna, one of the elements that comprise the concept of environment. This term includes terrestrial and marine fauna, the wild, pets, not only the earthly animals, as the reading of the article 29, 3<sup>rd</sup> § of the Law suggests.

The former understanding that excluded marine animals from the concept of fauna was due to the fact that those animals were object of a specific



law, namely, the Fishing Code. Likewise, pets are not excluded from the concept of fauna, so one must not confuse the norm of the article 29, 3<sup>rd</sup> § — a typical norm of hermeneutics — which addresses wild animals using the term “fauna”, which comprises the group of animals that belong to a certain region.

A more sensitive argument that stands out nowadays refers to the understanding of the fauna as an element of the legal asset, when one advocates for the animals the condition of subjects with their own rights.<sup>9</sup> New arguments and facts seem to question the existence of an exclusive human trait, thus weakening the idea that there is a clear borderline between human nature and other animals, suggesting that the distinction concerns the degree or complexity rather than the essence,<sup>10</sup> as it has been like has been spread.

Although in the past centuries, equal human rights have been a claim, few are the recognized rights of the animals. Nevertheless, since they have brains and a nervous system, they are susceptible to pain, like human beings. Pain does not need characterization according to species, it causes suffering, whether it is manifested in a man, an elephant or a cat, and it is the ability to have a painful feeling, produced by the stimulation of nervous terminations, which enables philosophers to talk about the right of the animals to not suffer. Thus, activists of movements for animal liberation understand that avoiding suffering implies a step in the achievement of their ultimate goals.<sup>11</sup>

Law #9605/98, in its article 32 caput and paragraph, prohibits acts that may cause suffering to animals, thus revealing the inaccuracy of the legal asset tutored by the norm. If all the types contemplated by the Law of Crimes Against the Environment aim to protect the environment, one must inquire to what extent cruelty against a pet, for instance, effectively affects this legal asset. One is led to believe that the lack of courage in going further in the correction of the formulation of the protected value has inhibited the legislators and theorists in admitting human solidarity towards other animals as a protected legal asset, as per Greco (2004, p. 104) and José Duarte (1958, p. 315).

Roxin, as quoted by Greco, would rather believe that such offence does not protect a specific legal asset, being it a rare exception of incrimination without a legal asset. Such solution does not ignore the existence of a value to preserved, perhaps lying half way between considering an animal a mere element in the environment, or granting it another legal category. One may affirm that

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<sup>9</sup> For further reading, see “Os delitos contra a fauna silvestre na República Argentina” (BUOMPADRE, 2014). See also “Porque é um delito esmagar um peixinho dourado? dano, vítima e a estrutura dos crimes de crueldade contra os animais” (CHIESA, 2013).

<sup>10</sup> GARCIA Fabric, De l’homme et de l’animal: différences de degré, de nature ou d’orientation ? Em: **Hominidéés**. Disponível em <<http://www.hominides.com/html/references/de-l-homme-et-de-l-animal-mensonge-tromperie.php>>. Acesso em: 1 dez. 2015.

<sup>11</sup> Heron Gordilho discusses this further in *Abolicionismo animal* (2009).

in spite of the anthropocentric perspective through which the norms are developed, there is a latent acknowledgement of the intrinsic value of animals.<sup>12</sup>

The fact of the matter is that commentators, in their majority, are more concerned in specifying the acts that could typify the nucleus of article 32, *caput*, than in absorbing considerations from philosophers on the possibility that the animal might become the passive subject of the crime.

The article punishes with the penalty of custody for a period of three months to one year and a fine those who abuse, mistreat, hurt or mutilate wild animals or pets, native or exotic. There are projects that aim to extend the penalty, in particular the project of the Criminal Code, which, in its article 391, increases the penalty of the *caput* to one to four years of freedom deprivation, which eliminates such violation from the scope of Law 9099 of 1995, for it is no longer considered of minor offensive potential, since the maximum penalty goes from one to four years. Nevertheless, it must be pointed out that the sanction in the special law is already the highest in the Criminal Code, which, undoubtedly, affects the principle of proportionality.

The conducts that describe the illicit in article 32, inspired in article 136 of the Criminal Code are: abuse, maltreatment, injury or mutilation of wild animals or pets, native or exotic.

There are criticisms to the borrowing of the expression “maltreatment”, which would be a synonym of cruelty, making the legislator redundant, and to the expression “abuse”, because of its openness and fluidity. As for the latter, one must remember that expressions of that kind are usual and, as a consequence, a meaning constructed by the doctrine and the jurisprudence might be given to that expression.

As for the expression “abuse”, Regis Prado (2013, p. 200) gives it the meaning of “to use badly, or inconveniently”, for instance, by demanding excessive work from the animal, by using of heavy harnesses, or whips with metal ends, lashes with piercing clamps, a behavior that may result in damage to the animal’s health or physical integrity. Therefore, the interpretation of the expression “abuse” finds its limit in the repute of the conduct that causes suffering that can affect the animal’s health.

Maltreatment can be inflicted by deprivation of food or by forcing the ingestion in order to fatten the animals, lack of indispensable care, abandoning them in dirty places, which are inappropriate in dimensions, or which leave the animal exposed to the attack of other animals or in vulnerable situations.

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<sup>12</sup> Minahim asserts: “The role of the legal asset in the scope of the Criminal Code is essential for the fixation of the object of prohibition, performing, as a consequence, the function of restricting the retrenchment —according to Schumann — of the civil liberties.” (2015, p. 59).

Federal Decree 24.645 of 1934 exemplary rules on the matter, in its 31 sub-paragraphs, typifying various conducts classified as maltreatment, namely: to practice abuse or cruelty against any animal; to keep animals in non-sanitized places or in places that prevent them from breathing, moving or resting, or which deprive them from air or light; to force them to work excessively; to deliberately strike, hurt or excise any organ or tissue, except for castration; to abandon an ill, hurt, exhausted or mutilated animal, as well as to fail to provide the animal with all that can be provided, including veterinary support (GORDILHO, 2009, p. 147).

As for injury and mutilation, these are acts of maltreatment, which may be used under the pretext of scientific experimentation.

In paragraph 1 of article 32, there is another form of mal-treatment with special cruelty that consists in mistreatment an animal by means of vivisection. As per paragraph 1, the same penalties are incurred by whoever conducts painful or cruel experiments in a living animal, be it for pedagogical or scientific purposes, when there are alternative methods.

The term alternative methods weakens the precautionary proposal of animal welfare insofar as its interpretation can be made from an anthropocentric perspective as observed in Article 2 of Decree nº 6899/09, in its clause II, item c, which considers as alternative the method that employs “the smallest number of animals”. The norm is flagrantly contrary to the Constitution and to the value it contemplates in article 225, more specifically, in clause VII of the first paragraph, which addresses the protection of the fauna and the flora, prohibiting, in the form of law, the practices that put in risk their ecological function, cause the extinction of species, or subject animals to cruelty (GORDILHO, 2010, p. 518).

No practice is crueler than vivisection, particularly when its use is dissociated from any kind of research, or even when such research can avoid being carried out on a living being, by using simulation resources. This legal device is therefore an outside body in a system that values animal life and its well-being.

Psychiatrists have conducted studies, which indicate a correlation between cruelty against animals and aggressive behavior against people. Inquiries amongst incarcerated individuals have proven the existence of a correlation between violent crimes and the practice of torture against animals. Like-

wise, there are studies with psychiatric patients that show an association between aggression against people and cruelty against animals.<sup>13</sup> Unfortunately, in our information society, these perversions have begun to be disseminated in the communication networks.

It must also be pointed out that it is a common crime of damage, of a commissive or an omissive nature (failing to feed, for instance), of a multiple action and with a result, in the modalities of injury or mutilation, insofar as the crime is perfected by the verification of the damaging result, being the attempt acknowledged.

However, with regard to the alternative of practicing acts of abuse and mal-treatment, the crime is formal, meaning that the practice of behavior that conforms to the type implicates its consummation, regardless any material result, which can be immediate with permanent effects (mutilation), or permanent (resulting from excessive labor, deprivation of food, sheltering in an unhealthy environment).

There is no guilt modality, as one finds in the models applied in Canada and in the United States, where there are projects to incorporate the crime of cruelty by neglect into law. The *preterdolo*<sup>14</sup> is acknowledged in the qualified form of paragraph 2. In this case, specifically, the proof of death must be obtained in order for the sanction to be aggravated by the qualifier.

The legal interest protected by article 32, paragraph 2 of Law 9.605/98 refers to the life of the animal and to the feelings that every human being has for animals. Moreover, this legal-asset is only violated when death occurs as a result of cruelty, that is, without any need, simply for the pleasure of killing, *animus et voluntas necandi*.

It can be noted that regarding the incriminating circumstance contemplated and punished by article 32 of Law 9605/98, cruelty and lack of necessity operate in different ways in the setting the limits of the criminal offense. In fact, it must be said that the crime addressed herein can be configured even if the slaughter of the animal happens by necessity, if perpetrated in a cruel and barbaric way (PAOLO, 2015).

Moreover, the subjective element of this particular crime is represented by general malice, that is, by the conscience and the will to cause the death of an animal by sheer cruelty or without any need.

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<sup>13</sup> See, among others: "Aggression against cats, dogs and people" (FELTHOUS, 1980). See, also: "Firesetting, enuresis, and animal cruelty" (HEATH; HARDESTY & GOLDFINE, 1984) and "Enuresis, firesetting and cruelty to animals: a triad predictive of adult crime" (HELLMAN & BLACKMAN, 1966).

<sup>14</sup> A variety of psychic causes of a crime of felony aggravated by the result, in which the agent practices a previous willful misconduct, and from this a later culpable result arises.

Nevertheless, all the culpable conducts of an animal slaughtering cannot be considered criminally relevant. Consider, for example, an automobile that causes the death of an animal crossing an urban road. In the absence of a psychological element of general malice, the conduct of the agent, who caused the animal's death, may be considered as criminally irrelevant in the legal system.

The classification has important consequences since the proof of the materiality of the crime will only be demanded in the modalities of injury and mutilation, in other modalities, the proof of performance of the demeanor suffices. This may or may not yield material results.

## 5. THE INTERNET AS A MEANS OF PROOF OF CRIME OF CRUELTY AGAINST ANIMALS

The modernization of social relationships and the development of new spaces for social action have made Criminal Law and Criminal Procedure come across the need to adapt themselves in order to operate within the realm of virtual space.

It is therefore necessary to examine the required degree of adaptation so that videos and images, disseminated in various social networks, and in the virtual realm in general, depicting cruel acts against animals may also be included as evidence in accordance with the existing Code of Criminal Procedure. On the other hand, it is also necessary to evaluate if these evidences constitute sufficient grounds for a possible conviction for environmental crime in light of the eventual disappearance of the physical vestiges of the criminal practice.

In order for the crimes against animals to be punished, assurance as to materiality and authorship is required, which in turn requires demonstration that the facts are true; this is only possible with the use of documentary evidence, expert witnesses, eye-witnesses and so on.

The evidence here consists of a set of acts performed by the parties, by third parties for the judge to reconstruct the truth and convince the latter specifically with regards to the criminal conduct, its perpetrators and the objective and subjective circumstances of the fact (SANTANA & SANTOS, 2013).

According to Osvaldo Alfredo Gozaíni (2006), while in Civil Law a less rigorous form of truth is enough, sufficing persuasion on the basis of facts and the assurance that arises from them, in the criminal process the need to find the truth about the occurrence of the facts is evident.

In order to analyze how the Brazilian Criminal Procedure has adapted to the new social reality and to new resources for repressing cruelty practices against animals, it is imperative to determine some premises. The first of these

is the orientation that guides the present research regarding the procedural system in which criminal proceedings are conducted (or should be conducted). The understanding of this first premise is necessary to define which system of evidence appraisal will conduct the performance of the magistrate. Only after the definition of these guidelines will it be possible to list the means of evidence admitted as testimonial devices for the persuasion of the magistrate, then and only then will it be possible to examine how the virtual spaces of evidence attainment are perceived within this political-criminal orientation.

Article 155 of the Code of Criminal Procedure determines that the judge must form his convictions freely, based on the evidence brought to the proceedings and submitted to counter argumentation. The article enshrines, therefore, the system of motivated free convincement or system of rational persuasion as the model of evidence appreciation. The indispensability of the counter argument, in turn, reflects a constitutional reading (article 5, clause LV, of the Federal Constitution of 1988) of Brazilian procedural codification, minimizing its inheritance of the Italian fascist model of the 1930s, whose text inspired the national Legal Doctrine.

Thus, both in the actual production of evidence in judicial argument, and in the procedures concerning the exceptional collected evidences during the investigation phase, it is necessary to guarantee the exercise of defense as the only possible (constitutional) path for the decision-making process.

As Aury Lopes Jr. (2014, p. 553) explains, this is how the legal regime of evidence and the adopted procedural system present themselves, as a means of understanding the stage of historical evolution in the knowledge-building model.

It is understood here that our democratic ambitions call for a re-reading of the procedural system with regards to the compatibility of its norms with a rational persuasion accusatory model of emphasis on personal guarantees.

Therefore, we have the adoption of an accusatory system, characterized mainly by the refusal of the probative initiative of the judge, a third party uninterested in the stakes of the process, as opposed to the inquisitorial system, an anti-democratic model in which the judge is admitted as a manager of evidences and an actual *part* of the procedure (LOPES JR, 2014, p. 554).

After laying down these premises, it is now necessary to analyze the legal regime of evidence defined by the Brazilian Criminal Procedure Code, while understanding that the judgment will be formed freely, based on the evidence, but without having to search for them, in order to respect the fundamental guarantees that must present themselves as a necessary course in the process of persuasion.

In determining the admissible means of evidence, the legislation did not ascertain a definitive roster (nominated evidence), accepting the so-called unnamed evidence, provided it arises in manner of exceptionality and without breaking away from constitutional and procedural guarantees. Among the evidence contemplated by the Code of Criminal Procedure, the expert evidence is the most relevant for the focus of analysis defined herein.

Fernando da Costa Tourinho Filho (2010) clarifies that the expert evidence corresponds to the “examination carried out by a person who has certain technical, scientific, artistic or practical knowledge concerning facts, circumstances or personal conditions”.<sup>15</sup>

Among the different types of expert examinations that may be useful to form the conviction, we highlight, for the purposes of the present study, the forensic (medical) examination. Derived from article 158 of the Code of Criminal Procedure, the aforementioned expertise is indispensable when the infraction leaves traces (non-transient crimes), without being dismissed after the possible confession of the defendant.<sup>16</sup>

The forensic examination must be carried out in accordance with the norms established by article 158 and ensuing articles of the Procedural Diploma, with attention to the changes laid down by Law No. 11, 690 of 2008, which has now determined its performance to be carried out by an official expert, holder of a diploma of higher education or, that not being possible, by two suitable individuals, also holders of higher education diplomas, with technical ability related to the nature of the examination.

The procedural law itself determines that the forensic examination may be direct or indirect, and that its absence, either in one modality or another, due to the complete disappearance of the traces of the crime, may be supplemented by testimonial examination (Articles 158 and 167, Code of Criminal Procedure).

One speaks of a direct forensic examination, when the test is carried out from the examination of the object of the investigation itself, and of an indirect examination, carried out when the object to be investigated has disappeared or when, for whatever reason, the direct examination is not possible. The indirect modality may involve the use of photographs or videos, for example, from which the forensic examination can be performed for the proof of criminal materiality.

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<sup>15</sup> Translated from the original: “exame procedido por pessoa que tenha certos conhecimentos técnicos, científicos, artísticos ou práticos acerca de fatos, circunstâncias ou condições pessoais” (TOURINHO FILHO, 2010, p. 552).

<sup>16</sup> The code is instated in Law 3.689 of 3/10/1941.

It is only in the hypothesis of impossibility to carry out the forensic examination, whether direct or indirect, that the use of witness evidence will be accepted as a gap filling practice. This is why Pacelli and Fischer (2015, p. 372) warn against the confusion between testimonial evidence and indirect expert evidence, since the latter is, necessarily, a modality of technical proof, requiring the participation of qualified personnel, as indicated previously.

It remains to be assessed whether videos and photographs, as well as other material containing demonstrations of mal-treatment against animals, found in the virtual arena, can be used as a means of proof of such conducts and if, when necessary, they are sufficient to convince a magistrate of a crime against animals, or whether, on the other hand, such a proposal is inconsistent with the procedural system of accusations and guarantees.

## 6. THE INDIRECT FORENSIC EXAMINATION AS A MEANS OF EVIDENCE COMPATIBLE WITH A PROCEDURAL SYSTEM OF PERSONAL GUARANTEES.

Nowadays, it is easy to notice the accusation that an accommodation of the Criminal System and Criminal Procedure to the new reality of offenses has been carried out at the expense of weakening the accusatory system and deteriorating the respect that is expected from a Democratic State to the fundamental guarantees of the accused.

For Alexandre de Moraes da Rosa and José Manuel Aroso Linhares (2011, p. 107-108), the narrowing of the relationship between the Law and modern economic structures is especially marked by confusion between 'Fundamental Rights' and 'Patrimonial Rights', with a loss of the essential concept of Justice, as it begins to be mistaken with a sense of efficiency.

However, it is of great importance to ponder whether it is possible to make compatible a notion of an efficient penal procedure (not in terms of the economic analysis of law), which might entail the use of practices offered by the new social realities, as being capable to protect a fair decision-making process. More specifically, it is necessary to assess whether the indirect expert examination corresponds to sufficient and legitimate evidences in an accusatory procedural system for a magistrate to be convinced of crimes of cruelty against animals disseminated and displayed in virtual social spaces.

In his works, Luigi Ferrajoli (2014, p. 89) draws up an epistemological layout of the various principles that make up the model of guarantees in Criminal Law, employing, in its formulation, eleven penal and procedural precepts: punishment, crime, law, necessity, offense, action, culpability, judgment, prosecution, proof, and defense.



Taking from the epistemology of personal guarantees as a major guideline for the recognition of facts within a democratic Penal Process, Elmir Dulerclerc (2004, p. 11) highlights the principle of strict jurisdictional process (*nulla culpa sine iudicium*) as the only acceptable model for the process of recognition and proof, requiring a probative procedure of inductive type.

In the case of the use of images and videos in which the criminal practice of acts of cruelty against animals is displayed in virtual networks, there is no offense against the net of constituted guarantees for an accusatory and democratic process, provided that such evidence is collected under the seal of jurisdictional strictness.

In order for such elements to form the convincing of the magistrate, it is imperative to observe that probationary management is not taken as a task of the judge, since there is no room, in a State that sees itself as democratic, for the partial acting of the magistrate in the production of evidences. Therefore, article 156 of the Code of Criminal Procedure is understood as incompatible with a procedural model of personal guarantees, when it refers to the judge's instructive powers.

Thus, the first element for the admissibility of material collected in the virtual environment containing demonstrations of cruel acts against animals is that the accusatory system and the burden of proof for the incriminating types described in Law No. 9605/98 have been respected.

In addition, it is also worth noting that the Code of Criminal Procedure, when dealing with the forensic examination, instates a hierarchical order that must be observed. So, following the line of reasoning of Aury Lopes Jr., the general rule for proving the criminal materiality of infractions that leave traces is, and will not cease to be, the use of the *direct* forensic examination; the indirect approach remaining for exceptional cases (LOPES JR., 2014, p. 638).

Therefore, the use of videos, photographs, and other forms of indirect forensic examination only legitimizes itself when it is not possible to conduct the direct expert examination due to the disappearance of the material remains of the crime. Moreover, it does not relieve the accusation from the duty of obedience to the rules set in article 158 and ensuing articles of the Code of Criminal Procedure, for after all, even if it is an indirect examination, such procedure does not cease to be a kind of expert examination.

With that in mind, any and all videos and photographs must be analyzed by an official expert or other reliable individuals. It is also important here to emphasize the need for knowledge geared towards the very practice of obtaining evidence in electronic and virtual spaces. This must be done as a way of properly evaluating if any manipulation has taken place. In all instances,

the process cannot stray away from the inductive construction of knowledge of the facts.

It should also be noted that the means for obtaining the aforementioned proof cannot go beyond the limits set by the Federal Constitution and the Code of Criminal Procedure, which do not accept, in any case, unlawful evidence or evidence derived from illegal means, under penalty of nullity.

Once the possibility of using such items as means of admissible proof in an accusatory criminal proceeding has been overcome, and having recognized the compatibility of the indirect expert examination with the model of personal guarantees has been recognized, even if only in its exceptionality, the sources of evidence for the obtaining of videos and images, which disseminate mal-treatment against animals, still have to be examined.

While the means of evidence correspond to the procedural instruments from which one obtains useful items to the process of recognition and convincing, the sources of proof are related to the individuals and objects from which it is possible to arrive at the proof.

Geraldo Prado (2014, p. 59) calls the attention to the need for complying with criminal procedural safeguards, particularly with regard to hidden methods of investigation, even when judicially authorized, such as telephone and e-mail interception (practices that are common in preliminary investigations).

The author speaks in favor of the setting of guiding principles in order to restrain great intrusions on privacy. The Council of Europe, he goes on to say, has determined three basic guidelines for such investigative practices, founded on the need for a clear legal foundation for the adoption of secret investigation or intrusive measures; the proportionality of the measures; and the existence of control (p. 62).

Therefore, this is not a course of action that, in the name of Animal Rights, would promote great intrusion across virtual network items, such as the exchange of e-mails and messages, upon which intimate and interpersonal relationships are established. In that respect, it is worth noting Law 9.296 / 96, which establishes that the interception of communication flow in computer and telematic systems shall not be accepted only in the cases of crimes punished with detention, as it is the case of the crimes against animals, contemplated in articles 29 and 34 of Law No. 9, 605 / 98.

However, even in the event of impossibility of an inquiry of confidential virtual communication in the fight against the crime of mal-treatment against animals, it is still possible to use videos and photographs containing useful elements from the indirect forensic examination of such practices, given that these have not been obtained by means of computer interception.

Accordingly, it is perfectly possible to make compatible use of material obtained in virtual exchanges as evidence for crimes of cruelty against animals, without ignoring the basic guarantees instated for building the convincing arguments for the magistrate.

As Salah Khaled points out, it is necessary to choose the procedural model to follow. On the one hand one might have an accusatory and democratic system, on the other, an inquisitorial process based on the persecution of the enemy (KAHLED JR., 2015). One must be aware that the effective and fair protection of legal assets does not have to go through the suppression of guarantees, or the flexibilization of the historical achievements of Democracy.

## 7. CLOSING REMARKS

With the decreasing power of surveillance in the information society, the virtual environment presents itself, on one hand, as a vehicle for spreading various crimes against the digital environment, among which are the crimes of cruelty against animals, demanding from the State new roles of inspection and surveillance.

By prohibiting and criminalizing precisely the actions that may cause suffering to animals, Criminal Law implicitly recognizes the intrinsic value of animals, so that the legal asset warded in this case must be the suffering of these creatures, who would be the true passive subjects of this crime.

Finally, the videos with images of cruelty to animals broadcasted on the Internet can serve as a means of proving the authorship and the materiality of the offense, although an official expert or other suitable individual must analyze these digital documents as a way of assessing their truthfulness.

## REFERENCES

BARRA, Alex S. B. e MORAES, Raquel de A. Indústria Cultural, Pós-Modernidade e Educação: Análise crítica da sociedade da in formação. **Revista de Educação PUC-Campinas**. Campinas, n. 23, novembro 2007.

BAUMAN, Zygmunt. **A cultura no mundo líquido moderno**. Trad. Carlos Alberto Medeiros. Rio de Janeiro: Zahar, 2013.

BRASIL. **Decreto-Lei Nº 3.689**, de 3 de outubro de 1941. Diário Oficial [da] República Federativa do Brasil. Retrieved from: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/Del3689.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/Del3689.htm).

\_\_\_\_\_. **Decreto-lei Federal nº 24.645**, de 10 de julho de 1934. Diário Oficial [da] República Federativa do Brasil. Retrieved from: [http://www.planalto.gov.br/ccivil\\_03/decreto/1930-1949/D24645.htm](http://www.planalto.gov.br/ccivil_03/decreto/1930-1949/D24645.htm).

\_\_\_\_\_. **Lei nº 9605/98**. Diário Oficial [da] República Federativa do Brasil. Retrieved from: [http://www.planalto.gov.br/ccivil\\_03/leis/L9605.htm](http://www.planalto.gov.br/ccivil_03/leis/L9605.htm).

\_\_\_\_\_. **Lei nº 11.690/08**. Diário Oficial [da] República Federativa do Brasil. Retrieved from: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2008/lei/l11690.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/l11690.htm).

\_\_\_\_\_. **Lei n. 11.829/08**. Diário Oficial [da] República Federativa do Brasil. Retrieved from: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2008/lei/l11829.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/l11829.htm).

\_\_\_\_\_. **Decreto-Lei Nº 12.735**, de 30 de novembro 2012. Diário Oficial [da] República Federativa do Brasil. Retrieved from: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2011-2014/2012/Lei/L12735.htm](http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2012/Lei/L12735.htm).

\_\_\_\_\_. **Decreto-Lei Nº 12.737**, de 30 de novembro 2012. Diário Oficial [da] República Federativa do Brasil. Retrieved from: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2012/lei/l12737.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12737.htm).

\_\_\_\_\_. Senado Federal. **Projeto de Lei nº 730/15**. Diário Oficial [da] República Federativa do Brasil. Retrieved from: <http://www.lexml.gov.br/urn/urn:lex:br:senado.federal:projeto.lei;pls:2015-11-10;730>.

BECK, Ulrich. **La sociedad del riesgo: hacia una nueva modernidad**. Tradução de Jorge Navarro, Daniel Jimenez e Maria Rosa Borrás. Barcelona: Paidós. 1988, p. 44.

\_\_\_\_\_. **Sociedade de Risco**. Rumo a uma outra modernidade. São Paulo: 34, 2011, p. 23-27.

BENJAMIN, Antonio H. v. Introdução ao Direito Ambiental Brasileiro. In: **Direito Ambiental na visão da Magistratura e do Ministério Público**. Jarbas Soares Júnior e Fernando Galvão (org). Belo Horizonte: Del Rey. 2003, p. 108

BUOMPADRE, Jorge. Os delitos contra a fauna silvestre na República Argentina. **Revista Brasileira de Direito Animal n. 15**. v. 9. Jan-abr 2014.

CASTRO, A. A. "A internet e os tipos penais que reclamam ação criminosa em público". In: **Revista de Direito Eletrônico**. Petrópolis: IBDE, v. 1, n. 3, 2003. p. 41-51. ISSN — 1679-1045. Retrieved from: [http://www.ibde.org.br/index\\_arquivos/rede3.pdf](http://www.ibde.org.br/index_arquivos/rede3.pdf).

CASTRO JR., Marco Aurélio de. **Direito e Pós-Humanidade**. Curitiba: Juruá. 2013.

CHIESA, Luis. Porque é um delito esmagar um peixinho dourado? dano, vítima e a estrutura dos crimes de crueldade contra os animais. **Revista Brasileira de Direito Animal n. 13**. v. 8, maio-ago. 2013.

DIAS, Jorge Figueiredo<sup>1</sup> DIAS, Jorge Figueiredo. O Direito penal entre a “sociedade industrial” e a “sociedade de risco”. **Revista Brasileira de Ciências Criminais**, São Paulo, n. 33, p. 39-65, 2001. p. 49.

DUARTE, José, **Comentários à lei das Contravenções Penais**. Parte especial. 2 ed. Rio de Janeiro: Forense, 1958.

DUCLERC, Elmir. Prova penal e garantismo: uma investigação crítica sobre a verdade fática construída através do processo. **Coleção Pensamento Crítico**. Coordenador Geraldo Prado. Rio de Janeiro: Lumen Juris, 2004.

FELTHOUS, A. R. (1980). Agression against cats, dogs and people. **Child Psychiatry and Human Development**, 10 (3): 169-177.1980

FERRAJOLI, Luigi. **Direito e Razão**. Teoria do garantismo penal. 4. ed. Trad. Ana Paula Zomer Sica, Alice bianchini, Evandro Fernandes de Pontes, Fernanda Lara Tórtima, José Antonio Siqueira Pontes, Lauren Paoletti Stefanini. São Paulo: Revista dos Tribunais, 2014.

FIORILLO, Celso A. P. **Crimes no meio ambiente digital**. São Paulo: Saraiva. 2013, p. 12-13

\_\_\_\_\_. **Curso de Direito Ambiental Brasileiro**. S16 ed. São Paulo: Saraiva. 2015.

FRIGOTTO, Gaudêncio. **Cidadania, tecnologia e trabalho**: desafios de uma escala renovada. *Tecnologia Educacional*, Rio de Janeiro, v. 21, n. 107, p. 04-10, jul/ago, 1992.

GARCIA Fabric., De l’homme et de l’animal: différences de degré, de nature ou d’orientation? In: **Hominidées**. Retrieved from: <http://www.hominides.com/html/references/de-l-homme-et-de-l-animal-mensonge-tromperie.php>. Access on 1/12/2015.

GORDILHO, Heron J. S. **Direito Ambiental Pós-Moderno**. Curitiba: Juruá. 2009, p. 61-62.

\_\_\_\_\_. **Abolicionismo animal**. Salvador: Evolução. 2009.

\_\_\_\_\_. Experimentação animal e hermenêutica constitucional. **Meio Ambiente, Direito e Biotecnologia**: Estudos em homenagem ao Prof. Dr. Paulo Affonso Leme Machado. Maria Auxiliadora Minahim, Tiago Batista Freitas e Thiago Pires Oliveira (coords). Curitiba: Juruá. 2010, p. 518

GOZAÍNI, Osvaldo Alfredo. Le verdade y la prueba. **Revista do Programa de Pós-Graduação em Direito da Universidade Federal da Bahia** n. 13. Salvador: Fundação Orlando Gomes. 2006, p. 32

GRECO, Luis- Princípio da ofensividade e Crimes de perigo abstrato. **Revista Brasileira de Ciências Criminais**.2004.

HASSEMER, Winfried. **Persona, mundo y responsabilidad**: bases para una teoría de la imputación en Derecho Penal. Valencia: Ed. Tirant Lê Blanch, 1999. Versión al español de Francisco Muñoz Conde y Maria Del Mar Díaz Pita. **Passim**

HEATH, G. A.; HARDESTY, v. A. & GOLDFINE, P. E. . "Firesetting, enuresis, and animal cruelty". **Journal of Child and Adolescent Psychotherapy**, 1 (2): 97-100.1984.

HELLMAN, D. S. & BLACKMAN, N. Enuresis, firesetting and cruelty to animals: a triad predictive of adult crime. **American Journal of Psychiatry**, 122: 1431-1435.1966.

KHALED JR., Salah H. **A Ambição de Verdade e a Permanência do Autoritarismo Processual Penal**. Retrieved from: [http://www.emerj.tjrj.jus.br/revistaemerj\\_online/edicoes/revista67/revista67\\_340.pdf](http://www.emerj.tjrj.jus.br/revistaemerj_online/edicoes/revista67/revista67_340.pdf) Access on 9/12/2015.

ITÁLIA. Tribunale Ordinario di Milano. **Sezione Distaccata di Rho**. 23 abr. 2012.

LEAL, Luziane F. S. e ANSELMO, José Roberto de. Bloqueio de conteúdos ilícitos postados nas redes sociais: uma decisão cidadã dentro do devido processo legal. **XXIV Encontro Nacional do CONPEDI - UFS**. 2015

LEVAL, Laerte Fernando. A condição-animal em Kaspar Hauser: crítica à ética racionalista: o bom selvagem e a esterilidade da razão. **Revista Brasileira de Direito Animal n. 3**, v. 2. Jul- Dez 2007.

LOPES JR., Aury. **Direito Processual Penal**. 11. ed. São Paulo: Saraiva, 2014.

MINAHIM, Maria Auxiliadora. **Autonomia e frustração da tutela penal**. São Paulo: Saraiva. 2015.

MORAES, Márcia Elayne Berbich de. **A (In)Eficiência do Direito Penal Moderno para a tutela do Meio Ambiente na Sociedade de Risco** (Lei nº 9.605/98). Rio de Janeiro: Lumen Juris, 2004.

PACELLI, Eugênio; FISCHER, Douglas. **Comentários ao Código de Processo Penal e sua jurisprudência**. 7. ed. São Paulo: Atlas, 2015.

PAOLO, Alessandro. **Uccisione di animali art 544 bis c. p.** — reato — crudeltà. Retrieved from: [www.overlex.com/leggiarticolo.asp?id=1740](http://www.overlex.com/leggiarticolo.asp?id=1740).

PRADO, Luiz Regis. **Direito penal do ambiente**. 5. ed. São Paulo, RT, 2013.p 105.

\_\_\_\_\_. **Prova penal e sistema de controles epistêmicos.** A quebra da cadeia de custódia das provas obtidas por meios ocultos. São Paulo: Marcial Pons, 2014.

ROSA, Alexandre de Moraes da; LINHARES, José Manuel Aroso. **Diálogos com a Law and Economics.** 2. ed. Rio de Janeiro: Lumen Juris, 2011.

ROUANET, Sérgio P. A verdade e a ilusão do pós-modernismo. In: ROUANET, S. P. **As razões do iluminismo.** São Paulo: Companhia das Letras, 1987.

SANTANA, Luciano Rocha e SANTOS, Clarissa P. G. dos. O crime maus-tratos aos animais: uma abordagem sobre a interpretação e a prova de materialidade e autoria (artigo 32). In: **Crimes ambientais:** comentários à lei 9.605/98. Ana Maria Moreira Marchesan e Annelise Monteiro Steigleder (organizadoras). Porto Alegre: Livraria do Advogado Editora. 2013, p. 159

SCHUNEMANN, Bernd. Sobre la dogmatica y la política criminal del Derecho Penal del medio ambiente. Tradução de Mariana Sacher de Koster, in: **Libro homenaje a José Rafael Mendonza Trocontis.** t 2. Caracas: Facultad de Ciências Jurídicas y Políticas da Universidad Central da Venezuela. 1989.

SILVA, Tagore T. A. **Direito animal e ensino jurídico:** formação e autonomia de um saber pós-humanista. Salvador: Evolução. 2014.

TOURINHO FILHO, Fernando da Costa. **Código de Processo Penal Comentado.** 13. ed. São Paulo: Saraiva, 2010.

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