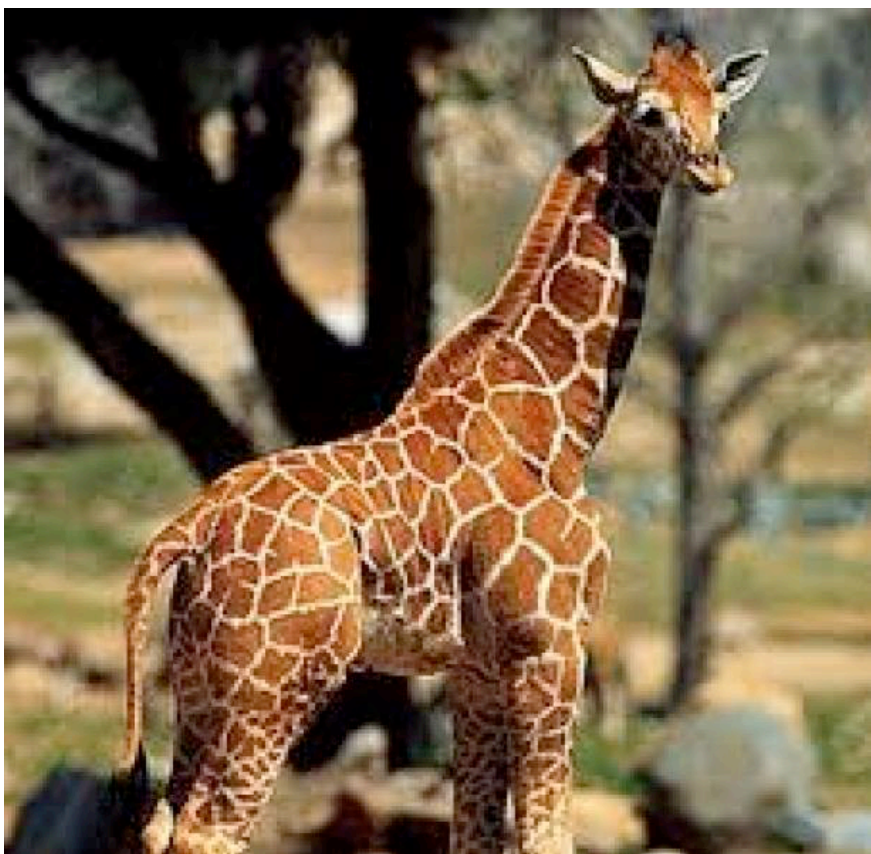


# The Reform of the Portuguese Civil Code: Recognising Animals as Sentient Beings

Keywords: estatuto jurídico animal; tratado de propiedad; seres sintientes; Código civil

The events of the 22<sup>nd</sup> of December brought great news to at end of 2016; the change of the legal status of animals recognised by the Portuguese Civil Code, from things of property to sentient beings.

On this date, the Portuguese Parliament unanimously approved that animals would no longer be considered as property. Until this moment they were only recognised by the Civil Code in articles 1302<sup>1</sup>, 1318 and 1323<sup>2</sup> of Book III, referred to as “Direite das Coisas”, in accordance with the Roman tradition that is to be found in the vast majority continental Codes (European and Latin-American) and has been recognised by the Treaties of Civil Law<sup>3</sup>. In this sense, Portugal was not, until this date, alone in considering animals merely things, for that has been their predominant legal status in occidental legal systems.



1 Portuguese Civil Code, Article 1302: "Só as coisas corpóreas, móveis ou imóveis, podem ser objecto do direito de propriedade regulado neste código".

2 Portuguese Civil Code, Article 1323.1: "Aquele que encontrar animal ou outra coisa móvel perdida e souber a quem pertence deve restituir o animal ou a coisa a seu dono, ou avisar este do achado; se não souber a quem pertence, deve anunciar o achado pelo modo mais conveniente, atendendo ao valor da coisa e às possibilidades locais, ou avisar as autoridades, observando os usos da terra, sempre que os haja.

3Cfr. Para Portugal, MENEZES CORDEIRO, A., *Tratado de Direito Civil III. Parte Geral III. Coisas* (Lisboa 2016), dedicates chapter V of its Treaty on the Property of animals ("Os Animais"), with an interesting reflection on the legal protection of animals in the area of property and the justification of the legal protection conferred upon them by the law

This important reform of the legal position of animals has been a long journey, culminating with the success of a proposal that, when compared to reforms of this nature across other countries during the 1990s and the first decade of the 21<sup>st</sup> century, presents elements of originality. With this reform, Portugal has put itself in a pre-eminent position by enshrining the latest advances in Animal Welfare science in legal text, thus affirming with certainty and strength that animals are sentient beings<sup>4</sup>.

The original proposal of the modification to the Civil Code was firstly presented on the 13<sup>th</sup> of May 2016, by the following parties: PAN (People, Animals, Nature), the Socialist Party (PS), the Left Block (BE) and the Social Democrat Party (PSD). The final draft achieved an absolute majority of the votes after debate by the Committee on the Constitutional Affairs, Rights, Freedoms and Guarantees. (Comissao de Assuntos Constitucionais, Direitos, Liberdades e Garantias). This special legal regime for animals came about as the proposal to recognise animals as sentient beings and regulate them in a section of the Civil Code (separate from that which regulates property) was approved by all the parties without exception (PAN, PSD, PS, BE, CDU y CDS-PP). This is without doubt a valiant and original decision, and leads the way for the reforms of other Civil Codes, such as the Spanish, that still resist modifying the legal status of animals so as to no longer recognise them as things.

It is important that the recognition for this initiative must go to the Portuguese party that, over the years, has prioritised the defence of animals among its policies. I am, of course, referring to the PAN, which relies on just one representative house, Representative André Silva. However, it is also important not to overlook the others that have been part of this effort; the representatives of the aforementioned political parties, and the experts that have, throughout the course of the process, made doctrinal contributions<sup>5</sup>, such as Professor Fernando Araujo<sup>6</sup>, the Director of the Law Faculty at the University of Lisbon, and Inés Real, animal ombudsman at the Lisbon Council<sup>7</sup>.

In effect, Article 1 reflects the modification of the legal status of animals, and is as follows:

“This law establishes a status for animals, recognising them as living, sentient beings”

This modification does not imply the immediate the attribution of legal personhood to animals, but it does entail, most remarkably, a new classification and the creation of a new legal concept, which relocates animals in a legal category *per se*, which is none other than that of “Animals”.

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4 Vid. GIMÉNEZ-CANDELA, T., Seres sintientes (<http://www.derechoanimal.info/esp/page/3142/seres-sintientes>); Brexit y los Animales. El legado del Reino Unido al Derecho Animal (<http://www.derechoanimal.info/esp/page/4752/brexit-y-los-animales-el-legado-del-reino-unido-al-derecho-animal>).

5 The Report on the Processing of the Committee on the Constitutional Affairs, Rights, Freedoms and Guarantees, 21st of December 2016 (<http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c324679626d56304c334e706447567a4c31684a53556c4d5a5763765130394e4c7a464451554e45544563765247396a6457316c626e527663306c7561574e7059585270646d46446232317063334e68627938795a544e6d4d324d324f4330305a4749774c545132596d4d744f4455795a6931685a57597a4e6d5534597a5534597a59756347526d&fich=2e3f3c68-4db0-46bc-852f-aef36e8c58c6.pdf&Inline=true>)

6 ARAÚJO, F., A hora dos Direitos dos Animais (Coimbra 2003).

7 Inés Real (<http://www.veterinaria-atual.pt/provedora-dos-animais-de-lisboa-ja-tomou-posse/>), Animal Ombudsman for the Lisbon Council since 2014, a graduate lawyer and alumnus of the Animal Law and Society Master (<sup>-a</sup> Ed.) at the Autonomous University of Barcelona.



The Portuguese Civil Code now recognises that animals, due to their subjective position as living beings, as much as for their objective position as sentient beings (as indicated by science), cannot be considered lifeless and therefore part of the category of property. For this reason it has seen the creation of a third legal concept of animals, distinct from ‘things’ and ‘human beings’, which, legally, we tend to refer to as “persons” (although the expanding category of “persons” is, in itself, nothing more than an abstract concept ensuring legal standing to something - a society, an entity, a collection of individuals, and a human being also). Animals, therefore, appear from now on in the Portuguese Civil Code as beings capable of sentience and as objects of legal relationships. Among other things, the recognition of animals as an independent legal category opens the possibility of compensation for the killing or injuring of an animal, the establishment of the position of carer for animals in cases of divorce, and the inalienability of domestic animals.

The aforementioned amendment constitutes a systematic reorganisation of the Civil Code in the following way<sup>8</sup>: the Subheading I-A has been added to Book I of Heading II, under the title of “Animals”, which integrates articles 201-B and 201-D<sup>9</sup>.

The Portuguese Parliament, however, has turned down a legal project that sought to improve the system of sanctions set out by the Penal Code for cases of animal cruelty. For this reason, the crime of abandoning an animal is still not punishable, in spite of the fact that it endangers the life and physical integrity of the animal (unlike Spain, where abandonment has been punishable since the latest reform of Art. 337 by the LO1/2015 of July). Nor has it succeeded in ensuring a punishment of the killing of an animal where such killing was not preceded by mistreatment, as well as punishment for cruelty towards animals used for production.

In conclusion, the reform of the Portuguese Civil Code opens an important door for legal reflection, and surpasses other reforms dealing with animals carried out by other European<sup>10</sup> and Latin-American Civil Codes (especially that undertaken by France in 2015<sup>11</sup>, as well as in Colombia<sup>12</sup>) and improves the legal consideration for animals by no longer understanding them as things of property.

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<sup>8</sup>Of course, this important modification being so recent, a detailed reading of the text and a greater critical reflection of the reform must wait until it has come into effect.

<sup>9</sup> Section II of Chapter III of Book I become known as “the occupation of things and animals”.

<sup>10</sup> The timeline of the change of the legal status of animals from things to not things, as a first step towards the ‘depropriation’ of animals in the Civil Law system, is as follows: Austria (ABGB, §285a) 1st of July 1988; Germany (BGB §90a) 20th of August 1990; Switzerland (ZGB §641<sup>a</sup>) 4th of October 2002; Liechtenstein (Sachenrecht art.20<sup>a</sup>) 14 of May 2003. Also Catalonia (Cc. art. 511-1,3) 10th of May 2006.

<sup>11</sup> GIMÉNEZ-VANDELA, T, Una nueva Revolución Francesa: la modernización del Code civil

(<http://www.derechoanimal.info/esp/page/3718/una-nueva-revolucion-francesa-la-modernizacion-del-code-civil>)

<sup>12</sup> CONTRERAS, C., Animales como seres sintientes protegidos por el Derecho Penal

(<http://www.derechoanimal.info/esp/page/4438/colombia-animales-como-seres-sintientes-protectidos-por-el-derecho-penal>)

Lately I have been of the belief **that the struggle for animals must be measured by victories**. This is not an expression of misplaced optimism, but, in fact, quite the opposite. It is a thought that reflects meticulous observation: there has not been a year, at least since the beginning of the millennium, that the passing of time has not provided us with great happiness in the form of achievements for animals, from prohibitions on production animals that improve their poor lives, criminal sanctions in cases of abuse (getting ever closer to protecting the life of the animal as deserving legal protection for its own sake), changings in the legal status of animals, improvements in their conditions of transport, experimentation and slaughter, increased interest in the study of Animal Law and the university programs designed to provide such courses.

Ultimately, each step forward is a solid improvement for animals. May 2017 see even more victories. The animals cannot wait any longer.

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