

Portugal

Prof. Dr. André Dias Pereira

Faculty of Law – University of Coimbra

andreper@fd.uc.pt



Law 8/2017, 3 March – Status of animals

A new status of animals, as “sentient living beings” was approved in the Parliament.

Animals are no longer seen as **things**

“Animals are living beings endowed with sensitivity and object of legal protection by virtue of their nature.”

Art. 201-B

Object of legal relationship # thing (res)

- **there are other objects!**
- **e.g.:**
 - **Performances (CREDIT RIGHTS),**
 - **Person (child) (FAMILY LAW),**
 - **Characteristics of the person (PERSONALITY RIGHTS),**
 - **Incorporeal, immaterial things (INTELLECTUAL PROPERTY)**
 - **+ ANIMALS / not res**
dogmatically – this is not a revolution...

Law 8/2017, 3 March – Status of animals

relevant changes:

Criminal law (new formulation (not things), stronger penalties)

Civil Procedural Law – (Pet animals shall not be object of garnishment and execution)

Civil Law

- New concept of the **property** of animals (Art. 1305-A),
- new condition for **divorce** is the agreement concerning the care of company animals
- **tort law:**, Art 493-A concerning *compensation in case of injury or death of animal.*

Art. 493-A Civil Code

- “1 - In the case of an injury to an **animal**, the responsible person is **obliged to compensate its owner or the individuals or entities that have made their rescue for the expenses that they have incurred for its treatment**, without prejudice to compensation due in general terms.

Comment

- Similar to Art 495 for people
- Real protection of the interests of animals.
- Any animal, not only pet animals... *No speciism*
- *Compensation of pure economic loss?*

Art. 493-A Civil Code

- 2 - The compensation provided for in the previous number is due **even if the expenses are higher than the monetary value that can be attributed to the animal.**"

Comment:

- **Onerosity and compensation**

- Art. 566
- 1. Compensation shall be calculated in monetary terms if natural restoration is not possible, would not fully repair the damage **or would be excessively onerous to the debtor.**

- **The case of the “old-timer”**



Art. 493-A Civil Code

- “3 - In the event of injury to a **pet animal** resulting in **death, deprivation of an important organ or limb, or serious and permanent affectation of his ability to move**, his **owner** shall be entitled, in accordance with paragraph 1 of Article 496, **adequate compensation for the displeasure or moral suffering in which he has incurred, in an amount to be set equitably by the court.**”



Pet animals

- European Convention for the Protection of Pet Animals (1993)
- Art. 1 (1)
 - By pet animal is meant any animal kept or intended to be kept by man in particular in his household for private enjoyment and companionship.
- Specicism?

???



Debate in the Literature: non-pecuniary damages for destruction of damage to a pet?

- **Restrictive position – was dominant in the Literature**
- Open/ broad position – was consacrated in the new Act.
 - **Does it protect animals?**
 - **Or the owners of animals?**
 - Protection of animals or protection of human interests?
 - **Antropocentrism?**

Non-pecuniary damage suffered by persons having a close relationship vs. harm to an animal

- Only in 2014, The Supreme Court changed its jurisprudence (Acórdão n.º 6/2014) **accepted compensation for the relatives in case of non-fatal severe injury.**
- Now: if you compensate non-pecuniary damage caused by the injury of a pet animal, it is fair to compensate non-pecuniary damage caused by the injury of a close relative.
- *sentimental loss*



andrediaspereira@hotmail.com