



Osservatorio Diritto degli Animali - Dipartimento di Giurisprudenza

Corso Diritto e Benessere degli Animali

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SURVEY ON THE LEGAL STATUS OF ANIMALS

AND POSSIBLE ACTIONS TO TAKE

Sintesi dei risultati e osservazioni

1. Finalità e questionario

In relazione al progetto affidatoci e volto a riconoscere un ruolo nella famiglia, anche sul piano istituzionale, agli animali, è stato redatto un questionario di analisi. Tale questionario, indirizzato ad esperti giuristi e/o associazioni, operanti in vari stati europei, è stato strutturato come segue:

- 1) in primo luogo, indicazione delle normative di riferimento nel paese interessato;
- 2) in secondo luogo, valutazione delle proposte divise per il riconoscimento di un ruolo dell'animale di famiglia nel diritto nazionale e/o europeo. In particolare, con tale questionario, oltre a richiedere agli intervistati di fornire una panoramica circa lo *status* dell'animale in ambito giuridico nel proprio paese di competenza, è stato altresì chiesto a questi ultimi di esprimersi in merito alle possibili strategie da adottarsi in ambito europeo per la tutela degli animali quali membri del nucleo familiare nonché di fornire la propria opinione circa la possibilità di intraprendere una causa pilota.

2. Risposte pervenute

Il questionario è stato inviato a soggetti identificati tra associazioni, professionisti e studiosi, i cui esiti sono qui allegati (cfr. allegati da 2 a 5). In particolare, ad oggi sono pervenute le risposte da parte di:

- Prof. Aloïse Quesne - Professoressa di *Private Law* presso *Université Paris-Saclay*, responsabile della *Clinique Juridique One health* ed esperta nell'ambito del progetto di riforma sulla *maltraitance des animaux*;
- Prof. Marita Giménez Candela – Professoressa di Diritto Romano presso *Universitat Autònoma de Barcelona*, direttrice del master “*Animal Law and Society*” e della rivista giuridica *Derecho de los animales*.
- Prof. Anne Peters, Direttrice del Max Plank di Heidelberg ed autrice di numerose pubblicazioni in ambito di diritto degli animali, unitamente a Viola Sauter, Ph. D.
- Ufficio Legale dell'associazione belga GAIA
- Alice di Conetto, *LLM Animal Law* presso *Lewis&Clarke Law School*, Responsabile *Centre for European Animal Law* di Bruxelles, *Lecturer* presso *Université de Paris*.

3. Valutazioni pervenute sulle azioni da intraprendere

Si sintetizzano le risposte ricevute in relazione alle future azioni da intraprendere:

- 1) **Aloïse Quesne**: si condivide sia l'idea di intraprendere un'azione test che possa condurre alla pronuncia di una sentenza pilota sia la prospettiva di proporre un'iniziativa legislativa a livello europeo. In particolare, si condividono le proposte di intervenire in relazione ai seguenti ambiti:
 - (i) la modifica del passaporto nazionale, includendo gli animali;
 - (ii) l'autorizzazione a far viaggiare sempre, quale diritto dei proprietari, gli animali di famiglia, compatibilmente con le loro esigenze etologiche;
 - (iii) introdurre una regolamentazione comune di base circa le modalità di adozione/acquisto degli animali, e
 - (iv) prevedere un permesso dal lavoro ai dipendenti in caso di morte dell'animale o per prendersene cura.
- 2) **Marita Giménez Candela**: si propone che gli animali vengano qualificati come esseri senzienti in tutto lo spazio europeo anche nelle normative di settore (e non solo nel Trattato UE); si ritiene inoltre utile che l'Unione Europea adotti una normativa quadro per la protezione e il benessere degli animali da compagnia.
Con riferimento alla esperibilità di una azione volta alla affermazione di una sentenza pilota, si condivide tale via di intervento, e si suggeriscono i seguenti ambiti di azione:

- (i) uniformare la normativa vigente circa il trattamento degli animali da compagnia in caso di separazione o divorzio, e
 - (ii) uniformare le norme nazionali degli Stati Membri circa il trasporto degli animali domestici.
- 3) **Anne Peters – Viola Sauter:** si individua, quale principale area di intervento a livello europeo, la regolamentazione delle adozioni e dell'acquisto di animali. Si ricorda, del resto, che anche in Germania (ove la posizione degli animali è prevista da tempo a livello costituzionale) sussistono ancora molte lacune in termini di tutela che un approccio europeo potrebbe colmare. Con riferimento alla possibile utilità di azioni pilota, si condivide e si segnala in particolare l'utilità che potrebbe avere il tema delle azioni in ambito di separazioni, divorzi, scioglimento convivenze, al fine di mantenere la relazione con l'animale.
- 4) **Associazione Gaia:** in generale, si condividono sia la via legislativa sia quella giurisdizionale con azione pilota. In particolare, si condivide l'idea di un'azione comune europea anche in ragione dei traguardi sinora raggiunti (es. eliminazione graduale del sistema delle gabbie) e si suggerisce di intraprendere azioni in chiave di *family law* a livello nazionale con il coordinamento dell'Unione Europea.
- 5) **Alice di Concetto:** si ricorda come la UE non abbia competenza diretta in materia di famiglia; pertanto si conviene sulla scelta di proporre una azione/proposta legislativa diretta a includere gli animali nel passaporto della persona fisica.

4. Osservazioni conclusive

Si deve segnalare come i soggetti interpellati abbiano espresso la loro valutazione favorevole:

(A) Sia ad *intraprendere iniziative legislative europee che trovando la loro fonte nel Trattato UE e nel relativo regolamento procedurale*, proseguendo il lavoro già svolto in passato e in linea con quelli che appaiono essere gli intendimenti della Unione Europea che, seppur con molti tentennamenti, anche grazie agli interventi della Corte di Giustizia, sembra attribuire sempre maggiore rilevanza alla posizione degli animali ed al loro benessere.

A questo proposito, sono stati identificati dei settori che potrebbero essere di particolare utilità:

- **Normativa in tema di acquisto,** prevedendo specifiche norme per l'acquisto di animali a livello unionale; si segnala, a questo proposito, come effettivamente la normativa europea sull'acquisto dei beni di consumo, già oggetto di parziale armonizzazione, potrebbe essere integrata, anche alla luce delle azioni già intraprese dai singoli ordinamenti nazionali, con specifiche regole che incidano sia sull'acquisto di animali, ponendo precisi limiti, sia (ma ciò appare senza dubbio maggiormente delicato) prevedendo specifiche sanzioni per gli operatori e/o gli acquirenti stessi.

Ad esempio, va osservato che ancora oggi l'acquisto di animali d'affezione è comunque equiparato, nella maggiorparte degli ordinamenti e altresì in Italia (cfr. Suprema Corte (n. 22728/18; Cass., ordinanza n. 35844/22 depositata il 6 dicembre 2022) all'acquisto di beni di consumo, specialmente al fine di tutelare il consumatore con termini di denuncia ampi. Così ancora avviene anche in Francia, dove si prevede espressamente nel Codice civile che gli animali sono degli esseri viventi dotati di sensibilità, ma tuttavia restano applicabili le norme generali sulla vendita (art. 515-5 Code Civil).

In alcuni Stati (si cita quale esempio la Francia, Loi no. 2021-1539 du 30 novembre 2021 visant à lutter contre la maltraitance animale et conforter le lien entre les animaux et les hommes) sono stati introdotti in ogni caso di recente precisi limiti alla vendita di animali ed imposti particolari doveri in capo all'acquirente. Si veda anche in merito la proposta di legge n.24/2022 presentata al Parlamento italiano, in particolare art.544 bis ss, ed ivi riferimenti ai divieti in materia di vendita di animali.

Mancano, dunque, sia a livello nazionale che a livello europeo regole uniformi o armonizzate per l'acquisto di animali volte a tutelare proprio questi ultimi. Muovere da tale presupposto potrebbe essere utile, tenendo conto che esiste già un approccio europeo in tema di vendita e che la copertura del Trattato UE a tutela degli animali (art.13 TFUE) potrebbe offrire lo strumento per coordinare le normative ponendo precisi limiti.

- Normative in tema di documentazione. (esempio passaporti etc.): questo fronte potrebbe inserirsi nell'alveo di competenza dell'unione Europea e trovare spazio in ambito di circolazione delle persone e di salute degli animali. Posto che non risultano documenti esattamente sovrappponibili ed analoghi allo stato di famiglia italiano a livello europeo, per le movimentazioni a carattere commerciale e non, di cani e gatti nel territorio UE, il Regolamento (UE) n. 576/2013 prevede infatti la presenza obbligatoria del passaporto individuale per ogni singolo animale, ossia un documento di identificazione dell'animale da compagnia. L'UE, infatti, ha competenza a regolamentare la circolazione degli animali da compagnia all'interno dell'Unione Europea sulla base della più generale competenza in materia di salute degli animali, e quindi richiede potrebbe richiedere ai proprietari che si spostano attraverso i confini dell'Unione Europea con i loro animali da compagnia di registrarli con un passaporto UE collegato direttamente a – o addirittura con richiamo e/o inserimento in - quello del proprietario, andando oltre l'attuale previsione in tema di passaporto europeo per l'animale.

Sebbene questa soluzione non porti a riconoscere gli animali come membri della famiglia, potrebbe contribuire ulteriormente a normalizzare una pratica molto legata alle famiglie umane in tutti i sistemi, che consiste nel collegare i dati personali dei minori ai loro genitori. Questa pratica potrebbe essere replicata per gli animali da compagnia e potrebbe contribuire a riconoscere ulteriormente gli animali non come prodotti o vettori di malattie, come la legge dell'Unione Europea li considera attualmente, ma come membri speciali della famiglia.

- Da ultimo, si potrebbe poi considerare anche la posizione dell'essere umano che sia anche un *lavoratore dipendente*, che intrattiene una relazione di affezione con l'animale e riconoscergli alcuni diritti in caso di malattia o morte di quest'ultimo.

(B) sia ad *intervenire con cause che possano condurre a sentenze pilota (anche “cause pilota” o case-test)*. In particolare, si sottolinea che l'intervento con *case-test* volte alla emissione di cause pilota che affermino principi utili, in sede di interpretazione del diritto europeo, sembra dirigersi a porre in luce i diritti fondamentali dei proprietari degli animali familiari, che potrebbero così trovare una via per essere protetti in relazione alle norme già esistenti che richiederebbero una innovativa o diversa interpretazione. Ad esempio, oltre ad azioni legate alle medesime problematiche individuate sub a) che essendo oggetto già in parte di legislazione europea (vd. Norme sulla vendita di beni di consumo) potrebbero offrire perni per avviare a livello nazionale e di poi europeo l'azione) ulteriori settori potrebbero riguardare casi di scioglimento o cessazione di convivenza, si andrebbe ad identificare un diritto dei soggetti che hanno avuto relazioni con l'animale a portare avanti tale rapporto.

Si sottolinea, a questo proposito, come potrebbe essere in subordine valutata l'iniziativa sia in relazione alla operatività della CGE (Corte di Giustizia EU) sia in sede di CEDU (Corte Europea dei Diritti dell'Uomo) laddove vengano in rilievo, rispetto alla posizione dell'individuo ed al rapporto con l'animale, possibili violazioni di diritti fondamentali.

Ovviamente, entrambe le soluzioni operative prospettate devono essere attentamente vagliate in relazione a due fattori “metagiuridici”:

- i tempi necessari per il raggiungimento degli obiettivi prefissati;
- le risorse organizzative ed economiche necessarie e la necessità di avere un “consenso” ai fini mediatici (questo sarà, senza dubbio, un elemento rilevante in chiave di opportunità). In particolare, si rammenta come l'iniziativa dei cittadini europei (ICE) è senza dubbio uno strumento fondamentale di democrazia partecipativa all'interno dell'UE. Grazie ad essa, infatti, un numero rilevante di cittadini - un milione di cittadini – che siano residenti in più Stati membri può invitare la Commissione a presentare una proposta di atto giuridico ai fini dell'attuazione dei trattati dell'Unione. Nonostante tale incisività, si deve dire che ad oggi, da quando è applicabile il regolamento del 2011 che stabilisce le procedure dettagliate relative all'ICE, sono state presentate con esito positivo poche iniziative alla Commissione – di cui peraltro ben due riguardanti la protezione e la tutela degli animali in senso lato!¹ Sebbene, poi, siano intervenute novità

¹Si ricorda come le basi giuridiche di tale strumento siano: Articolo 11, paragrafo 4, del trattato sull'Unione europea (TUE); Articolo 24, paragrafo 1, del trattato sul funzionamento dell'Unione europea (TFUE); Regolamenti (UE) nn. 211/2011 e 2019/788; Articoli 222 e 230 del regolamento del Parlamento europeo. Finora sei iniziative hanno raggiunto il numero richiesto di firme e sono state presentate alla Commissione: Right2Water (Diritto all'acqua), One of Us (Uno di noi), Stop Vivisection (Basta con la vivisezione), Ban Glyphosate (Vietare il glifosato), Minority SafePack - un milione di firme per la diversità in Europa, nonché End the Cage Age (Basta animali in gabbia). Il Parlamento ha organizzato audizioni con i rappresentanti di tutte e sei le iniziative, tenutesi rispettivamente il 17 febbraio 2014, il 10 aprile 2014, il 24 aprile 2015, il 20 novembre 2017, il 15 ottobre 2020 e il 15 aprile 2021. La Commissione ha fornito risposte esponendo le proprie conclusioni giuridiche e politiche in merito. Da quando è stata lanciata l'ICE, la Commissione ha registrato un totale di 89 iniziative. Per altri dati è possibile consultare il sito della Commissione UE.

tese a rendere l'ICE più accessibile (si potranno eventualmente approfondire gli aspetti organizzativi e giurisdizionali rilevanti) va sin da ora detto che resta ovviamente la premessa per la quale tale via richiede un impegno notevole sia a livello locale (si veda ad esempio la formazione dei comitati) sia a livello di coordinamento e centrale. Delle difficoltà e complessità che si accompagnano alla presentazione della ICE sono consapevoli le istituzioni comunitarie che dall'entrata in vigore del regolamento relativo all'ICE stessa sono state espresse notevoli preoccupazioni in merito al funzionamento dello strumento. Il Parlamento ha ripetutamente invitato a riformare il regolamento di riferimento al fine di semplificare e snellire le procedure.

A ciò si aggiungono i tempi di successiva discussione a livello europeo.

Quanto alla causa che possa condurre ad una decisione utile in sede UE (o di CEDU) si sottolinea in questa fase che tale ipotesi presuppone pur sempre l'individuazione di un caso a livello nazionale, e dunque l'instaurazione di un procedimento giudiziale innanzi ai giudici italiani a cui farà seguito il successivo ricorso alle giurisdizioni sovrannazionali.

Si ritiene, dunque che dovranno essere valutate con attenzione sia le possibili collaborazioni e/o rapporti esterni, sia le risorse necessarie per la realizzazione in concreto di tali attività.

Ovviamente, ci limitiamo in questa sede ad offrire alcune riflessioni, anche alla luce degli elementi emersi nel confronto – sia scritto che orale – con i soggetti coinvolti. Saremo, ovviamente, disponibili ad una più puntuale analisi e/o discussione su tali scenari.

5.Allegati

Si allegano:

Allegato 1: Testo della Survey

Allegato 2-5: Risposte pervenute alla survey in merito alle azioni da intraprendere

Allegato 6: Loi 2021/1539

Allegato 7: Proposta di legge 24/2022



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SURVEY ON THE LEGAL STATUS OF ANIMALS AND POSSIBLE ACTIONS TO TAKE

Please note that the present survey is not finalized to obtain comprehensive answers but to gather information in the field of animal law and feel free to add any further suggestion.

1. The actual legal status of animals in the EU

Legal status in Italy

In Italy the republican Constitution has been recently modified by providing in art. 9 that the laws of the State regulate the protection of animals. This has been an historical moment, as the first part of the Constitution where art.9 is included has never been modified before. The actual art. 9 stands as follows: “[The Republic] Protects the environment, biodiversity and ecosystems, also in the interest of future generations. The law of the State governs the methods and forms of animal protection». This is the milestone result of years of battles lead by animal protection organizations as well as academics, with a political transversal vote.

Nonetheless, animals are still identified as “*benti*” (goods), in the Civil Code of 1942 that represent the paramount reference for all other laws.

The sources of domestic law, however, do not all appear to be unequivocally aligned with the qualification of the animal as a good, subsumed by the Civil Code. A first example of this can be found in regional laws that identify the animal as a sentient being and affirm the duty to ensure its welfare, although with a selection of the 'categories' of animals protected¹. It is clear, in these cases, the loss of one of the main prerogatives of ownership, i.e. the absence of

¹ See Regione Toscana Law 20 october 2009, n. 59, Norme per la tutela degli animali. Abrogazione della legge regionale 8 aprile 1995, n. 43 (Norme per la gestione dell'anagrafe del cane, la tutela dell'animale da compagnia).

conditions and limits to the rights of the owner of the property; on the contrary, real duties of care towards the object of ownership, i.e. the animal, are identified².

In addition, there are numerous animal protection regulations that are difficult to reconcile with the idea of the animal as a thing and mere object of rights, and not a subject. For example, the Road Traffic Code (*Codice della Strada*) identifies a duty to rescue injured animals, unrelated to the position and existence of an owner as a possible victim of the resulting loss of the animal³. What is the purpose of such an imposition, if not to protect (another) subject?

A large set of criminal laws that punish criminal actions against animals - starting with Framework Law no. 281/1991 on the protection of pets against acts of cruelty in addition to the rules of the Criminal Code amended in 2004 - gives rise to a regulatory patchwork in which even the specialist doctrine is often in the balance in identifying the position of the animal as the object of criminal action or as a damaged subject, so as to propose hybrid solutions *in limine*.

A further important step in the disintegration of the figure of the good-animal is to be found in the reform of the rules on sports work, approved by Legislative Decree no. 36/2021, where there are detailed rules to protect the welfare of animals used in sporting activities. Obligations of protection and prohibitions of exploitation are consistent with the Lisbon Treaty, which identifies the animal as a sentient being. As indicated by the legislator, this is 'a unitary legislation in terms of protection of the rights of animals used in sporting activities', which provides 'obligations for owners, handlers, operators, instructors, organizers of events and competitions, who are required to preserve the welfare of animals in terms of nutrition, health care and care'. More specifically, the entire Title IV of Legislative Decree 36/2021 (specifically from Article 19 to Article 24) is dedicated to the general rules for the welfare of animals used in sporting activities, as well as specific rules for equestrian sport, harmonizing the provisions of the Ministry of Health and the Ministry of Agricultural Policies in a unitary discipline concerning all animals used in sporting activities. On the one hand, the above-mentioned obligations are laid down for those who keep an animal used in sporting activities in any capacity: they are required to preserve the animal's welfare in terms of feeding, health care and care in compliance with its ethological needs. On the other hand, specific bans are introduced on training and coaching methods that may harm the health and welfare of the animal, as a

² See T. HONORÉ, *Ownership*, in A.G. GUEST (ed.), Oxford Essays on Jurisprudence, Oxford, 1961, p. 107 ss., come ricordato anche da U. MATTEI, *La proprietà*, in Trattato di Dir. civ. diretto da R. Sacco, 2001, p. 139; A. GAMBARO, *La proprietà. Beni, proprietà, possesso*, Milano, 2015; P. RESCIGNO, voce *Proprietà (diritto privato)*, in Enc. Dir., vol. XXXVII, 1988, p. 254 ss.

³The text is as follow: "Al comma 1 dell'articolo 177 del decreto legislativo n. 285 del 1992, dopo il secondo periodo è aggiunto il seguente: "L'uso dei predetti dispositivi (acustico supplementare di allarme e di segnalazione visiva a luce lampeggiante blu) è altresì consentito ai conducenti delle autoambulanze, dei mezzi di soccorso anche per il recupero degli animali o di vigilanza zoofila, nell'espletamento dei servizi urgenti di istituto, individuati con decreto del Ministro delle infrastrutture e dei trasporti.

Con il medesimo decreto sono disciplinate le condizioni alle quali il trasporto di un animale in gravi condizioni di salute può essere considerato in stato di necessità, anche se effettuato da privati, nonché la documentazione che deve essere esibita, eventualmente successivamente all'atto di controllo da parte delle autorità di polizia stradale previste all'articolo 12, comma 1".

Art.189, comma 9-bis: L'utente della strada, in caso di incidente comunque ricollegabile al suo comportamento, da cui derivi danno a uno o più animali d'affezione, da reddito o protetti, ha l'obbligo di fermarsi e di porre in atto ogni misura idonea ad assicurare un tempestivo intervento di soccorso agli animali che abbiano subito il danno. Chiunque non ottempera agli obblighi di cui al periodo precedente è punito con la sanzione amministrativa del pagamento di una somma da euro 389 a euro 1.559. Le persone coinvolte in un incidente con danno a uno o più animali d'affezione, da reddito o protetti devono porre in atto ogni misura idonea ad assicurare un tempestivo intervento di soccorso. Chiunque non ottempera all'obbligo di cui al periodo precedente è soggetto alla sanzione amministrativa del pagamento di una somma da euro 78 a euro.

sentient being within the meaning of Article 13 of the Treaty on the Functioning of the European Union.

If we reason according to the remedial perspective, the “real antechamber of rights”, and while sharing the idea that in many cases we are faced with 'false positives of animal subjectivity', we understand that the solutions and formulas used are definitely incompatible with the notion of the animals as goods and prelude to the recognition of a right (duty to rescue/right to be rescued; owner's duty to ensure the welfare of the animal/right of the animal to welfare). The very terminology used (right of the owner to visit the animal, preservation of the relationship of affection, fostering and non-assignment of the animal) confirms the irreconcilable dichotomy with respect to the qualification of good that the civil codification still assigns to all animals.

Question 1: What is the legal status of animals in your country? In particular, is there any law or provision of law which are dedicated to the animals?

2) Animals as members of the family: examples

Italy

Animals are not actually included in the *stato di famiglia* (certificate of the members of the family living permanently together and composing a family for multiple effects of law).

Nevertheless they are often referred to as animali familiari, especially with reference to some species of animals (dogs, cats and other species).

In addition, we have examples of animals treated in practice as members of the family in very practical terms, by laws or by the case law.

For example:

- We can mention the cases in which reference has been made to the custody of the family pet in case of separation or termination of cohabitation, even going beyond the bond of ownership⁴.
- The reform of condominium in 2012 provided for the right of the owner to accompany the family pet in his home but also in common areas, clearly favoring the preservation of a relationship between two subjects⁵.

⁴ See Trib. di Milano, 13.3.2013: “è lecito che gli ex coniugi stabiliscano le condizioni del mantenimento dell’animale domestico (nella specie, un gatto) e della sua permanenza presso l’abitazione del coniuge dove è collocata la figlia minore dei separati, che se ne prenderà cura sostenendo le relative spese ordinarie. Le spese straordinarie, invece, per il mantenimento dell’animale dovranno essere ripartite in misura pari tra i coniugi e tutto ciò anche [considerando] l’interesse del minore legato al rapporto d’affetto con l’animale”; ancora, Trib. di Varese, Sezione I Civile, sentenza del 7 dicembre 2011: “Esiste un vero e proprio diritto soggettivo all’animale da compagnia, assecondando il desiderio della stessa [la persona anziana] di poter frequentare il proprio cane anche dopo il ricovero in casa di riposo”.

⁵ See the text of Law no.220 dated 11.12.2012, modifying art.1138 of the Civil code and providing that “Le norme del regolamento non possono vietare di possedere o detenere animali domestici”.

- Animals having a bond of affection or kept for affection cannot be foreseized in debt colletion procedures (Code of Civil Procedure).

Question 2:

In your legal system, are animals, or certain species of animals, qualified as member of the family? What is eventually required for that?

Do you consider a proper solution to propose a formal recognition of the animal in the certificate of the family/stato di famiglia or other formal documents identifying the family, if existing in your country?

3) Rules for adoption/buying animals sanctions for abandonment

Italy

-In Italy there are no specific duties to inform, or to be informed or trained, before adopting a companion animal from shelters or before buying animals. Some local regulations provide for the necessity of having a patent, or to take part to courses for the possession of animals (generally dogs), but in case of non compliance there is no possibility to stop the person from having or kept the animal as a primary law should regulate the matter.

- There is no financial support in case of adopting an animal. Only fiscal advantages are provided in case of medical expenses within very specific limits.
- There are sanctions for abandoning an animal, but only where the animal is left in public places. If a person leaves to animal to a shelter, no sanction is applied.

Question 3:

Is there any specific duty before adopting/buying an animal?

What is the situation in your country?

4) Strategies for EU proposals

1) Possible solutions

In order to have a better recognition of the position of animals in the family, some solutions could be considered.

If we leave apart solutions typical of the single states, one could consider:

a) EU Passport

The European Union introduced the EU passport some years ago. The aim was to...

A better clarification on the EU passport for animals could be possible.

b) European Citizens' Initiative

ECI - European Citizens' Initiative - is a participatory democracy instrument that allows citizens to suggest concrete legal changes in any field where the European Commission has the power to propose legislation.

To launch an initiative, it takes seven EU citizens, living in at least seven different Member States.

Once an initiative gathers one million signatures with minimum thresholds reached in at least seven countries.

The European Commission must decide whether or not to take action. If the Commission decides to put forward a legislative proposal, the normal legislative procedure starts.

The aim of the ECI is to provide the European Union with general legislation making it possible to verify in an objective manner the practical application of national provisions relating to the rule of law in order to strengthen mutual trust between the Member States and to facilitate the implementation of the provisions of Article 7 TEU concerning possible breaches of the Union's values.

It could also facilitate the enforcement of European laws on judicial cooperation in criminal matters (e.g. the European Arrest Warrant).

In the light of this democratic tool, the topic of the initiative could be as follow:

- Formulate a request in order to get the recognition of animals as family members, or as family to the owner
- Asking for possible modification of the EU passport?
- Introduce basic rules for minimum common requirements for adoption/buying of animals

Attentions: we will not discuss here the limit and extent of the EU competence in this case, we are merely analyzing the opportunity to act in order to support such minimum common rules.

c) Others

A pilot case is another possible solution in order to have affirmed that animals are part of the family at an EU level.

Question 4:

What do you think about the possible strategies, in particular a proposal for EU legislative initiative to qualified animals as member of the family?

Can you think of a relevant/useful example for a pilot case?

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SURVEY ON THE LEGAL STATUS OF ANIMALS AND POSSIBLE ACTIONS TO TAKE

I. The actual legal status of animals in the EU

What is the legal status of animals in your country? In particular, is there any law or provision of law which are dedicated to the animals?

Legal status in France

In French law, animals are no longer property but are subject to the property regime. In the sense of civil law, property is the qualification given to a thing that is the object of a right of ownership. These things are property only because they have a market value and are susceptible to appropriation. However, as a living being, the animal has an intrinsic value, perhaps even more perceptible when it comes to pets, which are sources of feelings and emotional relationships. Moreover, there are case law decisions on the moral prejudice caused by the death of an animal. The first decision on this subject was handed down by the First Civil Chamber of the Court of Cassation on 16 January 1962. In a highly innovative decision, the Court of Cassation held that "*Independently of the material loss it entails, the death of an animal may be the cause of subjective and emotional loss for its owner which may give rise to compensation*".

By Law n°76-629 of 10 July 1976 on the protection of nature, the French legislator recognised that animals, then movable or immovable property by destination, were "sentient beings" which "must be placed by their owners in conditions compatible with the biological requirements of their species" (Article L. 214-1 of the Rural and Maritime Fishing Code). Thus, the owner of a chair and a dog may destroy the chair but may not harm the life of the animal under penalty of criminal law.

Supporting the idea that animals are not property, the 1994 Penal Code separated offences committed against property from those committed against animals. Articles 521-1 and 521-2, which appear in a single section entitled "Serious abuse or cruelty to animals", have given rise to various comments. It is possible to discern in them a deliberate desire to individualise the texts protecting animals, which are no longer considered solely from the point of view of property, but from that of their own interests.

The most important text concerning the status of animals is undoubtedly Law No. 2015-177 of 16 February 2015 on the modernisation and simplification of law and procedures. This law created an article 515-14 in the Civil Code, which states that 'Animals are sentient living beings. Subject to the laws protecting them, animals are subject to the regime of property'. The animal is thus removed from the category of property while remaining subject to the regime of property. Consequently, the legislator has not created a new legal regime for animals, he has created a new category, that of sentient living beings, but this category is attached to the regime of property. The reform of the Civil Code leads more to a harmonisation of French legislation than to a real advance for animals insofar as the Rural and Maritime Fishing Code, like the Criminal Code, already had a specific consideration of the animal in favour of its sentience.

However, the provisions of the Civil Code and the Penal Code only apply to domestic animals, including those that are wild by nature and are tamed by man or kept by him in captivity. At present, wild animals in the wild state are therefore still not considered by the law as "sentient beings".

The difficulty with French positive law is that animals are classified, not according to their species, but according to their use by man. Indeed, the degree of protection of an animal is not defined according to its species and sensitivity but according to the "category" that man assigns to it: "pet animals", "animals for consumption", "laboratory animals", "wild animals", etc. Different rules therefore apply depending on their use. For example, a pet pig, a pig used in a laboratory and a pig raised for consumption and destined for the slaughterhouse will not be subject to the same rules regarding their protection.

II. Animals as members of the family: examples

In your legal system, are animals, or certain species of animals, qualified as member of the family? What is eventually required for that?

Do you consider a proper solution to propose a formal recognition of the animal in the certificate of the family/stato di famiglia or other formal documents identifying the family, if existing in your country?

France

In French law, there are no animals that are designated as "family members" by a text. A family booklet is issued in case of marriage or birth of a first child, but pets are not included either.

We can only note that it results from the combination of articles L. 112-2 and R. 112-2, 14° of the code of the civil procedures of execution that are unseizable, "as being necessary to the life and the work of the seized debtor and his family", the animals of apartment or guard¹.

The majority of people who own a pet consider it a member of the family. Therefore, the fate of pets in the event of a conflictual separation of their owners is a subject of major importance. In case of divorce of the married couple, there are no provisions concerning the "custody" of the animal. This is a gap in family law in this area.

The animal being an "emotional good", the claim of the pet during the procedure of divorce materializes by the will of the spouses to remain the only owner of the animal and to wish to obtain its "guard". The fate of the pet is then the same as the fate of the property.

Nevertheless, if the judge classically refused any clumsy assimilation of the child to the animal, refusing to grant a right of visit and lodging in favor of the spouse who did not obtain the enjoyment of the animal², certain judges took into account the wellbeing of the animal and the bond of affection uniting it to its master³. In 2003, the Court of Appeal of Douai decided, for example, to attribute the enjoyment of the family dwelling of a divorcing couple to the two spouses who, taking into account the layout of the home, could live in separate rooms, underlining that the family dog "could thus, going from one to the other, respond to the equal affection of its two masters"⁴. By virtue of articles 254 and 255 of the Civil Code, the Court of Appeal of Paris, in a decision rendered on September 13, 2001⁵, also considered itself competent to rule on the fate of the animal that lived in the family home, basing itself on the possibility given to the conciliating judge to prescribe the measures necessary to ensure the existence of the spouses until the date on which the judgement has the force of res judicata. In this case, each of the spouses expressed doubts as to the other's ability to take care of the

¹ However, there are two exceptions to this rule (article L. 112-2, 5° of the same code). The first concerns seizure to recover the sale price or sums lent for their acquisition. The second relates to the seizure of animals if they are of value or if they are in a place other than that where the distrainee usually lives or works.

² Paris Court of Appeal, May 21, 1981, JurisData n° 1981-042815; Paris Court of Appeal, January 11, 1983; Besançon Court of Appeal, October 28, 2005, JurisData n°2005-290840.

³ TGI Evreux, June 27, 1978. On this decision : *Gazette du Palais*, 1978, 2, p. 382.

⁴ Court of Appeal of Douai, November 27, 2003, JurisData n°2003-236158.

⁵ Paris Court of Appeal, 24th Chamber, Section D, September 13, 2001, n°2001/01243.

animal, without providing any concrete proof. The non-conciliation order had granted the wife the use of the dog, and the husband asked for custody of the animal in his appeal. The court then considered that the wife having left the marital home without taking the dog with her, and the dog having remained with the husband in the family residence, it was appropriate to reform the order and to attribute the enjoyment of the dog to the husband, especially as the wife had not seemed to have taken any care of the animal since her departure. The Paris Court of Appeal thus showed a certain authority to impose the respect of the animal's well-being and to preserve the bond of affection which could exist with the husband, especially since the wife had brought the proof of a purchase invoice of the dog established in her name. Even if this did not necessarily make the dog the wife's own property, the court could very well have considered this evidence sufficient to conclude that the animal was preferentially allocated to the wife, which was not the case⁶.

Two months later, the Court of Appeal of Nancy, in a decision rendered on November 30, 2001⁷, declared itself incompetent to settle the fate of the animal. In this case, the order of non conciliation had attributed the enjoyment of the dog to the wife, and this in the absence of opposition from the husband. But the latter had opposed this attribution in the appeal case, stating the better living conditions that he was likely to offer to the dog, explaining in a general way that his request was based on "the essential interest of the animal". The court then confirmed the decision of the first judge, only insofar as he had noted an absence of difficulty concerning the attribution of the dog. In its reasoning, the Court of Appeal of Nancy held that such a request could only be rejected, because no competence was vested in the judge to determine the interest of an animal in this way. The court then recalled that only the measures necessary to ensure the existence of the spouses and children could be prescribed. The Court of Appeal of Nancy then simply refused to rule on the question.

The comparison of these two judgments allows us to illustrate the reason why it is essential to specify the existing texts, so that the judge with the family business is expressly devolved the competence to rule on the interest of the animal, taking into account its new qualification "of alive being endowed with sensitivity". The sensitivity of this living being imposes indeed that the duty to protect the interest of the animal is recognized, with regard to its physiological needs and the established emotional bonds. To do this, it would be necessary to write into the Civil Code that the animal's well-being must necessarily be taken into account, independently of the matrimonial regime and the purchase invoice of the animal or the adoption contract, which should no longer be the only indices determining its future habitual residence.

⁶ It is nevertheless possible to imagine that the liquidation of the matrimonial regime could go against this decision, and ultimately lead to the dog being torn away from its home and its master, even though it had been attributed to the spouse at the stage of provisional measures.

⁷ Court of Appeal of Nancy, November 30, 2001, n°2575/01.

III. Rules for adoption/buying animals sanctions for abandonment

**Is there any specific duty before adopting/buying an animal?
What is the situation in your country?**

Law n° 2021-1539 of 30 November 2021 aimed at combating animal abuse and strengthening the bond between animals and humans has provided for the implementation of a compulsory "certificate of commitment and knowledge" for purchasers of a pet animal and for holders of equidae.

Decree n° 2022-1012 of 18 July 2022 on the protection of pets and equidae against animal abuse provides certain details on this certificate, which will be required from 1 October 2022 for dogs, cats, ferrets and lagomorphs (rabbits, hares) that are not intended for human consumption. The certificate will be required from 31 December 2022 for equidae.

It is regrettable that pets such as birds, fish or rats are not taken into consideration.

This certificate must be signed by the new purchaser, whether in return for payment or free of charge, who must sign a handwritten undertaking to respect the animal's needs. The certificate will specify several pieces of information depending on the species : - Its needs ; identification requirements (this is essential to limit animal abandonment) - the implications of keeping an animal. Indeed, all ownership has a financial cost (food, possible guarding, care...) and a logistical cost (guarding in case of absence, necessary space, daily outings, food...).

For the time being there is no form to be completed or model certificate, but a technical instruction will provide further details on the format.

For pets that are purchased from a professional, the certificate will be issued by a person holding the Attestation of Knowledge for Pets of Domestic Species or one of its equivalents listed in an order. This certificate of knowledge relating to the biological, physiological and behavioural needs and care of pets is issued by the regional directorates for food, agriculture and forestry. It follows the assessment that takes place at the end of a training course delivered by an organisation authorised by the Ministry of Agriculture and Food Sovereignty. Professionals working with dogs and cats must have this attestation of knowledge or be in possession of an equivalent professional certification.

Professional sellers or private individuals must ensure that the purchaser has the certificate before transferring a pet or an equine animal. The animal may not be sold less than 7 days after the certificate has been issued to the transferee. A forthcoming decree will specify the penalties for the transferor who does not check that the purchaser has signed a certificate, as well as for the person issuing a non-compliant certificate.

IV. Strategies for EU proposals

What do you think about the possible strategies, in particular a proposal for EU legislative initiative to qualified animals as member of the family? Can you think of a relevant/useful example for a pilot case?

European Citizens' Initiative

ECI - European Citizens' Initiative - is a participatory democracy instrument that allows citizens to suggest concrete legal changes in any field where the European Commission has the power to propose legislation.

In the light of this democratic tool, the topic of the initiative could be as follow: "Formulate a request in order to get the recognition of animals as family members, or as family to the owner".

The following are proposals that could be included in EU legislation:

- Modifying the European passport to include pets;
- Allow all pets travelling by plane to stay in the cabin, as is the case for assistance dogs, which travel free in the cabin, regardless of their size and weight. In the hold, there are too many deaths, due to air pressure, temperature or luggage. Animals are sentient beings, not luggage;
- Introduce basic rules for common minimum requirements for the adoption/purchase of animals;
- Consider the welfare of the animal, regardless of its ownership, in the event of the couple's separation. In this sense, we propose that the purchase invoice or the adoption contract should no longer be the only indicators determining the future residence of the animal. The family court must have the express competence to rule on the interest of the pet, independently of the matrimonial regime to which the owners are subject when they are married;
- Allow employees time off work in the event of the death or care of a pet⁸;
- Establish a common system for making arrangements for the future of one's pet following the death of its owner or the owner's inability to provide for its needs in the event of long-term illness;
- Allow pet owners to request that their pet be laid to rest with them after their death⁹.

Pilot case

This could be considered because the legal loopholes and prohibitions raised above contravene the provisions of European law guaranteeing respect for animal welfare and/or the privacy and family life of pet owners.

⁸ In France, the Wamiz platform decided to grant a paid day off to its employees who lost their pet. It seems to be one of the few companies that recognise the value of taking time off after such an event.

⁹ In this sense, see the Proposition de loi n°5007 aimed at allowing deceased owners to rest with their pets.

Questions/Answers

Question 1:

What is the legal status of animals in your country? In particular, is there any law or provision of law which are dedicated to the animals?

The legal status of animals in Spain has undergone a major change, thanks to Law 17/2021, which came into force on 5 January 2022 (Law 17/2021, of 15 December, amending the Civil Code, the Mortgage Law and the Civil Procedure Law, on the legal status of animals, <https://www.boe.es/eli/es/l/2021/12/15/17>). This law, which had a long and complicated procedure, enshrines the reform of the title of property in the Civil Code in such a way that animals are no longer things in property, but are now considered "sentient beings", subject to the particular laws that regulate their situation as "sentient beings". This modification of the Civil Code is the result of a process of harmonisation of the situation of animals, following the provisions of Art. 13 TFEU and in line with the process of "animal deobjectification" initiated in Europe, particularly in some Central European countries since the 1980s (Austria 1986; Germany 1990; Switzerland 2003; Belgium 2009; France 2015; Portugal 2017).

Also at the national level, Spain, as a member of the EU, has incorporated into its legal system, through the necessary adaptations, all the European regulations on Animal Welfare, in particular those aimed at production animals in the area of their care during transport, slaughter and experimentation (Animal Protection and Welfare Code https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=204&modo=2¬a=0&tab=2).

Spain is also a signatory of the European Protocol for the Protection of Companion Animals since 2017, by means of the "Instrument of ratification of the European Convention on the Protection of Companion Animals", made in Strasbourg on 13 November 1987 ("BOE" no. 245, of 11 October 2017) [https://www.boe.es/eli/es/ai/1987/11/13/\(1\)](https://www.boe.es/eli/es/ai/1987/11/13/(1))

The Spanish Penal Code also includes in its articles the crime of animal abuse (CP art.337). Abandonment is considered a crime (CP art. 337bis) since the reform carried out in 2015, (Organic Law 1/2015, of 30 March, which amends Organic Law 10/1995, of 23 November, of the Criminal Code) <https://www.boe.es/eli/es/lo/2015/03/30/1/con>

It should be borne in mind that Spain is a country constitutionally structured in 17 autonomous states and 2 cities with autonomous status (Ceuta and Melilla), which means that each of them has specific animal protection legislation, with specific competences, some of them quite different from each other, which makes a process of structuring and improvement necessary.

Finally, the new Law on the Protection, Rights and Welfare of Animals is already in parliamentary procedure after the approval of the preliminary draft at the beginning of August, and is expected to come into force in 2023 (Draft Law on the Protection, Rights and Welfare of Animals, 12 September 2022).

Question 2:

In your legal system, are animals, or certain species of animals, qualified as member of the family? What is eventually required for that?

In the Spanish legal system, animals are not considered family members in the formal sense. However, the aforementioned reform of the CC also includes the reform of the Civil Procedure Act. This reform stipulates that, in the case of crisis and/or break-up of couples (marriages, de facto unions) who have animals living with them, the judge has the power to order a visiting regime and protection of the physical and psychological well-being of the pets. In this sense, although pets cannot properly be considered as family members, a step forward has been taken to improve their situation and protect them in cases where family life is interrupted.

Do you consider a proper solution to propose a formal recognition of the animal in the certificate of the family/stato di famiglia or other formal documents identifying the family, if existing in your country?

Formal inclusion of animals as family members, through a certificate or a document, can be a way to improve respect for them.

Question 3:

Is there any specific duty before adopting/buying an animal? What is the situation in your country?

At the present time, in Spain, the owner of an animal is obliged to identify it with a microchip, register it in the municipal census, have an up-to-date health card, take out civil liability insurance and look after its health and welfare.

These are very basic aspects of the care and protection of pets, which are the responsibility of the municipality to control and enforce. These basic obligations constitute what is known as "responsible pet ownership".

Likewise, the owner of an animal is liable for damages caused by the animal (art. 1905 CC).

In Spain there is no proper pet adoption contract. Instead, shelters or animal collection centres usually use a private document of cession of the animal, which includes recommendations for the responsible keeping and care of the animal.

Question 4:

What do you think about the possible strategies, in particular a proposal for EU legislative initiative to qualified animals as member of the family?

Two possible steps or strategies are proposed:

- 1) To declare all companion animals in the European space as sentient beings. This would be one of the main strategies to achieve that companion animals are considered as family members in the EU. This would involve enacting basic legislation, common to all EU member states, to ensure that animals are considered as sentient beings in all countries.
- 2) To enact EU framework legislation for the protection and welfare of companion animals. The lack of European pet legislation common to all EU member states is badly needed. Companion animals, unlike production animals, experimental animals, aquatic animals, etc., lack a common European framework setting standards for their welfare and protection.

Can you think of a relevant/useful example for a pilot case?

There are two cases that can serve as pilot cases:

- 1) Unify the treatment of companion animals in case of divorce or separation of the cohabiting partner/marriage, throughout the EU. Such legal treatment in cases of crisis should be based on the premise that animals are sentient beings and their situation should be regulated according to their physical and psychological well-being.
- 2) Unify EU rules on the transport of pets.
Specifically in two areas:
 - a) Greater vigilance is needed at borders, to prevent trafficking and illegal sale of puppies.
 - b) It is also necessary to improve and facilitate the access of animals in public and private transport, in particular the access of animals in flights, trains, boats, buses, etc. should be made more flexible.
Likewise, at state level, the access of pets to urban public transport (metro, tram, bus) should be facilitated.

Survey on the Legal Status of Animals and possible Actions to take

Anne Peters and Viola Sauter

Question 1: What is the legal status of animals in your country? In particular, is there any law or provision of law which are dedicated to animals?

1) The Constitution: Animal protection as a State goal (Art. 20a of the Basic Law)

In 2002, animal protection was given constitutional status by adding the words “and animals” in the provision of Art. 20a of the German Constitution (Grundgesetz, GG).¹

The provision now runs: “Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life *and animals* by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.”

The provision is a so-called “*Staatszielbestimmung*” (state objective).² State objectives are constitutional norms with a legally binding effect. They prescribe a continuous respect for and fulfilment of certain tasks – objectively circumscribed goals – in the activity of the state.³

All organs of the state (in the legislative, executive, and judicial branches) are constitutionally obliged to work towards and improve the effective protection of animals. Art. 20a GG is primarily addressed to the legislature, containing a mandate for action and an obligation to constantly ameliorate the law.⁴ The executive and judicial branches must at all stages work towards animal protection.

2) Civil Code: Animals not things (1990)

The German Civil Code (*Bürgerliches Gesetzbuch*, BGB) originates from 1900. It is based on the dichotomy of *Personen* (persons; *personae*) and *Sachen* (things; *res*). In civil law, animals were considered to fall in the category of “*Sachen*” until 1990. With the “Act to Improve the Legal Status of Animals”, animals were explicitly removed from the category of things. A new provision was inserted (§ 90a) into the BGB.

§ 90a BGB runs: “Animals are not things. They are protected by special statutes. They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided.”⁵ (“Tiere sind keine Sachen. Sie werden durch besondere Gesetze geschützt. Auf sie sind die für Sachen geltenden Vorschriften entsprechend anzuwenden, soweit nicht etwas anderes bestimmt ist.”)

So animals are explicitly no longer “things” within the meaning of § 90 of the Civil Code. This provision seeks to express that animals are fellow creatures and sentient living beings for which humans bear responsibility and which they must protect and care for.⁶ In the case law, this idea is generally accepted to be the rationale (the underlying “*Rechtsgedanke*”) of the new provision: Animals are to be recognised as “fellow creatures” (“*Mitgeschöpfe*”) *throughout the entire legal order*.⁷ Put differently, by enacting § 90a BGB, the legislator committed itself

¹ Art. 20a (as amended by *Gesetz zur Änderung des Grundgesetzes* (Staatsziel Tierschutz) of 26 July 2002 (BGBl. 2002 I, p. 2862), entered into force on 1st August 2002.

² See e. g. German Federal Court (BVerfG), order of the first senate of 24th March 2021 – 1 BvR 2656/18, para. 112.

³ Report of the Expert Commission “*Staatszielbestimmungen/Gesetzgebungsaufträge*”, 1983, para. 7.

⁴ BVerfG, order of the First Senate of 24 March 2021 – 1 BvR 2656/18, para. 212.

⁵ *Gesetz zur Verbesserung der Rechtsstellung des Tieres im bürgerlichen Recht*, Act of 20 August 1990 (BGBl. 1990 I, p. 1762).

⁶ Draft Law of the Federal Government, Doc 11/5463, 25 October 1989, p. 1; Report of the Parliament, Doc 11/7369, 12 June 1990, p. 1.

⁷ AG Mergentheim, order of 19 December 1996 – 1 F 143/95, para. 3.

to safeguard animal protection for ethical reasons (“gesetzgeberisches Bekenntnis zum ethisch fundierten Tierschutz”).⁸

The legal consequences of this provision for the legal status of animals are controversial. (1) Some consider animals as *things sui generis*.⁹ But this reading is not convincing because it contradicts the explicit wording of §90a of the Civil Code that says “*not things*”.

(2) Another view is that the legislator has created a new legal category with this provision. According to this view, animals form – alongside things – a separate category *sui generis*, but still under the umbrella of legal “objects” (and are not persons).¹⁰ This conceptualisation reflects the historic intention of parliament.¹¹ The creation of this novel category of animals as legal objects *sui generis* has a mainly symbolic effect.¹²

(3) A plausible interpretation would be that the provision overcomes the Roman-law inherited dichotomy of persons and things and creates a third category *between and beyond* persons and things. But this interpretation is difficult to reconcile with the overall scheme of the German Civil Code that is permeated by the dichotomy.

In German law as it stands, there is broad agreement that animals have not been elevated to the status of a person by § 90a BGB,¹³ which is the conceptual counterpart to the legal “thing”. In contemporary German civil law as it stands, “person” is mainly understood as implying legal capacity. Legal capacity is defined as the ability to have rights or obligations.¹⁴ Although animals are negatively defined as being “*not things*”, § 90a BGB also says that the legal provisions on things are still – as a rule – applicable to them. It is therefore at least questionable whether § 90a of the Civil Code fulfills its purpose, namely to take into account the quality of animals as sentient living beings.

The provision of § 90a sentence 3 of the BGB also says that the application of some legal norms on things need to be modified when animals are involved (“with the necessary modifications”), or that they may not apply at all, if this is ruled out by law (“except insofar as otherwise provided”).

One possible interpretation of this last phrase of § 90a BGB is that the laws must explicitly say that they are not applicable to animals. But the prevalent view is that certain norms concerning things may implicitly carry the message that they do not fit for animals, for example if they are irreconcilable with the animals’ nature as sentient beings. It is a question of interpretation to identify this message in a specific legal norm at hand. Both § 90a BGB

⁸ OLG Oldenburg, order of 16 August 2018 – 11 WF 141/18, para. 5.

⁹ Heinz-Peter Mansel, § 90a, in: Rolf Stürner (ed.), *Bürgerliches Gesetzbuch* (München: C.H. Beck, 18th ed. 2021).

¹⁰ Joachim Jickeli/Malte Stieper, Vorb. § 90a, in: Malte Stieper et al (eds), *Staudinger BGB* (Berlin: Otto Schmidt 2021), para. 1; Albert Lorz, *Das Gesetz zur Verbesserung der Rechtsstellung des Tieres im bürgerlichen Recht*, in: Monatsschrift für deutsches Recht 12 (1990), 1057-1061 (1057); Jörg Fritzsch, § 90a, in: Wolfgang Hau/Roman Poseck (eds), *Beck’scher Online-Kommentar BGB* (München: C.H. Beck, 63th ed., 1 August 2022), para. 2.

¹¹ Draft Law of the Federal Government, Doc 11/5463, 25 October 1989, p. 6: “Allerdings wird die bisherige Rechtsanwendung bestätigt, daß das Tier im bürgerlichen Recht durchaus noch Rechtsobjekt ist und damit dem Rechtsverkehr zugänglich ist.”

¹² Carolin Raspé, *Die tierliche Person: Vorschlag einer auf der Analyse der Tier-Mensch-Beziehung in Gesellschaft, Ethik und Recht basierenden Neupositionierung des Tieres im deutschen Rechtssystem* (Berlin: Duncker & Humblot 2013), 278. Raspé suggests to conceptualise animals as a special sub-category inside the category of persons, as “animalistic” persons.

¹³ Eva Inés Obergfell, *Tiere als Mitgeschöpfe im Zivilrecht*, in: *Rechtswissenschaft* 3 (2016), 388-415 (393-94).

¹⁴ Andreas Spickhoff, § 1, in: Sächer et al. (eds), *Münchener Kommentar zum BGB* (München: C.H. Beck, 9th ed. 2021), para. 6.

and the constitutional goal of animal protection (Art. 20a GG) obliges the law-appliers to examine the relevant law in order to identify such inapplicability to animals.¹⁵ In any case, the legislator could at any time pass amendments that clarify that a given legal norm needs to be modified with regard to animals or may not apply to animals at all.

Examples of legal provisions that explicitly contain modifications for animals are the following:

- Under § 251 (2) Sentence 2 of the Civil Code, veterinary treatment costs must also be compensated when they are higher than the value of the animal.
- § 903 Sentence 3 of the Civil Code provides that the owner of an animal must observe the provisions on the protection of animals when exercising his/her rights as owner.
- § 811 (1) No. 8 of the German Code of Civil Procedure (Zivilprozeßordnung, ZPO) rules that domestic animals that do not serve any economic purpose are not subject to attachment in case of a compulsory enforcement. However, there are also exceptions for particularly valuable animals – as long as animal welfare is not compromised.

In addition to these civil law provisions, provisions protecting animals exist in the German Criminal Code (*Strafgesetzbuch*, StGB), especially in the context of offences against the environment, game poaching, fish poaching as well as pornographic content depicting sexual acts with animals. Furthermore, criminal offences like theft (§ 242 of the Criminal Code) or criminal damage (§ 303 of the Criminal Code) apply to animals.¹⁶

3) Animal Welfare Act

The most important law serving the protection of animals is the German Animal Welfare Act (Tierschutzgesetz, TierSchG).¹⁷ § 1 Sentence 1 says: “The aim of this Act is to protect the lives and well-being of animals, based on the responsibility of human beings for their fellow creatures.” (“Zweck dieses Gesetzes ist es, aus der Verantwortung des Menschen für das Tier als Mitgeschöpf dessen Leben und Wohlbefinden zu schützen.”)

The Act regulates in particular the keeping of animals, killing animals, interventions on animals like castration, animal testing and using animals for sport.

The basic principle is set out in § 1 sentence 2 of the Animal Welfare Act: “No one may cause an animal pain, suffering or harm without good reason”. (“Niemand darf einem Tier ohne vernünftigen Grund Schmerzen, Leiden oder Schäden zufügen.”)

Conversely, it is allowed to inflict pain, suffering and harm on an animal when there is a good reason (“vernünftiger Grund”). The key term, good reason, is an indeterminate legal concept. It seeks to resolve the tension between the protection of animals at the highest possible level on the one side and the protection of human interests on the other side. If a “good reason” (“vernünftiger Grund”) is lacking, the infliction of death, harm and suffering will constitute a crime (cf. § 17 of the Animal Welfare Act) or an administrative offence (cf. § 18 of the Animal Welfare Act).

¹⁵ Obergfell (n. 13), 395: “Prüfungspflicht”; e.g.: Christina Stresemann, §90a, in: Franz Jürgen Säcker et al (eds), *Münchener Kommentar zum BGB* (München: C.H. Beck, 9th ed. 2021), para. 8, 10; Lorz (n. 10), 1060, Raspé (n. 12), 296 assumes a “special situation” for animals.

¹⁶ Brunhild Wieck-Noodt, § 242, in: Volker Erb/Jürgen Schäfer (eds), *Münchener Kommentar zum StGB* (München: C.H. Beck, 4th ed. 2022), para. 9; Roland Schmitz, § 303, in: Volker Erb/Jürgen Schäfer (eds), *Münchener Kommentar zum StGB* (München: C.H. Beck, 4th ed. 2022), para. 26.

¹⁷ *Tierschutzgesetz in der Fassung der Bekanntmachung vom 18. Mai 2006* (BGBl. I S. 1206, 1313), last amended by Article 105 of the statute of 10 August 2021 (BGBl. 2021 I), p. 3436.

Four conditions must be met (cumulatively) to constitute a “good reason”:¹⁸ First, a plausible, valid and legitimate interest must be pursued. This is not the case when the interest pursued is unlawful, immoral, or if it is clearly not capable of justifying the infliction of pain, suffering or harm on an animal.

A legitimate interest is lacking in the following examples:

- § 3 of the Animal Welfare Act prohibits various acts like using painful methods in order to improve the performance of animals at sport competitions or similar events (§ 3 No. 1b of the Animal Welfare Act).
- It is prohibited to use force to feed animals as it is practiced for the production of *foie gras* unless this is necessary for health reasons (§ 3 No. 9 of the Animal Welfare Act). Therefore, these acts are not based on a good reason.
- § 4 (1) of the Animal Welfare Act prohibits to kill animals without anesthesia. If an animal is killed this way, a good reason is absent.¹⁹
- The infliction of pain and death because of an aversion to animals, for the production of luxury goods like fur,²⁰ for pleasure,²¹ for art,²² for shooting practice, or in anger is illegitimate and thus lacks a good reason.²³

Second, the damage done to the animals must be *suitable* to achieve the intended interest, i.e. work towards its realisation.

Third, the damage must be *necessary*. This is not the case if there are alternative procedures which are also suitable to achieve the interest, but which cause less suffering.

Alternative, less harmful procedures are available in the following examples:

- It is not necessary to kill an injured animal if the animal can be captured and given veterinary care.²⁴
- It is not necessary to kill tigers which are not purebreds and therefore not suitable for breeding.²⁵ An alternative and less severe procedure like a castration would be equally suitable to realise the interest in generating purebred offspring.²⁶

Fourth, the interest followed has to outweigh the damage to the animal. All advantages and chances as well as all disadvantages and risks must be taken into consideration.

In practice, this process is often imbalanced. For example, the public prosecutor’s office of Oldenburg said that there is a good reason to kill a piglet by pounding it against the wall. The public prosecutor argued that it could not be ruled out that the piglet was killed to relieve severe pain and suffering. But he failed to recognize that no legitimate interest was followed (cf. § 4 (1) of the Animal Welfare Act, see above).²⁷

¹⁸ Cf.: Federal Government, Doc 16/9742, 25 June 2008, p. 4; Almuth Hirt/Christoph Maisack/Johanna Moritz, *Tierschutzgesetz Kommentar* (München: Franz Vahlen 2016, 3rd ed.), § 1, paras 32-33.

¹⁹ Cf.: KG Berlin, order of 24 July 2009 – (4) 1 Ss 235/09 (150/09).

²⁰ Cf.: Draft Law of the Bundesrat, Doc 300/12, 6 July 2012, p. 26; Hirt/Maisack/Moritz (n. 18), § 1, para. 45.

²¹ Cf.: OLG Celle, judgement of 12 January 1993 – 1 Ss 297/91 considered the angling of fish that were released in angling ponds shortly before so that anglers can indulge their lust for killing as illegitimate.

²² Cf.: KG Berlin, order of 24 July 2009 – (4) 1 Ss 235/09 (150/09).

²³ Ernst Metzger, § 1, in: Albert Lorz/Ernst Metzger (eds), *Tierschutzgesetz Kommentar* (München: C.H. Beck, 7th ed. 2019), para. 44.

²⁴ OLG Karlsruhe, judgement of 10 May 1990 – 1 Ss 16/90.

²⁵ LG Magdeburg, judgement of 6 December 2010 – 26 Ns 120/10.

²⁶ OLG Naumburg, order of 28 June 2011 – 2 Ss 82/11.

²⁷ Jens Bülte, *Massentierhaltung – Ein blinder Fleck bei der Verfolgung von Wirtschaftskriminalität*, in: Neue Juristische Wochenschrift 19 (2019), 19-23 (22) with further references.

It is a problem that administrative practice does not factor in long-term effects into the necessity and proportionality assessment. By contrast, low prices for animal products – a long-term effect – is taken into account.²⁸

It would be more consistent to also take into account environmental damage such as a high nitrate pollution in water and soil, high water consumption, greenhouse gas emissions (especially methane), deforestation of rainforest for the production if animal feed like soy, and also heath issues like resistance to antibiotics as well the resulting social costs into account in the balancing process. All these partly direct, partly indirect and long term costs are not taken into account when balancing the pursued interest against the damage on the animal. Therefore, e.g. slatted floors are allowed although they not only cause pain and deformation for the animals but also cause a higher nitrate pollution than animal bedding such as straw.

An important question – especially in the context of factory farming – is whether and to what extent economic aspects (profitability) should be considered as a legitimate objective contributing to the necessity of inflicting harm on animals.

This was the key question in a decision of the German Federal Administrative Court on the killing of male chicks belonging to laying hen breeds.²⁹ In Germany, around 45 million male chicks are killed annually. Their breeding line is designed for egg production, not for meat production. Therefore, male chicks are not suitable for fattening. Because they cannot lay eggs either, they are shredded or gassed.

The Court ruled that economic considerations are *per se* no good reason.³⁰ Otherwise, the object and purpose of the Animal Welfare Act would be disregarded.³¹ However, the Court still considered the economic interests a good reason to kill the male chicks if an alternative – like sex determination of chicken embryos in the egg – is not available.³² Thus, the Court ultimately justified the killing of male chicks on the basis of economic concerns.

In the aftermath of the lawsuit, and in the face of the availability of in ovo sex determination, the legislator stepped in. Since 1 January 2022, § 4a of the Animal Welfare Act prohibits to kill male chicks: “It is prohibited to kill chicks of domestic fowl of the species Gallus gallus.”³³ (“Es ist verboten, Küken von Haushühnern der Art Gallus gallus zu töten.”)

Besides the key concept of a “good reason”, the Animal Welfare Act contains several indeterminate legal concepts, for example in § 17: “severe pain or suffering” (“erhebliche Schmerzen und Leiden”) or in § 2: “food, care and housing appropriate to its species, its requirements and behavior [...], avoidable suffering or harm” (“seiner Art und seinen Bedürfnissen entsprechend angemessen ernähren, pflegen und verhaltensgerecht unterbringen [...], vermeidbare Laden oder Schäden”).

Especially with regard to factory farming, the Animal Welfare Act leaves ample room for animal suffering, *inter alia* due to the high amount of indeterminate legal concepts. Besides, violations of the Animal Welfare Act are not prosecuted effectively.³⁴

The Animal Welfare Act, an act of parliament, authorises the executive branch to issue legal regulations (executive orders) which govern specific areas in more detail. An example is the

²⁸ Hirt/Maisack/Moritz (n. 18), § 1, para. 56.

²⁹ BVerwG, judgement of 13 June 2019 – 3 C 28.16 and 3 C 29.16.

³⁰ *Ibid.*, para. 10.

³¹ OLG Frankfurt, order of 14 September 1984 – 5 Ws 2/84, para. 2.

³² BVerwG, judgement of 13 June 2019 – 3 C 28.16 and 3 C 29.16, para. 10.

³³ *Gesetz zur Änderung des Tierschutzgesetzes – Verbot des Küiktötens*, Act of 18 June 1990 (BGBl. 2021 I, p. 1826-1827).

³⁴ Bülte (n. 27), 19-23.

Dog Regulation (“*Tierschutz-Hundeverordnung*”) which regulates the keeping of dogs.³⁵ Another example is the Animal Welfare Laboratory Animal Ordinance (“*Tierschutz-Versuchstierverordnung*”) which regulates the treatment of laboratory animals.³⁶

Question 2:

In your legal system, are animals, or certain species of animals, qualified as members of the family? What is required for that?

Animals such as cats and dogs are often referred to as family members by their humans. But no legal provision qualifies animals as members of the family under the law.

When animals are given special consideration by laws or in court, this is due to the qualification of animals as fellow creatures and sentient living beings under § 90a of the Civil Code and Article 20a of the Constitution.

In some constellations, the bond between the owner and the animal plays a relevant, sometimes even crucial role. For example:

- § 811 of the German Code of Civil Procedure (*Zivilprozessordnung*) states that domestic animals which do not serve any economic purpose may not be subject to attachment in case of a compulsory enforcement. The purpose of this provision is not only to protect animals, but also to protect the debtor’s bond of affection to the animal.³⁷
- In case of separation and divorce, companion animals which do not serve an economic or specific purpose (such as a guide dog) are treated like household effects under § 1361a and § 1568b of the Civil Code.³⁸

The qualification of the animal as “not thing” under § 90a of the Civil Code and the legal obligation to safeguard animal welfare has an impact on the judicial decision that assigns the companion animal as a “household effect” to one of the divorced spouses. Opinions and decisions are divided on these legal effects:

In some decisions, animal welfare has been regarded as the decisive factor.³⁹

Other courts have considered the parties’ “affection interest” (“*Affektionsinteresse*”) and “a reasonable participation in [!] the animal” (“*sinnvolle Teilhabe am Tier*”) to be crucial and more relevant than animal welfare concerns.⁴⁰

The law does not grant the separated or divorced partner who did not contain custody over the animal after separation and divorce any right of contact and of access to the

³⁵ *Tierschutz-Hundeverordnung vom 2. Mai 2001* (BGBl I S. 838), last amended by Article 1 of the statute of 25 November 2021 (BGBl. I), p. 4970.

³⁶ *Tierschutz-Versuchstierverordnung vom 1. August 2013* (BGBl. S. 3125, 3126), last amended by Article 1 of the statute of 11 August 2021 (BGBl. I), p. 3570.

³⁷ Jasmin Flockenhaus, § 811, in: Hans-Joachim Musielak/Wolfgang Voit (eds), *Zivilprozessordnung Kommentar* (München: Franz Vahlen, 19th ed. 2022), para. 24d.

³⁸ Cf. OLG Nürnberg, order of 7 December 2016 – 10 UF 1249/16, para. 36; OLG Stuttgart, order of 11 April 2014 – 18 UF 62/14, para. 1; OLG Hamm, order of 19 November 2010 – 10 WF 240/10, para. 1; OLG Bamberg, order of 10 June 2003 – 7 UF 103/03.

³⁹ Cf. OLG Nürnberg, order of 7 December 2016 – 10 UF 1249/16, paras 43-49, 58-60: The court ruled that the dog in dispute should be assigned to the household where it can stay in its pack; OLG Zweibrücken, order of 5 February 1998 – 2 UF 230/97, para. 4: The court ruled that the dog in dispute should be assigned to the person who stays in the prior home, because this is the dog’s familiar environment; OLG Oldenburg, order of 16 August 2018 – 11 WF 141/18, para. 5: The court ruled that the dog in dispute should be assigned to the person with whom it has a bond and relationship.

⁴⁰ Cf. OLG Stuttgart, order of 11 April 2014 – 18 UF 62/14; Riag Alexander Erbarth, § 1361a, in: Beate Gsell et al (eds), *Beck’scher Online-Großkommentar BGB* (München: C.H. Beck, 15 November 2022), para. 63; Beatrix Weber-Monecke, § 1361a, in: Franz J. Säcker et al. (eds), *Münchener Kommentar zum BGB* (München: C.H. Beck, 9th ed. 2022), para. 5.

animal.⁴¹ One first instance court (as a family court) decided in favor of such a right of contact and of access.⁴² The court argued that § 90a BGB enshrines a legal obligation that animals must be recognised as fellow creatures throughout the entire legal order. This then means, according to this court, that legal decisions concerning animals must – unlike legal decisions over innate things – take into account the animals’ “nature and their emotions”. The “compelling legal consequence” is that humans are prohibited to treat a fellow creature in a “completely arbitrary” way.⁴³

This judgment has been criticised as simply creating a right of access by unduly drawing an analogy to the right of access of the separated spouse to the children. Because such reasoning lacks any statutory basis, it amounts – according to the critics – to illegitimate judicial activism that oversteps the limits of legitimate interpretation of the statute.⁴⁴

Do you consider a proper solution to propose a formal recognition of the animal in the certificate of the family/stato di famiglia or other formal documents identifying the family, if existing in your country?

To our knowledge, a certificate for the family like the Italian *stato di famiglia* does not exist in Germany.

Question 3: Is there any specific duty before adopting/buying an animal? What is the situation in your country? Sanctions for abandonment?

When animals are kept for animal experiments, in zoos, shelters, animal fairs, for commercial purposes and when animals are imported from abroad for a fee, a permission (license) from the authorities is required (cf. § 11 of the Animal Welfare Act). In most German Federal States, a permission is required to keep dogs of certain breeds (so-called fighting dogs) such as Pitbull Terrier and Staffordshire Bullterrier.⁴⁵ In some federal states, humans must take a training and obtain a certificate of competence in order to be allowed to keep a dog, regardless of the breed.⁴⁶

All keepers of animals must comply with § 2 of the Animal Welfare Act which prescribes: “Any person keeping, caring for or required to care for an animal:

1. must provide the animal with food, care and housing appropriate to its species, its requirements and behavior;
2. may not restrict the animal’s possibility of species-specific freedom of movement to such an extent as to cause the animal pain or avoidable suffering or harm;
3. must possess the knowledge and skills necessary for providing the animal with adequate food, care and housing in accordance with its behavioral requirements.”

(“Wer ein Tier hält, betreut oder zu betreuen hat,

⁴¹ Cf. OLG Schleswig-Holstein, order of 21 April 1998 – 12 WF 46/98; OLG Stuttgart, order of 16 April 2019 – 18 UF 57/19; OLG Hamm, order of 19 November 2010 – 10 WF 240/10; OLG Bamberg, order of 10 June 2003 – 7 UF 103/03.

⁴² AG Bad Mergentheim, order of 19 December 1996 – 1 F 143/95.

⁴³ *Ibid.*, para. 3.

⁴⁴ OLG Bamberg, order of 10 June 2003 – 7 UF 103/03; OLG Hamm, order of 19 November 2010 – 10 WF 240/10, para. 2; OLG Stuttgart, order of 16 April 2019 – 18 UF 57/19; OLG Schleswig-Holstein, order of 21 April 1998 – 12 WF 46-98, para. 10.

⁴⁵ See e.g.: Baden-Württemberg: *Polizeiverordnung über das Halten gefährlicher Hunde vom 3. August 2000* (Gbl. 2000, S. 574), last amended by Article 8 of the statute of 3 February 2021 (Gbl.), p. 53, 54.

⁴⁶ See e.g.: § 3, *Niedersächsisches Gesetz über das Halten von Hunden vom 26 Mai 2011* (Nds., GVBl. S. 130), last amended by Article 2 of the statute of 22 September 2022 (Nds. GVBl.), p. 593.

1. muss das Tier seiner Art und seinen Bedürfnissen entsprechend angemessen ernähren, pflegen und verhaltensgerecht unterbringen,
2. darf die Möglichkeit des Tieres zu artgemäßer Bewegung nicht so einschränken, dass ihm Schmerzen oder vermeidbare Leiden oder Schäden zugefügt werden,
3. muss über die für eine angemessene Ernährung, Pflege und verhaltensgerechte Unterbringung des Tieres erforderlichen Kenntnisse und Fähigkeiten verfügen.”)

However, the law does not prescribe a due diligence for the seller of animals. He/she is not by law required to check whether the purchaser will be able to comply with these obligations.

§ 3 No. 3, 4 of the Animal Welfare Act prohibits to abandon animals. Abandonment is an administrative offence (cf. § 18 (1) No. 4 of the Animal Welfare Act) and may be sanctioned with a fine of up to 25.000 Euro (cf. § 18 (4) Animal Welfare Act). It is not prohibited to leave an animal at a shelter.

Question 4: What do you think about the possible strategies, in particular a proposal for EU legislative initiative to qualify animals as member of the family? Can you think of a relevant/useful example for a pilot case?

Pros

The following considerations bolster the proposal to an EU legislative initiative to qualify animals as members of the family:

1. A new status would reflect the image that many animal owners have of themselves and their animals.
2. Animals have a very high value in many families: Children receive companion animals in order to take responsibility for another living being and ultimately to learn how to deal with loss and death. Elderly people keep animals to feel less lonely.
3. In every stage of life, animals can enrich human lives. Especially the pandemic showed that animals help against loneliness, give structure to everyday life, and have a therapeutic value. Qualifying animals as family members would not only mean to recognize the value animals have for many families, but also acknowledge that they are sentient beings with feelings and emotions (cf. Art. 13 TFEU).

Cons

1. A recognition as a family member is anthropocentric: Only some animals would be protected because humans love them – not because of their own value.
2. The vast majority of animals in Europe are not regarded as family members, but as livestock. In 2021, 142 million pigs, 76 million bovine animals, 60 million sheep and 11 million goats were kept in Europe.⁴⁷ Besides this, countless poultry animals are held in confinement – in Germany alone more than 173 million in 2020.⁴⁸ The social and economic function of these animals is to be a commodity, they are a factor of production and not members of any family. The distinction between companion animals (potential family members) and animals in agriculture would need to be justified along non-speciesist and not merely anthropocentric considerations. An elevation of companion animals to family

⁴⁷ Eurostat, *Livestock population in numbers*, 23 September 2020, available at: <https://ec.europa.eu/eurostat/de/web/products-eurostat-news/-/ddn-20220517-2> (last access: 6 December 2022).

⁴⁸ Bundesministerium für Ernährung und Landwirtschaft, *Geflügelhaltung in Deutschland*, available at: <https://www.bmel-statistik.de/landwirtschaft/tierhaltung/gefluegelhaltung/> (last access: 6 December 2022).

members would de facto constitute a further deterioration of the legal situation of farm animals.

Initiative towards better regulation of companion animal sales

It is desirable to introduce minimum requirements for buying or adopting an animal. Currently, the sale of animals is underregulated in Germany. It is not prohibited to sell cages and pens that are far too small for the animals. Animals like rabbits can be lawfully sold as single animals although they always need contact with fellow species members. In addition, the trade (especially of puppies) on online platforms like Ebay is booming and not prohibited. At the same time, animal shelters are overcrowded.

The lawful sale of animals could be limited to shelters, animal welfare organizations, certified breeders and certified pet shops. Before an animal is sold, the needs of the animal should be explained and, if necessary, controls in potential buyers' homes should be carried out.

A citizens' initiative aimed in the direction of a better regulation of companion animal sales could reduce a lot of animal suffering, given that in Germany alone there are almost 35 million pets.⁴⁹

Possible pilot cases

Lawsuits directed at obtaining a right of access and contact by the divorced or separated spouse or partner to a formerly shared companion animal might be suitable pilot cases. Such a right of access is well established for children.

Complaints requesting such access to the animal have already been rejected by German courts with the argument that animals are household goods that are distributed in the course of a divorce (§ 1361a and § 1568b of the Civil Code) and that no legal provision provides for a right of access for household goods.⁵⁰ One first instance court (*Amtsgericht*) decision granted a right of access and contact. The single judge based its decisions on arguments of equity, propriety – and animal welfare.⁵¹

⁴⁹ Statista, *Anzahl der Haustiere in privaten Haushalten in Deutschland in den Jahren 2007 bis 2021*, 25 April 2022, availabe at: <https://de.statista.com/statistik/daten/studie/156836/umfrage/anzahl-der-haushalte-mit-haustieren-in-deutschland-2010/> (last access: 6 December 2022).

⁵⁰ OLG Schleswig-Holstein, order of 21 April 1998 – 12 WF 46/98; OLG Stuttgart, order of 16 April 2019 – 18 UF 57/19; OLG Hamm, order of 19 November 2010 – 10 WF 240/10; OLG Bamberg, order of 10 June 2003 – 7 UF 103/03.

⁵¹ AG Bad Mergentheim, order of 19 December 1996 – 1 F 143/95, para. 3.

Survey on the Legal Status of Animals and Possible Actions to Take

Belgium

1. Q1. What is the legal status of animals in Belgium? In particular, is there any law or provision of law which are dedicated to animals?

1.1. Belgian Constitution

While environmental protection, in particular the right to the protection of a healthy environment and the objective of sustainable development, is included in the Belgian Constitution, animal welfare is not. It is GAIA's position that animal welfare must be included in the Belgian Constitution and this objective may be achieved if the Constitution is revised. It is suggested to include animal welfare in Article 7bis of the Constitution or Article 23 of the Constitution. Although inclusion in Article 23 would imply a higher level of protection for animals, Belgian political parties, if they support this idea, prefer to include animal welfare in Article 7bis. Article 7bis of the Constitution anchors sustainable development as a governmental objective and GAIA suggests incorporating a requirement that governments must take the necessary measures to protect animals (thus a duty of care towards animals). The Belgian Constitutional Court may, where other constitutional provisions are reviewed, consider the content of Article 7bis and thus review other constitutional provisions read together with Article 7bis. Under the Belgian constitutional system direct review of national legislation on compliance with Article 7bis is not possible, only indirect legality review. Article 7bis is inferior to other constitutional articles such as Constitutional religious rights.

'Titel Ibis. On general political objectives of federal Belgium, the communities, and the Region.'

Article 7bis. In the exercise of their respective competences, the Federal State, the Communities and the Regions pursue the objectives of sustainable development in its social, economic and environmental aspects, taking into account the solidarity between the generations.

[Suggested addition: In the exercise of their respective powers, the Federal State, Communities and Regions strive towards the care of animals as sentient beings.]

Another option is to insert animal welfare in Article 23 of the Constitution. Article 23 provides an overview of economic, social, and cultural rights. This list may be supplemented with the protection of animal welfare and GAIA suggests animal welfare is incorporated into the existing right to the protection of a healthy living environment. The Belgian Constitutional Court is

allowed to review legal provisions directly on their compatibility with Article 23 of the Constitution (= direct legality review is possible).

‘Article 23.

Everyone has the right to lead a life in keeping with human dignity.

To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them.

These rights include among others:

- 1° the right to employment (...)*
- 2° the right to social security, to health care and to social, medical and legal aid;*
- 3° the right to decent accommodation;*
- 4° the right to the protection of a healthy environment, [suggested addition: including the protection and welfare of animals as sentient beings];*
- 5° the right to cultural and social fulfilment;*
- 6° the right to family allowances.*

1.2.Belgian Civil Code

On 30 January 2020 the Belgian Civil Code was amended, and now recognizes that animals are sentient beings.¹ Article 3.39 of the Civil Code provides:

‘Animals are sentient beings and have biological needs. The provisions regarding goods are applicable to animals, in compliance with the laws and regulations to protect animals and public order.’

The preparatory works indicate that Article 3.39 of the Civil Code provides the reasons that distinguish animals from goods, considering animals have specific characteristics (sentience / biological needs). Animals are effectively removed from the category of goods (Article 3.38 Civil Code). Hence, according to GAIA, the revised Civil Code indicates that animals, besides the legal categories ‘persons’ and ‘goods’, are a third legal and separate category, to which the laws on goods remain applicable, as well as animal protection laws.

1.3.Sources of Domestic Law that are not Aligned with the Qualification of Animals as Goods.

A. The Recognition of Animals as Sentient Beings in Federal and Regional Laws

¹ Belgian Chamber of Representatives, Legislative Proposal regarding Book 3 “Goods” in the new Civil Code DOC 55 0173/009, 16.

As said, Belgian federal law (Civil Code) does not qualify animals as good, considering animals have specific characteristics, as sentient beings with biological needs.

The Belgian regional animal welfare laws recognize too that animals are sentient beings. The Brussels Ordonnance of 6 December 2018 states that '*an animal is a living and sentient being, with its own interests and dignity, and enjoys specific protection.*' The Walloon Animal Welfare Code of 4 October 2018 provides along similar lines (Article D.1.): '*The animal is a sentient being with needs specific to its nature. This Law aims to protect the sentience of animals and to ensure the welfare of animals*'. The first draft of the Flemish Animal Welfare Code, that is planned to be adopted in 2023, provides that animals are sentient beings with specific needs. GAIA asks that this provision is submitted with the recognition that animals have their own species-specific interests, dignity and need special protection as well that their welfare and life quality is actively pursued. At this time, it is yet unsure how the finally adopted version will look like.

B. Belgian Federal and Regional Animal Welfare Laws

The Belgian federal animal welfare law, The Law of 14 August 1986 for the Protection of the Animals (and 262 implementation decisions) is uniquely dedicated to protecting animals and their welfare, separate from the rules applicable to goods.

Since the federalization of Belgium in 2014, the three Belgian regions (Flanders, Wallonia, and Brussels) became competent for animal welfare. Since then, each region has their own minister competent for Animal Welfare (separate from agriculture or public health competences) and the regional political bodies adopted or are in the process of adopting their own framework Animal Welfare Law governing many aspects of animal welfare, separate from the status of animals as goods. The Walloon Animal Welfare Code was adopted on 4 October 2018 and currently the Flemish and Brussels Ministers competent for Animal Welfare are circulating drafts for their own regional Animal Welfare Laws (until these are adopted the federal law of 1986 remains applicable in these two regions). It is expected the Flemish and Brussels Code for Animal Welfare are adopted in the course of 2023.

C. Negative Duty to Prevent Harm to Animals and a Duty of Care

The federal and regional animal welfare laws impose a negative duty, to prevent harm to animals. Article 1 of the Belgian Animal Welfare Law states: '*No one may, except in case of force majeure, commit acts that are not provided for by this law that cause an animal to die unnecessarily or to suffer mutilation, injury, or unnecessary pain.*'

In addition, the Belgian animal welfare laws impose a positive duty of care on the persons responsible for animals. Article 4 of the Belgian Animal Welfare Law states: '*Every person who has an animal, takes care of it or must take care of it, must take the necessary measures to*

give the animal, in accordance with its nature, physiological and ethological needs, it's health status and degree of development, adaption or domestication, adapted feed, care and shelter.'

D. Criminal Laws that Punish Criminal Actions Against Animals

The federal and regional animal welfare laws impose criminal actions against persons who abuse or neglect animals and/or violate the provisions of animal welfare legislation.

2. Q2.1. In your legal system, are animals, or certain species of animals, qualified as members of the family? What is eventually required for that?

Q2.2. Do you consider a proper solution to propose a formal recognition of the animal in the certificate of the family / stato di famiglia or other formal documents identifying the family, if existing in your country?

2.1.In Theory: Belgian Animals Are Not Members of the Family

Under Belgian legislation, animals are not qualified nor included as members of the family.

To become member of a (human) family, children are adopted in accordance with adoption procedures under family law. From a legal perspective, it may be recommended – if the objective is to fully integrate animals into the human concept of family – to analyze family law and propose a procedure for the adoption of animals into the family, alongside the procedure to adopt children into the family. Family law represents the deepest-rooted legal system regarding what it means to be a family and it may be necessary to include animal adoption into this system to ensure membership of animals into the family is cemented.

Other measures may also contribute to the recognition of animals as family members, such as the inclusion of animals in formal documents (e.g., in Belgium the certificate of family composition ('Attest gezinssamenstelling')).

Pets are considered family members to most pet owners (it may be useful to test this statement via a survey, if this has not been done already) and their inclusion in family law and / or in formal documents is only a formal recognition of this reality.

2.2.In Practice: Belgian Animals May Be Treated as Members of the Family

In legal cases regarding the custody of family pets in case of separation, the Belgian judge may consider "the interest of the animal" as a decisive factor to determine whether the animal should be assigned to ex-partner A or B. The consideration of the interest of the animal is deemed

legal, considering animals are sentient beings, which implies they have their own interests. Hence, even if person A is the formal owner of the animal (and bought the animal at the breeder) the judge may still assign the animal to person B if person B formed the closest bond with the animal (e.g., walking the dog, providing food, and establishing an affective bond with the animal). In practice, the Belgian courts agree that animals are “quasi-goods” (so the law of goods is not fully applicable), it is recognized by the court that animals are part of the “factual family” (Court of Appeal Antwerp) and the “interest of the animal” may be considered where decisions have to be made. The Belgian case law tends to prioritize the interest of the animal, not the exclusive ownership of the animal, as a guiding principle to establish who may keep the animal/ custody rules after separation of the couple. In Belgian scientific literature there are discussions regarding the legal basis for this case law and modifications of the law etc. are proposed to ensure/clarify the legality of this case law, although justifications for this approach may be found in the law as it is too (rules on the laws on goods, family law, and considered in the light of animal welfare law and the civil code).

The European and the Belgian case law in particular finds that a general prohibition on keeping animals in a (social) renting property limits the personal autonomy of the resident to organize his or her private life to their own individual wishes (violation of Article 8 European Convention Human Rights). In order to decide whether a ban on pets is acceptable in a concrete case a proportionality test is carried out. The judge studies whether the ban on pets in the rental property is proportional to the intended objective, that is the protection of the rental property. In accordance with the Belgian caselaw the interest of the lessor in the protection of his property is not violated if the lessee keeps non-intrusive and non-harmful pets, like cats, dogs, or other small pets. Other clauses, than a general prohibition, are studied by the judge case by case. The Belgian judge investigates whether the prohibition, considering the concrete circumstances (e.g., nuisance, damage, location and size of the property, type of pet), may be justified.

Under Belgian law, pets may not be foreseized (Article 1408 §1, 1° Judicial Code).

3. Q3. Is there any specific duty before adopting/buying an animal? What is the situation in your country?

Belgian legislation (applicable in Flanders and Wallonia) requires that the responsible person in the animal shelter advises the candidate-owner of a dog on which dog to adopt. The potential owner must fill out a list with questions that investigate how the owner would take care of the dog during vacation periods, how (s)he would satisfy the dog's need for movement and education, the steps that will be taken if the dog demonstrates problematic behavior and intentions to take an family insurance. Since Covid-19, many animal shelters decided that potential owners must first fill out the form and that only after this step an appointment can be set up at the shelter to meet a dog that meets the living circumstances of the potential owner. Hence, potential owners than may only meet

potential “matches” decided by the animal shelter. In practice, animal shelters refuse to give an animal up for adoption if they do not believe the potential owner would be a good owner. The law only requires the shelter to advise the owner on the most suitable dog, this is not a legal obligation. In practice, however, this system works quite well and (good) shelters do not allow the adoption of dogs by incapable owners.

The Walloon Animal Welfare Code requires persons must have an “animal permit” before they may keep an animal.² Everyone is assumed to hold this permit and this permit may be withdrawn in case of violations of animal welfare legislation by the judge and/or administrative authorities. A potential pet owner must go to the commune and obtain an extract from the central file / criminal record that he or she has not been condemned for animal abuse /negligence, and thus still holds the permit / the permit has not been withdrawn. This extract must then , by the potential pet owner (or anyone who wants to buy, adopt or receive a pet), be delivered to the animal shelter/breeder/... before a person may adopt a pet. The shelters and breeders must keep a register of everyone who bought / adopted an animal with reference to the extract from the central file and keep it for five years to allow inspectors to monitor whether this obligation is complied with.³

Just like in Italy there is no financial support in case of adopting an animal. There are sanctions for abandoning animals. If a person leaves the animal to a shelter, shelters request a contribution (‘*afstandsvergoeding*’), (e.g., min. € 70-75 for a dog; € 30 for a cat and € 20- 5 for a kitten). The exact amount of the contribution may differ among shelters. Additional contributions must be payed if the animal is not properly vaccinated.

4. Q4. What do you think about the possible strategies, in particular a proposal for EU legislative initiative to qualify animals as member of the family? Can you think of a relevant/useful example for a pilot case?

The European Citizens’ Initiative may be a worthwhile route to take, considering the recent success in applying this tool to animal welfare (the End of the Cage

² Walloon Animal Code of 4 October 2018, Article D.6.

³ Article D.144 du Livre 1er du Code de l’Environnement et à l’article 46 du Code Wallon du Bien-être Animal.

Age, phasing out of cage systems in the EU). It may be important to decide where this qualification of animals as members of the family may be included in EU law (EU passport for animals...)

Besides the EU route, it may be worthwhile to set the objective high and strive towards the full inclusion of pets in family law and research the concrete route to achieve this objective (e.g., where to include this new concept into national family law and the consequences of inclusion – legal value (symbolic or more?)). It may be worthwhile to inform EU countries of this objective + the concrete route to include pets into family law. In addition, it may be useful to list all ways animals may receive increased recognition in the legal system as family members and formulate recommendations towards EU countries on various ways to improve the status of pets as family members (different countries may benefit from different approaches, so an overview of all possibilities may be most effective). The implementation of these recommendations may eventually help towards achieving the objective to include pets as family members in family law. Ideally, recommendations are country-specific, and consider the context of each country:

- recognize pets as part of the family under national family law;
- introduce in law that the “interest of the pet” must be considered in cases of separation (or maybe also regarding other conflicts with pets before the courts);
- include provisions regarding custody of animals in family law;
- recognize in the law of goods, that animals are extracted from the law of goods and are a third separate legal category, besides goods and persons;
- including pets in formal documents;
- requiring permits before animals may be adopted, considering their status as de facto family members;
-

It may be worthwhile to ask for yearly updates with contacts in various countries on efforts made to improve the status of pets as family members and hopefully, over time, progress is made to achieve the status of pets as family members. Persistence may pay off in the end.

LOIS

LOI n° 2021-1539 du 30 novembre 2021 visant à lutter contre la maltraitance animale et conforter le lien entre les animaux et les hommes (1)

NOR : AGRX2035381L

L'Assemblée nationale et le Sénat ont adopté,

Le Président de la République promulgue la loi dont la teneur suit :

CHAPITRE I^{er}

CONDITIONS DE DÉTENTION DES ANIMAUX DE COMPAGNIE ET DES ÉQUIDÉS

Article 1^{er}

I. – Le titre I^{er} du livre II du code rural et de la pêche maritime est ainsi modifié :

1^o La section 1 du chapitre I^{er} est complétée par un article L. 211-10-1 ainsi rédigé :

« Art. L. 211-10-1. – Tout détenteur d'un équidé atteste de sa connaissance des besoins spécifiques de l'espèce.

« Lorsque la détention ne relève pas d'une activité professionnelle, l'attestation prend la forme d'un certificat d'engagement et de connaissance des besoins spécifiques de l'espèce, signé par le détenteur.

« Un décret précise les modalités d'attestation applicables, et dans le cas prévu au deuxième alinéa, le contenu et les modalités de délivrance du certificat.

« Avant tout changement de détenteur d'un équidé, le propriétaire de l'animal s'assure que le nouveau détenteur a attesté de ses connaissances en application du premier alinéa. » ;

2^o Au début du 2^o du I de l'article L. 214-8, sont ajoutés les mots : « Lorsque l'acquéreur de l'animal n'est pas tenu de signer un certificat en application du V du présent article, » ;

3^o Le V du même article L. 214-8 est ainsi rétabli :

« V. –Toute personne physique qui acquiert à titre onéreux ou gratuit un animal de compagnie signe un certificat d'engagement et de connaissance des besoins spécifiques de l'espèce, dont le contenu et les modalités de délivrance sont fixés par décret.

« Toute personne cédant un animal de compagnie à titre onéreux ou gratuit s'assure que le cessionnaire a signé le certificat d'engagement et de connaissance prévu au premier alinéa du présent V. La cession de l'animal ne peut intervenir moins de sept jours après la délivrance du certificat au cessionnaire.

« Les animaux de compagnie mentionnés au deuxième alinéa du présent V sont les chats et les chiens ainsi que les animaux de compagnie précisés par décret. »

II. – L'article L. 211-10-1 du code rural et de la pêche maritime est applicable à l'expiration du délai d'un an à compter de la promulgation de la présente loi lorsque la détention de l'équidé ne relève pas d'une activité professionnelle.

Le premier alinéa du V de l'article L. 214-8 du même code est applicable à toute personne physique qui acquiert pour la première fois depuis la promulgation de la présente loi un animal de l'espèce concernée.

Article 2

Le titre I^{er} du livre II du code rural et de la pêche maritime est ainsi modifié :

1^o Après le premier alinéa de l'article L. 212-13, il est inséré un alinéa ainsi rédigé :

« Les policiers municipaux et les gardes champêtres ont qualité pour rechercher et constater les infractions à l'article L. 212-10 et aux décrets et arrêtés pris pour son application, dans les limites des circonscriptions où ils sont affectés. » ;

2^o A l'article L. 215-3-1, la référence : « et L. 211-16 » est remplacée par les références : « , L. 211-16 et L. 212-10 ».

Article 3

A la deuxième phrase du premier alinéa de l'article L. 212-10 du code rural et de la pêche maritime, les mots : « nés après le 6 janvier 1999 » et, à la fin, les mots : « nés après le 1^{er} janvier 2012 » sont supprimés.

Article 4

La section 6 du chapitre II du titre I^{er} du livre II du code rural et de la pêche maritime est complétée par un article L. 212-12-1 ainsi rédigé :

« *Art. L. 212-12-1.* – Dans les établissements de soins vétérinaires, une signalisation apparente rappelle les obligations d'identification des animaux mentionnées au présent chapitre. »

Article 5

Le code rural et de la pêche maritime est ainsi modifié :

1^o Après le premier alinéa de l'article L. 212-2, il est inséré un alinéa ainsi rédigé :

« Pour les carnivores domestiques, les informations mentionnées au premier alinéa sont enregistrées dans un fichier national et font l'objet d'un traitement automatisé dans les conditions précitées. » ;

2^o A l'article L. 212-7, le mot : « deuxième » est remplacé par le mot : « dernier ».

Article 6

L'article L. 215-14 du code rural et de la pêche maritime est ainsi rétabli :

« *Art. L. 215-14.* – Les contraventions prévues en application du présent livre peuvent faire l'objet d'un traitement automatisé confié à l'Agence nationale de traitement automatisé des infractions. »

Article 7

Le code rural et de la pêche maritime est ainsi modifié :

1^o L'article L. 211-24 est ainsi rédigé :

« *Art. L. 211-24.* – Chaque commune ou, lorsqu'il exerce cette compétence en lieu et place de ladite commune, chaque établissement public de coopération intercommunale à fiscalité propre dispose d'une fourrière apte à l'accueil et à la garde, dans des conditions permettant de veiller à leur bien-être et à leur santé, des chiens et chats trouvés errants ou en état de divagation, jusqu'au terme des délais fixés aux articles L. 211-25 et L. 211-26. Cette fourrière peut être mutualisée avec un autre établissement public de coopération intercommunale ou avec un syndicat mixte fermé. La commune compétente peut mettre en place une fourrière communale sur son territoire ou disposer du service d'une fourrière établie sur le territoire d'une autre commune, avec l'accord de cette commune. Lorsqu'elle ne l'exerce pas en régie, la commune peut confier le service public de la fourrière à des fondations ou associations de protection des animaux disposant d'un refuge, sous forme de délégation de service public et dans des conditions fixées par décret en Conseil d'Etat.

« La fourrière a une capacité adaptée aux besoins de chacune des communes pour lesquelles elle assure le service d'accueil des animaux en application du présent code. Cette capacité est constatée par arrêté du maire de la commune où elle est installée.

« La surveillance dans la fourrière des maladies mentionnées à l'article L. 221-1 est assurée par un vétérinaire sanitaire désigné par le gestionnaire de la fourrière, dans les conditions prévues à la section 1 du chapitre III du titre préliminaire du présent livre.

« Dans leurs contrats de prestations, les fourrières sont tenues de mentionner les sanctions encourues pour sévices graves ou actes de cruauté envers des animaux, mentionnées à l'article 521-1 du code pénal.

« Les animaux ne peuvent être restitués à leur propriétaire qu'après paiement des frais de garde. En cas de non-paiement, le propriétaire est passible d'une amende forfaitaire dont les modalités sont définies par décret.

« Par dérogation au cinquième alinéa du présent article, les fonctionnaires et agents mentionnés au premier alinéa de l'article L. 212-13 du présent code peuvent restituer sans délai à son propriétaire tout animal trouvé errant et identifié selon les modalités définies à l'article L. 212-10, lorsque cet animal n'a pas été gardé à la fourrière. Dans ce cas, l'animal est restitué après paiement d'un versement libératoire forfaitaire dont le montant est fixé par arrêté du maire.

« Le gestionnaire de la fourrière est tenu de suivre une formation relative au bien-être des chiens et des chats, selon des modalités fixées par un décret qui prévoit des équivalences avec des formations comparables. » ;

2^o A la deuxième phrase du premier alinéa du II de l'article L. 211-25, après le mot : « refuge », sont insérés les mots : « ou à des associations mentionnées à l'article L. 214-6-5, » ;

3^o Les neuvième et dixième lignes du tableau constituant le second alinéa de l'article L. 275-2, les douzième et treizième lignes du tableau constituant le second alinéa de l'article L. 275-5 et les neuvième et dixième lignes du tableau constituant le second alinéa de l'article L. 275-10 sont ainsi rédigés :

«

L. 211-24 et L. 211-25	Résultant de la loi n° 2021-1539 du 30 novembre 2021 visant à lutter contre la maltraitance animale et conforter le lien entre les animaux et les hommes
L. 211-26	Résultant de l'ordonnance n° 2000-914 du 18 septembre 2000 relative à la partie législative du code de l'environnement

Article 8

Le deuxième alinéa du 3^e du I de l'article L. 214-6-1 du code rural et de la pêche maritime est ainsi rédigé : « – être en possession d'une certification professionnelle en lien avec au moins l'une des espèces concernées. La liste des certifications reconnues est établie par le ministre chargé de l'agriculture ; ».

Article 9

Après l'article L. 214-6-3 du code rural et de la pêche maritime, il est inséré un article L. 214-6-4 ainsi rédigé : « *Art. L. 214-6-4. – I. –* A des fins de suivi statistique et administratif, les personnes exerçant des activités mentionnées aux articles L. 214-6-1, L. 214-6-2 et L. 214-6-3 transmettent au fichier national mentionné à l'article L. 212-2 des informations relatives à leurs capacités d'accueil, à la traçabilité des animaux dont elles ont la charge et à leur suivi sanitaire, en ce qu'elles concernent leurs activités relatives aux carnivores domestiques.

« *II. –* Le décret en Conseil d'Etat prévu au dernier alinéa de l'article L. 212-2 détermine les modalités d'application du présent article. Il précise la nature des informations collectées, les conditions dans lesquelles la collecte des données et leur traitement peuvent être confiés à des personnes agréées par le ministre chargé de l'agriculture, la durée de conservation et les conditions de mise à jour des données enregistrées et les catégories de destinataires de ces données. »

Article 10

Le titre I^{er} du livre II du code rural et de la pêche maritime est ainsi modifié :

1^o L'article L. 214-6 est complété par un V ainsi rédigé :

« *V. –* On entend par famille d'accueil une personne physique accueillant à son domicile, sans transfert de propriété, un animal de compagnie domestique confié par un refuge ou une association sans refuge au sens de l'article L. 214-6-5, dans les conditions prévues à l'article L. 214-6-6. » ;

2^o Après l'article L. 214-6-3, sont insérés des articles L. 214-6-5 et L. 214-6-6 ainsi rédigés :

« *Art. L. 214-6-5. – I. –* Les associations sans refuge sont des associations de protection des animaux n'exerçant pas d'activité de gestion de refuge au sens de l'article L. 214-6-1 et ayant recours au placement d'animaux de compagnie auprès de familles d'accueil mentionnées à l'article L. 214-6.

« Ces associations accueillent et prennent en charge des animaux soit en provenance d'une fourrière à l'issue des délais de garde fixés aux articles L. 211-25 et L. 211-26, soit donnés par leur propriétaire, soit à la demande de l'autorité administrative ou judiciaire.

« *II. –* Ne peuvent détenir, même temporairement, des animaux de compagnie ou avoir recours au placement d'animaux en famille d'accueil en application de l'article L. 214-6-6 que les associations sans refuge :

« 1^o Ayant fait l'objet d'une déclaration au représentant de l'Etat dans le département ;

« 2^o Dont au moins l'un des membres du conseil d'administration ou du bureau remplit au moins l'une des conditions mentionnées au 3^e du I de l'article L. 214-6-1 ;

« 3^o Ayant établi un règlement sanitaire.

« *III. –* La liste des associations sans refuge déclarées en application du 1^o du II est tenue et actualisée par l'autorité administrative compétente en matière sanitaire, et mise à la disposition du public.

« *Art. L. 214-6-6. –* Tout refuge au sens de l'article L. 214-6-1 ou toute association sans refuge au sens de l'article L. 214-6-5 ayant recours au placement d'animaux de compagnie auprès de familles d'accueil au sens du V de l'article L. 214-6 :

« 1^o Etablit et conserve un contrat d'accueil de l'animal de compagnie signé par la famille d'accueil et l'association, comprenant les informations essentielles prévues par décret ;

« 2^o Remet à la famille d'accueil le document d'information mentionné au 2^e du I de l'article L. 214-8 ;

« 3^o Transmet à la famille d'accueil et conserve un certificat vétérinaire, établi dans un délai de sept jours à compter de la remise de l'animal ;

« 4^o Tient un registre des animaux confiés à des familles d'accueil, tenu à la disposition de l'autorité administrative à sa demande. Les informations relatives à la famille d'accueil sont enregistrées au fichier national mentionné à l'article L. 212-2 ;

« 5^o Poursuit les démarches relatives à l'adoption de l'animal, lorsque le placement en famille d'accueil ne revêt pas un caractère définitif aux termes du contrat d'accueil mentionné au 1^o du présent article.

« Un décret fixe les conditions d'application du présent article. »

Article 11

Le Gouvernement remet au Parlement, dans un délai de six mois à compter de la promulgation de la présente loi, un rapport dressant un diagnostic chiffré sur la question des chats errants. Le rapport évalue le coût de la capture et de la stérilisation des chats errants. Il formule des recommandations pérennes et opérationnelles pour répondre à cette problématique. Le rapport précise le champ d'application des mesures prévues, qui peuvent le cas échéant concerner également les chats domestiques. Il précise la mise en œuvre territoriale des recommandations formulées et indique les territoires prioritaires. Le rapport présente les modalités de financement de ce dispositif par les

collectivités territoriales et l'Etat. Il étudie en particulier la pertinence d'assurer ce financement par le biais d'un fonds de concours ou d'un fonds de dotation. Il est établi en lien avec l'observatoire de la protection des animaux de compagnie.

Article 12

I. – L'article L. 211-27 du code rural et de la pêche maritime est ainsi modifié :

1^o Après le premier alinéa, il est inséré un alinéa ainsi rédigé :

« Les établissements publics de coopération intercommunale à fiscalité propre peuvent, en application de l'article L. 5211-4-2 du code général des collectivités territoriales, mettre les moyens nécessaires à disposition des maires pour l'exercice de ce pouvoir de police. » ;

2^o A la fin du deuxième alinéa, la référence : « à l'alinéa précédent » est remplacée par la référence : « au premier alinéa du présent article » ;

3^o Après le même deuxième alinéa, il est inséré un alinéa ainsi rédigé :

« Pour l'application du présent article, le nourrissage de ces populations est autorisé sur les lieux de leur capture. »

II. – La onzième ligne du tableau constituant le second alinéa de l'article L. 275-2, la quatorzième ligne du tableau constituant le second alinéa de l'article L. 275-5 et la onzième ligne du tableau constituant le second alinéa de l'article L. 275-10 du code rural et de la pêche maritime sont ainsi rédigées :

«

L. 211-27	Résultant de la loi n° 2021-1539 du 30 novembre 2021 visant à lutter contre la maltraitance animale et conforter le lien entre les animaux et les hommes
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».

III. – A titre expérimental, pour une durée de cinq ans à compter de la promulgation de la présente loi, l'Etat, les collectivités territoriales et les établissements de coopération intercommunale à fiscalité propre volontaires peuvent articuler leurs actions dans le cadre de conventions de gestion des populations de chats errants.

La convention est signée par le représentant de l'Etat dans la région et les maires ou les présidents des collectivités territoriales et établissements publics de coopération intercommunale volontaires, afin d'améliorer la gestion et la prise en charge des populations de chats errants ou en divagation et d'articuler les compétences et moyens de chaque signataire dans cet objectif.

La convention fixe des objectifs en matière de gestion et de suivi des populations de chats errants, au regard notamment des missions prévues à l'article L. 211-27 du code rural et de la pêche maritime. La convention contient des engagements respectifs de chacune des parties. Ces engagements peuvent être de nature opérationnelle, organisationnelle ou, lorsqu'ils sont financés par une loi de finances, un budget déjà approuvé ou un dispositif de financement existant, de nature financière.

Les conventions signées en application du présent III ne peuvent excéder une durée de trois ans.

A l'issue de la période d'expérimentation prévue au premier alinéa du présent III, le Gouvernement remet au Parlement un rapport d'évaluation faisant état de la mise en œuvre des conventions.

Article 13

L'article L. 211-27 du code rural et de la pêche maritime est complété par un alinéa ainsi rédigé :

« Dans les mairies et les établissements de soins vétérinaires, une signalisation apparente présente l'intérêt de la stérilisation des animaux domestiques en termes de santé, de bien-être animal et de préservation de la biodiversité. »

Article 14

Au début du chapitre III du titre I^{er} du livre IV du code de l'environnement, il est ajouté un article L. 413-1 A ainsi rédigé :

« Art. L. 413-1 A. – I. – Parmi les animaux d'espèces non domestiques, seuls les animaux relevant d'espèces dont la liste est fixée par arrêté du ministre chargé de l'environnement peuvent être détenus comme animaux de compagnie ou dans le cadre d'élevages d'agrément.

« II. – La liste mentionnée au I est établie et révisée tous les trois ans, après enquête approfondie conduite par le ministre chargé de l'environnement. Cette enquête se fonde sur des données scientifiques disponibles récentes présentant des garanties de fiabilité.

« III. – Toute personne physique ou morale peut demander la mise à l'étude de l'inscription d'une espèce d'animal non domestique à la liste mentionnée au I ou le retrait d'une espèce d'animal non domestique de cette même liste.

« La demande fait l'objet d'une réponse motivée du ministre chargé de l'environnement au plus tard six mois avant la révision de la liste en application du II. La réponse peut faire l'objet d'un recours devant le juge administratif.

« Toute personne ayant présenté une demande en application du premier alinéa du présent III peut solliciter une dérogation au I, accordée par le représentant de l'Etat dans le département.

« IV. – Par dérogation au I, la détention d'un animal d'une espèce ne figurant pas sur la liste mentionnée au même I est autorisée si son propriétaire démontre qu'il a acquis l'animal avant la promulgation de la loi n° 2021-1539 du 30 novembre 2021 visant à lutter contre la maltraitance animale et conforter le lien entre les animaux et les hommes.

« V. – Un décret précise les modalités d'application du présent article, ainsi que la notion d'élevage d'agrément au sens du I. »

Article 15

I. – L'article L. 214-6-3 du code rural et de la pêche maritime est ainsi modifié :

1^o Au début, est ajoutée la mention : « I. – » ;

2^o Sont ajoutés trois alinéas ainsi rédigés :

« Un arrêté du ministre chargé de l'agriculture fixe les règles sanitaires et de protection animale applicables aux établissements de vente d'animaux de compagnie relevant du présent article et les autorités administratives chargées de leur contrôle.

« II. – La cession à titre onéreux ou gratuit de chats et de chiens est interdite dans les établissements de vente mentionnés au premier alinéa du I.

« En partenariat avec des fondations ou associations de protection des animaux, les établissements de vente d'animaux de compagnie mentionnés au même premier alinéa peuvent présenter des chats et des chiens appartenant à ces fondations ou associations, issus d'abandons ou dont les anciens propriétaires n'ont pas été identifiés. Ces présentations s'effectuent en présence de bénévoles desdites fondations ou associations. »

II. – Le premier alinéa du II de l'article L. 214-6-3 du code rural et de la pêche maritime entre en vigueur le 1^{er} janvier 2024.

Article 16

L'article L. 214-6-3 du code rural et de la pêche maritime est complété par un III ainsi rédigé :

« III. – La présentation en animaleries d'animaux visibles d'une voie ouverte à la circulation publique est interdite. »

Article 17

I. – Après le I de l'article L. 206-2 du code rural et de la pêche maritime, il est inséré un I bis ainsi rédigé :

« I bis. – Lorsqu'est constaté un manquement répété aux règles d'identification et aux conditions sanitaires prévues aux articles L. 236-1 à L. 236-8 pour les échanges intracommunautaires ou les importations ou exportations de carnivores domestiques, l'autorité administrative ordonne la suspension de l'activité en cause, pour une durée qui ne peut être inférieure à six mois. »

II. – L'article L. 236-1 du code rural et de la pêche maritime est ainsi modifié :

1^o Après le premier alinéa, il est inséré un alinéa ainsi rédigé :

« Tout chien importé ou introduit sur le territoire national ne peut entrer que s'il dispose d'au moins une dent d'adulte. » ;

2^o Au second alinéa, la référence : « à l'alinéa précédent » est remplacée par la référence : « au premier alinéa ».

III. – Le second alinéa de l'article L. 236-5 du code rural et de la pêche maritime est ainsi modifié :

1^o Les mots : « grave ou répétée » sont supprimés ;

2^o Est ajoutée une phrase ainsi rédigée : « Les frais occasionnés par ces contrôles sont mis à la charge de la personne ayant méconnu les dispositions du même article L. 236-1 ou de ses complices. »

IV. – Au premier alinéa de l'article L. 215-10 du code rural et de la pêche maritime, le montant : « 7 500 € » est remplacé par le montant : « 30 000 € ».

Article 18

Le titre I^{er} du livre II du code rural et de la pêche maritime est ainsi modifié :

1^o L'article L. 214-8 est complété par des VI à VIII ainsi rédigés :

« VI. – L'offre de cession en ligne d'animaux de compagnie est interdite.

« Par dérogation au premier alinéa du présent VI, une offre de cession en ligne d'animaux de compagnie est autorisée sous réserve :

« 1^o Qu'elle soit présentée dans une rubrique spécifique aux animaux de compagnie, répondant aux obligations prévues à l'article L. 214-8-2 ;

« 2^o Que la rubrique spécifique précitée comporte des messages de sensibilisation et d'information du détenteur relatif à l'acte d'acquisition d'un animal.

« Les modalités de mise en œuvre de ces obligations sont définies par décret.

« La cession en ligne à titre onéreux d'animaux de compagnie ne peut être réalisée que par les personnes exerçant les activités mentionnées aux articles L. 214-6-2 et L. 214-6-3.

« VII. – L'expédition par voie postale d'animaux vertébrés vivants est interdite.

« VIII. – La mention “satisfait ou remboursé” ou toute technique promotionnelle assimilée est interdite. » ;

2^o La section 2 du chapitre IV est complétée par un article L. 214-8-2 ainsi rédigé :

« *Art. L. 214-8-2.* – Tout service de communication au public ou tout annonceur autorisant la diffusion d'offres de cession de carnivores domestiques sur son service impose à l'auteur de l'offre de renseigner les informations prévues à l'article L. 214-8-1 et met en œuvre un système de contrôle préalable afin de vérifier la validité de l'enregistrement de l'animal sur le fichier national mentionné à l'article L. 212-2 et de labelliser chaque annonce. » ;

3^o Le chapitre V est complété par un article L. 215-15 ainsi rédigé :

« *Art. L. 215-15.* – Est puni de 7 500 euros d'amende le fait de ne pas mettre en œuvre le système de contrôle préalable mentionné à l'article L. 214-8-2. »

Article 19

L'article L. 214-8-1 du code rural et de la pêche maritime, dans sa rédaction résultant de l'article 1^{er} de la loi n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises, est ainsi modifié :

1^o Le premier alinéa est ainsi rédigé :

« I. – Toute publication d'une offre de cession d'animaux de compagnie fait figurer : » ;

2^o Après le même premier alinéa, sont insérés cinq alinéas ainsi rédigés :

« – les noms scientifique et vernaculaire de l'espèce, de la race et de la variété auxquelles appartiennent les animaux ;

« – leur sexe, s'il est connu ;

« – leur lieu de naissance ;

« – le nombre de femelles reproductrices au sein de l'élevage et le nombre de portées de ces femelles au cours de l'année écoulée, sauf élevages de poissons et d'amphibiens ;

« – le numéro d'identification des animaux, lorsque ceux-ci sont soumis à l'obligation d'identification en application du présent code ; »

3^o Au troisième alinéa, les mots : « le numéro d'identification de chaque animal ou » sont supprimés ;

4^o Après le même troisième alinéa, il est inséré un alinéa ainsi rédigé :

« Les modalités de contrôle des informations d'identification des animaux sont définies par décret. » ;

5^o A l'avant-dernier alinéa, au début, est ajoutée la mention : « II. – » et les mots : « de chats ou de chiens » sont remplacés par les mots : « d'animaux de compagnie » ;

6^o Au début du dernier alinéa, est ajoutée la mention : « III. – ».

Article 20

Le II de l'article L. 214-8 du code rural et de la pêche maritime est complété par un alinéa ainsi rédigé :

« La cession à titre gratuit ou onéreux aux mineurs d'un animal de compagnie est interdite en l'absence de consentement des parents ou des personnes exerçant l'autorité parentale. »

Article 21

La section 3 du chapitre II du titre I^{er} du livre II du code rural et de la pêche maritime est complétée par un article L. 212-9-1 ainsi rédigé :

« *Art. L. 212-9-1.* – Toute intervention médicale ou chirurgicale aboutissant à l'interruption permanente du passage de l'influx nerveux sensitif de tout ou partie d'un membre d'un équidé doit être inscrite sur le document d'identification de l'animal et dans le fichier national des équidés mentionnés à l'article L. 212-9 par le vétérinaire qui l'a pratiquée. »

Article 22

L'article L. 241-4 du code du sport est complété par deux alinéas ainsi rédigés :

« Pour l'application du premier alinéa du présent article, les conditions d'accès prévues aux locaux mentionnés au 3^o de l'article L. 232-18-4 s'appliquent aux lieux où se déroulent les manifestations mentionnées à l'article L. 241-2 et les entraînements y préparant, ainsi qu'aux locaux dans lesquels les animaux prenant part à ces manifestations ou entraînements sont habituellement gardés.

« Pour l'application du premier alinéa du présent article, la constatation des infractions prévues à l'article L. 241-2 et aux 2^o et 3^o du I de l'article L. 241-3 peut s'effectuer dans les conditions prévues à l'article L. 232-18-9. »

Article 23

Le chapitre III du titre I^{er} du livre II du code rural et de la pêche maritime est complété par une section 2 ainsi rédigée :

« Section 2

« *Vente forcée des équidés confiés au titre d'un contrat de dépôt ou d'un contrat de prêt à usage*

« Art. L. 213-10. – I. – Dans le cas où un équidé est confié à un tiers, dans le cadre d'un contrat de dépôt ou de prêt à usage, et où le propriétaire ne récupère pas l'équidé dans un délai de trois mois à compter de la réception d'une mise en demeure de récupérer l'animal, pour défaut de paiement, inaptitude ou incapacité totale de l'animal d'accomplir les activités pour lesquelles il a été élevé, le dépositaire peut vendre ledit équidé dans les conditions déterminées au présent article.

« II. – Le professionnel qui veut user de la faculté prévue au I présente au président du tribunal judiciaire une requête qui énonce les faits et donne les éléments d'identification de l'équidé et son lieu de stationnement, le nom du propriétaire et, le cas échéant, l'indication précise du montant de la somme réclamée à ce propriétaire, avec le décompte des différents éléments de la créance ainsi que le fondement de celle-ci. Il peut également demander la désignation d'un tiers à qui l'équidé sera confié en cas de carence d'enchères.

« III. – Si, au vu des documents produits, la demande lui paraît fondée en tout ou partie, le président du tribunal judiciaire rend une ordonnance autorisant la mise en vente forcée aux enchères publiques de l'équidé. L'ordonnance détermine, s'il y a lieu, le montant de la créance du requérant. Si le requérant justifie de l'accord d'un tiers pour assumer la charge matérielle de l'équidé, l'ordonnance peut prévoir que l'animal sera remis à ce tiers en cas de carence d'enchères.

« IV. – A peine de caducité, l'ordonnance doit être signifiée au propriétaire, à la diligence du requérant, dans un délai de trois mois. L'huissier de justice doit, par acte conjoint, signifier le jour, le lieu et l'heure de la vente, qui ne peut intervenir dans un délai inférieur à un mois à compter de la signification de l'acte. Dans ce délai d'un mois, le propriétaire peut récupérer son équidé après paiement de la créance s'il est débiteur du requérant. Le propriétaire peut aussi s'opposer à la vente par exploit signifié au requérant. Cette opposition emporte de plein droit citation à comparaître à la première audience utile de la juridiction qui a autorisé la vente.

« V. – La vente a lieu conformément aux dispositions du code des procédures civiles d'exécution relatives à la vente forcée des biens saisis.

« VI. – Le produit de la vente est remis au dépositaire jusqu'à concurrence du montant de sa créance, en principal et intérêts mentionnés par l'ordonnance, augmentée des frais. Le surplus est consigné à la Caisse des dépôts et consignations, au nom du propriétaire, par l'officier public, sans procès-verbal de dépôt. Il en retire un récépissé de consignation qui lui vaut décharge. Le montant de la consignation, en principal et intérêts, est acquis à l'Etat en application de l'article L. 518-24 du code monétaire et financier, s'il n'y a pas eu dans l'intervalle réclamation de la part du propriétaire, de ses représentants ou de ses créanciers. »

Article 24

Le code rural et de la pêche maritime est ainsi modifié :

1^o Après l'article L. 214-10, il est inséré un article L. 214-10-1 ainsi rédigé :

« Art. L. 214-10-1. – Les manèges à poneys, entendus comme attractions permettant, pour le divertissement du public, de chevaucher tout type d'équidé, via un dispositif rotatif d'attache fixe privant l'animal de liberté de mouvement, sont interdits. » ;

2^o Le premier alinéa de l'article L. 215-11 est complété par les mots : « ou de ne pas respecter l'interdiction prévue à l'article L. 214-10-1 ».

Article 25

I. – Au sein des modules visant à développer une culture de l'engagement et à transmettre un socle républicain du service national universel, les participants reçoivent une sensibilisation à l'éthique animale concernant les animaux de compagnie.

Cet enseignement amène les volontaires du service national universel à étudier le rapport de l'Homme avec l'animal sous le prisme philosophique et scientifique.

Par un arrêté conjoint des ministres chargés de l'agriculture, de l'alimentation, de l'éducation nationale, de la jeunesse et des sports et du ministre de la défense, sont précisés le contenu et les modalités de mise en œuvre de la sensibilisation à l'éthique animale.

II. – L'article L. 312-15 du code de l'éducation est complété par un alinéa ainsi rédigé :

« L'enseignement moral et civique sensibilise également, à l'école primaire, au collège et au lycée, les élèves au respect des animaux de compagnie. Il présente les animaux de compagnie comme sensibles et contribue à prévenir tout acte de maltraitance animale. »

CHAPITRE II

RENFORCEMENT DES SANCTIONS DANS LA LUTTE CONTRE LA MALTRAITANCE À L'ENCONTRE DES ANIMAUX DOMESTIQUES

Article 26

L'article 521-1 du code pénal est ainsi modifié :

1^o Au premier alinéa, le mot : « deux » est remplacé par le mot : « trois » et le montant : « 30 000 euros » est remplacé par le montant : « 45 000 euros » ;

2^o Après le même premier alinéa, sont insérés deux alinéas ainsi rédigés :

« Lorsque les faits ont entraîné la mort de l'animal, les peines sont portées à cinq ans d'emprisonnement et à 75 000 euros d'amende.

« Est considéré comme circonstance aggravante du délit mentionné au premier alinéa le fait de le commettre en présence d'un mineur. » ;

3^o Il est ajouté un alinéa ainsi rédigé :

« Lorsqu'ils sont commis avec circonstance aggravante, sauf lorsque les faits ont entraîné la mort de l'animal, les délits mentionnés au présent article sont punis de quatre ans d'emprisonnement et de 60 000 euros d'amende. »

Article 27

Le titre II du livre V du code pénal est ainsi modifié :

1^o Le chapitre unique devient le chapitre I^{er} ;

2^o Il est ajouté un chapitre II ainsi rédigé :

« CHAPITRE II

« DES ATTEINTES VOLONTAIRES À LA VIE D'UN ANIMAL

« Art. 522-1. – Le fait, sans nécessité, publiquement ou non, de donner volontairement la mort à un animal domestique, apprivoisé ou tenu en captivité, hors du cadre d'activités légales, est puni de six mois d'emprisonnement et de 7 500 euros d'amende.

« Le présent article n'est pas applicable aux courses de taureaux lorsqu'une tradition locale ininterrompue peut être invoquée. Il n'est pas non plus applicable aux combats de coqs dans les localités où une tradition ininterrompue peut être établie.

« Art. 522-2. – Les personnes physiques coupables de l'infraction prévue à l'article 522-1 encourgent également les peines complémentaires d'interdiction, à titre définitif ou non, de détenir un animal et d'exercer, pour une durée de cinq ans au plus, une activité professionnelle ou sociale dès lors que les facilités que procure cette activité ont été sciemment utilisées pour préparer ou commettre l'infraction. Cette interdiction n'est toutefois pas applicable à l'exercice d'un mandat électif ou de responsabilités syndicales. »

Article 28

L'article 521-1 du code pénal est complété par un alinéa ainsi rédigé :

« Est considéré comme circonstance aggravante de l'acte d'abandon le fait de le perpétrer, en connaissance de cause, dans des conditions présentant un risque de mort immédiat ou imminent pour l'animal domestique, apprivoisé ou tenu en captivité. »

Article 29

Après le premier alinéa de l'article 521-1 du code pénal, il est inséré un alinéa ainsi rédigé :

« En cas de sévices graves ou d'actes de cruauté sur un animal domestique, apprivoisé ou tenu en captivité prévus au présent article, est considéré comme circonstance aggravante le fait d'être le propriétaire ou le gardien de l'animal. »

Article 30

Après le premier alinéa de l'article 521-1 du code pénal, il est inséré un alinéa ainsi rédigé :

« Est considéré comme circonstance aggravante du délit mentionné au premier alinéa le fait de le commettre sur un animal détenu par des agents dans l'exercice de missions de service public. »

Article 31

L'article 131-5-1 du code pénal est complété par un 8^o ainsi rédigé :

« 8^o Le stage de sensibilisation à la prévention et à la lutte contre la maltraitance animale. »

Article 32

La première phrase du troisième alinéa de l'article 521-1 du code pénal est ainsi modifiée :

1^o Le mot : « article » est remplacé par le mot : « chapitre » ;

2^o Les mots : « pour une durée de cinq ans au plus » sont remplacés par les mots : « soit définitivement, soit temporairement, dans ce dernier cas pour une durée qui ne peut excéder cinq ans ».

Article 33

I. – A l'occasion d'un dépôt de plainte pour vol d'un animal, le plaignant signale obligatoirement ce vol aux personnes agréées pour la collecte et le traitement des données d'identifications mentionnées à l'article L. 212-2 du code rural et de la pêche maritime.

II. – Après le 11^o de l'article 311-4 du code pénal, il est inséré un 12^o ainsi rédigé :

« 12^o Lorsqu'il est destiné à alimenter le commerce illégal d'animaux. »

Article 34

L'article 99-1 du code de procédure pénale est ainsi modifié :

1^o Au deuxième alinéa, après le mot : « péril », sont insérés les mots : « ou de ne plus répondre à la satisfaction des besoins physiologiques propres à son espèce » ;

2^o Après le même deuxième alinéa, il est inséré un alinéa ainsi rédigé :

« Il en est de même lorsque les conditions du placement d'un animal entraînent des frais conservatoires supérieurs à sa valeur économique. Le juge d'instruction, lorsqu'il est saisi, le président du tribunal judiciaire ou un magistrat du siège délégué par lui peut, par ordonnance motivée prise sur les réquisitions du procureur de la République et après avis d'un expert agricole, ordonner qu'il sera cédé à titre onéreux ou confié à un tiers ou qu'il sera procédé à son euthanasie. »

Article 35

L'article 230-19 du code de procédure pénale est complété par un 19^o ainsi rédigé :

« 19^o Les interdictions de détenir un animal prévues à l'article 131-21-2 du même code. »

Article 36

Le code de l'action sociale et des familles est ainsi modifié :

1^o Après le 5^o bis de l'article L. 221-1, il est inséré un 5^o ter ainsi rédigé :

« 5^o ter Veiller au repérage et à l'orientation des mineurs condamnés pour maltraitance animale ou dont les responsables ont été condamnés pour maltraitance animale ; »

2^o L'article L. 226-3 est ainsi modifié :

a) Le deuxième alinéa est complété par une phrase ainsi rédigée : « Lorsqu'elles sont通知ées par une fondation ou une association de protection animale reconnue d'intérêt général à ladite cellule, les mises en cause pour sévices graves ou acte de cruauté ou atteinte sexuelle sur un animal mentionnées aux articles 521-1 et 521-1-1 du code pénal donnent lieu à l'évaluation de la situation d'un mineur mentionnée au troisième alinéa du présent article. » ;

b) Au dernier alinéa, la référence : « au 5^o » est remplacée par les références : « aux 5^o, 5^o bis et 5^o ter ».

Article 37

L'article L. 214-23 du code rural et de la pêche maritime est ainsi modifié :

1^o Le second alinéa du III est supprimé ;

2^o Il est ajouté un IV ainsi rédigé :

« IV. – Les frais induits par les mesures prises par l'autorité administrative en application du 7^o du I ainsi que des II et III sont à la charge du propriétaire, du détenteur, du destinataire, de l'importateur, de l'exportateur ou, à défaut, de toute autre personne qui participe à l'opération d'importation ou d'échange et ne donnent lieu à aucune indemnité. »

Article 38

Au premier alinéa de l'article L. 215-11 du code rural et de la pêche maritime, après le mot : « dressage », sont insérés les mots : « , d'activités privées de sécurité, de surveillance, de gardiennage, de protection physique des personnes ou des biens employant des agents cynophiles ».

Article 39

Après l'article 521-1 du code pénal, il est inséré un article 521-1-2 ainsi rédigé :

« Art. 521-1-2. – Est constitutif d'un acte de complicité des sévices graves, actes de cruauté ou atteintes sexuelles sur un animal domestique, apprivoisé ou tenu en captivité, prévus au premier alinéa des articles 521-1 et 521-1-1, et est puni des peines prévues aux mêmes articles 521-1 et 521-1-1 le fait d'enregistrer sciemment, par

quelque moyen que ce soit et sur quelque support que ce soit, des images relatives à la commission des infractions mentionnées au présent alinéa. Est constitutif d'un acte de complicité de mauvais traitements sur un animal et est puni de l'amende prévue pour les contraventions de la quatrième classe le fait d'enregistrer sciemment, par quelque moyen que ce soit et sur quelque support que ce soit, des images relatives à la commission de l'infraction de mauvais traitements précitée.

« Le fait de diffuser sur internet l'enregistrement de telles images est puni de deux ans d'emprisonnement et de 30 000 euros d'amende.

« Le présent article n'est pas applicable lorsque l'enregistrement, la détention, la diffusion ou la consultation de ces images vise à apporter une contribution à un débat public d'intérêt général ou à servir de preuve en justice. »

Article 40

Au premier alinéa de l'article 227-24 du code pénal, après le mot : « pornographique », sont insérés les mots : « , y compris des images pornographiques impliquant un ou plusieurs animaux, ».

Article 41

Après le 4^o de l'article 226-14 du code pénal, il est inséré un 5^o ainsi rédigé :

« 5^o Au vétérinaire qui porte à la connaissance du procureur de la République toute information relative à des sévices graves, à un acte de cruauté ou à une atteinte sexuelle sur un animal mentionnés aux articles 521-1 et 521-1-1 et toute information relative à des mauvais traitements sur un animal, constatés dans le cadre de son exercice professionnel. Cette information ne lève pas l'obligation du vétérinaire sanitaire prévue à l'article L. 203-6 du code rural et de la pêche maritime. »

Article 42

L'article L. 241-5 du code rural et de la pêche maritime est ainsi rétabli :

« *Art. L. 241-5. –* Tout vétérinaire, y compris un assistant vétérinaire, est tenu au respect du secret professionnel dans les conditions établies par la loi. Le secret professionnel du vétérinaire couvre tout ce qui est venu à la connaissance du vétérinaire dans l'exercice de sa profession, c'est-à-dire ce qui lui a été confié mais également ce qu'il a vu, entendu ou compris. »

Article 43

Le chapitre unique du titre II du livre V du code pénal est ainsi modifié :

1^o Au premier alinéa de l'article 521-1, les mots : « , ou de nature sexuelle, » sont supprimés ;

2^o Après le même article 521-1, il est inséré un article 521-1-1 ainsi rédigé :

« *Art. 521-1-1. –* Les atteintes sexuelles sur un animal domestique, apprivoisé ou tenu en captivité sont punies de trois ans d'emprisonnement et de 45 000 euros d'amende.

« Les soins médicaux et d'hygiène nécessaires ainsi que les actes nécessaires à l'insémination artificielle ne peuvent être considérés comme des atteintes sexuelles.

« Ces peines sont portées à quatre ans d'emprisonnement et à 60 000 euros d'amende lorsque les faits sont commis en réunion, en présence d'un mineur ou par le propriétaire ou le gardien de l'animal.

« En cas de condamnation du propriétaire de l'animal ou si le propriétaire est inconnu, le tribunal statue sur le sort de l'animal, qu'il ait été ou non placé au cours de la procédure judiciaire. Le tribunal peut prononcer la confiscation de l'animal et prévoir qu'il sera remis à une fondation ou à une association de protection animale reconnue d'utilité publique ou déclarée, qui pourra librement en disposer.

« Les personnes physiques coupables des infractions prévues au présent article encourrent également les peines complémentaires d'interdiction, à titre définitif, de détenir un animal et d'exercer une activité professionnelle ou sociale dès lors que les facilités que procure cette activité ont été sciemment utilisées pour préparer ou commettre l'infraction. Cette interdiction n'est toutefois pas applicable à l'exercice d'un mandat électif ou de responsabilités syndicales.

« Les personnes morales déclarées pénalement responsables dans les conditions prévues à l'article 121-2 encourrent les peines suivantes :

« 1^o L'amende suivant les modalités prévues à l'article 131-38 ;

« 2^o Les peines prévues aux 2^o, 4^o, 7^o, 8^o et 9^o de l'article 131-39. »

Article 44

Après l'article 521-1 du code pénal, il est inséré un article 521-1-3 ainsi rédigé :

« *Art. 521-1-3. –* Le fait de proposer ou de solliciter des actes constitutifs d'atteintes sexuelles sur un animal définies à l'article 521-1-1, par quelque moyen que ce soit, est puni d'un an d'emprisonnement et de 15 000 euros d'amende. »

Article 45

L'article 706-47 du code de procédure pénale est complété par un 15^e ainsi rédigé :

« 15^e Délits prévus au premier alinéa de l'article 521-1-1 du même code. »

CHAPITRE III

FIN DE LA CAPTIVITÉ D'ESPÈCES SAUVAGES UTILISÉES À DES FINS COMMERCIALES

Article 46

Le chapitre III du titre I^{er} du livre IV du code de l'environnement est complété par une section 3 ainsi rédigée :

« Section 3

« Dispositions relatives aux animaux d'espèces non domestiques détenus en captivité à des fins de divertissement

« Art. L. 413-9. – Une commission nationale consultative pour la faune sauvage captive est placée auprès du ministre chargé de la protection de la nature, qui en fixe par arrêté l'organisation et le fonctionnement et en nomme les membres.

« Elle est composée :

« 1^o De personnalités qualifiées en matière de recherche scientifique relative à l'éthologie, à la reproduction, à la conservation, aux caractéristiques biologiques et aux besoins des animaux non domestiques ;

« 2^o D'un vétérinaire spécialiste de la faune sauvage ;

« 3^o De représentants du ministre chargé de la protection de la nature, d'un représentant du ministre chargé de l'éducation, d'un représentant du ministre chargé de l'agriculture et d'un représentant du ministre chargé de la recherche ;

« 4^o De représentants d'organismes internationaux actifs en matière de conservation des espèces ;

« 5^o De représentants des associations de protection des animaux ;

« 6^o De représentants des associations d'élus locaux ;

« 7^o Et, sur désignation du président de la commission nationale consultative pour la faune sauvage captive, en fonction de l'ordre du jour, des représentants des établissements soumis au présent chapitre.

« Ses membres exercent leurs fonctions à titre gratuit.

« La commission nationale consultative pour la faune sauvage captive peut être consultée par le ministre sur les moyens propres à améliorer les conditions d'entretien ainsi que de présentation au public des animaux d'espèces non domestiques tenus en captivité.

« Art. L. 413-10. – I. – Il est interdit d'acquérir, de commercialiser et de faire se reproduire des animaux appartenant aux espèces non domestiques en vue de les présenter au public dans des établissements itinérants.

« Cette interdiction entre en vigueur à l'expiration d'un délai de deux ans à compter de la promulgation de la loi n° 2021-1539 du 30 novembre 2021 visant à lutter contre la maltraitance animale et conforter le lien entre les animaux et les hommes.

« II. – Sont interdits, dans les établissements itinérants, la détention, le transport et les spectacles incluant des espèces d'animaux non domestiques. Cette interdiction entre en vigueur à l'expiration d'un délai de sept ans à compter de la promulgation de la loi n° 2021-1539 du 30 novembre 2021 précitée.

« III. – Des solutions d'accueil pour les animaux visés par les interdictions prévues aux I et II sont proposées à leurs propriétaires. Ces solutions garantissent que les animaux seront accueillis dans des conditions assurant leur bien-être.

« IV. – Un décret en Conseil d'Etat précise les conditions dans lesquelles le ministre chargé de la protection de la nature peut déroger aux interdictions prévues à compter de leur entrée en vigueur, lorsqu'il n'existe pas de capacités d'accueil favorables à la satisfaction de leur bien-être pour les animaux visés par les interdictions prévues aux I et II.

« V. – Les certificats de capacité et les autorisations d'ouverture prévus aux articles L. 413-2 et L. 413-3 ne peuvent être délivrés aux personnes ou aux établissements souhaitant détenir des animaux des espèces non domestiques, en vue de les présenter au public dans des établissements itinérants. Les autorisations d'ouverture délivrées aux établissements réalisant une des activités interdites par le présent article sont abrogées dès le départ des animaux détenus.

« VI. – Tout établissement itinérant détenant un animal en vue de le présenter au public procède à son enregistrement dans le fichier national mentionné au II de l'article L. 413-6 dans un délai de six mois à compter de la promulgation de la loi n° 2021-1539 du 30 novembre 2021 précitée, dans des conditions précisées par arrêté du ministre chargé de l'environnement.

« VII. – Les conditions d'application du présent article sont précisées par arrêté du ministre chargé de la protection de la nature.

« Art. L. 413-11. – Les établissements de spectacles fixes présentant au public des animaux vivants d'espèces non domestiques sont soumis aux règles générales de fonctionnement et répondent aux caractéristiques générales des installations des établissements zoologiques à caractère fixe et permanent présentant au public des spécimens

vivants de la faune locale ou étrangère. Les modalités d'application du présent article sont précisées par voie réglementaire.

« Art. L. 413-12. – I. – Sont interdits les spectacles incluant une participation de spécimens de cétacés et les contacts directs entre les cétacés et le public. Cette interdiction entre en vigueur à l'expiration d'un délai de cinq ans à compter de la promulgation de la loi n° 2021-1539 du 30 novembre 2021 précitée.

« II. – Il est interdit de détenir en captivité ou de faire se reproduire en captivité des spécimens de cétacés, sauf au sein d'établissements mentionnés à l'article L. 413-1-1 ou dans le cadre de programmes scientifiques dont la liste est fixée par arrêté du ministre chargé de la protection de la nature. Cette interdiction entre en vigueur à l'expiration d'un délai de cinq ans à compter de la promulgation de la loi n° 2021-1539 du 30 novembre 2021 précitée.

« III. – Un arrêté du ministre chargé de la protection de la nature détermine les caractéristiques générales, les modalités de présentation du contenu des programmes scientifiques et les règles de fonctionnement des établissements autorisés à détenir des spécimens vivants de cétacés mentionnés au II. »

Article 47

Après l'article L. 413-1 du code de l'environnement, il est inséré un article L. 413-1-1 ainsi rédigé :

« Art. L. 413-1-1. – Un refuge ou sanctuaire pour animaux sauvages captifs est un établissement à but non lucratif accueillant des animaux d'espèces non domestiques, captifs ou ayant été captifs, ayant fait l'objet d'un acte de saisie ou de confiscation, trouvés abandonnés ou placés volontairement par leur propriétaire qui a souhaité s'en dessaisir.

« L'exploitant d'un refuge ou sanctuaire pour animaux sauvages captifs doit être titulaire du certificat de capacité prévu à l'article L. 413-2 pour une activité d'élevage des espèces animales présentes sur le site lorsqu'il n'y a pas de présentation au public. Dans l'hypothèse d'une présentation au public, le certificat pour cette activité est requis.

« L'établissement doit avoir fait l'objet d'une autorisation d'ouverture prévue à l'article L. 413-3.

« Au sein d'un refuge pour animaux sauvages captifs, les animaux doivent être entretenus dans des conditions d'élevage qui visent à satisfaire les besoins biologiques, la santé et l'expression des comportements naturels des différentes espèces en prévoyant, notamment, des aménagements, des équipements et des enclos adaptés à chaque espèce.

« Toute activité de vente, d'achat, de location ou de reproduction d'animaux est interdite.

« La présentation de numéros de dressage et tout contact direct entre le public et les animaux à l'initiative du visiteur ou du personnel du refuge ou du sanctuaire sont interdits.

« Le présent article s'applique sans préjudice des dispositions réglementaires relatives aux animaux d'espèces non domestiques.

« Les ministres chargés de l'environnement et de l'agriculture assurent l'exécution du présent article. »

Article 48

I. – La section 3 du chapitre III du titre I^{er} du livre IV du code de l'environnement, telle qu'elle résulte de l'article 46 de la présente loi, est complétée par un article L. 413-13 ainsi rédigé :

« Art. L. 413-13. – I. – Il est interdit de présenter des animaux domestiques ou non domestiques en discothèque. Pour l'application du présent I, est considérée comme discothèque tout lieu clos ou dont l'accès est restreint, dont la vocation première est d'accueillir du public, même dans le cadre d'évènements privés, en vue d'un rassemblement destiné principalement à la diffusion de musique et à la danse.

« II. – Il est interdit de présenter des animaux non domestiques, que ceux-ci soient captifs ou sortis de leur milieu naturel, lors d'émissions de variétés, de jeux et d'émissions autres que de fiction majoritairement réalisées en plateau, en dehors des locaux d'établissements disposant de l'autorisation d'ouverture prévue à l'article L. 413-3, et diffusés sur un service de télévision ou mis à disposition sur un service de médias audiovisuels à la demande, au sens de la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication. »

II. – Le II de l'article L. 413-13 du code de l'environnement entre en vigueur à l'expiration d'un délai de deux ans à compter de la promulgation de la présente loi.

Article 49

I. – La section 3 du chapitre III du titre I^{er} du livre IV du code de l'environnement, telle qu'elle résulte des articles 46 et 48 de la présente loi, est complétée par un article L. 413-14 ainsi rédigé :

« Art. L. 413-14. – I. – Il est interdit de détenir des ours et des loups, y compris hybrides, en vue de les présenter au public à l'occasion de spectacles itinérants.

« II. – L'acquisition et la reproduction d'ours et de loups, y compris hybrides, en vue de les présenter au public à l'occasion de spectacles itinérants est interdite.

« III. – Les certificats de capacité et les autorisations d'ouverture prévus aux articles L. 413-2 et L. 413-3 ne peuvent être délivrés aux personnes ou établissements souhaitant détenir, en vue de les présenter au public dans des établissements itinérants, des animaux des espèces non domestiques mentionnées au I du présent article. Les autorisations d'ouverture délivrées aux établissements réalisant une des activités interdites par le présent article sont abrogées dès le départ des animaux détenus. »

II. – Les I et III de l'article L. 413-14 du code de l'environnement entrent en vigueur à l'expiration d'un délai de deux ans à compter de la promulgation de la présente loi.

CHAPITRE IV

FIN DE L'ÉLEVAGE DE VISONS D'AMÉRIQUE DESTINÉS À LA PRODUCTION DE FOURRURE

Article 50

Après l'article L. 214-9 du code rural et de la pêche maritime, il est inséré un article L. 214-9-1 ainsi rétabli :

« Art. L. 214-9-1. – I. – Les élevages de visons d'Amérique (*Neovison vison* ou *Mustela vison*) et d'animaux d'autres espèces non domestiques exclusivement élevés pour la production de fourrure sont interdits.

« II. – La création, l'agrandissement et la cession des établissements d'élevage de visons d'Amérique mentionnés au I sont interdits. »

La présente loi sera exécutée comme loi de l'Etat.

Fait à Paris, le 30 novembre 2021.

EMMANUEL MACRON

Par le Président de la République :

Le Premier ministre,

JEAN CASTEX

*La ministre de la transition écologique,
BARBARA POMPILI*

*Le ministre de l'éducation nationale,
de la jeunesse et des sports,*

JEAN-MICHEL BLANQUER

*La ministre de la cohésion des territoires
et des relations avec les collectivités territoriales,
JACQUELINE GOURAULT*

*Le garde des sceaux,
ministre de la justice,
ÉRIC DUPOND-MORETTI*

*Le ministre des solidarités
et de la santé,
OLIVIER VÉRAN*

*Le ministre de l'agriculture
et de l'alimentation,
JULIEN DENORMANDIE*

(1) *Travaux préparatoires* : loi n° 2021-1539.

Assemblée nationale :

Proposition de loi n° 3661 rect. ;

Rapport de M. Loïc Dombreval, M. Dimitri Houbron et Mme Laëtitia Romeiro Dias, au nom de la commission des affaires économiques, n° 3791 ;

Discussion les 26, 27 et 29 janvier et adoption, après engagement de la procédure accélérée, le 29 janvier 2021 (TA n° 558).

Sénat :

Proposition de loi, adoptée par l'Assemblée nationale, n° 326 (2020-2021) ;

Rapport de Mme Anne Chain-Larché, au nom de la commission des affaires économiques, n° 844 (2020-2021) ;

Texte de la commission n° 845 (2020-2021) ;

Discussion et adoption le 30 septembre 2021 (TA n° 163 2020-2021).

Assemblée nationale :

Proposition de loi, modifiée par le Sénat, n° 4510 ;

Rapport de M. Loïc Dombreval, M. Dimitri Houbron et Mme Laëtitia Romeiro Dias, au nom de la commission mixte paritaire, n° 4606 ;

Discussion et adoption le 16 novembre 2021 (TA n° 688).

Sénat :

Rapport de Mme Anne Chain-Larché, au nom de la commission mixte paritaire, n° 86 (2021-2022) ;

Texte de la commission n° 87 (2021-2022) ;

Discussion et adoption le 18 novembre 2021 (TA n° 37, 2021-2022).

CAMERA DEI DEPUTATI

N. **24**

PROPOSTA DI LEGGE

D'INIZIATIVA DEI DEPUTATI

BRAMBILLA, RIZZETTO

Modifiche al codice civile e altre disposizioni per la tutela degli animali nonché in materia di animali familiari

Presentata il 13 ottobre 2022

ONOREVOLI COLLEGHI ! – Secondo il rapporto Eurispes 2022, circa 4 italiani su 10 (37,7 per cento) dichiarano di aver accolto un animale nella propria famiglia. La presenza degli animali nelle case degli italiani continua a registrare un progressivo aumento, considerando i dati relativi al 2017 (33 per cento), al 2018 (32,4 per cento) e al 2019 (33,6 per cento). In particolare, anche nel 2022, si registra la maggiore presenza di cani (il 44,7 per cento ne possiede almeno uno) e di gatti (35,4 per cento). Le indagini divulgata a partire dal 2018 mettono peraltro in luce l'abitudine diffusa tra gli intervistati di dormire con il proprio *pet* e il fatto che lo stesso campione sacrifichi una buona parte del proprio tempo libero per il benessere e le necessità del suo amico animale (passeggiate, gioco, attività all'aperto eccetera). In molti casi chi ha un animale domestico rinuncia a uscire o a

fare un viaggio per non lasciarlo solo. Questi dati mostrano con evidenza una mutata sensibilità nei confronti degli animali che da più di un terzo della popolazione sono considerati parte integrante della famiglia.

Di qui deve partire il legislatore, tenendo conto anche di alcuni recenti pronunciamenti della magistratura, per adeguare le norme a questa mutata sensibilità sociale. Ed è per questa ragione che la presente proposta di legge, anzitutto, introduce la definizione di animale familiare. Si intende per tale ogni animale domestico tenuto o destinato a essere tenuto dall'uomo senza altro fine che la compagnia. Nella definizione, quindi, rientrano anche animali tradizionalmente considerati da reddito, quali bovini, suini, ovini, caprini, equidi, conigli e volatili da cortile, che possono essere detenuti come animali familiari previa comunicazione scritta al sindaco e al

servizio veterinario pubblico competenti per territorio, con la quale si escludono, per il presente e per il futuro, la commercializzazione, la cessione a titolo oneroso e la macellazione di questi animali.

Nella piena consapevolezza della rilevante valenza sociale del rapporto che lega gli uomini agli animali d'affezione, la presente proposta di legge modifica alcune disposizioni del codice civile in materia di animali e introduce nuove norme per la loro tutela.

La necessità di tali interventi nasce non solo dal sentire comune di larga parte dell'opinione pubblica, ma anche dall'opportuno allineamento della disciplina civilistica all'evoluzione normativa internazionale, europea e nazionale, a partire dal Trattato di Lisbona che ha introdotto nel nuovo Trattato sul funzionamento dell'Unione europea l'articolo 13, che definisce gli animali « esseri senzienti » e impone che le normative nazionali tengano conto di tale superiore principio.

Anche la giurisprudenza ha riconosciuto il cambiamento della natura del rapporto tra proprietario e animale d'affezione, non più riconducibile alla mera proprietà di un oggetto di cui il detentore avrebbe la completa disponibilità, e ha equiparato la necessaria tutela di un animale a quella che si deve a un minore. Alcuni tribunali, proprio in sede di provvedimenti emanati in cause di separazione di coniugi, hanno già applicato per analogia quanto

previsto dal codice civile per i figli minori ponendo l'accento sull'interesse materiale e spirituale-affettivo dell'animale conteso da una coppia. Per citare un esempio, il tribunale di Foggia ha affidato un cane al coniuge ritenuto maggiormente idoneo ad assicurare il miglior sviluppo possibile dell'identità dell'animale e ha riconosciuto contestualmente in favore dell'altro coniuge il diritto di prenderlo e portarlo con sé per alcune ore nel corso di ogni giornata o per giornate concordate dalle parti.

Le disposizioni della presente proposta di legge, quindi, sono finalizzate a colmare vuoti normativi prevedendo una disciplina applicabile per l'affidamento degli animali familiari in caso di separazione dei coniugi ovvero in caso di morte del proprietario o del detentore.

Viene poi sancito il principio del libero accesso degli animali da compagnia nei locali pubblici o aperti al pubblico e sui mezzi di trasporto pubblico. Si riconosce il diritto al risarcimento per danni agli animali familiari e si disciplina il rapporto dei detenuti con la famiglia e con gli animali familiari.

Infine, la proposta di legge stabilisce che della famiglia anagrafica, formazione costituita da persone che coabitino e siano legate da vincoli di matrimonio, unione civile, parentela, affinità, adozione, tutela o anche solo da vincoli affettivi, facciano parte anche gli animali familiari.

PROPOSTA DI LEGGE

Art. 1.

(*Animale familiare*)

1. Ai fini della presente legge, per animale familiare si intende ogni animale domestico tenuto o destinato a essere tenuto dall'uomo per compagnia senza fini alimentari. La detenzione a fine familiare di animali quali bovini, suini, ovini, caprini, equidi, conigli e volatili da cortile è consentita previa comunicazione scritta al sindaco e al servizio veterinario pubblico competenti per territorio, con la quale si escludono presenti e future commercializzazioni, cessioni a titolo oneroso e macellazioni dei medesimi animali.

2. La registrazione degli animali di cui al comma 1 è a cura del servizio veterinario pubblico competente per territorio, che certifica la detenzione di tali animali a fine esclusivamente familiare ed effettua il loro riconoscimento tramite l'inoculazione di *microchip*.

3. Gli animali di cui ai commi 1 e 2 di provenienza non certa o non dimostrabile sono controllati a titolo gratuito, a cura del servizio veterinario pubblico competente per territorio, ai fini dell'accertamento di patologie trasmissibili pericolose. In caso negativo, gli animali sono adottabili. In attesa di affido o adozione presso famiglie, i costi di mantenimento e di cura degli animali sono posti a carico del sindaco.

4. Gli animali selvatici non sono considerati animali familiari.

5. Per allevatore di animali familiari si intende chiunque fa riprodurre o cede a titolo oneroso uno o più animali familiari ed è imprenditore agricolo ai sensi dell'articolo 2135 del codice civile.

Art. 2.

*(Introduzione del titolo XIV-bis del libro
primo del codice civile)*

1. Dopo il titolo XIV del libro primo del codice civile è aggiunto il seguente:

« TITOLO XIV-bis

DEGLI ANIMALI

Art. 455-bis. – (*Diritti degli animali*) – Gli animali sono esseri senzienti e il presente codice ne promuove e garantisce la vita, la salute e un'esistenza compatibile con le proprie caratteristiche etologiche. La detenzione e disponibilità degli animali a vario titolo deve sempre avvenire nel rispetto del loro diritto alla vita, alla salute e a una vita dignitosa e rispettosa delle caratteristiche etologiche. È vietato, fatti salvi i casi previsti dalla legge, l'allontanamento coatto di animali familiari dalla propria famiglia.

Art. 455-ter. – (*Affidamento degli animali familiari in caso di separazione dei coniugi*) – In caso di separazione dei coniugi proprietari o detentori di un animale familiare, o in caso di scioglimento dell'unione civile, il tribunale competente per la separazione, in mancanza di un accordo tra le parti, sentiti i coniugi e, se del caso, i familiari conviventi e la prole, nonché esperti di comportamento animale, nell'esclusivo interesse dell'animale, affida lo stesso in via esclusiva al coniuge che ne garantisce il migliore benessere psicofisico ed etologico.

Qualora sussistano volontà e opportunità per il benessere dell'animale comune, lo stesso è affidato in via condivisa.

Salvo diversi accordi liberamente sottoscritti dalle parti, ciascuno dei detentori provvede al mantenimento dell'animale da compagnia in misura proporzionale al proprio reddito. In caso di affido esclusivo il mantenimento è a carico del detentore affidatario.

La proprietà dell'animale, desunta dalla documentazione anagrafica, è unicamente criterio orientativo per il giudice, che decide, nell'esclusivo interesse dell'animale,

quale sia la persona che può garantirne il migliore benessere, a condizione che non si provi che l'animale ha avuto un rapporto esclusivo con chi ne risulta proprietario.

Nel caso di cessazione della convivenza di fatto, ai sensi dei commi 36 e 37 dell'articolo 1 della legge 20 maggio 2016, n. 76, o quando la questione sorga successivamente al procedimento di separazione dei coniugi o di scioglimento dell'unione civile, per l'affidamento di animali familiari è competente a decidere il giudice di pace del luogo dell'ultima residenza comune degli interessati, ferma restando l'applicazione delle altre disposizioni del presente articolo per l'individuazione del soggetto affidatario.

Art. 455-quater. – (Affidamento degli animali familiari in caso di morte del proprietario o del detentore) – Tra i diritti e i doveri che si trasmettono *mortis causa* è compreso anche il dovere di assicurare il benessere all'animale familiare di proprietà o comunque detenuto dal *de cuius*. In caso di decesso del proprietario o del detentore di un animale familiare, l'eventuale curatore, previo assenso dell'erede o del legatario onerato, sentiti tutti gli eredi e i legatari e previo assenso del tribunale, ne attribuisce l'affidamento temporaneo, fino all'affidamento definitivo, all'onerato o, in mancanza, a chi ne fa richiesta potendo garantire il benessere dell'animale. In mancanza di accordo, decide il tribunale che provvede, altresì, sentiti gli enti e le associazioni individuati con decreto del Ministro della salute ai sensi dell'articolo 19-quater delle disposizioni di coordinamento e transitorie per il codice penale, di cui al regio decreto 28 maggio 1931, n. 601, per l'affidamento definitivo, emanando i provvedimenti necessari.

È legittima la devoluzione di beni mobili o immobili a una persona, a un ente o a un'associazione con il vincolo che tali beni servano ad assicurare la custodia e il migliore benessere del proprio animale familiare.

Art. 455-quinquies. – (Accesso degli animali da compagnia ai locali pubblici, aperti al pubblico e sui mezzi di trasporto pub-

blico) – Nei luoghi pubblici, nei luoghi aperti al pubblico, comprese le strutture ospedaliere e le strutture residenziali e semi-residenziali pubbliche e private, e sui mezzi di trasporto pubblico l'accesso degli animali da compagnia di cui all'allegato I, parte A, del regolamento (UE) 2016/429 del Parlamento europeo e del Consiglio, del 9 marzo 2016, al seguito del proprietario o detentore è sempre consentito nel rispetto di comprovate esigenze di sicurezza e di igiene.

Art. 455-sexies. – (Animali delle Forze di polizia dello Stato e dei corpi di polizia locale) – Gli animali utilizzati per servizio dalle Forze di polizia dello Stato e dai corpi di polizia locale non sono classificabili in base al loro valore economico. Se riformati e, comunque, al termine del loro impiego o servizio devono essere ceduti immediatamente a titolo gratuito a chiunque ne faccia richiesta e sia in grado di assicurare il loro benessere. In ogni caso ne è vietata la loro macellazione.

Art. 455-septies. – (Divieto di vendita di animali familiari) – È fatto divieto di vendita di animali familiari, tranne nell'ipotesi dell'esercizio dell'attività di imprenditore agricolo di cui all'articolo 2135. Il trasferimento della proprietà di animali familiari può avvenire esclusivamente a seguito di cessione a titolo gratuito.

*Art. 455-octies. – (Divieto di vendita di animali familiari presso negozi e tramite internet) – È fatto divieto di vendita di animali familiari presso negozi o altri esercizi commerciali, nonché tramite *internet*, tranne nell'ipotesi dell'esercizio dell'attività di imprenditore agricolo di cui all'articolo 2135.*

Art. 455-novies. – (Vendita di animali) – Nella vendita di animali la garanzia per i vizi è regolata dalle leggi speciali in materia di animali o, in mancanza, dalle norme previste dagli articoli 1490 e seguenti. La vendita, o la cessione a qualsiasi titolo, di un animale è sempre effettuata con contestuali certificazione veterinaria scritta e certificazione della precedente proprietà e del luogo di provenienza.

La proprietà di un cane si trasferisce solo a seguito della sua registrazione all'anagrafe canina e dell'inoculazione del *microchip* o dopo la modifica della precedente registrazione.

Gli articoli 1520 e 1521 non si applicano agli animali ».

Art. 3.

(*Modifiche al codice civile e al codice di procedura civile*)

1. Al codice civile sono apportate le seguenti modificazioni:

a) all'articolo 844 è aggiunto, in fine, il seguente comma:

« Il proprietario o detentore di animali non è tenuto a impedire le immissioni sonore da parte degli stessi se queste non superano la normale tollerabilità. L'autorità giudiziaria, nell'applicazione del presente comma, tiene conto prioritariamente del benessere dell'animale e, salvo che la detenzione costituisca reato accertato con sentenza passata in giudicato, non può disporre l'allontanamento coatto dello stesso. Il giudice, a sua discrezione, può avvalersi della consulenza di enti e di professionisti idonei a indicare metodi rieducativi e non coercitivi cui sottoporre l'animale e i soggetti che convivono abitualmente con esso »;

b) al secondo comma dell'articolo 923 sono aggiunte, in fine, le seguenti parole: « ; l'acquisto di animali familiari, ai sensi del primo comma, è consentito nei limiti di quanto previsto dal presente codice e dalle leggi speciali in materia »;

c) l'articolo 1496 è abrogato.

2. Al terzo comma dell'articolo 708 del codice di procedura civile, dopo le parole: « nell'interesse della prole e dei coniugi » sono inserite le seguenti: « nonché degli animali familiari con essi conviventi ».

Art. 4.

(*Diritto al risarcimento per danni agli animali familiari e stato di necessità*)

1. In caso di danno agli animali familiari, i rispettivi proprietari o detentori sono

legittimati ad agire per il risarcimento dei danni patrimoniali o non patrimoniali. Il danno non patrimoniale è rapportato anche alla relazione affettiva con l'animale.

2. È sempre riconosciuto il diritto di cui al comma 1 agli enti e alle associazioni individuati dal decreto del Ministro della salute ai sensi dell'articolo 19-*quater* delle disposizioni di coordinamento e transitorie per il codice penale, di cui al regio decreto 28 maggio 1931, n. 601, nei casi di danno derivante dall'esercizio di una professione o di un'attività commerciale.

3. Al codice civile sono apportate le seguenti modificazioni:

a) all'articolo 2044 sono aggiunte, in fine, le seguenti parole: « o di un animale familiare »;

b) all'articolo 2045, dopo le parole: « di un danno grave alla persona » sono inserite le seguenti: « o a un animale »;

c) all'articolo 2052, dopo le parole: « è responsabile dei danni cagionati dall'animale » sono inserite le seguenti: « a persone, cose o ad altri animali ».

Art. 5.

(*Modifica dell'articolo 28 della legge 26 luglio 1975, n. 354, in materia di rapporti dei detenuti con la famiglia e con gli animali familiari*)

1. L'articolo 28 della legge 26 luglio 1975, n. 354, è sostituito dal seguente:

« Art. 28. – (*Rapporti con la famiglia e con gli animali familiari*) – 1. Particolare cura è dedicata a mantenere, migliorare o ristabilire le relazioni dei detenuti e degli internati con le loro famiglie e con i loro animali familiari.

2. Negli istituti penitenziari è sempre consentito l'ingresso di animali la cui detenzione non sia vietata, a condizione che siano accompagnati, con le stesse modalità e per i medesimi tempi previsti per le visite delle persone ».

Art. 6.

(*Modifica all'articolo 7 della legge 20 luglio 2004, n. 189, in materia di facoltà di agire davanti al giudice civile*)

1. All'articolo 7 della legge 20 luglio 2004, n. 189, è aggiunto, in fine, il seguente comma:

« 1-bis. Le associazioni e gli enti di cui al comma 1 possono agire davanti al giudice civile ai fini del risarcimento del danno, compreso il danno all'interesse diffuso perseguito, nonché della concessione dell'inibitoria, anche ai sensi dell'articolo 700 del codice di procedura civile, dei comportamenti sanzionati ai sensi della presente legge ».

Art. 7.

(*Inserimento degli animali familiari nella famiglia anagrafica*)

1. Della famiglia anagrafica definita ai sensi dell'articolo 4 del regolamento di cui al decreto del Presidente della Repubblica 30 maggio 1989, n. 223, fanno parte anche gli animali familiari, che devono altresì essere iscritti nella scheda di famiglia prevista dall'articolo 21 del medesimo regolamento.

2. Le dichiarazioni anagrafiche previste dall'articolo 13 del regolamento di cui al decreto del Presidente della Repubblica 30 maggio 1989, n. 223, devono includere anche l'intestazione dell'animale familiare da parte di uno dei componenti della famiglia e il decesso dell'animale familiare iscritto nella scheda di famiglia.

3. Entro un mese dalla data di entrata in vigore della presente legge, il Governo provvede a modificare gli articoli 4, 13, e 21 del regolamento di cui al decreto del Presidente della Repubblica 30 maggio 1989, n. 223, al fine di adeguarli a quanto disposto dal presente articolo.

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