

Legal Personhood of Animals (I): The case for the legal personhood of companion animals. Synthesis of doctrinal developments.

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Reception: April 2018
Acceptance: April 2018



Abstract

Law 2015-177 of February 16, 2015, modifying the French Civil Code, defined animals as « living beings doted with sensibility », which marked an evolution in French Law. Yet neither attributed legal personhood nor provided with a new legal regime, animals remain, except where special laws protect them, covered by the regime of things.

The objective of the March 29, 2018 Seminar was twofold:

- To demonstrate that companion animals are capable of being granted legal personhood.
- To recommend, concomitantly, the recognition of the legal category of (natural) non-human person and the creation of a special regime attached to it.

Keywords: legal personhood, companion animals, legal status, (natural) non-human person, doctrine, legal status of the companion animal, legal regime, object or subject of rights, legislative proposal.

A « living, unique and irreplaceable being ». This is how the Court of Cassation, France's highest Civil Court, defined the companion animal in a ruling of December 9, 2015¹.

The judgement falls in line with Law 2015-177 of February 16, 2015, revising Article 515-14 of the French Civil Code to define the animal as a “living” being endowed with sensibility.

Although being neither a person nor a thing, the animal as a legal entity nonetheless goes on to obey the Law of Things, except where special animal protection laws derogate to this general regime, as laid down by Article 515-14 as amended. This provision means that the animal is an object (not subject) of protection, with the effect that legal persons can bear and exercise property rights over it².

With regards to the Conference held in Toulon on March 29, 2018, French newspaper *Le Monde* headlined with “The animal, thing and subject”³, encapsulating the difficulty inherent in the current state of the law applying to animals that causes confusion when confronted with their evolving legal status, as the question of what is the legal status of animals remains to be solved - possibly, by the attribution of legal personhood.

The Code for Rural and Fishing Activities (Code Rural et de la Pêche Maritime), defines the companion animal as « any animal kept or destined to be kept by Man for his pleasure » (C. rur., art. L. 214-6). “For his pleasure”... The instrumentalization of the companion animal is deplorable in this phrasing, standing in clear contradiction with the aforementioned Delgado case which affirmed that the companion animal, destined to receive his keeper's affection, has “no economic vocation”.

If the legal status of animals is nowadays deemed to evolve⁴, the legal status of companion animals seems to be the first category of animals to be pushing the doors of legal personhood by opening the first academic reflections⁵ at the Law Faculty of Toulon, France.

Organizers of the conference, in partnership with the French animal protection Foundation 30 Millions d'Amis, have developed a dogma that rests on two guidelines:

- Granting legal personhood to companion animals;
- Recognizing the new legal category of (physical) natural nonhuman persons and building its corresponding legal regime.

I. To found: the aptitude of companion animals to attain legal personhood.

- Testimonies from the past

Historically, animals have been ascribed some forms of legal personhood. As far back as Antiquity, animals could be considered as children or friends. Fundamental rights (such as the right to life) and inheritance rights (through wills) have existed in the Middle-Ages or during the Old Regime. Animals could even have standing in a trial, as evidence has shown

¹ Cass. 1^{ère} civ. 9 déc. 2015, pourvoi n° 14-25910 – « Delgado » case.

² « *La personnalité juridique de l'animal de compagnie : carences d'aujourd'hui, force de demain* », by Cédric RIOT, Research Professor, Lecturer in Private Law and Criminal Sciences at Toulon University.

³ *Le Monde*, 31 mars 2018 edition, suppl. p. 6.

⁴ « *Rapport de synthèse du Colloque sur la personnalité juridique de l'animal (I) - L'animal de compagnie* », by Jean-Pierre MARGUENAUD, Private Law Professor at the University of Limoges. Professor MARGUENAUD expressed his satisfaction about the holding of a seminar dedicated to « the legal personhood of animals », having defended, in 1987, his thesis on « The animal in private law ».

⁵ Other seminars have been scheduled to study notable the case of wild and farmed animals, with the objective of advancing special regimes for these animals.

that animals' trials have been held in Europe and in America up until the beginning of the 20th century⁶.

The powerful link that can unite Man to the Animal explains partially why such a demand for juridical recognition of animals has been regularly promoted, and even sometimes welcomed in positive law. Thus the animal exists among other subjects of law.

- Scientific progress

Science increasingly abolishes the barriers erected between Man and the Animal one after the other. What have been assumed to be Man's "unique traits" gradually disappear. The Cambridge Declaration of July 7, 2012, proclaimed by neurologists from various backgrounds, is uplifting on this subject:

"We declare the following: "The absence of a neocortex does not appear to preclude an organism from experiencing affective states. Convergent evidence indicates that non-human animals have the neuroanatomical, neurochemical, and neurophysiological substrates of conscious states along with the capacity to exhibit intentional behaviors. Consequently, the weight of evidence indicates that humans are not unique in possessing the neurological substrates that generate consciousness. Nonhuman animals, including all mammals and birds, and many other creatures, including octopuses, also possess these neurological substrates."⁷

Scientific discoveries thus reveal that animals are apt to receive legal personhood. In these conditions, the Law cannot keep on ignoring the scientific reality.

To that extent, denying existence, autonomy, sensibility and therefore the personality of an animal appears superficial.

- International dynamics

Recently, international dynamics have been aimed at renewing the legal consideration of animals. Whether envisioning dignity (Austria, Germany, Switzerland) or taking into account animals' sensibility (France, Colombia, Portugal), a real evolution has occurred⁸. As for the European Union, it obliges itself and its Member States to take full account of animal welfare in the making of their policies as provided by the Lisbon Treaty. Coherence would call for the next challenge to be conferring legal personhood upon animals.

Pretending we live in an exclusively human universe negates the very notion of the "living". The Swiss Constitution is enlightening in this regard: "We, the Swiss people and Cantons, being mindful of our responsibility towards creation..." Hence designating animals to be subjects of law would proceed from this responsibility. Article 9 (1) of the Universal Declaration of Animal Rights of 1989 provides that "Animals' legal personhood and rights must be recognized by the Law". If the effects of this text are at best symbolic, it remains however that sovereign States can resolve to accord legal personhood to any entity they decide.

⁶ « *Une convergence pluridisciplinaire en faveur de la personnalité juridique de l'animal de compagnie* », by Caroline REGAD, Research Professor, Lecturer in History of the Law at the University of Toulon.

⁷ The Cambridge Declaration on Consciousness, July 7, 2012, Francis Crick Memorial Conference on Consciousness in Human and non-Human Animals, at the Churchill College of the University of Cambridge.

⁸ « *Le statut de l'animal de compagnie : législation espagnole comparée* », par Maria Teresa GIMENEZ CANDELA, Professor at the University of Barcelona.

- The absence of any legal obstacle

Observations brought by the Conference held on March 29, 2018 led to one positive conclusion: there is no obstacle derived from legal technique that would prevent assigning legal personhood to companion animals⁹.

Thus, the question is essentially a matter of politics, rather than a matter of legality of the process.

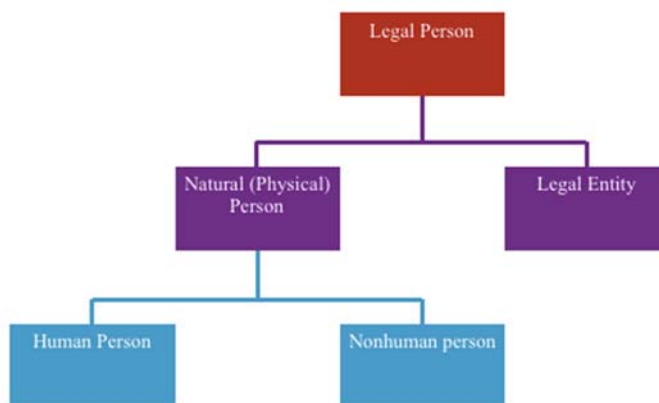
II. To plan: The recognition of the new category of (physical) non-human person and the conception of the legal regime attached to it.

Towards awarding legal personhood to companion animals on their own, it appeared opportune to adapt the classification of legal persons. To no extent is it a question of granting animals rights that would be identical to these of the human person, but instead to create another category of subject of rights: that of the “non-human natural (physical) person”.

- Theoretical contribution: an additional legal group

French positive law distinguishes, amongst legal persons, legal entities from natural persons (human persons).

The debate calls for enlarging the legal category of natural persons that cannot any longer limit itself to being comprised of self-conscious creatures¹⁰ only, that is to say, humans. In this regard, considerations from the Conference in Toulon led to a doctrinal proposition aimed at the recognition of a supplementary legal category: the non-human natural person.



⁹ « *La personnalité juridique de l'animal : exhausser l'animal ou rabaisser l'homme ? Une trivialité méthodologique* », by Alain PAPAUX, Professor of Legal Methodology and Philosophy of the Law at Lausanne University.

¹⁰ This approach appears too restrictive, by taking not account only one type of self-awareness that applies only to humans. Professor GIMENEZ-CANDELA proposes to replace this criterion by this of the feeling of awareness of the self, much wider.

This proposal allows for the acknowledgement of the ability of companion animals to be subjects of rights, without brutally impairing the classical *summa divisio* inherited from Roman Law: persons on the one side, things on the other.

This arrangement opens new perspectives that enable, beyond the founding of an independent status, taking the individual animal's interests into account, which is too often impossible in the current state of the law.

- The practical contribution: a tailor-made legal regime

Terminological changes would follow the reform. The subject of rights, the animal cannot be bought any longer, the latter referring to the very notion of property. It has been suggested to transpose to animals the fiction already established by filiation rules applied to human persons. Such is the case of adoption, where legal filiation does not necessarily correspond with biological filiation¹¹. All the more, it would consist in linking companion animals to their affective family. In the meantime, the adopting person would be designed as the one “responsible” for the animal in place of the erroneous terminology of “owner”.

The functioning of this unique status should be investigated from the capacity and representation points of view. The legislator could find some inspiration in the legal regime of minors and incapable adults (minority, tutorship, curatorship) in order to define the representation framework necessary for the full enjoyment of animals' rights¹². This latter could consist of a perfect representation, that is to say that the human person would act in the name and in the place of the animal; or imperfect, in which case, the person representing the animal would act in the interest of the animal, yet would still contract in his or her own name. This second regime, although seemingly to be granting less importance to the animal could, paradoxically, allow it to benefit from some subjective rights through the intervention of the human person that represents it.

Moreover, the issue of the legal personhood of animals invites us to address, in identical terms, the question of the fiscal system that would apply. Various hypotheses have been evoked during the Seminar¹³ in relation to a seizure of the companion animal by Fiscal Law.

Following the seminar, Caroline REGAD, Cédric RIOT and Sylvie SCHMITT solemnly and symbolically handed over to Valérie GOMEZ-BASSAC, Member of Parliament of the 6th Var District, a law proposal towards the attribution of legal personhood to companion animals. The Member of Parliament vowed to defend the text and to take the necessary steps towards its defence in the National Assembly. May the spirit of this Seminar, which aimed to elevate animals to the rank of subjects of rights, find resonance with the French national representatives.

¹¹ « *La personnalité juridique de l'animal de compagnie : carences d'aujourd'hui, force de demain* », by Cédric RIOT, Research Professor, Lecturer in Private Law and Criminal Sciences at Toulon University.

¹² « *Vers un régime de protection proche de celui de l'incapable* », by Laurent PENNEC, Research Professor, Lecturer in Private Law at Toulon University.

¹³ « *Hypothèses variées sur les conséquences d'une saisine de l'animal de compagnie par le droit fiscal* », by Sylvie SCHMITT, Research Professor, Lecturer in Public Law at the University of Toulon.