

Animals in the Spanish Civil Code: A Reform Interrupted*

Marita Giménez-Candela
Founder and Editor in Chief
Orcid:0000-002-0755-5928



Received: April 2019
Accepted: April 2019

Recommended citation. GIMÉNEZ-CANDELA, M., Animals in the Spanish Civil Code: A Reform Interrupted, dA. Derecho Animal (Forum of Animal Law Studies) 10/2 (2019) - DOI <https://doi.org/10.5565/rev/da.438>

Abstract

On the 14th February 2017 the process of reforming the legal status of animals in the Civil Code began in the Spanish Parliament. This also included corresponding amendments in the Mortgage Law and in the Civil Procedure Rules, which aimed at changing the consideration of animals as living beings endowed with sensibility instead of as things. Before the formalities of approving the reform were completed, it was interrupted by the call for General Elections on the 28th April 2019, causing a halt to the necessary de-objectification of animals in the civil field and is now in a period of uncertainty and expectations for a reform that still remains necessary.

Keywords: Spanish civil code; codification; legal status of animals; de-objectification; sentient beings; art. 13 TFUE; property; sentience.

Resumen - *Animales en el código civil español: una reforma interrumpida*

El 14 de febrero de 2017 se dio inició en el Parlamento español al proceso de reforma del estatuto jurídico de los animales en el CC, la Ley Hipotecaria y la Ley de Enjuiciamiento Civil, destinada a transformar la condición de los animales de cosas a seres vivos dotados de sensibilidad. A falta de pocos trámites para su aprobación, la convocatoria de Elecciones Generales el 28 de abril de 2019, ha interrumpido esta necesaria Descosificación de los animales en el ámbito civil y ha abierto una etapa de incógnitas y de expectativas para una reforma que sigue siendo necesaria.

Palabras clave: Código civil español; codificación; estatuto jurídico de los animales; descosificación; seres sentientes; art. 13 TFUE; propiedad; sentiencia.

* This work forms part of the MINECO investigation Project DER2015-69314-P «Legal status of animals: origin, development and policies» (2015-2019), which the IP of the author, and which forms part of other national and international investigations.

Summary

1. Analysis of the reform
2. Results and obstacles

1. Analysis of the reform

On 1st March 2019 the Official Bulletin of the General Courts published the Committee Report,¹ which had driven the processing of the “Legal Proposal to modify the Civil Code, the Mortgage Law and the Civil Procedure Law, on the legal framework for Animals”.²

Two years (2017-2019)³ of visible intense labour in favour of changing the legal status of animals and many years (from 2006 onwards) of not so visible labour towards the same ends were summarised in seven brief pages.⁴ It urges an analysis of what the reform of the legal regulations for animals in the Civil Code intends to do, the results that will arise, as well as the difficulties in achieving them and, finally, the perspectives on the future considered by this necessary reform that has now been interrupted.

It is clear that the Spanish Civil Code was,⁵ and is, in need of a reform that updates the legal status of animals and adapts it to that which is demanded by European animal welfare legislation and the reforms undertaken by the countries closest to us (both geographically and legally), in the area dealt with by our reform, which was none other than that of the nature of the ownership of animals and the corollaries that follow from this.

In this sense the Committee Report is expressed as an explanation of reasons that recognise (although in a somewhat imprecise way) the foundations that gave rise to the aforementioned legal proposal that has today been interrupted following a slow process lasting two years.⁶

¹The presentation was integrated by the following Deputies: D. Avelino de Barrionuevo Gener (GP), D. Miguel Lorenzo Torres (GP), D. Francisco Molinero Hoyos (GP), D. Javier Antón Cacho (GS), D.^a María Dolores Galovart Carrera (GS), D.^a Sara Carreño Valero (GCUP-EC-EM), D. Juan Antonio López de Uralde Garmendia (GCUP-EC-EM), D. Guillermo Díaz Gómez (GCs), D.^a María Virginia Millán Salmerón (GCs), D. Joan Capdevila i Esteve (GER), D. Mikel Legarda Uriarte (GV-EAJ-PNV), D. Enric Bataller i Ruiz (GMx) and D.^a Lourdes Ciuró i Buldó (GMx).

²Official Bulletin of the General Courts of 1 March 2019 (122/000134) Legal Proposal to modify the Civil Code, the Mortgage Law and the Civil Procedure Law, on the legal framework for animals.

http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-167-1.PDF#page=1

³The reform proposal was officially made known and published on 14th February 2017, when the non-legal Proposal presented by the Citizens Parliamentary Group was unanimously approved. Vid. the chronicle of CODINA, J.I., Unanimidad en el Congreso de los Diputados para instar la reforma del Código civil español y reconocer a los animales como seres dotados de sensibilidad, in dA. 2/2017 <https://derechoanimal.info/es/actividades/2017/unanimidad-en-el-congreso-de-los-diputados-para-instalar-la-reforma-del-codigo-civil>. The activity of the Observatory of Justice and Animal Defense, which entailed the collection of 350,000 signatures for its “Animales-no-son-cosas” (Animals are not things) campaign in support of the reform and the coetaneous driving of the Affinity Foundation, can be considered essential to its advance forward.

⁴ The legal status reform of animals has been the motor of ICALP investigation, led by those who subscribe to this article, through initiatives undertaken by the investigation projects I+D “Challenges of Investigation”, granted by MINECO in two successive calls for competition: DER 2010-2013, “Animals, Law and Society: from Roman Law to Global Society”, and DER 2015-2019 (DER2015-69314-P) “Legal status of animals: origin, development, policies”, which have resulted in publications (books, articles, a legal journal), doctoral theses, presentations by Congress that, as well as other things detailed in the corresponding headquarters, have justified the intervention of investigators of both Projects in the preparation process for the reform now in the phase of technical interruption.

⁵ For a reliable insight into the traditional principles of the consideration of animals as things, see ROGEL VIDE, C., *Los animales en el Código Civil* (Madrid 2017); *idem*, *Personas, Animales y Derechos* (Madrid-México 2018); vid. the review of the latest book by HUI, M., *Amending Classic Civil Codes*, in JAL & IAWS 1 (2018) 337-351.

⁶GIMÉNEZ-CANDELA, M., *La Descosificación de los animales en el Código Civil español*, in dA. *Derecho Animal* (Forum of Animal Law Studies) 9/3 (2018) 7-47 <https://doi.org/10.5565/rev/da.361>. In this same volume (9/3 (2018)), four articles by the following authors on the Project to reform the Civil Code were also published as a thematic Dossier in the review: ALÁEZ CORRAL, *Algunas claves de la futura reforma del Estatuto Jurídico Civil del animal en España*, in dA. *Derecho Animal* (Forum of Animal Law Studies) 9/3 (2018) <https://doi.org/10.5565/rev/da.342>; MENÉNDEZ DE LLANO, N., *La modernización del estatuto del animal en la legislación civil española*, in dA. *Derecho Animal* (Forum of Animal Law Studies) 9/3 (2018) <https://doi.org/10.5565/rev/da.343>; LELANCHON, L., *La reforma del estatuto jurídico civil de los animales en el Derecho francés*, in dA. *Derecho Animal* (Forum of Animal Law Studies) 9/3 (2018) <https://doi.org/10.5565/rev/da.344>; REIS MOREIRA, A., *La reforma del Código Civil portugués respecto al estatuto del animal*, in dA. *Derecho Animal* (Forum of Animal Law Studies) 9/3 (2018) <https://doi.org/10.5565/rev/da.345>

During this time, the unanimous will expressed by the Chamber of Deputies to provide animals with a legal status more in tune with the following elements has been clearly demonstrated in all and every stage in which the text had to be put to a vote in Congress:

- what society demands
- what science has demonstrated
- what the Animal Welfare legislation of the European Union has established, with particular reference to the stipulations of art. 13 TFEU,
- what the animal turn, expressed by the De-objectification of animals, has already achieved in other European countries, as well as in the global environment.

This unanimity was expressed for the first time when the transactional amendment text, presented by the Citizens Group, was the object of a vote on 14 February 2017,⁷ as well as afterwards when, being presented by the Popular Group, it readied the legal proposal to modify the Civil Code, the Mortgage Law and the Civil Procedure Laws on the legal framework of animals for the next step on 13 October 2017.⁸

The planned reform of the Spanish Civil Code,⁹ which revolved around the recognition of sentience for all animals (and not only companion animals), was articulated around three elements:

- the redefining of the legal framework that places property above animals
- the ownership of animals considered living beings endowed with sensibility
- the accompanying laws to make the recognition of animals as sentient beings effective

2. Results and obstacles

From this perspective, the reform of the civil framework of animals, which the Commission of Justice, with full powers, accepted after the amendment phase, first of all affected the denomination of the second Title that remained structured as follows: “On animals, goods, property and their modifications”. This modification is of the greatest importance, and is likely that which substantially justifies the purpose of the reform, which is not limited to changing the denomination of animals from things to sentient beings, but grants them a category separate from unmoveable things.

The key to understanding this new category is found in recognising that animals must have a legal framework adapted to their condition as sentient beings, which separates them from considerations as moveable things as it has been established until now in the 1889 Civil Code, in accordance with the settled Roman tradition that, without a solution of continuity, and following the promulgation of the Napoleonic Code, formed the basis for the majority of occidental legal regimes and, therefore, all the European and Latin-American civil codes, as well as the Civil Codes of Japan and Turkey, modelled after the German BGB.¹⁰

Moving away from the known Gaian *summa divisio* (persons-things) is difficult for those who are not aware of the real impact of this distinction.¹¹ Therefore, it continues to be difficult to make the majority of jurists aware that treating animals differently because of their distinct nature that makes them worthy of a separate legal treatment¹² is not a threat for the law, but in fact an enrichment.

In this sense, the reform of the Civil Code art. 333 is evidence of how the treatment of animals conforming to their condition as “living beings endowed with sensibility” and which must be in accordance with their nature and with the provisions intended for their protection is conceived. The explanation in

⁷Cfr. Diario de Sesiones del Congreso de los Diputados, pleno y diputación permanente, Año 2017, Nº 29, XII Legislatura, sesión plenaria Nº 27, martes, 14 de febrero de 2017, págs. 43-50. http://www.congreso.es/public_oficiales/L12/CONG/DS/PL/DSCD-12-PL-29.PDF;

⁸ Official Bulletin of the General Courts of 13 October 2017 (122/00034) Legal proposal to modify the Civil Code, the Mortgage Law and the Civil Procedure Rules on the legal framework of animals http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-167-1.PDF#page=1

⁹ARRIBAS ATIENZA, P., El nuevo tratamiento civil de los animales. Law Journal, Nº 9136, Tribunal Section, 9 February 2018

¹⁰Vid. broadly, with a timeline of reforms of the civil status of animals in Austria, Germany, Switzerland, Catalonia, Portugal, France, Colombia, the Czech Republic, Luxembourg and other initiatives of the same type GIMÉNEZ-CANDELA, M., Dignidad, sentiencia, personalidad: relación jurídica humano-animal, in dA, Derecho Animal (Forum of Animal Law Studies) 9/2 (2018) <https://doi.org/10.5565/rev/da.346>

¹¹GIMÉNEZ-CANDELA, M., Persona y Animal. Una aproximación sin prejuicios, in dA, Derecho Animal (Forum of Animal Law Studies) 9/1 (2019) 8-20 <https://doi.org/10.5565/rev/da.417>

¹² In this sense, the following reflection from scientific bases is intriguing: BINDER, R., Die Würde des Tieres is antastbar, en Rechtswissenschaft. Zeitschrift für rechtswissenschaftliche Forschung 3 (2016) 497ss.

paragraph 1 refers to the extremely broad European animal protection legislation that uses Welfare as a standard; regulations that Member States are obligated to follow in accordance with the stipulations of art. 13 TFEU.¹³ Moreover there also exist wide, autonomous animal protection regulations that are applicable in the ambit referred to by the Civil Code, which are those of Private Law.

The proposed text consists of four paragraphs (art. 333):

1. Animals are living beings endowed with sensibility. The legal framework for goods will only apply to them if it is compatible with their nature and the provisions intended for their protection.
2. The owner of an animal can enjoy and make use of it respecting its quality as a being endowed with sensibility, guaranteeing its welfare in respect of the characteristics of each species. The law of use does not tolerate abuse. The law of making use of an animal does not include abandonment or slaughter, except in cases stipulated by legal regulations.
3. The expenses intended for the recovery of an animal injured by a third party can be recovered by its owner, in accordance with what is proportionate, even when they are greater than the value of the animal.
4. Notwithstanding the compensation owed according to the general rules of civil responsibility, in the case in which the injury of a companion animal caused by a third party causes its death, the loss of a vital limb or organ, or a serious or permanent impairment of its capacity for movement, its owner and those that live with the animals have the right to compensation, which will be decided accordingly by the court for the moral suffering endured.

A consequence of the redefinition of animals as a category *a se*, or a category *sui generis* within that of property, is the affirmation that use does not entail abuse and that the provision excludes abandonment and slaughter without regulations that permit it. Reference is clearly made here to the abandonment of animals constituting the crime of the revised art. 337 of the Criminal Code, established in the reform of that year (2015),¹⁴ as well as to the abuse that causes the death of an animal and to slaughter that is not in accordance with the anticipated regulations, which are none other than those of Law 32/2007, of 7 November, on the care of animals, with regard to their exploitation, transport, experimentation and slaughter.¹⁵ As it is clear, the reform of the Civil Code refers not only to companion animals, but, as it has already been indicated, to all animals.

Another innovative consequence of the new legal framework on animals is a new consideration of the value of an animal, which is now not strictly the market value, as a thing of property, but one that derives from its sentience and the human-animal link in recognition of this. The effect of this new recognition refers to the expenses recoverable for an animal injured by a third party, which are recoverable by the owner even if they are greater than the value of the animal, as well as to the recognition of the moral damages from the death and injuries caused by a third party. In this sense, Jurisprudence has already made it clear that in terms of recognising the singularity of human-animal relations, it has played an important role as an innovator in recent years.¹⁶

An innovative aspect of the interrupted reform makes reference to the introduction of criteria for the shared custody that can be ruled by the judge in a case of separation or divorce, bearing in mind the interests of family members and the welfare of the animal (art. 90.1.c; art 94 (revised) 103,2). The fact that the planned reform recognises this consolidates and recognises a practice that is presented as habitual between family lawyers and lacks regulations, which are greatly necessary given the changes that the family structure

¹³Art. 13 TFEU <https://www.boe.es/doue/2007/306/Z00001-00271.pdf>

“In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the EU countries relating in particular to religious rites, cultural traditions and regional heritage”

¹⁴ CP art. 337 (revised); cfr. REQUEJO CONDE, C., El delito de maltrato a los animales tras la reforma del código penal por la Ley Orgánica 1/2015, de 30 de marzo, in dA. Derecho Animal (Forum of Animal Law Studies) 6/2 (2015) <https://doi.org/10.5565/rev/da.77>

¹⁵ Law 32/2007, of 7 November on the care of animals, with regard to their exploitation, transport, experimentation and slaughter <https://www.boe.es/buscar/act.php?id=BOE-A-2007-19321>

¹⁶ The first sentence for damages for pain and suffering for the loss of an animals was given in Catalonia in 2007; vid. the commentary of the judge who himself gave the ruling, ARIAS, G., Sentencia 466/07, de dieciséis de mayo, Juzgado de primera Instancia num. 32 de Barcelona, in dA, Derecho Animal (Forum of Animal Law Studies) <https://doi.org/10.5565/rev/da.236>

in our country has experienced in recent years.¹⁷

The recognition of animal sentience has also propitiated the introduction of the Mortgage Law (art. 111) on the prohibition of extending the mortgage to animals that form part of either an industrial or recreational cattle farm, as well as the prohibition of extending the mortgage contract to companion animals. Aside from this, the reform also deals with the prohibition of the seizure of companion animals through the modification of art. 605 of the Civil Procedure Laws (Law 1/2000, of 7 January).

The Committee Report made, in conclusion, a reflection that is surprising in its clarity and for its unusual use of expressions in which the legislator echoes a desire for improvement, which is not possible in the process set out in the text of the Legal Proposition. In essence, it recognises that the reform of the legal framework on animals is not enough, as it leaves animals partially subject to the framework of things where there are no specific regulations intended to regulate the legal regulations that involve animals, for which reason it would be *de lege ferenda* “desirable” that the “protective framework is progressively extended to the various areas in which animals are involved, and that the supplementary application of the legal framework of things is gradually restricted”.¹⁸

That the reform of the legal status of animals in the Civil Code has not resulted in its passing is, in my opinion, one more step on a journey that it will be hard not to resume with the new Parliament emerging following the vote on 28th April 2018. The propitiating elements remain in force. Society has changed its attitude towards animals, science is increasingly offering consolidating evidence in favour of animal sentience, the de-objectification movement is a global reality perceptible in many countries and, lastly, animal welfare legislation remains active and binds Spain as a Member State that cannot disregard its obligations.

References

- ALÁEZ CORRAL, Algunas claves de la futura reforma del Estatuto Jurídico Civil del animal en España, in dA. Derecho Animal (Forum of Animal Law Studies) 9/3 (2018) <https://doi.org/10.5565/rev/da.342>
- ARIAS, G., Sentencia 466/07, de dieciséis de mayo, Juzgado de primera Instancia num. 32 de Barcelona, in dA, Derecho Animal (Forum of Animal Law Studies) <https://doi.org/10.5565/rev/da.236>
- ARRIBAS ATIENZA, P., El nuevo tratamiento civil de los animales. Legal Journal, Nº 9136, Tribunal Section, 9 February 2018
- BINDER, R., Die Würde des Tieres is antastbar, in Rechtswissenschaft. Zeitschrift für rechtswissenschaftliche Forschung 3 (2016) 497ss.
- CASAS DÍAZ, L. / CAMPS I VIDELLET, X., Las crisis matrimoniales y los animales de compañía: una aproximación práctica desde el ejercicio de la abogacía, in dA, Derecho Animal (Forum of Animal Law Studies) 9/1 (2019) <https://doi.org/10.5565/rev/da.397>
- CODINA, J.I., Unanimidad en el Congreso de los Diputados para instar la reforma del Código civil español y reconocer a los animales como seres dotados de sensibilidad, in dA. 2/2017 <https://derechoanimal.info/es/actividades/2017/unanimidad-en-el-congreso-de-los-diputados-para-instar-la-reforma-del-codigo-civil>
- GIMÉNEZ-CANDELA, M., Dignidad, sentiencia, personalidad: relación jurídica humano-animal, in dA, Derecho Animal (Forum of Animal Law Studies) 9/2 (2018) <https://doi.org/10.5565/rev/da.346>
- GIMÉNEZ-CANDELA, M., La Descosificación de los animales en el CC español, in dA. Derecho Animal (Forum of Animal Law Studies) 9/3 (2018) <https://doi.org/10.5565/rev/da.361>
- GIMÉNEZ-CANDELA, M., Persona y Animal. Una aproximación sin prejuicios, in dA, Derecho Animal (Forum of Animal Law Studies) 9/1 (2019) <https://doi.org/10.5565/rev/da.417>
- HUI, M., Amending Classic Civil Codes, rec. a ROGEL VIDE, C., Personas, Animales y Derechos (Madrid-México 2018), in JAL & IAWS, nº 1 (2018) 337ss.

¹⁷CASAS DÍAZ, L. / CAMPS I VIDELLET, X., Las crisis matrimoniales y los animales de compañía: una aproximación práctica desde el ejercicio de la abogacía, in dA, Derecho Animal (Forum of Animal Law Studies) 9/1 (2019) <https://doi.org/10.5565/rev/da.397>

¹⁸ Official Bulletin of the General Courts of 1 March 2019 (122/000134) Legal proposal to modify the Civil Code, the Mortgage Law and the Civil Procedure Laws on the legal framework of animals http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-167-1.PDF#page=1

- LELANCHON, L., La reforma del estatuto jurídico civil de los animales en el Derecho francés, in dA. Derecho Animal (Forum of Animal Law Studies) 9/3 (2018) <https://doi.org/10.5565/rev/da.344>
- MENÉNDEZ DE LLANO, N., La modernización del estatuto del animal en la legislación civil española, in dA. Derecho Animal (Forum of Animal Law Studies) 9/3 (2018) <https://doi.org/10.5565/rev/da.343>
- REIS MOREIRA, A., La reforma del Código Civil portugués respecto al estatuto del animal, in dA. Derecho Animal (Forum of Animal Law Studies) 9/3 (2018) <https://doi.org/10.5565/rev/da.345>
- REQUEJO CONDE, C., El delito de maltrato a los animales tras la reforma del código penal por la Ley Orgánica 1/2015, 30 marzo, in dA. Derecho Animal (Forum of Animal Law Studies) 6/2 (2015) <https://doi.org/10.5565/rev/da.77>
- ROGEL VIDE, C., Los animales en el Código Civil (Madrid 2017)
- ROGEL VIDE, C., Personas, Animales y Derechos (Madrid-México 2018)

Legal References

- CP art. 337 (revised), Organic Law 1/2015, of 30 March
- Art. 13 TFUE <https://www.boe.es/doue/2007/306/Z00001-00271.pdf>
- Journal of Sessions of the Congress of Deputies, plenary session and permanent council, for the year 2017, N° 29, XII Legislature, plenary session N° 27, Tuesday, 14 February 2017, pages 43-50. http://www.congreso.es/public_oficiales/L12/CONG/DS/PL/DSCD-12-PL-29.PDF
- Official Bulletin of the General Courts 1 March 2019 (122/000134) Legal Proposition to modify the Civil Code, the Mortgage Law and the Civil Procedure Law on the legal framework for animals. http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-167-1.PDF#page=1
- Official Bulletin of the General Courts of 13 October 2017 (122/00034) Legal Proposition to modify the Civil Code, the Mortgage Law and the Civil Procedure Law on the legal framework for animals. http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-167-1.PDF#page=1