Portugal

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Law 8/2017, 3 March – Status of animals

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

Animals are no longer seen as **things**

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

Art. 201-B

Object of legal relationship # thing (res)

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

Law 8/2017, 3 March – Status of animals

relevant changes:

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

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

Civil Law

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

Art. 493-A Civil Code

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

Comment

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

Art. 493-A Civil Code

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

Comment:

Onerousity and compensation

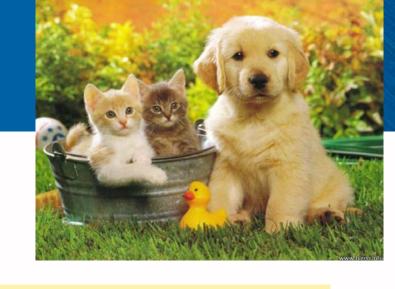


- Art. 566
- 1. Compensation shall be calculated in monetary terms if natural restoration is not possible, would not fully repair the damage or would be excessively onerous to the debtor.
- The case of the "old-timer"

Art. 493-A Civil Code

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

Developments in Tort Law in Europe 2017



Pet animals

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



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

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

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

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



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