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Neither persons nor things: the changing status of animals in private law

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Abstract. The *summa divisio* between the person and the thing lies, traditionally, at the very basis of European private law. In a growing number of European jurisdictions however, provisions have been introduced in the Civil Code that differentiate between animals and other legal things or objects. Even though it is certain that these provisions do not vest animals with a form of legal personality similar to that of humans or corporations, it has been noted that the new legal status may influence the way animals are being addressed in other areas of private law and can sometimes even be construed as limiting the rights of persons. Perceived as such, the special status of the animal challenges the traditional dichotomy between the person and the thing, giving rise to a category that lies in-between.

This article aims to shed light on the changing status of the animal in private law in western Europe. The Civil Code provisions differentiating between animals and other things or goods of France, Belgium, Germany and the Netherlands are compared to show how the development manifests itself differently in different legal cultures. The article concludes with the suggestion that the special status of animals in the Civil Code can provide some valuable lessons for the way in which the central dichotomy between the person and thing can be overcome, and form a possible starting point for a dynamic and 'more-than-human'-legality that recognizes various non-human modes of existence.

Résumé. La summa divisio entre « la personne » et « la chose » est, traditionnellement, à la base des systèmes juridiques européens. Cependant, dans un nombre croissant de juridictions européennes, des dispositions ont été introduites dans le Code civil qui différencient les animaux des choses. Même s'il est certain que ces dispositions ne confèrent pas aux animaux la personnalité juridique, le nouveau statut juridique des animaux peut modifier la manière dont les animaux sont traités dans d'autres domaines du droit privé et peut même restreindre les droits de propriété sur les animaux. Ainsi, le statut particulier de l'animal met en cause la dichotomie traditionnelle entre sujet et objet de droit, créant une catégorie d'êtres qui ne sont ni des personnes ni des choses.

Le présent article vise dès lors à analyser l'évolution du statut de l'animal en droit privé en Europe, spécialement en France, en Belgique, en Allemagne et aux Pays-Bas. Ces systèmes juridiques sont comparés pour démontrer l'influence des différentes cultures juridiques sur l'évolution du statut de l'animal. L'article conclut par la suggestion que le nouveau statut spécial des animaux dans le Code Civil peut fournir des leçons précieuses sur la manière dont la dichotomie centrale entre la personne et la chose pourrait être surmontée, fournissant un point de départ possible pour une dynamique du droit plus grande et un reconnaissance juridique des modes diverses d'existence non-humaine.

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Zusammenfassung. Die summa divisio zwischen der Person und dem Ding bildet traditionell die Grundlage des Privatrechts. In einer wachsenden Zahl von europäischen Rechtssystemen sind jedoch Bestimmungen in das Zivilgesetzbuch eingeführt worden, die zwischen Tieren und anderen Rechtsgegenständen unterscheiden. Obwohl es sicher ist, dass diese Bestimmungen Tieren keine Rechtspersönlichkeit verleihen, die der von Menschen oder Unternehmen gleicht, wurde bereits festgestellt, dass dieser neue Rechtsstatus die Art und Weise beeinflussen kann, wie Tiere in anderen Bereichen des Privatrechts behandelt werden, und sich manchmal sogar als Einschränkung der Rechte von Personen konstruieren lässt. Als solches wahrgenommen, stellt der besondere Status des Tieres die traditionelle Zweiteilung zwischen Subjekt und Objekt in Frage und führt zu einer neuen Kategorie, die weder Person noch Sache ist.

Dieser Artikel hat zum Ziel, den sich ändernden Status des Tieres im Privatrecht Westeuropas zu erläutern. Die Bestimmungen des Zivilgesetzbuches in Frankreich, Belgien, Deutschland und den Niederlanden werden verglichen, um zu zeigen, wie sich die Entwicklung in verschiedenen Rechtskulturen unterschiedlich manifestiert. Der Artikel schließt mit dem Gedanken, dass der besondere Status der Tiere in den jeweiligen Zivilgesetzbüchern einige wertvolle Erkenntnisse für die Art und Weise liefern können, wie die zentrale Dichotomie zwischen Person und Sache überwunden werden könnte, und somit einen möglichen Ausgangspunkt für eine dynamischere Darstellung und 'mehr als menschliche' Legalität darstellt, die verschiedene nichtmenschliche Existenzweisen anerkennt.

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1. Introduction

1. The introduction of provisions stating that animals do not equal other legal things or goods in the Civil Codes of, among other countries, Germany,[2] France,[3] The Netherlands,[4] and most recently Belgium,[5] is often critiqued as merely constituting a symbolic measure, superficially answering the growing demand to 'de-objectify' animals without producing any legal effects.[6] Nevertheless, the possible implications of the development should not be underestimated. Even though it is certain that the provisions that differentiate between animals and other things do not vest the animal with legal personality, the new status may influence the way animals are being addressed in various areas of private law and can possibly be construed as a limit to the rights of persons. Perceived as such, the provisions give rise to a new private law-category that lies in-between the person and the thing.

2. This article will assess the changing status of animals in private law in a profound manner. The new Civil Code provisions differentiating between animals and other things in Germany, the Netherlands, France and Belgium will be compared in order to shed light on the way in which the development manifests itself differently in different legal cultures. Apart from black-letter law, the way in which the animal and its interests feature in the preparatory works and parliamentary debates will be considered relevant, and the broader societal context will be taken into account in the explanation of similarities and differences between the legal systems.[7] Furthermore, the article will shed light on the degree to which judges take the special nature of animals into account in private law cases. The argument will be put forward that the new status of animals can and should be regarded as a significant challenge to the dichotomy between the person and the thing that traditionally lies at the very basis of private law.

[2] Germany, §90a BGB *Bürgerliches Gesetzbuch* since 1990 [hereafter: German Civil Code]. Other examples are: Austria, Art. 285a ABGB *Allgemeines bürgerliches Gesetzbuch* since 1988; Switzerland, Art. 641a ZGB *Zivilgesetzbuch*, since 2002; Czech Republic, Art. 494 OZ *Občanský Zákoník*, since 2012.
[3] France, article 515-14 CC *Code Civil* since 2015 [hereafter : French Civil Code].
[4] The Netherlands, Art. 3:2a BW *Burgerlijk Wetboek* since 2016 [hereafter: Dutch Civil Code]
[5] Belgium, Art. 3.38-39 BW *Burgerlijk Wetboek* since 2020, in force September 1, 2021 [hereafter: Belgian Civil Code].
[6] For a critical view see Jelle Eric Jansen, 'Over de Ontzakelijking van Dieren En de Grenzen van Het Zaaksbegrip' (2011) 5 Rechtsgeleerd Magazijn Themis 187; Johan Van de Voorde, 'Dieren Als Quasi-Goederen. Beschouwingen over de Juridisch-Technische Wenselijkheid van Een Bijzonder Statuut Voor Dieren Tussen Goederen En Rechtssubjecten' (2016) 138 Rechtskundig Weekblad 203.
[7] In the tradition of LeGrand, see for instance Pierre Legrand, 'Forein Law: Understanding Understanding' (2012) 66 37.

3. The article will be structured as follows. First, a short theoretical background to the historical classification of animals as 'things' will be set out. Second, the structure and wording of the provisions embedded in the legal context of the four countries will be compared, exposing the similarities and differences between them. After that, I will analyse case law in order to determine to what extent animals are treated differently from other goods in private law cases; particularly with regard to the application of family law regulations, the determination of compensation for damage, and the execution of seizure for debts. In the last part of the article, I will suggest that the changing legal approach to animals challenges the binary explanation of private law as consisting only of persons and their property.

2. Animals and the person/thing dichotomy

4. Before the positivist legal context can be examined, the comparative approach taken in this article makes it necessary to include a reflection of the main theories and concepts that play a role, in particular the origins of the representation of animals as 'things' in private law. It is often argued that the dichotomy between the person and the thing originally reflected the perceived division between human culture and the external, natural world. The human person stands at the very centre of the legal realm, and the external world becomes object of law as soon as parts of it are appropriated by the human. By catching a rabbit or cutting a tree, the human created property rights in these parts of nature, which were subsequently brought into the legal sphere by becoming objects of these rights.[8] The distinction between the person and the thing can then be regarded as a *means* to establish property rights.[9]

5. Whereas property rights were traditionally conceived of as concrete, natural rights, directly attached to the 'thing', an 'absolute dominion' of men over the external world,[10] under influence of later legal writers property was increasingly 'dephysicalized'; regarded as an abstract right of exclusion in relation to other possible owners and subjects of law rather than attached to a concrete object.[11] In this context, rights were construed as legal relations existing between legal persons, not between persons and things.[12] As a result, the legal sphere became increasingly cleansed of all that is not human (or a collection of humans in the form of a corporation) and explained in solely inter-person relationships.[13] Today, as the animal is regarded an object of property rights in all legal systems, it is often said that

[8] Jelle Eric Jansen, 'Eigendomsverkrijging Door Stropers. Over Leeuwenjacht, Royal Animals En Het Aneignungsrecht' (2016) 8 Nederlands Tijdschrift voor Burgerlijk Recht 58.
[9] Toni Selkälä and Mikko Rajavuori, 'Special Issue Traditions, Myths, and Utopias of Personhood Traditions, Myths, and Utopias of Personhood: An Introduction' (2017) 18 German Law Journal 1018.
[10] As Blackstone put if famously. William Blackstone, *Commentaries on the Laws of England, Vol. 2: The Rights of Things*.
[11] Nicole Graham, *Lawscape: Property, Environment, Law* (Routledge 2011).
[12] Visa AJ Kurki, 'Hohfeldian Infinities: Why Not to Worry' (2017) 23 Res Publica 137.
[13] Gunther Teubner, 'Rights of Non-Humans? Electronic Agents and Animals as New Actors in Politics and Law' (2006) 33 Journal of Law and Society 497, 499.

the animal as such is largely invisible to private law: it is entirely defined by its status as property.[14]

6. Over the last years however, the absolute division of the world into two separate domains of human versus non-human has been called into question. On the one hand, the growing scientific evidence for a variety of unexpected capacities in animals has made the drawing of a hard line between humans and other species increasingly difficult to legitimize.[15] On the other hand, the fact that we live in an era in which humans constitute the main driving force behind geological change- by some referred to as 'the Anthropocene'- makes it clearer than ever that humans are an inherent part of nature and that a nature that is defined by its being *not* human can no longer be delineated.[16] In this context, the strict dichotomy between the human person who holds property rights and the non-human thing which features only as object of those rights can no longer be upheld. The abstract notion of property as detached from any physical reality, only existing between a select group of human agents, becomes problematic.[17]

7. According to some critics, the traditional conception of property rights as a relation between legal persons exclusively is not only incorrect, but possibly even, to some degree, *the cause of* the very situation of environmental destruction that we find ourselves today as it promotes the practically limitless exploitation of that what is owned.[18] They critique the fact that, only when damage to nature can, in some way, be framed as damage to humans, it matters for law.[19] Stating that the borders of law should be determined by natural boundaries, these authors suggest that an update to the anthropocentric grounds underlying our modern legal systems is necessary: nature and nonhumans should be intrinsically relevant for law.[20] However, most attention in this upcoming field of 'Earth Jurisprudence' has gone to the recognition of ecosystems and natural entities as legal subjects, and little has been written on the way in which this approach would influence the

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[14] For instance by Steven M Wise, 'Hardly a Revolution—the Eligibility of Nonhuman Animals for Dignity-Rights in a Liberal Democracy' (1998) 22 Victoria Law Review 793, 837. Angela Fernandez, 'Not Quite Property, Not Quite Persons: A Quasi Approach for Nonhuman Animals' (2019) 5 Canadian Journal of Comparative and Contemporary Law 1. However, in some civil codes the animal existence has been visible through the specific provisions concerning liability for animals. See on this topic Qiang Wang, 'In a Cage of Law: Liability Imputation System in the Tort Law on Kept Animals-A Chinese-German Comparative Study' (2019) 3 European Review of Private Law.

[15] Christian Illies, 'The Threefold Challenge of Darwinism to an Ethics of Human Dignity' in Marcus Düwell and others (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2015); James Rachels, *Created From Animals: The Moral Implications of Darwinism* (Oxford University Press 1990).

[16] Bruno Latour, *Facing Gaia* (Polity Press 2017); Francesca Ferrando, 'The Party of the Anthropocene: Post-Humanism, Environmentalism and the Post-Anthropocentric Paradigm Shift' (2016) 4 Relations 159.

[17] Graham (n 11).

[18] Peter Burdon, 'Wild Law: The Philosophy of Earth Jurisprudence' (2010) 35 Alternative Law Journal 62; David Humphreys, 'Rights of Pachamama: The Emergence of an Earth Jurisprudence in the Americas' (2017) 20 Journal of International Relations and Development 459.

[19] This fact was famously challenged by Christopher D Stone, 'Should Trees Have Standing--Toward Legal Rights for Natural Objects' (1972) 45 Southern California Law Review 450.

[20] Jamie Murray, 'Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law-Part 1' (2014) 35 Liverpool Law Rev 215; Peter Burdon (ed), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press 2011). One of the first books that proposed to take natural boundaries as starting point for law is Michel Serres, *The Natural Contract* (1990).

object-status of individual animals in a private law context.[21] Whether or not the changing status of animals in Western-Europe can be regarded as part of the trend, remains the question. In the next section, I will discuss the changing status of animals in more detail, showing to what extent the Civil Code provisions give rise to a separate legal category for animals that can no longer be equalled with that of legal things.

3. Changing the legal status: the animal-category

8. As the theoretical underpinnings of the objecthood of animals in private law have been set out, we can now turn to the actual legal context. Before embarking upon an in-depth analysis of the special status of animals in case-law, this section will describe the way in which the classification of animals as 'things' or 'goods' in the Civil Code has been changed in the last decades in the four countries under study. It will become clear that it is not entirely correct to speak of a distinction with the category of legal goods; in Germany and the Netherlands, animals are distinguished from things *[Sache, zaken]* and in Belgium from objects *[voorwerpen, choses]:* they can still be owned and are therefore, in some way, still goods. The differences in the wording and structure of the four Civil Code provisions might be partly explained by the varying legal approaches to the animal in public law as, respectively, fellow beings, intrinsically valuable, sentient and dignified.

3.1. *Animals as fellow beings in Germany*

9. The exclusion of animals from the category of 'things' in Germany is part of the broader changing legal approach to animals characterized by the introduction of the words *'und die Tiere'* [and the animals] in the Basic Law, the constitution of Germany, in 2002.[22] Since that moment, animal protection is perceived as a 'state goal' and animal interests can now be weighed against constitutionally protected human interests.[23] Also in private law, we will see that reference is sometimes made to the constitutional provision regarding animals in legal decision-making in which the special nature of animals as living beings plays a role: the constitutional provision thus very much lies at the basis of the German approach to the animal. Apart from that, the German *Animal Protection Act* recognizes that humans bear responsibilities towards animals as 'fellow beings', a terminology unique to the German context.[24]

10. The Civil Code provision differentiating between animals and other legal things has been introduced in Book 1 (general part), division 2 (things and animals) as §90a and reads as follows: '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.'[25] The exclusion is quite clean, as the header of the division already makes clear that it discusses things *and* animals: two categories are created where there was

[21] Jamie Murray, 'Placing the Animal in the Dialogue Between Law and Ecology' (2018) 39 Liverpool Law Review 9 <https://doi.org/10.1007/s10991-018-9213-2> accessed 18 March 2019.

[22] German Basic Law, §20a GG *Grundgesetz*.

[23] Claudia E Haupt, 'The Nature and Effects of Constitutional State Objectives: Assessing the German Basic Law's Animal Protection Clause' (2010) 16 Animal Law 213.

[24] German Animal Protection Act §1 *Tierschutzgesetz* [hereafter: German Animal Protection Act].

[25] German Civil Code, §90a *BGB*. All translations are unofficial and done by the author.

formerly only one.[26] Nevertheless, what remains obvious is the lack of definition of what animals then are- no reference is made to their capacity to feel, or the fact that they are alive. Hence, animals are negatively defined; they are simply 'non-things', governed by the provisions applying to things.

11. The addition of §90a to the Civil Code did not stand alone but was characterized by the alteration and addition of several provisions in private law for which the special status of animals was deemed relevant.[27] Other changes were for instance the amendment of §251-2 BGB regarding compensation for animals, and an addition to §903 BGB on the powers of the owner. Furthermore, in procedural law, §765a ZPO on enforcement measures, and §811c ZPO on the conditions regarding seizure of animals were amended in order to make the differentiation between animals and things more internally consistent.[28] Hence, the differentiation between 'things' and 'animals' in Germany is part of a broader, comprehensive change in the private law approach to the animal.

3.2. *Animals as intrinsically valuable in the Netherlands*

12. The differentiation between animals and other objects, '*zaken*', in the Civil Code is in the Netherlands regarded as the result of the recognition of intrinsic value of animals. The idea that animals have intrinsic value was introduced already in 1981 in a Memorandum on 'Animal Protection and the Government' which held that the development of legislation concerning animals should start from the recognition that they have intrinsic value and, 'before deciding the legitimacy of any action involving animals, the interest of the animal should be taken into account in a conscious balancing process.'[29] Since then, Dutch legislation concerning animals, regardless whether they are wild or domesticated, has been coloured by this notion of intrinsic value, which is repeated in the current *Animal Protection Act*.[30] The idea was that, as their intrinsic value was recognized, this would also have implications for the status of animals as property: they had to be distinguished from legal things that do not have intrinsic value. Consequently, together with the *Animal Protection Act,* the Civil Code was amended to include such a reference.

13. The provision concerning the extraction of animals from the category of things [*zaken*] is introduced as Article 2a under Title 1 (general provisions), section 1 (definitional provisions) of the Book on the Law of Goods. After defining 'things' as all physical objects that are susceptible to human control, the provision regarding animals now reads as follows: '(1). Animals are not things. (2) Provisions relating to things are applicable to animals, with

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[26] See on this topic Eva Schumann, '„Tiere Sind Keine Sachen' – Zur Personifizierung von Tieren Im Mittelalterlichen Recht' in Lars Kreye, Carsten Stühring and Tanja Zwingelberg (eds), *Natur als Grenzerfahrung* (Universitätsverlag Göttingen 2009).

[27] This more comprehensive change to the status of animals under private law was made through the Act for Improvement of the Status of Animals in Private Law (1990), *TierVerbG*, *Gesetz zur Verbesserung der Rechtsstellung des Tieres im bürgerlichen Recht vom 20. August 1990, BGBl. I S. 1762.*

[28] German Civil Code §251-2 BGB and §903 BGB. German law of civil procedure, §765a and §811c *ZPO Zivilprozessordnung* [hereafter: German law of civil procedure]. The provisions will be further examined in the coming sections.

[29] Memorandum on Animal Protection and the Government (1981) *Nota Rijksoverheid en Dierenbescherming, Tweede Kamer II, 16 996, nr. 2.*

[30] Dutch Animal Protection Act, Art. 3. *Wet Dieren* [hereafter: Dutch Animal Protection Act].

due observance of the limitations, obligations and legal principles based on statutory rules and rules of unwritten law, as well as of public order and public morality.'[31] Interesting in this respect is the emphasis on unwritten law, which is unique to the Dutch approach. Nevertheless, some authors have argued that the wording of the article, contrary to the German provision, creates an inherent contradiction: it says that animals are not physical objects susceptible to human control, which at the same time they are.[32] Apart from that, the provision does not exclude animals from the broader category goods, which is defined as consisting of, apart from 'things', also 'patrimonial rights'. In a very strict reading, by stating that animals are not 'things' and in the absence of any other, positive definition, animals could still be patrimonial rights. Furthermore, similar to the German situation, no characteristics of animals are mentioned in the provision: animals are simply defined as 'non-things'.

14. In the explanatory note to the amendment, it is stated that the reason to introduce provision 2a is first of all the fact that equaling animals with things 'is not in line with the natural legal feeling' and follows logically from the broader recognition of intrinsic value in the current *Animal Protection Act*.[33] The aim of the Civil Code provision is to make clear that 'it is not just the use-value for humans but also the intrinsic value of the animal that determines the acceptability of behaviour of humans towards animals.'[34] In a 2018 case, the Supreme Court discussed the special status of animals at length, emphasizing that the aim is to 'subject human treatment of animals to adapted norms but not to bring the animal outside of property law'; if that were the aim, the Court notes, the animal should have been recognized as subject of law.[35] According to the Attorney General, the provision should therefore be seen as nothing more than 'a symbolic deed of political correctness'.[36] Moreover, contrary to Germany, the provision altering the status of animals was not part of a broader reform of the private law status of the animal: provision 2a constituted the only change.

3.3. *Animals as sentient in France*

15. In France, the notion that animals are sentient beings and thus not equal to inanimate objects was already present in art. L214-1 of the Rural Code which encompassed most of the provisions on animal welfare before the Civil Code was amended.[37] However, the capacity of 'sentience' is, in this context, regarded more a condition for the animal protection provisions to apply: the act only applies to those animals whose sentience is scientifically established. Moreover, the rural code only applies to domesticated animals or wild animals in captivity and excludes wild and stray animals. Contrary to the other countries discussed here, France does not have one law or code in which all provisions concerning animal protection are put together. The addition of a provision that differentiates animals from other objects in the Civil Code was therefore applauded by

[31] Dutch Civil Code, Art. 3:2a BW.

[32] Jansen (n 6).

[33] Explanatory Note to the Animal Protection Act (2007-2008) Tweede Kamer, *Memorie van Toelichting Wet Dieren, 31389 nr. 3.*

[34] Parliamentary Debates , *Kamerstukken I 2010/11, 31 389, nr. E, p. 2.*

[35] Dutch Supreme Court (May 15, 2018), *Arrest Hoge Raad*, ECLI:NL:HR:2018:996.

[36] Ibid, §3.6.

[37] French code of the rural and fishing art. L214-1, *Code rural et de la pêche maritime* [hereafter: French rural code].

animal protection organizations and regarded an important step forward for animal protection in France.[38] As there is no main, centralized instrument that is devoted to the protection of animals, the amendment can be regarded a way to centralize the dispersed French approach.

16. The Civil Code provision is introduced in the header of Book 2 (goods and the different modifications of property) *before* the actual division between moveable and unmoveable goods of Title 1 and is hereby not an inherent part of the division. Art. 515-14 now states that: '[a]nimals are living beings gifted with sentience. With reservation to the laws that protect the animals, they are subjected to the regime of goods.'[39] On the one hand, the location of the article is remarkable, as it comes before the Title and can therefore be interpreted as most fully extracting animals from the law of goods. On the other hand however, the second sentence seems to neutralize its effect by making clear that animals are subjected to the same regime as goods without giving any conditions, except for the laws that protect animals. Just as in the Netherlands, the addition of the provision has therefore been regarded largely symbolic.[40]

17. In preparatory work, the initial proposal for the amendment was motivated with the aim to 'achieve a coherent legal system for animals in order to harmonize our various codes and modernize the law' and proposed in relation to the efforts to modernize and simplify the French legal system.[41] Remarkable is that in the French case, contrary to Germany and the Netherlands, the emphasis lies on the recognition of the fact that animals are sentient beings. Rather than creating a separate category in between persons and objects, the French article positively defines the animal as the kind of being it is, and subsequently makes clear that regulations concerning goods that are owned still remain applicable to animals. Indeed, the main aim seems to be the centralization and harmonization of the formerly dispersed animal protection provisions. This approach seems, until now, the most straightforward.

3.4. *Animals as dignified in Belgium*

18. In Belgium, the capacity to legislate on animal protection is, since the sixth state reform, a regional power. Hence, in Flanders, Brussels and Wallonia slightly different versions of the original *Animal Protection Act* of 1987 are in force.[42] Wallonia recognized the sentience of animals in their version of the Act already in 2015, which was confirmed in 2018 in the new Walloon Animal Welfare Code.[43] Brussels introduced a separate first article in

[38] See for instance the view of the animal protection organization 30millionsdamis, retrieved from https://www.30millionsdamis.fr/actualites/article/8451-statut-juridique-les-animaux-reconnus-definitivement-comme-des-etres-sensibles-dans-le-code/, accessed on April 20, 2020.

[39] French Civil Code, art. 515-14 *CC*.

[40] Fabien Marchadier, 'L'animal Du Point de Vue Du Droit Civil Des Personnes et de La Famille Après l'article 515-14 Du Code Civil' (2015) 1 Revue Semestrielle de Droit Animalier 433.

[41] 'Projet de loi relatif à la modernisation et à la simplification du droit et des procédures dans les domaines de la justice et des affaires intérieures' discussed in Jean-Marc Neumann, 'The Legal Status of Animals in the French Civil Code' (2015) Global Journal of Animal Law, 1. Non-peerreviewed article, retrieved from http://www.gjal.abo.fi/gjal-content/2015-1/article3/NON%20PREE%20VIEWED%20ARTICLE%20Jean-Marc%20Neumann%20The%20French%20Civil%20Code.pdf, accessed on April 20, 2020.

[42] Belgian Animal Protection Act, *Wet van 14 augustus 1986 betreffende de bescherming en het welzijn van dieren,' BS 3 December 1986, 16.382*,[hereafter: Belgian animal protection act].

[43] Walloon Animal Welfare Code, *Code Wallon du Bien-Etre Animal,* October 3, 2018.

2018, recognizing that '[a]n animal is a living, sentient creature with its own interests and dignity, which enjoys special protection.'[44] The reference to the dignity of animals is quite unique and might be inspired by the Swiss approach to animal protection in which the notion of animal dignity stands central.[45] The region of Flanders has not introduced a provision regarding the sentience of animals in its version of the *Animal Protection Act*.

19. In private law, the new Book on Property Law introduced in the Belgian Civil Code 2020 (in force in 2021) refers to animals immediately in the definition of goods in Title 2 (division of goods), subtitle 1 (general categories). The first article of this section, art. 3.38. states that objects *[voorwerpen]*, regardless of whether they are natural or artificial, physical or incorporeal, should be distinguished from animals, and subsequently objects and animals should be distinguished from persons.[46] The following article, Art. 3.39. defines animals, stating that 'animals have the capacity to feel and biological needs. The provisions applicable to physical objects are applicable to animals, with due observance of the legal and procedural provisions regarding the protection of animals and public order.'[47]

20. Of all four countries, the Belgian Civil Code defines animals most clearly as a third category between objects and legal persons and, like France, puts an emphasis on their capacity to feel and thus positively defines what an animal is. The exclusion of animals from the category of things is furthermore most integrated in the structure of the Civil Code: also in the definition of objects, the distinction with animals is mentioned. This can be explained by the fact that the amendment happened, in Belgium, simultaneously with the adoption of an entirely new Book in the Civil Code. The preparatory work for the Book exposes furthermore that the intention was indeed to create a third category. After a discussion of the similar amendments in other countries, it is stated that 'objects need, in an introducing *summa divisio*, to be distinguished from persons, but also from a third category, that of the animals. In view of the scientific and societal progress the special characteristics of the latter have become clear, with the result that they can be classified neither as objects, nor as subjects of law.'[48] This is an interesting remark as it shows that the intention is indeed to overcome the central dichotomy and create some kind of animal category that lies in-between.[49] However, at the same time article 3.42 makes clear that 'goods' are all things susceptible to ownership, implying that animals are still fully goods.

4. Animals as goods or non-goods in private law

21. At first sight, all four provisions differentiating between animals and other things make, in different ways, clear that those regulations applying to goods do still apply to animals as well, but that the protections of animals have to be taken into account in the application of

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[44] Belgian Animal Protection Act art. 1. [version of Brussels Hoofdstedelijk Gewest] *Wet van 14 augustus 1986 betreffende de bescherming en het welzijn der dieren.*

[45] Stefanie Schindler, 'The Animal's Dignity in Swiss Animal Welfare Legislation – Challenges and Opportunities' (2013) 84 European Journal of Pharmaceutics and Biopharmaceutics 251.

[46] Belgian Civil Code, art. 3.38 *BW* (in force from September 1, 2021).

[47] Belgian Civil Code, art. 3.39 *BW* (in force from September 1, 2021).

[48] Belgian Chamber of Representatives (July 16, 2019) *Belgische Kamer Van Volksvertegenwoordigers, Wetsvoorstel houdende invoeging van boek 3 'Goederen' in het nieuw Burgerlijk Wetboek, DOC 55 0173/001*, p.97.

[49] This is also argued by Johan Van de Voorde, 'Het Nieuwe Goederenrecht En Het Milieu' (2020) 3 Tijdschrift voor Milieurecht 272.

those provisions.[50] As Jelle Eric Jansen discusses, a result of the addition therefore could be that 'the obligations of humans towards animals [stemming from public law] work through in the way in which the concept of [private] ownership over animals should be understood.'[51] At the same time however, he points out that owning an animal is already something entirely different than owning a football precisely because the ownership rights are limited by public law provisions-most of the things I can do to footballs I cannot do to animals since they would be considered forms of animal abuse. In other words, ownership in modern law is never an 'absolute dominium' but rather limited per definition by public law and public order, and this is not unique for ownership over animals.[52] If I own a national monument, I am also strongly limited in what I can do to it by public law regulations.

22. Should we then conclude the differentiation between animals and other goods is solely and entirely symbolic, rid of any further legal effect? Not necessarily. The non-thing-status of animals can possibly be interpreted as a way to give expression to the special treatment of animals as different from other goods that are object of ownership rights in fields of private law that have, at first sight, little to do with animal protection. Conceived as such, the Civil Code provision could increase the consistency in legal decision-making concerning animals in, for instance, tort law, family law, and civil procedure by codifying the idea that also for these purposes, the special nature of animals matters and should be taken into account. This section will expose the ways in which private law treats the animal different than it treats other goods, specifically in the application of family law regulations (4.1.), the way in which compensation for damage is measured (4.2.) and the degree to which animals are subject to seizure for debts (4.3.).

4.1. *Application of family law regulations*

23. A first situation in which the good-status of animals plays a role is within family law. After a divorce of separation, the goods that were commonly owned by the couple involved have to be divided among them- a situation that can easily give rise to conflict. In all four countries, provisions exist that deal with the division of goods or 'household effects' in case that conflict arises. When such goods or household effects include companion animals it means they are subject to division and it has to be determined which of the parties gets ownership over the animal. If animals are treated as goods, only considerations of ownership would be relevant in such determination. The question that stands central in this section is to what extent non-ownership related considerations play a role in cases concerning the placement of animals after separation of the owners: either based on a recognition of the existence of a bond between owners and animals that gives rise to rights to contact, or by taking into account the interests of the animal in the decision.

4.1.1. *Rights to contact with animals*

24. One can imagine that parties involved in ownership conflicts over animals often consider their relationship to the animal more alike one to a child than to an inanimate good. It is therefore not rare to find claims of parties to rights of contact or visitation with the animal,

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[50] The provision stipulating the rights of ownership (German Civil Code § 903 BGB; Dutch Civil Code Art. 5:1; Belgian Civil Code Art. 544; French Civil Code Art. 544) are thus still applicable to animals.

[51] Jansen (n 6) 190.

[52] Jansen (n 6).

based on the emotional bond they have with them. In all four countries however, in case law concerning the placement of animals after divorce, it is often emphasized that the regime of goods still applies to animals, even when they are distinguished from other things in the Civil Code. Courts often start with an explicit reminder that those provisions regulating the distribution of property (or household effects) after divorce are also applicable to animals, and those pertaining to children are not.[53] When one of the parties can make a stronger claim to ownership over the animal, for instance because he or she paid for it, the animal will be theirs. When the ownership claims of both parties are equal (no exclusive ownership of one of the parties can be proven or common ownership is clear) this means that the animal should be divided according to the principles of division of goods after divorce of the particular legal system.

25. In Germany, the emotional bond between parties and animals is only very rarely taken into account by the judge in the decision regarding ownership over an animal. In an early case of 1996, the judge of a local district court referred to the Civil Code §90a, stating that it entailed the recognition of the animal as 'fellow being' in the legal system, meaning that animals- in contrast to insensitive objects- cannot 'be dispensed of without consideration of their nature and feelings' and 'the spouse who has not received the dog can be granted the right to be with the dog at certain times.'[54] Likewise, in a case of 2014 before the Court of Appeal of Stuttgart, the judge took into consideration the fact that '[t]he family court has provided evidence of the dog's relationship with both parties and found that at the hearing, Babsi quickly wagged her tail at the applicant, was then picked up by her and remained on her lap', apparently as an indication that they had a good relationship.[55] Nevertheless, as in a case of 2003, the judge saw no legal ground to decide on the rights to contact that one of the parties claimed to have since the relevant provisions stipulating rights to contact 'only concern the rights to contact with children. A legal basis for regulating the visiting of pets cannot be created by jurisprudence, because this would exceed the limits of permissible interpretation'.[56]

26. Dutch case law is quite similar in this respect. Judges reaffirm that laws pertaining to children involved in divorce cases cannot be applied in analogy to companion animals: despite the differentiation with 'things', animals remain legal goods that are subject to the regulations applying to division of goods after divorce. Contrary to Germany however, animals are not automatically considered household effects. In a case of 2008 at the Court of Zutphen, the court stated that, if no explicit mention of the animal is made during division of the household effects, this means that it has not been divided. Consequently,

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[53] For instance in Germany: '[a]ccording to § 90 a sentence 3 BGB, the regulations applicable to things are to be applied to animals. Thus, the assignment of a dog is based on the rules of § 1361a BGB on the distribution of household items in separated life.' Court of Appeal Stuttgart (April 7, 2014), *Beschluss vom 07. April 2014 – 18 UF 62/14,* ECLI:DE:OLGSTUT:2014:0407.18UF62.14.0A. See also The Netherlands: Court of Zwolle-Lelystad (March 9, 2006) ECLI:NL:RBZLY:2006:AY5727, Court of Arnhem (July 13, 2010), ECLI:NL:RBARN:2010:BN3989,

[54] Local District Court of Bad Mergentheim (December 19, 1996) *Beschluss vom 19. Dezember 1996 – 1 F 143/95* ECLI:DE:AGMERGE:1996:1219.1F143.95.0A, §124.

[55] Court of Appeal (Senate for family matters) Stuttgart (April 7, 2014), *Beschluss vom 07. April 2014 – 18 UF 62/14,* ECLI:DE:OLGSTUT:2014:0407.18UF62.14.0A.

[56]Referring to §1684 and §1685 BGB. Court of Appeal Bamberg (June 10, 2003), *Beschluss vom 10. Juni 2003 – 7 UF 103/03,* ECLI:DE:OLGBAMB:2003:0610.7UF103.03.0A, §5.

even though the applicant maintained that the dogs had been divided together with the rest of the household, their placement still had to be considered separately.[57] In a case of 2007, the court furthermore pointed out that 'the parties are free to demand the juridical division of the dog, but for defining a visitation schedule, the court does not see a legal ground.'[58] This is confirmed again in a 2008 case. 'In any case, we cannot speak of a visitation schedule. The conditions for such construction are based upon juridically recognized interests of children and parents, that cannot be applied to analogy in property law'.[59] In a 2016 case, it is said again explicitly that a visitation schedule such as referred to in Book 1 of the Civil Code cannot be applied to animals, and therefore no right to contact with the pet can exist.[60]

27. In Belgium, different approaches have been taken by courts. The judge of the court of first instance of Marche-en-Famenne in Belgium was very clear on the question whether one could demand a visitation right to an animal that is owned by someone else. The idea that such right could be demanded, rested, according to him, on an incorrect analogy with the regulation in regards to children.[61] Also in France, analogy with the regulations concerning children is rejected. In a case of 2005 before the court of appeal of Besançon, the judge stated that it is not the responsibility of 'the judge delegated to the division of family affairs to rule, by an abusive reference to the legislation regarding children, on the custody of an animal.'[62] Already in 1983, the exact same stance was taken when the court of Paris had stated that referring to rights to contact and visit were based upon such incorrect reference to legislation applicable to children.[63]

28. In France as well as in Belgium, we do however also find some cases in which judges do allow the special nature of the animal to play a role, recognizing the affectional bonds that can exist between people and animals. In a French case of 2006, the judge decided the husband should get the dog because he had custody of the children and the animal was of particular emotional importance to them.[64] In a 2000 case in which the appellant demanded the right to visit and walk the dog that, after the separation, was living with the defendant, the judge of the Brussels Court of Appeal regarded her claim as founded and recognized that, as the appellant seemed attached to the dog, there was no reason that only the defendant should have the right to walk it.[65] Thus, the court gave her, what was described as a 'walking right' [*wandelrecht*] of one hour per week.[66] The judge in a 2019 case before the Court of Appeal of Antwerp went even further: even though the appellant did not have any ownership claims over the two dogs involved, the court recognized animals as 'part of the family' with whom an 'affectional bond' can be created that remains in place even after a divorce of the owners.[67] It was stated that 'anno 2019', animals can no longer be regarded

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[57] Court of Zutphen (April 29, 2008) ECLI:NL:RBZUT:2008:835.

[58] Court of the Hague (February 14, 2007) ECLI:NL:GHSGR:2007:AZ9125 § 4.

[59] Court of Zutphen (July 17,2008) ECLI:NL:RBZUT:2008:BG4395.

[60] Court of Gelderland (March 29, 2016) ECLI:NL:RBGEL:2016:1759.

[61] Court of first instance, Marche-en-Famenne KG (March 29, 1995)

[62] Court of Besançon (October 28, 2005) *1ere chambre civil, sect B, jurisdata 2005-290840*

[63] Court of Paris, (January 11, 1983). See Marchadier (n 40).

[64] Court of Dijon (June 15, 2006) *Gaz. Pal. 2006 n° 234 p. 13.*

[65] Court of Appeals, Brussels, (September 12, 2000) *AJT 2001-02, 551 § E.*

[66] Ibid. It should be noted however that the parties were common owners over the animal before the divorce.

[67] Court of Appeal, Antwerp (April 29, 2019) *2019/FA/46.*

as equal to other goods and are better considered 'quasi-goods'.[68] This recognition played a role in the decision that the appellant should be able to have the dog at least one week every two months, even though he had no ownership rights over it.[69]

4.1.2. *Interests of the animal*

29. A different way in which the special nature of animals plays a role in divorce and separation cases is through the recognition that animals have a stake in the outcome of the decision. Even though, as with the affectional bonds, no direct explicit legal ground exists for such interpretation, judges do frequently refer to the interests of the animal involved, sometimes only noting the suitability of the owner, but other times basing their entire decision upon the question with which party the animal would have a better life. In Germany, factors are for instance taken into account such as the fact that one of the parties did not know how to prevent pregnancy in a dog, which was referred to as speaking against 'his suitability as a dog owner'.[70] Apart from that, the capability of the parties is more generally considered, for instance in the following statement: '[t]here is no doubt that both spouses are perfectly capable of taking care of a Maltese dog, the respondent due to his early childhood socialization with dogs, and the applicant based on literature research and further education'.[71] Nonetheless, in the same decision, the court stated that it should be the interests of both parties to enjoy their co-ownership rather than the welfare-requirements of the dog that should be guiding the decision.[72]

30. Also in the Netherlands, reflection on the interests of the animal in the decision about its placement has been made by legal decision-makers. In a 2013 case at the Dutch court of Limburg concerning a conflict between two former spouses about the ownership over the dog, it was stated that 'the court considers first of all that, with respect to the balancing of interests, the interest of the dog has to be taken into account. The dog is a living creature that is dependent on the parties, who are responsible for its well-being as common owners.'[73] After that, it continued with an elaborate assessment of the abilities of both parties to care for the dog, taking into account factors such as 'the long experience with care-taking of this type of dog' of the woman, and the 'insecurity on the question whether the man possesses the adequate financial resources to take care of the dog' of the man.[74] Eventually, the court concluded that, since in the case the dog would be allocated to the man no adequate care could be secured, the woman would get the full ownership over it, as 'the interests of the woman and dog together weigh more than the interest of the man.'[75] In a 2018 case before the court of Gelderland, the interests of the dog are furthermore considered elaborately. It is stated that both parties 'are home during weekdays and make use of a dog walking service

[68] See also Van de Voorde (n 6).
[69] Even though, in the end, the court also concluded that there existed an oral contract between the parties.
[70] Court of Appeal Stuttgart (April 7, 2014), *Beschluss vom 07. April 2014 – 18 UF 62/14*, ECLI:DE:OLGSTUT:2014:0407.18UF62.14.0A, §10.
[71] Ibid.
[72] Court of Appeal Stuttgart (April 7, 2014), *Beschluss vom 07. April 2014 – 18 UF 62/14*, ECLI:DE:OLGSTUT:2014:0407.18UF62.14.0A.
[73] Court of Limburg (May 15, 2013), ECLI:NL:RBLIM:2013:CA0058.
[74] Ibid.
[75] Ibid. *(*Original tekst: *'dat het belang van de vrouw en de hond tezamen zwaarder weegt dan het belang van de man.')*

on other days, meaning that the circumstances in which they would care for the dog are comparable.'[76] In this case, use was made of a dog expert, who determines whether or not the dog would suffer from living with one of the parties only, and regular referral was made to the interest of the dog. In a similar case, the court even took the interests of the dog into account in reaching a conclusion about a visitation schedule. 'The dog seems to suffer under the behaviour of the two parties. If they think the interest of [name dog] is important, they should behave as such and conform to a strict performance of the regulation that [name dog] has become accustomed to during the previous years.'[77] Several other cases have been reported in which animal interests were considered relevant or even a sufficient ground to restrict property rights over it.[78]

31. In Belgium and France, similar remarks have been made. Especially those judgements that concern preliminary measures during divorce take the interest of the animal into account. In a Brussels case in which the applicant had claimed a form of co-parenting to the dog concerned, the judge concluded that it was undesirable to force 'the poor animal' to change its environment every six months.[79] Also in France, the idea that a dog would change environment constantly was considered and the opinion of an expert requested, according to which 'a permanent change of location would cause psychological problems for the dog.'[80] In a 2011 case before the court of Versailles concerning the placement of a dog, the judge noted that 'the current living conditions [of the husband], who lives in a house with a garden, are more in line with the needs of this animal.'[81] This was the first time that the interest of the animal was not only expressly mentioned, but also constituted, explicitly, the decisive criterion for the attribution of the animal during a divorce procedure.

32. Legal scholar Fabien Marchadier characterized the judgment as 'a remarkable and unprecedented development'. He argued that the interpretation of the judge should be construed as 'contributing to the consistency of the legal system. Because, taking into account the needs of the animal, the judges reconcile two prescriptions which operate in two quite different fields, but whose requirements can interact. On the one hand, article 254 of the Civil Code, specific to provisional measures pending the declaration of a divorce and the final settlement of the spouses' personal and property situation, considers only the interests of humans. On the other hand, articles L 214-1 and L 214-2 of the Rural Code, relating to the protection of animals, set out, in general terms, the duties which weigh on the owner of an animal due to the explicit recognition of the sensitivity of the latter. […] It does not seem incongruous that this general provision should be observed in all circumstances.'[82] Attention for the interest of animals was repeated in later cases, and the capacity of the parties to take care of the animal was taken into account, for instance in a 2014 case, in

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[76] Court of Gelderland (October 4, 2018), ECLI:NL:RBGEL:2018:4163.

[77] Court of Overrijssel (December 23, 2016), ECLI:NL:RBOVE:2016:5112.

[78] Charline De Coster, 'De Ontwikkelende Rechtspositie van Het Dier', *Recht in Beweging* (Maklu-Uitgevers 2017).

[79] Court of first instance Brussels, (December 28, 1999) *Rev.trim.dr.fam. 2001*, 315, note J.-P. Masson.

[80] Local District Court of Bad Mergentheim (December 19, 1996) *Beschluss vom 19. Dezember 1996 – 1 F 143/95* ECLI:DE:AGMERGE:1996:1219.1F143.95.0A, §129.

[81] Court of Versailles (January 13, 2011) *ch. 2, sect. 1, n° 10/00572*.

[82] Fabien Marchadier, 'Chroniques de Jurisprudence: Droit Civil Des Personnes et de La Famille' (2011) 1 Revue Semestrielle de Droit Animalier 43. See also Marchadier (n 40).

which the fact that the wife was a veterinarian was mentioned as a reason why she would get ownership over the animal.[83]

4.1.3. *Comment*

33. With some limited exceptions, it is clear that legal decision-makers are quite reluctant to take the special bonds between humans and animals into account in their considerations regarding the placement of animals after divorce, and reject the idea that humans have a right to contact with their (former) companion animal. To avoid an analogy with legislation concerning children, they emphasize that, for the purposes of family law, animals are still regarded as goods. On the other hand however, there seems to be an increasing willingness to take into account the interests of the animal in the decision. Visitation schedules in which the animal would have to change environment are rejected for fear of psychological damage to a dog, and sometimes the determinative factor in the placement is the ability to care for the animal, overruling considerations of ownership. Furthermore, as has become clear, the variety between the lines of reasoning of courts of different countries, but also within just one jurisdiction, is considerable: whereas some courts recognize 'affectional bonds' with animals as family members or decide that the animal should be with the one that provides the best care, others emphasize that there is legally no difference between a pet and a lamp. A problematic aspect of this observation is the fact that such decision may significantly be affected by the court and judges' personal views on the status of pets. Hence, separating couples are left in a perilous position in which the decision whether or not they will see their beloved pet ever again seems to depend, to a large extent, on the mood and personal preferences of the individual deciding their case.

34. From this comparison we can furthermore conclude that the amendment of the Civil Code to distinguish between animals and other things does not seem to be of substantial influence in the context of family law, since many of the cases discussed here took place before the provision was added. The need to create a special status for animals might better be regarded as a consequence; a way to make a trend explicit that is already going on. In line with the observations of Marchadier, this article proposes to regard the special treatment of animals in the context of divorce cases (especially when their interests are taken into account) as increasing rather than diminishing the consistency of the legal system since the interests and sentience of the animal are already recognized in public laws. The Civil Code provision differentiating between animals and things provides a bridge to make the responsibility of the owner for his or her animal have private legal relevance.

4.2. ***Determination of compensation for damage***

35. The good-status of animals is, secondly, relevant for tort law in cases in which compensation for damage to property has to be paid.[84] On the basis of principles stemming from Roman law, compensation for harms for which redress is given can be divided into two broad categories: material damage and immaterial or moral damage, of which the latter

[83] Court of Appeal Bastia, (January 15, 2014) *12/00848*.
[84] In Germany, §823 BGB. In the Netherlands, the duty to pay compensation is based upon 6:101 BW. In Belgium and France, the duty of compensation is based upon art. 1382 BW/CC.

covers all injury of non-patrimonial nature, including injury to reputation and feelings.[85] With regard to material damage, traditionally, the height of compensation is determined on the basis of the market value of the good that has been damaged: the aim is to return the owner to their financial status prior to the injury. As they are considered to be goods, damage to animals is regarded as damage to property of the owner which, when someone is found to be liable, should be compensated.[86] However, especially with regard to old animals their market value is very low or non-existent. The question central in this section is therefore whether and to what extent animals are treated differently from other goods in the determination of the height of compensation. We can distinguish between compensation for the animal when it has died and compensation for medical costs when the animal was wounded.

4.2.1. *Compensation for death*

36. In case of the death of an animal at the fault of someone else, in all four countries the owner can make a claim to at least the economic value of the animal, or the money needed to buy a similar kind of animal, sometimes including the costs made to bury or cremate the animal that died. A more interesting question is to what extent the owner can make a claim to compensation of the immaterial damage he or she has suffered at the loss of their companion. The German approach to compensation is, first of all, quite narrow: there is generally little room to claim compensation for pain and suffering of the owner, *Schmerzensgeld*. The central idea in determining all compensation for damage is the idea of proportionality and reasonableness: in case of the death of an animal, claiming *Schmerzensgeld* is not considered as such. This was emphasized in a case of 2011, where the court stated that '[a]ccording to Section 253 (2) of the German Civil Code (BGB), compensation for pain and suffering can be claimed from people who have injured their bodies, health, freedom or sexual self-determination. A compensation for pain and suffering for animals is not provided for in German civil law and is thus alien to it. The Civil Code recognized in § 90a BGB that animals as living beings are not things and are protected by special laws. But that doesn't mean that animals are equal to humans.'[87] This was confirmed in several other decisions.[88]

37. In the Netherlands, the overall approach is similar: compensation for damage should, at all times, be 'reasonable and objective'. In case of the death of an animal, only the market value and the costs made as direct consequence of its death- such as, for instance, cremation costs- have to be compensated.[89] In the determination of the market value of a dog that was killed by another dog before the court of Limburg, the owners had argued that the value of their dog was higher than at the moment they bought it because they had given it a full education and upbringing. The judge however rejected this argument, stating that 'it cannot follow the claimants in their statement that their 'fully domesticated' dog has

[85] PR Handford, 'Moral Damage in Germany' (1978) 27 The International and Comparative Law Quarterly 849.
[86] Germany: §823 BGB, The Netherlands: art. 6:162 BW, Belgium: art. 1382 BW, France: 1382 CC.
[87] Court of first instance, Wiesbaden (August 18, 2011), *Urteil vom 18. August 2011 – 93 C 2691/11 (34)*, §15.
[88] See for instance Federal Court of Justice (March 20, 2012) BGH, *Urteil vom 20. März 2012 – VI ZR 114/11 –(BGHZ 193, 34-38);* District Court of Aachen (August 19, 2010) *Urteil vom 19. August 2010 – 8 O 483/09*.
[89] Dutch Civil Code article 6:106 BW simply does not entail immaterial losses.

increased in value, since there are no convincing grounds for such assumption': rather, it stated that the value of the animal decreases with age and was determined at a 100€ below its purchase price.[90] Emotional damage caused by the loss of a companion animal can furthermore not be compensated: this is only possible in case of the loss of a (human) family member and severe physical suffering has to be proven. In a case of 2013 before the court of Limburg, the judge stated with regard to the immaterial damage that was claimed by the owner whose dog had died, that 'the law does not entail the possibility to claim monetary compensation for the sadness they experience at the loss of their dog'.[91]

38. In Belgium and France, compensation for immaterial damage is largely considered a symbolic matter, mainly serving to recognize the pain of the involved, generally referred to as 'moral damage'. It is much more broadly recognized than in The Netherlands and Germany. In order to make a claim to this form of compensation in regard to humans, a personal bond should exist with the victim, the so-called 'affectional bond'. The strength of such bond is important in the determination of the height of compensation.[92] In the context of moral damage for animals, a landmark case was the judgment of 1962 of the Court of Cassation of France regarding the death of a horse, which stated that 'the death of an animal can, for its owner, be the cause of a subjective and affective disadvantage, which can give rise to reparation', deciding that the owner should get compensation larger than the market value of the animal.[93] In Belgium, a similar decision was made already in 1954, when the judge determined the compensation at almost twice the economic cost of the dog that was killed, taking into account the horrible experience of the owner in losing his loyal companion.[94] Also in later cases, judges often assumed the existence of an affectional bond between animal and owner in their determination of the height of compensation for moral damage, hereby applying the regulations for moral damage in the case of family members in analogy.[95] For instance in a 2016 case before the court of Liège, the judge referred to the affectional bond between the owner and the dog that had died and, even though it affirmed that loss of a dog could not be regarded similar to a human loss, awarded moral damages of 500€.[96] Over the last years, some French as well as Belgian courts have however determined the compensation for moral damage at a symbolical 1€, reaffirming that 'the uniqueness of a human person is still of another dimension than that of an animal.'[97]

39. In all four countries, the determination of the compensation for animals when they have died as a result of someone else's fault cannot be regarded as isolated from their broader view on liability and tort. Compensation for immaterial damage at the loss of a companion

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[90] Court of Limburg (April 24, 2013) ECLI:NL:RBLIM:2013:BZ8474P

[91] Ibid, §4.16.

[92] Compensations for immaterial loss have for instance been awarded by French courts when the claimant showed that he was passionate about horse riding and regularly spent time with the animal. See Court of Appeal, Caen (October, 1 1996) *1996–047976*; Court of Appeals, Rouen (February 26, 2009) *2009–376567*.

[93] French Court of Cassation, (January 16, 1962) 199. Sometimes referred to as *Arret Lunus*. Retrieved from: https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000006960299, accessed on April 22, 2020. The relevant provisions in this regard are Articles 1927, 1928, and 1147 of the French Civil Code.

[94] Police court judge Brussels (November 24, 1955) *113*.

[95] Police court judge Ghent (June, 30, 2000).

[96] Court of Liege (February 23, 2016) *RGAR 2016, nr. 15338*

[97] Court of Brugge (February 7, 2005) *NJW 2005, 316*. See R De Corte, 'Eén Euro Morele Schadevergoeding Voor Verlies Huisdier' (2015) 1 Juristenkrant 6.

animal is rejected in Germany and the Netherlands, whereas in Belgium and France, the claim for immaterial 'moral' damage seems more readily accepted. Furthermore, whereas one might have expected that in the Netherlands the notion of intrinsic value (which, as was discussed, forms the reason for the differentiation between animals and things to begin with and entails the idea that animals have more than solely economic value)[98], plays a role in this regard, such interpretation has not been taken by legal decision-makers. It is likely that, since the concept is not repeated in the Civil Code provision, private law judges are simply not aware of the concept. The broader difference can thus mainly be explained from the fact that the overall approach to immaterial compensation for damage is much more restricted in the first two countries, whereas in Belgium and France, whose tort law is in both cases based on the Napoleonic code of 1804, moral damage has always been awarded more easily.[99] Nevertheless, the differences between the amount of money that is awarded (a symbolical 1€ or an uncannily precise number of 3,048.98€ for the immaterial damage following the death of a horse[100]) is stunning. The question is whether the same difference exists with regard to compensation for material costs.

4.2.2. *Compensation for medical costs*

40. Based on the idea of proportionality, compensation to restore goods in case liability for damage is, in Germany, regarded as 'disproportionate' when it exceeds the market value of a good.[101] However, the comprehensive changes in the German Civil Code put animals in an exceptional position: §251 II-2 BGB now states that '[t]he expenses resulting from the healing treatment of an injured animal are not disproportionate if they significantly exceed its value.'[102] In a case before the Federal Court of Justice, this addition has been further clarified as follows:

> 'In the event of an animal being injured, §251 II-2 of the German Civil Code (BGB) stipulates that the legal treatment of animals (Art. 20a GG , § 1 TierSchG) means that the expenses incurred in the medical treatment of the animal are not disproportionate when they significantly exceed its value. Based on the responsibility of humans for the animal as a 'fellow creature' and the fact that it is a pain-sensitive living being, the relevant provision prohibits a strictly economic approach when assessing damage to animals. Provided that treatment was actually carried out, § 251 II-2 BGB requires that the interests of the injuring party not only consists in the value of the animal, but also the intangible interest in restoring its health and physical integrity, resulting from the responsibility for the animal.' [103]

This quote eloquently shows how the German perspective on animals in private law is a comprehensive approach that is closely connected to the provisions of public law concerning animals: the court makes a direct reference to the mentioning of animals in the constitution

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[98] See section IIIB

[99] See for a study in which the differences are further analysed Vernon Palmer, *The Recovery of Non-Pecuniary Loss in European Contract Law* (Cambridge University Press 2015).

[100] This was a case before the Court of Appeals Limoges, (May, 3 2005) *2005–275022*.

[101] For vehicles, disproportionate is about 130% of the market value. See German Federal Court of Justice (October 15, 1991) *BGH - VI ZR 67/91*.

[102] German Civil Code, §251 II-2 BGB.

[103] German Federal Court of Justice (October 27, 2015) *Urteil vom 27. Oktober 2015 – VI ZR 23/15* §12.

and the recognition of animals as fellow creatures in the *Animal Protection Act*. In an earlier case, it was already emphasized that in deciding where the border of proportionality lies, 'it is always necessary for the judge to assess the overall circumstances of the specific individual case. The individual relationship between the injured and the injured animal can also be important.'[104] The border beyond which the medical costs of an animal without any market value are to be considered disproportionate, was, in an earlier case concerning compensation for a cat, determined at around 1500€.[105] For an 8 year old dog which was purchased for 175€ and was hit by an inattentive driver, the medical costs of 2200€ were not considered disproportionate.[106]

41. In the Netherlands, jurisprudence shows that in case that the animal was wounded, the medical costs have to be compensated as well as all costs surrounding its medical treatment (such as the day free from work and travel costs), as long as they are 'reasonable and adequate', even though no provision similar to that of Germany exists in the Civil Code: the costs are simply regarded as part of the material damage.[107] In a 2005 case before the Court of Zwolle regarding the medical costs of over 1000€ made for a cat that had a market value of below 50€, the judge stated that 'it is generally known that companion animals such as dogs and cats are regarded a part of the family within which they fulfil a certain affective/ emotional role. In view thereof, not every cat is the same, and it is understandable that the owner of the cat did go beyond its market value to save it.'[108] It decided that the defendant, who was found liable, had to pay the full amount.

42. In Belgium and France, the approach to the compensation of medical costs is similar but, in both countries, largely dependent on the discretion of the judge since, unlike Germany, no provision exists in the Civil Code that is specifically concerned with the compensation for animals. A case of 2015 before the court of Antwerp concerning a small dog with a market value of about 450 € had to be given medical attention after it suffered a violent attack by someone else's dogs, amounting to over 1800 €. The defendant pointed to the fact that animals are goods (the provision differentiating animals from other goods had not yet been adopted) in her argument that this amount was not in accordance with the market value of the good. The judge however rejected this argument, stating that 'one cannot put a dog and a piece of furniture at equal footing. A dog is a living creature that has its own place in a family [...]. One cannot require the appellant to euthanize the dog immediately.'[109] A 2005 case in Ghent had come to the same conclusion: even though the pony involved was old and the chances on full recovery small, the judge decided that 'a companion animal- even when it is considered a good- has an affectional value for its owner, which does not diminish with time; *a contrario*, the opposite might be true.'[110] Interestingly,

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[104] Ibid.
[105] District court of Bielefeld (May 15, 1997), *Urteil vom 15. Mai 1997 – 22 S 13/97*
[106] Court of first instance, München (December 6, 2013), *Urteil vom 6.12.13 – 344 C 1200/13*. The judge also referred to §251-II-2 in his decision.
[107] There is hardly any academic literature on the topic; see for a non-academic overview: https://www.consumentenbond.nl/aansprakelijkheidsverzekering/huisdieren-en-aansprakelijkheid, accessed on April 20, 2020.
[108] Rechtbank Zwolle-Lelystad (February 8, 2005), *ECLI:NL:RBZLY:2005:AT2546*.
[109] Magistrate of Antwerp (September 15, 2005) 6. *RW 2015-16, 356*. See also Charline De Coster, 'Morele Schadevergoeding Bij Dierlijk Lijden: Hoe Ver Gaat Het Sentiment?' (2018) 6 Tijdschrift voor Belgisch Burgerlijk Recht 335.
[110] Court of Ghent (October, 10 1997) *RW 1999-2000, 502*. See also Van de Voorde (n 6).

the court thus took the opposite approach as that of an earlier discussed Dutch case, regarding the value of the animal as increasing rather than decreasing with time.

4.2.3. *Comment*

43. Even though small differences between the four countries can be identified, the general picture shows clearly that, in case an animal is injured, judges seem much more open to consider the special nature of animals and their emotional value for human beings than when it has been killed. Whereas in many of the cases discussed in the previous section, the determination of compensation for the animal was quite similar to the determination of compensation for any other good, when the animal is hurt and in need of treatment, judges suddenly refuse to treat animals as goods and emphasize their uniqueness and bond with humans. On the one hand, this is understandable, as medical costs easily exceed the market value of an animal and most of the animals would instantly have to be declared 'total loss', but on the other hand, it amounts to an inconsistency in the application of the regime of goods. Only Germany has solved this problem by introducing an explicit reference to the exceptional treatment in its Civil Code. Nevertheless, the different approach to the killed versus wounded animal creates the strange situation that, if a person is responsible for wounding an animal (for instance when their dog attacks a cat), they can better let it kill the cat to make sure the costs remain limited.

4.3. ***Execution of seizure for debts***

44. The good-status of animals is lastly also relevant for the execution of seizure for debt. When an individual is unable to pay his or her debts, in all four countries certain articles specify the conditions and circumstances for the collection of their property.[111] As goods, animals would, in theory, be subject to seizure just as other goods. However, in all four countries animals take a somewhat special position. The question that stands central in this section is to what extent the animal is treated differently from other goods in the context of seizure for debts of firstly, companion animals and secondly, other kinds of animals.

4.3.1. *Seizure of companion animals*

45. In Germany, the fact that special conditions apply to animals in the context of seizure for debts was made explicit at the same time that it amended the provision together with the broader change of the legal status of animals in 1990. Since then, §811c ZPO holds that '[a]nimals that are kept at home and are not used for commercial purposes are not subject to seizure'.[112] An exception is made for animals that have a very high value if the debt collector would otherwise suffer a substantial hardness, as long as it is in line with the requirements of animal welfare.[113] In a 2007 case before the court of Berlin, use was made of such exception as the koi carpers and parrots of the defendant constituted her only valuable property that 'despite of the emotional bound that exists between the defendant and her fish and birds' could be taken for seizure under the exception.[114]

[111] German law of civil procedure: § 885 ZPO
[112] German law of civil procedure: § 811c-1 ZPO
[113] German law of civil procedure: § 811c-2 ZPO
[114] District Court of Berlin (March 16, 2007) - *81 T 859/06*. ECLI: DE: LGBE: 2007: 0316.81T859.06.0A

46. In the Netherlands, no formal mention is made of animals in the context of the law on administrative seizure,[115] meaning that in theory, all animals are possibly subject to seizure just like other goods.[116] Even though it does not happen often as companion animals hardly represent any value, cases have occurred in which the dogs of debtors were taken away.[117] However, a revision of the law concerning seizure has been proposed to the parliament. In this proposal, a distinction between animals and other goods is made in all relevant articles[118] and companion animals of the executed, as well as those of his family members living with him and the food and products necessary to care for the animals are excluded from the possibility of seizure.[119]

47. Belgium and France both also exclude companion animals from the possibility of seizure. In Belgium, 'companion animals' are simply excluded from all seizure possibilities in article 1408-1.1 of the procedural law,[120] whereas in France, art. R112-2 of the code for civil procedure excludes 'companion- or guarding animals' kept in the house insofar as necessary for the survival of the seized and his or her family.[121] Even though one can wonder whether companion animals are ever necessary for survival, this provision has broadly been interpreted as extracting companion animals from the possibility of seizure for debt. Nevertheless, in both countries it is not certain whether a horse that is kept outside of the living area falls below the exception: the provisions have been mainly interpreted as denoting only 'small' companion animals that are kept inside the house.

4.3.2. *Seizure of other animals*

48. In Germany, §811c clearly only excludes companion animals from seizure for debt. Other animals, in principle, can thus be subject to seizure. A secondary article that is relevant in some cases is however §765a ZPO on enforcement measures in the context of seizure for debt. It states that, '[s]hould the measure concern an animal, the execution court is to consider, in weighing the matter, the responsibility that the person has for the animal.'[122] In case law, it has been clarified as requiring that '[t]he bailiff must take account of the interests of animal protection and the provisions of the *Animal Protection Act* when he takes the animals away from the property.'[123] Hence, more than an exception to seizure

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[115] According to art. 435 BW all goods that are susceptible to seizure can be seized. There is only an exception made for goods that are used for the public good (art. 436). As animals are still goods they can be subject to seizure.

[116] The association of debt collectors (*Vereniging van deurwaarders)* discourages its members to seize companion animals, but it is still legally possible.

[117] For instance in 2018 when the dog of a citizen of Bergen, the Netherlands, was taken away. See : https://www.limburger.nl/cnt/dmf20181024_00078375/openstaande-schulden-deurwaarder-neemt-hond-in-beslag. Accessed on April 14, 2020.

[118] The proposed art. 448 will say 'moveable goods and companion animals', *Wijziging van het Wetboek van Burgerlijke Rechtsvordering en de Faillissementswet in verband met de herziening van het beslag- en executierecht*, Tweede Kamer, vergaderjaar 2018–2019, 35 225, nr. 2.

[119] Ibid, art. 447 (g) of the proposed law.

[120] Belgian procedural law art. 1408 §1.1 *Gerechtelijk Wetboek.* Parl. St. Kamer 1982-83, nr. 625/78.

[121] France art. R111-2 §14 *Code des procédures civiles d'exécution.* This is the reglementary article adherent to article L112-5 of the same code.

[122] German law of civil procedure §765a ZPO

[123] See Federal Court of Justice (April 4, 2012) BGH, *Beschluss vom 04.04.2012 - I ZB 19/11*, §15.

for debt, this provision should be understood as replacing the responsibility for the care for the animals to the executor of the measure before he hands the animals over to a facility for selling them.[124] In the same case, the court emphasized that even though case law was divided on the issue, the differentiation between animals and things in the Civil Code (§90a) meant that the provisions relevant to (moveable) goods still applied to animals as well. This line of reasoning has been critiqued by German scholars as the court found a legal base to apply the regulations pertaining to goods to animals in the very article that aimed to give shape to the special status of animals in private law.[125]

49. In the Netherlands, even when the proposed amendment of the law on seizure will be accepted, animals kept for any other purposes than companion are fully susceptible to seizure: only companion animals would be formally excluded. Belgium and France however both put animals kept for farming purposes in a somewhat exceptional position by excluding some of them from possible seizure, arguably insofar as they were historically considered as crucial for the survival of people. In Belgium, according to art. 1408 §1.6 'one cow, or twelve sheep or goat, at the choice of the seized, together with one pig and twenty-four birdlike animals, just as the hay, food and grain necessary for the cattle during one month' are excluded from seizure.[126] In France, simply those animals 'intended for the subsistence of the seized as well as the food necessary for their breeding'[127] are excluded.

4.3.3. *Comment*

50. It is not at all certain that the exclusion of animals from the possibility of seizure constitutes their significantly differential treatment as compared to other goods. Indeed, one could question whether the exclusion of companion animals has anything to do with their special nature, or whether they are just excluded together with some other goods that are considered as having little economic value. From the preparatory work it becomes clear that in Belgium, the reason for the exclusion is the aim to protect (weak) persons from the emotional shock that can be the result of suddenly losing their companion animal, implying a quite anthropocentrically motivated *ratio legis*.[128] The distinction between animals kept 'at home' and animals kept for economic purposes should however be noted and might indicate that some recognition of an emotional bond between humans and animals is implicitly present. Especially in Germany, the provision §765a *ZPO* emphasizing the recognition of the human responsibility for his or her animal is an example of some distinction. Apart from that, in a Belgian case discussed earlier, the court referred to the exclusion of the animals from the possibility of seizure as evidence of the fact that animals are not like other goods and should be considered 'quasi-goods', even before the amendment of the Civil Code took place.[129]

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[124] It has also become clear from case law that the possibility of destruction according to § 885-4 Clause 1 half. 1 ZPO does not exist for animals taken for seizure because this would violate the Animal Protection Act. See Federal Court of Justice (April 4, 2012) *BGH, decision of April 4, 2012 -I ZB 19/11* and Federal Court of Justice (November 8, 2013) *BGH , decision of 08.11.2013 - V ZR 185/13*.

[125] Patrick Bruns, *Anmerkung*, NJW 2012, 2890-289.

[126] Belgian procedural code, 1408 §1.6 *Gerechtelijk Wetboek*.

[127] France procedural code Art. R111-2 §15 *Code des procédures civiles d'exécution*.

[128] Van de Voorde (n 6) 214.

[129] Court of Appeals, Antwerp (April 29, 2019) *2019/FA/46*.

5. Implications

51. The above described special treatment of animals in private law might, to some, feel somewhat awkward as it, at times, seems to break with the central dichotomy between the person and the thing. Interests of non-persons are taken into account in private law, sometimes even construed as restrictions on property rights of legal persons, and their monetary value is determined at a value that greatly exceeds their market value. At the same time however, it is clear that the exclusion of animals from the category of 'goods' or 'things' does in no way constitute their recognition as full subjects of law. In this section, the implications of the special status of animals as some kind of 'third' category will be analysed.

52. A first important observation that can be made based on this study is the fact that the changing status of animals in private law cannot be regarded as an isolated, abstract issue, but is closely intertwined with the specific legal context and particular approach to animals in public law that is highly culturally determined. This became especially clear from the case of Germany, where also in private law cases, judges tend to refer to the underlying idea of 'animals as fellow beings' stemming from the German *Animal Protection Act*, and reference is made to the constitutional mentioning of animals, whereas, in the Netherlands, the notion of intrinsic value is repeated throughout all animal legislation. Even though the four amendments of the Civil Code are relatively similar in their symbolic function and often mutually inspired,[130] they manifest themselves differently as they are interpreted within the existing legal framework in which a particular view on animal protection is already incorporated. The differences between the legal cultures also clearly matter with regard to the way in which non-animal related legislation is applied to animals. Especially the compensation for damages is interpreted very differently in Belgium and France, where the idea of 'moral' compensation is much more entrenched in tort law than in the other two countries. It is therefore that is imprecise to speak of 'the' status of animals as the title of this article is guilty of: instead, it is more correct to always refer to the specific context in which this status manifests itself.

53. A second lesson we can draw from the changing status of animals in private law is the fact that it challenges certain dichotomies that are often taken for granted. First of all, this study seems to indicate that the position of the non-human does not necessarily have to be approached in binary terms and defined in terms of full subjectivity or mere objectivity. It has become clear that it is possible to envision a situation that goes beyond the traditional dichotomy, in which the animal is still regarded as property and 'legal good' in those situations in which that conception is relevant (for instance to hold its owner liable for the damage it causes), but for other purposes (for instance in divorce cases), can be regarded as a sentient being with interests that should be taken into account and weighed even *against* those of the owner. As certainly with regard to companion animals the idea of extracting them from the property regime (as many abolitionist animal rights theories propose) might not always be desirable, this is an important observation that could be a starting point for

[130] In the legislative proposal for the Belgian amendment, a comparison is made with the Netherlands and Quebec to define the way in which Belgium should amend its Civil Code. See Belgian Room of Representatives (July 16, 2019) *Belgische Kamer Van Volksvertegenwoordigers, Wetsvoorstel houdende invoeging van boek 3 "Goederen" in het nieuw Burgerlijk Wetboek, DOC 55 0173/001.*

further investigation with regard to the ways in which the desired degree of subjectivity for animals could be achieved.[131]

54. The construction of animals as a category 'in-between' the person and the thing furthermore also challenges the public versus private law dichotomy, in the sense that the special status of animals is largely derived from the public legal protections addressing them. In other words, the special status makes clear that private ownership over animals is inherently linked to and restricted by public law. Even though this was in practice already the case before the provisions on animals as a separate category were introduced, the intertwinement has now become more explicit. Indeed, as some of the German cases showed, judges refer to the public law protections of animals as part of the overall legal approach to the animal and speak about the recognition of animals as 'fellow beings' by 'the legal system'. Also with regard to the placement of animals after divorce the central idea seemed to be that the responsibility and capability to care for an animal that is required by public animal protection acts works through in private law when the suitability of the owners as animal carers is evaluated. In this context, it is clear that ownership is not primarily defined by the right to exclude others, but very much by the nature of the animal as living being, and the responsibility of the owner to look after it. Rather than horizontally connected to other possible owners, the ownership relation in this regard seems to be one *between* the owner and the owned, in which not only the right of exclusion of others plays a role.

55. The idea that, in order to give shape to a coherent and comprehensive legal approach to non-human entities in law, the binary explanation of law should be overcome, aligns with the idea of 'more-than-human legalities' as it was introduced by Irus Braverman.[132] Based on the notion that '[b]ringing nonhuman forms of agency into (legal) existence seems to depend not only on acknowledging animals as non-things [...], but also as non-persons, in the sense of being something other than the person defined according to the model of human agency',[133] she describes the situation of more-than-human-legalities as a legal sphere that recognizes other than human existences as intrinsically relevant for law. At the same time however, rather than advocating a transition to yet another all-encompassing paradigm such as 'biocentrism', the idea of 'more-than-human legalities' is 'a dynamic and fluid approach that makes visible and acknowledges the myriad relational ways of being in the world, their significance to law, and in turn, law's significance to these other modes of existence'.[134] The other modes of existence Braverman refers to could in theory not only include animals but also, for instance, non-human forms such as sentient robots or cyborgs.[135] Even though a thorough analysis of this view lies outside of the scope of the current article, the concept of 'more-than-human'-legalities seems very well suited to describe the non-binary situation that the current analysis has laid bare.

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[131] A very helpful theory with which to approach legal personality as a bundle concept instead of an 'all-or-nothing-package' is Visa Kurki, *A Theory of Legal Personhood* (Oxford University Press 2019).

[132] 'More-than-Human Legalities Advocating an 'Animal Turn' in Law and Society' in Austin Sarat and Patricia Ewick (eds), *The Wiley Handbook of Law and Society* (John Wiley & Sons, Inc 2015); 'Law's Underdog: A Call for More-than-Human Legalities' (2018) 14 Annual Review of Law and Social Science 127.

[133] CB Bevilaqua, 'Chimpanzees in Court: What Difference Does It Make?' in Y Otomo and E Mussawir (eds), *Law and the Question of the Animal: A critical jurisprudence* (Routledge 2013) 85.

[134] Braverman, 'Law's Underdog: A Call for More-than-Human Legalities' (n 132) 141.

[135] Donna Haraway, 'The Cyborg Manifesto', *Simians, Cyborgs, and Women* (Routledge 1991).

6. Conclusion

56. This article aimed to shed light on a remarkable development taking place in private law across different European jurisdictions in which a special status is created for animals that does not equal that of other legal things. The relevant Civil Code provisions of four western-European legal systems were compared in order to analyse how the development manifests itself differently in different legal cultures, taking into account the degree to which legal decision-makers tend to treat animals differently from other goods that are owned. It was found that, in some cases, animal interests are taken into account in property conflicts during divorce, compensation for damages to animals greatly exceeds their market value, and animals are, to some degree, excluded from the possibility of seizure for debt. It became clear that the legal status of animals as non-things creates sort of an in-between category in the Civil Code that challenges some of the central dichotomies of the legal system.

57. Nevertheless, it has become clear that the new status of animals is not at all comparable to that of the legal person. As the formulation and interpretation of the Civil Code provisions make clear, the motivations for the amendment are mainly symbolic and the intention is not to change the status of animals into that of a subject of law. Animals remain goods and objects of property rights for most purposes, and legal decision-makers only consider the special nature of animals to a limited degree. The main aim of the provisions differentiating between animals and other goods therefore seems to be to emphasize that public legal protection of animals prevents reducing them to mere goods in all situations. Rather than a radical change, I propose to regard the special status of animals in the Civil Code as the codification of a broader trend that has been taking place over the last decennia in which the intrinsic relevance of animals for law is increasingly recognized. The provision could then be a promising catalysator in the quest for a more comprehensive and consistent legal approach to animals that aligns with the degree of concern we see for animals in society of today.

58. The comparative approach taken in this article has shed light on two correlated issues that could be helpful for further studies of the animal in private law. First of all, the importance of culture-specificity in the private legal approach to animals should always be acknowledged. The efficiency of a specific legal change depends, especially in private law, largely on the degree to which it aligns with the legal culture of a particular national context. Even in the case of four relatively similar civil law countries, their approach towards the protection of animals is characterized by a specific discourse of animals as, for instance, fellow creatures, or sentient beings, that has been given shape over decades. Such particular concepts should be guiding in the possible evolution of the legal framework. The second issue has to do with the realization that it is not necessary to explain private law in binary terms, solely with respect to the absence or presence of legal personhood. A more constructive and in-depth image can be painted when we consider that animals already constitute a third category in-between the person and the thing.

59. Lastly, it should be noted that, in the context of the broader debate regarding the moral and political rights of animals, a contribution this article has made is the observation that legal personhood might not be necessary in order to establish some of the advantages that humans and corporations enjoy in our present legal system. Indeed, to a third category

certain aspects of legal personality could, in theory, be attached that have the consequence that the animal protection provisions can function more efficiently.[136] This limited approach might prove adequate in the civil law context in which the formal recognition of animal personhood seems still pretty far away. Eventually, this would lead to a situation in which the legal realm can only be explained as a gradual 'more-than-human' legality in which several entities hold personality-related incidents and rights to different degrees. The European development in which a Civil Code category is created for animals that lies somewhere in between the person and the thing contributes to the trend towards such a more dynamic and 'more-than-human'-legality.

[136] A possible way in which we can envision such a situation is the dissolution of legal personhood in the recently developed theory by Kurki (n 131).

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