



## THE RIGHT OF DOMESTIC ANIMALS IN THE MULTISPECIES FAMILY



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### ABSTRACT

This article analyzes the evolution of the concept of family; domestic animals, within the scope of the multispecies family; animal sentience and established rights; custody, in case of dissolution of the multispecies family, and the updating of legislation. To address this topic, focus was given to updating the Civil Code. The objective of this research is to highlight the subjects proposed in the article. For this, exploratory research was used as a methodology, using websites, books, articles and news. The main authors used in the research are: Gary Francione, Juliana Soares de Oliveira, Lewis Henry Morgan, Lima apud Lourenço, Marianna Chaves, Maria Berenice Dias, Michele Faria de Sousa, Pablo Stolze Gagliano, Roberta Salvático Vaz de Mello, Rodolfo Pamplona Filho and Flávio Tartuce. The results indicated that the Brazilian legislation, although delayed, has been updating itself in the integral protection of the multispecies family, and that the legal system has as its main point, in decisions, to protect the welfare of the animal and the affective bond between animals and humans. It is clear that the discussion of the topic, together with the significant increase in demand, makes evident the need to address the subject, as well as the need for updated legislation to guarantee the rights of families, animals and society in general.

**Keywords:** Multispecies family, Domestic animals, Animal sentience.

## INTRODUCTION

The concept of family is something that never remains stationary, given that, over time, society changes and so do social relations. Family, which in the past was strictly related to the blood tie, has been modified and becomes something that has as its main point the affective bond, that is, affective coexistence as a necessary aspect to configure the family bond.

It is easy, therefore, to see that the concept of "family" has undergone strong and constant changes, and it is necessary for society, in general, to update itself.

It is possible to verify that animals are increasingly present in people's daily lives, and living with them daily. These changes in habits are noticeable in markets, shopping malls, bars and restaurants, for example, places that were exclusively intended for people and that over the years, these places have realized the real need to modify and personalize their service, also accepting animals in these spaces.

In view of this, it is clear that animals, which are sentient beings, that is, which have the ability to feel positive and negative emotions, are increasingly gaining space in society, which changes over time and it is necessary to adapt to current customs.

It so happens that, in the legal sphere, this issue is outdated, and animals are still characterized, according to the Civil Code (Law No. 10,406, of January 10, 2002) as objects, movable property, where their guardian is seen as the owner, also characterizing animals as mere objects, a fact that is noticeable that is changing in society.

With human evolution, it can be seen that the role of animals has been changing, considering that, in the past, they were used mainly as a resource for the survival of families.

Currently, animals are more related to the affective aspect, being part of people's daily lives as they have always been, but with a different role, much more related to the affective bond.

Analyzing from another aspect, it is also possible to perceive the need for this new legislation to address domestic animals in the family aspect, given that animals are considered, by many of their guardians, as an integral member of the family, and it is very common nowadays to adopt these animals.

After daily interaction, the affective bond generated between the animals and their guardians is evidenced, which is already a sufficient requirement to configure the affective bond between them.

However, it is common for the affective ties between family members to be broken, as in the case of a divorce, making it necessary to have the intervention of an impartial third

party to resolve the conflict, ensuring the well-being of all involved. Often, after these conflicts, it is necessary to establish shared custody of the animal, making it evident that it is essential to seek legal support for this legal relationship aimed at the family environment, dealing with this "multispecies family" modality and the rights inherent to these animals.

As it is already known, family is the object of much discussion and updating because it is common for family conflicts to occur and the concept of family undergoes constant changes over time, requiring constant improvement of legislation to guarantee the rights of these families and society as a whole.

The objective of this scientific article is to discuss animal law, with emphasis on the multispecies family, analyzing how animal rights relate to the institute of the multispecies family.

It was also sought to highlight the need for updated legislation capable of regulating, in a cohesive way, the rights of animals, in order to inform the reader of the need to update the legislation that regulates domestic animals, in addition to demonstrating the real need for legislation that characterizes the animal as a subject of rights.

The objectives of this work are: a) to develop the concept of family with a focus on its constant change in our society as well as human habits; b) expose the fact that certain situations that a short time ago were considered normal attitudes for the time may necessarily be something retrograde or outdated with the passage of time due to constant human evolution; c) highlight the reason for characterizing domestic animals as sentient beings, different from what is established in the Civil Code of 2002, which characterizes animals as moving beings; d) to evidence, through decisions rendered by the Court of Justice of Paraná, the point of view of the legal system in relation to the right of domestic animals, await and the multispecies family. To carry out this search, the words "guard", "pets" and "multispecies family" were used.

In order to achieve these objectives, it is necessary to follow some steps, demonstrating the real and present need to establish the protection of the rights of domestic animals and the multispecies family, through exploratory research.

The exploratory research will have primary sources, through articles, study projects, secondary sources through books and manuals and decisions of the Court of Justice of Paraná to evidence, in practice, how these updates that have occurred in the family and in society in general are being discussed.

The main authors used in this research were Lewis Henry Morgan, Marianna Chaves, Lima apud Lourenço, Pablo Stolze Gagliano, Rodolfo Pamplona Filho, Maria Berenice Dias, Gary Francione, Juliana Soares de Oliveira, Roberta Salvático Vaz de Mello,

Michele Faria de Sousa, Flavio Tartuce among others, as well as websites, such as World Animal Protection, and decisions of the Court of Justice of Paraná.

To highlight the proposed subject, this article is divided into topics that describe the main pertinent issues.

In the first part, the concept of family will be developed, through some notorious events on the subject and the insertion of the domestic animal in the family. Soon after, the concept of multispecies family will be developed, its main characteristics and the main factors for the emergence of this new concept of family. Next, what is called "animal sentience" will be developed and how the legal system sees domestic animals and their legal protection. So that it can then be developed through the analysis of judicial decisions, where the keywords 'custody' and 'pets' were used in the research carried out at the Court of Justice of Paraná to show how the custody of domestic animals in cases of family separation is being approached and decided and finally, the main changes that should occur in the year 2024 in the Civil Code in relation to family and domestic animals will be developed.

## **THE FAMILY AND THE INSERTION OF THE DOMESTIC ANIMAL**

Family is something that has existed since the dawn of civilization. In the beginning, human beings, seeking a better way of subsistence and living more securely, lived together with other humans, as the grouping in the family helped protect individuals against enemies and also facilitated hunting and gathering food (Porfirio, n.d.).

According to the studies of anthropologist Lewis Henry Morgan, in his book "The Origin of the Family, Private Property and the State"

Family is the active element; it never remains stationary, but passes from a lower form to a higher form, as society evolves from a lower to a higher degree. Kinship systems, on the contrary, are passive only after long intervals, record the progress made by the family, and do not undergo a radical modification until the family has already changed radically" (Morgan, 2022, p.78).

Family, historically, is mainly composed of the blood tie, but over the years this concept has been changing, creating numerous meanings. Currently, "family" is understood as the group of people who have a degree of kinship or affective ties and live in the same house forming a home. It is noticed that, in Brazil, the population, in general, has pets, and it is very difficult to see a residence that does not have any type of domestic animal, that is, they are part of the Brazilian family (World Animal Protection, 2019).

According to a survey carried out by "word animal protection", which is a global non-profit organization that fights for the end of animal suffering, offering fair conditions for all

species, in Brazil, about 77% of the population has animals in their homes, and among these, about 94% of these people consider their animals as members of their family. This data further highlights the need for legislation to serve this part of the population, called a multispecies family, which is conceptualized as the one formed by the human family nucleus in shared coexistence with their pets, which are considered family members (World Animal Protection, 2019).

The so-called Multispecies Family is more related to the affective aspect, unlike traditional families, in which the main point to characterize it is the blood tie.

Marianna Chaves (2015) states:

Rooms are considered highly private spaces, the inner sanctuary of postmodern societies. Thus, when people claim that their pet is a member of the family and allow it to enter their bedroom, this fact indicates that the animal is not only a component of the family entity, but an intimate, close member. [...] Therefore, access to housing ends up being concrete evidence that pets are not members of the family only in the figurative sense (Chaves, 2015, p.7).

The presence of animals in Brazilian homes makes the affective life of families better and better, which is why they gain a large space in people's daily lives, making them members of their families.

According to Lima apud Lourenço (2008), to be considered a multispecies family it is necessary to meet the following requirements: family recognition, moral consideration, affective attachment, intimate coexistence and inclusion in daily activities.

The first element (family recognition) involves family affection, similar to how a child is treated, with love, affection and time at his disposal, recognizing them through terms that prove that they are an integral part of the family.

The second element, which is moral consideration, is demonstrated through the care that tutors provide for their animals, for example: veterinarian; considerable time in their company; leisure; and so on.

The third element is attachment, which is proven through certain attitudes of the tutors, such as: hugging, kissing, talking, etc. Here tutors show love and affection for their pet.

The fourth element is intimate coexistence, which is when the animal participates in the routine of the house, for example: waking up and sleeping together or in the same environment, walking with its tutors, participating in the routine, etc. The fifth and last element is the inclusion in special day-to-day activities, which is when the animal participates in parties, trips, and acts that involve the participation of the family. (Lourenço, 2008, n.p. apud by Brandt; Friendrich, 2021, p.27).

Thus, it is perceived that domestic animals have become family members in Brazilian homes, these being intimate members, who have a great affective bond with their guardians, which makes society, and its regulations, need updates to guarantee the rights of these animals and their families.

Pets become, in the domestic imaginary, an integral part of each one's self, integrated into language and invested with affection, functioning in the symbolic order of the family. In the symbolic places within the imaginary family scene, they

are named objects, transformed in their natural state through domestic pedagogy, the orthopedics of customs (they eat, sleep, defecate and behave in the way established by the uses and customs of each group, sharing the existence of the family as much as the latter also shares with them its identity and uniqueness. (Seguin; Élide; Araújo, Luciane Martins de; Neto, Miguel Dos Reis Cordeiro. A new family: multiespecie. São Paulo: Revista de direito ambiental, 2016. v. 82).

It is possible to analyze, from the statement of the authors above, that the domestic animals are integrated into the family in a natural way, sharing the existence of the family, even though they are still seen by the legal system as "objects".

The Constitution of the Republic of 1988 contains in its article 225 a rule that protects animals, regardless of their origin or classification. However, the protection guaranteed to them has a purely utilitarian argument: animals, as members of the Brazilian fauna, are protected in order to guarantee a healthy habitat for current and future human generations (GOMES; Nathalye Santos Caldeira. Ethics and animal dignity: an approach to the Brazilian constitution, the law on crimes against nature and the decree for the protection of animals from the perspective of the Universal Declaration of Animal Rights. Fortaleza: XIX National Meeting of CONPEDI, 2010.

It can be verified, along with this context, that the doctrine establishes that the legal nature of animals is provided for in article 82 of the Civil Code (Law No. 10,406, of January 10, 2002), according to which movable property is considered to be those "susceptible to self-movement, or removal by force of others, without alteration of the substance or of the economic and social destination" (Brasil, 2002), evidencing the view of the current legal system in relation to animals in the characteristic of "movable property", that is, a kind of object that moves.

In view of the above information, it is noticeable that the legal system needs to be updated to protect the rights of families and animals to guarantee their rights in the family and affective aspect and in the rights of domestic animals, in general.

## **MULTISPECIES FAMILY**

It is a fact that family is something that has existed since the beginning, and that evolves along with society. It is due to these factors that new concepts of family can be evidenced, such as the multispecies family.

As the social environment progresses, the family also evolves and changes, because according to Friederich Engels the family is a product of the social system, which is a reflection of the culture of that time. He adds that the family is active, it does not remain stationary, passing from one form to another higher as society evolves. (Carvalho, 2020, p.41.).

"The family is as old as humanity itself, constituting the substrate that confers development, transformation, failures, achievements to its components, and is present in health and disease". (Ackerman, 1986, p. 35).

It can be seen that, currently, the main characteristics necessary to define a family are the affective ties and the intimate and daily coexistence that are inserted in it, unlike in the past when the blood tie was the main characteristic.

"It is not possible to present a single and absolute concept of Family, able to a priori delimit the complex and multifarious range of socio-affective relationships that bind people, typifying models and establishing categories". (Gallienus; Pamplona Filho, 2021, p.15).

It so happens that the Constitution, aiming to offer an environment without discrimination, leaves room for establishing all types of families, which is no different from the global trend of the twenty-first century, which seeks to establish a free, fair and solidary society.

The affective phenomenon gained legal contours, to the extent that the Magna Carta of 1988 does not define what a family is, much less assigns requirements for its formation and validity, leaving the members of the family group in charge of the freedom and autonomy, typical of private law, in forming the most diverse family groups. It should also be noted that the family deserves special protection from the State, and therefore does not allow for undue interference in its formation. (Belchior, et al. 2018, p.64-79).

The multispecies family comes from the affective bond between humans and domestic animals, which has become very common nowadays, modifying this relationship between them, which in the past was more focused on work, or to facilitate people's daily lives.

More and more the idea of family moves away from the structure of marriage. The distinctive element of the family, which places it under the mantle of legality, is the presence of an affective bond. The union of people with identities of life projects and common purposes generates mutual commitment. It imposes duties and ensures rights. The family is always socio-affective, due to a social group considered the basis of society and united in affective coexistence. (Dias, 2021, p.441).

Another important factor for this new concept of family is that marriage, something that was a matrimonial act with the intention of generating children, has also changed over time, making it possible to perceive the change that has been occurring in society.

It is possible to notice that many couples choose not to have children, but to adopt animals, the so-called "pets". In this context, it establishes (FRACIONE, 2013)

Applying the principle of equal consideration to animals does not mean that we are committed to the position that animals are "the same" as humans (whatever that means), or that they are our "equals" in all respects. It just means that if humans and animals do indeed have a similar interest, we should treat that interest in the same way, unless there is some good reason not to." (Francione, 2013, p. 28).



Analyzing from another aspect, it can also be seen that it is necessary to address this issue, given that animals are seen by many of their guardians as children, and it is very common nowadays to adopt "pets" and even shared custody of them.

Thus, it is evident that it is necessary to seek legal support for this family relationship, in the "multispecies family" modality and the rights inherent to these animals seen as members.

Family is the object of constant evolution, requiring discussions on the subject at the same speed as they are transformed, seeking to keep the inherent rights up to date, as it is common for the ties between members to be broken and this concept to undergo constant changes over time.

Another fundamental aspect, when it comes to the multispecies family, is the right of animals and their guardians to free movement.

It is notable that domestic animals, for some people, are considered members of the family, it happens that some condominiums still insist on maintaining clauses that prohibit the permanence of domestic animals, which are considered abusive.

The understanding is that the prohibition of the movement of animals is already settled in the legal system, despite the fact that there is a large number of people who still do not know that these clauses are considered abusive, so it is necessary to highlight this issue.

The possibilities of prohibition are only possible when the animal poses a risk to the health or safety of other residents or when it takes away the peace of the neighborhood, otherwise, its permanence must be allowed, as can be evidenced in the decision of Rapporteur Elaine Harzheim Macedo

1. INTERLOCUTORY APPEAL. ORDINARY ACTION WITH REQUEST FOR INJUNCTIVE RELIEF. PROHIBITION OF ENTRY AND PERMANENCE OF SMALL PETS IN CONDOMINIUM UNITS, AS WELL AS CIRCULATION IN COMMON AREAS. OWNER OF THE APARTMENT WHO IS UNDERGOING PSYCHIATRIC TREATMENT. PRESENCE OF THE REQUIREMENTS REQUIRED BY ARTICLE 273, I AND § 2 OF THE CPC. GRANTING OF INJUNCTIVE RELIEF. INTERLOCUTORY APPEAL PROVIDED WITH A PLAN. (Interlocutory Appeal No. 70040867509, Seventeenth Civil Chamber, Court of Appeals of the State of Rio Grande do Sul, Rapporteur: Elaine Harzheim Macedo, Judged on 01/18/2011)

In this way, it can be seen that society is inserting the animal more and more in the social life and personal routine of families, and that any clause that prohibits the circulation of domestic animals in places of free circulation should be considered an abusive clause, and should be excluded and penalized.



## ANIMALS AS SENTIENT BEINGS AND THEIR LEGAL PROTECTION

It is extremely important to talk about this subject when discussing domestic animals and the family. This chapter will address animal sentience and some updates in the legal system related to this issue only. The other changes are present in a chapter where updates related to animals and the family in general will be described.

Animals, although they do not have the ability to think, act and make decisions, as in humans for example, they have the ability to feel emotions, which is called "sentience".

"Sentience is the ability to have conscious perceptions of what happens to the being and what surrounds it. Sentient beings can experience feelings such as pain, anguish, loneliness, love, joy, anger, among others" (Serrão, 2015).

Sentience must be duly legitimized and disseminated in order to evidence and regulate its application in judicial decisions.

In Brazil, it is perceived that the definition of animals as sentient beings is already partially consolidated, where it can be perceived, albeit timidly, that "animal sentience" is present through judicial decisions, although the Civil Code has not yet specifically recognized this aspect, but that this in turn, is already part of the project that aims to update it.

The project that aims to update the Civil Code, in 2024, is extremely important to animals, with an entire chapter reserved to address the right that is inherent to them. The topic discussed in the Senate proposed a new legal approach to animals, recognizing them as sentient beings, that is, beings endowed with the ability to feel, through the expression of feelings, such as fear, joy, sadness, which makes these animals have an understanding of the environment in which they are inserted, having happy feelings if the environment is pleasant or feelings of fear and sadness if the environment is not pleasant for the animal's well-being.

It was verified the need to propose a regulatory norm for the custody of pets, based on the new concept of multispecies family, so that it is recognized that these animals are not objects, but sentient beings that need protection as recommended by the Federal Constitution of 1988, based on animal dignity. Although Brazilian jurisprudence is not unanimous, many judges have understood that these animals are not objects as taught by the Civil Code, but true members of the family (Oliveira; Mello; Souza; 2022, p.18).

In this sense, Germana Parente Neiva Belchior and Maria Ravelly Martins Soares Dias report on animal sentience, in an article published in the Brazilian Journal of Animal Law, in 2019.

Sentience, therefore, makes beings capable of feeling and experiencing sensations and feelings consciously, and these characteristics are not only privileges of

humans, but also of non-human animals, including pets in this category (Belchior; Days; 2019, p.75).

As seen, the current text of article 82 of the Civil Code (Law No. 10,406, of January 10, 2002) exempts animals from the treatment of movable property, which, however, is not the most correct, after all, animals are living beings and, therefore, must have legal protection and differentiated treatment.

This proposal seeks to include article 82-A. and its paragraphs in the Civil Code, providing for the differentiation of the legal treatment of animals and encouraging the elaboration of a specific law on the subject.

Article 82-A Animals, which are the object of law, are considered living beings endowed with sensitivity and subject to legal protection, by virtue of their special nature.

Paragraph 1 - The legal protection provided for in the caput shall be regulated by a special law, which shall provide for the appropriate ethical treatment of animals;

Paragraph 2 - Until a special law is enacted, the provisions relating to goods shall be applicable in the alternative to animals, provided that they are not incompatible with their nature and are applied considering their sensitivity;

Paragraph 3 - From the affective relationship between humans and animals, legitimacy may derive for the corresponding protection of interests, as well as a claim for compensation for losses and damages suffered. (in press, 2024).

The change proposed by the jurists is extremely important to guarantee the necessary rights to animals, legally establishing that they are sentient beings, that is, "they are endowed with senses and emotions, in their most varied forms" (Figueiredo, 2018, n.p.).

It is mainly due to this aspect that more and more animals are present in Brazilian homes as family members.

## **ANIMAL AS A SUBJECT OF LAW**

The structures of Brazilian homes are constantly evolving, as well as the concept of family. It is possible to see that animals play a prominent role in this new dynamic, as they have become indispensable in most Brazilian homes, but not as a mere object present in our daily lives, but as a member of the family, which brings happy moments and helps to improve the quality of life by bringing lightness to the environment and participating in the daily lives of Brazilians.

These new family configurations have been gaining ground in the most diverse areas of knowledge, especially in Psychology, Veterinary Medicine and Law, 52 due to the importance given to the mutual behavioral relationship between the family and domestic animals. This trend is growing, instigating the expansion of the concept of family, valuing more the bonds of affection, so esteemed in Family Law. (Vieira; Cardin, 2018, p. 171).

It is notable that with these aspects the family relationship between domestic animals and humans creates great affective bonds and that human relationships tend to have conflicts with each other, and often dissolutions occur, due to this and several other factors.

It happens that, with these dissolutions, when the affective bond of the family exists, together with the animals, it is necessary that the legal system, through effective legislation, has the support of the legislation to establish the necessary measures to safeguard the rights of these families, and of the animals, helping to solve conflicts in an appropriate way, guaranteeing the rights inherent to each member of the family.

One can cite as an example, the legal system of Portugal, which has already settled the understanding that animals cannot be seized, since they cannot be seen as an object, as they have life, as Rafael Calmon points out:

In Portugal, for example, pets are considered absolutely unseizable (CPC, art. 736, "g"), immune to the rules of communication of assets (CC, art. 1.733.1, "h"), and subject to custody agreed by the parties or decided by the judge, on the occasion of the breakdown of the family union (CC, arts. 1.775, 1.778º and 1.793.º-A). In the United States of America, the States of Alaska and Illinois were the pioneers (2016 and 2017) to enact laws establishing guidelines for courts on the interests, welfare and care of pets in divorce proceedings. More recently (2018), the "Family Code" of the State of California had section 2605 added to its text, which authorizes the Court to establish custody of pets in these cases. (Calmon, 2021, p. 82).

It is necessary for the Judiciary to address this issue in view of the affective relationship of humans with their animals, since the interest is totally based on affection, with the interested party having as its main objective to continue the existing affective relationship, differentiating itself from when the interest is merely patrimonialist and economic, as for example in the case of people who raise animals to obtain some kind of financial return, through the sale of the puppies.

Another aspect that is of paramount importance to be addressed is the vulnerability of the animal, considering that this vulnerability will be present throughout its life, since the animal does not have the ability to live without dependence on its guardians, unlike wild animals, which live in nature and do not have direct contact with humans, And because of this, they are able to live through natural resources, unlike domestic animals that, due to the fact that they have been domesticated, cannot survive only with the resources of nature and need human beings, needing protection and basic care so that they can live with dignity.

This is how it establishes (SILVA, 2020):

The vulnerability of the animal, I dare say, is a macro view and in general, even greater than that of the child, who will become an adult and, if no impeding cause exists, will achieve his own autonomy, as mentioned. The animal, on the other hand, will always remain dependent on its owners during its existence. Therefore, the relationship between tutor and animal must gravitate around affection, with the pet,

until the end of its existence, being provided with a dignified life, with protection and well-being. (SILVA, 2020, p. 72).

It is perceived that for some authors the vulnerability of the animal is even greater than that of the child, considering that the animal is vulnerable throughout its life, unlike the child, who develops and when he reaches adulthood he achieves his own autonomy.

In order to guarantee their dignity and quality of life of animals, it is necessary that these aspects are highlighted ensuring that the best for the integrity of the animal is established, protecting its vulnerability and ensuring its specific needs.

## **THE POINT OF VIEW OF THE COURT OF JUSTICE OF PARANÁ ON CUSTODY IN THE MULTISPECIES FAMILY**

Laws and court rulings have evolved to allow for formal pet care plans, recognizing them as important family members.

Recognizing the rights of animals in the multispecies family means that choices must be made taking into account the well-being of the animal, its feelings, its health and the full protection due to its vulnerability.

After analyzing the main decisions handed down by the Court of Justice of Paraná, through research, where the keywords "custody", "pets" and "multispecies family" were used to locate decisions that deal with disputes about the custody of pets, where it can be seen that the beneficial result for the protection and care of the animal.

The choice of these terms aimed to broadly cover decisions involving both custody in the family context and situations of litigation involving pets and the multispecies family.

Regarding the dissolution of marriage or stable union (family bond), it is clear that the rapporteurs are recognizing the institute of the multispecies family, maintaining the affective bond generated by this family institute.

The main requirement in decisions is related to the well-being of the animal, its health and its specific needs, guaranteeing them the necessary legal protection.

It is also possible to verify that the rapporteurs are recognizing animals as sentient beings. In addition, there are decisions aimed at establishing that animals have specific needs, which must be respected, always seeking to prevail the well-being of the animal.

It can be seen, in the case below, in which the Reporting Judge establishes shared custody, justifying that there is an affective bond between the animal and the ex-spouse, and determining the division of expenses to meet the needs of the domestic animal.

INTERLOCUTORY APPEAL. FAMILY LAW. ACTION FOR SEARCH AND SEIZURE OF PET C/C REQUEST FOR CUSTODY AND COMPENSATION FOR MORAL DAMAGES. AGGRAVATED DECISION THAT REJECTED THE REQUEST FOR

URGENT RELIEF TO ESTABLISH UNILATERAL CUSTODY OF THE DOGS IN FAVOR OF THE RESPONDENT/AGGRAVATING PARTY. PLAINTIFF'S APPEAL. NON-ACCEPTANCE OF THE CLAIMS. EVIDENCE OF AFFECTION BETWEEN THE PLAINTIFF AND ANIMALS. WELL-BEING OF THE ANIMAL ITSELF MUST BE TAKEN INTO ACCOUNT. EVIDENCE THAT THE PARTIES, AFTER THE SEPARATION, MAINTAINED SHARED CUSTODY OF THE DOGS, AS WELL AS SHARED DECISIONS AND EXPENSES. MAINTENANCE OF THE AGGRAVATED DECISION. APPEAL KNOWN AND NOT GRANTED. (TJPR - 11th Civil Chamber - 0048749-90.2024.8.16.0000 - Curitiba - Rel.: SUBSTITUTE JUDGE IN THE SECOND DEGREE LUCIANE DO ROCIO CUSTÓDIO LUDOVICO - J. 09.09.2024)

It is also noticed, in some decisions that address the dissolution of the stable union, the determination of custody and the right to visitation, using the nomenclature "pets" to mention the animals and establish the rights inherent to them and to other family members.

CIVIL APPEAL – ACTION FOR RECOGNITION AND DISSOLUTION OF STABLE UNION WITH DIVISION OF ASSETS – CONCILIATION HEARING – AGREEMENT REGARDING THE DIVISION OF ASSETS – CUSTODY OF PETS – JUDGMENT GRANTING "CUSTODY" TO THE PLAINTIFF AND ESTABLISHING VISITS TO THE DEFENDANT, CONDEMNING THE PLAINTIFF TO THE PAYMENT OF PROVISIONAL AND COMPENSATORY ALIMONY. CUSTODY OF PETS – MATTER NOT RAISED IN THE INITIAL – DEFENDANT WHO REQUESTS "CUSTODY" IN THE CONTEXT OF THE DEFENSE – PROCEDURAL IRREGULARITY – NEED TO FILE A COUNTERCLAIM – ISSUE THAT DOES NOT INVOLVE AN INALIENABLE RIGHT – JUDGMENT THAT MUST BE ANNULLED EX OFFICIO IN THIS PART, BY EXTRA PETITA. APPEAL PREJUDICED. PROVISIONAL ALIMONY – ALLOCATION TO THE SUPPORT OF THE PARTY FOR A FIXED PERIOD, UNTIL IT IS ABLE TO PROVIDE FOR IT BY ITSELF – COMPENSATORY ALIMONY – ALLOCATION TO THE MAINTENANCE OF THE STANDARD OF LIVING ONCE ENJOYED – AMOUNTS THAT ARE NOT TO BE CONFUSED WITH OR OFFSET BY THE AMOUNT RECEIVED IN THE DIVISION OF ASSETS – FINANCIAL INCAPACITY OF THE FEEDER NOT PROVEN. SENTENCE UPHeld. APPEAL FEES – FIXATION – ARTICLE 85, PARAGRAPH 11 OF THE CPC. ALTERATION, EX OFFICIO, OF THE FEES ARBITRATED AT THE ORIGIN – AMOUNT THAT MUST BE LEVIED ON THE AMOUNT OF THE CONVICTION, AND NOT ON THE ECONOMIC BENEFIT (ARTICLE 85, PARAGRAPH 2 OF THE CPC). APPEAL PARTIALLY HEARD AND NOT GRANTED. (TJPR - 12th Civil Chamber - 0006940-86.2022.8.16.0131 - Pato Branco - Rel.: JUDGE GIL FRANCISCO DE PAULA XAVIER FERNANDES GUERRA - J. 08.04.2024).

As can be seen in the decisions, the Court of Justice of Paraná recognizes the rights of domestic animals and the multispecies family.

However, it is necessary to prove, in fact, the affective bond with the animal and the family relationship, to characterize the multispecies family, as in the decision rendered by the Reporting Judge Sérgio Luiz Kreuz.

INTERLOCUTORY APPEAL. CIVIL LAW AND CIVIL PROCEDURE. APPEAL FILED AGAINST A DECISION THAT, IN A PRELIMINARY INJUNCTION, REGULATED VISITS BY THE PLAINTIFF TO FOUR PETS. RESIGNATION OF THE DEFENDANT THAT ENTAILS ACCEPTANCE. INITIAL CLAIM IN THE CUSTODY OF TWO OF THE DOGS. JUDICIAL PROTECTION PROVIDED IN VIOLATION OF ARTS. 141 AND 492 OF THE CODE OF CIVIL PROCEDURE. LITIGANTS WHO HAVE MAINTAINED A ROMANTIC RELATIONSHIP, HOWEVER, DO NOT INTEND THE CHARACTERIZATION OF QUALIFIED DATING OR STABLE UNION.

IMPOSSIBILITY OF PRESUMPTION THAT THEY CONSTITUTED A MULTISPECIES FAMILY. ANIMALS THAT HAVE ALWAYS LIVED WITH THE AGGRAVATED PERSON, WHO BORE THE COSTS FOR THE PROPER MAINTENANCE OF EACH ONE. FAILURE TO PROVE THE AFFECTIVE BOND SIGNED BY THE RESPONDENT WITH THE PETS. VISITS THAT MUST BE SUSPENDED UNTIL FURTHER PROCEDURAL INSTRUCTION. 1ST DEGREE DECISION REVOKED. APPEAL GRANTED.  
(TJPR - 11th Civil Chamber - 0034814-17.2023.8.16.0000 - Curitiba - Rel.: JUDGE SÉRGIO LUIZ KREUZ - J. 26.11.2023)

It is also perceived in the decisions of the rapporteurs that the rights involving multispecies families and domestic animals are not only related to the relationship between couples, but also any family entity that lives with the animal and has an affective relationship that characterizes the multispecies family, such as the case in which mother and daughter who have a domestic animal, broke the relationship and the affective ties between them and the Court of Justice of Paraná decided that visitation rights should be established for the domestic animal due to the deep affection between them.

This fact is evident in the decision below by the Reporting Judge Fabio Haick Dalla Vecchia.

CIVIL APPEAL. FAMILY LAW. SEARCH AND SEIZURE. GUARD. VISITATION. DOMESTIC ANIMAL. ADOPTION. TERM SIGNED BY THE LEGITIMATE POSSESSOR. RECOGNITION. DEEP BONDS OF AFFECTION BETWEEN THE ANIMAL AND THE ENTIRE FAMILY UNIT. RUPTURE OF THE RELATIONSHIP BETWEEN MOTHER AND DAUGHTER. AN UNFORTUNATE SITUATION THAT DOES NOT RULE OUT THE RIGHT TO VISITATION TO THE ANIMAL. APPEAL KNOWN AND NOT GRANTED.1. Nowadays, pets have gained a prominent position in families, with the construction of undeniable bonds of affection between pets and their guardians, with the right of visitation being recognized in cases of rupture of the family unit.2. Appeal known and not granted.  
(TJPR - 11th Civil Chamber - 0004701-17.2022.8.16.0194 - Curitiba - Rel.: JUDGE FABIO HAICK DALLA VECCHIA - J. 04.03.2024).

In view of the above, and the analysis of the decisions rendered in the Court of Justice of Paraná, it is clear that conflicts involving animals and the multispecies family are present, and that the main point taken into account is the welfare of the animal, which is vulnerable and needs effective legal protection, which is being understood in some courts.

## THE CIVIL CODE AND ITS UPDATES

In 1916, the first Civil Code was created, a pioneer in regulating civil relations in Brazil. It so happens that with the passage of time, and social change, this code, little by little, became outdated, making it necessary to create a new project to meet the needs of society at the time (Pinheiro, 2003).

In 1969, the creation of a new project began, noting the clear social need for new regulations, which only resulted in 1975, when the Commission of Jurists was created to prepare this new project (Pinheiro, 2003).



It turns out that this stage was extremely slow and for a long time was inert, passing through the hand of several governments to only come into force in 2002, which in a way partially reduced the efficiency of this project, since the legislation discussed was born outdated, considering that the main discussions and updates took place in 1975 and only in 2002, About 27 years later, the project came into force. Even so, the Civil Code of 2002 represented a significant advance in relation to the previous one.

Recently, in July 2024, the project that aims to reform the Civil Code again was approved. The committee of jurists of the Superior Court of Justice approved the final report, and the text establishes several changes, seeking to maintain its effectiveness.

The main changes related to the family, animal rights and the multispecies family according to the Senate Agency (Federal Senate, 2024) are the following:

Recognition of the multispecies family, establishing that pets should be considered children by affection, and guardians can be called "human parents".

The protection of animals in divorces and stable unions: the bill provides for the regulation of custody, visits, and attribution of assets by will to animals.

Ensure that animals have the status of "sentient" beings, that is, animals can gain the status of beings with feelings, such as: feeling love, fear, sadness, etc.

The establishment of alimony for domestic animals, ensuring that the animals, in some cases, need alimony to be decreed, in order to provide the same quality that the animal had before the break of the family bond.

In the legal system, it is already possible to perceive decisions aimed at recognizing this right in order to protect the vulnerability of the pet.

It is possible to see that society has undergone great changes, mainly due to the technological era and the new forms of work, which encompass society, and which has made the change in family patterns significant.

The work composed of 38 jurists began in August 2023. 280 suggestions from society were analyzed and public hearings were held, with the support of the Senate's Legislative Consultancy, to arrive at a text with more than a thousand articles" (Agencia do Senado, 2024, n.p.).

The recognition of all forms of family is one of the most important changes in the Civil Code Update Project, recognizing Homoaffective, single-parent and multispecies families.

The update of the Civil Code is necessary, as it is essential to highlight the vulnerability of animals and ensure their protection in the context of the multispecies family, which is an increasingly present reality in Brazilian society. Although the right of animals in the multispecies family is increasingly present in a beneficial way in judicial decisions due to



the strong affective bond with their guardians, animals remain legally unprotected in many aspects, which makes them susceptible to situations of abuse and neglect.

In this scenario, it is necessary for the legal system to evolve to keep up with social advances and guarantee fundamental rights, incorporating a more inclusive and sensitive perspective on interspecies relations. By ensuring the protection of animals as members of the family, the Civil Code now reflects the principles of dignity, equality and respect for the well-being of vulnerable beings, and the family, aligning itself with the values and demands of society.

## CONCLUSION

This article addressed the multispecies family, the rights of animals and their custody in the event of family dissolution.

The great evolution of interactions between humans and animals is highlighted, which reflects a significant change in the way animals are perceived and treated in the legal and social spheres.

It is clear that animals no longer play the same social role as in the past, when they were used mainly as labor or a source of income. Nowadays, with the social changes that occur, living with the animal is much more related to the affective bond.

The analysis made by great authors on this theme revealed that the insertion of domestic animals in Brazilian homes is much more than a matter of coexistence, it involves the construction of a great affective bond that is a fundamental aspect for the construction of the family, the so-called multispecies family.

Animals are considered members with specific rights and needs, and full protection should prevail due to their vulnerability and sentience, since it is perceived that the antiquated characteristic that called them moving living beings is changing, considering that the vast majority of jurists argue that animals are not objects and should have their rights protected.

The recognition of animals as sentient beings requires a more complete legal approach to ensure the adequate protection of animals, given that they have feelings and conscience.

The discussion about the status of animals as subjects of law must guarantee the protection of the animal's vulnerability, and it must be protected by its legal representative and through legislation, always ensuring the search for advancement in legal protections, as can be seen in the proposals provided for in the update of the Civil Code of 2002, which was analyzed in 2023, and proposed in 2024, by leading jurists.

Even with these projects that aim for change, there are still gaps that need to be addressed to ensure effective and comprehensive protection for animals. The Civil Code still faces challenges in fully reflecting the complexity of multispecies family relationships and animal rights.

The data presented showed that legislative efforts and changes in the Civil Code are already yielding results, but it is still necessary to make some changes to ensure the proper insertion of animals in the family structure.

Another aspect addressed was the point of view in the legal system regarding the multispecies family and the right of domestic animals in cases of family conflicts. It can be seen that the Court of Justice of Paraná has been consolidating that domestic animals have rights and that the decisions involving these families must have as their main point the protection and well-being of the animal, ensuring the protection of its dignity and vulnerability.

In short, the integration of animals into the multispecies family and the recognition of their legal rights are topics that are gaining more and more space in the legal system.

The lack of specific rules that recognize this new family configuration generates large legal gaps, especially in cases of family dissolution. In this context, animals, without adequate legal protection, can be treated as patrimonial assets, a kind of object, disregarding their status as sentient beings and the affective bonds with their guardians. Due to these facts, legislation that recognizes the multi-specific family is necessary to ensure the protection of the interests and well-being of animals, safeguarding rights and adopting fair criteria in family disputes, thus establishing that the legal system is aligned with the principles of dignity, protection of the vulnerable and equity, promoting decisions based on respect for interspecies relations and the best benefit for vulnerable beings.

The evolution of the rules, and the adaptation of the Civil Code to reflect these changes, have been occurring. These are small positive steps, but a continuous effort is still needed to ensure the protection of animals and the necessary regulation in the multispecies family.

Future studies should focus on the practical implementation of legislation and its respective updates, considering that society and customs are always updated, ensuring the full and up-to-date legal protection of families and animals.

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