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On December 16, 2021, has been published in the Official State Gazette (BOE) Law 17/2021, of December 15, amending the Civil Code, the Mortgage Law, and the Civil Procedure Law on the legal status of animals, whereby they are no longer considered mere things but are recognised as living beings endowed with sentience.

The approval of this Law culminated on December 2, 2021, when the Plenary of the Congress of Deputies held the last debate in which the amendments introduced by the Senate regarding the “Proposal of Law” amending the Civil Code, the Mortgage Law, and the Civil Procedure Law on the legal regime of animals were dealt with.

After an intense debate, the amendments introduced by the Senate in the aforementioned Proposition of Law on the legal regime of animals were finally approved by a majority, all of them having the favourable vote of the Parliamentary Groups represented in the Chamber, with the exception of the amendment introduced by the Senate, in its session number 40, held on 17 November 2021, consisting of deleting the introduction of paragraph 1 of art. 90 b) bis third paragraph, regarding the termination of the file when the spouses, in case of matrimonial crisis, formalize the agreements before the court clerk or notary and these are “seriously detrimental to the welfare of pets who will warn the grantors”, as it has counted with 93 votes in favour, 237 against and 1 abstention in the session held on 2 December 2021 in the Plenary of the Congress of Deputies.

The approval the Law 17/2021, by the Plenary of the Congress of Deputies, represents a great solid and firm step forward for animals, as they go from being considered mere things to being recognised as living beings endowed with sentience, in line with the provisions of art. 13 TFEU as well as other neighbouring European countries such as France and Portugal. It can be said that this publication in the Official State Gazette (BOE) is a historic day for Spain, as it is a reform that has been long-awaited over the last few years.

In fact, this legislative initiative, referring to the modernization of the legal regime for animals, is not the first time that it has been submitted for consideration. As a matter of fact, already

2 https://www.congreso.es/ca/agenda
on 14 February 2017, the Plenary of the Congress of Deputies unanimously approved unanimously to urge the Government to modify the legal regime of animals, after submitting for debate and vote a Proposition of practically identical tenor to the one that has been approved. As is well known, this legislative initiative, which had received the unanimous approval of Congress in the two sessions in which it was put to the vote, was unable to go ahead and complete the proposed reform, due to the political vicissitudes that dissolved the Houses and left the legislative proposals existing at that time in a waiting period. Subsequently, on 7 September 2020, the Popular Parliamentary Group presented in Congress a bill to amend the Civil Code, the Mortgage Law, and the Civil Procedure Law, on the legal regime of animals, which it was agreed to admit for processing and transfer to the Government, but without success.

II.- REFORM OF THE LEGAL REGIME FOR ANIMALS.

Law 17/2021, of December 15, introduces some reforms to the Civil Code, the Mortgage Law, and the Civil Procedure Law. Firstly, and regarding the reforms introduced in the Civil Code, an adaptation and modernisation with regard to the true nature of animals, since they are recognised as beings endowed with special sensitivity, a principle which must henceforth govern the interpretation of the entire legal system, and consequently, they cease to have the status of mere things or properties (art. 333 and 333 bis CC). However, the legal regime of properties and things may continue to apply to them insofar as it is compatible with their nature or with the provisions aimed at their protection, all of which are inspired by the principles of animal welfare and protection.

In addition, for the first time in Spain, legislation is envisaged, with regard to the human-animal relationship, on the fate of pets when there is a marital crisis, as it provides for its regulation both in the main proceedings and in the process of modification of measures, either by mutual agreement between the spouses or by the judicial authority, the distribution of the time of cohabitation and care, if necessary, as well as the burdens associated with the care of the animal, all in the interest of the members of the family and the welfare and the animal and regardless of its ownership (art. 90, 91, 94 bis, 103 CC). In matters of inheritance, provisions are laid down concerning the destination of animals (art. 941 bis) owned by the successor in title, with the care of the pet animal taking precedence in all cases.

A legislative novelty that should be highlighted is that a limitation to shared custody and guardianship of the minor children between the parents is envisaged, when the existence of animal abuse or the threat to cause it, as a means to control or victimise the common children or the other spouse, can be appreciated (art. 92 CC).

It also expressly provides for action for recovery against the owner who has incurred the costs of treatment and care of an injured or abandoned animal, as well as compensation for moral damages (art. 333 bis) to the owner and, extensively, to the persons with whom the animal lives, when the injury has caused the death or serious impairment of the physical or mental health of the pet animal. On the other hand, the legislation on finding, possession, and occupation, natural incomes, hidden defects, liability for damages, ownership, and division is adapted to the true nature of the animal as a sentient being (art. 348, 357, 404, 430, 431, 432, 437, 438, 460, 465, 499, 610, 611, 1.346, 1.484, 1.485, 1.492, 1.493, 1.864 CC), in the same way that the articles 334 and 346 CC is adapted in line with the reform on the legal regime of animals. It is also forbidden for pets to be pledged (art. 1.864 CC).

Secondly, and with regard to the reforms introduced in the Mortgage Law, in coherence with the reforms of the CC, it is prohibited to extend the mortgage to pets, as well as to extend the mortgage to animals placed or destined in a property dedicated to livestock, industrial or recreational exploitation (art. 111 LH).

Thirdly, and with regard to the reforms introduced in the Law on Civil Proceedings, pets are declared unattachable (art. 605 LEC). However, this reform does not cover the seizure of the income that may be generated by pets. And, in coherence with the reform of the CC, the arts. 771 and 774 LEC are modified so in the judicial procedure the time of cohabitation and care of the companion animals is regulated.

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