On multi-species families: pets as subject of rights in cases of marital dissolution

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ABSTRACT: The purpose of this study is to analyze common household pets as subjects of rights, that is, holders of a specific protection that guarantees their well-being within family relationships as members, due to the bonds and affectivity they have developed. In this context, questions are raised as to the possibility of applying, by analogy, the norms of Family Law, specifically with regards to custody, visitation rights and alimony, when there is marital dissolution. For the development of the research, the theoretical method was used, which consists of a bibliographic review and analysis of the country's legislation.

KEY WORDS: Affectivity. Domestic animals. Multi-species family. Marital Dissolution. Subject of Rights. Multi-species Family.

1. INTRODUCTION

Recently, Animal Rights have been studied under a new perspective within the different academic areas such as sociology, law and biology, among others. We no longer see animals as objects, but elevate them instead to the status of subjects capable of being the holder of rights and of a specific protection that guarantees their well-being.

This new perspective is reflected in relationships within families/households where the pet, the object of this study, is seen as

an integral member of the family.

Thus, from the perspective of affectivity, which is an aggregating element of the family institution, a new family model has been recognized socially and legally- the multi-species family- consisting of human and non-human members.

In this context, many questions arise regarding the current treatment of our legal system and its (in) adequacy to the new role that these pets have assumed within the family, as subject of *sui generis* rights.

The present work - developed using the theoretical method - has the purpose of raising the discussion about the possibility of applying, by analogy, the norms of family law, specifically with regard to the custody, visitation rights and alimony, when rupture of the marital bond occurs and the pet becomes the subject of litigation.

In order to do so, a contextualization will initially be made regarding the socio-juridical condition of the pet, where we succinctly have delineated its concept, as well as the current legal treatment guaranteed by the country's judiciary order.

We also considered the indispensability of the animal´s condition as subject of rights and, whether our legal system allows such recognition and the possibility of the application of the norms of Family Law and the recognition of the multi-species family, which, in view of the deep interspecies affective bonds, has made the pet an integral part of the family.

Finally, we examine whether or not there is the possibility of applying, by analogy, the general principles of law that rule custody, visitation and alimony for children to pets, as subjects of rights and members of the family household, especially from the perspective of Brazilian laws.

2. Contextualization: the current legal conditions of pets

It is known that the relationship between human beings and non-human animals is ancient. Some authors date it to prehistoric times, where animals had an eminently utilitarian function and served mainly to protect territories. Historically, we have seen a

profound change in this form of human-animal interaction, where the exerted role of predator has lost strength and has become domesticated (CAETANO, 2010; HART, 1985).

In this context, capitalism, coupled with socially rooted anthropocentrism[1], marked the transformation of the relationship between human beings and animals, leading to "the eternal and growing exploration of the underdog", where man "became the owner" and non-human animals, in turn, "became slaves." (RODRIGUES, 2008, p.116)

Over time, in the face of unbridled exploitation, we have seen an increasing concern over the preservation of the environment and the protection of fauna. The first legislative records protecting animals from ill-treatment date back to 1822 in England, with the advent of the British Cruelty to Animal Act, followed by Germany in 1838 and Italy in 1848 (RODRIGUES, 2008).

At the international level, on January 27, 1978, the Universal Declaration of the Rights of Animals was approved by the United Nations´ Educational, Scientific and Cultural Organization (UNESCO), which states in its preamble that "all animals have rights", and that "the respect of men towards animals is linked to the respect of men towards their own fellow men "(UNESCO, 1978).

This declaration is an important normative tool for the protection of animal rights in general, because it protects the integrity of animals in a broad sense, emphasizing their equality and their right to existence [2], and most importantly, the duty of man, bestowed with awareness, to respect and protect them, as is shown in article 2 [3] (RODRIGUES, 2008, UNESCO, 1978).

As far as pets are concerned, the aforementioned declaration preserves "the right to live and grow according to the rhythm and conditions of life and freedom that are proper to their species" and to those who are chosen as companions, "the right to a life expectancy according to their natural longevity ", as provided for in Articles 5[4] and 6[5] respectively (UNESCO, 1978).

It is observed that the aforementioned statement represents an evolution in the history of the human being, because according to Edna Cardoso Dias, this document "is an invitation for man to renounce his current conduct of exploiting animals, and progressively change his anthropocentric way of living, in order to reach

biocentrism "(DIAS, 2000, p.333).

In Brazil, the first records regarding animal protection date back to 1924 with the Decree number 16.590. However, it wasn´t until 1988 when the Constitution of the Federative Republic of Brazil under the terms of art. 225, § 1, subsection VII actually consolidated the right to an ecologically balanced environment, materializing the constitutional protection of animals against practices of cruelty or that lead to the extinction of the species.

By expressly prohibiting acts of cruelty, the legislature acknowledged that "animals are endowed with sensitivity [...] prohibiting specifically the practices that endanger their ecological function, cause their extinction or subject them to cruelty" (GORDILHO, 2008, p.138).

The constitutional text reflects the change as to how nature should be treated in general, according to the Brazilian law, and as Antonio Herman Benjamin points out, the greatest achievement here is the rupture of the idea that "the elements of the environment considered as things and only things, seen in isolation and condemned unrestrainedly to private appropriation", are moving towards an understanding based on " valuing not only fragments or elements of nature, but of the whole and their reciprocal relations "(BENJAMIN, 2011, p.80).

The legislative advances in the constitutional sphere are undeniable, since the species that are part of the fauna can no longer be considered by our laws as *res nullius* or *res derelicta*, in other words, "no man's things" or without owner or master, subject to domination, consequently repealing the old Hunting Code (Decree-Law No. 5,894, dated October 20, 1943), the old Fishing Code (Decree-Law No. 221 of February 28, 1967) and the Civil Code of 1916. (FIORILLO, 2012).

An advance that did not occur in the infraconstitutional legislation, even though Brazil is a signatory to the Universal Declaration of the Rights of Animals is in regards to animals that live in the wild and not in captivity. They are considered property of the State, as provided in art. 1 of Law No. 5,197, of January 3, 1967 [6], which is anachronistic to our legislation regarding the defense and protection of animals and wildlife.

Likewise, the innovations were not sufficient to extirpate the

cruel treatment of animals, especially in the field of environmental law. Amateur hunters, for instance, are allowed and stimulated by public authorities, under the terms of article 6, Law 5,197, dated January 3, 1967[7], to kill animals in order to protect crops, orchards and herds, under the terms of article 37, of Law No. 9605 of February 12, 1998[8].

It should be noted that the present study focuses on pets, understood as those non-human species that exhibit warm behavior and, as a rule "do not exist in freedom or in the jungle and are generally accustomed to living around humans, or " those that remain at home, such as dogs, cats, rabbits, ferrets, among others. (EITHNE and AKERS, 2011, p.214).

Pets are subject to the Civil Legislation which gives them, in general, the legal *status* of thing or movable asset, according to the wording in articles 82[9] and 83[10], which clearly shows a legal devaluation of the non-human animal, legally subjected to the appropriation and exploitation by the human being[11].

Regarding the treatment of animals by the Brazilian Civil Code, Regina Sahm states:

> [...] movable assets are those that can be displaced by their own movement (self-moving), by force of others (merchandise), without changing its substance or its economic-social destination. [...]. With regard to the first part of the article, which refers to animals and inanimate objects, the difference is of no importance, since the legal regime is the same for both (movable assets) (SAHM, 2010, p.105).

The above understanding is most evident in the drafting of Article 1.228[12], also in the Civil Code. It gives the human being, as owner, the faculty to use, enjoy and dispose of the *thing*, as well as the right to recover it from those who unjustly have it- a resource also applicable to animals- as movable asset, and in this way the human being can enjoy non-human animals, as well as use or alienate them, according to their social purpose.

It is observed that the pet has its legal regulation "for the benefit of man, its owner", where his interests are always linked and submissive to those of the owner, which does not guarantee it effective legal protection that considers the animal´s specificities and

best interests (SILVA and VIEIRA, 2016, page 15).

In spite of the legal treatment foreseen in our legal system, the Judiciary has gradually been asked to express itself on issues involving pets, mainly in family disputes, such as the dissolution of conjugal unions, where the application of the aforementioned law does not serve the interests of the disputing parties, and especially the animal in dispute, which demonstrates the rupture from the anthropocentric and rationalist paradigm in force still strongly entrenched, where the pet is seen as a member of the family.

3. Pet as a right holder

The legal system views pets as movable assets at the disposal of the owner, ignoring the intelligence and affectionate relationship it has with human beings and other animal species.

In contrast, "stories about the devotion and loyalty of pets to their owners are not uncommon and generally impress us by the intensity of the bond". Dogs, cats, and other animals are often treated by their guardians undoubtedly as children, giving them attention, care, protection, among other types of care (PASTORI, 2012, page 22, VIEIRA and PIRES, 2016).

Undoubtedly, the limit that separates animals from humans is no longer that of the past:

> [...] in the American scientific culture of the late twentieth century, the border that separated humans from animals has been completely broken. The last strongholds defending the privilege of [human] singularity - the language, the use of instruments, the social behavior, the mental events have fallen; None of this really establishes, in a convincing way, the separation of man and animal. [...] Over the last two centuries, biology and the theory of evolution have produced modern organs as objects of knowledge, while simultaneously reducing the separating line between humans and animals to a pale vestige, expressed in the ideological struggle or in the professional disputes between the sciences of life and the social sciences. (HARAWAY, 2009, p.40)

Thus, the condition of animal is questioned as a requirement for being considered a subject of rights. And emerging within this

context are those [13] who strongly advocate the possibility of framing pets as subjects of rights.

The idea that animals in general can be considered subjects of law is not recent. As Henry S. Salt believed and also claimed by the end of the 19th century, "animals are the holders of true personality," just as Cesare Goretti also defended a few years later that "we cannot deny them the most fundamental and humble right of every living being: the right to escape pain "(SALT, 1900, p. 208, GORETTI, 1928, p.09)

But before entering into the aforementioned discussion, it is necessary to recover the concept of subject of law, which for the classical doctrine is defined as "the person to whom the law assigns the faculty or the obligation to act, exercising powers or fulfilling duties". For some authors the term person and subject of rights are placed as synonyms (Gomes, 1999, 142).

The Brazilian Civil Code in its article 1[14] provides that every person is capable of rights and duties, in other words, to be a person, as a subject of rights, and be the holder of the capacity to have rights and duties. However, there is a doctrinal confusion, because in order to be a subject of rights it isn´t necessary to be a human being. (RODRIGUES, 2012, p 126)

Legally, the term person is:

> [...] an entity that is susceptible to rights and obligations, that is, a subject of rights and holder of legal bonds. Since every legal de facto holder is necessarily a subject of law, it is obviously clear that the notion of subject of law does not equate to the idea of being an individual and therefore animals as holders of legal relationships can be considered subjects of law and would normally be included in the category of persons, even if they are not individuals or legal entities according to the terminological predicate. (RODRIGUES, 2012, p 126).

In the same sense, César Fiuza affirms that it is the law that confers the personality, being a cultural concept and not a natural one. He emphasizes that "it is not natural, that in the past there were human beings to whom the Law did not attribute personality. They were slaves, considered objects before the legal order "(FIUZA, 2001, page 63).

In this context, it is understood that the human condition or the attribute of person is not a presupposition for the framing of being as the subject of rights, that is "the subjects of rights are all beings endowed with the capacity to acquire or exercise right entitlements and to answer to legal obligations, "and this resistance in" recognizing animals as subjects of law overlaps the juridical question of a social political character "(LÔBO, 2012).

There are two prevailing thoughts that stand out in the fight for the recognition of animals in general as subjects of rights: the first one known as liberalism, having Peter Singer as its main defender, and where the foundation lies "in the principles of justice". For Singer, "animals as sentient beings should have their interests taken into equal consideration with those of human interests". The second thought is the abolitionist, with Tom Regan as its main theoretical reference, which generally says that "animals are the subjects of a life, and for this their rights should be recognized based on their inherent values, which differ from intrinsic values "(DIAS, 2011, pp. 310-311).

On the other hand, those who deny the possibility of framing animals as subjects of rights, do so by emphasizing the intangibility of human nature, as if it had an untouchable superiority, considering that they constitute true objects affecting human action, inasmuch as these currents believe that "the protection of the environment exists so as to favor the human person and only reflexively to protect the other species" (FIORILLO, 2012, p. 280).

Those who follow the beliefs of Danielle Tetu Rodrigues feel that the acceptance of the "juridical *sui generis* nature of animals would be sensible, so that they may be understood as subjects with rights", and thus society has the "right to demand from each of its members to respect such rights, as well as the laws created to protect animals from cruel human practices "(RODRIGUES, 2012, p 121, TOLEDO, 2012, p. 214)

The Brazilian civilian legislation opposes legal and social coherence insofar as it confers legal capacity and, through legal fiction, consequently guarantees them the status of subjects of rights. In other words, "an animal has no rights. However, a legal entity (juristic person) not only has such rights, but also has constitutional rights "(BUGLIONE, 2009, p.43).

This contradiction becomes even more evident with the increasing number of multi-species families, as a result of the intensification of interspecies relationships, coupled with the concern for animal welfare which is gradually being consolidated socially. Thus, classifying animals as objects or a thing is in fact perpetuating a retrograde and discriminatory view.

This is because the human-animal relationship is not a "real right, but a personal right instead, whose characteristic trait is precisely the relationship between persons, through the elements of passive and active subject, as well as the due benefit" (RODRIGUES, 2012, p 126).

In the context of a family, when the group composed of human animals welcomes and elevates nonhuman members to the same status as theirs and recognizes them as part of the family, within its limitations, they become real subjects of rights. We thus see a paradigm shift, in which the nonhuman member of the family is no longer seen as an object of law.

However, the resistance on the part of the Judiciary is latent when it comes to the recognition of animals as subjects of rights, especially in situations of family disputes and marital dissolution, where there is no concern for the protection and the defense of the pet´s rights, under the aegis of the animal´s best interest.

What we perceived, through the perspective of bioethics, especially when it comes to the new definitions of family relationships with pets, is that "it is no longer just a matter of protecting 'our inferior brethren' from ill-treatment inflicted by human beings, but to claim on their behalf the right to a good life, to a full development" and, therefore, the recognition of these as subjects of rights is essential (FERRY, 2009, p.81).

Obviously, "the fact that every day animals are becoming more important members within the family environment where they live does not make them human." However, recognizing the importance of the relationship between humans and their pets shows the need for a more dignified treatment, not limited to the conception of a thing, but within the perspective of a rights-holder, protected as a being in itself (Chaves, 2016 p.11).

Thus, the protection of animals in general, especially pets as members of a family, has reached more prominence in the face of

the practical cases that have been brought to the courts, where the concept of animal as a thing or mobile asset is beginning to lose ground.

4. The multi-species family: the pet as a family member

The constitutionalization of Family Law, coupled with the enactment of the Civil Code of 2002, brought significant changes aimed at meeting the new demands, highlighting the demarcation, as well as the consolidation of human dignity, family solidarity, legal equality of spouses and partners, equality among children, responsible parenthood, pluralism of family entities, affectivity in the family sphere, and others that guide their application (LÔBO, 2011).

From this perspective, the affective bond becomes the preponderant element instead of the akin, thus giving rise to a new conception of family.

Thus, it can be said that the members of the new family arrangement are united by affection and respect, and that "the personal fulfillment of affection in the environment of coexistence and solidarity is the basic function of the family of this day in age, whereas "private family juridical relations must always be guided by the protection of life and the biopsychic integrity of the members of the family, consubstantiated in the respect and the security of the rights of personality", in order to guarantee the full development of its members (LÔBO, 2011, p. 20; LISBOA, 2010, p. 36).

In general terms, there is a profound change in the concept of family, which is starting to frame new models that not long ago were placed outside the legal system, such as single-parent, homo-affective relationships, poly-affective families, among others, as Giselda Hironaka points out:

> [...] to say what a family "is" in law, requires that we turn a blind eye to a multitude of social facts essentially representative of the family, but which sometimes do not fit into any cold mold of Positive Law. Hence there is the need for concepts to be increasingly open, especially when it comes to the family (HIRONAKA, 2015, p. 53).

Thus, affection has become the basis of family ties, which has resulted in a more comprehensive and flexible concept of family.

This change in Family Law culminated in a more humane approach, which can also be seen in the Federal Supreme Court, where Minister Luiz Fux, in ruling the Direct Action of Unconstitutionality No. 4,277[15], which excluded the possibility of discrimination of the various family groups, highlighted that three requirements are essential for a group to be identified as a family: family love, communion of life and identity, that is, "[...] the certainty of its members to the existence of an unbreakable bond. .] "(STF, 2011).

Recently, among the numerous family impasses, the right of the family has been challenged in matters that involve pets. This is because, not infrequently, couples have chosen not to have children, but to have pets as companions, where they are often "treated as human animals, losing the reference of the 'being"" and becoming true members of the family and even treated as" animal-children "(MEDEIROS, 2013, p. 212).

The results of the 2013 National Health Survey conducted by the Brazilian Institute of Geography and Statistics (IBGE) in partnership with the Ministry of Health and published in 2015, confirm this tendency, since the population of dogs in Brazilian households, for example, was estimated to be 52.2 million, and that of cats estimated at 22.1 million (IBGE, 2015).

In view of the expressive number regarding the population of pets in Brazilian households, in addition to the new role that these animals have assumed in some families, (as well as considering that the social transformation implies essentially a modification or adequacy of the family structure itself), it is understood that there is no way to conceive the concept of family without considering this interaction between the human being and the nonhuman animal (FARACO, 2003).

The strengthening of the relationship between the human being and the pet ends up elevating it to the status of family member, and the courts have to express themselves on matters related to custody, visitation and alimony, when rupture of the conjugal society occurs and there is no consensus.

According to Tereza Rodrigues Vieira and Loraini Candi-

da Bueno Pires, this "current and social adjustment brings new members into the family context, which are nonhuman animals", adding that under a new perspective of Family Law "one cannot lose sight of the fact that the new family is enveloped by a range of ideas from its evolutionary process. What was once seen as a group of people involved in affective bonds, is now seen as human people and not human. " (VIEIRA and PIRES, 2016, p.57).

Therefore, the aforementioned change is a result of the rupture of the current anthropocentric and rationalist paradigm which is still deeply rooted. Thus, we talk about multi-species family as one that is composed of humans and nonhuman animals, that under the perspective of affectivity claims its social and legal recognition.

5. Rules governing custody of children and the possibility of applying these to pets

The conjugal society is dissolved by the death of one of the spouses, annulment of the marriage or by divorce, as prescribed in Article 1.571 of the Civil Code and in Paragraph 6 of Article 226 of the Constitution of the Republic where assets are divided, whether consensual or judicial. And when there is no agreement between the parties, it is up to the magistrate to decide on the individual requests of the parties as to the division, according to the property regime adopted in the constancy of the conjugal society (LÔBO, 2011).

And among the numerous effects of divorce or dissolution, such as the extinction of conjugal duties, it is known that this does not alter the relationship between parents and children. Such a situation does not have the power to put an end to the duties of the parents with regard to small children, as stated in Article 1.632 of the Civil Code.

However, it is not unusual for couples, in the constancy of marriage or common-law marriage, by mutual agreement acquire or adopt a pet, such as a puppy, and treat it as an integral member of the family, creating ties of affection and love, constituting a true family entity or a multi-species family.

In Brazil, as in other countries, there are no legal provisions that specifically address the custody of pets when the dissolution

of the conjugal bonds occurs and there is no consensus between the parties.

Thus, the treatment given by the Brazilian legislation, where the animal is equated to a movable asset, does not seem plausible when it comes to pets. Based on the assumption that in some cases pets are seen as members of the family household, in no way should they be put in the same category as movable assets, since within household itself they are considered true subjects of *sui generis* rights.

On the other hand, contrary to the Brazilian legal system, some advances in this regard have taken place in foreign laws, such as in the French jurisprudence that "has been particularly attentive to the sociological evolution of its animal status, as attested by the legal judgments that recognize the animal as having a similar role to that of children", with regard to custody issues in the event of divorce (GOMES, 2015, p. 361).

In fact, the applicability of the laws for children and adolescents, according to Marianna Chaves, "may shock and cause some reticence," but that is not absurd, since not too long ago "children and animals were treated exactly the same way. They were all property of their owners (in the case of known infants it was the parents "(CHAVES, 2016, p.20).

Aspects such as this challenge lawmakers to find solutions to the practical cases that have reached the Judiciary, while facing the infeasibility of the jurisdictional power and the legislative vacuum with regard to custody, visits and alimony to pets which are considered members of the family. It is the analogy that emerges as an important tool to overcome this omission, and it is the magistrate duty to ensure social wellbeing, as stated in Articles 4 and 5, both from the Law of Introduction to the Norms of Brazilian Law.

It is understood that the application, by analogy, of custody-related laws and other rights that children and adolescents have as holders, is a measure that can address this gap considering the context in which pets are treated as members of the family comparing the limitations to those of children, as will be better punctuated in the course of this research.

5.1 CUSTODY AND THE ANIMAL´S BEST INTEREST

Custody of a minor is related to the care attributed to both or one the parents or to a third party in the event of loss of family right which includes moral, financial and educational assistance. It has a legal provision in article 1.583 and subsequent ones in the Civil Code, when it is related to the parents and, in article 33 and subsequent ones of the Child and Adolescent bylaws in cases of loss of family power, being assigned to a third party.

Custody can be secured in two ways: shared or unilateral. It is understood by unilateral as the custody that is attributed to one of the parents, whereas shared custody consists of joint and equal responsibility for the exercise of the rights and duties of parents, concerning family rights of the children they have in common. The latter has become the rule with the enactment of Law 13.058 of December 22, 2014.

In the Brazilian Judiciary, in disputes involving pets, custody laws are not clear. However, there is what is called alternate custody for possession but not shared, and the court's attempt to abstain from the discussion, about whether or not to assign subjective rights to the pet in question, is taken from the judgment of Case No. 0019757-79.2013.8.19.0208, issued by the 22 th Civil Chamber of the Court of Justice of the State of Rio de Janeiro[16], where the dispute involved the possession of a couple's pet dog.

There is an emphasis by the judge of the importance and transformation of the human-animal relationship, the incongruity of the treatment within the civil legislation, thus decided for the alternate possession based on the dignity of the human person, highlighting the right to have a pet.

The establishment of custody or possession, in the case of legal disputes of pets also raises questions about the criteria that must be observed, and here we need to recognize these beings as subjects with rights, so that the protection provided explicitly considers the welfare and the best interest of the animal, as it occurs with children and adolescents, taking into consideration which of the parties can provide better living conditions.

It is emphasized that when talking about better living conditions, it is understood that it is not limited exclusively to financial matters, but also to the preservation of the integrity of the pet or its

physical and affective companionship, .

According to Mills Eithne and Kreith Akers, the courts generally have considered the best interest of the animal in a veiled way when deciding family disputes over pets, but there is strong resistance for their open acknowledgment, as in the case of the Texas court that refused to prove the best interest of the animal, justifying that such criterion refers to the children. (EITHNE and AKERS, 2011).

It is believed that the discussion about the best interest of the animal, from the perspective of Brazilian legislation, is a criterion that inevitably must be considered by those who apply the law, when deciding on the custody of the pet, under the risk of direct affront to the Federal Constitution, which in fact prohibits cruelty in the face of animals, while in a reflexive way it demands that the human being praise for its integrity, a fact that cannot be ignored by the magistrate.

Therefore, considering that non-human animals experience affective states, as well as being able to exhibit intentional behaviors, within their specificities, capable of showing affection such as suffering, among other feelings similar to human beings, as stated in the Cambridge Declaration on Consciousness in Humans and Non-Humans, signed in 2012, added to the role of "being part of the family", when disputes occur, as is the case involving children and adolescents, for the purpose of securing custody or possession, the suitability of the parties must be considered and, in both cases, the determination of the joint exercise.

And, given the vulnerability and dependency of the pet, as a non-human member of the family and subject of rights, there are no legal obstacles to applying custody rights be it in the shared or unilateral modality, as recorded in the Article 1,583 of the Civil Code, imposing on the guardian or guardians the care expenses provided for in article 33 of the Statute of the Child and Adolescent (SILVA and VIEIRA, 2016).

5.2. VISITATION RIGHTS

The right to visit emerges when the unilateral guardianship is established, also referred to as the exclusive custody, with the purpose to preserve the child's right to coexist and maintain affective

bonds with both parents.

In this section, it is said that "the child has the right to communicate with each of his/her parents and they, in turn, have the same right towards the child,"a right that in the Brazilian legal system provides for in article 1,589 of the Civil Code, and may be extended to the grandparents "and persons with whom the child or adolescent maintains an affective bond", according to the terms of sentence 333, of the IV Civil Law Conference of the Federal Justice Council, held in 2006 (LÔBO, 2011, p.197).

It is understood that in the absence of legislation dealing with the rights of pets, in cases of litigation, the right of access as foreseen in the civil legislation, can be applied by analogy, aiming at meeting social purposes.

In the same way, the extension of this right to those with whom the pet has established affective bonds, such as other members of the family who have proven to have this bond of affection, applying the law is plausible.

This is because, since animals are sentient beings and often considered part of the family, the abrupt rupture of the relationship with one of the guardians or with the other members of the family group, can damage the integrity of the animal as well as the dignity of non-guardian, who also holds the right to have the company of the pet, even in cases where he/she does not have custody.

The right to visitation encompasses not only coexistence but also materializes the right to supervise, which can also be exercised by the party with whom it is not kept, and in some cases "even in the participation in the choice of the genealogical tree, especially in animals with pedigree, reflecting the duty of information on the part of the person who has the custody (Gaeta, 2003, p.74).

The rules over visitation rights may be stipulated by the parties on a consensual basis, or by the magistrate in cases where there is no agreement, always seeking to preserve the best interest of the animal, according to the peculiarities of the case under analysis.

5.3. FOOD

The duty to supply food is provided in the Brazilian law, in articles 1669 and 1695, both of the Civil Code and, based on the principle of family solidarity, the "duty to provide food is based on

the human and economic solidarity that must exist between family members or relatives "(GONÇALVES, 2012, page 499).

The duty to provide food is conditioned by both the need for food and the possibilities of the provider, which is not limited to the concept of food itself, but comprises all expenses to ensure the minimum necessary for a decent life, such as clothing, housing, medical and dental care, leisure and other necessities essential to the full development of those who need them (VENOSA, 2008).

It should be noted that in human relations, when there is no proper provision of food it is regarded as abandonment, which may be affective, material or intellectual, where the first does not have legal support in relation to the specific penalty, contrary to what occurs with material abandonment and intellectual abandonment, which are characterized as a criminal conduct in article 244 and 246 of the Penal Code respectively and, in the case of the elderly, in Article 98 in the Statute of the Elderly.

In this area, when a couple chooses to acquire or adopt a pet, they assume the responsibility of supplying all needs, providing, besides food which is necessary for their subsistence, everything that is essential for a dignified life, under the penalty configured as maltreatment, which by virtue of Article 32 of Law No. 9,605 of February 12, 1998 (Environmental Crimes Act) constitutes criminal conduct.

Therefore, in cases of divorce or dissolution of the conjugal union, as in the case of custody and visiting rights, rules dealing with the obligation to provide maintenance, by analogy and in compliance with the general principles of law, may be applicable in favor of pets.

In discussing the topic, Camilo Henrique Silva points out that "although the family relationship is based on blood relationship, the relationship between the guardians and their animals is of an affinity", and it is also possible to have compulsory civil responsibility (SILVA, 2015, p.111).

This possibility is even clearer under the aegis of the constitutional text itself, which prohibits the practice of acts of cruelty towards animals, a category in which abandonment, which is of a material nature here, is seen as a cruel and degrading act, as set forth in article 6, item b, of the Universal Declaration of the Rights

of Animals.

It is understood, therefore, that the pet has the right to receive food, and it is a duty of the person who does not have custody, who, following the in natura rendering by the guardian, must cooperate financially within his/her means , in order to ensure a decent life the one benefitting from the alimony (in this case the pet).

6. Conclusion

It is observed in the present study that despite the legislative advances regarding animal protection in the legal scenario, where its protection has reached the Constitution in the Brazilian legal system, in general the legal treatment conferred by the Brazilian legislation still remains anachronistic. Pet as well as the fauna in general, are still framed as a thing or a movable asset, a problem that is repeated in other countries.

On the other hand, the evolution of the family over time has placed affection as the foundation of these relationships, and has culminated in the expansion of its concept, encompassing the plurality of new family configurations (added to the intensification of interspecies relationships), where pets or companions are considered and treated as members of the family group. Therefore, one cannot think of a family without considering such interaction.

In this way, the multi-species family in a timid manner has claimed recognition, especially in the legal sphere, leading to strenuous judiciary discussions, especially in cases of divorce or dissolution of the conjugal society, regarding the situation of the pet.

Situations like these require a new posture from the Judiciary, where the treatment of the pet under the prism of environmental law, or Civil Law that classically conceives it as a thing or movable asset when there is a dispute. It is inevitably urged to consider, at the time it applies of the Norm, the affective bonds between humans and the nonhuman beings, who often compose through affectivity the family of its owners.

In this scenario, it is understood that the application of the norms related to custody, food and visits regarding children and adolescents, for the pet it is a legal measure that can be efficient,

and legitimized by analogy and general principles of law.

However, the need to create legislation adequate to this new reality, which clearly considers its legal status as true subjects of rights, where it can openly be discussed the welfare and best interests of the pet for its effective protection.

Endnotes

1. Anthropocentrism "is a generic conception that, in synthesis, puts Man at the center of the Universe, that is, the maximum and absolute reference of values" (MILARÉ, 2007, pp. 97-98).

2. ARTICLE 1: All animals are born equal in life, and have the same right to existence.

3. ARTICLE 2: A) Each animal has the right to respect. (B) Man, as an animal species, shall not be entitled to exterminate or exploit other animals in violation of that right. He has a duty to put his conscience at the service of other animals. C) Each animal has the right to the consideration, cure and protection of man.

4. ARTICLE 5:(A) Each animal belonging to a species, which commonly lives in the environment of man, has the right to live and grow according to the rhythm and conditions of life and freedom proper to its species.B) Any modification imposed by man for mercantile purposes is contrary to this right.

5. ARTICLE 6: A) Each animal that man chooses as a companion has the right to a life span according to its natural longevity. B) The abandonment of an animal is a cruel and degrading act.

6. Art.1 Animals of any species, at any stage of their development and living naturally out of captivity, constituting wildlife, as well as their nests, shelters and natural breeding grounds, are the property of the State, and their use, persecution, destruction, hunting or pick up.

   § 1 If regional peculiarities involve the exercise of hunting, the permission shall be established in a regulatory act of the Federal Public Power.

7. § 2 The use, pursuit, hunting or harvesting of wildlife species on

privately owned lands, even when permitted under the preceding paragraph, may also be prohibited by the respective owners, who are responsible for supervising their domains. In these areas, for the practice of hunting, it is necessary the express or tacit consent of the owners, under the terms of arts. 594, 595, 596, 597 and 598 of the Civil Code.

Art. 6 The Public Power shall stimulate:
A) The formation and operation of amateur hunting and shooting clubs and societies to achieve the associative spirit for the practice of this sport.
B) the construction of breeding sites for the production of wild animals for economic and industrial purposes.

8. Art. 37. It is not a crime to slaughter an animal when it is carried out:

I - in a state of need, to quench the hunger of the agent or his family;
II - to protect crops, orchards and herds from the predatory or destructive action of animals, provided that it is legally and expressly authorized by the competent authority;
III - (VETOED)
IV - because the animal is harmful, as long as it is characterized by the competent organ.

9. Article 82. movable goods are those susceptible to own movement, or removal by force of others, without any alteration of substance or economic-social destination.

10. Art. 83. The following shall be considered movable for legal purposes:
I - energies that have economic value;
II - the real rights over moving objects and the corresponding actions;
III - the personal rights of patrimonial character and respective actions.

11. According to Mills Eithne and Kreith Akers, in the United States, Australia, and Canada, domestic animals are considered as personal property or movable property (EITHNE and AKERS, 2011, 214).

12. Art.1.228 The owner has the faculty to use, enjoy and dispose of the thing, and the right to take back the power of whoever unjustly possesses it or holds it.
§ 1 The right to property shall be exercised in accordance with its economic and social purposes and in such a way as to preserve, in accordance with the special law, the flora,

fauna, natural beauties, ecological balance and historical and artistic patrimony, as well as avoiding air and water pollution § 2. The acts that do not bring to the owner any comfort, or usefulness, and are animated by the intention of harming others, are prohibited. § 3. The owner can be deprived of the thing, in the cases of expropriation, by necessity or public utility or social interest, as well as in the request, in case of imminent public danger. § 4. The owner may also be deprived of the property if the property claimed consists of an extensive area, uninterrupted possession and in good faith, for more than five years, of a considerable number of persons, and they have performed therein, jointly or separately , works and services considered by the judge socially and economically relevant. § 5 In the case of the preceding paragraph, the judge shall establish the fair compensation to the owner; Paid the price, it will be worth the sentence as title for the registration of the property in the name of the owners.

13. Peter Singer, Tom Regan and Edna Cardozo Dias, for example, share this understanding

14. Art. 1 Every person is capable of rights and duties in the civil order.

15. This action was aimed at recognizing the homoafetive union, an opportunity in which the Brazilian Supreme Court highlighted the affective aspect as a pillar of family relations.

16. CIVIL LAW - RECOGNITION / DISSOLUTION OF STABLE UNION - SHARING OF SEMOVENT PROPERTY - PARTIAL PROCEDURE SENTENCE THAT DETERMINES THE POSSESSION OF THE PET DOG TO THE EX- CONVIVER WOMAN- A RESOURCE THAT ONLY VERSES ON THE ANIMAL POSSESSION - THE REAL OWNER - PROBATIONARY SET THAT EVIDENCES THAT THE CARE OF THE DOG WAS THE CHARGE OF THE PETITIONER - The right of the appellant/man to have the animal in his company - pets whose destiny, if conjugal societydissolves, is a theme that challenges lawmakers- semovent by its nature and purpose, cannot be treated as a mere good, to be hermetic and thoughtlessly shared, abruptly breaking up the relationship with one of the members of the family - "Dully" the dog had been given to the pplicant by the defendant, at a time of particular distress faced by the cohabitants, namely a natural abortion - emotional and affective ties built around the animal, which

should be kept, as much as possible - a solution that does not have the power to confer subjective rights to the animal, and expresses itself, on the other hand, as one more of several multifarious manifestations of the principle of the dignity of the human person, in favor of the applicant - partial acceptance of the irresignment to, despite the absence of normative ruling regent on the subject, but weighing all the vectors above evidenced, to which is added the principle that closes the Non liquet, to enable the applicant, if he chooses, to take with him the dog Dully, exercising his provisional possession, enabling him to fetch the dog on alternate weekends, from 10:00 am on Saturday to 17:00 on Sunday , A sentence that remains (RIO DE JANEIRO, 2015).