

## **LAW & FOUNDATIONS**

**The Senate and the Chamber of Deputies, meeting in Congress... penalize by law:**

**Adaptation of the legal status of nonhuman animals in the Civil and Commercial Code of the Nation.**

**Article 1: Add as Article 21 bis of the Civil and Commercial Code of the Nation the following text:**

ARTICLE 21 BIS. – “Nonhuman animals, whatever their species, are considered as non-human physical persons and consequently subject to law. Their sentience is fully recognized and they are excluded from any other characterization that affects their also recognized dignity. As such, they are the holders of their own rights and of all those recognized by this Code and special laws, as well as of freedom from ill-treatment by human beings. They shall exercise their rights through human or legal persons with an interest in defending those rights.”

**Article 2: Amend Art.14 of the Civil and Commercial Code of the Nation to be written as follows:**

“ARTICLE 14. - Individual and collective advocacy rights. This Code recognizes:

- a) individual rights;
- b) collective advocacy rights.

The law does not protect the abusive exercise of individual rights when it may affect the environment, nonhuman animals, and collective advocacy rights in general.”

**Article 3: Add as Article 465 bis of the Civil and Commercial Code of the Nation:**

ARTICLE 465 BIS. – “Nonhuman animals are not considered goods in any sense, but in the terms of Art. 21 BIS.”

**Article 4: Amend Article 594 of the Civil and Commercial Code of the Nation to be written as follows:**

ARTICLE 594. – “Adoption is a legal institution whose purpose is to protect the right of children and adolescents to live and develop in a family that provides care to meet their emotional and material needs when these cannot be provided by your family of origin.

Adoption is granted only by court order and the adopted child is summoned in the state of the child, in accordance with the provisions of this Code.

It is expressly recognized that non-human animals may be adopted and, because of their natural conditions and in accordance with the administrative rules in force, they can live with human persons. This adoption does not require a judicial decision or any process, but it will only be legitimate as long as there is no evidence of ill-treatment by its adopters.”

**Article 5: Amend Article 439 of the Civil and Commercial Code of the Nation to be written as follows:**

ARTICLE 439. – “The regulatory agreement must contain questions relating to the allocation of housing, the distribution of property, any financial compensation between spouses, and the care of the nonhuman animals they have borne; to the exercise of parental responsibility, in particular the provision of food; all provided that the factual assumptions referred to in this Section are given, in accordance with the provisions of this Title and Title VII of this Book. The provisions of the preceding paragraph do not preclude other issues of interest to the spouses.”

**Article 6: Add as Article 541 bis of the Civil and Commercial Code of the Nation**

**the following text:**

ARTICLE 541. - The need for sufficient quantity and quality of food, medical care, shelter, clothing and adequate housing for nonhuman animals is part of any food obligation under this Code.

**Article 7: Add as Article 526 bis of the Civil and Commercial Code of the Nation the following text:**

ARTICLE 526 BIS. - "Both for the allocation of family housing, financial compensation and distribution of property, the needs of nonhuman animals living with such a union will also be considered."

**Article 8: Amend Article 1737 of the Civil and Commercial Code of the Nation to be written as follows:**

ARTICLE 1737. – "There is damage when a right or an interest not reproved by the legal system is injured, which has as its object the person, the property, one or more nonhuman animals, or a right of collective incidence."

**Article 9: Add as Article 1738 bis of the Civil and Commercial Code of the Nation:**

ARTICLE 1738 BIS. - "Nonhuman animals are entitled to claim compensation for the damage they suffer, in the forms established by the applicable procedural law."

**Article 10: Add as Article 958 bis of the Civil and Commercial Code of the Nation:**

ARTICLE 958 BIS. - "Any contract which has as its object or is related to the performance of activities or services where nonhuman animals are injured, caused pain, torture, hostility or parody in any way."

**Art.11: Form. -**

## FOUNDATIONS

Mr. President,

The relationship of human beings with other animals has evolved along different paths throughout history, drawing in general a path absolutely directed to the understanding that the latter, far from being a mere tool share the world with us.

Thus, none other than Domingo Faustino Sarmiento, a hero of our nation and undeniable founder of the educational torch Argentina, pushed the first law that sanctioned behaviors related to animal abuse. Later, in the year 1954 and attending to the severe situations of mistreatment that these continued to suffer, mainly for the animals that were used for blood traction, the Deputy Antonio Benitez promoted the sanction of Criminal Law 14.346, which establishes a significant number of behaviors that make up the criminal types of "Ill-treatment" and "Cruel Acts" against animals. In fact, in the parliamentary debate of the law, it has been indicated that *"The plausible purpose of defending the animal species from those acts that by their cruelty or their lack of mercy mean a bad treatment, while maintaining a moral heritage of the Republic within a level that is in tune with social improvement and with the feelings that make the spiritual discipline of man (...) The position of our block is frankly favorable to*

*everything that means an improvement of the legal instruments designed to protect the animals themselves and, at the same time, avoid committing acts that are at odds with the degree of culture and civilization that the country has achieved"* (Deputy Weidmann, D. Ses. Dip. 1954, p. 1747).

Subsequently, accompanied social changes at this point undeniable that have meant an understanding of our relationship with animals based on respect, love, and recognition of them as an "other" rather than a simple object, jurisprudence, and international law have also contributed to the subject.

Our own National Constitution establishes in the first place the Right to the Environment, a collective and indivisible right. The forecast points out that: *All inhabitants enjoy the right to a healthy, balanced environment, suitable for human development and for productive activities to meet present needs without compromising those of future generations; and have a duty to preserve it. [...] The authorities shall provide for the protection of this right, [...] for the preservation of natural and cultural heritage and biological diversity*". Thus pointed out, it is evident that biological diversity can only be defended or conserved as long as each species is consistently cared for. Thus by a natural interpretation of our legal order, animals belong to the category of Diffuse Rights, promoting the protection of each species in its respect. This has been stated in Advisory Opinion 23/2017 of the IACHR, highlighting that *the right to a healthy environment as an autonomous right, unlike other rights, protects the components of the environment [...]. The aim is to protect nature and the environment not only because of its connection with human utility or the effects that its degradation could cause on other human rights, such as health, life, or personal integrity but for their importance for the other living organisms with whom the planet is shared, also deserving of protection in themselves.* (OC.23/2017, IACHR [http://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf);) )

In parallel, as has been pointed out in the case of law, *"on the basis of a dynamic and non-static legal interpretation, it is necessary to recognize the animal as a subject of rights, since non-human (animal) subjects are holders of rights so that their protection is imposed in the corresponding area of competence"* (Cf. "Orangutana Sandra s/ Appeal in cassation s/ Appeal of Habeas Corpus", Case No CCC 68831/2014/CFCP Chamber II). This jurisprudential interpretation exemplifies, beyond many others that are developed in this protection under the condition that nonhuman animals are definitely "subjects to law" and that therefore they are eager to receive effective judicial protection, argues that in our legal system, animals deserve their due representation. As long as animals have rights, the constitutional guarantees of "Due process", "Right of defense" and "Petition before the authorities" (Arts 14, 18, and 33CN) must be activated immediately, because where there is a right there is a legal remedy to enforce it (CSJN Halabi, Ernesto c/ P.E.N. - law 25. dto. 1563/04 s/ amparo law 16.986).

In the same sense, another jurisprudence has been expressed, exemplifying the following: that equines have *"the respect of their constitutional rights"* (cf. Criminal Appeals and Guarantees Chamber, Quilmes. Chamber II. "Karina Dotto s/ Appeal

Incident”, case n° 33369 –since *“There is no right, ultimately, that has no root and basis in the Constitution, even if it is directly and immediately governed by the common law”* (Judgments, 301:447; 305:2096; 310:2306 and their citations, CNCiv, Room C, 14/11/68, LL, 137-760)), which *“The interest legally protected by the law is not the property of a human or legal person, but that of the animals themselves, who are holders of the guardianship that establishes against certain human behaviors”*, at the same time the same court pointed out at the time *“Animals are not things, they are protected by special laws”* and that *“The categorization of animals as subjects of rights does not mean that they are holders of the same rights as human beings, but that it is a question of recognizing their own rights as part of the obligation of respect for the life and dignity of every sentient being”* (Judge. Cont. Admin. 4, orders “Association of Officials and Lawyers for Animal Rights and Others vs. Government C.A.B.A. s/amparo (RCJ 6780/2015)”, which “Law 14.346 on ‘ill- treatment and acts of cruelty to animals’ does not protect the feeling of pity or humanity towards animals, but animals as ‘subjects of rights’, so that the conduct of the accused has not fallen on an object or thing, but on a subject worthy of protection”, adding there the judge “I share the current of understanding that the animals observe as living beings susceptible to suffering, because, as has been explained with all clarity and lucidity ‘instead of asking if a living being can reason or speak, one must ask if he can suffer. *If these animals, like human beings, can suffer, and if it is considered that suffering must be avoided, all these living beings have, by virtue of such a common characteristic, the right not to be inflicted sufferings for their sake*” -CAP. XVII, SEC.1, note to paragraph 4, cited in AAVV Penal Code of the Argentine Nation, note 15- (Orders “F. C/ S.R.M.R P/ Maltreatment and animal cruelty” (N°36598), Judgment N° 1927 dated 20/4/2015. First Correctional Court of the First District of Mendoza), which *“...Law 14.346, does not protect the feeling of pity, but the Animals as Subjects to Law, therefore, the behavior of the accused has not been done to an object or thing, but to a SUBJECT...”* (“F. C/Sieli Ricci, Mauricio Rafael P/Maltreatment and Cruelty”, Judge. Corr. of the 3rd Circ. Jud. of Mendoza), that *“today thanks to scientific knowledge and legal interpretation that is dynamic and evolutionary; nonhuman animals are not considered “objects”, they are victims and Holders of rights... it is about recognizing their own rights as part of the obligation to respect life and their dignity of “being sentient”* (Chamber I of the Cám, of Apel. in the Criminal, Criminal and Misdemeanours of the Prov. of Bs.As. in “Incident of appeal in García Blanco, Raquel s/ inf. Law 14346”) and, finally, the case of the Chimpancé “Cecilia”, the animal on which a writ of habeas corpus was granted in the province of Mendoza, ruling that the animal is not a thing but a sentient living being. And therefore, *animals as subjects to law, have fundamental rights that should not be violated because they have metacognitive abilities and emotions* (“Expte No. P-72.254/15, Mendoza).

Also in the face of a different and absolutely valid historical consideration of the issue, one can consider the ease with which today we can see the injustice of slavery of black people, but at the given historical moment, it was considered that there was no problem to consider as a legal category -and social- of “objects” to some people, which affected the now recognized principle of equality. This possibility of classifying as objects some

members of the species *Homo sapiens* was justified by arguments that postulated differences based on intellectual inferiority, inability to control themselves, or by refusing to recognize the ability to suffer like that of white people. Similar reasons were used to deny the same rights to other groups, including women, considered less intelligent and, thus, lack of merit to have rights that would allow them to develop an autonomous life on equal terms. This equality, which is now a universal requirement of various global movements, the basis and promise of every right, is an ideal that forces us to review which characteristics or physical and psychological aspects are irrelevant and make unequal treatment unfair. So, suppose it was true that statistically women were less intelligent, or black people less “rational”, what would this matter in terms of rights to the freedom from cruel treatment and equal access to health or education? Now that these injustices seem obvious, it should not make us forget that the issue is not that we are equal in everything, but the differences alleged to justify the injustice of inequality are incorrect because of their irrelevance to the relationship between them and the damage caused.

However, this order of ideas is also accepted internationally. In fact, the “Universal Declaration of Animal Rights” that “*every animal has rights*”, and that “*Man, as an animal species, cannot be attributed the right to exterminate other animals or to exploit them in violation of their right*” (Art.2), which also “*Every animal belonging to a species that traditionally lives in the environment of man has the right to live and grow at the pace and conditions of life and freedom that are peculiar to its species. Any modification of such rhythm or conditions imposed by man for commercial purposes is contrary to that right*” (Art.5) and closes its circle by stating that “*The rights of the animal must be defended by law, as must the rights of man*” (Art.14). With respect to the latter, although it does not comply with the formalities required to be considered a “Universal Declaration” in terms of public international law, the truth is that Presidential Decree 1088/2011, creator of the “The National Responsible Dog and Cat Care Programme”, when taken into account in its recitals, gives it validity to be considered in our right, at least as a guide.

A historic change and a gigantic step towards a future of hope for nonhuman animals was set by the **The Cambridge Declaration on Consciousness** signed at that University, in England by 13 eminent neuroscientists in the presence of Dr. Stephen Hawking.

It has proclaimed that non-human animals have neuroanatomical substrates, neurochemical and neurophysiological states of consciousness along with the ability to exhibit intentional behaviors indicating that humans are not the only ones to possess the neurological basis that gives rise to consciousness. Nonhuman animals including all mammals, birds, and many other creatures including octopuses also have the same neurological substrates as us.

In it, it was pointed out that “*There is convergent evidence indicating that nonhuman animals possess the neuroanatomical, neurochemical and neurophysiological substrates of states of consciousness, along with the ability to show intentional*

behaviors. Consequently, the weight of evidence indicates that humans are not the only ones to possess the neurological basis that gives rise to consciousness. Nonhuman animals, including all mammals and birds, and many other creatures, are also on these neurological substrates" (<http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>; <https://www.animal-ethics.org/declarationofconsciousness-cambridge>).

For the rest, Philip Low, the Author of this historic Declaration visited our country last year, confirming what he said in the declaration, stating that ***“Knowing that animals have a conscience should change the way we deal with them. “They deserve ethical treatment, moral treatment. We have to treat them with respect”***, adding *“We have the possibility to know the two generations that precede us and impact those that follow. So I propose to be responsible for our covenant on Earth, in our social circles, in the country where we live, and bring about change,”* (<https://www.infobae.com/salud/ciencia/2018/11/27/argentina-tiene-que-wonder-if-you-want-to-be-part-of-the-past-and-keep-testing-in-animals-or-move-to-the-future/>)

**Finally, on 29 March 2019, law professors from the University of Toulon, France gave a legal response to the Cambridge Declaration.**

The Toulon Declaration proposes an evolution of the legal status of animals. If the Cambridge Declaration produced an absolute turn in the way we perceive nonhuman animals, **the professors of Law of the University of Toulon issued a statement to the effect that nonhuman animals should be considered as non-human physical persons thus removing them definitively from the status of things.**

**Since the Toulon Declaration, France has had a bill to amend the Civil Code. In 2015 the French Civil Code had already amended one of its articles, from that moment on considering nonhuman animals as sentient beings but kept them in the category of objects.**

**The Toulon Declaration makes it very clear that this 2015 amendment was not enough to free animals from the status of things and the next step must be taken to make the law consistent.**

If one observes international law, it is clear that in a similar sense, many countries have made progress in generating protective regulations for nonhuman animals. In fact, Chile punishes ill-treatment against animals at the same time as its law 20.380 establishes the rules for responsible care of them; Spain punishes ill-treatment, even punishing its abandonment and also has an enviable draft protection law, animal rights and welfare with early approval; Peru does the same through its Law 27.265, and Uruguay through Law 18.471. Meanwhile, countries such as Germany, Austria, and Switzerland (also Chile in its draft new federal constitution) constitutionally recognize animals as sentient beings, departing from the category of mere goods.

If we are talking about living and sentient beings it is absolutely impossible, as we see, to continue to consider them as an object.

**The Preamble to the Toulon Declaration** reads as follows: *“We university jurists participating in the trilogy of colloquiums organized at the University of Toulon on the subject of the legal personality of animals, considering the work carried out in the field of neurosciences and having taken note of the Cambridge Declaration of 7 July 2012 in which the scientists concluded that humans are not the only possessors of the neurological substrates of consciousness but share them with humans, regretting that the law has not yet taken these steps to deepen and develop the body of animal law, noting that in most legal systems animals are still considered things and are devoid of legal personality, which leads to them not being granted their rights as living beings. Considering that today the law cannot continue to ignore scientific advances to improve the taking into account of animals, knowledge that until now has been underused. Finally, the current incoherence of national and international legal systems cannot sustain inaction without urgently initiating the changes necessary to take into account the sensitivity and intelligence of nonhuman animals.*

**We declare:**

- That animals should be declared universally as non-human persons and not as objects.
- That it is urgent to put a definitive end to the reign of objectification. That current knowledge imposes a new legal view on the non-human animal.
- That consequently, animals should be recognized as persons in the legal sense and that, beyond the obligations imposed on human persons in dealing with non-human persons, the animals rights should be recognized by taking into account their interests.
- Animals should be considered as non-human physical persons and the rights of these non- human physical persons should be different from the rights of human physical persons.
- The recognition of the legal personality of animals is presented as an indispensable stage in the coherence of legal systems.
- This dynamic is part of a legal logic that is both national and international.
- Only the path of legal personification is capable of providing satisfactory and favorable solutions for all.
- In this way, it is emphasized the link between the entire community of living beings must and can find a legal translation.

How did the Cambridge Declaration on Consciousness change our perception of animals? July 7, 2012 was a historic moment for nonhuman animals and humans.

But the question is: Is this enough? And the answer is: It is not!

In our country, animals continue to be subject to the regime of movable property, even if it has been recognized that they are not.

This is a serious legal schizophrenia. If we do not recognize them as persons in order to give them rights, there will be no consistency in recognizing them as living beings endowed with conscience and leaving them subject to the regime of goods.

We are talking about living beings to whom it is necessary in coherence to recognize the quality of a person in the legal sense. There is no need to fear the term person applied to nonhuman living beings.

Nor should we be concerned about any equivalence between humans and animals. It is not a question of recognizing the same rights as human beings.

What should be done is to give nonhuman animals legal personality in order to be integrated into a legal system as non-human physical persons.

We are talking about the practical application of the Cambridge Declaration, about bringing it into reality so that the law fits that reality. **It is urgent to heal this issue and the appropriate way to do so is through the recognition of animals as non-human persons, through a specific regime.**