

## CHANGING THE LEGAL STATUS OF ANIMALS: LEGISLATION AND LITIGATION

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### Abstract

This paper addresses the issue of the legal status of non-human animals and the possibility of changing it from the status of things or property, to the status of non-things, or better, sentient beings. Key arguments for the change of their status are discussed, including the argument from marginal cases, and the scientific evidence indicating that many animals are sentient beings. Two ways of initiating such changes seem most promising: legislation, i.e. the modification of civil codes, and litigation, i.e. filing lawsuits on behalf of individual animals. It is argued that legislative changes are necessary for moving animals out of the legal category of things and into the category of sentient beings that can bear rights. On the other hand, litigation could bring about a more radical change of the legal status of some animals.

**Key words:** Animals, legal status, sentient beings, things, rights

## ПРОМЕНА ПРАВНОГ СТАТУСА ЖИВОТИЊА: ЗАКОНОДАВСТВО И СУДСКИ СПОРОВИ

### Апстракт

Тема овог рада је проблем правног статуса не-људских животиња и могућност промене тог статуса од статуса ствари, или својине, у статус не-ствари или, још боље, осећајних бића. У раду се разматрају кључни аргументи у прилог промени њиховог статуса, попут аргумента маргиналних случајева, као и научна евиденција која указује на то да су многе животиње осећајна бића. Два начина иницирања оваквих промена највише обећавају: путем законодавства тј. изменом грађанских законика, и путем судских спорова, тј. подношењем тужби у име појединачних животиња. Заступа се тврдња да су законодавне промене неопходне ради премештања животиња из правне категорије ствари у категорију осећајних бића која могу да имају права. С друге стране, покретање судских спорова би могло довести до радикалније промене правног статуса неких животиња.

**Кључне речи:** животиње, правни статус, ствари, осећајна бића, права

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### INTRODUCTION

Until the 19<sup>th</sup> century, the prevailing view in Western thought was that nonhuman animals were inanimate objects that had no moral standing and to which humans had no moral obligations. This view draws on Descartes' (1637/1971) assertion that animals are mere bodies, machines that run automatically like clocks and have no consciousness or soul, or any kind of mental life. Accordingly, just as we have no moral obligations to clocks, we have no moral obligations to animals. Unlike Descartes, Kant (1784-5/1997) recognizes that animals are sentient beings, but argues that humans have no direct moral obligations to animals because animals have no reason or self-awareness, so they are solely means that serve our purposes and have only instrumental value.

Quite a different view has been advanced by Jeremy Bentham, who argues that animals should be granted rights based on their sentience, and regardless of the fact that they lack some of the capacities that human beings have: "The question is not, Can they reason? nor, Can they talk? but, Can they suffer?" (Bentham 1781/1907, Ch. XVII). Bentham believes that animals, because of their capacity for suffering, have interests that are morally important and should be protected by law, and points out that humans have direct moral duties to animals, the most important of which is not to cause their unnecessary suffering.

Bentham's view has had a significant impact on our understanding of animals and the protection of their welfare: today, it is generally accepted that many animals are sentient beings with a wide range of emotions, and that it is not morally justifiable to harm them (unnecessarily). However, animals still have the status of things or human property, and do not have rights protected by law. The current practices of treating animals include: the daily killing of billions of animals that are raised on factory farms in inhumane conditions; using a great number of animals in experiments and biomedical testing, as well as in the entertainment industry, and the annual killing of hundreds of millions of animals by hunters and for their fur. Our treatment of animals is strikingly at odds with our knowledge about the nature of their emotional lives and our views on moral issues.

It is clear that the present day understanding of morality and law is markedly anthropocentric – only humans are considered to be moral subjects and therefore, only humans can be legal persons. Animals are excluded from the moral community and are not moral subjects, so they cannot be legal persons either. The current legal status of animals can be compared to the status of slaves in ancient times - they are things or "animate property," a term used by Aristotle for human slaves (Cavaleri & Singer 1993). Like slaves at that time, animals are absolutely subordinate to humans today: they are bought and sold like objects and constitute human property. Although our treatment of different animals varies im-

mensely – from providing gentle care for our beloved pets, to blatant animal abuse on factory farms - what all these animals have in common is that they have no control over their lives. However, unlike ancient slaves, animals cannot rebel or fight to change their legal status - people are the ones who have to grant them a different status.

In this paper, I support the thesis that the legal status of animals as things, or property, limits the legal protection they can have, because things have no interests and possess only instrumental value – they are a means of achieving the ends of humans (Francione 1995). I discuss the key argument for the thesis that the legal status of animals should be changed, i.e. that they have, or can have, their own interests or well-being. The fundamental criterion of having interests is considered to be sentience, or animals' capacity to experience suffering and pleasure, which is a prerequisite for having any interests in their well-being (Singer 1975; Regan 1985, 2003; DeGrazia 1996). I concur that someone's interests are best protected by legal means and argue that as long as animals are objectified in law, they cannot be legally protected and their interests will be systematically ignored for the benefit of humans. I thus conclude that in order to protect animals' welfare and interests, it is necessary to abolish their legal status as *things*, or property, and recognize that they belong to the legal category of *sentient beings*.

#### ARGUMENTS FOR CHANGING THE STATUS OF ANIMALS

The basis of the current moral and legal status of nonhuman animals is the argument that they lack some cognitive and emotional capacities that human beings have. Greater value is attached to typically human capacities and associated experiences, undervaluing the capacities and experiences which are either more developed in animals or which humans lack. Because animals lack many capacities that human beings have, the common belief is that their level of well-being is lower than that of humans (McMahan 2015). Nevertheless, an animal can have a good life and be happy, even though it has a comparatively low level of well-being. An important distinction should be made here between *well-being*, or welfare, and *fares well*. The subjective quality of life of a sentient animal that fares well is not necessarily lower than the quality of life of a human who fares well (DeGrazia 2016).

The question is why belonging to the human species should be morally relevant; human beings belong to various natural kinds, such as mammals, living beings, etc. Ascribing moral considerability to all humans simply because they belong to the species *Homo sapiens* is clearly *speciesism* – a bias in favour of the members of one's own species. Belonging to the human species ought not to be a morally relevant criterion, nor is it essential for having rights.

One of the compelling arguments for the moral considerability of animals is *the argument from marginal cases* (the AMC). ‘Marginal cases’ refer to human beings who lack some of the characteristic features that are traditionally considered to be morally relevant - rationality, autonomy, self-consciousness, use of language, etc. Marginal cases include: ‘pre-moral’ humans or infants who will become moral beings if they develop normally; ‘post-moral’ human adults who used to be moral but are no longer so because of their old age or illness (dementia); and ‘non-moral’ human adults who have never been, nor will they ever be, members of the moral community due to some serious mental illness or accident (Scruton 2000, p. 42).

The AMC challenges the traditional view that animals do not have moral standing, or have slight moral standing, because they do not have the aforementioned morally relevant characteristics. It points out that the so-called marginal humans do not have these morally relevant characteristics to a degree that is sufficient for moral status, while these capacities are more developed in some animals than they are in some human beings. Thus, if marginal humans are morally considerable, then animals with similar morally relevant capacities should be morally considerable too. For the sake of consistency, if moral status is ascribed to marginal humans, then it cannot be denied to relevantly similar animals; on the other hand, if animals are not morally considerable, then neither are marginal humans (Tanner 2006, p. 50). In other words, we have to admit either that marginal humans have slight moral status like animals, or that animals have the same moral status as marginal humans.

Having this in mind, those who argue that only humans have moral status ought to show that all human beings, including marginal cases, have some morally relevant characteristic or characteristics that no animals have. However, scientific evidence available today indicates that all the characteristics and capacities human beings have can be found, to some degree, in nonhuman animals too. Many scientists point out that the difference between humans and other animals is only a difference in degree, not a difference in kind (Darwin 1871/1981; Panksepp 2011).

#### *THE CURRENT LEGAL STATUS OF ANIMALS AND CHANGES IN LEGISLATION*

In view of the above arguments and scientific evidence, which indicates that many animals are sentient beings, and given that it is widely accepted that humans evolved from other animals, it seems that the adequacy of the legal status of animals ought to be reconsidered. The current legal status of animals is in the ‘grey zone’ - between the status of things and the status of sentient beings. Legally, they still fall into the category of ‘things’ or ‘property’, although they are not considered to be mere

things but *living property* protected by special laws, such as animal welfare laws. But the problem with this legal classification of animals as objects/property seems to be that the law in effect objectifies animals in this way (Shyam 2015). Treating animals like objects is not justifiable because they are sentient and have their own, morally relevant interests.

In other words, the legislation at the national and international level does not adequately reflect scientific knowledge about animal sentience. Scientific evidence from various fields, such as cognitive ethology, comparative and evolutionary psychology, neurobiology, and other related areas, suggests that many animals are sentient to some degree, or at least that all vertebrate species are. Accordingly, at least these animals should be regarded by law as sentient beings, and not as things or property. The recognition of animal sentience in legislation is essential for changing human perception of nonhuman animals, and it is the basis for introducing specific policies and procedures that will ensure the protection and improvement of animal welfare.

In reality, animals are still largely treated as objects, and they are considered to be things or human property in the eyes of the law. The status of animals as things makes it impossible to compare the interests of humans and animals in a meaningful way, while current laws do not recognize at all that animals have their own interests which should not be disregarded for the sake of human benefit. However, the situation has started to change, and several countries in Europe and worldwide have recognized in their civil codes that animals are not things, or even that they are sentient beings.

#### *Countries which Recognize that Animals are Not Things*

In the last few decades, several countries have modified their civil codes in order to recognize that animals are not things. The provision that animals are not things and that they are protected by special laws was first introduced by Austria in its Civil Code in 1988 (Austrian Civil Code, art. 285a). In addition, the Austrian Civil Code stipulates that the laws relating to objects do not apply to animals, unless there is a provision to the contrary. Similar provisions were introduced by Germany in its Civil Code in 1990:

Animals are not things. They are protected by special statutes. They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided (German Civil Code, section 90a).

Like Austria and Germany, Switzerland also acknowledged that animals are not things, in 2003. After these countries, several other countries changed their civil codes in a similar way, including the province of Catalonia, in 2006, the Netherlands, in 2011, the Czech Republic, in

2012, and others. Outside the European Union, apart from Switzerland, Moldova has also introduced in its Civil Code a provision that animals are not considered things and that they are protected by special laws. However, provisions relating to things still apply to animals, except in cases specified by law (Moldova Civil Code, art. 287).

The civil codes of all these countries recognize that animals are distinct from ordinary things: they have the so-called ‘non-thing’ status. This negative definition of animals as *non-things* is certainly a shift away from the false premise on which all these laws are based - that animals are things; still, it has limited value because it has no theoretical or practical consequences. In effect, these provisions are declarative in nature: although animals are no longer things legally, they are still treated as things. Animals have the status of ‘non-thing things’, which is paradoxical (Brels 2016).

What is lacking here is a definition that would clarify the legal status of animals, or specify a special legal category to which animals belong. Due to the absence of such a special legal category, the legal status of animals has not *de facto* changed. Even though the extent to which animals are subject to laws that apply to things has been reduced, if there are no special animal protection laws, they are still subject to laws and legal provisions that relate to things (Michel & Kayasseh 2011, p. 20). However, these changes improve the legitimacy of animal welfare laws and lead to the formulation of better standards for the protection of animal welfare, which is precisely what happened in Austria and Switzerland. It is also significant that the Constitutions of these countries contain animal protection provisions, i.e. there is a constitutional basis for their animal welfare laws.

#### *Countries which Recognize that Animals are Sentient Beings*

The most important legal document of the EU rejects the notion of animals as things or property, and recognizes that animals are sentient beings. The Lisbon Treaty of 2009 (art. 13) stipulates that Member States must take into account animal welfare, and it sets the minimum standards to be adhered to in legislation.

The positive definition of animals as sentient beings is certainly a step forward compared to the previously discussed negative definition. This positive definition can be found in the civil codes of some countries, such as France (introduced in 2015), Quebec (in 2015), New Zealand (2015), Colombia (2016), and quite recently, Spain (2021). Unlike Austria, Germany, and other countries that have adopted a negative definition of animals as non-things in their civil codes, which prevents practical i.e. legal consequences, France defines animals in a positive way, as sentient living beings:

Animals are living beings endowed with sentience. Subject to the laws that protect the animals, they are subject to the regime of property. (French Civil Code, art. 515-14).

By defining animals as living, sentient beings that are distinct from goods or property, their autonomous legal status is justified by their capacity for sentience, supported by scientific evidence (Giménez-Candela 2015). This modification of the legal status of animals in the French Civil Code took place under the influence of the social climate of growing interest in this issue, and social demands to ensure the better protection of animals, following years of parliamentary debates on and discussions of this problem.

Following the example of France, a year later, Colombia modified its Civil Code and its Criminal Code, introducing a positive definition of animals as sentient beings. Thus, Colombia became the first country in South America to recognize that animals are sentient beings. These changes were preceded by a prolonged discussion and exchange of views involving jurists and experts in the field, with the participation of animal welfare organizations. One of the convincing arguments used, apart from the fact that great progress had already been made in this field at the international level, pointed to a potential link between animal abuse and violence against people. In early 2016, the Colombian Congress approved the Bill (number 172) as a Law of the Republic, which reformed the National Animal Protection Statute of 1989, the Colombian Civil Code, the Criminal Code and the Criminal Procedure Code (Contreras 2016). This Law establishes that:

Animals as sentient beings are not things, they will receive special protection against suffering and pain, in particular, suffering and pain caused directly or indirectly by humans; this Law classifies some behaviours related with animal abuse as punishable and establishes a police and legal enforcement procedure. (Law No. 1774, art. 1)

The Colombian Civil Code was modified to recognize that animals are sentient beings distinct from things, which means that animals belong to the new legal category of *sentient beings*. In addition, related laws were also amended in order to harmonize the entire legal framework. Accordingly, it was necessary to amend the Criminal Code too, by introducing harsher penalties for animal abuse and abandonment, including fines and prison sentences. Of course, the Law applies to sentient animals – vertebrates, and it protects the interests of these animals in not being abused. Such comprehensive modifications of the legal framework ensure the existence of practical legal procedures that guarantee the protection of animal welfare and their interests.

However, although both the Lisbon Treaty and the civil codes of several countries recognize that animals are sentient beings, or at least

that they are not things, these changes are primarily a theoretical advance. In all these countries, animals are still treated as things and can be used as objects or goods, that is, they can be bought, sold, exploited and disposed of. Despite the progress made in terms of improving the laws relating to the status of animals and their welfare, it usually has limited value unless mechanisms for their enforcement and accountability are established. This should be taken into account when it comes to the Civil Code of the Republic of Serbia.

### *The Legal Status of Animals in Serbia*

The Republic of Serbia is among the few countries with continental legal systems that do not have a civil code, even though Serbia was among the first countries in Europe, after France and Austria, to adopt a civil code - the 1844 Civil Code of the Kingdom of Serbia (Avramović 2018). This Serbian Civil Code was modelled on the Austrian Civil Code and was in effect for a little over a hundred years, until it was abolished in 1946. The drafting of a modern-day Civil Code of the Republic of Serbia was initiated in 2002 at the Kopaonik School of Natural Law, and in 2006 the Government of the Republic of Serbia formed the Commission for drafting the Civil Code. Over the last fifteen years, the drafting of text of the Serbian Civil Code has been in progress, and so far three preliminary drafts have been prepared.

The latest version of the preliminary draft of the Serbian Civil Code from 2019 classifies animals as things or property: “The objects of subjective rights are animals, things, human actions, personal goods, products of the human mind” (Preliminary Draft of the Civil Code of the Republic of Serbia, art. 127). The Preliminary Draft stipulates that the legal provisions relating to things apply to animals, unless otherwise specified by special laws: “The provisions of the Code relating to objects apply to animals on issues that are not regulated by special laws” (Ibid, art. 144).

On the other hand, the Serbian Animal Welfare Law of 2009 recognizes that many animals (all vertebrates) are sentient beings. The starting point for taking into account the welfare of animals in the Law is animal *sentience* - their capacity to experience pain, suffering, fear, and stress. The basic provisions of the Animal Welfare Law stipulate that it refers to sentient animals, defined as a “vertebrate capable of experiencing pain, suffering, fear, and stress” (Animal Welfare Law, art. 5, cl. 13).

The Animal Welfare Law emphasizes the capacity of animals to feel pain and suffering; accordingly, the focus is placed on preventing the maltreatment of animals or causing unpleasant experiences in them, i.e. the focus is on animal protection from physical and emotional abuse that would cause their pain, suffering, fear, stress, injury or death (Ibid, art. 5, cl. 18, par. 1). The main value of this Law is that it recognizes the duty of all people to respect animals and to take care of their lives, health and

well-being (Ibid, art. 3, par. 2; art. 4, cl. 1 and 2). This is especially important when it comes to animals that are directly dependent on humans (Ibid, art. 6, par. 2), and so animal ‘owners’ or ‘keepers’ are held accountable for their lives, and for the protection of their health and well-being (Ibid, art. 5, clauses 3 and 10).

In order to have a consistent national legal framework, which would be in compliance with the Lisbon Treaty, it would be reasonable and justifiable to recognize in the Serbian Civil Code, currently being drafted, that animals are not things, or that they are sentient beings protected by special laws, such as the Animal Welfare Law. Regardless of the fact that Serbia is not a member of the EU, it is argued here that we should follow the positive example of states that have introduced such provisions in their civil codes, recognizing the legal status of animals as ‘non-things’, or better yet, as ‘sentient beings’.

The positive definition of animals as sentient beings is undoubtedly an improvement over the negative definition of animals as ‘non-things’ for the reasons mentioned above. In addition, having learned a lesson from the countries that modified their civil codes in this manner, this paper argues that it is imperative to modify and amend the laws related to the Civil Code, primarily the Criminal Code, to ensure that they are in line with these changes. This would make the legal framework coherent and ensure a consistent application of the Code, so that the new legal status of animals can actually be enforced.

#### *CHANGING THE LEGAL STATUS OF ANIMALS THROUGH LITIGATION*

A different approach to changing the legal status of nonhuman animals is through litigation. This approach has been used in the United States and Argentina, where several lawsuits have been filed on behalf of individual animals, primarily great apes and other intelligent mammals, in order to free them. The *Nonhuman Rights Project* (NhRP) organization and its founder Steven M. Wise advocate changing the legal status of at least some animals to recognize that they are not mere things existing for the sake of humans, but rather nonhuman legal persons that have fundamental rights to bodily integrity and liberty. There have been several cases of judicial discussions of the legal status of an animal, its right to freedom, and the recognition of that right.

The first case to discuss in a court of law whether an animal was illegally detained and could be considered a legal person is the case of the chimpanzee Suiça, who was caged at the Salvador Zoo in Brazil. In 2005, petitioners sought her release and her transfer to the Great Primates sanctuary based on the common law procedure *habeas corpus*. The writ of *habeas corpus* is a legal instrument used for determining the legality of

someone's detention, and this was the first time it was used in a lawsuit aimed at releasing an animal. Unfortunately, the chimpanzee died in the meantime and the case was dismissed.

In 2013, the NhRP filed a petition with the Supreme Court of the State of New York, demanding the release of the chimpanzee Tommy and his transfer to an animal sanctuary on the grounds that he lived in a place that cannot be considered his natural environment (Mountain 2013). In addition to this lawsuit, three more suits were filed that same year, aimed at releasing three more chimpanzees – Kiko, Hercules and Leo. These lawsuits were also based on the procedure *habeas corpus*, arguing that captive chimpanzees are in fact imprisoned, and that the same principles that apply to imprisoned humans should also apply to chimpanzees.

In the first case brief, it is stated that Tommy is not a thing to be owned, but “a cognitively complex autonomous legal person with the fundamental legal right not to be imprisoned” (Gorman 2013). The Court rejected the petitions for the release of Tommy and Kiko, and ruled that a chimpanzee is not a legal person that is entitled to *habeas corpus* relief. The explanation of the Court's decision in these cases was that, although chimpanzees and humans share many cognitive, social, and behavioral capacities, chimpanzees cannot bear legal responsibility like humans or be held legally accountable.

As for the chimpanzees Hercules and Leo, who were used in experiments at the New Iberia Research Center (NIRC) on Long Island, a separate lawsuit was filed on their behalf in December 2013 seeking their release and transfer to a sanctuary. In this case too, both the County Supreme Court and the Appellate Division reached decisions that denied the rights of these chimpanzees to be protected by the writ of *habeas corpus*. However, these proceedings can be considered a small but significant procedural victory in the struggle for animal rights. Namely, Justice Jaffe signed the order to show cause, directing the NIRC to demonstrate the basis for detaining the chimpanzees, which can be interpreted as an implicit recognition that it is justified to seek a writ of *habeas corpus* in the case of nonhuman animals.

Jaffe states in her decision that the concept of ‘legal personhood’ is not necessarily synonymous with ‘human being’, and that this concept - who or what is legally considered a person – has evolved significantly over the centuries and will continue to evolve. For example, women used to be considered the property of their husbands or male family members and had only some rights, while slaves were treated even worse, as property with few rights or none at all. Although this decision upheld the previous court ruling that chimpanzees could not be released under the writ of *habeas corpus*, the NIRC decided to discontinue using these two chimpanzees in research, to release them, along with many other chimpanzees, and to allow their transfer to a sanctuary.

Recent examples from South America can be considered great progress in the efforts to change the legal status of at least some nonhuman animals. In Argentina, a historic court ruling was made in 2014, which approved the release of orangutan Sandra from a zoo in Buenos Aires, and recognized that she had been unlawfully deprived of her liberty. In addition, Sandra was granted the status of a ‘non-human person’ who deserves basic rights such as the right to life, liberty, and freedom from torture (Barkham 2014). The most recent case is the court decision from 2016, which is considered a milestone in the field of animal rights. It concerns the chimpanzee Cecilia from the Mendoza Zoo in Argentina, whose rights were recognized in the decision. The Court ordered her release from the Zoo and her transfer to a sanctuary for great apes. In this lawsuit, the writ of *habeas corpus* was also used, and the judge declared that Cecilia is not a thing but a non-human person, a subject of rights that are inherent in sentient beings. Judge Mauricio stated that the rights which non-human animals have are not the same as human rights, but the rights of their species - to live in their natural environment and to develop. In her closing remarks, the judge quotes Kant: “We can judge the heart of a man by his treatment of animals” (Kant 1784-5/1997, p. 212).

Initiating court cases is an attempt to change the legal status of nonhuman animals in order to reform the laws relating to animals through the courts and not Parliament, i.e. through legislation. Such an approach to this issue is effective primarily in legal systems based on case law, which applies to countries with the Anglo-Saxon tradition. If a court decides that a particular animal is a legal person and should be released under the writ of *habeas corpus*, it sets a precedent that can also benefit other animals of the same species. Even in these countries, this way of initiating change is quite slow and expensive, and only the animals on whose behalf the lawsuit was filed and who are the subjects of a writ of *habeas corpus* can benefit from it directly. However, it makes it easier to file a petition for the release of animals that belong to other species but have similar cognitive capacities (Shyam 2015).

On the other hand, when it comes to countries with continental legal systems, such as Serbia, the benefits of initiating such lawsuits are not obvious. However, such lawsuits, even if they are not successful, can be an indirect way of initiating change because they draw attention to the problem in question. As a rule, the media closely monitor and report on such court cases, and these reports raise the awareness of the legal status of animals and can lead to greater public support. Furthermore, this can initiate public and professional debate on the issue and as a result, it can bring about an initiative to change and amend laws relating to the legal status of animals and their welfare.

*CONCLUSION: ANIMALS AS SENTIENT BEINGS WITH RIGHTS*

Distinguishing animals from things in legislation and singling them out as a distinct category of ‘sentient beings’ is the first step towards granting them basic rights that would protect their interests. In fact, a significant improvement in the treatment of animals can only be achieved by such a change in their legal status, because someone’s interests and welfare are best protected through having rights. Legal rights are, in fact, protected interests: “Namely, every subjective right is a right to protection of interests, which a legal person achieves through legal means” (Paunović 2004, p. 173, n. 270).

It can be argued that even the so-called ‘Five Freedoms’ are actually minimum rights (liberty-rights) that apply to animals, or can be reformulated as rights. The Five Freedoms principle was conceived by F. W. R. Brambell in the mid-1960s, when, at the British Government’s request, he chaired a committee for assessing the welfare of animals raised on farms. In its report, the Brambell Committee defined the principles of animal welfare, and concluded that at least these minimum conditions should be met to ensure the welfare of farm animals: sufficient freedom of movement, companionship, and adequate food and drink. In the late 1970s, the Farm Animal Welfare Council (FAWC)<sup>1</sup> revised and improved these welfare standards, and they still exist in a similar form as the Five Freedoms: Freedom from hunger, thirst, and malnutrition, Freedom from discomfort, Freedom from pain, injury, and disease, Freedom to express normal behaviour, and Freedom from fear and distress. The Five Freedoms are the bedrock not only of British but also of European legal regulations relating to the protection of animal welfare, including the Serbian Animal Welfare Law. In line with the above view, it could be argued that the laws based on these standards in fact protect the rights granted to animals.

Cochrane (2013) argues that all sentient beings possess at least some basic rights because they have interests, and all interest-holders possess rights. He suggests that human rights should be re-conceptualised as *sentient rights*. Wise (2010) advocates the revision of legislation to recognize that a nonhuman animal, such as a chimpanzee or a dolphin, has the capacity to possess at least one legal right. This refers primarily to fundamental legal rights to bodily liberty and bodily integrity, which are rights as immunities that protect the fundamental interests of a being. These *immunity-rights* are based on negative liberty-rights (‘freedom from’) that imply freedom from legal obligations.

This would mean that animals are only holders of legal rights, but without any legal obligations or liability. On the other hand, humans would have direct duties to animals that correlate with the rights of ani-

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<sup>1</sup> Now the Animal Welfare Committee (AWC).

imals, so that a breach of those duties would constitute an offence against them. Animal rights could be looked after by legal representatives who would guarantee the exercise of their rights, because just like ‘marginal’ human beings, animals cannot demand the protection of their rights. But this might not be necessary after all, since animal rights could be protected by enacting relevant laws and enforcing them consistently.

However, in order to extend fundamental legal rights to nonhuman animals, animals first need to be moved out of the legal category of *things* and into the legal category of *sentient beings* that can bear rights. In this paper, I have discussed such a change of the legal status of animals, which has already been underway in several countries in Europe and beyond.

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## ПРОМЕНА ПРАВНОГ СТАТУСА ЖИВОТИЊА: ЗАКОНОДАВСТВО И СУДСКИ СПОРОВИ

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### Резиме

Главна сврха овог рада је да укаже на то да данашњи правни статус не-људских животиња као ствари, или својине, више није прикладан, нити је у складу са научним сазнањима о природи животиња. У раду се заступа тврдња да је неопходно променити правни статус животиња како би се признало да оне нису ствари већ осећајна бића, и доводи се у питање аргументација која је у основи оваквог правног статуса животиња. Разматрају се кључни аргументи који поткрепљују тезу о моралној релевантности животиња као што је аргумент маргиналних случајева и научна евиденција која указује на то да су многе не-људске животиње осећајна бића. Покушај промене правног статуса животиња подразумева два главна приступа, у зависности од правног система одређене државе: путем законодавних промена и путем покретања судских спорова у име појединачних животиња. Што се тиче законодавних промена, наводе се примери неколицине држава у Европи и ван Европе које су у прошлости деценије измениле своје грађанске законике како би признале животињама статус не-ствари, односно осећајних бића, што је признато и у Лисабонском уговору. Разматра се и ситуација у Србији, у којој Грађански законик Републике Србије тек треба да се донесе, а у којој се животиње законом још увек сматрају стварима или људском својином. У раду се брани тврдња да би било упутно да се у српском Грађанском законнику животињама призна статус осећајних бића, или барем да се призна да нису ствари. Поред законодавних промена, покретање судских спорова у САД и јужноамеричким земљама ради ослобађања одређених животиња довело је до значајнијег помака у залагању за промену правног статуса животиња. У неким од ових судских поступака животиње су ослобођене на основу правне стратегије ха-

beas corpus и чак им је признат статус не-људског правног субјекта. Овде се подржава тврдња да би животиње са комплексним когнитивним и емоционалним способностима требало да имају посебан статус пасивних правних субјеката, док би осталим осећајним животињама требало укинути правни статус ствари или својине, и признати им статус осећајних бића која могу да имају права како би се истински заштитила њихова добробит и интереси.