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Condoy Truyenque, Marcia

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Multispecies Families in Latin American Law. Protecting Companion Animals with Human Constitutional Rights*

La familia multiespecie en el derecho latinoamericano. Protegiendo a los animales de compañía mediante derechos constitucionales humanos

Marcia Condoy Truyenque[1]
Faculty of Law. University of Helsinki
marciacondoy@derechoanimalenperu.org
https://orcid.org/0009-0003-3939-9346



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1. Marcia Condoy Truyenque is a PhD student at the University of Helsinki as part of the project on Legal Agency led by Visa Kurki and funded by the European Research Council of the European Union. Previously, in 2022, Marcia graduated with honors with an LLM in Animal Law from Lewis & Clark Law School (United States). She has followed master's courses in Public International Law and International Human Rights Law at the Catholic University of Louvain (Belgium). In 2019 she opened the Animal Law area at Preston + Legal Firm, this being the first legal firm in Peru with an area specialized in Animal Law. She currently directs Animal Law in Peru, an initiative for the promotion of Animal Law as a legal area in Peru (https://derechoanimalenperu.org/). Email: marciacondoy@derechoanimalenperu.org Orcid: https://orcid.org/0009-0003-3939-9346

Abstract

A recent attitudinal change towards animals has led many people to recognize their family structures as multispecies families, that is, a family composed of human members and animals of other species, united by affective ties, and solidarity, in a horizontal relationship, and even where there is mutual recognition. This social phenomenon requires that the legal concept of family, which today more than ever accepts the plurality of family structures, also includes multispecies families. The protection of multispecies families is necessary and possible if one considers that in Latin America today, a *post-positivista* legal system prevails that is aimed at protecting fundamental rights and freedoms. This legal system allows for a broad interpretation of rights such as the right to free development of personality and the right to family integrity, rights that already serve as foundational for the recognition and protection of multispecies families in Latin America.

Keywords: family; animals; multispecies families; right to the free development of the personality

Resumen

Un reciente cambio de actitud hacia los animales ha llevado a muchas personas a reconocer sus estructuras familiares como familias multiespecies, es decir, una familia compuesta por miembros humanos y animales de otras especies, unidos por vínculos afectivos y de solidaridad, en una relación horizontal, e incluso donde existe un reconocimiento mutuo. Este fenómeno social exige que el concepto jurídico de familia, que hoy más que nunca acepta la pluralidad de estructuras familiares, incluya también a las familias multiespecies. La protección de familias multiespecies es necesaria y posible si se considera que en América Latina hoy prevalece un sistema jurídico post-positivista encaminado a proteger los derechos y libertades fundamentales. Este ordenamiento jurídico permite una interpretación amplia de derechos como el derecho al libre desarrollo de la personalidad y el derecho a la integridad familiar, derechos que ya han servido como fundamento del reconocimiento y protección de las familias multiespecies en América Latina.

Palabras clave: familia; animales; familias multiespecies; derecho al libre desarrollo de la personalidad

Introduction

Traditionally, the western legal concept of family has included only human members united by biological ties of first-order consanguinity relationship: parents, daughters, sons, and siblings, comprehended within a heterosexual family. However, in considering psychology and sociology, a family is not determined by blood ties, but rather by the

roles and identification of its members as family. This understanding of family is progressively introduced within Latin American Law by accepting the existence of a plurality of family structures such as extended families, stepfamilies, or same sex couples with children.

Under this scheme, today we can also talk about the existence of multispecies families and their integration into law. Multispecies families are a social phenomenon in which people recognize their companion animals as integral members of their families. This genuine recognition provide rationale to recognize and protect multispecies families in its integrity in the same way that the recognition and legal protection provided a purely human family.

In this work (1) I will begin by defining companion animals as they are the animal nonhuman members of the multispecies family. In the second part, (2) I will explain the facts behind the integration of companion animals into the family structure based on psychological and sociological studies. In the third part, (3) I will present the legal framework that allows the legal recognition and protection of the multispecies family, emphasizing the right to free development of personality, a right broadly recognized in Latin American Constitutional Law. Finally (5) I will present real-life cases that have used recognized and protected the figure of the multispecies family with the legal effect of protecting animals.

1. What is or who should be considered a companion animal? Defining companion animals

In general terms, a multispecies family refers to a family made up of individuals of different species other than humans, and the non-human animals that comprise it are companion animals. Therefore, it is important to understand what a companion animal is before defining multispecies families.

Some Latin American legislations have defined what companion animals are. The Chilean Law specific for companion animals defines them as "*those domestic animals, whatever their species, that are kept by people for companionship or security purposes*." (Ley 21020). Article 8 of the Uruguayan Animal Protection Law defines companion animals as any animal that is kept without lucrative intention and that, due to its evolutionary and behavioral characteristics, can coexist with humans in a domestic environment, receiving attention, protection, food, care, and health care from its owner (Ley 18471). Article 21 of the Peruvian Law on Animal Protection and Welfare, Law 30407, defines the category of companion animal as any domestic species that lives in the family

human environment, whose actions can be controlled by the owner or holder (Ley 30407). Also, the Bill of Animal Rights recent presented to the Ecuadorian Congress as a result of the Estrellita Constitutional judgement (Corte Constitucional del Ecuador, 2022) (Condoy Truyenque, 2023) defines *animals intended for companionship* as those non-human animals that have gone through a process of domestication, selection, reproduction and breeding with the purpose of accompanying human beings (Defensoría del Pueblo Ecuador, 2022). All these legislations identify that companion animals are domesticated animal species, probably assuming that a companion animal that have been subject to selected breeding precisely for provide companionship, care, and protection. Domesticated animal species are a group that Sue Donaldson and Will Kymlicka have deeply described in book Zoopolis, A Political Theory of Animal Rights as part of their *political* categorization based on human-animal relationships (Donaldson & Kymlicka, 2011). So I will mention key characteristics described by theses authors about these group of animals in order to understand what companion animals are identifies as domesticated animals.

By definition, domesticated animals have been integrated into human communities and cannot be conceived independently of them. Domesticated animals are those animals who, whether directly or indirectly (Kristensen, 2022), have been subjected to a breeding process (domestication) that has allowed human beings to obtain different characteristics from them for purposes such as providing food, clothing, work, care or protection. As Donaldson and Kymlicka explain, the category *domesticated* is heterogeneous (Donaldson & Kymlicka, 2011, pág. 73), creating particular characteristics in different animal species. Nevertheless, domestication creates a series of characteristics common to all animals that are fundamental for understanding their integration not only within human communities, but fundamentally into the core of a family unity.

A first characteristic to highlight is their dependency on humans. Because domesticated animals have received continuous care from humans in the process of obtaining their products or services, domesticated animals are adapted to the conditions of continuous human care. Thus, domesticated animals are dependent on humans in everything that is vital to them, such as obtaining food, access to water, or finding shelter. Such dependency creates positive moral obligations from human beings towards these animals. For instance, dependence on humans from obtaining food will imply the human obligation to provide food. A second characteristic to consider is the *neotonization*, also *called juvenile heterochronism* or *juvenilization*. Neotonization consists of the retention of juvenile characteristics in the adult of an animal species such as cute

features, low aggression, playfulness, and other characteristics. For instance, the size, head shape, eagerness to learn and play, retention of begging, and barking behaviors in domesticated dogs more closely resemble juvenile wolves than adult wolves (Donaldson & Kymlicka, 2011, pág. 83). Domestication and neoteny go hand in hand (Donaldson & Kymlicka, 2011, pág. 85), because the domestication process implies selecting breeding, juvenile characteristics, such as low aggression or droopy ears and flatter snouts, are mostly selected for their benefits for human handling or for human aesthetic preferences. It is possible to say that, due to the neotonization, domesticated animals are eternal juvenile or children, recalling again their characteristic of dependency.

Connected to their juvenile characteristics and dependency, it must also be recognized a third characteristic: that domesticated animals have a high capacity to socialize with human beings and, above all, communicate with human beings (so called interspecies communication). Due to their long history living with humans, domesticated animals know how to communicate what they want or what their needs and preferences are, like when a dog bangs on its food bowl, or nudges us with its nose to remind us that it's time for a walk (Donaldson & Kymlicka, 2011, pág. 84). Biologists describe that domesticated animals were often selected based on their socialization skills, cooperation, and participation in mixed human-animal settings. (Donaldson & Kymlicka, 2011, pág. 102). Based on these empirical realities, Donaldson and Kymlicka argue that domesticated animals should be considered members of political communities. For my purposes, I consider that dependency, neotonization, and the ability for interspecies communication are facts that justify the recognition of animals as family members. Consider that neotonization and dependency make domesticated animals like children, as therefore they would require protection and care preferably within a family environment.

Domestication also works bilaterally. It is not just humans who have subjected animals to the processes of domestication. Humans themselves have also been modified through domestication. In *When animals speak: Toward an interspecies democracy*, Eva Meier explains that, because of their long history together, dogs and humans understand each other quite well in such a way that it is possible to affirm the existence of interspecies communication:

> Humans, even those who do not live with dogs, can interpret the barking and growling of dogs correctly, and dogs can do the same for human vocal and facial expressions. Recent research has shown that, contrary to popular belief, dogs do understand the words that humans use and do not just respond to their tone of voice (Meijer, 2019, pág. 77)

Meier explains that dogs and humans have coevolved, both playing a role in how the other perceives the world and affecting them in their genetic make-up: When a dog and a human who have affection for one another gaze into each other's eyes, both create oxytocin—something that humans also do when they look into the eyes of their child or lover (Meijer, 2019, pág. 77). This is relevant for multispecies families as, we will see in the next section, the configuration of multispecies families not only implies the recognition of companion animals as family members by humans but also, that the same animals recognize themselves as members of human families.

The best examples of companion animals will be dogs and cats, domesticated animals that have traditionally served roles of companionship and protection. However, it is not possible to definitively establish whether or not a particular animal species is a companion animal. Thus, dogs are mostly considered companion animals in Western countries and not in others where they are raised and sold for, for instance, meat. It is important to consider also that there is a whole industry around the pet care and companion animals. Dog food, pet medicine, and the same breeding purebred dogs are millionaire industries that consider companion animals as livestock or subjects to exploit for money. Likewise, other domesticated species, typically consider for other purposes can become companion animals. A cow that would ordinarily be considered a production animal may be considered part of the family by her owners who do not see in her any economic value.

In the same manner, not just domesticated animals can be companion animals, as wild and liminal animals can also be integrated into family units. Two recent cases show this fact. In the *Estrellita* constitutional case, about the tenancy for eighteen years of a wild animal (*chorongo* or woolly monkey) as a companion animal and her seizure by the officials from the Ecuadorian Ministry of the Environment to a zoo, the plaintiff identified herself as "*Estrellita's mother and caregiver,*" affirming that she developed "*motherly feelings towards her [Estrellita]*" (Corte Constitucional del Ecuador, 2022). In this case, the Constitutional Court of Ecuador established that Estrellita should not be taken by officials because she had developed attachments and a life as part of a human family (Condoy Truyenque, 2023). The case of the monkey *Laisa*, relates to a black howler monkey (*Alouatta caraya*) who lived for 24 years as a member of a multispecies family after having been rescued when she was a baby, had similar circumstances to those of the monkey *Estrellita*. *Laisa* was taken by the Argentina environmental authority after the complaint of a neighbor who informed of the presence of a monkey in the yard of a house (Juzgado de Garantías de Junín, 2023). In the *Laisa* case, the judge considered the evidence provided by the

family regarding *Laisa's* life and habits, and recognized that *Laisa* knew no other life than living in a house with human beings who were her family. The *Estrellita* and the *Laisa* cases demonstrated that, even though keeping wild animals out of their habitat may not be ideal, there are circumstances which can lead to animals typically conceived of as wild, mainly highly social species such as primates, to become companion animals. Wild and liminal animals can become companion animals, either because they have been trafficked as exotic pets like in the *Estrellita* case, or because they have been adopted under different circumstances that include the animal's own initiative in joining humans. Thus, examples of people who have adopted or raised foxes or mice in their homes are not rare. Donaldson and Kymlicka have also recognized that wild and liminal animals also have, in different degrees (probably less than domesticate animals), dependency, neotonization, and sociability (Donaldson & Kymlicka, 2011). Still, cases related to wild animals and multispecies families should be considered on case-by-case bases, in order to consider the especial circumstances of the animals, mainly referred to their attachment to humans, as the *Estrellita* and *Laisa* cases did.

Therefore, I maintain that a companion animal can be any animal, regardless of whether they are considered domesticated, liminal, or wild. I consider that the two defining characteristics of companion animals are their integration within the human community, and that their value is not strictly economic. Indeed, in contrast to production, farming, working or other categories of domesticated animals, the value and the integration of companion animals into a human community is not an economic one. It is possible to say that companion animals are the first group of animals that are recognized to have a value found in dignity, or value in themselves.

2. Companion animals as family members and the multispecies family configuration

A multispecies family is a family that has integrated companion animals into the family structure. It is not merely about the integration of the animal into the family environment or letting an animal live within the home, rather in a multispecies family there are bonds of affection and recognition between the members in a horizontal relationship, where the non-human animal is not considered as inferior, but they have their own space in the home and their own role in the family.

It is the human recognition of their companion animals as family members that gives life to the phenomenon of the multispecies family.

It is this subjective recognition the necessary and sufficient requirement that gives legitimacy to the legal figure of the multispecies family. The presence of animals has always been a characteristic of family life (Díaz, 2015, pág. 85). However, recently there has been a general attitudinal change towards animals that has expanded how much owners are willing to do for them. Recognizing an animal as a member of the family no longer only implies letting them reside within the family environment, but today people make real emotional, financial and time efforts that go beyond simply satisfying the animal's basic needs (Díaz, 2015, pág. 85). Today, people spend considerable time and money providing their companion animals with veterinary care, cosmetic care, or nutritional supplements; It is also common to see that the daily agenda includes walks outside the animal, or even the creation of social networks for animals. Pablo Suárez points out that to the animals with whom we live:

> (1) We give them a name (personality attribute), (2) we take into account their existence and their needs when moving, vacationing, when a separation occurs in the family, etc., (3) we recognize them in many sometimes a family state (son, brother). (Suárez, 2017, pág. 67)

The main point here is that people develop genuine affective bonds with animals because they identify certain roles in them including company, care, confidence, emotional support, support in solitude, among others (Díaz, 2015, pág. 85), which is why animals are particularly important during family crises as they are capable of fulfilling a stabilizing role in the family (Díaz & Rodríguez Ceberio, 2019, pág. 52). The chemistry that binds humans to their fellow animals creates an emotional attachment that explains why they mean so much to humans (Díaz, 2015, pág. 52).

In this sense, it is not uncommon to hear people refer to their fellow animal as sons and daughters or brothers and sisters. However, it should be taken into account that research indicates that in most cases our fellow animals are not an element of *replacement of gaps* (hypothesis compensation or substitution) but rather a *complement of family systems* (hypothesis of complementarity) (Díaz & Rodríguez Ceberio, 2019, pág. 52). Thus, there are deep, meaningful and lasting connections between people and their companion animals and an evident recognition of the latter as members of the family.

In addition to the unilateral recognition that owners make of their companion animals as members of the family, it is also possible to identify a psychological response of the animal assuming themselves as a member of the family when they are included in the family nucleus. For

example, as Ann Ottney Cain explains, animals integrated into the family can be part of family triangulations (Ottney Cain, 1985).Family triangulations are a mechanism that allows families to deal with intense emotional states and are made up of three members. In "Pets as Family Members," Ann Ottney Cain explains that in families where animals are included, they participate in triangulations. For example, in a conflict situation, animals try to stop a fight by performing behaviors that include seeking to be petted or behaving in a way that people find funny, seeking to provoke laughter in the conflicting members. These behaviors are intended to try to release tension, or to make the people in conflict forget their anger (Ottney Cain, 1985).

Díaz Videla and Rodríguez Ceberio also explain that various concepts of Bowen's Systemic Family Theory have been identified in human-animal family dynamics (Díaz & Rodríguez Ceberio, 2019, pág. 55). For example, when a family system becomes unbalanced (like when a member is sick or in pain), one member takes over the responsibility and becomes overly focused on the under-functioning member while the under-functioning member relies on the over-functioning member (Leow, 2018, pág. 10). In cases of multispecies families, this *over-functioning/under-functioning* relationship includes animals. Thus, an animal has the ability to detect diseases or emotional distress in another human member of the family; a human member of the family can detect a disease or emotional distress in their companion animal; and an animal can detect a problem in other animal members of their family (Díaz & Rodríguez Ceberio, 2019).

Thus, many animals assume themselves as members of their families. This fact shall not be considered a necessary requirement for the legal recognition of the multispecies family, but it allows us to understand that the configuration of a multispecies family is not simply an unilateral act (from humans to their animals), but more bilateral, because in many cases, animals as active subjects and according to their capacities, choose for themselves to be members, actively modifying and outlining the rules of families (Díaz & Rodríguez Ceberio, 2019, pág. 51). This point is important insofar as its understanding could be key to the application of a principle of the best interests of the animal (as an analogy to the principle of the best interests of the child) in cases where the guardianship or possession of a companion animal is at stake, such as with divorce or separation cases.

For all the above, it is considered from the studies of sociology and psychology, the family is understood from the interaction of its members through roles where each one is important in the functioning of the family system, not only from the existence of blood relations. Under this concept, companion animals are true members of the family, more pre-

cisely of a multispecies family. Thus, I define a multispecies family as the family integrated at its core by members of different animal species united by emotional ties, mutual recognition, and horizontality.

3. The constitutional framework behind the recognition and protection of the multispecies family

Unlike the concept of family applied by sociology and psychology, the traditional legal concept of family includes only human members united by a first-order consanguineous relationship, that is, parents, children and siblings. The traditional legal concept of family in western law includes only a heterosexual, married, paternalized, *patrimonialized*, sacralized and biologized family, as a result of the religious and conservative inheritances that influenced family law as part of civil law (Suárez, 2017, pág. 65).

Despite the conservatism of civil law, family law is one of the branches of law that underwent the most changes under the influence of human rights and constitutional law. Family law now prioritizes the protection of the family nucleus and the autonomy of the will of the individuals who make it up over the traditional and conservative demands of public order. An example of this is the principle of the best interests of the child, which weighs rights such as the right to identity over the social refusal for a child to have two fathers or two mothers (Caso Forneron e Hija vs. Argentina. Fondo, Reparaciones y Costas., 2012). Given this relativization of the concept of family, the law today accepts the plurality of family structures that include figures such as the extended family, blended family (families reconstituted by members of previous family units), *homoparental* families (same sex couples with children) and even the cohabitation society and/or or familiarization of the friend, all of them based on the principles of solidarity and mutual aid and with legal consequences between the parties and against third parties (Pérez Contreras, 2015, pág. 5)

In this order of ideas, if the concept of family obeys the recognition that the members give to themselves and their interactions through roles, and if there is not a single form of family organization(Suárez, 2017, pág. 65) but a plurality of family structures, it is then necessary to recognize the multispecies family as another form of family for legal purposes. According to Pablo Suárez, the multispecies family is a response to a realistic conception of family, which is sensitive to social changes, and which is based on socio-affective relationships and not merely on biological relationships, much less in accordance with structures and rules imposed by religious ideas or moral conceptions (Suárez, 2017, pág. 67).

The Inter-American Court of Human Rights has indicated, in the case *Forneron and Hija vs. Argentina*, that "in the American Convention a closed concept of family is not determined, much less only one model of it is protected", but rather "the term “family members” must be understood in a broad sense" (Caso Forneron e Hija vs. Argentina. Fondo, Reparaciones y Costas., 2012). Also, the Colombian Constitutional Court in ruling T-070/15 has redefined the concept of family as:

> That community of people related to each other by natural or legal ties, which bases its existence on love, respect and solidarity, and which is characterized by the unity of life or destiny that intimately links its closest members (Corte Constitucional Colombia, 2015).

In the same ruling, the Colombian Court points out that, although the biological family is fully protected by the Constitution, this does not mean that the family that is constituted outside of biological ties is not also the object of legal and constitutional protection.

To this flexibility of family we must add that Latin American constitutional frameworks allow greater flexibility when it comes to recognizing animals as members of the family. Latin American Constitutionalism is *post-positivista,* meaning that its bases are legal positivism, but it overcomes the strict legality towards a reading of law that includes morality (Barroso, 2008, pág. 5) and principles based on an idea of justice. In order to avoid judicial activism and to maintain legitimacy and rationality in the judicial decisions, a whole theory on constitutional interpretation has been constructed. Latin American Constitutionalism interprets the constitution as a text that is not finished, but dynamic and open to new interpretation according to social expectations and demands. In doing so, the judge plays an active role in the interpretation of the constitution through an assessment of the facts on a case-by-case basis. Furthermore, one of the symbols of Latin American Constitutionalism is the normativity of constitutional principles, such as the *pro homine* principle, that enshrines certain values or indicates public purposes pursued (Carbonell, 2010). In addition, a theory of legal argumentation has been developed in order to make possible judicial decisions based on justice and, at the same time, on predictability and legal certainty (Barroso, 2008, pág. 5). Under this scheme, Latin American Law could be considered today as the most progressive system, under which have been recognized rights such as gender rights, and indigenous or multicultural rights, which until recently were marginalized (Gargarella, 2015, pág. 171) despite the fact that Latin American societies are still considered strongly conservative.

Within this scheme, in Latin America it has been recognized in different instances that animal protection is an issue that goes beyond legal

recognition or protection, but is fundamentally a matter of constitutional importance. Thus, for example, recently, the Constitutional Court of Ecuador recognized that animals are subjects of law by virtue of the Rights of Nature that the Constitution of Ecuador recognizes (Rights of Nature and animals as subjects of rights, Case "Mona Estrellita ", 2022). Even if animals are not *explicitly* recognized as legal subjects, the constitutional importance to animal consideration and protection continues being strong. In the sentence C- 041/17, the Constitutional Court of Colombia indicated that:

> Although the Constitution does not explicitly recognize animals as rights holders, this should not be understood as their denial, and even less as a prohibition for their recognition - named -. Its demand attends to factors such as the evolution of humanity and the changes that a society presents, which can lead the Court to make visible what at first glance is not envisioned in the Constitution. Furthermore, regardless of the classification of rights over time (generational), they form a unit inasmuch as they are interdependent, integral and universal (Corte Constitucional de Colombia, 2017).

Considering that animal protection is not a purely legal issue, but also includes moral obligations toward animals on a constitutional level, it is possible that fundamental rights recognized in the Constitution can be interpreted in a sense that directly consider other animals. In the case for the recognition and protection of animals as family members, the right to free development of personality is particularly important among the different constitutional rights that can serve the objective of animal protection.

The right to free development of the personality, is the right to the development of the individual's capabilities for constructing their own meaning of material life, in the exercise of their moral autonomy in areas of freedom, removed from any state intervention (Tribunal Constitucional del Perú, 2018). Given that the choice of the formation of one's own family is part of the free and autonomous choice of one's own meaning of material life, the choice of having an animal as a member of the family would be an aspect of the constitutional right to the free development of personality.

In the case 1413-2017-PA/TC, the Peruvian Constitutional Court ruled that ownership of a companion animal is a manifestation of the right to free development of personality (Tribunal Constitucional del Perú, 2018). According to the facts of the case, the plaintiff was the owner of an apartment located on the 16th floor of the building where he had lived since 2012. In 2015, the board of building owners, through a new regulation, prohibited the use of the elevator for companion ani-

mals, under threat of a fine. Thus, people who had companion animals in their apartments and wanted to take them outside had to go up or down using only the building's service stairs. In the case of the plaintiff, from up to and from the 16th floor. The plaintiff alleged that going up and going down 16 floors daily was affecting the health of his companion animal. In this case, the Peruvian Constitutional Court, referring to a previous ruling of the Colombian Constitutional Court, recognized that:

> Owning a companion animal is a manifestation of the right to free development of personality, The possession of a companion animal is a manifestation of the right to free development of the personality, in the understanding that it is the option of each person to decide whether or not to have a companion animal, which corresponds to the life plan of each individual. Although for some, the possession of a companion animal may seem like a minor or even banal decision, for many people - in the position of the Constitutional Court of Colombia, embodied in ruling T-034/13, which this Collegiate shares -, in greater or less intensity, can have an important meaning in their life, developing certain affective and emotional bonds; to which is added that, for certain people, they are a decisive support in the deployment of their daily activities (Tribunal Constitucional del Perú, 2018).

Both the Constitutional Tribunal of Peru and the Constitutional Court of Colombia have recognized that the multispecies family is a phenomenon protected by the right to the free development of the own personality and, therefore, protected by the sphere of autonomy. This is forced by the growing acceptance of different ways of understanding what a family is and the plurality of ways of loving that exist.

Consequently, multispecies families are respectable equally to other kinds of families and, therefore, they shall be subject to equal legal protection. In the next section I will present some successful cases in which the existence of a multispecies family was recognized and protected.

4. The multispecies family applied to real life cases

Finally, it is necessary to identify some successful cases in Latin America in which courts have recognized the existence of a multispecies family and, as a corollary, have protected the companion animals involves and their human families.

Probably the most famous case related to the multispecies family in Latin America is the *Clifor* case, in which the immediate protection of the health and survival of a dog was possible using the concept of the multispecies family in connection with the constitutional right to family

unity. In 2020, in the city of Ibagué in Colombia, the family of *Clifor*, a schnauzer who suffers from idiopathic epilepsy, found themselves without access to phenobarbital, a medication for the treatment of epilepsy. Phenobarbital is a medication exclusively distributed by the Colombian State, which has a monopoly on its sale and acquisition. In May 2020, during the context of the pandemic and quarantines due to Covid-19, there was no stock of phenobarbital given that the State had not yet made the corresponding contract with the distributor. Lina Sofía Lozano Cárdenas, who identified herself in the process as *Clifor's* sister and who indicated that her family is made up of Clifor, her father and her sister, filed a constitutional action in order to obtain the phenobarbital for *Clifor* as soon possible.

Even when constitutional actions as considered *ultima ratio* resources and are mostly considered just for the protection of human constitutional rights, the constitutional action on behalf of *Clifor* was received by the judge that also resolve the case positively to *Clifor* and his family interestsm(Juzgado Primero Penal Del Circuito con Funciones de Conocimiento de Ibagué, 2020). The judge found that the refusal to provide phenobarbital by the State represented both a breach of the animal protection obligations recognized by the Constitutional Court as a constitutional obligation and a violation to Clifor's right to access the supply of medications, which reduced his life expectancy, putting his health and life at risk. Interestingly, the judge also found that, by putting Clifor's life at risk, the fundamental right of Clifor's family to the preservation of the family unit and the tranquility of his family members was also violated:

> This situation violates the fundamental rights of preservation of the family unit of Mrs. LINA SOFÍA LOZANO CÁRDENAS, since it puts her at risk, given that the CLIFOR pet is part of said family, as the emotional attachment of the members of the family is evident. Family with the dog, with which this factual situation is framed within the concept of a diverse family that evolves into a sociologically accepted concept and is that of the multispecies family, which considers that animals in a family environment fulfill important and defined functions in this area, for which reason, special consideration must be taken with them (Juzgado Primero Penal Del Circuito con Funciones de Conocimiento de Ibagué, 2020).

That is, the judge in the *Clifor* case protected not only the rights of the animal but also, holistically, the multispecies family. The judge ordered the State to acquire Phenobarbital within 48 hours and deliver it to the representative of *Clifor*, so that he can continue with his medical treatment.

In judicial file 158-2021-0-1018-JR-CI-01, the Civil Court of Santiago of the judicial district of Cusco resolved a case in which the plaintiff claimed moral damages as a result of the attack on her little dog *Munay* by of the defendant's two Rottweiler breed dogs. The plaintiff alleged that beyond the material damage, the attack caused her suffering and distress due to the attack on a member of her multispecies family, in this case *Munay*. The Civil Court of Santiago, based on article 1984 of the Peruvian Civil Code (1984) which provides that moral damage is compensated *considering its magnitude and the harm caused to the victim or his family*, stated that in the process it was demonstrated that *Munay* is incorporated into the plaintiff's family living environment, so the injuries and the time of care received by *Munay* placed her in a state of suffering and anguish, granting compensation for moral damage to the plaintiff, independently. to compensation for material damage (Juzgado Civil de Santiago Corte Superior de Justicia de Cusco, 2022).

Note that, in the previous case, as well as in those explained below, the loss or damage of a companion animal does not exclusively imply financial damage, but the recognition of moral or sentimental damage is also possible. As previously stated, when the emotional ties that humans create with their companion animals are cut or damaged, a destabilization occurs in the family system (Díaz & Rodríguez Ceberio, 2019), which translated into law implies moral or moral damage. Sentimental. In the Peruvian case, this damage takes the form of a request for damage to a family member, in accordance with article 1984 of the Peruvian Civil Code. For this recognition to be possible, "it will be important to prove the existence of emotional ties between the members of the multispecies family in order to prove the emotional burden claimed as moral damage."

The figure of moral or sentimental damage can also be used for criminal contexts in which there is not an animal protection law, or it is inapplicable, for example in the *Tita* case (Juzgado Penal de la ciudad de Rawson, Provincia del Chubut, 2021). In March 2020, in the Province of Chubut, Argentina, a police officer, who was in the exercise of his duties, was attacked by Tita, a mixed-breed dog with Pitbull features. When *Tita* was walking away from him, the policeman shot Tita with her firearm, causing her pulmonary hemorrhage, because of which she had to be euthanized. All of this happened in front of *Tita's* family members.

The criminal judge in the case found that Law 14346 (which prohibits the mistreatment of animals) was inapplicable. However, the judge found that, in a subsidiary way, the offense of damage of article 183 of the Argentine Penal Code was applicable, sentencing the defendant for the crimes of Abuse of Authority and Damage to one year of suspended prison and two years of disqualification. To support his motivation, the

judge emphasized that the damage caused to the family exceeded one of a patrimonial nature, since:

> Tita's death has caused an irreparable loss in her family, the testimonies of CASTILLO and MUÑOZ showed the integration of Tita in family life, transforming it into a Multispecies family (…) Without a doubt, the damage caused to Tita's family has been immense. (Juzgado Penal de la ciudad de Rawson, Provincia del Chubut, 2021)

In the *Tita* case, the judge sentenced the accused for the crimes of Abuse of Authority and Damage to a sentence of one year of suspended prison and two years of special disqualification. In this case, the judge found that the accused could not allege proof of a state of necessity, since this doctrine is due to the existence of an interest of greater value (Juzgado Penal de la ciudad de Rawson, Provincia del Chubut, 2021) over another of lesser value, and in this case, animal life does not. He lacks the courage to accept that a police officer defends himself using a firearm when there is no danger to his life.

In addition to protecting the family unit, the recognition of the multispecies family has the effect of protecting the members of these families independently when cases of separation or divorce occur. In the *Yorkshire* case, the Superior Court of Justice recognized that companion animals pose a unique and peculiar subjective value to their holders, totally different from any other type of private property. The court also recognized that companion animals maintain very intimate feelings towards their holders. Therefore, the court concluded that it was possible to establish a regime of shared visits for companion animals after the dissolution of a stable union as well as establishing the distribution of expenses caused by companion animals between ex-partners (Tribunal Superior de Justicia , 2022). Similarly, an Argentine court resolved a case of family violence in which it established protection guarantees for both the children and the companion animals involved (Sentencia 15592/2023, 2023). Among such protection guarantees, the court established a regime of shared ownership of companion animals. In this case, the court noted:

> Although the [Argentine] legal system has not yet advanced in a way that can foresee and/or regulate what situation the non-human animals of the family will be in, after it is decided to end a common life project, those members who also make up the family and have joined it - in the case of two dogs M. and L. -, this represents a reality that cannot be denied and that must find a solution in those of us who have the obligation to provide a response even in the absence of specific regulations that establish this.

> The principle of this is that of equality (art. 16 CN) and its limit will be the non-violation of the rights of others. Thus, I consider that non-human animals, especially those that have been domesticated, are sentient beings, who miss, who suffer, and who acquire customs, so there is no doubt that the change produced by the separation of spouses will affect them too. In principle, it would be the family that would be in the best position to look after their interests, but when this does not happen and is a cause of tension and violence like this case (…).(Sentencia 15592/2023, 2023)

Consequently, the court established a (provisional) regime for the possession of the companion animals that coincided with the same regime for shared custody of the children:

> The following communication regime is provisionally established: M. and L. will share with Mr. R. D. from Friday at 7 p.m. until Monday at 7 p.m. and with Mrs. B. from Monday at 7 p.m. until Friday at 7 p.m. so that they can share the same time with both families and their children (Sentencia 15592/2023, 2023).

The judgement issued in the *Simona* case is key for the legal protection of multispecies families in Latin America, because it is the first judgement (at least of which I am aware) that defines the family judge as the competent judge for resolving cases regarding multispecies families. Based on the arguments put forward in the Spanish and first version of this article, the Superior Court of Bogotá, Colombia, resolved a *contienda de competencia* (controversy or discrepancy between two magistrates or courts, regarding the competence or jurisdiction to hear a specific case or matter) in the *Simona* case (Sala Mixta del Tribunal Superior de Bogotá, 2023). The *contienda de competencia* arose from a lawsuit regarding the shared custody of the dog *Simona*. The plaintiff alleged that he considers *Simona* to be his daughter and that *Simona* is part of his nuclear family. The plaintiff also alleged that since the separation with his ex-partner, he and *Simona* were negatively affected because he was not able to visit her regularly since the defendant considered that his visits had the effect of affecting emotionally to *Simona* (that is, that both parties showed concern for Simona's well-being).

In the *Simona* case, the lawsuit was originally submitted to the *Juzgado Tercero de Familia de Bogotá,* a family court that rejected jurisdiction alleging that the decisions regarding animals were not contemplated in the relevant General Code of Procedure and, therefore, this court sent the process to the Civil Court of the Bogotá Circuit. This civil court, in turn, rejected the claim, pointing out that animals are part of the family, and their well-being can be affected by divorces and separations and,

consequently, the matter fell to the family judges. Given the conflict of jurisdiction, the Superior Court of Bogotá was responsible for decide which court had jurisdiction to hear the *Simona* case. In doing so, the Superior Court of Bogotá highlighted that, although the General Code of Procedure of Colombia establishes that family courts have jurisdiction over custody cases regarding children and adolescents, it must also be considered that the jurisprudence of the Supreme Court of Justice of Colombia established that family judges also have jurisdiction over cases of special circumstances related to the protection of the families in general. Given that today the law recognizes not only the special protection in favor of animals, but also their role in the family, it is up to the family courts to hear cases regarding custody of companion animals.

The decision issued in the judgment of the Simona case was able to address the protection of the plaintiff (human) and of *Simona* in a holistic way. The court considered it necessary to highlight that the plaintiff considers *Simona* as her daughter, and that *Simona* has also been affected because, according to the plaintiff, she had become depressed to the point of deciding not to eat. Thus, it was recognized that the divorce has had a negative impact on both and therefore, it is necessary to protect the multispecies family as a whole. The ruling states:

> The approach of this decision is based on the emotional ties that arise *between beings who feel*, on the occasion of the formation of a family, therefore, the demand for the regulation of visits of SIMONA, filed by JADER ALEXIS CASTAÑO against LINA MARÍA OCHOA BUSTIDAD corresponds to the Third Family Court. (Sala Mixta del Tribunal Superior de Bogotá, 2023) (italic added)

The judge also remarked that establishing that family courts have jurisdiction to hear the processes relating to multispecies families and companion animals should not being intended as to equate *other* animals with human beings. On the contrary, according to the ruling:

> We are recognizing that, in today's society, certain animals have been integrated into families and, in those cases in which mutual ties are generated, it is possible to recognize certain duties and obligations that would lead to some mandates in favor of animals (Sala Mixta del Tribunal Superior de Bogotá, 2023).

Finally, the recognition of the multispecies family allows to judges and other justice administrators to resolve special cases on a case-by-case basis, as was previously mentioned in the *Estrellita* and *Laisa* cases, both involving wild animals withing multispecies family circumstances. A detailed description of the facts and judgment of the Estrelli-

ta case can be found in the paper *An Analysis of the Estrellita Constitutional Case from an Animal Rights Perspective* (Condoy Truyenque, 2023). The facts of the *Laisa* case are analogous to those of the *Estrellita* case. *Laisa*, a black howler monkey (*Alouatta caraya*), was rescued by her human family when she was a baby during a process of deforestation in the province of Chaco, Argentina (Juzgado de Garantías de Junín, 2023). The family explained that *Laisa* was found with her dead mother and her limbs injured, reason that led them to adopt her. *Laisa* lived with her human family for 24 years, until the complaint of a neighbor who informed the Argentina environmental authority about the presence of the monkey in the yard of a house. Given the seizure, *Laisa's* family initiated a judicial process requesting to the court to return *Laisa* to her home, the place in which *Laisa* "*has developed the full nature of her life in freedom, in the shelter of the beings who love her and support her*"; it was her intention of the family that *Laisa* would be able to "*continue her days in the same way in which she used to live*."(Juzgado de Garantías de Junín, 2023). In this case, the judge took into account the evidence provided by the family regarding the life that Laisa led in her house and the living habits that she had, which were harmed when Laisa was seized by the environmental authority. The judge recognized that Laisa knew no other life than living in a house with human beings who were her family. In consequence, the court ordered the immediate return of Laisa to her family (Juzgado de Garantías de Junín, 2023).

The presented cases are some examples that demonstrate that the legal figure of the multispecies family can be used to protect both companion animals and the family as a whole. These cases are the foundations for other further protections for companion animals in Latin America, that can include inheritances for animal members of the family, the extension of health insurances to companion animals, among others.

The recognition of the integration of companion animals into human families, and their legal consideration as members thereof, is an undeniable reality and an urgent legal requirement. The existing emotional fusion between people and their companion animals that is manifested from emotional proximity and the impact of absence, gives sufficient legitimacy to the multispecies family that makes it possible for legal recognition. However, this is only a first step. The legal figure of the multispecies family focuses solely on the protection of companion animals.

The protection of animals within the law has much greater challenges, especially regarding animals that do not yet arouse sufficient social interest for their legal protection or whose commercial or utilitarian value surpasses any intention of protection, being the best example animals intended for human consumption. However, as a first step, the multispecies family could be the door to greater legal protections for

other animals, as well as interspecies legal protections, such as the protection of public health from a One Health approach, or biocultural rights.

Conclusion

A multispecies family is a family made up of individuals of different species in addition to humans. Its members are united by ties of affection and recognition between the members in a relationship of horizontality, where the non-human animal is not seen as inferior, but rather has their own space in the home and their own role in the family system. The legitimacy of the legal figure of the multispecies family lies fundamentally in the recognition and legitimate feelings that human beings make with respect to their companion animals. However, animals also have the ability to recognize themselves as members of the family.

Under these terms, the multispecies family is a true family from the study of psychology and sociology, and therefore should be recognized and protected by law. Different existing legal conditions make possible the recognition and protection of the multispecies family. In the Latin American context, the legal conception of the family is progressively changing toward a pluralistic composition of families, as the case law of the Inter American Court of Human Rights and other constitutional tribunals demonstrates. Also, Latin American Constitutionalism offers a legal scene to think in animals beyond strict legality. As a *post-positivista legal system,* Latin American Constitutionalism interprets the constitution and the rights that it contains in a dynamic way, and as able to address social expectations and demands. Under such constitutional interpretation, courts such as the Constitutional Court of Colombia or the Constitutional Tribunal of Peru have interpreted that the right to free development of personality includes the right to choose the kind of family one wants in their life, including multispecies families.

These legal foundations have allowed to multiple courts, of different levels of the justice administration, to recognized and protect in real life multispecies families, as in the *Clifor*, *Munay*, *Tita*, *Yorkshire, Simona,* and *Laisa* cases. Perhaps the most important effect of recognizing the multispecies family in the law is the effect of extending constitutional protections of humans to companion animals. For instance, the extension of the right to access to health for an animal in order to protect family integrity. For that reason, I consider the recognition and protection of the multispecies family as a gateway to achieving true rights for companion animals and animals in general.

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