

ADRIENNE BONNET, CÉDRIC EDOUARD ET VIRGINIE
SAVARIT (EDS.)

LA PROTECTION DES ANIMAUX ET LE DROIT
DE L'ENVIRONNEMENT

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Raffaella Cersosimo

MA Animal Law and Society (UAB)

ORCID: 0000-0002-1352-2217

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ABSTRACT

This is a review of the book “*La protection des animaux et le droit de l’environnement*” edited by Adrienne Bonnet, Cédric Edouard et Virginie Savarit and published by L’Harmattan, Paris 2023. This work analyses the benefits and drawbacks of environmental legislation for animals, with a particular focus on the French context.

KEYWORDS

Wild animals; environmental law; protection; welfare; ecological damage.

RESUMEN

Se realiza una revisión del libro “*La protection des animaux et le droit de l’environnement*” coordinado por Adrienne Bonnet, Cédric Edouard et Virginie Savarit y publicado por L’Harmattan, Paris 2023. Esta obra analiza las ventajas e inconvenientes de la legislación ambiental para los animales, con especial atención al contexto francés.

PALABRAS CLAVE

Animales salvajes; derecho ambiental; protección; bienestar; daño ecológico.

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The legal framework relating to animals is spread across different branches of law at international, national and local levels. Animals also feature in environmental law. In addition to these many laws, there is also case law interpreting them. What is the scope of these laws? Do they protect animals as individuals or as members of a species?

The discussion on this issue is relatively recent in the academic community and has resulted in the publication of researches analysing the treatment of animals in environmental law and animal law, a discipline that is gaining traction in the legal world.¹ An association of young French academic researchers² contributed to this debate by organising its first colloquium on environmental law and animal protection standards.³ The speeches were subsequently published in a collective book edited by Adrienne Bonnet, Cédric Edouard and Virginie Savarit, members of the aforementioned association.

The book is divided into two parts, each of which includes contributions from different researchers. The initial part is dedicated to the advantages that environmental legislation offers in the protection of animals.⁴ The second part of the book goes on to identify the disadvantages of environmental law in this context.⁵

Adrienne Bonnet introduces both parts of the book.⁶ The author recalls the initiatives taken within the European Union to protect the environment, such as the Biodiversity

¹ See generally, ABATE, R.S. (Ed.). *What Can Animal Law Learn from Environmental Law*, 2nd ed. (Washington D.C. 2020); FAVRE, D. *An International Treaty for Animal Welfare*, in *Animal Law* 18 (2012) 237-280; NAVA ESCUDERO, C. *Derecho ambiental y derecho animal. Semejanzas y diferencias*, in *Boletín Mexicano de Derecho Comparado* 165 (2022) 199-230; SCHOLTZ, W. *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Cheltenham, UK-Northampton MA, USA 2019)

² Association des Juristes Privatistes de l'Adour (A.J.P.A): <https://formation.univ-pau.fr/fr/vie-etudiant/vie-associtative/ajpa.html>

³ BONNET, A., CÉDRIC, E., SAVARIT, V. *La protection des animaux et le droit de l'environnement* (L'Harmattan 2023) 9

⁴ *Ibid.*, at 25

⁵ *Ibid.*, at 85

⁶ BONNET, A. *Propos introductifs. L'approche environnementaliste: une certaine idée de la protection animale*, in BONNET, A., CÉDRIC, E., SAVARIT, V. *La protection des animaux et le droit de l'environnement*, *op. cit.*, 11-24

Strategy for 2030 and the Farm to Fork Strategy. These initiatives have an impact on the environment and climate, as well as on wildlife and production animals.⁷ Nevertheless, the provisions pertaining to animals are primarily designed to protect them as belonging to a species, without consideration of their own wellbeing. The law treats “animal protection” as a separate concept from “animal welfare”,⁸ even though the latter is addressed in Article 13 of the Treaty on the Functioning of the European Union and has been recognised by the Court of Justice of the European Union as a “legitimate public interest objective”.⁹ Examples of conservation and protection standards can be found in international,¹⁰ European¹¹ and national law.¹² The environmental law may protect some animals, particularly through the protection of ecosystems, but not all others.¹³ This explains the emergence of animal law.¹⁴

The initial part of the book is comprised of an analysis by Laure Cazalis.¹⁵ She elucidates the compensation for ecological damage that may, in certain instances, be advantageous for wild animals belonging to protected species. The enactment of a law on the protection of nature (*loi n. 76-629 du 10 juillet 1976*) has resulted in the wild animal being no longer regarded as *res nullius*, *i.e.* as something that anyone can appropriate, but as a living being whose loss may constitute ecological damage, insofar as the animal contributes to the maintenance of an ecosystem.¹⁶ In 2012, the French Supreme Court recognised the right to claim ecological loss (Erika case).¹⁷ In 2016, following this landmark judgement, a law amended the Civil Code by introducing liability and compensation for ecological damage (*C. civ.*, art. 1246 *et seq.*).¹⁸ The responsible must repair in kind the damaged environment. This can be achieved, for example, by reintroducing animals into their natural environment.¹⁹ Difficulties may arise if compensation in kind is not possible, so the court will have to resort to other

⁷ *Ibid.*, at 11-12

⁸ *Ibid.*, at 13

⁹ *Ibid.*, at 15 (citing the judgement *Viamex Agrar Handels*)

¹⁰ *Ibid.*, at 14 (citing the Convention on International Trade in Endangered Species of wild Fauna and Flora Mar. 3, 1973, and The International Agreement on the Conservation of Polar Bears and Their Habitat, Nov. 15, 1973)

¹¹ *Ibid.*, at 14-15 (citing the Directives 92/43/EEC, 98/58/EEC and 1999/74/EC)

¹² *Ibid.*, at 15 (citing the Title IV of the French Environmental Code)

¹³ *Ibid.*, at 17-18

¹⁴ *Ibid.*, at 19

¹⁵ CAZALIS, L. Préjudice écologique et droits des animaux, in BONNET, A., CÉDRIC, E., SAVARIT, V. La protection des animaux et le droit de l'environnement, *op. cit.*, 27-40

¹⁶ *Ibid.*, at 27-28

¹⁷ *Ibid.*, at 29 (the Erika case concerns an oil tanker that sank off the coast of Brittany, France, causing an environmental disaster)

¹⁸ *Ibid.*, at 28 (citing the *Loi n° 2016-1087 du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages*)

¹⁹ *Ibid.*, at 31-35

criteria.²⁰ Anyone entitled to sue can make a court claim for compensation, such as public bodies, communities or associations.²¹ In other cases, the courts have recognised the moral damage suffered by certain organisations for the loss of wild animals, because they have claimed it instead of the ecological damage (the courts cannot rule *ultra petita*). Compensation for moral damage does not necessarily lead to the reintroduction of the species.²²

In her contribution,²³ Virginie Savarit elucidates the potential of environmental law to safeguard endangered animal species through their reintroduction into their natural habitat, which simultaneously facilitates their conservation. The author addresses the issue by defining biodiversity in accordance with Article 2 of the Convention on Biological Diversity of 5 June 1992. This definition encompasses the maintenance of biodiversity, which also necessitates the reintroduction of endangered species.²⁴ The author provides an account of the legal framework governing the reintroduction of species in France, delineating the scope of these regulations and the international and European standards that the French State is obliged to adhere to. French environmental law protects wild animals on specific lists established by administrative acts. Furthermore, the reintroduction of protected species is subject to ministerial authorisation.²⁵ The reintroduction of species can be impeded when conflicts arise between the imperative to protect the environment and the scientific, economic and social interests involved. In such instances, the role of the administrative judge is to act as a mediator, attempting to reconcile the competing interests.²⁶ One of the key interests is the protection of people and the security of material and cultural property. This allows for the principle of protecting a protected species to be derogated from in exceptional circumstances, such as a decision not to reintroduce the species or to destroy it. Such derogations are provided for in specific situations and under specific conditions, with the objective of ensuring a minimum level of protection for the species in question.²⁷

The contribution of Morgan Lechhab-Vacossin deals with the regulation of natural habitats for species.²⁸ The author begins by distinguishing between two categories

²⁰ *Ibid.*, at 36-38

²¹ *Ibid.*, at 32

²² *Ibid.*, at 29-30, 34-35

²³ SAVARIT, V. Conservation de la faune sauvage et réintroduction des espèces menacées d'extinction, in BONNET, A., CÉDRIC, E., SAVARIT, V. La protection des animaux et le droit de l'environnement, *op. cit.*, *op. cit.*, 41-57

²⁴ *Ibid.*, at 41-42

²⁵ *Ibid.*, at 43-50

²⁶ *Ibid.*, at 50

²⁷ *Ibid.*, at 51-52

²⁸ LECHHAB-VACOSSIN, M. Contractualisation des espaces naturels ordinaires et protection indirecte des animaux, in BONNET, A., CÉDRIC, E., SAVARIT, V. La protection des animaux et le droit de

of natural spaces: those that are protected by international and European legislations, which are applicable in French law, and those that are not. The unprotected spaces represent a transitional zone between natural and artificial realms.²⁹ In the absence of a specific legal framework, the author considers that these spaces can be protected through contractual instruments, which can be adapted to respond to public and private interests, as well as indirectly ensuring the protection of wild animals.³⁰ There are examples of contractualization and privatisation in the environmental field that demonstrate how public and private actors can collaborate to achieve a shared objective of safeguarding these spaces.³¹

The second part of the book commences with Cédric Edouard's contribution on hunting and fishing.³² The environmental law considers hunting to be an activity that helps to maintain the balance between fauna and humans. However, the rules at international, European and national levels do not take into account the protection of animals. This is not surprising given that the purpose of the hunt is to kill them. In essence, animals are considered to the extent that they constitute a resource for the activity.³³ This is also true of fishing. There are distinct regulatory frameworks governing recreational and commercial fishing. Nevertheless, in both cases, the protection of animals is not a primary concern. Even the rules that impose quotas are designed to protect the business more than the animals themselves.³⁴ Consequently, in both hunting and fishing, environmental law is concerned with the protection of animals as belonging to a species or as resources that must not be exhausted. This is always in the interest of human beings. One potential solution to the issue of animal suffering is to prohibit sport fishing and hunting of certain animals for a specified period and in designated locations.³⁵ It must be acknowledged that environmental law does not address the issue of animal suffering. Some protection can be observed in the regulations governing hunting and fishing activities, such as the maximum number of animals that may be taken or a minimum size below which the taking is prohibited.³⁶ The regulations governing hunting and fishing techniques, which prohibit the use of cruel devices, can prevent the suffering of animals. However, despite the existence of these regulations, there is often opposition from those who would like

l'environnement, *op. cit.*, 59-83

²⁹ *Ibid.*, at 63-64

³⁰ *Ibid.*, at 66-67, 75-80

³¹ *Ibid.*, at 67-74

³² EDOUARD, C. L'encadrement des activités de chasse et de pêche: une protection perfectible des animaux par le droit de l'environnement, in BONNET, A., CÉDRIC, E., SAVARIT, V. La protection des animaux et le droit de l'environnement, *op. cit.*, 87-110

³³ *Ibid.*, at 88-89

³⁴ *Ibid.*, at 89-90

³⁵ *Ibid.*, at 91-100

³⁶ *Ibid.*, at 101-103

to use traditional techniques, even if these techniques cause suffering.³⁷ Individual wild animals are not afforded any protection. In this context, is illustrative a legal rule (*art. L214-3 du code rural et la pêche maritime*), which prohibits the mistreatment of domestic animals and “domesticated or kept in captivity” wild animals. This rule fails to consider the protection of free wild animals. Another elucidated rule is article R436-37 of the Environmental Code, which gives priority to fishing activity. Species-based protection of animals in hunting and fishing is inherently limited, and a more comprehensive approach would be to protect them as sentient beings.³⁸

The same ambivalence can be found in criminal law, as Mael Germain explains.³⁹ General criminal law protects animals as sentient beings over which humans exercise dominion. In contrast, environmental criminal law protects animals that escape this control as part of nature.⁴⁰ By establishing different categories of animals, the law treats them ambiguously. Consequently, the judges will also apply these rules in this manner, and the degree of repression will vary depending on whether the animal is “dominated” or not.⁴¹

How can the interests of animals be effectively protected? Laurent Dufaur-Dessus’ contribution points the way to the recognition of the animal’s legal personhood.⁴² The attribution of legal personality to an individual or entity allows them to be subjects of law, and to be able to defend their rights. The author explores the theories that have fuelled the debate on the recognition of the animal’s legal personhood and goes on to explain the different characteristics of the “technical personhood” and the “anthropomorphic personhood”. These theories could be superseded by a new conception of personhood, which encompasses the interests of everything that is living, including the environment.⁴³

The contribution of Saioa Goyeneche concludes the book.⁴⁴ Despite the growing interest in the animal question, the pursuit of human interests limits the protection that

³⁷ *Ibid.*, at 103-106

³⁸ *Ibid.*, at 106-108

³⁹ GERMAIN, M. Le droit pénal et les animaux: l’animal dans la nature, l’animal hors la nature, in BONNET, A., CÉDRIC, E., SAVARIT, V. La protection des animaux et le droit de l’environnement, *op. cit.*, 111-139

⁴⁰ *Ibid.*, at 113

⁴¹ *Ibid.*, at 116-117

⁴² DUFAUR-DESSUS, L. La personnalité juridique de l’animal: retour sur des discours doctrinaux, in BONNET, A., CÉDRIC, E., SAVARIT, V. La protection des animaux et le droit de l’environnement, *op. cit.*, 141-157

⁴³ *Ibid.*, at 143-155

⁴⁴ GOYENECHÉ, S. Propos conclusifs – Une évolution de la protection des animaux par le droit de l’environnement fondamentalement anthropocentré, in BONNET, A., CÉDRIC, E., SAVARIT, V. La protection des animaux et le droit de l’environnement, *op. cit.*, 159-169

French law can offer to animals.⁴⁵ With regards to the international level, despite the existence of conventions and agreements that protect species threatened with extinction, the welfare of animals as individuals is still not considered. At the European level, there is Article 13 of the Treaty on the Functioning of the European Union (TFEU), which requires consideration for the welfare of animals as sentient beings. Furthermore, there are directives that protect certain categories of animals and strategies that aim to protect animal welfare. Nevertheless, even these provisions are affected by an anthropocentric approach, which necessitates a paradigm shift.⁴⁶

The book is well structured. It presents the various issues in a clear and reasoned manner, elucidating the nuances of environmental law. It will be useful to those who wish to gain a deeper understanding of French law in this area and to carry out comparative studies. It offers a panorama of the existing literature on the subject, along with an analysis of the main legal sources and judicial cases that have shaped its practical application. Written by young academics, the book is accessible not only to researchers, but also to those without specialist knowledge of the subject. It is an invitation to reflect on the necessity of developing an animal law that considers the real interests of animals, including those living freely in their natural environment.

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⁴⁵ *Ibid.*, at 160-162

⁴⁶ *Ibid.*, at 162-169

