



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, May 20, 2002

## JUDGMENT in the name of the Republic of Latvia

in case No. 2002-01-03

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, justices Anita Ušacka, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Andrejs Lapse and Ilze Skultāne

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Paragraph 3 of Article 16, Article 17 (Paragraph 11 of the first part) and Articles 19<sup>2</sup> and 28<sup>1</sup>

on the basis of the constitutional claim by Diāna Branceviča, Margarita Grišanova, Jūlija Opikova, Olga Pavlova and Gaļina Vodņeva

holding the proceedings in writing, reviewed the case

**”On Compliance of the Cabinet of Ministers July 31, 2001 Regulations No. 349 ”Amendments to Regulations No. 291 of 3 October, 1995 ”Regulations of Keeping Dogs and Cats”” with Article 105 of the Satversme and Article 14 (Paragraph 3) of the Cabinet of Ministers Structure Law”.**

### **The establishing part**

On October 3, 1995 in accordance with Article 14 (Paragraph 3) of the Cabinet of Ministers Structure Law, the Cabinet of Ministers passed Regulations No. 291 ”Regulations of Keeping Dogs and Cats” (henceforth – Regulations of Keeping Dogs and Cats). At the time the Saeima had not yet adopted the law, regulating the requirements for keeping house (room) animals.

On December 9, 1999 the Saeima adopted the Animal Protection Law, which took effect on January 1, 2000.

The objective of the Law is determined in Article 2 of the Law as well as in the preamble of the Law. Article 2 of the Law envisages: "This Law determines persons rights and obligations in the field of animal protection". In its turn, in conformity with the preamble of the Law "the ethical duty of humanity is to ensure the well-being and protection of all species of animals, because each individual by itself is a value. Humans have the moral obligation to dignify all creatures and to treat animals with tolerant understanding and to protect them. No-one is permitted, without a valid reason, to kill an animal, to hurt it in any other way".

Article 16 of the above Law determines that "it is prohibited to keep as house (room) animals wild, poisonous or predatory animals, monkeys, marine mammals as well as animals, which need to be fed with living warm-blooded animals".

Transitional Provisions of the Animal Protection Law envisage that "persons in whose ownership as of the moment of the taking effect of this law are those animals mentioned in Article 16 may not permit the reproduction of those animals, and by July 1, 2000, must ensure the keeping of those animals in collections of wild animals or if such is impossible – euthanasia."

In its turn Article 10 of the Law determines the right of the Cabinet of Ministers to pass Regulations in the field of animal protection. In compliance with Paragraph 2 of the Article, the Cabinet of Ministers shall pass "regulations regarding protection of house (room) animals and determine the well-being requirements for the keeping, trade in and demonstration at public exhibitions of those animals as well as the rights and obligations of house (room) animal keepers". On December 6 the Saeima has supplemented the Transitional Provisions of the Law with Sub-item 1 of Item 3, determining that the Cabinet of Ministers shall pass the above Regulations till July 1, 2002. The above amendments took effect as of January 5, 2002.

On July 31, 2001 the Cabinet of Ministers with their Regulations No. 349 " Amendments to Regulations No.291 of 3 October, 1995 "Regulations of Keeping Dogs and Cats" supplemented the Regulations with Sub-item 6.5., prohibiting "to keep , reproduce and bring into the state pit bullterriers, Argentina Danes, Brazilian fils, Tosa inu and American Staffordshire terriers as well as mongrels of the above species". Item 2 of the Regulations additionally establishes that " pit bullterriers, Argentina Danes, Brazilian fils, Tosa inu and mongrels of the above species, which have been bought (obtained) up to the moment of the Regulations taking effect shall be subjected to sterilization or castration till August 1, 2002."

**The submitters of the constitutional claim** (henceforth – the submitters) – Diāna Branceviča, Margarita Grišanova, Jūlija Opikova, Olga Pavlova and Gaļina Vodņeva – challenge the compliance of the Cabinet of Ministers Regulations No.349 "Amendments to Regulations No. 291 of 3 October, 1995 "Regulations of Keeping Dogs and Cats"" (henceforth- the challenged act) with Article 105 of the Republic of Latvia Satversme (henceforth – the Satversme) and Article 14 (Paragraph 3) of the Cabinet of Ministers Structure Law.

It is pointed out in the constitutional claim that the challenged act has been passed in accordance with Article 14 (Paragraph 3) of the Cabinet of Ministers Structure Law. This Paragraph envisages that the Cabinet of Ministers may only issue normative acts- regulations "in case if the respective issue is not regulated by law". Making a reference to Constitutional Court Judgments, the submitters point out that the Saeima experiences the legislative right and that the government, just on the basis of Article 14 (Paragraph 3) of the Cabinet of Ministers Structure Law , may not pass regulations on issues, which are within the competence of the legislator.

The submitters hold that the legal relations, regulated by the challenged act – prohibition to keep and bring into the country dogs of certain species, as well as the directives how to treat the dogs which have been brought to the country before the moment the challenged act took effect- are within the competence of the legislator. The Saeima, in Article 16 of the Animal Protection Law has determined what animals may not be kept as domestic animals. In its turn the Cabinet of Ministers in accordance with Article 10 (Paragraph 2) of the above Law is authorized to confirm the regulations for the protection of the domestic animals and the rights and obligations of the persons keeping them. The submitters stress that the Cabinet of Ministers, when passing the challenged act has exceeded its authority and "entered" the sphere of the Saeima activity.

A viewpoint is expressed in the constitutional claim that Regulations of Keeping Dogs and Cats specify the legal norms of animal protection and are subordinated to it. Thus the above Regulations may have been passed only on the basis of the Animal Protection Law, i.e., in case, mentioned in Article 14, Paragraph 2 of the Cabinet of Ministers Structure Law.

The submitters state that the challenged act is not in conformity with Article 105 of the Satversme. The state acknowledges and protects the right of a person to own property, also the right to own pit bullterriers, Argentina Danes, Brazil firs, USA Staffordshire terriers and mongrels of the above species. The right to property may be limited on the basis of laws. The Cabinet of Ministers has exceeded its authority by arbitrarily supplementing the list of the prohibited animals, enumerated in Article 16 of the Animal Protection law. By determining the duty of the owners of the animals to sterilize or castrate the mentioned dogs or mongrels of the above species, the value of the dogs is

reduced and the activity is directed towards annihilation of the species. As the result the right to property of the owner (keeper) of the animals is limited.

The submitters request to declare the challenged act as null and void as of the moment of its acceptance.

**The institution, which has passed the challenged act – the Cabinet of Ministers** in its written reply points out that the challenged act is not at variance with Article 105 of the Satversme and Article 14, Paragraph 3 of the Cabinet of Ministers Structure Law.

The Cabinet of Ministers points out that at the time when the Regulations of Keeping Dogs and Cats were adopted, no law, regulating requirements for keeping and protecting domestic animals, as well as envisaging the rights and obligations of the owner of the animal had been passed.

In the written reply it is stressed that the objective of the Animal Protection Law together with the preamble of the Law creates ensurance of the protection of animals. Tolerant understanding in its turn is the aggregate of activities, insuring physiological needs of the animals. Therefore this Law cannot serve as the basis for the Cabinet of Ministers Regulations, which envisage the demand of sterilizing or castrating the dogs of the aggressive species, which have been obtained up to the day the Regulations took effect, as the objective of the activities is not to ensure physiological needs of the animals. The Cabinet of Ministers holds that the requirements of the Animal Protection Law and the Regulations of Keeping Dogs and Cats are essentially different. As the Law and the Regulations of Keeping Dogs and Cats regulate different issues, the challenged act is not at variance with Article 14, Paragraph 3 of the Cabinet of Ministers Structure Law.

The Cabinet of Ministers explains that it was necessary to react quickly and efficiently to the July 2001 incident when a USA Staffordshire terrier attacked children, which ended in grievous bodily harm. The challenged act was passed because keeping of dogs of aggressive species created a threat to security, health and life of people. Prohibition of several species of dogs was necessary because of the negative public attitude to keeping dogs of the above species and to reach the objective, incorporated into Paragraph 2 of the Regulations of Keeping Dogs and Cats, namely – to ensure that keeping of dogs shall not endanger people.

The viewpoint, expressed in the written reply stresses that American Staffordshire terriers and pit bullterriers were bred for dog fights. The above species have a genetic disposition of attacking dogs and small animals. Attacks of these dogs are especially cruel and there is no possibility of stopping them. If the dog attacks a person, the latter may receive grievous bodily harm.

Therefore the Cabinet of Ministers reached the decision to prohibit keeping of certain dog species.

The Cabinet of Ministers maintains that the challenged act has been elaborated by taking into consideration experience of other states. Several Member States of the European Union have determined restriction of keeping and importing into the country certain dog species as well as envisaging sterilization or castration of the above dog species.

After evaluating the limitation of property rights, envisaged in Article 105 of the Satversme, the Cabinet of Ministers explains that the principle of proportionality has to be observed. One has to evaluate what fundamental human rights are more important: the right to property or the right to health and life. The human right to living (life) is absolute and may in no case be limited. Thus the limitation of the right to property has a legitimate objective – protection of the human right to life and health.

An expertise on traits of the above dog species was demanded and the president of the Latvian kinologist society Vija Klučniece, the Associated professor of the Latvian University Faculty of Biology (Chair of the Zoology) Dr.h.biol. Tatjana Zorenko as well as the Centre of Veterinary Medicine were invited as experts.

The expert Vija Klučniece in her conclusion expresses the viewpoint that no dog species can be considered as aggressive as the characteristic traits of the dog depend on training and selection of the dog. The species prohibited for keeping by the challenged act also cannot be regarded as aggressive. However, aggression in dogs of the above species and some other species (like Rotweilers, Dobermans, German Sheep dogs) may be more easily provoked. The expert holds that sterilization and castration do not always change the psyche of the dog. If the animals are sterilized or castrated before they have reached the age of one year, they do become calmer, but sterilization of grown up dogs may have the opposite effect. It is pointed out in the conclusion that the existing administrative fines and the civil liability of the owner of the dog, which has bit a person, are sufficient; however the juridical institutions shall examine every case more efficiently. The expert states that the decision on prohibition of several dog species has been adopted without taking into consideration the negative viewpoint of the specialists on it.

The expert Tatjana Zorenko acknowledges that no species shall be considered as aggressive. However, experience proves that there exist several dog species, specimens of which act inadequately and aggressively. All the Danes may be dangerous: pit bull terriers, Argentina Dane, Brazilian fil, Tosa inu and American Staffordshire terriers. The expert stresses that sterilization and castration do not principally change the dog's psyche. However, the dog may become less aggressive after castration. The expert holds that the Latvian

society is not ready for keeping the dogs of the so called "risk group", however it is necessary to inform the society, especially the young generation of the problems but not to prohibit keeping the dogs. Penalty for violation of the regulations of keeping dogs shall be both – more severe and differentiated. Besides testation of dogs and educating their owners is a must.

The director of the Centre of Veterinary Medicine Ivars Lūsis in his conclusion points out that several dog species may be regarded as aggressive, as they have inborn agressivity. The number of aggressive specimen of these species is much greater than that of the other species. Aggressive conduct may be noticed in rotveilers, Caucasus sheep dogs, Naples mastiffs, chow-chow and Dobermans. Ivars Lūsis states that sterilization and castration change dog's psyche, especially if it has been done in early age of the animal. If the animals are castrated they become less aggressive because of the lack of sex hormones, however one cannot guarantee that the animals will become much less aggressive or not aggressive at all in all cases. The conclusion advises to take into consideration the recommendations of the European Federation of Veterinary Doctors and to postpone elaboration and application of new normative acts till the moment of obtaining proper evidence of the dangerousness of separate dog species. The most efficient way of protecting people from aggressive dogs is strict action against definite dogs and their owners. It is necessary to educate the dog owners, to establish a unified identification system of all dogs and carry out other activities.

### **The concluding part**

Article 105 of the Satversme determines: " Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation".

To establish the contents of human rights norms incorporated into the Satversme, they shall be interpreted in compliance with the norms applied in the practice of international human rights. Practice of the European Court of Human Rights is mandatory as regards interpretation of November 4, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention) and this practice shall be used for interpretation of relevant norms of the Satversme (*see August 30, 2000 Constitutional Court Judgment in case No.2000-03-01*).

Article 1 of the First Protocol of the Convention envisages:

" Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public

interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The European Court of Human Rights, when interpreting the rights fixed in Article 1 of the First Protocol of the Convention, has concluded that the above Article includes three separate norms: first of all, the first sentence of Article 1 envisages the right to peaceful enjoyment of his possessions, secondly, the second sentence determines prohibition and provisions for deprivation of the possessions, but the second part of the Article acknowledges that the state experiences the right of controlling the use of property in accordance with the general interest (*see September 23, 1982 European Court of Human Rights Judgment in case "Sporrong and Lönnroth v. Sweden"*).

The three above separate norms are closely connected. Article 1 of the First Protocol of the Convention envisages state liability for interference in realization of the property right, if the economic value of the property decreases in the result of the above interference (*see Theory and Practice of the European Convention on Human Rights. Third edition by P.van Dijk, G.J.H.van Hoof. The Hague –London-Boston. Kluwer Law International, 1998, p.620*). However in certain cases the state may interfere in realization of the property right. One of the forms of state interference is control of the property use, which is determined in the second part of the above Article.

Also Article 105 of the Satversme determines both the right to enjoyment of the property and the right of the state to restrict the property rights. The state of Latvia may enforce the required laws to control the use of property in accordance with the public interest.

Well-grounded is the viewpoint of the submitters that the Cabinet of Ministers, when passing the challenged act has violated the right to property of the owners of pit bullterriers, Argentina Danes, Brazilian fils, Tosa inu and American Staffordshire terriers as well as the rights of the owners of mongrels of the above species. The property right incorporates also the right of obtaining all the potential benefit from his property, i.e., income and interest. The challenged act by prohibiting the reproduction of the above dogs as well as by obliging the owners to subject their dogs to sterilization and castration restricts the right of the owner to obtain all the benefits from his property. Application of the challenged act may result in decrease of the economic value of the dogs of the above species.

The state of Latvia could restrict the property right to separate species of dogs. However, in the practice of the European Court of Human Rights it is acknowledged that any limitation of the property rights, which is connected with the right of the state to control the use of property shall be proportional to general public interests and the protection of the rights of an individual (*see September 23, 1982 European Court of Human Rights Judgment in case "Sporrong and Lönnroth v. Sweden"*).

Property rights may be restricted but only after verifying whether the restriction is valid, namely, whether:

- 1) it has been determined by the law;
- 2) it has a legitimate objective;
- 3) it is proportional.

Thus, first of all one has to verify if the restriction of the property right, envisaged in the challenged act, has been determined by law.

In the practice of the European Court of Human Rights it has been proved that "law" is not only the act passed by the Parliament but also another generally binding (external) normative act, for example, government regulations. It has to be passed on the basis of the law, has to be published or accessible in another way. The act has also to be clearly formulated so that the addressee may understand his/her rights and obligations and it has to be in conformity with the principles of a law-based state (*see March 25, 1983 European Court of Human Rights Judgment in case Silver and others v. the United Kingdom*).

In the case *Malone v. the United Kingdom* (*August 2, 1984 Judgment*) the Court has taken the decision that the above normative act shall be in compliance also with the principle of rule of law: "It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference".

The third sentence of the Satversme Article 105 also determines that property rights may be restricted only in accordance with law. When interpreting this norm of the Satversme in accordance with the European Court of Human Rights practice, it may be concluded that the term "law" includes not only the laws, adopted by the Saeima but also other generally binding (external) normative acts if they comply with the above criteria.

The challenged act was passed on the basis of Article 14 (Paragraph 3) of the Cabinet of Ministers Structure Law. This legal norm envisages the right of the

Cabinet of Ministers to pass regulations in cases "if the respective issue is not regulated by law".

When interpreting Article 14, Paragraph 3 of the Cabinet of Ministers Structure Law, one has to take into consideration Article 1 of the Satversme, from which follows the principle of separation of power and Article 64, which determines that "the Saeima, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this Constitution", as well as Article 81, which delegates the right to issue regulations, which have the force of the law, to the Cabinet of Ministers in specially envisaged cases (*see April 3, 2001 Constitutional Court Judgment in case No.2000-07-0409*).

On October 3, 1995, when the Regulations of Keeping Dogs and Cats was passed, the Saeima had not adopted the law, regulating keeping of house (room) animals, therefore – on the basis of Article 14, Paragraph 3 of the Cabinet of Ministers Structure Law- the Cabinet of Ministers passed the above Regulations .

Situation changed when the December 9, 1999 Animal Protection Law, adopted by the Saeima took effect. In Article 16 of the Law the legislator has enumerated animals, prohibited to be kept as house (room) animals. Thus, the prohibition of keeping some animals as the house (room) animals was determined by the law and the issue could not be considered as not regulated by law.

Transitional Provisions of the Animal Protection Law regulates also the issue on treatment of animals, whose keeping has been prohibited, but which are the property of persons at the moment of the law taking effect.

If the legislator had wanted to supplement the above list of animals with the dog species, mentioned in the challenged act, he could amend the Animal Protection Law.

Thus from the moment of the Animal Protection Law taking effect, the Cabinet of Ministers could not establish restrictions for keeping, reproducing and bringing into the state dogs of certain species on the basis of Article 14, Paragraph 3 of the Cabinet of Ministers Structure Law. The government, when passing the challenged act on July 31, 2001, that is, after the Animal Protection Law had taken effect, has arbitrarily supplemented the list of animals, prohibited to be kept as house (room) animals, determined by the legislator. The Cabinet of Ministers has also determined that in accordance with the challenged act the owners of the prohibited dog species have to subject the dogs to sterilization or castration till August 1, 2002. Thus the government has violated the principle of separation of power, established by Article 1 of the Satversme and has undertaken the authority of the legislator, thus violating Article 64 of the Satversme.

The Saeima might have authorized the Cabinet of Ministers with the right of determining restrictions for keeping, reproducing and bringing into the state certain dog species, but the authorization and the regulations by the government have to comply with the above criteria, namely, the regulations have not only to be published and formulated so that the dog owners can understand their obligations, but the law has to clearly determine the scope and way of implementation of the authorization, so that the executive power would not arbitrarily interfere with the realization of the property rights of an individual.

Even though Article 10, Paragraph 2 of the Animal Protection Law envisages that the Cabinet of Ministers shall approve "regulations regarding protection of house (room) animals and determine the well-being requirements for the keeping trade in and demonstration at public exhibitions of those animals as well as the rights and obligations of house (room) animal keepers" the legal norm does not include the authority to the Cabinet of Ministers of determining also the prohibition of keeping, reproducing and taking into Latvia certain species of dogs.

Item 1 of the Regulations of Keeping Dogs and Cats envisages that "these Regulations determine a unified in the territory of the Republic of Latvia procedure of registering dogs and cats as well as the procedure of keeping them". After supplementation of Item 6 of the above act with Sub-item 5, the dog owners (keepers) are prohibited to keep, reproduce and bring into Latvia dogs of certain species. However, the Animal Protection Law does not authorize the Cabinet of Ministers to determine the above prohibition.

Materials in case also confirm the above conclusion. Thus, the Cabinet of Ministers in its written reply and addition to the written reply has pointed out that –on the basis of Article 10, Paragraph 2 of the Animal Protection Law-Regulations of the Cabinet of Ministers shall be issued till July 1, 2002. The Cabinet of Ministers has submitted to the Constitutional Court the draft of the "Regulations on the Protection of the House (Room) Animals, the Well-being Requirements for Keeping, Trade in and Demonstration at Public Exhibitions of Those Animals, Rights and Obligations of the Keeper of the House (Room) Animals as well as the Procedure of Registration of Dogs and Cats". No prohibition of keeping, reproducing or bringing into Latvia certain dog species is incorporated into it.

Thus there is no authorization by law, giving the Cabinet of Ministers the right to determine the prohibition of keeping, reproducing or taking into Latvia certain species of dogs, in which the scope and way of implementation of the authority would be precisely formulated.

Thus the restrictions on enjoyment of the property rights, envisaged by the challenged act have not been determined in compliance with the law in the understanding of the third sentence of the Satversme Article 105.

If the restriction of the fundamental rights has not been established by **law**, then it is unconfordable with the Satversme. Thus there is no necessity to additionally assess whether the objective of the restriction of the enjoyment of the property right, envisaged by the challenged act, is legitimate, whether the restriction is appropriate for reaching this objective and whether it is proportional.

### **The Substantive Part**

On the basis of Articles 30-32 of the Constitutional Court Law **the Constitutional Court decided:**

To declare the Cabinet of Ministers July 31, 2001 Regulations No. 349 "Amendments to the Cabinet of Ministers October 3, 1995 Regulations No. 291 " Regulations of Keeping Dogs and Cats"" as unconfordable with Article 105 of the Satversme and Article 14, Paragraph 3 of the Cabinet of Ministers Structure Law as null and void as of the day of publishing the Judgment.

The Judgment is final and allowing of no appeal.

Chairman of the Constitutional Court session

Aivars Endziņš