



SUPREME COURT OF NORWAY

On 6 June 2018, the Supreme Court gave judgment in

HR-2018-1057-A, (case no. 2017/1678), civil case, appeal against judgment,

A

(Counsel Knut Jullumstrø)

v.

The state represented by
the Ministry of Justice and
Public Security

(The Attorney-General represented by
Torje Sunde)

V O T I N G :

- (1) Acting Justice **Sverdrup**: The case concerns a review of a decision by the National Police Directorate to authorise the destruction of a dog.
- (2) Rambo is a male dog and a mix between a Rottweiler and a Boxer. It is 7-8 years old and weighs around 45 kilos. B took over Rambo when the dog was around a year old, and it lived with him until June 2015. Rambo was then taken over by B's mother, A, who now owns the dog. Rambo was living with her when relocated to a kennel in the autumn of 2016 pending a decision in the case at hand.
- (3) On the evening of 29 December 2015, A was taking Rambo for a walk when they met C. Rambo then bit C's forearm, causing a relatively large bleeding wound.
- (4) C reported the incident on 5 January 2016. On 30 March, the police issued a destruction order for Rambo.
- (5) B lodged a complaint to the National Police Directorate, which decided on 6 September 2016 to dismiss the complaint.

- (6) B and A brought the decision by the National Police Directorate before the district court requesting that it be set aside. They also requested a preliminary injunction to release Rambo from the kennel.
- (7) Alstahaug District Court gave judgment on 10 January 2017 concluding as follows:
- "1. The decision by the National Police Directorate of 6 September 2016 is invalid.
 2. The petition for preliminary order is dismissed.
 3. The state represented by the Ministry of Justice and Police Security is to pay costs of NOK 154 420.60 – onehundredandfiftyfourthousandfourhundredandtwenty 60/100 – within 2 – two – weeks of the service of the judgment."
- (8) The district court emphasised that Rambo had had a so-called castration implant injected shortly before the incident with C, and that this was the probable cause of the dog's aggression. Rambo's great value to A was also emphasised.
- (9) The state appealed the district court's judgment to the court of appeal. Hålogaland Court of Appeal gave judgment on 30 June 2017 concluding as follows:
- "1. Judgment is given in favour of the state represented by the Ministry of Justice and Police Security
 2. B and A are to pay costs of NOK 171 010 – onehundredandseventyonethousandandten – within 2 – two – weeks of the service of the judgment.
 3. In the preliminary order case, B and A are to pay costs of NOK 10 150 – tenthousandonehundredandfifty – within 2 – two – weeks of the service of the judgment."
- (10) The court of appeal did not find it substantiated that the castration implant had caused a change in Rambo's behaviour. Also, there were witness descriptions of the neighbourhood's fear of the dog. In such a situation, the tight bond between A and the dog could not have an effect on the ruling, and the court of appeal concluded that the destruction order was valid.
- (11) A has appealed to the Supreme Court against the application of law and findings of fact. The appeal against the procedure has been abandoned. The case remains in the same position as before the court of appeal.
- (12) The Supreme Court has heard the appeal simultaneously with case 2017/2028 (HR-2018-1058-A), which also concerns the validity of a dog destruction order.
- (13) The appellant, A, has briefly contended:
- (14) It is undisputed that Rambo bit C, but there was no contact between teeth and skin, and it was not necessary for C to seek medical care. Rambo bit as a warning, and not by full force. C approached the dog abruptly, it was dark and he was unsteady and seemed threatening to Rambo. The most likely explanation for the biting is the increased level of

testosterone due to a castration implant that had recently been injected. The bite was situational, and the dog will not bite again.

- (15) Rambo has never attacked a person, neither before nor later, despite the fact that the dog has lived under rather stressful conditions that might have caused the aggression.
- (16) The court of appeal bases its judgment on the false premise that a dog that has bitten once will bite again. There exists no tenable evidence of this. On the contrary, statistics of the many dog bites reported versus the few destructions carried out show that this is not the case. It is also a fallacy that a dog that is aggressive towards other dogs is also aggressive towards humans.
- (17) Expert statements, tests and the experience of kennel staff indicate that Rambo is a harmless dog. A is strongly connected to Rambo and needs to have him around. Hence, destruction is altogether an disproportionate measure.
- (18) A has submitted this prayer for relief:

"1. Alstahaug District Court's judgment in case 16-160576TVI-ALST, items 1 and 3, are to be upheld.

2. A, born 00.00.74 are to be awarded costs in the court of appeal and in the Supreme Court.

Alternatively:

1. The parties are to carry their own costs in the district court, the court of appeal and in the Supreme Court.

- (19) The respondent, *the state represented by the Ministry of Justice and Police*, has briefly contended:
- (20) The state agrees with the court of appeal's interpretation of law and findings of fact when the court has concluded that destruction is not a disproportionate measure.
- (21) Rambo bit and injured C under completely ordinary circumstances, and unprovoked. The attack on C cannot be linked to the preceding chemical castration of the dog.
- (22) The increased likelihood that dogs that have bitten once will do so again is a central premise for the formulation of the law. This is set out in the preparatory works. In any case, the aggression leading up to the attack says something about the dog's general temper.
- (23) Rambo has been aggressive towards other dogs on several occasions, which has caused worry and fear among the neighbours and in the local surroundings. This feeling of insecurity is an independent aspect in the assessment of whether destruction is disproportionate.
- (24) The state represented by the Ministry of Justice and Police Security has submitted this prayer for relief:

"1. The appeal is to be dismissed.

2. The state represented by the Ministry of Justice and Police Security is to be awarded costs in the Supreme Court.

(25) *My view on the case.*

(26) Pursuant to the Dogs Act section 25 subsection 1, the court may review all aspects of the case, including the administrative discretion. A has contended that the law must be interpreted to mean that the court, when reviewing the validity of a decision, may also consider the events that took place after the Police Directorate's decision and up to the date on which judgment was given. The state, in turn, has contended that the court is only to consider the facts presented at the time of the decision, but that significance may be attached to new evidence shedding light on the situation at the said time, see the Supreme Court ruling in Rt-2012-1985 para 81. In my view, this issue is not prominent in the case at hand, and I will leave it here.

(27) The legal basis for the Police Directorate's decision to authorise destruction is found in the Dogs Act. Pursuant to the section 1, the Act is meant to regulate a healthy dog care for the good of society and to the delight of each dog keeper. When the Dogs Act was being discussed at the Storting [the Parliament], the legislative committee's majority held that dog care "is an essential part of many people's lives, and the dog serves a number of useful and social purposes", see page 10 of the committee's recommendation.

(28) The purpose of the Dogs Act is to "contribute to advancing dog care that maintains security, safety and general peace and order", see section 1 subsection 2. To maintain security, the police may implement a number of immediate measures pursuant to section 17. In serious cases, the police may also order destruction or relocation subsequently pursuant to section 18. The first two subsections of section 18 read:

"If a dog has attacked or injured a person, the police may subsequently order destruction unless this is deemed a disproportionate measure. The same applies if the dog has hunted or injured domesticated reindeer, pets or wild deer, or injured a different dog or pet. In the assessment, particular emphasis must be placed on the present danger, the injury inflicted, the future risk and insecurity the dog and the dog keeping may be assumed to cause and the dog's usefulness. No significance is to be attached to the dog's economic value or any economic loss suffered after of the injury was inflicted.

If it is deemed feasible and appropriate, the police must seek to relocate a dog rather than destroying it."

(29) A basic condition for destruction pursuant to section 18 subsection 1 first sentence is that Rambo has "attacked or injured" a person. It is indisputable that C was injured when Rambo bit him in the arm and gave him a bleeding wound. The parties agree that this basic condition is met.

(30) Another condition is that destruction is not "deemed a disproportionate measure". In this assessment, a number of aspects must be emphasised, including danger and injury, risk and insecurity, and the usefulness of the dog. The list is not exhaustive; see the term "particular". In the preparatory works of the Dogs Act, it is stated that the provision in section 18 is meant as a "safety measure for the protection of people and animals", see Proposition to the Odelsting no. 48 (2002–2003) page 153. Hence, the purpose is not to

issue sanctions against the dog keeper or the dog, which makes "the future risk and insecurity the dog ... may be assumed to cause" a central issue.

- (31) The question is precisely what is required for destruction to be deemed a "disproportionate measure".
- (32) Pursuant to the preparatory works, the legislature wanted to balance the concern for safety with the positive sides of dog care. In the consultation paper, the Ministry suggested a provision nearly identical to that finally adopted, and stated that an assessment of proportionality "will contribute to avoiding destruction in cases where the dog has not been of great threat or disturbance"; see the Proposition page 141. It is also held that the threshold must be lower for putting down a dog that has attacked a person than a dog that has attacked another animal, and the threshold should be even lower if it concerns a child. Next, it is stated:

"Emphasis should also be placed on the future risk the dog must be assumed to constitute. If it concerns a well-adjusted and well-treated dog with a gentle temper that has acted irregularly in a highly unusual situation that is unlikely to recur, destruction will seem a disproportionate measure.

- (33) The Dogs Act replaced a number of previous in previous legislation, among others the preliminary Fighting Dogs Act of 1991. According to the Ministry, the practicing of the destruction rule in the Fighting Dogs Act could form a basis for the discretionary assessment that is to be made pursuant to the Dogs Act section 18, cf. the Proposition page 153. The Fighting Dogs Act contained a general provision in section 5 permitting destruction of dogs that "have inflicted injuries on people or animals", but not "if the circumstances under which the injuries were inflicted suggest that destruction is a disproportionate measure". The proposition to the Dogs Act on page 153 provides an extract from the preparatory works of the Fighting Dogs Act, Proposition to the Odelsting no. 45 (1990–1991) page 4, containing the following statement by the Ministry of Agriculture:

"One could easily imagine a situation where an injury has been inflicted, but where the circumstances are of such a nature that it would be completely unreasonable to order destruction. The police [...] will have to assess this in each case. The injury inflicted on the person or the animal ought to be serious. Psychological injury to a person may also be counted as serious."

- (34) Furthermore, it is stated that the proportionality in the Fighting Dogs Act

"... permits a discretionary assessment in each case to prevent that dogs are put down for minimal injuries, foreseeable injuries based on the injured person's own behaviour, for instance by provocation, injury following behaviour towards the dog that is unwise considering the dog's natural reaction pattern or for injuries that under an overall assessment of the situation should not lead to such a strict reaction."

- (35) Prior to the adoption of the Dogs Act, a number of tragic events had taken place where dogs had injured and killed children. Criticism was raised against the state of the law, and the Ministry stated that it was easier to put down a dog that had injured cattle than a dog that had injured people. When the Dogs Act was adopted in the Storting, the legislative committee's majority held that the Dogs Act would make it easier to have dogs put down,

see Recommendation to the Odelsting no. 91 (2002–2003) page 10-11:

"The committee finds that the possibility to destroy and to request destruction of a dog should be extended. The reason for the proposition and the committee's view is that dogs cause injuries to an increasing extent and that inappropriate dog care has made many people feel unsafe."

- (36) The state has submitted that the provision's wording that destruction is not "deemed a disproportionate measure" must be interpreted to mean that the main rule is destruction, and that there must be weighty arguments against it to avoid it. I believe such a view is unfounded. On the other hand, a rule that destruction is "normally" to take place, is found in section 18 subsection 4 a, but under the condition that it concerns a child who has inflicted serious injuries. According to the wording of section 18 subsection 1, a broader assessment is required.
- (37) The question which significance the dog's intrinsic value should have for the wording of the relevant provision is discussed in the preparatory works. The Ministry did not want the Dogs Act to be based on the perception of the dog as an independent subject. The following is stated in this regard on page 153 of the proposition:

"Several hearing instances deem the concern for the dog itself a crucial aspect in the assessment, or they hold that no measures should be made against the dog, but against the "real offender", the owner. For some, such views may be based on the perception that the dog is an independent subject that should be entitled to the protection of the legal system. However, the Ministry will mention that the dog is subject to the owner's right of ownership within the scope established by animal protection legislation, and finds it hard – when disregarding the emotional aspects and the connection people may feel with a dog – to place the dog itself in a different position than other common mammals. It would seem irrational to ascribe human or personal reactions to dogs rather than to other animals, and make this the basis for the legislation on safety issues raised by dog care."

- (38) The dog's intrinsic value is however expressed through the condition that destruction must not be a "disproportionate measure". This threshold also applies in cases where the owner for various reasons cannot take care of the dog him or herself. The dog's intrinsic value is also expressed in the provision in section 18 subsection 2, establishing that the police must seek relocation of the dog if that may eliminate the risk in a satisfactory manner. Some of the immediate measures mentioned in section 17 may be seen from the same angle.
- (39) Pursuant to section 18 subsection 1, as mentioned, emphasis must also be placed on the dog's usefulness. The consultation paper refers to the usefulness of dogs with special functions, such as guide dogs and police dogs. The dog's social and emotional value to the owner is incorporated in the very threshold for what can be deemed disproportionate, but in special cases it must be possible to include this in the individual assessment.
- (40) A has contended that the court of appeal has based its judgment on the false premise that a dog that has bitten once will bite again, and that this is a common misunderstanding that may also determine the limits of the law. I cannot see that any acts or preparatory works are based on such a premise. To explain the inclusion of a provision on dogs that have already attacked or inflicted injury, the Ministry states on page 153 of the Proposition that "[u]nder the circumstances, the fact that the dog has attacked or bitten once without it being in self-defence may increase the likelihood of new attacks in a similar situation".

Hence, there may be situations where the risk of recurrence is small. In its comments to the Dogs Act section 18 subsection 1, the Ministry gives several examples of such cases, for instance on page 153 of the Proposition:

"Inflicted injuries may be minimal, the dog may be small and have a strength unsuited to create fear etc. It may concern injuries inflicted on a person during normal dog training, or caused by the dog in self-defence because it has felt provoked."

- (41) In the risk assessment, it is not necessary to study the psyche of each dog. The size of the risk must be assessable based on objectively verifiable factors, witness statements and other information provided. The preparatory works express scepticism towards extensive testing of the dog and the need for dog experts in these cases, page 155 of the Proposition:

"An individual assessment of the psyche of each dog generates complex evidentiary issues and will demand substantial resources in the proceedings, and owners with aggressive dogs under poor care may too easily get away if such a system were to be introduced. Some hearing instances find that dog experts should be called to evaluate the dog before decisions are made. Such a system focusing on the dog's temper, procuring of dog expert statements, possibly based on lengthy observations of the dog, and an assessment of whether the problem may be eliminated by social measures (if the owner follows up), will according to the Ministry have the effect that the rules will not function in practice. However, no adequate quality checks are carried out on the, mostly, self-appointed dog expertise. In practice, both people who work with dogs occasionally and those who are more active, call themselves dog experts. These people have varying experience and training."

- (42) Although the various statements in the preparatory works deviate in terms of which threshold applies for "disproportionate measures" under section 18 subsection 1, the total impression is that the threshold for what is regarded as an unacceptable risk is not very high. The central issue is the future risk the dog will represent, and this assessment must be made in the light of the severity of the attack or the injury. For destruction to be carried out there must be a genuine and substantial risk that the dog will attack again.
- (43) The question then is whether the destruction order for Rambo is "deemed a disproportionate measure".
- (44) The very cause of the bite has been described somewhat differently by C and A. C says he crossed the road approximately two meters behind A who was holding the dog on a short leash. He has explained that Rambo turned and approached him. As a reflex, he reached out his hand to let the dog smell, but instead it bit him in the forearm. He managed to break free and prevented another attack by hitting the dog over the nose.
- (45) A has explained that she saw that C was walking unsteadily on the icy and slippery road. She therefore stopped and pulled the dog closer to her. According to her statement, C approached to greet the dog. When he bent down and reached his hand out towards the dog, it jumped up and bit him.
- (46) Like the court of appeal, I consider the two versions to be almost equally probable. Both versions describe a normal meeting between a dog on a leash and a person walking. The difference concerns the very events leading to the bite, which I do not find significant in the legal assessment to be made pursuant to section 18.

- (47) When it comes to the very bite, C's arm had marks from the dog's entire lower jaw, as well as bleeding wounds that had to be bandaged. I concur with the court of appeal's description of the events:

"It is undisputed that the dog's teeth did not reach C's skin, and that the wounds have been inflicted because C's twisted his arm out of the dog's mouth. The presented photos of the injuries show relatively large, bleeding wounds that needed to be bandaged. The court of appeal accepts that it was C's thick clothes that prevented the teeth from reaching the skin. If C had worn thinner clothes, the injuries could have been much more serious. In the court's view, this shows that a bite by Rambo is likely to cause serious injuries, which must be emphasised in the assessment."

- (48) The Dogs Act defines "serious injuries to a person" as injuries regarded as bodily harm pursuant to the Penal Code section 273, see the Dogs Act section 2 d. The injuries inflicted on C are in my view serious within the meaning of the Dogs Act, however at the lower end of the scale. If a child had suffered the same injuries, the dog would normally have had to be put down, see section 18 subsection 4. The case at hand concerns an adult, which requires a broader assessment pursuant to section 18 subsection 1. But the fact that the injuries are regarded as serious within the meaning of the Dogs Act, says something about the severity. That this was a powerful bite is supported by the substantial injuries suffered by C despite thick clothes cushioning the teeth. It was generally a serious incident.
- (49) Against this background, the question is how big a risk Rambo will represent in the future. As mentioned, Rambo attacked C when they crossed each other during a regular walk. A was using a special "anti-pull" leash and she had put on a separate leash around Rambo's waist. She also saw that C was approaching them. It is not unusual that dogs on a leash greet people who want to say hello, or unexpectedly cross the road behind them. An attentive dog owner must be prepared to meet people who bend down to say hello to the dog. The incident with C is thus not an irregular situation; on the contrary, it is in my view rather likely that something similar will happen again.
- (50) A has referred to a test carried out by dog expert Trond Larsen with Rambo in a similar situation. In the test, Larsen walked in a threatening manner in the dark towards the dog and A on the same road. Rambo started to sneer when Larsen was about ten meters away, and the sneering increased as Larsen came closer. Larsen turned and crouched when the distance was about three meters, and Rambo then approached him cheerfully wagging its tail. In my view, this situation is not comparable to what really happened. Larsen had spent more than two hours at A's house together with her and the dog immediately prior to the incident. I therefore place no emphasis on this test.
- (51) Rambo had the castration implant Suprelorin (9.4 mg) injected on 17 December 2015 to reduce problems related to its libido. This was done shortly before the attack on C on 29 December. A has claimed that the implant made Rambo more aggressive, and now that it has been removed, the risk of new attacks is gone.
- (52) Veterinary Vibeke Rootwelt testified before the court of appeal and has also given a written statement before the Supreme Court. She has explained that the injection of a castration implant makes the dog's testosterone level increase until the production of testosterone collapses. Then, the dog no longer produces testosterone. She has also explained that the adding of the sex hormone Suprelorin in this initial phase does not increase the dog's general aggression level. In the Norwegian drug information handbook

Felleskatalogen, it is stated that this takes place in "very rare cases". The same is stated by the European Medicine Agency, in its overview of product characteristics under section 4.6: "[i]n very rare cases, a transient behavioural change has been reported with the development of aggression". "Very rare" is the lowest frequency category, defined as less than 1 animal in 10 000 animals treated.

- (53) Gry Løberg, an expert on dogs' behaviour, has stated on the other hand that it is "highly probable" that the aggression exhibited in the situation with C was caused by the implant. Her report is poorly substantiated and contains no references to scientific literature. She comments on Rambo without having met neither the dog or its owner. Central witness statements by A regarding the dog's protective instincts are also not discussed. Hence, I place little emphasis on Løberg's report.
- (54) Rambo has been aggressive towards other dogs both before and after the castration implant was injected. Balancing this against the statements by veterinary Rootwelt and the stated frequency of aggression after treatment with Suprelorin, I consider it unlikely that Rambo's attack on C was caused by the implant.
- (55) A has argued that Rambo has attacked a person only this once, despite having been in several stressful situations before. I do not consider this significant, as Rambo's attack took place after the situations in question. A has also acknowledged that due to her partner's conduct towards her, the dog may have become more nervous and developed a protective instinct. The fact that Rambo has behaved exemplarily at the kennel where it is presently in care, cannot be given significance either. At the kennel, Rambo is in safe surroundings with trained personnel who are used to handling dogs.
- (56) Also, there are police reports stating that Rambo has created fear in the local community by attacking other dogs, both before and after C was injured. Although one cannot automatically draw a line between attacks on dogs and attacks on people, it is an independent aspect in the assessment that Rambo has caused insecurity in its surroundings.
- (57) For relocation pursuant to section 18 subsection 2 to be a relevant alternative to destruction, it is a condition that the risks are eliminated. In the case at hand however, the risk lies primarily in Rambo's more fundamental characteristics, and relocation is thus not an option.
- (58) A has held that Rambo is of great personal value to her. The strong connection is the result of the dog having been a support to her in difficult circumstances of life. In this regard, A has also described an incidence where she believes Rambo saved her life.
- (59) The central issue under section 18 subsection 1 is, as mentioned, the future risk the dog represents considering the severity of the attack. Serious injuries were inflicted on C, with an even more serious injury potential. The attack took place during ordinary circumstances where the dog was being held on a leash. There is a genuine and substantial risk that Rambo may attack and injure people again. The dog also creates fear in its surroundings with its aggressive behaviour towards other dogs. Emotional bonds and A's need to keep Rambo, must give way in this regard.

- (60) Against this background, I have concluded that destruction is not a disproportionate measure. As I see it, the destruction order is also not at the lower end of the scale of acceptability.
- (61) The state has requested costs in all instances. Although the very outcome of the case has been clear, the case has raised unresolved legal issues that have required a review. I thus find that there are weighty grounds for exempting the appellant from liability for costs in all instances, see the Dispute Act section 20-2 subsection 3.

- (62) I vote for this

J U D G M E N T :

1. The appeal is dismissed.
2. Costs are not awarded in any instance.

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| (63) Justice Berglund: | I agree with the justice delivering the leading opinion in all material aspects and with her conclusion. |
| (64) Justice Noer: | Likewise. |
| (65) Justice Bull: | Likewise. |
| (66) Justice Øie: | Likewise. |

- (67) Following the voting, the Supreme Court gave this

J U D G M E N T :

1. The appeal is dismissed.
2. Costs are not awarded in any instance.