



SUPREME COURT OF NORWAY

On 6 June 2018, the Supreme Court gave judgment in

HR-2018-1058-A, (case no. 2017/2028), civil case, appeal against judgment,

A (Counsel Andreas Meidell)

NOAH – *for animal rights* (intervener) (Counsel Stephen Knudtzon)

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) Justice **Berglund**: The case concerns the validity of a decision by the National Police Directorate to authorise the destruction of a dog.
- (2) A is owner of the male dog Bob, a mix between a Boxer, a German Shepherd and a Rottweiler. The dog was around eight years old when the incidents in question took place. It weighs between 40 and 50 kilos.
- (3) On 6 September 2015, B, a friend of A, was looking after the dog. B took Bob for a walk in *Grønlandsleiret*, a street in Oslo. There, he tied the dog to a bench outside of the hamburger restaurant Max before walking in. Shortly after, patrolling police officers observed that Bob was biting a passer-by in his trouser leg. The patrol stopped, but since they found the dog aggressive, they waited until B came out. While the officers were talking to B, Bob tried to get loose by pulling the leash. The dog also tried to attack the officers. When B had untied Bob from the bench and was walking him down the street, Bob suddenly jumped at a passing baby stroller. B managed to pull the dog back, the leash stretched to the limit. This episode was observed by another police patrol, which found the situation so alarming that they stopped to assist. Shortly after, Bob jumped at a

passing woman and bit or scratched her, giving her a bleeding wound and a large bruise. Then Bob snapped at several other passers-by, amongst them a cyclist, before the police managed to get it into a side street that was blocked until the rescue company Viking arrived to seize the dog.

- (4) On the same day, Bob was taken into the police's care, and the dog has been at a kennel since. On 9 October 2015, the police ordered destruction of Bob in accordance with the Dogs Act section 18 subsection 1, cf. section 24 subsection 1 f. Following an appeal, the order was upheld by the National Police Directorate on 4 December 2015.
- (5) Oslo District Court gave judgment on 25 August 2016 concluding as follows:
 - "1. **Judgment is given in favour of the state represented by the Ministry of Justice and Police Security.**
 2. **A is to pay costs of NOK 48 850 to the state represented by the Ministry of Justice and Police Security within two weeks of the service of the judgment."**
- (6) The district court found that Bob, unprovoked, had attacked several persons, that he had been unpredictable and that he had been a threat to passers-by. The court also found that the dog was likely to hurt people and create insecurity in the future. After an overall assessment, discussing the possibility of relocation, the district court concluded that destruction was not a disproportionate measure.
- (7) A appealed the judgment to Borgarting Court of Appeal, which concluded as follows on 4 October 2017:
 - "1. **The appeal is dismissed.**
 2. **A is to pay costs of NOK 71 325 – seventyonethousandthreehundredandtwentyfive - to the state represented by the Ministry of Justice and Police Security – within 2 – two – weeks of the service of the judgment."**
- (8) The court of appeal ruled with dissenting opinions. The majority of the judges mainly supported the district court's grounds, emphasising that the incidents were serious involving a considerable risk of injury. The majority also found that the dog had attacked for no reason, and that the circumstances were neither extraordinary nor unlikely to recur. The minority found, on the other hand, that it was an extraordinary situation that had escalated after a less serious prelude. In the minority's view, any dog could have reacted in the same way, and there was no risk of recurrence. Also, the minority emphasised the ethical doubt associated with destroying a healthy animal.
- (9) A has appealed to the Supreme Court against the findings of fact and the application of the law.
- (10) The Supreme Court has received written statements from police officer Normann and from B. Also, the organisation for animals' rights, NOAH *for animal rights* (NOAH), participates as intervener. As a new submission before the Supreme Court, A and NOAH contend that no attack or injury has occurred within the meaning of the Dogs Act. Apart from that, the case remains the same as before the court of appeal.

- (11) The case is heard by the Supreme Court together with HR-2018-1057-A, which also concerns the applicability of an administrative decision on dog destruction.
- (12) The appellant, A, contends the following:
- (13) Pursuant to the Dogs Act section 18, an attack or injury must have occurred before destruction is an option. This is not the case here, and the basic condition for destruction is thus not met. An attack assumes aggressive and determined behaviour with the purpose of harming someone. The assessment must be based on what is considered normal dog behaviour. The incidents in Grønland were not attacks within the meaning of the Dogs Act, but they were actions by an attention-seeking dog in a stressful environment. The police has interpreted Bob's behaviour incorrectly.
- (14) Also, Bob has not injured anyone as the term is defined in the Dogs Act. Pursuant to the preparatory works, scratches and minor bruises are not injuries. If the Supreme Court finds that an injury has been inflicted, the injury is minor.
- (15) Under any circumstance, it would be disproportionate to put Bob down because of the Grønland incidents. The majority of the court of appeal has misinterpreted the preparatory works and set the threshold for destruction to low. The minority's grounds for declaring the decision by the Police Directorate invalid are accurate.
- (16) In the proportionality assessment, one must take into account that it was a single episode in Grønland, consisting of several sequences within a limited period of time. A more precise description would be irregular behaviour in an extraordinary situation that will not happen again. Neither before nor after the episode has Bob demonstrated anything but friendliness and safe behaviour. In posterity, veterinary checks and behaviour tests have been carried out, confirming that the dog is not dangerous. The same is set out in statements from the owner of the kennel where the dog has been located the last three years. In addition, the destruction of a healthy dog is ethically questionable. It must also be assumed that A will never leave Bob with others again.
- (17) In the case at hand, both alternative measures under the Dogs Act section 17 on the use of a muzzle etc., and relocation under the Dogs Act section 24, are possible. Destruction is thus not to take place.
- (18) Pursuant to the Dogs Act section 25, the court may review all aspects of the case. This implies that the judgment must be based on the facts on the date of its pronouncement.
- (19) A has submitted this prayer for relief:
- "1. The decision by the National Police Directorate of 4 December 2015 to destroy the dog Bob is to be declared invalid.**
 - 2. The respondent is to pay to the appellant costs in the district court and the court of appeal totalling NOK 152 328."**
- (20) The intervener, *NOAH – for animal rights* – mainly contends the same as A, but mentions in addition the following:
- (21) Dogs are generally attention-seeking, and normal dog behaviour may therefore be

misread by persons who do not know dogs. If Bob is put down, it will imply that thousands of other dogs meet the basic conditions for destruction, as around 5 000 bites a year require medical care. This demonstrates that the police have set the threshold too low.

- (22) NOHA concurs with A's prayer for relief.
- (23) The respondent, *the state represented by the Ministry of Justice and Police*, mainly contends:
- (24) The court of appeal's findings of fact and interpretation of the law are correct.
- (25) In the state's view, the basic condition for destruction in the Dogs Act section 18 on attacks or injures, is met. "Attack" includes biting and jumping at someone, unless it is clear that there is no real reason to be frightened and no harm is done. In the case at hand, multiple attacks constituted a risk to the public, and a woman was injured after being bitten. When assessing these events, the dog's subjective intention is not to be taken into account. In practice, section 18 subsection 1 means that destruction is the starting point when a person has been injured or the attack entails a real risk.
- (26) The events were so serious that destruction is not a disproportionate measure. Bob has showed that attacks are part of his behaviour pattern. The attacks took place during a normal city walk and not under extraordinary circumstances that are unlikely to recur. The injury potential of a new attack is big. No particular weight can be placed on the expert statements since they do not emphasise the very events. The legislature has furthermore assumed that the dog's intrinsic value is not an independent aspect in the proportionality assessment.
- (27) The court's review of the matter should have the same scope as reviews of other administrative decisions, but with a full review of the discretion exercised.
- (28) 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.**
- (29) *My view on the case.*
- (30) I find that the appeal should be dismissed.
- (31) The case concerns the validity of the Police Directorate's decision to destroy the dog Bob. It questions in particular the contents of the terms "attack" and "injury" pursuant to the Dogs Act section 18, and when destruction is "disproportionate".
- (32) Before I go into the Dogs Act section 18, I mention that A has contended that the Dogs Act section 25, stating that the court has jurisdiction to review all aspects of the case, implies that the review must be based on facts on the date of the judgment. The state, in turn, has contended that the review must be based on facts on the date of the Police

Directorate's decision, but with a full review of the discretion exercised. In the same way as in the Supreme Court judgment HR-2018-1057-A, in a case that was heard jointly with the one at hand, I find that the time of the review is irrelevant to the result. Thus, I will not go further into that.

(33) *The requirement of injury or attack under the Dogs Act section 18*

(34) In HR-2018-1057-A paras 27 and 28, the justice delivering the leading opinion presents the object of the Dogs Act, to which I refer. Here it is set out that the Act is meant to regulate a healthy dog care for the good of society and to the delight of each dog keeper, at the same time as maintaining security, safety and general peace and order. The Dogs Act section 18 on destruction or relocation of a dog following unwanted events must therefore be interpreted and applied against this background.

(35) I then turn to the basic conditions in section 18, of which the first two subsections 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."

(36) Before the district court and the court of appeal, there was agreement that the basic conditions for attack or injury were met. Before the Supreme Court, however, it is contended that the dog's behaviour involved neither an attack nor an injury within the meaning of the Dogs Act.

(37) I will first examine what the condition "attacked" means under the Dogs Act.

(38) The condition is not defined in the Act, but the previous provision in the Penal Code 1902 section 354 and the preparatory works to the Dogs Act section 18 shed a certain light on the issue. Pursuant to section 354, a loose dog could be put down if it had "assailed" [*anfält*] a person. In the proposed new Dogs Act included in the consultation paper of the Ministry of Justice and Public Security (2000) item 6, the Ministry proposed to continue this as a condition for destruction. The term is more closely described in Proposition to the Odelsting no. 48 (2002-2003) page 133, setting out that it comprises incidents where the dog has directly attacked a person by "biting, grabbing or jumping at him or her", and "incidents where the dog in a threatening manner has prevented him or her from passing".

(39) The proposal was criticised during consultation. The Ministry decided to change the wording from "assail" to "attack" [*angripe*], as "attack" would be easier to understand linguistically, and it had a more specific meaning. About this change, the following is stated in the said Proposal on page 154:

"The word 'assailed' covers everything from biting and snapping to grabbing, jumping at or threatening a person preventing him or her from passing. However, if the dog has assailed someone without causing any injury or fear, destruction is, in the Ministry's view, not an

option. If it concerns a playful and attention-seeking dog making small children feel unsafe although it cannot be considered dangerous, the starting point should be that the behaviour problem is solved by warnings and increased control, see particularly section 17 of the draft, alternatively relocation, before destruction can be considered at all. If it concerns a dog that scares its surroundings and prevents children and families from moving freely in the area, destruction may be relevant pursuant to section 24 subsection 1 e of the draft."

- (40) As I read the preparatory works, "attack" is to include behaviour such as biting, snapping, grabbing and jumping at, unless the behaviour is such that it does not create real fear. This is a tightening of the previous provision in section 354.
- (41) The appellant holds that an attack assumes an aggressive and determined behaviour, and when taking normal dog behaviour into account, it must be a requirement that the dog snaps or shows other obvious signs of aggression before it can be characterised as an attack.
- (42) In my view, there is no legal basis for such conditions, neither in the wording of the Act nor in the preparatory works. In practice, it would involve a narrowing of the area of application that the legislature has expressly defined.
- (43) I will now assess whether the Grønland incidents are to be regarded as attacks within the meaning of the Dogs Act.
- (44) The first episode took place outside a hamburger restaurant, where Bob was tied up, about a meter from the entrance. Bob bit a passer-by in his trouser leg, possibly because the man had surprised him. The bite did not make a hole, but the police officers observing the incident saw an aggressive dog and a frightened man. After talking to the man, the officers learned that he had started when the dog grabbed his trouser leg, and that he started shivering, but that he was not scared. Nevertheless, I find this must be characterised as an attack within the meaning of the Dogs Act.
- (45) Next, the dog tried to attack the police officers while still tied up. They had to jump away, in fear of being bitten. Based on this description by the police officers who experienced it, this, too, must be characterised as an attack.
- (46) The most serious incident took place while Bob was being held on a leash by B, and is described as follows by patrolling police:

"The moment they passed each other, at a small distance, Bob turned towards the stroller and jumped at it. As far as I remember, there was physical contact between the dog and the stroller. Bob jumped high enough to get his head and forepaws above the edge of the stroller – i.e. the part where the child lay. He jumped and hit the right side of the stroller. He reached the edge with his forepaws, while leaning his head towards the child ..."

B managed to pull Bob away with the leash. He had to use strong force, and the leash was completely stretched-out. As I saw it, this is what prevented Bob from getting his head into the cradle where the child lay."

- (47) In my view, this was beyond doubt an attack. The police officers who reported the incident found the situation dramatic.
- (48) Shortly after the incident with the baby stroller, Bob jumped up and bit a woman in her arm, before snapping at a cyclist. It has been questioned whether the woman was bitten or

scratched with a claw. The court of appeal found, after immediate hearing of other evidence, that it was a bite. Based on the material presented before the Supreme Court, I cannot see any reason for departing from this assessment. In my view, both the biting and the snapping towards random passers-by were attacks within the meaning of the Dogs Act.

- (49) The appellant contends that the incidents are best described as intense greeting, since Bob is an attention-seeking dog that was nervous under unfamiliar circumstances.
- (50) I do not concur. Although dogs may greet people in various ways and with varying intensity, and people may react according to their knowledge about dogs, the explanation that Bob was seeking attention does not fit the recent descriptions. As I see it, it concerns multiple attacks that must be considered in conjunction; there is no doubt that they could create real fear.
- (51) It is therefore clear that the basic condition for attack has been met in this case.
- (52) Nevertheless, I will consider more closely the alternative basic condition "injured" before I turn to the proportionality assessment.
- (53) The condition "injured" is not defined in the Dogs Act or in the preparatory works. On the other hand, "considerable injury" used in section 18 subsection 4 a, stating that destruction is the normal reaction to attacks on children, is defined in section 2 d as "injuries regarded as bodily harm under the Penal Code section 273". Pursuant to the Penal Code, bodily harm has been inflicted if a person "harms the body or health of another person, renders another person physically helpless or causes unconsciousness or a similar condition in another person". Typical examples of bodily harm are fractures and major wounds leaving scars at visible places.
- (54) On the distinction between "serious injury" and "injury", the following is stated in Proposition to the Odelsting no. 48 (2002-2003) page 156:

"Serious injury is injury that must be regarded as bodily harm pursuant to the Penal Code section 229, as well as bites to the head. Other examples – such as scratches by claws or bites without bleeding, or wounds that are so small that they would not be counted as bodily harm pursuant to the Penal Code section 229 – must be subject to a broader assessment pursuant to the general rule in section 18 subsection 1 of the draft".
- (55) An injury thus refers to less serious physical assault. As I read the preparatory works, body marks referred to in the above quote are normally comprised by "injury", but destruction, even when a child has been hurt, can only be ordered after an overall assessment, taking also the danger and risk into account. I also read from the preparatory works that not any physical assault within the meaning of the Penal Code is an injury within the meaning of the Dogs Act.
- (56) In the case at hand, Bob has bitten a random woman passing on the street. The bit pierced her skin and created a risk of infection, and it left a substantial bruise giving her several days of pain. In my view, there is no doubt that this was an injury within the meaning of the Dogs Act.

- (57) *In summary*, several attacks and one injury have occurred in this case. This implies that the basic conditions in section 18 are met.
- (58) *The question whether destruction a disproportionate measure*
- (59) Although both basic conditions are met, destruction can only be ordered if it does not appear as a "disproportionate measure", see the Dogs Act section 18 subsection 1. The details of how this should be interpreted, and the threshold for destruction, are provided in the Supreme Court ruling HR-2018-1057-A para 42, pronounced earlier today. I base my ruling on what is set out therein, and the fact that it establishes that section 18 subsection 1 does not contain a main rule for destruction.
- (60) When assessing whether destruction would be a disproportionate measure, "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". The assessment must be based on objectively verifiable factors, see HR-2018-1057-A para 41.
- (61) The injury inflicted on the passing woman in the case at hand was not serious, but it was not trifling either. The injury was also the result of an attack with considerable potential for harm.
- (62) Also, the attack on the baby stroller involved a large risk of harm; it was only luck that Bob did not come near the child and that the stroller did not tip over. One of the observing police officers was familiar with dogs, and according to his report, he perceived the situation as "acute and dangerous to the public".
- (63) When assessing the level of danger, one must in addition to these episodes consider that Bob bit a man in his trouser leg, launched at the police officers and snapped at a cyclist passing by. Although these three episodes individually cannot result in destruction, they confirm that Bob was aggressive and that attacks are part of the dog's behaviour pattern. I add that the police considered it necessary to take Bob into a side street and block the street to prevent further attacks.
- (64) The appellant holds that the incidents are to be considered as one event, with several sequences, and that this makes it less serious. In my view, this is not a fitting description. There were several different attacks against different persons over a certain period of time, where Bob shifted between being calm and angry, but he was generally unpredictable.
- (65) According to the Dogs Act, future risk and feeling of security are also relevant. The appellant contends that the behaviour testing and veterinary examinations and Bob's subsequent conduct at the kennel show that there is no risk that the dog will act aggressively again. As for the general relevance of dog expert statements, I refer to what is quoted from the preparatory works in HR-2018-1057-A para 41 regarding the varying quality of such statements. Note that none of the experts in this case seems to have taken in the gravity of the Grønland incidents, nor have any of them been able to give a satisfactory explanation for the attacks. Testing under controlled circumstances and observations at a protected kennel environment give few valuable points for the assessment of the risk of new attacks.

- (66) When assessing the future risk, one must bear in mind that Bob, for no reason, attacked several people in a busy city area where people may easily come close and unexpectedly on dogs. The situation seems to have escalated, possible because the police interfered, but someone will normally interfere when a dog attacks. Also, according to the police statements from A and B, the dog had a tendency of becoming nervous and aggressive when being tied, so the dog's behaviour in the situation at hand was not unique.
- (67) I therefore agree with the court of appeal's majority that a real and substantial risk exists that Bob may react in the same manner in the future.
- (68) As emphasised in HR-2018-1057-A para 32, with further references to the preparatory works, destruction would be a disproportionate measure "[i]f 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". In my view, this is not the case here.
- (69) Pursuant to section 18, the dog's usefulness must also be included in the proportionality assessment. I refer to HR-2018-1057-A para 39 on the further interpretation of this condition. The emotional value the dog has to A and his family is not sufficient to establish that the measure is disproportionate.
- (70) Finally, the legislature has assumed that the dog's intrinsic value and the ethical issues associated with putting down a healthy animal are not to be assessed individually. This is further discussed in HR-2018-1057-A paras 37 and 38, and there is no reason for me to go further into it.
- (71) Although the conditions for destruction are met, the police are to seek relocation of the dog rather than ordering destruction, if this is feasible and suitable for eliminating the risk, see the Dogs Act section 18 subsection 2. Furthermore, section 17 gives a legal basis for implementing various measures to maintain the security and safety of individuals, the public and animals.
- (72) Based on the serious events in this case, alternative measures under section 17 do not appear relevant. Bob was on a leash when several of the attacks took place, without his keeper being able to prevent them. Relocation is also not an option. Like the district court and the court of appeal's majority, I find that the dog's qualities leading to the attacks suggest that relocation is an inappropriate alternative.
- (73) The intervener contends that if Bob has to be put down, a large number of family dogs are in danger of suffering the same fate, as dog bites lead to thousands of doctor's calls each year. In my view, such a conclusion is unfounded. It is set out in the Dogs Act section 18 and today's judgments by the Supreme Court that a broad overall assessment is to be made, and that normal, playful conduct is not comprised by the provision. Before the Supreme Court, it was stated that the Police Directorate issues only just twenty destruction orders a year, which indicates that the provision seems to be practiced in accordance with the threshold now established by the Supreme Court.
- (74) *An overall assessment* of the attacks on random passers-by in a normal urban environment, the arm injury and the potential serious harm involved, shows that there is a real and substantial risk of new attacks that cannot be minimised by alternative measures. Destruction is not a disproportionate measure.

- (75) Against this background, the decision by the Police Directorate is valid, and the appeal must therefore be dismissed.
- (76) *Costs*
- (77) The state has won the case, and is entitled to compensation for costs, see the Dispute Act section 20-2 subsections 1 and 2.
- (78) Although the case has not given rise to much doubt, there are weighty reasons for exempting A and NOAH from the cost liability in all instances, see the Dispute Act section 20-2 subsection 3. Here, I place extra emphasis on the fact that the case has raised legal issues of principle that there has been good reason to clarify.
- (79) 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.

- (80) Justice **Noer**: I agree with the justice delivering the leading opinion in all material aspects and with her conclusion.
- (81) Justice **Bull**: Likewise.
- (82) Justice **Sverdrup**: Likewise.
- (83) Chief Justice **Øie**: Likewise.
- (84) 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.