



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Minister of Agriculture, Forestry and Fisheries v National Society for the Prevention of Cruelty to Animals**

**CCT 186/16**

**Date of judgment: 25 August 2016**

---

#### **MEDIA SUMMARY**

---

*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On 25 August 2016 the Constitutional Court handed down judgment extending the suspension of an order of invalidity it granted on 11 July 2013 in *National Society for the Prevention of Cruelty to Animals v Minister of Agriculture, Forestry and Fisheries and Others* [2013] ZACC 26. The period of suspension of the invalidity order runs from 27 August 2016 to 31 July 2017.

The North Gauteng High Court, Pretoria declared sections 2 and 3 of the Performing Animals Protection Act (Act) constitutionally invalid. This was because the provisions required a Magistrate to determine applications and issue licenses for the training, exhibition or use of animals. This unjustifiably infringed the doctrine of separation of powers in which the judiciary, the legislature and the executive each have separate constitutional terrains and responsibilities. This Court on 11 July 2013 confirmed the declaration of invalidity but suspended the order for 18 months to allow Parliament time to rectify the unconstitutionality in the statute.

Before the 18 months expired, the Minister applied urgently for an extension. This was granted. An order issued on 27 November 2014 extended the suspension until 12 July 2015. However, on 6 July 2015, the Minister again urgently applied for a further extension. This was because it had become practically impossible to meet the new deadline. Following a temporary suspension until 28 August 2015, the Court granted a further extension until 27 August 2016.

The Minister then applied for a third extension. The reason was that when the National Council of Provinces (NCOP) voted on the Performing Animals Protection Amendment Bill (Bill), there were fewer than 30 delegates present. In the NCOP at least one third of the delegates must be present before a vote is taken. That was lacking. The President was therefore asked not to assent to the Bill. And further steps to pass the Bill into law without it first being referred back to the NCOP for a quorate vote would amount to an abuse of process and would violate the Constitution. The President then referred the Bill back to the National Assembly.

The respondent, the NSPCA, did not oppose the further extension. The Court, this time, decided the Minister's application without requesting written submissions from the parties.

The Court's unanimous judgment expresses concern about frequently extending orders of invalidity. Thus, the Court emphasises that extensions should not be granted lightly.

Nonetheless, the Court held that a further extension would be just and equitable in the circumstances. The Minister gave a good explanation for the unusual number of extensions. It was necessary to grant the Minister additional time to remedy the unconstitutional provisions. The declaration of invalidity meant that Magistrates could no longer issue licenses. The Court considered that orderly state administration would be severely affected if no authority could issue these licences. This would prejudice both potential applicants and existing license holders. The Minister asked for an extension until 31 October 2016, alternatively for six months. In view of the legislative difficulties, the Court extended the suspension by 11 months, until 31 July 2017.