

OSLO DISTRICT COURT

**JUDGMENT**

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**Pronounced:** 31 January 2022 by Oslo District Court

**Case no.:** 20-169475TVI-TOSL/04

**Judge:** District Court Judge Per Kaare Nerdrum

**Associate judges:** Researcher *Doctor agronomiae* Katja Nilsson  
Researcher *Doctor scientiarum* Cecilie Marie Mejdell

**The subject matter of the case:** Whether continued breeding of English Bulldogs and Cavalier King Charles Spaniel page will be lawful. Claim for declaratory judgment and prohibition.

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Norwegian Society for Protection of Animals

Advocate Emmanuel Feinberg  
Advocate Dagny Marie Ås Hovind

**versus**

Lena Iren Notstad Haugland  
Norwegian Kennel Club

Advocate Geir Lippestad  
Advocate Hilde Renate Engeland  
Advocate Geir Lippestad  
Advocate Geir Lippestad  
Associate Eirik Nikolas Husebye  
Gjerstadberget

Christel Cecilie Tiedemann Hagen

Liv Anne Klubben  
Jorunn Rosander  
Inger Pettersen  
Norwegian Cavalier King Charles Spaniel Club  
Liss Bodil Olsen  
Norwegian Bulldog Club

Advocate Geir Lippestad  
Advocate Geir Lippestad  
Advocate Geir Lippestad  
Advocate Geir Lippestad  
Advocate Geir Lippestad  
Advocate Geir Lippestad

## JUDGMENT

The case concerns whether continued breeding of the dog breeds Cavalier King Charles Spaniel and English Bulldog and will be contrary to section 25 of the Animal Welfare Act, and a prohibition against future breeding.

### 1. Procedural history of the case

Following a letter before action dated 17 September, the Norwegian Society for Protection of Animals (“*Norwegian Society for Protection of Animals*”) filed a complaint on 23 November 2020 claiming that it is contrary to section 25, first and second paragraphs, of the Animal Welfare Act to breed the dog breeds English Bulldog (“*Bulldog*”) and Cavalier King Charles Spaniel (“*Cavalier*” – together the “*Breeds*”). The legal proceedings were brought against the Norwegian Kennel Club (“*NKK*”), the two pedigree dog clubs Norwegian Bulldog Club (the “*Bulldog Club*”) and Norwegian Cavalier King Charles Spaniel Club (the “*Cavalier King Charles Spaniel Club*”), and three named breeders of each of the Breeds (together the “*Breeders*”). With respect to the Breeders, a claim was also made for a prohibition against breeding of the two Breeds. Below, the Bulldog Club and the Cavalier King Charles Spaniel Club are referred to jointly as the “*Pedigree Dog Clubs*”, and together with NKK simply as the “*Clubs*”. The defendants are referred to jointly as the “*Defendants*”.

In their reply dated 18 January 2021, the Defendants claimed, principally, dismissal of the case and, in the alternative, judgment in their favour. On 22 March 2021, the district court issued a ruling containing the conclusion that the legal proceedings should be admitted for hearing. The ruling is legally binding.

At a case management conference on 26 May 2021, it was decided that the court should include an associate judge who is an expert in genetics and an associate judge who is an expert in veterinary medicine, and the main hearing was scheduled.

The main hearing took place over five full court days from Wednesday 10 November to Tuesday 16 November 2021. Ten persons gave evidence on behalf of the parties, eight party-appointed expert witnesses were called and documentation was submitted as shown in the court record and the digital documents bundle for the case. The documents bundle has been saved as “*Dyrebeskyttelsen Dokumentsamling Endelig*” [Norwegian Society for Protection of Animals, Documents Bundle, Final], contains 2,481 pages and is referred to below as “*U*” + page number. The parties also made use of a joint bundle of legal summaries, saved as “*Dyrebeskyttelsen Juridisk Utdrag Endelig*” [Norwegian Society for Protection of Animals, Legal Summaries, Final], containing 888 pages and referred to below as “*JU*” + page number.

### 2. The basis of claim of the claimant – the Norwegian Society for Protection of Animals:

#### 2.1 The Norwegian Society for Protection of Animals has primarily made the following submissions:

- That the legal proceedings have been brought to clarify whether section 25 of the Animal Welfare Act limits the types of genetic material which may be passed on through breeding, and whether the genetic material of Bulldogs and Cavaliers exceeds this limit. The case has therefore been brought a breed level, not at the level of individual Clubs.

The case does not hinge on whether any of the Defendants are or are not culpable or responsible for the current content of the genetic material. On the contrary, there is agreement that all parties to the case are undoubtedly genuinely concerned to ensure good animal welfare, that the Clubs have taken various steps to improve the situation and that the Breeders are not alleged to have done anything “*wrong*” in their activities. The legal proceedings may therefore be felt to be both burdensome and unfair to the individual Defendants. Nevertheless, the legal proceedings are necessary to determine the scope of the breeding provision in the Animal Welfare Act.

A judgment against the Defendants will not prohibit reputable breeding of Bulldogs and Cavaliers, since reputable and scientifically-founded cross-breeding may be a satisfactory alternative. Unlawful breeding is unlikely to flourish – neither breeders nor most dog buyers want sick animals. A judgment against the Defendants will only apply to the two Breeds in the case, although a judgment relating to Bulldogs is likely to be relevant to other breeds with serious frequency of BOAS, such as French Bulldogs and Pugs. Nevertheless, a judgment will send a clear signal to all breeds to undertake thorough assessments.

- That the animal welfare legislation has over time given increasing weight to the consideration of animals’ intrinsic value in addition to their utility value to humans, and has acknowledged that a precautionary principle should be followed in the absence of sufficient knowledge. The general clause in section 3 of the Animal Welfare Act indicates that breeding activities pursuant to section 25 must also protect animals against the risk of unnecessary stresses and strains.

The first paragraph of section 25 prescribes that breeding shall promote “*characteristics which produce robust animals which function well and have good health*”, i.e. a broader goal than just achieving good animal welfare. Animals with a material risk of health problems are not “*robust animals*”. The requirement is relevant to the scope of the list of prohibitions in the second paragraph concerning breeding which

- alters genes in such a way that they influence the physical or mental functions of animals negatively,
- reduces the ability of animals to engage in natural behaviour, or
- raises general ethical concerns.

If animals are nevertheless born with genes as specified in the second paragraph, the third paragraph prohibits their use in future breeding. It is submitted that the list must be applied as a whole and uniformly, without any individual weakness triggering a breeding prohibition under the act. A minimum threshold must presumably be implied. The weaker animal welfare has become, the more important the breeding prohibition becomes. The consideration of keeping a breed “*pure*” has no place in the statutory assessment.

The preparatory works make it clear that the provision also prohibits breeding of animals with undesirable characteristics when the breeding activities serve the overarching objective of eliminating the undesired characteristics; see Proposition to the Odelsting No. 15 (2008–2009), page 70. Alternatively, the court must conduct a concrete assessment of the reality and duration of a corrective breeding programme compared to the requirements of good animal welfare for the offspring.

A routine need for medical or surgical treatment may indicate unlawful breeding; see Proposition to the Odelsting No. 15 (2008–2009), page 111.

Section 25 does not impose obligations on everyone. Nevertheless, the present case is purely a declaratory judgment action which will not establish liability, culpability or that anyone has breached the prohibition. By admitting the legal proceedings for hearing, the court has already decided that the Defendants are sufficiently closely linked with the legal proceedings. Even if NKK does not undertake practical breeding activities itself, NKK does participate in it as the highest, standard-setting and most central, actor in Norwegian pedigree dog breeding. NKK must be regarded as a “*breeding organisation*” pursuant to the clarification of section 25 which applies as of 1 July 2021, and the current statutory text applies in the present case, which concerns whether breeding is contrary to the act (at the time the judgment is issued).

- That the Norwegian Society for Protection of Animals submits that human selective breeding has been conducted over the past 100–200 years which altered the genetic material of both Breeds at Norwegian population level contrary to section 25, second paragraph. Future breeding of both Breeds will therefore be prohibited by the third paragraph.

The altered genetic material of Cavaliers is current dominated by:

- “*Chiari-like Malformation*” (“*CM*”), a condition where the brain of the animal is too large for the skull cavity with the result that the brain is pressed out of the back of the head and down towards the spine. Almost all Cavaliers in Norway have this malformation of the skull. Approximately 15% of these Cavaliers show clinical symptoms of CM such as pain, vocalisation, unprovoked itching, avoidance of activity or touch and/or sleep problems. CM is incurable, but the pain can be alleviated to some degree through medication or brain surgery. In addition, it is assumed that CM is also a causal factor in relation to
- Syringomyelia (“*SM*”), a condition where the animal develops a fluid-filled cavity in the spinal cord, not least as a result of reduced absorption and blocked flow of spinal and cerebrospinal fluid. SM is also incurable, but surgery and medication can reduce the symptoms in some cases. Clinical symptoms include pain, sensory and motor indicators such as phantom itching, spinal curvature, weak musculature and reduced ability to walk normally. The frequency of SM increases with increasing age: at the age of one year, approximately 25% of all Cavaliers show changes in the spinal cord consistent with SM, while at the age of five years this applies to approximately 70% of all Cavaliers. Not all of these dogs develop serious clinical symptoms; the expert Rusbridge estimates that at least 22% of affected dogs experience serious clinical symptoms; and
- The heart valve disease “*Myxomatous Mitral Valve Disease*” (“*MMVD*”) is a genetic disorder which results in the leaking of one or more heart valves. If left untreated over time, the illness results in fluid filling the lungs (pulmonary oedema) and heart failure.

MMVD can affect all dog breeds, but the illness is particularly prevalent in Cavaliers, which also experience it particularly early. Approximately 10% of Cavaliers contract MMVD in their first year of life, and approximately another 10% contract the disease every year of life thereafter, so that almost all Cavaliers have contracted MMVD by their tenth year of life. MMVD is the clearly most significant individual cause of early death among Cavaliers. In addition, Cavaliers have an average life expectancy of approximately eight years, meaning that some Cavaliers die of other causes before contracting MMVD.

MMVD is diagnosed by observation of a heart “*murmur*” which is audible through a stethoscope; the most certain diagnostic method is ultrasound. Preventive medication can delay the development of symptoms and maintain good quality of life for an average of 800–1,200 days. Once dogs develop severe valve leakage and signs of fluid in the lungs, most die or are euthanised within one year.

The Cavalier also experiences an excess frequency of, in particular, “*Episodic Falling Disease*” and “*Curly Coated Eye Syndrome*”, both of which are attributable to inherited genetic mutations.

The altered genetic material of Bulldogs is dominated by its extremely short-snouted or “*brachycephalic*” head shape, which results in:

- “*Brachycephalic Obstructive Airway Syndrome*” (“*BOAS*”), which encompasses respiratory problems caused by restriction of the passage of air through the airways to a greater or lesser degree. Clinical symptoms of BOAS include snoring and wheezing, strained and rapid breathing, reduced endurance and temperature-regulation ability, and an increased risk of heat stroke. BOAS cannot be treated medicinally, but surgery can help to some degree. The condition is graded according to the degree of severity, from 0 to 3. Approximately 15% of Bulldogs have grade 0 and grade 3, respectively, while approximately 35% have grade 1 and grade 2, respectively. Accordingly, approximately 85% have grade 1 or higher, and approximately half have either grade 2 or grade 3; and
- Inability to reproduce naturally. In England, between 60% and 100% of Bulldogs are delivered by C-section. In Norway, which has been a leader in this area, C-sections have still accounted for 61%–72% in the past four years. At the same time, the number of emergency C-sections – i.e. cases in which natural birth was attempted but a C-section became necessary – has increased from 15% to 28% in the same period.

The scale of natural mating of Bulldogs in Norway has increased from 0% in 2011 to 7.7% in 2012, 36% in 2020 and 62% in 2021 – a total increase of 22% in the years 2017–2019. Both conception and birth are a natural physical function.

In addition, Bulldogs display an excess frequency of orthopaedic conditions, particularly in the hips and elbows, skin problems such as allergies, itching, infections and moist dermatitis, “*Cherry Eye*” and uroliths.

It appears highly unlikely that these conditions can be bred out of the Breeds, due to low genetic variation. In any event, this would take many generations – far too long for the purposes of the Animal Welfare Act. Continued breeding will be contrary to section 25, first to third paragraphs, of the Animal Welfare Act.

2.2 Statement of claim of the Norwegian Society for Protection of Animals:

With respect to the Norwegian Kennel Club:

1. That it is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed English Bulldog.
2. That it is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed Cavalier King Charles Spaniel.

With respect to the Norwegian Bulldog Club:

1. That it is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed English Bulldog.

With respect to the Norwegian Cavalier King Charles Spaniel Club:

1. That it is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed Cavalier King Charles Spaniel.

With respect to Inger Pettersen, Liv-Anne Klubben and Christel Hagen:

1. That it is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed Cavalier King Charles Spaniel.
2. That Inger Pettersen, Liv-Anne Klubben and Christel Hagen be prohibited from breeding the dog breed Cavalier King Charles Spaniel.

With respect to Lena Haugland, Liss Bodil Olsen and Jorunn Rosander:

1. That it is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed English Bulldog.
2. That Lena Haugland, Liss Bodil Olsen and Jorunn Rosander be prohibited from breeding the dog breed English Bulldog.

With respect to all Defendants:

1. That the Norwegian Society for Protection of Animals be awarded legal costs.

### **3. The basis of claim of the Defendants:**

3.1 The Defendants have primarily made the following submissions:

- That the parties largely agree on the percentage distribution of the individual diagnoses, but that they disagree about the importance of the diagnoses for animal welfare, the significance of

the Clubs' breeding activities with respect to animal health and who should be held responsible for overall breeding activities over a period of more than 100 years, and about the legal content of the Animal Welfare Act.

- That there is agreement that the defendant Breeders represent “*best practice*” with respect to breeding of the Breeds in Norway. The individual Breeders and dog owners are best placed to evaluate the quality of life of individual dogs, since they live in closer proximity to their pets than, for example, the owner of livestock kept in stalls or on cultivated pasture. The evidence submitted by Breeders, animal buyers, veterinarians and the Norwegian Food Safety Authority following inspections consistently confirms good animal welfare and function for the Breeds at population level.

An individual diagnosis of audible breathing sounds does not support a different assessment. Even if 15% of Cavaliers suffer painful CM conditions, 85% of the Breed experience no pain and can be used in further breeding. The same applies to the 78% which do not contract SM. There is agreement that Bulldogs with grade 3 BOAS should not be bred. Nevertheless, it is submitted that dogs with grade 2 or lower cannot be said to suffer or experience poor animal welfare. Moreover, Norwegian figures from an unselected Bulldog population show less serious BOAS than English surveys – some 80% with grades 0 and 1, 15% with grade 2 and just 5% with grade 3. In the longer term, grade 2 can be split such that no breeding is done with high grade 2 dogs and low grade 2 dogs are only combined with grade 0 and grade 1 dogs, which in the absence of clinical symptoms must be regarded as healthy animals. The prevalence of BOAS is therefore no obstacle to continued breeding of Bulldogs.

Overall, Norwegian and Scandinavian breeding rules are stricter than those in other countries; the populations are healthier and live better lives with good animal welfare, and the Clubs have already implemented several measures to improve breeding, such as a three-year minimum breeding age for Cavaliers and a breeding prohibition for Bulldogs which are not expected to be able to give birth naturally or which have grade 3 BOAS.

The specialist authorities have neither proposed nor adopted a breeding prohibition as demanded by the claimant from the courts; on the contrary, the proposals have concerned how good breeding can be achieved. However, prohibitions have been introduced for other species and breeds, such as the cattle breed Belgian Blue, which features bred muscular hypertrophy (so-called “*double-musculature*”) to achieve increased meat weight. Weight must be given to the assessment of the specialist authorities.

The Defendants agree that changing course through the initiated planned breeding programme will take a number of years, and that the outcome is, in principle, uncertain. However, the same also applies to any cross-breeding project, which will have to be undertaken on a scientific and international basis and which must prevent new genetic diseases or faults from being bred into the animals, and prevent genetic variation from being lost with the result of creating new genetic bottlenecks.

- That NKK is a membership-based interest group, not a “*breeding organisation*” within the meaning of the current section 25 of the Animal Welfare Act. NKK does not breed any animals, does not set criteria for the selection of breeding animals and has no “*influence on breeding*” other than giving advice to the Pedigree Dog Clubs and Breeders. In any event, NKK falls outside the group of persons specified in section 25.

In addition, it is emphasised that since section 25, second and third paragraphs, are formulated in present tense rather than past tense (perfect tense), they do not apply to historical breeding practices over a period of 100 years, but rather to future breeding which alters the functions of future offspring negatively or reduces their ability to engage in natural behaviour, etc. The Defendants are not making negative alterations, reducing or maintaining any existing negative genes, but are working deliberately and actively to improve the physical and mental functions of the Breeds and their ability to engage in natural behaviour in accordance with the purpose of the Animal Welfare Act. Judgment must therefore also be given in favour of the other Defendants.

There is a sufficient number of robust and functional animals with good function and health which can be used in future breeding of both Breeds. Even though some Cavaliers face health challenges, almost all Cavaliers live good, healthy lives without clinical disease. Equally, Bulldogs with grade 0 and grade 1 BOAS are clinically free of disease, while grade 2 dogs enjoy good lives with good animal welfare.

The case has not shed light on either how any cross-breeding of the Breeds should be undertaken or who should design, decide, implement and monitor such an initiative. Cross-breeding will in any event take time and will have to involve largely the same dogs, and the results will be uncertain. There is a real risk of cross-breeding in new diseases or conditions and/or restricting the breadth of the Breed's genetic material.

3.2 Statement of claim of the Defendants:

On behalf of the Norwegian Kennel Club:

1. That judgment be given in favour of NKK.
2. That NKK be awarded legal costs.

On behalf of the Norwegian Bulldog Club:

1. That judgment be given in favour of NBK.
2. That NBK be awarded legal costs.

On behalf of the Norwegian Cavalier King Charles Spaniel Club:

1. That judgment be given in favour of NCK.
2. That NCK be awarded legal costs.

On behalf of Inger Pettersen, Liv-Anne Klubben and Christel Hagen:

1. That judgment be given in favour of the parties.
2. That Inger Pettersen, Liv-Anne Klubben and Christel Hagen be awarded legal costs.

On behalf of Lena Haugland, Liss Bodil Olsen and Jorunn Rosander:

1. That judgment be given in favour of the parties.
2. That Lena Haugland, Liss Bodil Olsen and Jorunn Rosander be awarded legal costs.



## The court's assessment

### 4. The parties to the case

#### 4.1 Norwegian Society for Protection of Animals

The Norwegian Society for Protection of Animals was founded 1859, is Norway's oldest animal protection association and has approximately 9,000 individual members distributed across 27 local associations. The purpose of the association is to promote and protect the rights and welfare of animals. The highest governing body of the Norwegian Society for Protection of Animals is its national congress. The society's central committee is its highest governing body between national congresses. The Norwegian Society for Protection of Animals also has the following organisational units: working committee (AU), local associations and contact persons.<sup>1</sup>

It has been stated that the local association in Oslo and Akershus raised the topic of "ethical breeding" in around 2015, and that the national council allocated money to the purpose in 2017. The Norwegian Society for Protection of Animals notified the Norwegian Food Safety Authority of several alleged violations of section 25 the Animal Welfare Act following the Dogs4All exhibition in Lillestrøm on 18 November 2018. After the Norwegian Food Safety Authority had discussed the reports submitted by the Norwegian Society for Protection of Animals centrally, an unnamed inspector wrote, in an advance warning to a breeder who was the subject of an inspection:<sup>2</sup>

*"The purpose of implementing the measures must be to protect individuals against unnecessary suffering, and to move dog breeding in Norway in a direction that is more acceptable from an animal welfare perspective. The breeding prohibition in section 25 should therefore focus on individuals and characteristics rather than particular breeds.*

*The clarification will be published on the Fagkjernen website.*

*The Norwegian Food Safety Authority will communicate the conclusion to clinical veterinarians through DNV and to breeders through NKK.*

...

*Criteria for concluding that section 25 of the Animal Welfare Act has been breached are observations of individuals with over-typed undesirable anatomical characteristics which require medical or surgical treatment in order for the dog to have acceptable quality of life, with a particular focus on dogs with breathing problems."*

None of the conducted inspections resulted in notification of duties or warnings of decisions.

The present legal proceedings were brought not least because the Norwegian Society for Protection of Animals considers that the Norwegian Food Safety Authority is interpreting section 25 incorrectly. The Norwegian Society for Protection of Animals has also pursued its objective through previous legal proceedings, for example in relation to battery hens, fur-bearing animals and abandoned kittens.<sup>3</sup>

#### 4.2 NKK<sup>4</sup>

NKK was founded in 1898 and is a voluntary, non-profit common-interest association for dog owners which has approximately 100,000 memberships distributed across approximately 85,000 persons. These persons are members through one or

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<sup>1</sup> The articles of association of the Norwegian Society for Protection of Animals can be found in U, pages 34–49.

<sup>2</sup> U, pages 2308–09.

<sup>3</sup> See, respectively, Supreme Court Reports (Rt.) 1984, page 1488, Battery hens I, Supreme Court Reports (Rt.) 1987, page 538, Battery hens II and Supreme Court Reports (Rt.) 1995, page 1823, Battery hens III; LE-1999-306 and 307 Fur-bearing animals and LA-2013-14932 Kittens.

<sup>4</sup> NKK's articles of association (U, pages 942–56).

more of the approximately 264 independent breed or activity clubs or associations which make up NKK. Both the Bulldog Club and the Cavalier King Charles Spaniel Club are such breed clubs

NKK's purpose is to *“safeguard the interests of dogs and dog-keeping in Norway, and to help promote positive activities with dogs and dog sports, as well as the management of individual dog breeds. NKK shall also work to promote ethically sound treatment of dogs and the orientation of breeding in the desired direction with respect to breed standards, working characteristics and breed health.”*

The annual meeting of the supervisory board is NKK's highest governing body. The Executive Board is NKK's highest governing body between meetings of the supervisory board. NKK also has the following organisational units: regional boards and several specialist committees and panels. NKK's many activities include the registration of pedigree dogs, exhibitions and training of judges, hunting tests, a range of courses, training opportunities and competitions, as well as advisory services. NKK also maintains the Dogweb database, which is used by many breeders and buyers. It is assumed that approximately 50% of all Norwegian dogs are registered with NKK. The other half are not associated with the organised breed and activity clubs.

Pursuant to Article 1-1, third paragraph, of its articles of association, NKK has overall responsibility for dog breeding and dog breeds in Norway, while management of individual breeds is delegated to the respective breed clubs. In addition, the articles of association of NKK's clubs and associations must fulfil the obligatory content of NKK's statutory purposes, regardless of whether or not these are specifically incorporated into the articles of association of the club or association in question. Clubs and associations are also required to support NKK's activities and to comply with NKK's laws and rules.<sup>5</sup>

NKK is the Norwegian member of the International Canine Federation (*Fédération Cynologique Internationale*, or *“FCI”*). The FCI does not have independent responsibility for any breed standards, but rather constitutes a shared cooperation platform for the national kennel clubs which are responsible for the breed standards of individual countries' national dog breeds. Norway has a total of seven national dog breeds: Norwegian Elkhound grey and black, Norwegian Buhund, Norwegian Lundehund, Dunker (Norwegian Hound), Hygen Hound and Halden Hound.

Responsibility for the breed standards for Bulldogs and Cavaliers lies with the UK organisation The Kennel Club. However, not all national kennel clubs are members of the FCI; for example, neither The Kennel Club nor the American Kennel Club is.

#### 4.3 The Pedigree Dog Clubs

The Bulldog Club was founded in 1919 and has approximately 650 members, while the Cavalier King Charles Spaniel Club was founded in 1998 and has approximately 900 members. Approximately 130 Bulldogs and approximately 560 Cavaliers are registered annually in Norway.

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<sup>5</sup> Article 2-1 of the articles of association in U, page 943, see also Article 1-1 and Article 1-4 of the articles of association of the Bulldog Club in U, page 958, and Article 1-1 of the articles of association of the Cavalier King Charles Spaniel Club in U, page 962.

The articles of association of the Pedigree Dog Clubs have been approved by NKK and are based on the same principles.<sup>6</sup> Their respective purposes are to:

- *“promote ethical and sound treatment and that breeding of dogs takes the desired direction with respect to breed standards, working characteristics and breed health”*; and to
- *“promote ethically and practically sound treatment of dogs and that breeding takes the desired direction with respect to breed standards and breed health.”*

Both Pedigree Dog Clubs have the following bodies: ordinary and extraordinary annual meetings, board, nomination committee and departments. The Bulldog Club has separate departments for Bulldogs (English Bulldogs) and French Bulldogs.

The Pedigree Dog Clubs are responsible for preparing and updating breed-specific breeding strategies (“RAS”) for *“their”* breeds, and RASs must be approved by NKK. The Bulldog Club has established two health panels (one for each breed), while the Cavalier King Charles Spaniel Club has established a Breeding Council.

Both Pedigree Dog Clubs have adopted extensive rules and guidelines on breeding and rearing. These contain a range of health requirements and rules on the homing of puppies. The members of the Pedigree Dog Clubs are obligated under association law to follow the rules and recommendations of both their club and NKK. Potential sanctions include refusal of registration, a breeding suspension and exclusion. Individual club members may also choose to withdraw from the Pedigree Dog Club, and thus from the NKK system, but still continue to breed and sell dogs.

#### 4.4 The Breeders

The legal proceedings have also been brought against six Breeders – three for each Breed. Most of these persons are involved in breeding as a hobby alongside other work or business activity, meaning that the net financial result is fairly limited. Several have given evidence that they primarily breed puppies for personal use and therefore regularly keep a puppy from each litter. Most use online systems which show the dogs’ pedigree and which go back for up to 10 generations to ensure a low degree of inbreeding.

The Clubs recommend guideline sale prices for puppies, which the Breeders follow. The recommended price for a Bulldog puppy is approximately NOK 25,000, while it is approximately NOK 20,000 for a Cavalier. One Breeder quoted a rule-of-thumb that the financial break-even point is six puppies per litter, with the seventh generating a profit and five or fewer meaning a loss.

Further, most of the Breeders have established Facebook groups in which puppy buyers can ask questions and share stories and experiences if they wish. The Breeders have stated that the buyers’

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<sup>6</sup> The articles of association of the Bulldog Club can be found in U, pages 958–61, and its ethical rules in U, pages 968–70. The articles of association of the Cavalier King Charles Spaniel Club can be found in U, pages 962–67, and its breeding rules and guidelines in U, pages 972–76.

feedback on puppy health and development is consistently positive, whether given through Facebook groups or elsewhere.

Several of the Breeders do not understand why dogs which are happy and active should be suffering from serious pain or health conditions as claimed by the Norwegian Society for Protection of Animals; for example, toothache is discovered quickly. They have found the legal proceedings to be a heavy personal burden and consider that they have been subjected to extensive harassing coverage and characterisations, particularly on social media.

The Bulldog Breeders are:

- Jorunn Rosander, a retired teacher and operator of the Jofro-Bull<sup>7</sup> kennel. Rosander's parents were also involved in dog breeding (Alsations) and were exhibition judges, and Rosander has been involved in various dog sports over the years, including dog sledding, agility and "scentwork". She has completed a number of courses under the auspices of NKK. In the past five years, she has received 11 litters totalling 42 puppies with fathers from Sweden, Finland and Slovenia. Of these, she has kept 16 puppies. In the 11 litters, she has experienced one case of gastric dilatation volvulus and a couple of C-sections. She gave evidence that the heads of Bulldog puppies are not the cause of birth problems, since the head is not particularly large at birth. She also gave evidence that her puppies have been healthy, lively and active; two of her own dogs have reached the age of 15. She tests her dogs extensively, but has not obtained a BOAS grading to date;
- Lena Haugland, who is a homemaker and operator of the Kalagera kennel for rearing of Bulldogs and Dogue de Bordeaux.<sup>8</sup> She received her first litter of Bulldogs in December 2015, and has received a total of 57 puppies. She has kept one puppy from each litter, but some of these have been placed with 'feeding hosts'. Of the 57 puppies, four have been reported to have a disease, and one of these had surgery to shorten its soft palate. Four out of six breeding bitches have given birth naturally. She BOAS grades all her dogs now. She has established a dedicated Facebook group for her buyers, and emphasises personal chemistry and mutual trust in connection with puppy sales; and
- Liss Bodil Olsen, a publicly certified enrolled nurse and operator of the Zendream<sup>9</sup> kennel. She has received a total of seven litters totalling 32 puppies since 2014, and has kept 10 of the puppies. Reported diseases include an operation for soft palate, one case of Cherry Eye and otherwise cuts to paws, kennel cough, etc. Her bitches have delivered one or two litters each. With the exception of one bitch which delivered by planned C-section after she swallowed a tennis ball, all have attempted to give birth naturally. C-sections have been used in two additional cases; once because the contractions never started and once because the puppies did not drop down into the birth canal. In addition, one litter was born in the veterinary surgery. She has established a Facebook group for her buyers.

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<sup>7</sup> U, page 917, and website (U, page 997).

<sup>8</sup> U, page 917, and website, (U, page 995).

<sup>9</sup> U, page 917, and personal comment, U, page 996. Report following inspection (U, pages 2403-05).

The Cavalier Breeders are:

- Inger Pettersen, an enrolled psychiatric nurse and now a homemaker and operator of the Gostuen kennel alongside her daughter Tina Kristin Pettersen, a shop assistant.<sup>10</sup> Both gave evidence. They stated that they receive approximately 10 litters per year and have received a total of 190 puppies over the past five years, of which they have kept 21 puppies. Three of the sold puppies have been returned due to early onset of heart murmurs, and two due to suspected CM. Buyers undertake to report any health problems experienced by the puppies. Puppies without a “clean” veterinary certificate are sold as family dogs with a breeding reservation. They have established a Facebook group for their purchasers;
- Christel Hagen is a book-keeper and operates the Cavalierhagen kennel.<sup>11</sup> She has received a total of 16 litters over the past nine years, and 35 puppies in the past five years. She has kept some of the puppies. She generally breeds her own bitches, borrowing external males, and considers exhibition results to secure breed-typical dogs. She uses online tools to ensure low inbreeding. Of the 35 puppies, one was reported to have a grade 1 luxating patella and one developed a feed allergy, but there were no cases of CM/SM or MMVD. Her puppies generally enjoy good health and good quality of life; and
- Liv-Anne Klubben operates the Jørsi<sup>12</sup> kennel. She did not give evidence. She has received seven litters in the past five years and is a former deputy chair of the Cavalier King Charles Spaniel Club and member of the Breeding Council.

It is assumed that most dog buyers will consider a breeder’s membership of the NKK system as a sign of quality, and will therefore prefer NKK-registered puppies. However, it is uncertain whether pedigree dogs are also being bred outside the NKK system and, if so, on what scale.

## 5. The statutory rules

The Animal Welfare Act 2009 replaced the Animal Protection Act 1974, which in turn replaced Norway’s first Animal Protection Act, of 1935. The name of the act already shows that the purpose of the act has evolved over time. While the Animal Protection Act 1935 prohibited neglect in order to prevent suffering, the Animal Protection Act 1974 protected animals against unnecessary suffering while also seeking to take account of the instincts and natural needs of animals. The current act acknowledges the intrinsic value of animals and, according to section 1, serves the purpose of promoting good animal welfare and respect for animals.<sup>13</sup>

The district court will begin by considering the content and origins of the legislation.

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<sup>10</sup> U, page 916, and website (U, pages 978–83).

<sup>11</sup> U, page 916, and website (U, page 977).

<sup>12</sup> U, page 917, and website (U, pages 984–94).

<sup>13</sup> Regarding the historical background to the legislation, see Stenevik et al., *Dyrevelferdsloven kommentarutgave* [The Animal Welfare Act Commentary Edition], Juridika, pages 3–6 (JU, pages 737–40) and Berg, *Lov om dyrevelferd* [The Act relating to animal welfare], Gyldendal Rettsdata, Note 1, first to third paragraphs (JU, page 731).

## 5.1 The current statutory text

Section 25 of the Animal Welfare Act on breeding reads:

### **“Section 25. Breeding**

*Persons who keep animals, breeders, breeding organisations and breed clubs shall through breeding promote characteristics which produce robust animals which function well and have good health.*

*No breeding, including through methods of gene technology, shall be carried out which:*

- a) alters genes in such a way that they influence the physical or mental functions of animals negatively, or pass on such genes,*
- b) reduces the ability of animals to engage in natural behaviour, or*
- c) raises general ethical concerns.*

*Animals with a genes as cited in the second paragraph shall not be used for further breeding.*

*The King may issue regulations on breeding in accordance with the principles in this section, including on breeding activity within breeding organisations and breed clubs.”*

With effect as of 1 July 2021, the group of persons subject to the provision was clarified as follows: “so that it is clear that breeding organisations and breed clubs are covered by the provision and that obligations may be imposed on them to achieve the purpose of the provision.”<sup>14</sup> At the time of adoption of the Animal Welfare Act in 2009, the first and fourth paragraphs of the provision read as follows:

### **“Section 25. Breeding**

*Breeding shall promote characteristics which produce robust animals which function well and have good health.*

... [Second and third paragraphs unamended.]

*The King may issue specific regulations on the breeding of animals in contravention of the principles in this section.”*

## 5.2 Origins of the statutory text

### 5.2.1 *The Animal Protection Act 1974*

Neither the Animal Protection Act 1935 nor the act of 1974 regulated breeding specifically. However, when the Gene Technology Act was adopted in 1993, the following new first and second paragraphs were added to section 5 of the 1974 act, which originally concerned animal supervision and care:

*“It is prohibited to alter an animal’s genes through methods of gene technology or through traditional breeding activities if*

- 1. this renders the animal unsuited to engaging in normal behaviour or influences physiological functions in an undesirable direction,*
- 2. the animal is caused unnecessary suffering,*
- 3. the change raises general ethical concerns.*

*It is prohibited to breed animals that have become as specified in the first paragraph.”*

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<sup>14</sup> Prop. 128L (2020–2021), page 3 (JU, page 438).

The preparatory works to the Gene Technology Act did not comment specifically on the new breeding provision in the Animal Welfare Act, stating only that the provision “*clarifies the ethical considerations which must be taken into account in relation to both animal breeding through methods of gene technology and targeted breeding using traditional methods.*”<sup>15</sup> The supervision and care provision was subsequently taken out of section 5 of the Animal Protection Act 1974 and included in a new section 5a for legislative reasons.<sup>16</sup> They can now be found in section 24 of the current act.

In other words, the Gene Technology Act introduced equal regulation of breeding through methods of gene technology and traditional methods.

### 5.2.2 *The Animal Welfare White Paper, 2002–2003*

In December 2002, the Government published a comprehensive white paper on the keeping of all animals from an animal protection perspective (the “*Animal Welfare White Paper*”).<sup>17</sup> Through the white paper, the Government wished to develop an ethical platform with overarching objectives on which future efforts to promote animal welfare in Norway were to be based. The Government identified the following, among other things, as guidelines for the platform:<sup>18</sup>

- that animals have intrinsic value, implying a requirement to “*take extensive account of the natural needs of animals and actively prevent illness, injury and pain*”;
- that physically and mentally healthy animals were a prerequisite for all types of breeding; and
- that health was an important aspect of the term “welfare” which should be given greater prominence than previously in both targets and measures.

The ethical platform was supplemented by overarching objectives, five strategies for achieving these and a series of concrete targets and proposed measures. The Animal Welfare White Paper stated generally that “*greater consideration must be given to health in connection with breeding*” – in the case of all breeds – and that “*(T)here are numerous examples of breeding which can be said to be contrary to the letter of the law, in relation to both pets and livestock.*”<sup>19</sup>

As regards breeding of dogs, and partially pedigree cats, it was specifically stated that external breed standards had in many cases resulted in an “*increased risk of injury and illness, and resulted in reduced welfare*”.<sup>20</sup> Further, the Animal Welfare White Paper pointed out “*(B)reeding of dogs with defects to meet breed standards*” and “*breeding between close relatives, risk of heritable conditions*” as particular challenges.<sup>21</sup>

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<sup>15</sup> Proposition to the Odelsting No. 8 (1992–1993), page 93.

<sup>16</sup> Proposition to the Odelsting No. 68 (1999–2000), page 13.

<sup>17</sup> Report to the Storting No. 12 (2002–2003) *Om dyrehold og dyrevelferd* [On animal husbandry and animal welfare] (JU, pages 32–231).

<sup>18</sup> Animal Welfare White Paper, page 150 (JU, page 178).

<sup>19</sup> Animal Welfare White Paper, page 52 (JU, page 80).

<sup>20</sup> Animal Welfare White Paper, page 156 (JU, page 184).

<sup>21</sup> Animal Welfare White Paper, page 170 (JU, page 198).

The Animal Welfare White Paper was considered by the Norwegian Parliament's Standing Committee on Business and Industry in May 2003.<sup>22</sup> The committee unanimously supported both the presentation of the ethical platform and the suggestion that it “*should constitute guidance on our attitudes towards animals and the keeping of animals in our society.*”<sup>23</sup> The committee also unanimously supported “*the targets and measures described in the white paper*” with respect to breeding and biotechnology.<sup>24</sup>

### 5.2.3 The Consultation Paper, November 2007

Against this backdrop, the ministry circulated a consultation paper regarding a new act on animal welfare in November 2007 (the “*Consultation Paper*”). Regulation of breeding was discussed in the general provisions in the Consultation Paper (page 43), in the form of a proposed new statutory text (page 113) and in comments on the statutory proposal (page 93–94). In summary, the Consultation Paper was based on the proposition that:<sup>25</sup>

*“The ethical platform in the Animal Welfare White Paper assumes that animals which are able-bodied in both physical and mental terms must be a prerequisite for all types of breeding. This principle is important for safeguarding good animal welfare in the context of all animal husbandry, and the Consultation Paper proposed that it be enshrined in the act. All breeding was therefore to be based on promoting characteristics that produce robust animals which function well and have good health.*”

*The Consultation Paper stated that the ministry considers that greater consideration must be given to health in the context of breeding, and that all breeding objectives must include healthy and able-bodied animals. This was stated in the first paragraph of the provision, which applies to breeding. The second paragraph applies to all reproduction. It was emphasised that it is important to prevent breeds from being bred and formed in contravention of the principles in this provision, and that particular challenges arise with regard to enforcement of the provision in relation to imported animals which can be expected to suffer in Norway due to defects created through breeding.*

*It was also pointed out that any aspects of breeding and biotechnology other than health and welfare consequences for individual animals would fall outside the scope of this provision.”*

The Consultation Paper was broadly support during the consultation process.

### 5.2.4 The Proposition, November 2008

On 28 November 2008, a draft new Animal Welfare Act was published in the form of Proposition to the Odelsting No. 15 (2008–2009) – the “*Proposition*”. The introduction to the Proposition stated that:<sup>26</sup>

*“The draft act is largely based on new knowledge about the abilities and needs of animals, as well as objectives identified in Report to the Storting No. 12 (2002–2003) Om dyrehold og dyrevelferd [On animal husbandry and animal welfare]. Through the new Animal Welfare Act, the ministry wishes, among other things, to clarify the status and rights of animals. The background to the statutory proposal is a significant development in knowledge of the abilities and needs of animals, combined with high ethical targets as regards how we want animals to be treated in society. A material principle underpinning the act is the recognition that animals have intrinsic value in addition to their utility value to humans...*”

*The legislative proposal not only specifies standards which facilitate good animal welfare today; it should also be interpretable in light of the ethical standards applicable to animal husbandry in society at any given time*

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<sup>22</sup> Recommendation to the Storting No. 226 (2002–2003) (JU, pages 215–30).

<sup>23</sup> Page 6 of the Recommendation (JU, page 220).

<sup>24</sup> Page 8 of the Recommendation, (JU, page 222).

<sup>25</sup> Cited from Proposition to the Odelsting No. 15 (2008–2009), page 69, JU, page 370.

<sup>26</sup> Page 7 of the Proposition (JU, page 297).



*and thus remain relevant for longer. This statutory proposal marks a desire to set a good example with regard to protecting the interest of animals, including in an international context.”*

#### 5.2.5 The Recommendation, March 2009

The Standing Committee on Business and Industry considered the Proposition in Recommendation No. 56 (2008–2009) (the “*Recommendation*”), issued on 24 March 2009. Among other things, the Committee unanimously stated that

*“The committee is pleased that the statutory proposal emphasises the word ‘welfare’. The public’s understanding of what should be regarded as good animal protection has developed considerably, both in the agricultural sector and as regards the keeping of pets. The committee considers that... More recent research in the field of animal protection is providing new knowledge about the perception, feelings and experiences of animals which it is entirely logical to take into account in the legislation. Moreover, there has been a development in relation to production methods in the agricultural sector, the size of herds, etc. which help make it appropriate to impose stricter animal welfare requirements than have been appropriate previously. Moreover, technical solutions and equipment have been developed for the pet-keeping sector which make it logical to adopt stricter animal welfare requirements.*

...

*The committee considers that Norway is a global leader in the area of animal welfare. The committee considers that the new act helps ensure that this will remain the case in the future.*

*Nevertheless, the committee considers that it is challenging to balance the requirement of strong animal protection legislation with the interests of persons who will own animals, and particularly persons who use animals in a commercial context, for example in the agricultural sector.”<sup>27</sup>*

The Committee did not discuss the breeding provision specifically. However, the committee majority did reiterate the symbol provision in the Consultation Paper, which states that animals have intrinsic value irrespective of any utility value they may have for humans, for example in section 3, new first sentence, after this had been omitted from the Proposition. The legal significance of the amendment was disputed at the time of adoption, and is still debated.<sup>28</sup>

#### 5.2.6 Clarification of the group of persons affected by the breeding provision, 1 July 2021

As stated above, section 25 was amended with effect as of 1 July 2021 “*so that it is clear that breeding organisations and breed clubs are covered by the provision and that obligations may be imposed on them to achieve the purpose of the provision.*”<sup>29</sup> The preparatory works to the amendment are Prop 128 L (2020–2021) (“*Prop 128*”) and Innst 624 L (2020–2021) (“*Innst 624*”), as well as a preceding consultation paper dated 23 December 2020.

The reasons given for clarification of the breeding provision in Prop 128 include that, “*(E)xcessive focus on individual characteristics may have negative effects on animal health and anatomy, in turn reducing animal function and quality of life. More recently, increasing*”

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<sup>27</sup> Page 41 of the Recommendation (JU, page 271).

<sup>28</sup> Pages 42–43 of the Recommendation (JU pages 272–73); see also *Karnov Lovkommentarer* [Karnov Law Commentary], Note 2 on section 3 by Mari Kjellevoid Brygfjeld.

<sup>29</sup> Prop. 128L (2020–2021), page 5 (JU, page 438).

attention has been devoted to negative side effects, particularly on pet health and working characteristics, which can result from planned breeding.”<sup>30</sup>

The Standing Committee on Business and Industry unanimously “noted that the backdrop to amendments of the statutory proposal are planned breeding which is used to promote desired characteristics in a breed, and that excessive focus on characteristics may have negative effects on the animals. The ministry therefore sees a need to clarify section 25 to make it clear that requirements can be imposed regarding the content of breeding plans and that corresponding requirements may be imposed on persons who keep animals, breeders, breeding organisations and breed clubs for other species of animals.”<sup>31</sup>

### 5.3 Brief comments on other provisions of the Animal Welfare Act

In addition to introducing a new purpose provision on the promotion of good animal welfare and respect for animals in section 1, the Animal Welfare Act also retained the general duty of care found in the 1974 act regarding how animals are to be treated. The adopted provision reads:

**“Section 3. General provision on the treatment of animals**

*Animals have an intrinsic value independently of any utility value they may have for humans. Animals shall be treated well and be protected against the risk of unnecessary stresses and strains.”*

In legal terms, section 3 can be classed as a catch-all clause for the purposes of the Animal Welfare Act. The preparatory works show partly that the provision is to have independent significance for specific circumstances that fall outside the other provisions of the act and will “provide guidance on the interpretation and application of other provisions in the act.”<sup>32</sup> Partly, the same section shows that the assessment of whether a stress or strain is “unnecessary” must emphasise “the nature and scope of these, whether they are caused by humans, what the purpose is of exposing animals to these and whether the action is generally accepted”. Finally, it is shown that a precautionary principle should be applied in areas of deficient knowledge.

### 5.4 The interpretative issues in the case

The district court will now consider the questions of statutory interpretation raised by the case.

#### 5.4.1 *Legal nature and structure of the breeding provision*

Both the breeding provision in section 25 and the general clause in section 3 have been given the form of a so-called “legal standard”. The district court uses the term “legal standard” to refer to a legal rule which by including a discretionary assessment standard outside of itself incorporates views, trade-offs and knowledge as exist at any given time in society or the relevant area of life or specialist area. Legal provisions which refer to “good business practice”, “immoral”, “propriety and good faith”, “good practice”, “the best interests of the child” or – as here – “general ethical concerns” are typical examples of a legal standard.

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<sup>30</sup> Prop 128 L (2020-2021), page 5, final paragraph (JU, page 438).

<sup>31</sup> Innst 624 L (2020-2021), page 4 (JU, page 460).

<sup>32</sup> Page 109 of the Proposition (JU, pages 398–99). This has been followed up on in case law, see for example HR-2017-1250-A, paragraph 44.

A legal rule drafted as a legal standard will reflect altered views and circumstances in society or specialist knowledge without having to adopt a formal statutory amendment. This makes the rule more adaptable and targeted in the event of changes in circumstances and knowledge, and updates. On the other hand, the functional content of the rule will not be immediately clear from its wording alone, and the scope and limits of the rule may be more difficult to predict. The main content of the Proposition clarifies that the Animal Welfare Act “*shall... be interpretable in light of the ethical standards for animal husbandry applicable in society at any given time, and thus also remain relevant for longer.*”<sup>33</sup>

The first paragraph of section 25 prescribes that all breeding shall “*promote*” characteristics which produce “*robust*” animals which function “*well*” and have “*good*” health. The verb “*promote*” implies a requirement to engage in activities with the aim of achieving the specified purpose. The breeding work must therefore be carried out in a way that secures a high and increasing probability of healthy and well-functioning animals.

The “*robust animals*” requirement implies both that parent animals must be well-functioning and that they may not carry heritable diseases or undesirable genes, so that the risk of their offspring developing health problems is small. The core of the “*robust animals*” requirement is that the animals can withstand strains which are normal and foreseeable in the context of animal husbandry.

The content of the prohibition in section 25, second paragraph, largely reflects the requirement in the first paragraph, but is more absolute in form since a breach of the prohibition will be an objectively unlawful circumstance. The prohibition has been divided into three alternatives which, depending on the circumstances, may overlap.

Sub-paragraph a) prohibits alteration of genes through breeding which “*influence[s] the physical or mental functions of animals negatively*”. The following clarifications in the Proposition are important in the present case:

- that breeding which influences the functions of animals negatively will also be unlawful where the breeding activities serve the purpose of breeding out undesirable characteristics over time. This applies even if the consequence is that old breeds die out entirely;<sup>34</sup>
- that the prohibition in a) applies not only to breeding which alters genes in an undesired direction, but also breeding which passes on genes which have already been altered, in the same manner as under the preceding 1974 act;<sup>35</sup> and
- that a need for routine medical or surgical treatment “*may indicate that breeding is in breach of*” the prohibition in the second paragraph, a).<sup>36</sup>

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<sup>33</sup> Page 7 of the Proposition (JU, page 297).

<sup>34</sup> See the request of Norwegian pet organisations for clarification on page 70 of the Proposition (JU, page 370) together with the Ministry’s reply on page 70 of the Proposition (JU, page 371).

<sup>35</sup> Page 70 of the Proposition (JU, page 371).

<sup>36</sup> Page 111 of the Proposition (JU, Page 418).

Sub-paragraph b) prohibits breeding which reduces the ability of animals to engage in natural behaviour. The prohibition is framed in absolute terms, and its wording permit neither trade-offs nor exceptions for trivialities. Both breeding which reduces the ability of an animal to mate or give birth naturally and breeding which makes animals more fearful or aggressive may be covered by the prohibition in b). It is a logical assumption that the term “*natural behaviour*” has the same meaning in section 25 as in section 23, where the statutory text lists stimulating activities, exercise and rest as examples of normal behaviour.

Sub-paragraph c) prohibits breeding which raises general ethical concerns. According to the Proposition, the decisive factor in this regard is the general view in society, considered together with an expert assessment of whether the activities include circumstances which are undesirable from an animal welfare perspective.<sup>37</sup>

Section 25, third paragraph, prohibits the use in breeding of animals carrying genes as specified in the second paragraph, a) to c). The prohibition covers breeding of all animals featuring such alterations, regardless of whether the alterations are attributable to methods of gene technology, traditional breeding activities or natural mutations.

Section 25, fourth paragraph, contains legal authority to issue regulations, which thus far has not been used in relation to the breeding of dogs. It has not been submitted, and there are no grounds for concluding, that the requirements and prohibition in the breeding provision may only be enforced following preparation of more detailed rules in the form of regulations. On the contrary, the Consultation Paper “*emphasised that it is important to prevent breeds from being bred and formed in contravention of the principles in this provision, and that particular challenges arise with regard to enforcement of the provision in relation to imported animals which can be expected to suffer in Norway due to defects created through breeding.*”<sup>38</sup> Regarding the provision on the living environment of animals, the Consultation Paper also stated that since few regulations had been issued on the keeping of pets, and no such regulations were anticipated in the next few years, there was a “*need for general guidelines directly in the act.*”<sup>39</sup>

The quotes from the Proposition show that the breeding provision was drafted with the aim of being enforced, with regard to both imported animals bred abroad and animals bred in Norway.

The preparatory works specify that section 25 permits breeding which adapts animals to the environment they are provided with in the context of animal husbandry, while breeding to compensate for deficiencies in the environment or to adapt animals to tasks or environments they have no natural capacity to flourish in is prohibited.<sup>40</sup> In the present case, it is not necessary to consider in greater detail the concrete differentiation between these instructions.

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<sup>37</sup> Page 70 of the Proposition (JU, page 371).

<sup>38</sup> Reproduced on page 69 of the Proposition (JU, page 358).

<sup>39</sup> Section 4.4.2 of the Consultation Paper.

<sup>40</sup> Page 111 of the Proposition (JU, page 418).

Section 25 applies to all breeding which takes place in Norway, regardless of whether the genes covered by the provision have been developed in Norway or abroad.<sup>41</sup> Accordingly, the breeding provision cannot be circumvented by using males or sperm from abroad in breeding in Norway.

The Defendants have submitted that since section 25, second and third paragraphs, are written in present tense and not past tense (perfect tense), they do not prohibit breeding using genes which are the result of historic breeding practices over a period of almost 100 years, and simply apply to future breeding which would further alter the genes of offspring contrary to the provision. The district court does not accept this argument.

The wording of section 25, third paragraph, partly prohibits any use in breeding of animals which have genes as specified in the second paragraph, regardless of when or where the genes arose. The statutory text thus provides no support for the restriction on the scope of the provision which the Defendants have asserted.

The Animal Welfare White Paper, the Consultation Paper, the Proposition and the Recommendation contain no grounds in support of the suggestion that the breeding provision distinguishes between when and where genes have been altered; the question pursuant to section 25, second paragraph, is simply whether they affect the physical or mental functions of animals negatively, reduce the scope for natural behaviour or raise general ethical concerns. On the contrary, the district court finds that the preparatory works as a whole, by emphasising

- that the Animal Welfare Act stems from a significant development in knowledge of the abilities and needs of animals, combined with high ethical targets as regards how we want animals to be treated in our society. The Animal Welfare Act therefore incorporates values which have not previously been emphasised in the Animal Protection Act and which constitute an important public interest;<sup>42</sup>
- that the Animal Welfare Act was intended to help ensure that Norway remained a global leader in the area of animal welfare, and that section 25, second paragraph, c), also incorporates future developments in general societal views.<sup>43</sup> Prevailing law and assessments in other countries are therefore not automatically transferrable to Norwegian conditions and prevailing Norwegian law;
- that the Consultation Paper makes it clear that section 25 also applies to genes developed abroad, while also pointing out the particular enforcement challenges which can arise in connection with the importation of animals which suffer from defects created through breeding abroad;<sup>44</sup> and
- that the Proposition clarified that the breeding provision prohibits breeding of animals with undesirable characteristics, even if the purpose of breeding is to eliminate the undesired characteristics and there is a risk that old breeds may thus die out;<sup>45</sup>

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<sup>41</sup> Page 93 of the Consultation Paper.

<sup>42</sup> HR-2016-2285-A, paragraphs 21–22.

<sup>43</sup> Page 7 of the Proposition (JU page 297) and page 41 of the Recommendation (JU, page 271).

<sup>44</sup> Page 93 of the Consultation Paper; see the quote on page 69 of the Proposition (JU, page 358).

<sup>45</sup> Page 70 of the Proposition (JU, pages 370–71).

are inconsistent with the legal interpretation invoked by the Defendants on this point.

#### 5.4.2 The group of persons

NKK has submitted that it is not a “breeding organisation” within the meaning of section 25 following the statutory amendment in 2021. The district court does not accept this argument either.

Some, but by no means all, prohibition provisions specify the group of persons to which the prohibition applies. The district court is minded to adopt the starting point that a prohibition which does not specify the group of persons to which it applies is applicable to any person who commits or participates in commission of the act or omission covered by the prohibition. However, the district court is not required to decide specifically whether NKK was covered by section 25 of the Animal Welfare Act prior to 1 July 2021, for two particular reasons.

First, the claim against NKK is framed simply as a claim for a declaratory judgment establishing that breeding of the Breeds is contrary to section 25, first to third paragraphs. The claim is not linked to a particular time, and no sanctions are claimed. A judgment which grants the claim for a declaratory judgment will decide the question as at the date the judgment is issued, and pursuant to section 11-3, first sentence, of the Dispute Act must be based on the application of the law which the court deems correct at the time of issuing the judgment. NKK’s earlier submission that the case must be decided based on the Animal Welfare Act as worded at the time the complaint was filed therefore cannot succeed. Nor does the case raise questions of retrospective effect pursuant to, for example, Article 97 of the Norwegian Constitution or section 3 of the Penal Code.

Second, the district court finds that NKK is a “breeding organisation” within the meaning of section 25 as currently worded. Prop 128 explained the need for the statutory amendment as follows:<sup>46</sup>

*“Breeding organisations and breed clubs have a strong influence on the breeding situation, which in turn has a strong influence on animal welfare. Given the current wording of section 25, it can be questioned whether breeding organisations and breed clubs are covered by the provision. The wording “[n]o breeding... shall be carried out” can be interpreted to mean that it is the physical aspect of breeding activities which is covered. The statutory text can therefore be interpreted to mean that only breeders are covered by the provision. This is unfortunate, since it is breeding organisations and breed clubs that usually develop criteria for the selection of breeding animals and thus decide the framework conditions for breeding.*

*The preparatory works to the Animal Welfare Act clarify that breeding includes all activities which are necessary in order for animals to produce offspring. The term encompasses both natural reproduction and “reproduction which is manipulated to a greater or lesser degree, including biotechnology and gene technology”; see Proposition to the Odelsting No. 15 (2008–2009), section 4.2. Section 25 of the Animal Welfare Act must be read in conjunction with section 2, which states that the act applies to all “conditions which affect animal welfare”. Since breeding affects animal welfare to a high degree, this indicates that section 25 is not only intended to cover breeders, but also other parties involved in the breeding process. It is therefore unfortunate that this is not clearly expressed in the wording at present.”*

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<sup>46</sup> Page 8 of Prop 128 (JU, page 442).

The terms “*Breeding organisations and breed clubs*” were thus intended to include parties which “*develop criteria for the selection of breeding animals and thus decide the framework conditions for breeding.*” As regards the breeding of pedigree dogs, NKK decides the criteria for the selection of breeding animals in cooperation with the different pedigree dog clubs; see section 4.2 above.

Prop 128 was also issued after the preceding consultation paper was circulated and comments on it were received. During the consultation process, NKK stated that the pedigree dog clubs should not be ordered to comply with the breeding provision because they did not engage in breeding themselves, and additionally because the volunteers in the pedigree dog clubs lacked practical scope to take responsibility for the breeding activities and breeding plans of private individuals.<sup>47</sup> The Ministry took the view that clarification of the group of persons was “*necessary because a logical interpretation of the word “breeding” raises doubts about whether the overarching breeding activity which occurs within breeding organisations and breed clubs is covered by the provision.*”<sup>48</sup> Further, the Ministry founded its proposal on the need to be able to impose requirements on breeding parties to prepare a breeding plan, requirements as to what such breeding plans should contain and requirements on how the breeding plans should safeguard the requirements of the Animal Welfare Act. The details in this regard were to be set out in regulations, which are apparently currently being drafted.<sup>49</sup> The Proposition<sup>50</sup> then stated:

*“The wording “persons who keep animals, breeders, breeding organisations and breed clubs” is intended to encompass all parties which actively engage in breeding or play a role in the breeding of animals. A “person who keeps animals” is a person who has physical or legal responsibility for an animal, whether permanently or temporarily (Proposition to the Odelsting No. 15 (2008–2009), page 93). The term “breeder” is a catch-all term covering all parties which keep animals which have offspring, and encompasses both commercial and hobbyist activities. The terms “breeding organisations” and “breed clubs” encompass all organisations and clubs which engage in breeding at a general level, for example by setting the criteria for the selection of breeding animals.*

*The proposed amendment to section 25, fourth paragraph, entails expansion of the regulatory legal authority to include “breeding activities” engaged in by “breeding organisations” and “breed clubs”. The term “breeding activities” encompasses all work which is necessary in order for animals to have offspring, including overarching work which establishes the framework conditions for breeding. The Ministry wishes to clarify this in the regulatory legal authority, and to propose that the same parties subject to the duty be specified in section 25, first paragraph. The reason for this is that the Ministry wishes to make it clear that overarching breeding activities carried out by breeding organisations and breed clubs can also be governed by regulation. The Ministry therefore maintains that clarification of the group of persons subject to the duty should be included in both section 25, first paragraph, and in section 25, fourth paragraph.”*

The Ministry’s comment on section 25, first paragraph, reads:<sup>51</sup>

*“Breeding activities are understood to mean all work done in connection with breeding, including the overarching work which establishes the criteria for the selection of breeding animals.”*

The Norwegian Parliament’s Standing Committee on Business and Industry adopted the Ministry’s interpretation in its recommendation.<sup>52</sup>

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<sup>47</sup> Page 9 of Prop 128 (JU, page 443).

<sup>48</sup> Page 9 of Prop 128 (JU, page 443).

<sup>49</sup> Page 9 of Prop 128 (JU, page 443).

<sup>50</sup> Page 9 of Prop 128 (JU, page 444).

<sup>51</sup> Page 18 of Prop 128 (JU, page 454).

<sup>52</sup> Page 2 of Innst 624 (JU, page 460).

The district court is therefore in no doubt that NKK must be regarded as a “*breeding organisation*” pursuant to section 25, first and fourth paragraphs, of the Animal Welfare Act, even if NKK does not own breeding animals or carry out actual or practical breeding activities.

#### 5.4.3 Legal consequences

The Animal Welfare Act authorises a number of sanctions. Contravention of section 25 may be penalised pursuant to section 37. The Norwegian Food Safety Authority may issue an order pursuant to section 32, issue a prohibition against activities pursuant to section 33 or impose a fine pursuant to section 34 or a coercive fine pursuant to section 35. In the present case, however, no claim has been made for any such sanctions.

Section 33, second paragraph, “*emphasises the power of the court to impose a corresponding prohibition in connection with criminal proceedings.*”<sup>53</sup> The district court finds that this emphasis does not impose any restriction on the court’s power to issue a prohibition against unlawful breeding in a civil case. Moreover, it has not been submitted in the case that the court lacks jurisdiction to issue a prohibition against unlawful breeding with respect to the Breeders, provided that continued breeding of the Breeds is found to be contrary to the prohibition and requirements in section 25 of the Animal Welfare Act.

The breeding provision does not prohibit the importation of animals with unlawful genes, but does prohibit their use in breeding. As regards offspring which have nevertheless been bred in contravention of section 25, euthanasia may be relevant, but only if the individuals in question suffer and cannot achieve satisfactory animal welfare through compensating measures such as medication or surgery.

#### 5.4.4 Unlawfulness threshold and trade-off between different interests

Despite the categorically formulated wording of section 25 of the Animal Welfare Act, the district court agrees with the Norwegian Society for Protection of Animals that a minimum threshold must be exceeded in order for breeding at breed level to be unlawful. The district court bases this interpretative outcome on the fact that the general clause in section 3 of the Animal Welfare Act requires animals to be “*protected against the risk of unnecessary stresses and strains*”, but does not require protection against all such stresses and strains. The general clause thus envisages a critical level or minimum threshold. As stated above, the general clause will “*provide guidance on the interpretation and application of other provisions in the act*”, in addition to being directly applicable to instances which fall outside the other individual provisions of the act.<sup>54</sup>

It is difficult to quantify in detail where the minimum threshold for unlawful breeding will lie, both generally and at breed level. As early as in a letter to the Norwegian Parliament’s Standing Committee on Foreign Affairs and Defence dated 3 December 1998, the Minister of Agriculture stated that breeding of the cattle breed Belgian Blue would be contrary to the breeding provision in the then-applicable Norwegian Animal Protection Act.<sup>55</sup> The fact that the Standing Committee on Business and Industry – by re-including section 3, first sentence – emphasised that animals have intrinsic value in addition to any utility value they may have to humans may indicate that the minimum threshold should not be set too

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<sup>53</sup> Page 134 of the Proposition (JU, page 423).

<sup>54</sup> Page 109 of the Proposition (JU, pages 398–99), and for example HR-2017-1250-A, paragraph 44.

<sup>55</sup> Annex 3 to Recommendation to the Storting No. 72 (1998–99) (U, page 773).



high. For its part, the district court has taken guidance from the four criteria set out in the Proposition with respect to the assessment of what stresses and strains will be unnecessary pursuant to section 3, second sentence.<sup>56</sup> These criteria are:

- the nature and scope of the strains/stresses;
- whether they are caused by humans;
- the purpose of exposing the animal to a strain/stress; and
- whether the action is generally accepted.

Particularly the purpose of a strain or stress may necessitate complex and differing trade-offs, such as:

- Financial interests. In the Recommendation, a unanimous Standing Committee on Business and Industry stated that it is “*challenging to balance the requirement of strong animal protection legislation with the interests of persons who will own animals, and particularly persons who use animals in a commercial context, for example in the agricultural sector*”.<sup>57</sup> On the other hand, it can presumably be claimed that a proportion of the significant efficiency gain made in the agricultural sector through breeding activities should benefit animal welfare, at least if the efficiency gain has been achieved at the expense of animal welfare;
- The consideration of food and nutritional safety. Most people will presumably consider that the threshold for what stresses and strains an animal must suffer should be higher if this is necessary in order for humans to have access to sufficient and healthy food;
- The consideration of protecting special functions, such as necessary animal testing when trying out pandemic vaccines or cancer medicines; guide dogs for the blind and sight-impaired; avalanche and rescue dogs; and the police’s use of dogs for different assignments like bomb searches, drug searches and the maintenance of public order, etc.; and
- The consideration of maintaining species diversity. As stated above, the Proposition stated that breeding of animals with undesirable characteristics did fall within section 25, even if old breeds would die out as a result.<sup>58</sup> It is not certain that the view expressed in the Proposition can be fully maintained if the stress/strain is necessary to maintain not only individual breeds but also entire animal species or groups of animal species.

However, the district court finds no grounds in the Animal Welfare Act or its preparatory works in support of the view that – in the context of the different trade-offs inherent in the breeding provision – any intrinsic value can be assigned to whether or not breeding helps to keep an animal breed “*pure*”.

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<sup>56</sup> Page 94 of the Proposition (JU, page 399).

<sup>57</sup> Page 40 of the Recommendation (JU, page 271).

<sup>58</sup> Page 70 of the Proposition (JU, page 371).

On the contrary, Prop 128 emphasised – as an advantage of clarification of the group of persons for the purposes of the regulatory legal authority in section 25, fourth paragraph – that the clarification would allow breeding requirements also to be imposed with respect to animals which are not defined as a pure breed<sup>59</sup> without simultaneously indicating that it may be appropriate to impose differing breeding requirements within and outside breed standards. Moreover, the concern expressed in the Animal Welfare White Paper that breeding based on external breed standards for dogs had “*in many cases resulted in an increased risk of injury and illness, and resulted in reduced welfare*”<sup>60</sup> gave particular emphasis to the “*breed consideration*”. The same applies to the identification in the Animal Welfare White Paper of “*breeding of dogs with defects to meet breed standards*” and “*breeding between close relatives, risk of heritable conditions*” as breeding challenges”.<sup>61</sup>

In his expert opinion dated 12 October 2021, Head of Section Knævelsrud from the Norwegian Food Safety Authority concluded, among other things, that breeding of all dog breeds is permitted because the legislature has not prohibited any dog breed in either the Animal Protection Act 1935 or the Animal Protection Act 1974, or in the Animal Welfare Act 2009.<sup>62</sup> In the district court’s opinion, this view is based on an incorrect understanding both of the impact of individual pedigree dog protocols with respect to the requirements of the Animal Welfare Act and of the distribution of roles between the legislature and the Norwegian Food Safety Authority as the responsible supervisory body pursuant to section 30 of the act.

#### 5.4.5 The precautionary principle

The final part of the general clause in section 3 of the Animal Welfare Act requires that animals must be “*protected against the risk of unnecessary stresses and strains*”. The general clause thus requires measures to be implemented even when there is a “*risk of*” unnecessary stresses and strains on animals; there is no condition that the stresses or strains must arise first. The preparatory works show that the precautionary principle in the general clause was intentional on the part of the legislature.<sup>63</sup> Moreover, legal theory assumes that the Animal Welfare Act contains such a principle.<sup>64</sup>

In the district court’s view, therefore, this must be interpreted to mean that the breeding provision in the Animal Welfare Act also incorporates a precautionary principle in the absence of knowledge of circumstances which may be significant for animal welfare.

#### 5.4.6 Does the breeding provision only apply to “health and welfare consequences for individual animals”?

The content of the Consultation Paper as reproduced in the Proposition states:<sup>65</sup>

*“It was also pointed out that any aspects of breeding and biotechnology other than health and welfare consequences for individual animals would fall outside the scope of this provision.”*

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<sup>59</sup> Page 10 of Prop 128 (JU, page 444).

<sup>60</sup> Page 156 of the Animal Welfare White Paper (JU, page 184).

<sup>61</sup> Page 170 of the Animal Welfare White Paper (JU, page 198).

<sup>62</sup> U, pages 1528 and 1529.

<sup>63</sup> See page 22 of the Animal Welfare White Paper (JU, page 50) and page 94 of the Proposition (JU, page 399).

<sup>64</sup> See Stenevik et al., *Dyrevelferdsloven kommentarutgave* [The Animal Welfare Act Commentary Edition], Juridika.no, page 38 (JU, page 772); and Kjellevold Brygfeld, *Karnov Lovkommentar* [Karnov Law Commentary] on section 3, note 3, sixth paragraph.

<sup>65</sup> Page 69 of the Proposition (JU, page 370).

The district court has considered separately the question of what significance should be given to the statement when interpreting the terms and scope of the breeding provision, and therefore when determining the outcome of the present case, which has been brought at breed level. Since the question was not specifically discussed at the main hearing, the parties were requested to comment on the question by letter from the court dated 16 December 2021.<sup>66</sup> The deadline for submitting any comments was set as 10 January, with the deadline for any concluding comments being 17 January 2022.

The Norwegian Society for Protection of Animals has primarily submitted that the requirements and prohibition in the breeding provision do not apply only to individual animals. The paragraph in the Consultation Paper narrows down the conditions in the breeding provision by specifying that any aspects of breeding other than health and welfare consequences – such as ethical aspects of e.g. biotechnology – are not included, but this does not apply to the scope of the provision’s legal consequences if the conditions are met.

The wording of section 25, second paragraph, already uses the plural form in relation to both the “*physical or mental functions of animals*” and the “*ability of animals to engage in natural behaviour*”; the provision therefore does not only encompass individual animals. The paragraph in the Proposition which immediately precedes the paragraph discussed by the court emphasises “...that it is important to prevent breeds from being bred and formed in contravention of the principles in this provision”. On page 9 of the subsequent Prop 128, the Ministry “*emphasises that section 25 encompasses all animal species*” and also encompasses “*breeding of groups of animals which are not defined as a pure breed.*”<sup>67</sup> In addition, policy considerations indicate that having differing legal regulations for breeding at group and individual level is meaningless when circumstances at group level have real and concrete risk effects for all animals in the group at the individual level.

The Defendants have primarily submitted that the condition applicable to all breeding is that breeding is only done with healthy animals. Both Breeds currently have a sufficient number of robust animals which function well and have good health. Section 25 must be interpreted on three levels:

- The overarching purpose of breeding: the first paragraph requires that the purpose of breeding must promote positive characteristics that secure good function and health, as the Clubs have done by formulating strict criteria, standards and breeding objectives to improve dog health through breeding;
- The concrete effects of particular breeding: the second paragraph prohibits breeding which entails negative alteration or passing on of genes. The Defendants avoid this through their standards and breeding objectives, etc., and through the use of tests, family trees and breeding programmes; and
- Which individuals are used in a concrete mating: as worded, the third paragraph imposes a breeding prohibition at individual level, following a concrete assessment of the health and genes of the individual. A whole breed will not have the same genes or state of health.

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<sup>66</sup> Doc. Nos. 128–32.

<sup>67</sup> JU, page 443.

The concept of animal welfare is central to the Animal Welfare Act as a whole pursuant to the purpose provision in section 1, and thus also to the breeding provision in section 25. The concept of animal welfare is linked to the condition of the individual, and “*is not automatically transferrable to... a group of animals*”, such the population of a barn or fish farm cage.<sup>68</sup> The breeding provision must therefore be applied at the specific individual level, not at breed or population level.

**The district court** has concluded that the limitation in the Consultation Paper of the “*aspects of breeding and biotechnology [which] would fall outside the scope of this provision*” is not of independent significance in the assessment of the present case.

The district court agrees with the Norwegian Society for Protection of Animals that the aspect limitation in the Consultation Paper is directed at the conditions linked to the breeding provision, not the legal consequences of the provision. This means that, when assessing whether the breeding provision has been breached, consideration shall only be given to the health and welfare consequences of breeding for individual animals, not any other aspects such as a breeding objective to give dogs better hunting characteristics or fewer allergens that could trigger allergic reactions in people, or any ethical dilemmas linked to breeding objectives. One such dilemma could be an objective of breeding blind laying hens (to limit pecking in henhouses).

Moreover, the Consultation Paper has clarified specifically that the evaluation of health and welfare consequences of breeding is not based on the population average; individuals in a barn or a fish farm cage that perform the least well also have to fulfil the statutory requirement.<sup>69</sup>

The district court’s application of the law on this point is based on the following, among other things:

- that the wording of section 25 does not provide grounds for concluding that the provision only prescribes legal consequences at individual level rather than population or breed level;
- that in the paragraph immediately preceding the discussion of the aspect limitation in the Consultation Paper, the Proposition emphasises that the Consultation Paper also “*emphasised that it is important to prevent breeds from being bred and formed in contravention of the principles in this provision*”.<sup>70</sup> This strongly indicates that the legal consequence of the breeding provision was also intended to encompass populations or breeds, as long as the legal conditions are met in each individual case. The failure to reiterate or expand on the aspect limitation in the Consultation Paper in the Proposition or the Recommendation indicates that the legislature saw no contradiction between these two paragraphs:
- that the subsequent Prop 128 “*emphasises that section 25 encompasses all animal species*” and also encompasses “*breeding of groups of animals which are not defined as a pure breed*”;<sup>71</sup> and

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<sup>68</sup> Page 65, third paragraph, of the Consultation Paper.

<sup>69</sup> Page 65, third paragraph, of the Consultation Paper.

<sup>70</sup> Page 69 of the Proposition (JU, page 370).

<sup>71</sup> JU, page 443.

- that weighty policy considerations indicate that it should be permissible to give the breeding provision legal effect at breed or population level if the conditions in the provision are met at such a level.

## 6. The district court's evidential assessment

### 6.1 Introduction

The parties have agreed that both Breeds feature individual examples which are entirely healthy and individual examples which are very sick. The agreement between the parties does not resolve the case, which has been brought at breed level rather than the level of individual animals.

The content of the “*animal welfare*” concept in the Animal Welfare Act is complex. Different experts can attribute differing content to it, and the content may also change over time. According to the Proposition, one possible definition may be “*the subjective experience of an individual of its mental and physical condition as a result of its attempt to master its environment.*”<sup>72</sup> The concept thus undoubtedly starts with the situation of an individual animal compared to any safeguarding measures implemented by humans, not the situation at population, breed or species level.

The concept of animal welfare is central to the Animal Welfare Act as a whole; see both the name of the act and the purpose provision in section 1. However, the term is not used explicitly in the breeding provision in section 25, which relates to “*genes [which] influence the physical or mental functions of animals negatively*”, reduction of the “*ability to engage in natural behaviour*” or raising of general ethical concerns. The present legal proceedings therefore cannot be resolved simply through contemplation of the “*animal welfare*” of individuals or the Breeds in isolation.

There are few representative quantitative surveys of the health or animal welfare situation of the Breeds in Norway. In the present case, therefore, several such surveys from other European countries have been submitted, including England, where the breed standards for both Breeds are administered. The parties have also called expert witnesses from England, Sweden and Norway. The parties and their experts have provided largely identical descriptions of the health situation of the Breeds; see below.

The district court finds it most likely that quantitative surveys from other European countries are suited also to shed light on the factual situation of the Breeds in Norway, although the possibility cannot be excluded that the clinical disease profile may be slightly different in Norway:

- in part, the breed standards for both Breeds are identical in the European countries from which the surveys stem; and
- in part the district court has concluded – following the main hearing – that breeding of the Breeds in Norway makes extensive use of breeding animals or sperm obtained from other European countries

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<sup>72</sup> Page 19 of the Proposition (JU, page 311).

as part of an initiative to restrict inbreeding in Norway. In this regard, reference is firstly made to the Breeders' evidence regarding their own breeding practices. Secondly, the reply states that 55% of all Cavalier litters registered by NKK in the years 2010–2020 involved at least one breeding dog originating outside Norway.<sup>73</sup> Thirdly, reference is made to the board's unanimously adopted proposed resolution at the Cavalier King Charles Spaniel Club's annual meeting on 2 June 2018 not to launch a cross-breeding project after all, which stated:<sup>74</sup>

*“In terms of descent and breeding material, the Norwegian population of Cavaliers is almost identical to the gene pool in England, Sweden and a number of other European countries. Nor are there other observations or facts indicating that the situation is more serious here than in other countries.”*

Further, no additional circumstances emerged at the main hearing which indicate that the situation of the Breeds in Norway is generally or most likely significantly better than in other European countries with which it is logical to make a comparison.<sup>75</sup>

A final initial observation is that the majority of the submitted research materials were prepared after the Animal Welfare Act entered into force on 1 January 2010. The materials thus constitute new knowledge compared to the basis which existed at the time the Animal Welfare Act was adopted in the summer of 2009.

The district court will now proceed to discuss in greater detail the substantiated health and animal welfare situations of Cavaliers and Bulldogs, respectively.

## 6.2 Cavaliers

The health situation of Cavaliers was explained particularly by Professor Clare Rusbridge from Surrey, Professor Jens Häggström from Uppsala and veterinary cardiologist Liva Vatne from Oslo. Three heritable diseases in particular were highlighted:

### 6.2.1 *CM (“Chiari-like Malformation”)*<sup>76</sup>

CM designates a genetic heritable condition whereby the interior volume of the skull is insufficient to accommodate the volume of the animal's brain and the extended medulla. Parts of the cerebellum and the extended medulla may then form a hernia towards the spinal cord. The condition results from closure and fusing of the seams between the plates of the skull before the dog is fully grown.<sup>77</sup> In Cavaliers, the interior skull volume is most reduced at the front of the skull. There is insufficient space for the nerve tissue, and this may result in signs of pain (CM-P) and Syringomyelia; see further below.

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<sup>73</sup> U, page 935, and evidence given by Indrebø.

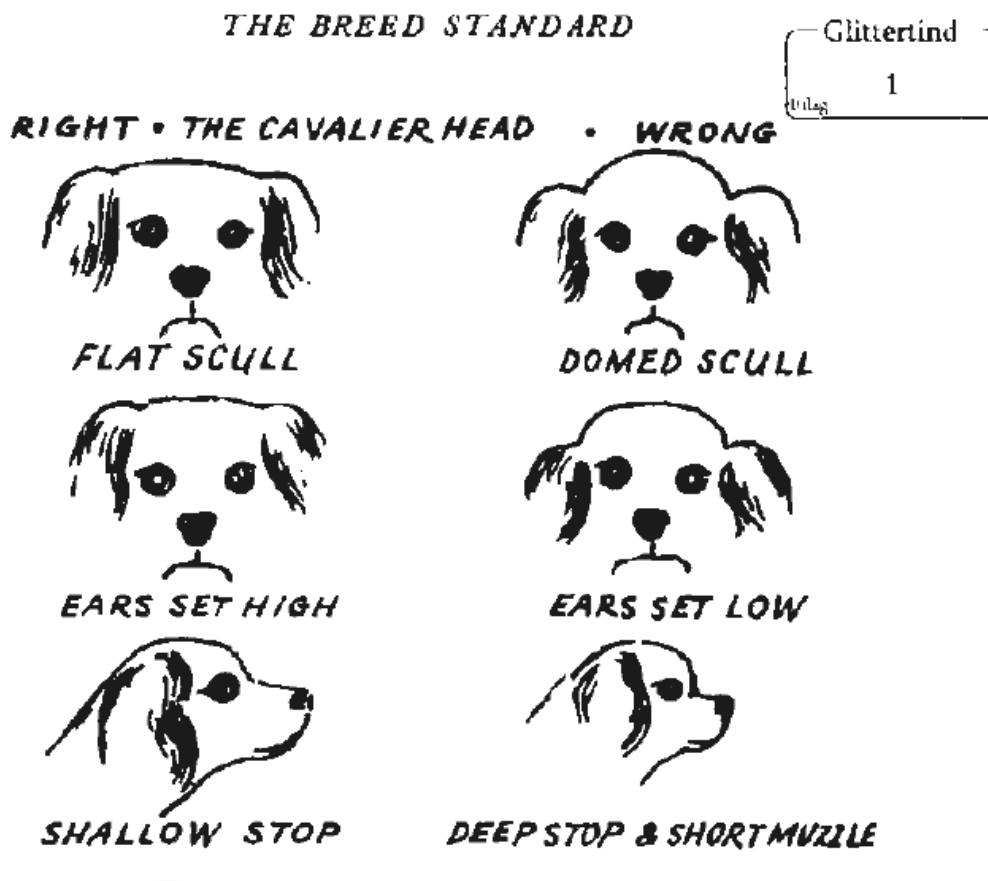
<sup>74</sup> U, page 687.

<sup>75</sup> As also stated by Knævelsrud in the supplementary witness statement (U, page 1533).

<sup>76</sup> As regards CM and SM, the court has particularly based its conclusions on the statement of Professor Rusbridge dated 26 September 2021 (U, pages 1432–47).

<sup>77</sup> See U, page 1433.

The condition can be recognised visually because animals with CM are smaller and have a shorter muzzle and a steeper forehead than animals without CM. Professor Rusbridge termed the head shape of Cavaliers without CM “*traditional*”, because this was the “*correct*” head shape of the breed in the 1960s and 1970s.<sup>78</sup> The difference is illustrated by this presentation of “*correct*” and “*incorrect*” facial features and proportions for Cavaliers as at 1964.<sup>79</sup>



Today, almost all Cavaliers have CM to some degree. Professor Rusbridge gave evidence that she nevertheless only uses 92% as the prevalence rate in a scientific context, not least because there is no certain diagnostic test for CM.<sup>80</sup> Other short-muzzled dog breeds also have an over-frequency of CM, but Cavaliers are especially affected because they also have an oversized brain in relative terms, corresponding to the brain of a dog which is approximately twice as heavy.

On 13 November 2017, NKK replied to a question asked by the Norwegian Food Safety Authority – whether there are dog breeds with “*particularly substantial health challenges*” – by stating that “*almost all Cavaliers [have] Chiari-like Malformation (possibly not producing symptoms, but suspected to play a role)...*”<sup>81</sup>

<sup>78</sup> U, page 1434.

<sup>79</sup> Excerpt from U, page 2286. Taken from the book Stenning, E.M. *Cavalier King Charles Spaniels*, W. & G. Foyle Ltd., London, Great Britain, 1964.

<sup>80</sup> U, page 1434.

<sup>81</sup> U, page 602.

Not all Cavaliers suffer demonstrable pain or have other clinical symptoms resulting from CM (so-called CM-P, for “*pain*”). Pain is a subjective experience which is not always observable in the form of measurable changes in physiology or behaviour. Moreover, CM-P develops over time. Professor Rusbridge gave evidence that CM-P is probably under-reported, for several reasons. In part, veterinarians attribute barely 2% of Cavaliers’ pain symptoms to CM-P or SM, and instead use imprecise diagnoses or diagnoses which do not entail pain when the condition is stabilised, such as spondylosis. In part, many Cavaliers which are diagnosed with pain symptoms and which have both CM-P and SM are only diagnosed with SM. A survey of 500 Cavaliers examined at to English neurology departments from September 2013 to September 2017 showed that 62.4% had behavioural signs of pain and 47.6% showed pain when touched (“*spinal pain*”). Of the dogs with pain, 43.2% were diagnosed with SM, 14.8% with orthopaedic causes, 12.0% with intervertebral disc disease and 11.2% with CM-P without simultaneous SM.<sup>82</sup> The survey is not representative of CM-P prevalence among Cavaliers at breed level because not all Cavaliers are presented for neurological examination. However, the district court finds that the distribution in the survey between pain causes can shed light on the prevalence of CM-P.

Although no separate Norwegian surveys have been undertaken, the district court finds it most likely that the prevalence in Norway is not significantly lower than in countries with which genetic material is regularly exchanged, i.e. around 15%–20%.

CM-P is not fatal, but is, on the other hand, incurable. The skull cavity can be expanded towards the rear through surgery, which is both expensive and entails a risk of suffering and death. Further, pain symptoms can be alleviated medicinally, but the medication often has to be administered one to three times daily, and many dogs require a combination of several preparations. However, pain treatment does not give all dogs with CM-P satisfactory quality of life. Two smaller surveys from England and Denmark indicate that approximately 15%–20% of dogs with CM-P are euthanised due to the condition.<sup>83</sup>

CM is heritable, and appears to be linked to several genes that influence the development of the skull from foetus to full-grown dog. No simple genetic mapping test is available, and for the same reason none can be expected to be developed. In addition, there is a real risk that all living Cavaliers are genetically predisposed to CM, meaning that CM cannot simply be bred out.<sup>84</sup>

#### 6.2.2 SM (*Syringomyelia*)<sup>85</sup>

SM is a condition where a dog develops cysts or fluid-filled cavities in the spinal cord, which over time can destroy nerve paths. In humans, the congenital incidence is 8–10 cases per

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<sup>82</sup> U, pages 1436–37.

<sup>83</sup> U, page 1438.

<sup>84</sup> U, page 1442.

<sup>85</sup> In this context, the court has particularly based its conclusions particularly on the statement of Professor Rusbridge.



100,000, with approximately 20% contracting the condition after a spinal cord injury.<sup>86</sup> SM may be caused by several factors, but short-muzzled dogs and dogs with relatively large brains, like Cavaliers, have an increased risk. The lack of space for the brain results in squeezing of nerve tissue. This disrupts/blocks circulation of spinal and cerebrospinal fluid, which therefore accumulates in cysts in the spinal cord.<sup>87</sup>

SM is diagnosed securely by MRI, but this is a costly examination which is not available everywhere in Norway. Rusbridge recommends examination of breeding dogs before initial mating, and repetition when the dog reaches five years of age. Cheaper and more accessible diagnostics (CT scan) are under development.

The prevalence of SM increases as dogs age. If cysts with a size of 4mm or larger are diagnosed as SM, approximately 25% of Cavaliers have SM by the age of one year, and the proportion increases to approximately 70% among dogs aged five years.<sup>88</sup> It is most likely that the same will also apply to Norwegian Cavaliers. SM may cause both neurological and/or motor symptoms, depending on where in the spinal cord the cyst(s) sit(s).

Not all Cavaliers with SM experience serious clinical symptoms – so-called SM-S. Professor Rusbridge referred to a questionnaire completed in Denmark in 2007, in which all owners of six-year-old Cavaliers in Denmark were contacted. The survey showed that 15.4% of the dogs had symptoms consistent with SM-S. The response rate was 56%. Professor Rusbridge estimated that, in total, at least 22% of SM-affected Cavaliers suffer serious clinical symptoms,<sup>89</sup> and the district court has adopted this estimate as the most likely.

Since a majority of Cavaliers with SM will also have CM-P, Professor Rusbridge made a distinction in her statement between symptom prevalence among Cavaliers with both CM-P and SM and the smaller group of Cavaliers with clinical symptoms of SM without simultaneous CM-P; see the following table showing the prevalence of different symptoms:<sup>90</sup>

<b>Clinical symptoms</b>	<b>Prevalence among animals with CM-P and SM</b>	<b>Prevalence among animals with symptomatic SM (SM-S) without CM-P</b>
Phantom itching	43%	67%
Spinal curvature	18%	27%
Muscular impairment	25%	39%
Muscular atrophy	4%	6%
Reduced ability to walk normally	10%	15%

<sup>86</sup> Source nhi.no.

<sup>87</sup> U, page 1438, final two paragraphs – page 1439, first paragraph.

<sup>88</sup> U, pages 1439-40.

<sup>89</sup> U, page 1440, first paragraph.

<sup>90</sup> Excerpt from table translated by the court (U, page 1442).

Further, during the main hearing, Professor Rusbridge gave evidence about clinical indications, namely that of Cavaliers with CM-P or SM-S:

- 65% make a sound when they are lifted up;
- 55% experience pain when they are petted;
- 38% have motion impairment or intolerance;
- 28% resist being scratched;
- 36% experience difficulties with jumping or climbing stairs;
- 28% show altered behaviour;
- 23% show unwillingness to move; and
- 22% experience sleep disruption.

SM is caused by CM and is incurable. Symptoms such as pain and phantom itching can be reduced but not eliminated by means of medication. Symptoms such as muscular impairment and reduced mobility are normally permanent because the spinal cord suffers permanent damage, although physiotherapy and water training can strengthen residual functionality and strength. Surgical interventions will rarely be able to reverse clinical symptoms, but may reduce the animal's pain or need for medication.

SM is also heritable, and symptomatic SM is presumably highly heritable. It is assumed that the condition is linked to two identified regions of two chromosomes, but it is also affected by other genetic factors. Breeding of animals without SM reduces the risk of the offspring developing SM. However, many animals develop SM between the ages of one and five, i.e. after ordinary breeding debut. At the main hearing, it was asserted that SM can be bred out of Cavaliers over time, provided that all breeding individuals are surveyed, that the results are made available for breeding at breed level and that cheaper and more accessible mapping tools than currently available are developed.<sup>91</sup> The realism of these claims is evaluated in greater detail in section 7.2.2 below.

#### 6.2.3 MMVD (“Myxomatous Mitral Valve Disease”)<sup>92</sup>

MMVD is a genetic disorder which results in thickening of the heart valves between the left atrium and ventricle and thus leakage and associated backflow of blood from the left ventricle to the atrium. MMVD can affect many breeds and species. In humans, between 0.6% and 2.4% of the population are affected by MMVD.<sup>93</sup>

MMVD accounts for up to 75% of all heart disease in dogs, and is therefore the most prevalent canine heart disease. The disease develops over time. In relation to Cavaliers, the district court finds it to be substantiated both that the breed has a particularly high incidence of MMVD and that

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<sup>91</sup> For further discussion of breeding risk, etc. linked to SM, the district court refers to the statement of Professor Rusbridge (U, pages 1442–55), the statement of Professor Vangen (U, page 1451), and the statement of veterinarian PhD Indrebø (U, page 1469).

<sup>92</sup> As regards MMVD, the court has based its conclusions particularly on the statement of Professor Haggström dated 14 August 2021 (U, pages 1415–20) and the statement of veterinary cardiologist Valnes dated 9 September 2021 (U, pages 2261–62).

<sup>93</sup> Statement of Professor Haggström (U, page 1416).

disease debut occurs at a younger age among Cavaliers than many other dog breeds. In the case of Cavaliers, the prevalence of MMVD increases by approximately 10% per year of life, meaning that 10% of all Cavaliers have MMVD at age one, 20% at age two, 30% at age three, etc. MMVD manifests earlier in males than bitches, and it is also more likely that the offspring of parents which developed MMVD late will also develop MMVD late.<sup>94</sup> In other words, virtually all living Cavaliers will have developed MMVD by the age of 10.

MMVD is best graded using ultrasound. There is a shortage of experienced radiologists in Norway, but the condition can also be identified with sufficient certainty by detection of a whistle/murmur by auscultation (use of a stethoscope).

The development of MMVD can be split into

- Preclinical phase B1: Audible murmur and accumulation on the heart valve, but no enlarged ventricle. The B1 phase is not medicated specifically, and the animal is not clinically “sick”. The median duration of the B1 phase is approximately 400 days;
- Preclinical phase B2: Leakage and enlarged ventricle, but the animal does not develop serious disruption to circulation with fluid in the lungs. The B2 phase is medicated with a tablet twice a day. This doubles the median duration of the B2 phase from 400 to 800 days and thus increases the total preclinical phase from approximately 800 to approximately 1,200 days; and
- Clinical phase, which entails the animal experiencing breathing difficulties due to circulation failure with fluid in the lungs (oedema), and requires medicinal and fluid-expelling treatment. More than 50% of individuals die or are euthanised within one year of the start of the clinical phase.

The combination of high incidence and early disease debut means that as many as half of all Cavaliers die or are euthanised due to heart failure, most commonly between the ages of six and 10 or older. The average life expectancy of Cavaliers is eight years, one year higher than the average of all dog breeds but presumably not particularly high for a dog of its size. Some Cavaliers therefore die of causes other than MMVD before developing the disease.

The development of MMVD is influenced by genetic factors, most likely by several genes with threshold effects. At the same time, there is a lack of a commercially available genetic mapping tool for MMVD.<sup>95</sup> Work is therefore being done in Norway and several other countries to increase the age of breeding debut among Cavaliers so that dogs with early manifestations of MMVD are not used in breeding.

#### 6.2.4 Other health challenges among Cavaliers

Following the main hearing, the district court finds it most likely that Cavaliers also have an excess frequency of other diseases than CM-P, SM-S and MMVD, in particular “*Episodic Falling Syndrome*” and “*Curly Coated Eye Syndrome*”, both of which are heritable

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<sup>94</sup> Statement of Professor Häggström (U, page 1419).

<sup>95</sup> U, page 1419.

genetic conditions. The district court will not discuss these in detail, since they are not of independent significance to the outcome of the legal proceedings.

### 6.3 Bulldogs

Bulldogs are described as a “*brachycephalic*” breed due to their short and broad skull and flat muzzle. A definition of brachycephaly encompasses dogs whose skull breadth exceeds 80% of their skull length. The head development of bulldogs in Norway can be illustrated by two winning exhibition dogs photographed at an interval of 110 years:<sup>96</sup>

#### English Bulldog 1904 and 2014



An alternative illustration is provided by this comparison of three assumed European bulldog skulls from approximately 1900–1920; 1971 (born 1963) and 1993 (born 1985), respectively:<sup>97</sup>

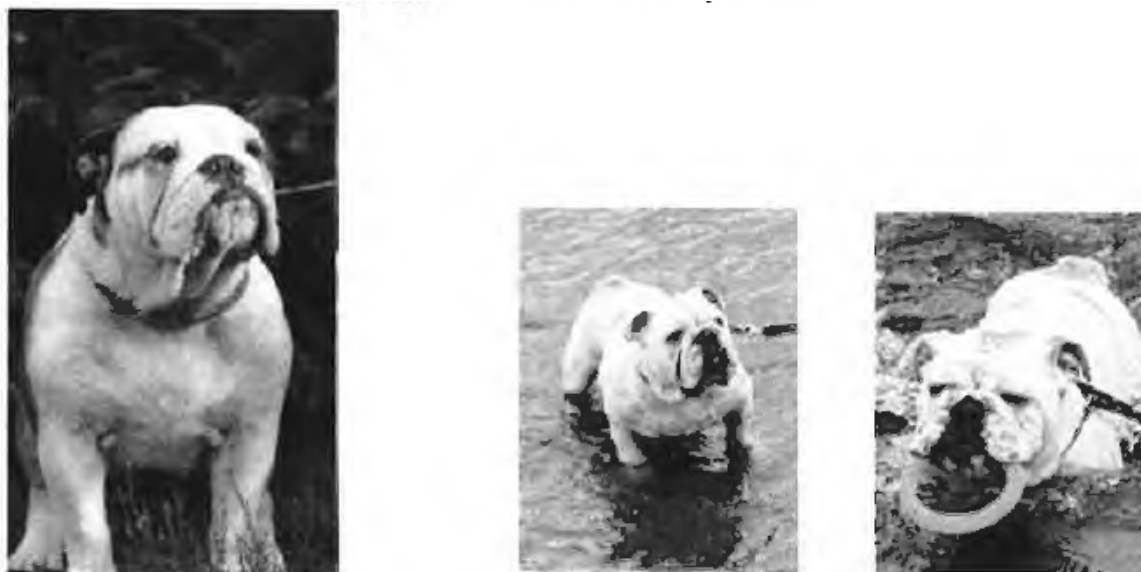


photograph by Natural History Museum Bern

<sup>96</sup> U, page 406. The picture from the Scandinavian dog exhibition in Kristiania in June 1904 is taken from *Hunder og hundesport gjennom 100 år - Norsk Kennel Klub 100 år* [100 years of dogs and dog sports – 100 years of the Norwegian Kennel Club], 1998, page 35.

<sup>97</sup> From the complaint (U, page 22).

The supplementary statement of the expert Indrebø includes pictures of bulldogs from the USA with “*very extreme details*”, compared with two award-winning Norwegian bulldogs from the kennels of one of the Breeders.<sup>98</sup> The US examples are obviously not representative of the breed in Norway, and are omitted here. However, the two Norwegian examples are reproduced below:



The health situation of Bulldogs was particularly elucidated by veterinarian Susanne Solbakk from Frogner in Akershus,<sup>99</sup> Professor Jane Ladlow from Cambridge<sup>100</sup> and veterinarian PhD Astrid Indrebø from Oslo.<sup>101</sup> In the present case, two particular health conditions linked to the brachycephalic head shape of Bulldogs have been emphasised:

### 6.3.1 BOAS (“*Brachycephalic Obstructive Airway Syndrome*”)

Dogs normally breathe through the nose, but will breathe through the mouth during physical exertion, when aroused or to expel excess heat (panting). As the name indicates, BOAS is a syndrome caused by reduced passage of air through the upper airways because these are blocked by soft tissue to a greater or lesser degree, for example inside the compressed nose, due to an excessively long and thick soft palate, excessively small windpipe diameter, narrowed nostrils,<sup>102</sup> etc. Overweight can exacerbate BOAS. The ratio between the cranium and muzzle length (“*craniofacial ratio*”) and neck circumference may also affect the impact of BOAS, but there is no clear connection in this regard because the impact can vary significantly between individuals with the same cranium/muzzle ratio and neck circumference.

Clinical symptoms of obstructed airways include snoring sounds from the nose/nasopharynx, wheezing from the throat, strained or rapid breathing, reduced endurance, sleep problems and apnoea. In some cases, the dog has to use more power to pull air into the lungs, and may find it

<sup>98</sup> U, pages 1523–24 – Lena Haugland’s Kalagera kennels.

<sup>99</sup> Statement dated 21 September 2021 (U, pages 1401–14) and supplementary statement dated 26 October 2021 (U, pages 2304–06).

<sup>100</sup> Statement dated 15 October 2021 (U, pages 2273–76).

<sup>101</sup> Supplementary statement U, page 1521.

<sup>102</sup> For photographs of different degrees of narrowed nostrils, see U, page 1133.

has to fight to get air to breathe.<sup>103</sup> In some cases, the soft tissue in the airways may expand as a result of breathing difficulties, with the outcome that the airways become even narrower, thereby exacerbating the condition further. In addition, dogs with BOAS have reduced tolerance of heat and high humidity because their ability to regulate temperature by breathing is weakened, and their physical endurance is weakened for the same reason. BOAS is also regarded as a leading cause of dogs regurgitating their own stomach content.<sup>104</sup>

BOAS is often diagnosed around the age of two or three, or earlier. The disease worsens over time. However, weight loss and exercise can reduce the symptoms.

The witness Ladlow developed a method for surveying and grading BOAS from 2007 to 2019. The method involves specially certified veterinarians listening to a dog's breathing before and after moderate walking on a treadmill for three minutes at a speed of four miles per hour. This corresponds to a distance of 321 metres or approximately 100 metres per minute.<sup>105</sup> The dogs are graded from 0 to 3, where dogs with no audible breathing obstruction even during stethoscope examination are graded 0, dogs with breathing obstruction audible only during stethoscope examination are graded 1, dogs with intermittent breathing obstruction also audible without a stethoscope are graded 2, and dogs with constant breathing obstruction audible without a stethoscope are graded 3; see further details in the table below.<sup>106</sup>

Grade	Time	Respiratory noises	Inspiratory exertion	Dyspnea, cyanosis, syncope
Grade 0	Pre-strain	Inaudible	Absent	Absent
	Post-strain	Inaudible	Absent	Absent
Grade I	Pre-strain	Inaudible to mild snoring (stertor) and/or moderate intermittent nasal snoring when sniffing	Absent	Absent
	Post-strain	Mild snoring (stertor) and/or moderate intermittent nasal snoring when sniffing, and/or intermittent mild snoring when panting	Absent or mild	Absent
Grade II	Pre-strain	Mild to moderate snoring (stertor)	Absent to moderate	Absent
	Post-strain	Moderate to strong snoring (stertor)	Moderate to strong and/or regurgitation of foam/saliva	Dyspnea. No cyanosis or syncope.
Grade III	Pre-strain	Moderate to strong snoring (stertor) or any form of wheezing (stridor)	Moderate to strong	Dyspnea. May have cyanosis. Unable to exert itself.
	Post-strain	Strong snoring (stertor) or any form of wheezing (stridor)	Strong and/or regurgitation of foam/saliva	Dyspnea. May have cyanosis or syncope.

The district court finds Ladlow's grading method to be generally accepted and adequately verified and consistent.

Ladlow gave evidence that she regards grade 0 and grade 1 dogs as clinically unaffected by BOAS, since the animals have "*normal tolerance of exercise*" without reduced quality of life or other clinical indications.

<sup>103</sup> U, page 2325 is a supervision report by the Norwegian Food Safety Authority in which, in the case of a bitch, it "*looked like the abdomen was partly being used to breathe*".

<sup>104</sup> Statement of the witness Solbak (U, page 1404).

<sup>105</sup> 4 mph x 1,609 m / 60 = 107 m/minute. The distance travelled after three minutes is 321 m.

<sup>106</sup> U, page 1404. Described by Professor Ladlow at U, pages 2274–75.

She recommends that grade 3 dogs be excluded from breeding. Grade 2 dogs can be bred with care, and only with grade 0 or grade 1 dogs so as not to reduce the genetic variation of the breed too much, with the related risk of other conditions arising. After a number of years, when grade 3 dogs become rare, grade 2 dogs can be split into two groups so that severely affected grade 2 dogs can be excluded from breeding as well.<sup>107</sup>

The witness Solbakk, on the other hand, considered that a dog which experiences strained breathing after exercise as easy and short as in the test, is not a clinically normal dog, while the witness Indrebø considered that a dog with a BOAS grading of 1 does not “*suffer problems as a result of the disease which are significant from an animal welfare perspective*”.<sup>108</sup>

Ladlow co-authored an English study published in 2017 and based on an unspecified combination of dog presented for examination at clinics, dogs provided by research-willing owners and breeders, and dogs exhibited in the period from September 2013 to September 2016. Of a total of 201 bulldogs, 10.9% were graded 0, 37.8% were graded 1, 38.8% were graded 2 and 12.4% were graded 3.<sup>109</sup> The study thus showed that approximately half of the English Bulldogs were graded 0 or 1, while the other half was graded 2 or 3. At the main hearing, Ladlow gave evidence that it is currently no longer socially acceptable to exhibit grade 3 bulldogs in England, and that grade 0 and grade 1 breeding males achieve better prices than grade 2 males.

Solbakk referred to an English study dated 2016 in which 15.2% [of dogs] were graded 0, 44.8% were graded 1, 24.8% were graded 2 and 15.2% were graded 3.<sup>110</sup> The study encompassed 66 bulldogs, six of which were presented at a clinic for assessment of their airways.

From August 2019 to 8 September 2021, NKK has BOAS-graded a total of 60 Norwegian bulldogs presented at courses for BOAS certification by veterinarians in accordance with Ladlow’s method. The course arranger therefore requested access to dogs in all categories.<sup>111</sup> Of these, 30% were graded 0, 50% were graded 1, 15% were graded 2 and 5% were graded 3.<sup>112</sup>

The district court has concluded that the BOAS distribution will normally be better in a population of exhibition dogs which want to qualify for breeding than in a population of dogs which owners take to veterinarians or clinics with suspected breathing difficulties. Neither of these populations can be regarded as entirely representative at breed level. Further, the district court has found it most likely that not all bulldog owners take their dogs to a veterinarian or clinic for examination of what many persons regard as “*breed-typical*” breathing and snoring noises.<sup>113</sup> Finally,

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<sup>107</sup> U, page 2275, first and second paragraphs.

<sup>108</sup> U, pages 1404 and 1408, first paragraph, together with U, page 1521.

<sup>109</sup> Liu 2017 (U, pages 1129–52). Dogs Panel at U, page 1131, and the grading distribution at U, page 1136.

<sup>110</sup> U, page 1406.

<sup>111</sup> U, page 2275.

<sup>112</sup> U, page 1467, together with U, page 1407. At the main hearing, Indrebø gave evidence that (as at mid-November 2021), an additional three dogs had been BOAS-graded in Norway, all with grade 0.

<sup>113</sup> Solbakk, U, page 1406.

the court would point out that it is entirely permissible to use sperm from dogs in countries where BOAS grading is not undertaken in Norwegian breeding. The same applies to frozen sperm from dead, ungraded animals.

The clinical diagnosis BOAS appears to relate to the head shape of the Bulldog, and is affected by many genes and environmental factors.

Ladlow gave evidence that work is being done to develop a test for individual BOAS risk factors. Even if such a test or set of tests were to be developed within two to three years as indicated, the genetically determined head shape will presumably place clear restrictions on the clinical improvements in the breed which can be achieved through breeding activities. In any event, these activities will take a long time. Ladlow considered that cross-breeding will be a sensible step if the BOAS situation of bulldogs is not improved materially in the next 10 years.<sup>114</sup> The witness Knævelsrud from the Norwegian Food Safety Authority gave evidence that if a brachycephalic dog were suddenly to arise through mutation, it would presumably be covered by the breeding prohibition in section 25.<sup>115</sup>

In November 2017, NKK wrote, in reply to a question from the Norwegian Food Safety Authority, that it was *“very difficult to implement effective measures because NKK cannot know which dogs have been operated for BOAS or have BOAS without having been operated. In 2015, NKK sent an enquiry to the Norwegian Food Safety Authority in which we recommended the introduction of a reporting duty for veterinarians who operate the airways of brachycephalic dogs. This could have become a useful tool with respect to epidemiology and more effective breeding measures. Unfortunately, the Norwegian Food Safety Authority refused this request.”*<sup>116</sup>

### 6.3.2 Birth of puppies and C-section

The ability to conceive and birth puppies is part of a dog’s *“natural functions”*. Moreover, it is undisputed that Bulldogs are often inseminated artificially and, particularly, that puppies are frequently delivered by means of planned or emergency C-sections. This may be due to several factors, including a narrow pelvis in bitches, relatively large puppies and the fact that a Bulldog with BOAS which gives birth may be particularly exposed to both weight gain and the physical strain of birthing puppies. Use of C-sections may also be linked to habitual practice.

For example, an English survey has shown that 86% of English Bulldogs born from 2000 to 2010 were delivered by C-section.<sup>117</sup> The survey, which had a response rate of 24%, included replies from 71 breeders of Bulldogs relating to a total of 195 bitches and 288 puppies. The survey also showed that Bulldogs had the second-highest rate of C-sections of all dog breeds in England, behind the brachycephalic Boston Terrier on 92.3%.

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<sup>114</sup> U, page 2275, final paragraph to page 2276, first and second paragraphs.

<sup>115</sup> U, page 1528.

<sup>116</sup> U, page 602. NKK’s enquiry and the Norwegian Food Safety Authority’s reply are reproduced at U, pages 1465–66.

<sup>117</sup> U, pages 767–72.



NKK has argued against planned C-sections for many years. NKK’s breeding strategy for all breeds specifies that planned C-sections should not be used because breeding should not be done with bitches that are not expected to be able to give birth naturally. Bitches which have had two C-sections are not to be mated again.

The following data have been provided for Norwegian Bulldogs registered with NKK:<sup>118</sup>

Year	% natural birth	% emergency C-section (at least one puppy born before C-section)	% planned C-section
2011	37.5%		
2012	-		
2017–2019	28%	15%	57%
2020	39%	25%	36%
2021 (up to and including 27 September)	31%	15%	54%

Overall, the district court has proceeded on the basis that a majority of all Norwegian bulldog puppies were delivered by C-section from 2011 to 2021. During this period, the proportion of planned C-sections declined somewhat, as recommended in NKK’s breeding strategy. However, the proportion of emergency C-sections increased. An increasing number of Norwegian bulldogs have thus attempted to give birth naturally in recent years, and quite a substantial number of these have been unsuccessful. However, emergency C-sections may also be due to factors other than the ratio between the puppies and the size of the birth canal, for example that the puppies lay wrong, that contractions did not start or that the litter included very many or just one puppy.

### 6.3.3 Other health challenges experienced by Bulldogs

Bulldogs are also vulnerable to other genetic conditions such as skeletal conditions, allergic and infection problems resulting from the many skin folds of the breed, and “Cherry Eye” – a growth on the eye caused by a prolapse of the tear duct which has to be removed surgically. Mention can also be made of a Finnish study from 2020 which concluded that it is unlikely that the orthopaedic difficulties of Finnish Bulldogs can be bred out through selective breeding within the breed.<sup>119</sup> The district court will not discuss these issues in greater detail since they are not of independent significance to the outcome of the legal proceedings.

## 6.4 Structural aspects of dog breeding and implemented measures

### 6.4.1 Approximately 400 different breeds

As emphasised by, among others, the witness Knævelsrud from the Norwegian Food Safety Authority in her statement, dog breeding can be distinguished from the breeding of most other pet species through its classification into approximately 400 breeds, which attach great importance to external breed characteristics. A distinctive appearance has often been refined, and the underlying genes have been established through breeding activities, including where this has resulted in reduced function and

<sup>118</sup> Indrebø, U, page 1468; see also Solbakk, U, page 1409.

<sup>119</sup> U, pages 834–44. Conclusion at U, page 843.

poorer animal welfare. Despite the fact that the species ‘dog’ displays very great genetic variation, each individual breed has limited genetic variation and is historically often based on a genetic bottleneck due to breeding of closely related individuals. Moreover, given that many vulnerable breeds comprise few individuals, genetic variation is low within certain breeds.<sup>120</sup>

#### 6.4.2 Fragmented group of stakeholders

Dog breeding is also characterised by a fragmented and varied group of stakeholders, comprising

- International and national kennel clubs;
- Pedigree dog clubs, which are the “*breed owner*” and administer the individual dog breeds;
- Exhibition judges and the exhibition/prize system. For many breeds, a dog has to have been shown and have won exhibition awards to qualify for breeding. In addition, winning many awards increases demand for use of an animal in breeding. Both the statement and the evidence given by the witness Vangen related that the small skull of Cavaliers and the short muzzle of Bulldogs have been developed through more than 100 years of breeding, and that judges “*have for many decades rewarded the ‘shortest possible’ or the ‘smallest possible’ when the breed standard specifies ‘short’ or ‘small’.* This breeding of extremes has therefore developed the breeds in the wrong direction over time, leading to the said resulting health problems/defects.”<sup>121</sup> It is most likely that the use of foreign judges at exhibitions has also played a part in standardising the distinctive external appearance and genes of individual breeds across national borders;
- In their capacity as qualified experts with first-hand access to animals, veterinarians will be “*in a unique position to give guidance to breeders, dog owners and potential buyers of puppies on whether a dog should be used for breeding, what breed a puppy buyer should choose and what demands a puppy buyer should make of a breeder and with respect to the parents of the puppy and the puppy which is bought.*”<sup>122</sup> Veterinarians are also in a strong position to help ensure that high-quality breeding-relevant health information is registered for individual dogs. The statement by the witness Lingaas specified that veterinarians have no right to disseminate information about their clients or their clients’ dogs, and that many diseases are registered with an inadequate classification and inadequate specificity.<sup>123</sup> The witness Indrebø stated that NKK has taken steps to enable individual veterinarians to enter diagnoses relating to serious heritable diseases directly in Dogweb, but that “*very few*” veterinarians use the reporting system because this requires owner consent due to the duty of confidentiality applicable to veterinarians.<sup>124</sup> On the other hand, the information available to the court indicates that NKK-accredited veterinarians are obligated to obtain prior consent from owners for the registration of breeding-relevant diagnoses in Dogweb before examination is undertaken.<sup>125</sup> Pursuant to sections 21(5) and (6) of the Animal Health Personnel Act,

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<sup>120</sup> U, page 1525.

<sup>121</sup> U, page 1450. In a similar vein, NKK’s submission dated October 2017 (U, page 1487).

<sup>122</sup> Statement of the witness Knævelsrud (U, page 1531).

<sup>123</sup> U, page 1492.

<sup>124</sup> U, page 1470.

<sup>125</sup> Statement of the witness Indrebø (U, page 1463).

the duty of confidentiality of veterinarians under section 20 does not apply when “*weighty private or public interests render it lawful to pass on the information*”, or if it is “*expressly stated or clearly assumed that a duty of confidentiality shall not apply*” in an act or provision issued pursuant to an act. In contrast, veterinarians apparently have a duty to report disease and treatment at individual level on farms.

In June 2017, at least 1,580 veterinarians signed an appeal against unethical pet breeding organised by the Norwegian Veterinary Association, which referred particularly to the skull size of Cavaliers. The appeal presented four proposed “*necessary*”<sup>126</sup> measures to be taken by the Norwegian Food Safety Authority, the authorities, breeders and consumers. NKK supported the four measures in the appeal in a lengthy comment submitted to the Norwegian Veterinary Journal in October 2017.<sup>127</sup> However, the comment was not published in the journal;

- Individual breeders make and implement individual breeding decisions. It is most likely that a large proportion of Norwegian dog breeders across the entire country engage in “*hobby breeding*” based on varying degrees of professionalism and specialist knowledge. Accordingly, almost 80% of all puppy litters registered by NKK in the years 2007–2016 were born to breeders who received three or fewer litters a year, and only 4.2% of litters during the period were born to breeders who received more than eight litters a year.<sup>128</sup> A majority of the defendant Breeders who gave evidence before the district court had other jobs or were retired.

Approximately 50% of all Norwegian dogs, including some mixed breeds, are registered with NKK. It is unknown whether breeding of pedigree dogs also occurs outside NKK and, if so, on what scale;

- Individual dog buyers;
- The Norwegian Food Safety Authority in its capacity as supervisory body under the Animal Welfare Act. Based on the statement and evidence of the witness Knævelsrud, the district court has concluded:
  - That the Norwegian Food Safety Authority does not consider it “*relevant*” to engage in inspection-based supervision of dog breeding in the absence of reported concerns or other indications of specific contraventions of the breeding provision. In addition, inspections of breeders are considered “*probably not... a suitable method for influencing irresponsible breeding of dogs under the current rules*”;<sup>129</sup>
  - That any prohibition against breeding and, potentially, the keeping of existing breeds will raise many difficult questions related to delimitation and enforcement “... ”

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<sup>126</sup> U, pages 423–27.

<sup>127</sup> U, pages 1484–89 (incorrectly dated October 2019, see statement of the witness Indrebø, U, page 1478).

<sup>128</sup> U, page 1485.

<sup>129</sup> Statement of the witness Knævelsrud (U, page 1528–29).

(I)nformation and knowledge are more important methods for steering dog breeding in the right direction than regulations and inspections”,<sup>130</sup> and

- That it is not “relevant to issue regulations requiring the conduct of examinations which are not available in practice, or to expect or order individual breeders to have such examinations carried out” (regarding MR-examination of potential SM/CM in Cavaliers before and after participation in breeding);<sup>131</sup>

and

- The Ministry of Agriculture and Food, which has jurisdiction to issue regulations pursuant to section 25, fourth paragraph, of the Animal Welfare Act. Norway has not yet issued regulations on dog breeding, but draft regulations were presented by the Norwegian Food Safety Authority after the present case was admitted for hearing. The introduction to the assignment letter from the Ministry to the Norwegian Food Safety Authority dated 11 July 2019 instructing the Authority to conduct a review and prepare draft regulations on dog breeding stated:<sup>132</sup>

*“The general requirements in the Animal Welfare Act relating to breeding are intended to help promote characteristics which produce robust animals which function well and have good health. However, it is clear that the breeding of certain dog breeds has moved in the direction of ever more extreme variants in structural features which also cause, in some cases, severe health problems.”*

#### 6.4.3 Particular comments on the significance of voluntary stakeholders

A factor in addition to the number of dog breeding stakeholders is that many of these parties are voluntary or member associations based on voluntary participation. In the present case, many statements have been submitted to the effect that individual stakeholders may have given consideration to the possibility that voluntary participants may decide to withdraw from organised platforms – which secure at least some control and guidance – in favour of non-organised platforms free of all supervision if enforcement of the breeding provision becomes too rigorous. In addition, the fear has been expressed that animal welfare may be undermined further in such case. By way of examples in this regard, the district court would refer to

- The statement of the witness Indrebø:<sup>133</sup>  
*“If NKK and the breed clubs do not have the support of the breeders, they are likely to continue breeding dogs outside the NKK system. The breeders have no financial incentive to register their dogs with NKK; in the case of many breeds, unregistered pedigree dogs and mixed-race dogs stemming from breeds with health problems are sold for higher prices than registered pedigree dogs. NKK has no control over these, and in most cases no health examinations are carried out.”*

Indrebø’s statement also contained the information that all dogs in Denmark are ID-marked and registered in the Danish Dog Register by law. When the Danish Kennel Club (“DKK”) introduced strict registration restrictions for a number of breeds, the proportion of pedigree dogs which were also voluntary members of DKK fell drastically; for example (as at 2018) to just 7.7% for Chihuahuas, 10.1% for Pekinese, 11.6% for Shi Tzus and 14.7% for French Bulldogs. Cavaliers and

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<sup>130</sup> Statement of the witness Knævelsrud (U, page 1530).

<sup>131</sup> Supplementary statement of the witness Knævelsrud (U, page 2267).

<sup>132</sup> U, page 1504.

<sup>133</sup> U, page 1475.

Bulldogs, in contrast, maintained DKK registration ratios of 40% and 42%, respectively. The lower the registration ratio related to the national kennel club, the smaller the influence of the kennel club's breed standard and other breeding activities on the breed as a whole;

- The witness Knævelsrud from the Norwegian Food Safety Authority regarding dialogue with NKK related to dog breeding:<sup>134</sup>

*“We have particularly discussed with NKK the degree to which it enforces the regulatory framework and uses sanctions against clubs and breeders. The challenge is that NKK is a member club based on voluntary membership. Strict requirements chase members away. The high proportion of NKK-registered dogs is a strength in Norway. As far as we know, the proportion of dogs which are not registered with the national kennel club is far lower in comparable countries.”*

- The Norwegian Food Safety Authority's refusal dated 26 October 2015 of NKK's proposal to require veterinarians to report BOAS operations in an open database whose creation and operation NKK was willing to finance (excerpt):<sup>135</sup>

*“... However, a duty to report may result in breeding dogs which need an operation to ease breathing difficulties not getting this because the breeders wish to avoid a breeding suspension for the dog. There is also a risk that breeding of unregistered dogs will increase further as a result of breeding restrictions. Mandatory ID-marking and registration of all dogs may reduce the consequences of this, and is in our opinion a prerequisite for success of the measure as intended. However, the combination of a reporting duty for operations and mandatory ID-marking may result in an increasing proportion of (unhealthy) dogs being imported from abroad”; and*

- The witness Ladlow:<sup>136</sup>

*“Banning the breeds has also been discussed in the UK. We are concerned that this stops the legitimate registered breeders that promote health and instead there is an increase in unlicensed breeders or dogs are imported often from puppy farms. We are concerned about some of the more extreme cross breeds that we are seeing – the 'micro bullies' and 'pocket bullies' which often have severe breathing and muscular skeletal defects. It seems sensible to initially work with registered health-conscious breeders and improve the health of the registered dogs.”*

Finally, at the main hearing both the chair of the Cavalier King Charles Spaniel Club – Skarpsno – and the deputy chair of the Bulldog Club – Hølen – stated that the two Pedigree Dog Clubs would have to disband if the legal proceedings were to be successful. In such case, the task of the Clubs would have fallen away and volunteers could not be expected to take on positions of trust.

#### 6.4.4 “Unfair legal proceedings”

Several of the Defendants also emphasised the paradoxical and unfair nature of the fact that legal proceedings which aim to promote animal health have been brought against stakeholders who in practice have done the most to strengthen animal health. At the main hearing, many examples were quoted of work done by NKK and the Pedigree Dog Clubs over many years to improve animal health among dogs through breeding of not only the Breeds but also other dog breeds, and it was stated that Norwegian and Scandinavian kennel clubs have promoted improved animal health and stricter breeding controls in international forums.

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<sup>134</sup> Statement of the witness Knævelsrud (U, page 1531).

<sup>135</sup> Statement of the witness Indrebø (U, page 1465–66).

<sup>136</sup> At the end of her statement (U, page 2276).

At the end of her supplementary statement, the witness Knævelsrud stated that, “*The Norwegian Food Safety Authority considers NKK to be a reputable organisation which pursues responsible dog breeding*”, and that, “*NKK actively promotes healthy dog breeding through information-provision, training, international work and measures targeting specific problems such as inbreeding, BOAS grading and other challenges, not least linked to the two breeds in question.*”<sup>137</sup>

By way of a non-exhaustive list of examples of activities pursued by NKK, the following can be noted:

- Individual dog breeds are administered by a national pedigree dog club; in the case of the Breeds in the present case, this is the English pedigree dog club. Both the Pedigree Dog Clubs and the individual breeders of Cavaliers and Bulldogs are organisationally obliged to comply with the international breed standard in their breeding, and amendment of a breed standard administered abroad requires long-term efforts through the FCI. Originally, for example, the breed standard for Chihuahuas required that the bony parts of the skull should not have fused (so-called “*open fontanelles*”). As a result of NKK’s efforts, the requirement for open fontanelles was not only taken out of the breed standard but open fontanelles are today a breeding exclusion criterion for Chihuahuas.<sup>138</sup>
- When the FCI’s annual world exhibition was arranged in China in 2015, NKK protested strongly about the standard applicable to Chinese rearing of dogs as human food, primarily in relation to deficient animal welfare during the life of the animals and in connection with slaughter. Following extraordinary general meetings, the protests resulted in the FCI improving both the requirements in its articles of association relating to animal welfare and its breeding strategy along the lines of NKK’s own rules. NKK passed a unanimous annual meeting resolution to withdraw from the FCI in the event of failure in the “*China case*”.<sup>139</sup> On NKK’s initiative, the FCI’s breeding rules now also permit cross-breeding of variants and closely related breeds without the prior consent of the kennel club in the home country of the breed.<sup>140</sup>
- Since the late 1980s, NKK has maintained a database containing health information for individual registered dogs, their siblings and other relatives, which is currently open and freely available (Dogweb). Dogweb is widely used by both breeders and buyers.<sup>141</sup>
- NKK’s basic ethical rules for breeding and rearing include, among other things, minimum and maximum ages and a maximum number of litters periodically and in total for bitches, as well as a recommendation that males should not sire more puppies during their lifetime than the equivalent of 5% of the number of puppies of the breed born over a five-year period (so-called “*matador breeding*”). NKK’s basic rules safeguard animal health better than the rules in many other countries.<sup>142</sup>

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<sup>137</sup> U, page 1531 and U, page 2267.

<sup>138</sup> Statement of the witness Knævelsrud (U, page 1531).

<sup>139</sup> Evidence given by NKK Executive Board Chair Martinsen in court.

<sup>140</sup> Statement of the witness Indrebø (U, pages 1461–62).

<sup>141</sup> Including the statement of the witness Indrebø (U, page 1462).

<sup>142</sup> Statement of the witness Indrebø (U, page 1464).

- Together with the Nordic kennel clubs, NKK has launched an initiative with respect to breed judges to avoid external exaggerations at the expense of breed health (“*Breed Specific Instructions*”, or BSI). Today, the initiative covers 37 at-risk breeds, including both Cavaliers and Bulldogs.<sup>143</sup>
- Following several years of effort, the Cavalier King Charles Spaniel Club met the UK organisation The Kennel Club in September 2017 to clarify the scope for initiating cross-breeding of Cavaliers.<sup>144</sup> At the annual meeting of the Cavalier King Charles Spaniel Club on 2 June 2018, however, the annual meeting decided not to initiate such cross-breeding, for four reasons. The genealogical pattern of SM had not been finally clarified and alternative measures such as the use of older breeding animals and breeding animals with long-living family trees should be attempted first. In addition, the situation was no more serious in Norway than in other countries, and cross-breeding had not been initiated elsewhere despite the almost identical genes of Cavaliers in Norway and England, Sweden and some other European countries; and
- Both breed clubs have adopted stricter breeding rules in recent years. Among other things, the Cavalier King Charles Spaniel Club has raised the debut age from two to three years and recommended that no male dogs should have more than 30 offspring before the age of five years or more than approximately 100 puppies in total.<sup>145</sup> Among other things, the Bulldog Club has a debut age of 20 months, a one-year quarantine period after two litters in the space of a year or a C-section and a breeding suspension following two C-sections or a grade 3 BOAS diagnosis. Grade 1 or grade 2 BOAS dogs may only be used in breeding if the partner has a grade of 0, and grade 2 dogs require an expanded heart certificate. No male dogs should have more than 20 offspring over a three-year period, including through the use of frozen sperm.<sup>146</sup>

Following the main hearing, therefore, it appears clear that the Clubs have adopted a number of measures to improve dog breeding practices both generally and specifically in relation to Cavaliers and Bulldogs, both nationally and in relevant international forums.<sup>147</sup> It appears likely that the genes and animal health of the Breeds would be worse in the absence of these measures.

However, the district court would note that these legal proceedings do not concern who is culpable for, has participated in or is otherwise responsible for the current genes of the Breeds. The legal proceedings concern whether the genes of the Breeds today are such that continued future breeding of the Breeds would be contrary to the statutory requirements and prohibition in section 25.

#### 6.5 Particular comments on cross-breeding

The Norwegian Society for Protection of Animals has submitted that the Breeds can only be saved through cross-breeding with other breeds, but has not specified how any cross-breeding project would or should be designed or implemented.

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<sup>143</sup> Statement of the witness Indrebø (U, pages 1471–72).

<sup>144</sup> U, pages 686–87; see also page 935.

<sup>145</sup> The breeding rules and guidelines of the Cavalier King Charles Spaniel Club (U, pages 972–76).

<sup>146</sup> The ethical rules of the Bulldog Club (U, pages 968–70).

<sup>147</sup> As also stated in the witness Knævelsrud’s supplementary statement (U, page 2267).

The district court would note that both the assessment as to whether cross-breeding of Cavaliers and Bulldogs will be compliant with the breeding provision in the Animal Welfare Act and the question of how cross-breeding should in such case be designed fall outside the scope of the present legal proceedings.

## **7 Subsumption: Will continued breeding of Cavaliers and Bulldogs be contrary to section 25 of the Animal Welfare Act?**

### **7.1 Introduction**

As reviewed in greater detail in section 5.4 above, the district court finds that the outcome of the case depends on whether it is

- sufficiently likely that
- a sufficient number of animals will develop
- sufficiently serious heritable diseases in the event of continued breeding of Cavaliers or Bulldogs.

As stated in section 5.4.4 above, the district court has also found that application of the breeding prohibition at breed level requires that a minimum threshold be exceeded. In assessing the height of the minimum threshold, the district court has taken account of

- The nature and scale of the stresses/strains; see further section 7.2 below with respect to Cavaliers and section 7.3 below with respect to Bulldogs;
- The fact that the Breeds have been subjected to the relevant stresses/strains by humans through the sum total of individual decisions made in the context of breeding activities over a period of approximately 100 years or more. In this regard, it is sufficient to reiterate the reference to
  - o Professor Ladlow's statement that "*(U)nfortunately, breeding for a particular phenotype (the wide head and flat muzzle) has resulted in accompanying diseases in many dogs which are thus essentially man-made*",<sup>148</sup> and to
  - o The Ministry of Agriculture and Food's assignment letter to the Norwegian Food Safety Authority dated 11 July 2019 stating that, "*However, it is clear that the breeding of certain dog breeds has moved in the direction of ever more extreme variants in structural features which also cause, in some cases, severe health problems.*"<sup>149</sup>
- The fact that no grounds have emerged in the case to indicate that the relevant stresses/strains to which the Breeds have thus been exposed are generally accepted, whether in terms of general views in society or in animal welfare circles. On the contrary, animal welfare circles have to an increasing degree and in various contexts stated that some dog-breeding segments are developing in an undesired and unlawful direction. In this regard, it is sufficient to refer to the sum total of

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<sup>148</sup> U, page 2273.

<sup>149</sup> U, page 1504.



- Council of Europe Resolution of 10 March 1995, which among other things urged breeding organisations for cats and dogs in particular to reassess breeding standards that could cause animal welfare problems and, if these proved inadequate, to “*consider the possibility of prohibiting the breeding and for phasing out the exhibition and the selling of certain types or breeds when characteristics of these animals correspond to harmful defects*”;<sup>150</sup>
- The statement from the Norwegian Council for Animal Ethics (appointed by the Ministry of Agriculture) dated 14 November 1998, which among other things stated that, “(B)*reeding is currently done of dog breeds that have external features that directly cause or increase vulnerability to illness or injury to such a degree that they cannot be deemed ethically justifiable. Breeding such animals may also be contrary to the provisions of the Animal Welfare Act*”;<sup>151</sup>
- A further statement by the Norwegian Council for Animal Ethics dated December 2010, which among other things stated that, “(I)*n the case of certain dog breeds, it has emerged that external features recorded in the breed standard create susceptibility to health problems which should be consciously avoided in future breeding. Examples in this regard include a short nose bridge, which often causes breathing difficulties (for example in Pugs, Pekinese and Bulldogs), broad, powerful heads which may cause birthing problems (for example Bulldogs and Boston Terriers)...*”;<sup>152</sup>
- The status report “*Dyrehelsemessige aspekter ved avl av rasehunder i Norge*” [Animal health-related aspects of breeding pedigree dogs in Norway] dated 14 December 2015, which among other things stated that, “(T)*he international and national system for the breeding of pedigree dogs has thus far failed to either prevent or stop a development which in the case of several breeds is in obvious conflict with animal welfare*”;<sup>153</sup>
- NKK’s request to the Norwegian Food Safety Authority dated June 2015 to introduce a reporting duty related to operations on airways in response to BOAS, to make it easier to impose a breeding suspension on operated animals. As stated above, the Norwegian Food Safety Authority rejected NKK’s proposal;<sup>154</sup>
- The initiative taken by the Cavalier King Charles Spaniel Club in relation to the UK organisation The Kennel Club between 2015 and September 2017 concerning the possibility of initiating cross-breeding of Cavaliers;<sup>155</sup>
- The Norwegian Veterinary Association’s appeal dated June 2017 against unethical pet breeding, signed by more than 1,500 veterinarians, which referred particularly to the skull size of Cavaliers;<sup>156</sup> and
- The Ministry’s assignment letter to the Norwegian Food Safety Authority dated 11 July 2019, which stated that “*it is clear that the breeding of certain dog breeds has moved in the direction of ever more extreme variants in structural features which also cause, in some cases, severe health problems*”;<sup>157</sup>

and

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<sup>150</sup> U, pages 841–50, particularly page 848.

<sup>151</sup> U, pages 350–57.

<sup>152</sup> U, pages 359–70, quote from U, page 362.

<sup>153</sup> U, pages 399–422, prepared by veterinarians Sjetne Lund, Rootwelt and Grøndahl at the Department of Companion Animal Clinical Sciences, Norwegian University of Life Sciences, at the request of the Norwegian Society for Protection of Animals, Oslo and Akershus. Quote taken from U, page 412.

<sup>154</sup> Reproduced at U, pages 1465–66.

<sup>155</sup> U, pages 686–87; see also page 935.

<sup>156</sup> U, pages 423–27.

<sup>157</sup> U, page 1504.

- The fact that the purpose of exposing the Breeds to the relevant stresses/strains cannot be justified by the consideration of maintaining species diversity, the consideration of financial interests, the consideration of safeguarding food and nutritional safety or the consideration of protecting functions of particular value to society. Both Cavaliers and Bulldogs are purely pets with associated social and mental value to their owners, household members, etc. Such value is far from immaterial. However, it cannot outweigh the key premise of the Animal Welfare Act that “*animals have intrinsic value in addition to their utility value to humans.*”<sup>158</sup> In this regard, the district court would also refer to the assessment of the witness Knævelsrud from the Norwegian Food Safety Authority that, “(H)owever, if we did not currently have brachycephalic dogs but such a dog were suddenly to be born as a result of a mutation, it is likely that future breeding of the characteristic would be deemed contrary to section 25 of the Animal Welfare Act, and thus prohibited.”<sup>159</sup>

As described in greater detail in section 5.4.4 above, maintaining the “purity” of a dog breed is not a protected or independent consideration under the Animal Welfare Act, even though this may be an organisational obligation for members of the Pedigree Dog Clubs and NKK. However, in the event of any conflict, the requirements and the breeding prohibition in the Animal Welfare Act take precedence over any private and voluntary organisational obligations.

The district court will therefore discuss in greater the detail the relevant stresses and strains to which the Breeds will be subjected through continued breeding.

## 7.2 Particular comments on Cavaliers

### 7.2.1 CM

The district court finds it to be qualifiedly likely that practically all Norwegian Cavaliers currently have genes that result in CM. They therefore develop a skull without sufficient space for the brain and the upper part of the spinal cord. Professor Rusbridge compared this to attempting to force all size 9 feet into a size 7 shoe. In the district court’s view, CM alone means that the genes of Cavaliers have been altered through earlier breeding “*in such a way that they influence the physical or mental functions of animals negatively*”; see section 25, second paragraph, a). In the district court’s view, “*general ethical concerns*” are also raised by the fact that humans, through breeding to achieve an appearance we find cuter and prettier, have given Cavaliers a skull without sufficient space for the brain, and contrary to the then-applicable “correct” head shape. A possible historical parallel can perhaps be found in today’s assessment of the Chinese practice of binding or tying up the feet of little girls to form these into small “*lotus feet*”. The practice was prevalent in China and stemmed from a beauty ideal which varied in prevalence according to region and social standing for approximately 1,000 years from approximately 900 AD.<sup>160</sup> The practice is thought to have been eliminated today, and is penalisable as child abuse.

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<sup>158</sup> Page 7 of the Proposition (JU, page 297).

<sup>159</sup> U, page 1528.

<sup>160</sup> See [https://en.wikipedia.org/wiki/Foot\\_binding](https://en.wikipedia.org/wiki/Foot_binding).

No credible test is available for determining which genes cause CM, and none can be expected to be developed. At present, moreover, there are no known attempts to breed CM out of Cavaliers; on the contrary, an intended cross-breeding project was unanimously stopped at the Cavalier King Charles Spaniel Club's annual meeting in June 2018.<sup>161</sup> The mere existence of CM in the genes of all Cavaliers means that the breed should not be used in future breeding pursuant to section 25, third paragraph, of the Animal Welfare Act.

In addition, it is likely that Norwegian Cavaliers also have a risk of between 15% and 20% of developing CM-P, which painfully reduced an animal's ability to engage in natural behaviour contrary to section 25, second paragraph, b). With respect to this group of Cavaliers, all three alternatives in section 25, second paragraph, will be met. Since it is impossible to predict which individuals with CM will develop CM-P, the fact that approximately every fifth or sixth puppy, or 15%–20%, will develop CM-P will be sufficient to conclude that Cavaliers should not be used in future breeding pursuant to the precautionary principle in the Animal Welfare Act; see section 25, third paragraph, and section 5.4.5 above.

#### 7.2.2 SM

In addition, the heritable reduced skull of Cavaliers entails a significantly increased risk of SM. Approximately 25% of Cavaliers, or every fourth dog, has developed SM by the age of one. Four years later, the proportion has increased to 70%. However, the final 30% avoid the condition.

SM does not produce clinical symptoms in all affected individuals, and the symptoms vary in their severity; see section 6.2.2 above. However, more than half of the dogs experience symptoms such as phantom itching or express pain when they are lifted up or petted, and approximately 22% develop "*serious clinical symptoms*".

The district court finds that the genes of Cavaliers must be deemed altered in the form of this heritable excess frequency of SM. The alteration affects the physical and mental functions of animals negatively; see section 25, second paragraph, a). As regards the 22% which develop "*serious clinical symptoms*", these also reduce an animal's ability to engage in natural behaviour such as moving around; see section 25, second paragraph, b). For these 22%, the court takes the view that "*general ethical concerns*" will additionally be raised by the fact that the result of human breeding activities contrary to the then-applicable "*correct*" head shape has rendered the Cavalier's head too small for its brain, on the basis that we view the dog as cuter and prettier as a result; see section 25, second paragraph, c). Cavaliers which carry SM in their genes should therefore not be used in future breeding pursuant to section 25, third paragraph.

Further, it is most likely that not all Cavaliers carry a predisposition to SM in their genes. 70% of dogs without SM had parents which were both free of SM. On the other hand, the probability of puppies also developing SM if both parents have SM is 92%.<sup>162</sup> If only one parent is free of SM, the probability that the offspring will develop SM is 77%.

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<sup>161</sup> U, pages 686–87.

<sup>162</sup> Statement of Professor Rusbridge (U, page 1443).

The district court finds it most likely that the heritable risk of developing SM can be reduced somewhat in Cavaliers over time, provided that

- cheaper and improved mapping tools are developed for SM and made generally available
- all Cavaliers involved in Norwegian breeding are mapped, including those resident abroad; and
- the test results determine which individuals are involved in breeding.

None of these three conditions is currently met. Nor is it more likely than not that any of the conditions will be met within a reasonable period. In addition, using existing MRI diagnostics is financially prohibitive given current puppy prices, and there is presently a limited population of Cavaliers which are genetically free of SM. The population available for future breeding is further reduced if carriers of MMVD are excluded from the sample; see section 7.2.3 below.

In addition, the preparatory works to the Animal Welfare Act clarify that the breeding provision prohibits breeding of animals with undesirable characteristics, even if the purpose of breeding is to eliminate the undesired characteristics and the outcome of a breeding stop would be that the breed dies out.<sup>163</sup>

The district court therefore finds that the presence of SM in the genes of Cavaliers is an independent bar to future breeding of the breed pursuant to section 25, third paragraph, see also the second paragraph, of the Animal Welfare Act.

### *7.2.3 MMVD*

It is highly likely that all Cavaliers will develop MMVD sooner or later over a 10-year period, unless they die of some other cause earlier. MMVD reduces heart function and presents a risk of developing heart failure with circulation disruptions, thus affecting the physical or mental functions of the animal negatively. Assuming good follow-up by a veterinarian and, eventually, appropriate medication, the valve disease can be kept under control and the dog can remain clinically unaffected for approximately 1,200 days, or approximately three years (median value). After this preclinical phase, however, the animal will suffer a significant negative effect within the meaning of the Animal Welfare Act, even if appropriate medical treatment is given.

The district court agrees with the witness Vatne that a Cavalier with medicinally treatable mitral valve disease of short duration and late debut will experience better animal welfare than, for example, a Bulldog with grade 3 BOAS which has to fight to get enough air to breathe its entire life.<sup>164</sup> However, whether another animal or a different breed has a different condition which is even worse is neither decisive nor relevant pursuant to section 25, second and third paragraphs, of the Animal Welfare Act.

In genetic terms, MMVD is thought to be linked to a polygenetic pattern with a threshold effect, but no genetic mapping tool is available. During the preclinical phase, the condition can be diagnosed by means of auscultation (examining by stethoscope) or ultrasound. It appears most likely that implementing measures to raise the debut age for use in breeding to three years and imposing a breeding suspension on dogs

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<sup>163</sup> Page 70 of the Proposition (JU, pages 370–71).

<sup>164</sup> Statement of the witness Vatne (U, page 2262, final paragraph).

which have developed a murmur may cause Cavaliers to develop MMVD later in life. At present, such measures are being implemented by the Cavalier King Charles Spaniel Club and NKK.

However, the preparatory works to the Animal Welfare Act clarify that the breeding provision prohibits breeding of animals with undesirable characteristics even if the purpose of breeding is to eliminate the undesired characteristics and the consequence of a breeding stop will be that the breed will die out.<sup>165</sup> The district court therefore also finds that the current level of MMVD presence in the genes of Cavaliers is a bar to future breeding of the breed pursuant to section 25, third paragraph, see also second paragraph, of the Animal Welfare Act.

### 7.3 Particular comments on Bulldogs

All Bulldogs have a brachycephalic head shape resulting from long-term breeding. There is no doubt that the brachycephalic genes of Bulldogs have altered the animal's physical or mental functions negatively over time; see section 25, second paragraph, a). As stated above, the Norwegian Food Safety Authority, represented by the witness Knævelsrud, stated that if a brachycephalic dog had suddenly arisen through mutation without preceding breeding activities, future breeding of the characteristic would be contrary to section 25.<sup>166</sup>

Two particular conditions have been highlighted in the present case, both stemming wholly or partly from the brachycephalic genes of the Bulldog.

#### 7.3.1 *BOAS*

BOAS is a condition in brachycephalic dogs characterised by the animals struggling to obtain sufficient oxygen. This is due to several factors, including narrow nostrils, squeezing of osseous tissue and soft tissue in the nasal cavity due to the shortened muzzle, and anatomical changes in the throat – often a long, soft palate. As reviewed above, a BOAS grading from grade 0 to grade 3 has been developed based on the degree of severity. The condition often worsens over time. However, dieting and exercise can reduce the symptoms after symptom debut. The witness Ladlow stated that “(A)lthough there is a perception from some veterinary professionals that all brachycephalic dogs are affected to some extent, we have seen dogs from the extreme brachycephalic breeds that have no upper airway noise and normal exercise tolerance.”<sup>167</sup> Such dogs are given a BOAS grade of 0; see below.

In the same part of her statement, Ladlow explained that her BOAS test is designed to

*“ ... expose those animals that are teetering on the edge of obstruction when calm and firmly tipped into ‘affected’ once stressed. Exercise tests also reveal clinical signs in those dogs that only have respiratory noise when mouth breathing (often the long but not particularly thickened soft palates) after switching from nasal breathing in the consult room.”*

An important quantitative question in the case will be whether Bulldogs with a BOAS grade of 1 have a reduced “ability to engage in natural behaviour” pursuant to section 25, second paragraph, b), or whether such dogs

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<sup>165</sup> Page 70 of the Proposition (JU, pages 370–71).

<sup>166</sup> U, page 1528.

<sup>167</sup> U, page 2274.

have “genes (which) influence the physical or mental functions... negatively” pursuant to section 25, second paragraph, a). Therefore, the statutory text does not really ask whether dogs with a BOAS grading of 1

- are “healthy”, “clinically normal” or show “clinical symptoms of obstruction of the airways”; see the witness Solbak,<sup>168</sup> or
- are “clinically affected” or suffer “problems as a result of the disease which are significant from an animal welfare perspective”; see the witnesses Ladlow and Indrebø.<sup>169</sup>

BOAS grade 1 includes dogs which experience – when not under strain – “mild snoring (*stertor*) [i.e. audible strained breathing arising in the back of the throat] and/or moderate intermittent [i.e. periodic or variable] nasal snoring when sniffing”, but neither panting nor inspiratory exertion (i.e. strained breathing requiring the use of muscles).

Once a dog has been put under strain by walking 321 metres in three minutes, grade 1 encompasses dogs which experience “mild snoring (*stertor*) and/or moderate intermittent nasal snoring when sniffing and/or intermittent mild snoring when panting”, and up to “mild inspiratory exertion” without developing dyspnea (the feeling of being unable to breathe), cyanosis (blue skin or mucous membranes due to excessively low oxygen content in the blood) or syncope (fainting). The witness Ladlow and Bulldog Club deputy chair Holen both gave evidence that symptoms consistent with grade 1 can only be discovered using a stethoscope, not with the ear alone.

As stated in section 5.4.1 above, the statutory text in section 23 of the Animal Welfare Act on the living environment of animals shows that “stimulating activities, exercise and rest” are probably elements of the statutory term “natural behaviour”, which is also used in the breeding provision in section 25. In the district court’s view, it is qualifiedly likely that a dog which experiences mild snoring and increased use of muscles to breath after walking 321 metres in three minutes will thereby experience a reduced opportunity to engage in natural behaviour such as exercise. When assessing what duration and intensity of exercise are natural for a Bulldog, it appears logical to start with the fact that 200 years ago the breed was used in bullfighting, and thereafter in the hunting of wild oxen by biting into their noses.<sup>170</sup>

The current BOAS grading system is based on the dog’s ability to walk approximately 100 metres per minute for three minutes, or for 12 minutes as in the Netherlands. The grading system is designed to distinguish between seriously and less seriously affected animals within the breed, not to hit the threshold

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<sup>168</sup> U, pages 1404 and 1408.

<sup>169</sup> U, page 2275 and U, page 1521.

<sup>170</sup> Source: <https://en.wikipedia.org/wiki/Bulldog>. This states, with a further reference to <https://www.vettimes.co.uk/news/dutch-to-crack-down-on-breeding-of-dogs-with-too-short-snouts/>, that on 31 May 2019 the Dutch Government decided to enforce a breeding prohibition for dog breeds with muzzles shorter than one-third of the skull, which had been adopted some five years earlier, in 2014. The prohibition applies to approximately 20 breeds, including Bulldogs, French Bulldogs and Pugs. The same year, the Dutch Kennel Club adopted a breeding requirement that a bulldog had to regain an ordinary body temperature and pulse within 15 minutes of walking 1,000 metres in 12 minutes (i.e. an average of 83 metres per minute).

pursuant to the breeding provision in the Norwegian Animal Welfare Act. As stated at the end of section 5.4.4 above, the breeding provision in the Animal Welfare Act does not give independent weight to the maintenance of “breed purity”.

Further, as stated at the end of section 5.4.1 above, there are no grounds in the Animal Welfare Act or its preparatory works in support of the view that section 25 only applies to genetic alterations or reductions in the ability to engage in natural behaviour which have arisen after the Animal Welfare Act entered into force on 1 January 2010. On the contrary, according to the preparatory works the Animal Welfare Act aims to introduce stricter animal welfare requirements than were previously deemed correct, and to adjust the requirements in accordance with the ethical standards applicable to animal husbandry in society at any given time.<sup>171</sup> Finally, the legislature considered that the Animal Welfare Act should pre-empt international developments.

The district court’s conclusion is that breeding of BOAS grade 1 Bulldogs has also reduced the ability of offspring to engage in behaviour which is natural for the breed, contrary to section 25, second paragraph, b). Bulldogs with a BOAS grade of 1 or higher must also be said to have suffered a negative effect on their physical and mental functions through genetic alterations; see section 25, second paragraph, a). It therefore follows from section 25, third paragraph, that Bulldogs with a BOAS grade of 1 or higher may also not be used in future breeding in Norway. This most likely applies to between 70% and 85% of all Norwegian Bulldogs.

Bulldogs with a BOAS grade of 0 are found to have maintained their ability to engage in natural behaviour, even though their breathing capacity is far poorer than that of non-brachycephalic dog breeds. However, no genetic tests are available that can establish which breeding animals do not have “*BOAS genes*” in their genes. The requirement in section 25, first paragraph, for “*robust animals*” prohibits the use of breeding animals which carry undesirable genes, even when the individual breeding animals are well-functioning; see section 5.4.1 above. Further, the Proposition has clarified that breeding which negatively affects the functions of an animal will be unlawful even when breeding serves the purpose of breeding out undesirable characteristics over time.<sup>172</sup>

The district court therefore finds that the genes which cause BOAS in offspring currently dominate the genes of Bulldogs to such a degree that future breeding of Bulldogs will fall within the scope of the prohibition in section 25, third paragraph, see also second and first paragraphs, of the Animal Welfare Act.

### 7.3.2 C-sections

The “*physical functions and natural behaviour*” of a dog include giving birth to puppies naturally. Complications resulting in a C-section may arise in individual dogs of any breed. However, C-sections are common practice for Bulldogs. Approximately 70% or more of Norwegian Bulldogs born in the last 10 years have been delivered by planned or emergency C-section. In the case of English Bulldogs, 86% were delivered by C-section in the period 2000–2010.

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<sup>171</sup> Page 41 of the Recommendation (JU, page 271); see also page 7 of the Proposition (JU, page 297).

<sup>172</sup> Page 70 of the Proposition (JU, pages 370–71).

The proportion of C-sections in Norway has remained high, despite the fact that NKK has worked to reduce the number of planned C-sections for many years. Emergency C-sections – with the associated increased health risk and stress – have had to be used for a fairly large number of Bulldogs which have attempted a natural birth because the dogs were nevertheless unable to give birth naturally.

The district court finds it most likely that the genes of Bulldogs have reduced the ability of the breed to give birth naturally contrary to section 25, second paragraph, b). The breed's genetically determined inability to give birth naturally is an independent reason why Bulldogs should not be used in future breeding pursuant to section 25, third paragraph, of the Animal Welfare Act.

#### 7.4 The minimum threshold for breeding is exceeded at breed level

Following an overall assessment of the seriousness and prevalence of the stresses and strains reviewed in sections 7.2 and 7.3 above, the district court finds that both Cavaliers and Bulldogs exceed the minimum threshold with respect to lawful breeding at breed level pursuant to section 25 of the Animal Welfare Act.

The action for a declaratory judgment brought by the Norwegian Society for Protection of Animals has thus succeeded before the district court.

#### 7.5 The significance of consequence considerations and other policy considerations with respect to subsumption

The Defendants have invoked various policy considerations in support of their claim for judgment in their favour. The submissions are based particularly on the fact that a judgment as claimed by the Norwegian Society for Protection of Animals will undermine, rather than strengthen, the animal welfare of dogs in Norway in several ways that are contrary to both the purpose of the Animal Welfare Act as expressed in section 1 and the general clause in section 3. It has therefore been submitted that a judgment in accordance with the result arrived at by the district court would entail

- Difficulties of delimitation – which breeds other than Cavaliers and Bulldogs are covered by the breeding prohibition in section 25, third paragraph? The delimitation difficulties are claimed to undermine predictability for and threaten the activities of NKK, many pedigree dog clubs other than those for Cavaliers and Bulldogs and a large number of breeders across the entire country. In addition, it has been submitted that the courts will in such case have to expect a flood of new and resource-intensive legal proceedings concerning the breeding of other dog and animal breeds;
- Enforcement difficulties; for example with respect to<sup>173</sup>
  - o What characteristics are covered by the breeding prohibition and/or the prohibition against keeping dogs with these characteristics?
  - o Which breeds will be prohibited?
  - o What about mixed breeds?
  - o What options will apply to dogs of potentially unlawful breeds? Euthanasia? Castration/sterilisation? A breeding prohibition?
  - o How will such a prohibition be enforced? and

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<sup>173</sup> Taken primarily from the statement of the witness Knævelsrud (U, page 1530).



- What about tourists or temporary workers from EEA countries who bring dogs of prohibited breeds with them? What if such a dog is pregnant and gives birth in Norway? etc.;

and

- The consequences and ripple effects if future breeding of the Breeds is relocated out of Norway entirely, or at least out of the sphere of influence and guidance of the Norwegian Clubs; in addition, both Cavaliers and Bulldogs remain popular and in-demand breeds in Norway. In such case, the result is likely to be a combination of greater importation of major animal health problems from abroad than at present, increased unorganised breeding of the Breeds in Norway contrary to the prohibition in section 25, third paragraph, and a related lapse and undermining of current controls and promotion of animal health and guidance given through the voluntary Pedigree Dog Clubs and NKK. This undermining effect will set back efforts to improve animal health at both the national and, not least, the international level, where NKK and the other Scandinavian kennel clubs are a driving force with respect to the FCI and other countries.

The district court would note that the case concerns a determination of whether breeding of the Breeds is contrary to section 25 of the Animal Welfare Act, and a prohibition against continued breeding applicable to the Breeders. No prohibition has been claimed against the keeping, importation or sale of any of the Breeds. The supervisory authority pursuant to section 30 of the Animal Welfare Act is the Norwegian Food Safety Authority, not the judiciary.

As regards the other submissions on this point, it is noted that the sources of law discuss the degree to which the courts may, should or must deviate from or interpret restrictively a statutory text and its preparatory works based on the consideration that the outcome would in such case conflict with the express or assumed purposes or intentions of the statute or the legislature. In the district court's view, this issue does not apply in the present case.

Following consideration of a fundamental and far-reaching Animal Welfare White Paper based on a new ethical platform, and following circulation of the preceding Consultation Paper regarding a new act which attracted broad-based support, the Storting (the Norwegian parliament) adopted an Animal Welfare Act based on a deliberately reinforced prioritisation of the consideration of animal health and welfare, and on a desire that the Norwegian statutory provisions should continue to be globally leading in the future. As far as the district court can see, the ambitious ethical and fundamental priorities and innovations in the Animal Welfare Act were not politically controversial during the legislative process.

Since the act entered into force 12 years ago, the breeding provision has not been reviewed by the courts until the present case. The district court cannot exclude the possibility that the judgment outcome may raise at least some of the policy considerations and consequence considerations invoked by the Defendants. However, the district court finds it clear that the balance between the prohibition, requirements and priorities articulated in the Animal Welfare Act and the preparatory works on the one hand, and the potential consequences of the act being enforced as adopted on the other

hand, must primarily rest with the legislature, for example in the form of new legislation or regulations consistent with the principles in section 25, see the fourth paragraph of the provision.

## 8 Legal costs

The Norwegian Society for Protection of Animals has won the legal proceedings in all respects or in all material respects, and pursuant to the general rule in section 20-2(1) of the Dispute Act is entitled to full reimbursement by the opposing party of its reasonable, necessary and proportionate legal costs.

Pursuant to the exception rule in section 20-2(3), however, the court may exempt the losing party from liability for costs in full or in part if “*weighty reasons make it reasonable to do so*”. In sub-paragraphs a) to c), the statutory text particularises the reasonableness grounds to which particular weight shall be given in such cases. However, the list is neither exhaustive nor decisive; the decisive factor is whether there are sufficiently weighty reasonableness grounds to mitigate liability for costs fully, or at least partly, in the present case. The clearly dominant, and most commonly applied, general rule is – and shall be – that the losing party must reimburse the reasonable, necessary and proportionate legal costs of the winning party.

The case has raised fundamental questions of law which have not previously been resolved by the courts. This factor is often given considerable weight, particularly by the Supreme Court, and in such cases often also with an effect on costs incurred before lower courts.

The need for legal clarification has been particularly strong in the present case, due to both:

- the fragmented and complex group of parties involved in dog breeding as described in section 6.4.2 above, which appears to have resulted in diffusion of responsibility, failure to act and perceived powerlessness on the part of several individual parties; and
- the self-perceived restrictions on action of parties as described in section 6.4.3 above, as a result of the potential animal welfare consequences of a presumed fear that individual dog buyers and/or breeders may perceive enforcement of the Animal Welfare Act as adopted as too rigorous, lacking in sufficient legitimacy or support or, at least, as too far-reaching or disproportionate in its concrete consequences at individual level. Such a fear cannot be dismissed as entirely unfounded; see the reactions to DKK’s strict registration restrictions discussed in section 6.4.3 above and the actual breeding development of the Cavalier’s skull and muzzle form contrary to the applicable, adopted breed standard as illustrated in section 6.2.1 above.

The district court has also given substantial weight to the fact that leading parties on both sides of the legal proceedings are non-profit, voluntary member organisations with largely coincident objectives, and limited financial resources. The actions of NKK and the Pedigree Dog Clubs appear to have made a proactive, helpful contribution over a prolonged period of time to achievement of

the coincident objectives of the parties and the Animal Welfare Act; see the list of examples in section 6.4.4 above.

Finally, the Norwegian Society for Protection of Animals has emphasised that the legal proceedings were brought against the Defendants for procedural reasons,<sup>174</sup> not because the Defendants bear particular blame or culpability or responsibility for actions or omissions in their breeding activities. This also applies to the defendant Breeders, who are acknowledged to represent “*best practice*” in Norwegian breeding of the Breeds and who are largely private individuals who have engaged in “*hobby breeding*” on a non-profit basis on a limited financial scale. It would be somewhat paradoxical if a necessary action for enforcement were to mean that the voluntary dog club system has to discontinue its activities and/or that conscientious hobby breeders become personally bankrupt as a result of the need to clarify the content and scope of the breeding provision.

Following an overall assessment, the district court has concluded that weighty reasons make it reasonable not to award any legal costs whatsoever in the present case; see section 20-2(3) of the Dispute Act.

The judgment is unanimous.

The judgment has not been pronounced by the statutory deadline of four weeks; see section 19-4(5) of the Dispute Act. This is due to a combination of the scope of the case, the need to rehear the case in writing pursuant to section 9-17(2) of the Dispute Act and intervening scheduled hearings in other cases.

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<sup>174</sup> Relating to the “*legal interest*” requirement in section 1-3(2) of the Dispute Act.

## CONCLUSION OF JUDGMENT

With respect to the Norwegian Kennel Club:

1. It is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed English Bulldog.
2. It is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed Cavalier King Charles Spaniel.

With respect to the Norwegian Bulldog Club:

1. It is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed English Bulldog.

With respect to the Norwegian Cavalier King Charles Spaniel Club:

1. It is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed Cavalier King Charles Spaniel.

With respect to Inger Pettersen, Liv-Anne Klubben and Christel Hagen:

1. It is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed Cavalier King Charles Spaniel.
2. Inger Pettersen, Liv-Anne Klubben and Christel Hagen are prohibited from breeding the dog breed Cavalier King Charles Spaniel.

With respect to Lena Haugland, Liss Bodil Olsen and Jorunn Rosander:

1. It is contrary to section 25, first, second and third paragraphs, of the Animal Welfare Act to breed the dog breed English Bulldog.
2. Lena Haugland, Liss Bodil Olsen and Jorunn Rosander are prohibited from breeding the dog breed English Bulldog.

With respect to all Defendants:

1. No legal costs are awarded.

Court adjourned

Per Kaare Nerdrum

Katja Nilsson

Cecilie Marie Mejdell

Guidance on appeals in civil cases is enclosed.