

DECISION no. 23
From 23rd of January 2018

Referring to the unconstitutionality exception of the dispositions of art. 13³ align.(5) and of the phrase “only after their identification”, contained in art.13⁴ from the Government Emergency Ordinance no. 155/2001 regarding the approval of the stray dogs management program, by reference to the first thesis of this article, regarding “the rabies vaccination action of dogs with owner”

Valer Dorneanu	- president
Marian Enache	- judge
Petre Lăzăroiu	- judge
Daniel Marius Morar	- judge
Mircea Ștefan Minea	- judge
Mona-Maria Pivniceru	- judge
Livia Doina Stanciu	- judge
Simona-Maya Teodoriu	- judge
Varga Attila	- judge
Cristina Cătălina Turcu	- assistant magistrate

With the participation of the Public Ministry’s representative, prosecutor Luminița Nicolescu.

1. On the role stands the settlement of the unconstitutionality exception of the provisions of art. 133 align.(5) and of the phrase “*only after their identification*”, contained in art.134 from the Government Emergency Ordinance no. 155/2001 regarding the approval for the program of stray dogs management, exception raised by The Electronic Register of Domestic and Pet Animals Association, in the File no .920/33/2015 of the Court of Appeal Cluj- 3rd administrative and fiscal contentious Division, and which is the subject of The Constitutional Court’s File no. 70 D/2016.

2. To the nominal call, is presented the defendant of the exception author, lawyer Ovidiu Podaru, with the power of attorney submitted to the file, missing the other part, to whom the citation procedure is legally fulfilled.

3. The assistant magistrate refers to the fact that the file is at the second term of the trial. To the File, both The legislative Council and the College of Veterinarian Surgeons have submitted points of view regarding the incidental legislative framework in question, the author of exception submitted a specialist’s opinion on rabies problem, as well as replies received by the author from The National Sanitary-Veterinary and for Food Safety Authority and from The Sanitary-Veterinary County Directorates, resulting the number of animal rabies cases. It have also been provided documents from hospitals, referring to the number of people bitten by dogs and vaccinated for rabies, and also a copy of the World Health Organization’s web page, where “The European Bulletin of Rabies” is presented, covering the rabies cases and their territorial dispersion in Romania and the neighboring countries.

4. The case being in the state of judgment, the president gives the word to the defendant of the exception author, who demands its admission, showing, essentially, that,

according to art.34 from the Constitution, the state must manifest an active attitude to the prevention of any disease that would affect the health. In this regard, the Government Ordinance no.42/2004, regarding the organization of the sanitary- veterinary and for food safety activity, which, in art. 1 and 3, details the evoked constitutional principle, was adopted. This is the context in which the criticized legal regulations have arisen. Rabies vaccination is free, but is conditioned by dog's identification and registration in The Registry of evidence for dogs with owner, which implies costs for its owner, according to the submitted files. Therefore, although the vaccination is free, this can not be done without identification. The risk caused by rabies infection on animals, and then, by its transmission to human beings is really high in Romania, that is precisely why the funds allocated to vaccination are provided by The European Union. Danger comes from transit through the territory by wild animals, respectively by those from Ukraine, which is the main outbreak of rabies in Europe. It is shown that, because of the condition of the dog's vaccination on their identification, in Romania there are not vaccinated more than 50% of the dogs with owner, fact acknowledged by the sanitary- veterinary authorities. If at the level of reports the number animals infection outbreaks has decreased, the danger remains the same regarding humans, the number of people vaccinated against rabies being of 15000-16000 annually. Rabies is a disease that causes death, and the only chance for a person bitten by an animal is prophylactic vaccination. The author's defender demands the application by analogy of the considered principles related to gratuity, retained in Constitutional Court's Decisions no. 251 from 17th of September 2002, no. 548 from 15th of May 2008 and no. 191 from 31st of March 2015. He appreciates that genuine gratuity does not have to be conditioned by a fee or another operation which consists in another consideration. He shows that the Government's point of view refers to the property right. In relation to this point of view, he appreciates that the constitutional litigation court should look the problem from the perspective of a third party which may be affected by the danger of a bite from a dog whose owner refuses to identify, respectively to vaccinate the animal against rabies. This third party has no possibility of defending his own health. The state must interfere in order for the operation of vaccination not to be conditioned by identification, or to bear the costs of identification.

5. The President gives the word to the judge, Mrs. Simona-Maya Teodoroiu, who addresses three questions to the defender of the exception's author, respectively: since when has the rabies vaccination been done in Romania, how exactly were the records of vaccinated dogs kept before introducing the identification by microchip and whether the vaccination used to be free or did imply costs.

6. The defender of the exception's author requests the Court that these questions to be answered by Mister Dr. Prof. Paul Alexandru- veterinarian, as specialist.

7. The Court gives the word to Mister Paul Alexandru, who, essentially states that rabies vaccination was introduced in Romania in 1954, when the first cases of illness in humans were reported. The records regarding the animals identification has gone through three stages: the first one consisted of the description of the animal, the second consisted of the nasal fingerprint and the holding of health books, and the last one represents the identification by microchip implantation. In his opinion, the last phase must be free of charge, because the dog has no agro-zoo-alimentary value, thus, in the rural environment owners will not pay for dogs identification. In addition, vaccination is conditioned by identification only

in dogs' case, but in case of other animal species that may be infected with rabies, there is no mandatory identification prior the vaccination.

8. The representative of the Public Ministry requests the rejection, as unfounded, of the exception of unconstitutionality. In this regard, he shows that art. 34 from The Constitution enshrines the complex right to health care, as it relates to the human condition at the level of the current life requirements, by its content ensuring both the preservation and the development of its physical and mental qualities that allow it a real participation in the social life. The restriction of a constitutional right is admitted, answering to the need to ensure the rights' legal security and the freedom of others. The imposition by the legislator of the obligation to bear the costs of identification is not excessive, such as to affect the existence of the right itself.

THE COURT,

Considering the documents and the papers of the file, states the following:

9. By the Closing from 13th of January 2016, pronounced in the File no. 920/33/2015*, **The Court of Appeal Cluj – 3rd Section administrative and fiscal litigation noticed the Constitutional Court with the exception of unconstitutionality of the art.133³ align.(5) and art.134⁴ stipulations from The Government's Emergency Ordinance no.155/2001 regarding the approval of the management program for dogs without owner.** The exception was invoked by the Electronic Register of Domestic and Pet Animals Association, in a case concerning the request for annulment of the a art.3 align.(2), art.4 align.(1), art.7 align.(2) and art.10 from the Norms regarding the identification and registration of dogs with owner, approved by the president of The National Sanitary-Veterinary and for Food Safety Authority's Order.

10. In motivating the exception of unconstitutionality, the author points out that the criticized law is unconstitutional, insofar as it makes the rabies vaccination of dogs conditional upon their identification and registration in the Register of Dogs with Owners (hereinafter referred to as RECS), bringing a touch to art.34 align.(1) and (2) from the Fundamental Law, regarding the right to health protection.

11. Regarding the stipulations of the art.13³ align. (5) from Government's Emergency Ordinance no.155/2001, the author points out that, by means of these, the obligation to identify the dogs with owner is regulated, which implies an exorbitant expense in relation to the population's income, especially in rural areas, where a family may need more dogs. The effect of the criticized law is the delay or the evasion of dogs' registration and, subsequently, from rabies vaccination, or solving the abandonment of animals, in order to avoid sanctions.

12. In both of these mentioned hypotheses, dogs will not be vaccinated against rabies because, according to art.133 of the Government's Emergency Ordinance no.155 / 2001, the rabies vaccination action is carried out only after their identification. This creates the risk of a rabies epidemic, which violates art. 34 align (1) and (2) of the Constitution, regarding the right to health protection.

13. The author considers that the critiqued texts transpose the provisions of Regulation (EU) No. 576/2013 of the European Parliament and of the Council from 12 June

2013 regarding the non-commercial movement of pet animals and repealing the Regulation (EC) No 998/2003. He compares the provisions of the Regulation with the regulations contained in the Norms for the identification and registration of dogs with owners approved by the Order of the President of the National Sanitary Veterinary and Food Safety Authority no.1 / 2014, showing that the Regulation refers to the dogs accompanying their owners in a non-commercial movement, and art. 7 align. (2) of the mentioned Norms, when they are taken out in public spaces. The conclusion is that the legislator extended the application of the Regulation's provisions, which regulates the non-commercial movement of pet animals for all situations where dogs with owner are taken out in public places, without distinguishing whether they are utility or companion dogs. Also, the author refers to the costs related to the identification and registration of dogs in R.E.C.S., pointing out that the mentioned Regulation makes no reference to the person who will bear the expenses related to the obligations written in it, whereas art.133 align. (5) of the Government's Emergency Ordinance no.155 / 2001 regulates the costs' bearing by the owner. Or, the costs necessary for identification are left to the discretion of veterinarians, each setting a global price, the high level of prices leading to the aforementioned consequences, namely delaying or obstructing dog registration or abandoning animals. In conclusion, the legal criticized provisions, which lets the obligation of the identification costs to be borne by the owner, and by which the rabies vaccination is conditional upon the identification of the dogs, violate the art.34 align. (1) and (2) of the Constitution.

14. **The Court of Appeal Cluj^{3rd} administrative and fiscal contentious Division** considers that the exception of unconstitutionality is unfounded, because the method of management established by the legislator applies to all those in the same situation.

15. According to the stipulations of art.30 align.(1) from the Law no.47/1992, the closure of the referral was communicated to the presidents of the two Chambers of Parliament, to the Government, and also to People's Advocate, in order to express their points of view on the raised exception of unconstitutionality.

16. **The Government** considers that the exception of unconstitutionality of the criticized legal stipulations is unfounded, showing that, by the stipulations of the art. 13³ align.(5) from Government's Emergency Ordinance no. 155/2001, is being established a limitation of the ownership right allowed by the dispositions of the art.44 align.(1), second thesis from Constitution. According to art.73 align.(3) digit m) from Constitution, the legal regime of the ownership right and the limits that the legislator may bring to this right are established by organic law, the emergency ordinance being able to regulate in the organic law's field. There is no question of violating the right to health protection, because the obligation of dogs identification before rabies vaccination is a limitation of the ownership right, established in accordance with the provisions of the fundamental Law.

17. **The Presidents of the two Chambers of Parliament and the People's Advocate** did not communicate their points of view on the exception of unconstitutionality.

THE COURT,

examining the conclusion of the referral, the Government's opinion, the report drawn up by the reporting judge, the documents submitted, the conclusions from the defender of the

exception author, from the present expert and the prosecutor, the criticized legal provisions, in relation to the provisions from the Constitution, as well as the Law no.47/1992, remembers the following:

18. The Constitutional Court was legally notified, and has the capacity, according to the provisions of the art.146 digit d) from the Constitution, as well as of the art.1 align.(2) from the art.2, 3, 10 and 29 from the Law no.47/1992, to solve the exception of unconstitutionality.

19. **The object of the exception of unconstitutionality**, as it was retained in the termination of the referral, is the provisions of art.13³ align. (5) and art.13⁴ of the Government's Emergency Ordinance no.155/2001 regarding the approval of the program for stray dogs' management, published in the Official Monitor of Romania, Part I, no. 794 from 13th of December 2001, with the changes made by the Law no.258 / 2013 amending and supplementing the Government's Emergency Ordinance no.155 / 2001 on the approval of the dogs without owner management program, published in the Official Monitor of Romania, Part I, no.601 from 26th of September, 2013, which have the following content:

- Art.13³ align.(5): *"The identification of dogs with owner is mandatory and is borne by the owner."*
- Art.13⁴: *"The action vaccination against rabies for dogs with owner and for those that are about to be given to adoption is done only after their identification."*

20. From the examination of the critics formulated by the exception's author, The Court notes that its subject matter is the stipulations of the art.13³ align.(5), as well as those of the phrase *"only after their identification"*, contained within the art.13⁴ from the Government's Emergency Ordinance no.155/2001 regarding the approval of the management program for stray dogs, by reference to the first thesis of this article, regarding *"the action of vaccination against rabies of dogs with owner"*. In this regard, The Court notices that the second thesis of the art.13⁴ from the Government's Emergency Ordinance no.155/2001 on dogs that are about to be given to adoption has not been criticized by the author, because the expenses resulting after deworming, rabies vaccination, sterilization and identification by microchip implantation, as well as post-adoption registration in R.E.C.S., is the responsibility of the specialized services for stray dogs management, established at the level of the administrative-territorial units or, as a result of the concession, of legal entities - associations and foundations that carry out activities in the field of animal protection, as it results from art.13³ align. (1) of the Government's Emergency Ordinance no.155 / 2001. For dogs given for adoption by them, there are no impediments regarding the compliance of the order for identification and the subsequent vaccination, as regulated by art.13⁴ from the Government's Emergency Ordinance no.155/2001, because the mentioned persons have to dispose, through the norm's hypothesis, of budgets allocated to these operations.

21. The author of the exception of unconstitutionality claims that the criticized texts of the law violate the constitutional stipulations of the art.34 align.(1) and (2) regarding the right to health protection.

22. By examining the exception of unconstitutionality of the stipulations from art. 13³ align. (5) of the Government's Emergency Ordinance no.155 / 2001, the Court notices that the term *"identification"* is defined in art.2 digit i), from the Norms regarding the

identification and registration of dogs with owner, approved by the Order no.1/2014 of the President of The National Sanitary-Veterinary and for Food Safety Authority, published in the Official Monitor of Romania, Part I, no.31 from 154th of January 2014, as the ensemble of operations and procedures that aim to individualize an animal, using permanent ways of identification. The way of identification is the microchip in which the information necessary for the unique identification of the animal is entered. According to art.3 align.(5) from the aforementioned Norms, dogs are exclusively identified by implanting a microchip within a maximum of 90 days from birth, but in any case before its selling, free donation or disposal in public spaces, by the veterinarians in veterinary medical care units registered within the unique Registry of the veterinary offices with or without legal personality, owned by the College of Veterinarian Surgeons, as well as from the universities that owe university veterinary clinics, registered as R.E.C.S. identifiers and operators.

23. The Court finds that the purpose of the identification is “registration”, which represents the collection and introduction operation in R.E.C.S. of the data regarding the identification of the animal, the events, veterinary information and owner’s identification data. The represents, therefore, a base of the previously nominated information, which is kept in an electronical form and archived into a database run by the College of Veterinary Surgeons.

24. The Court remembers that the identification for the purpose of registration in R.E.C.S. and the release of the health book as a result of identification, represent operations aimed for the prevention of abandonment on the public domain, the surveillance of breeding dogs, as well as the identification of the owner in the case of liability for the damage caused by the animal, under the conditions of the art. 1375 from the Civil Code.

25. Also, the Court notes that these operations serve the health and welfare of animals, within the meaning of the art.4 align.(1) from the European Convention for pets’ protection, ratified by law no.60/2004 regarding the ratification of the European Convention for pets’ protection, signed in Strasbourg on 23rd of June 2003, published in the Official Monitor of Romania, Part I, no.400 from 5th of May 2004, as well as within the meaning of the art.1 align.(1) from Lawno.205/2004 regarding animals’ protection, republished in The Official Monitor of Romania, Part I, no.320 from 30th of April 2014.

26. Also, in its jurisprudence, the Court has stated that the animals may be seen as a constituent part of a sustainable and ecological balanced environment, their protection being embedded within the wider framework of ensuring conditions for maintaining a healthy nature, of which to benefit both the present and future generations. At the same time, the quality of the environment implies a healthy fauna, the problems of animals may also affect people’s health and safety. Therefore, the concern for animals’ health appears as a reflection of people’s right to health protection, guaranteed at a constitutional level by the stipulations of the art.34, which establishes the duty of the State to take measures to ensure hygiene and public health (see Decision no.511 from 4th of July 2017, published in the Official Monitory of Romania, Part I, no.788 from 4th of October 2017, par.14 and 15).

27. Taking into account the things exposed, the Court notes that the dispositions of the art.13³ align.(5) from the Government’s Emergency Ordinance no.155/2001 which establishes the obligation to identify the dogs with owner, do not prejudice art.34 align.(1) and(2) regarding the right to health protection from the fundamental Law.

28. The Court finds, regarding the costs of the identification and subsequently the registration operations, that they are incurred by the owner, as it results from the text of the law under control, as well as from the art.7 align.(10) from the Norms regarding the identification and registration of dogs with owner, and that the price on which the operations are carried out is established according to the art.36 from the Law no.160/1998 on the organization and exercise of the profession of veterinarian, republished in the Official Monitor of Romania, Part. I, No.209 from 24th of March 2014, according to which the tariffs and the fees for the free medical-veterinary practice are set by each veterinarian. The Court notes that the risk of disproportionate charges in relation to the income of the dogs' owners should be avoided, precisely in order to prevent situations in which they would objectively be unable to bear the costs of identification, registration in R.E.C.S. or the issue of the health book.

29. Regarding the exception of the unconstitutionality of the phrase "only after their identification", contained in art.13³ of the Government's Emergency Ordinance no.155 / 2001, referring to the first thesis of this article, regarding the "*rabies vaccination action of dogs with owner*" the Court observes that the stipulations of the art. 34 of the Constitution guarantee the protection of health and establish the obligation of the State to take the necessary measures to ensure hygiene and public health. In this regard, the organization of healthcare, the social assurance system, the control of the medical professions and paramedical activities, as well as of some other measures to protect the physical and mental health of the person, is left to the discretion of the legislator. Thus, the Law no.95 / 2006 on health reform was adopted, republished in the Official Monitor of Romania, Part I, no. 652 from 28th of August 2015, which regulates the field of public health, a major social interest objective. One of the ways that guarantees the right to health protection is the prevention and control of diseases, according to art.5 digit d) from the Law no.95/2006.

30. The Court notes that prevention and control of diseases that are contagious to people are necessary, giving effect and providing a guarantee of compliance of the art. 34 from the Constitution. In this regard, according to art.1 from the Government's Ordinance no. 42/2004 regarding the organization of veterinary and food safety activities, published in the Official Monitor of Romania, Part I, no.94 from 31st of January 2004, the prevention of the transmission of diseases from animals to humans is a state problem and a duty for all the inhabitants of the country, being a part of the public health policies developed under the previously cited constitutional stipulations and of the infraconstitutional (legal) ones.

31. In this context, the Court notes that, according to the art.2 a) and b) from the Sanitary Veterinary Norm regarding general measures for the prevention and control of rabies at domestic and wild animals, approved by the Order of the President of the National Sanitary Veterinary and Food Safety Authority No.29 / 2008, published in the Official Monitor of Romania, Part I, no.323 from 24th of April 2008, rabies is a zoonosis, transmissible disease from animals to humans, defined as acute infectious encephalomyelitis, common to humans and different species of domestic and wild animals, characterized clinically by extremely serious nerve symptoms, always followed by death.

32. The Court notes that the rabies vaccination actions are partly carried out, according to the Government's Decision no.1156/2013 for the approval of the sanitary-veterinary actions, contained in the Program of actions for surveillance, prevention, control

and eradication of animal diseases, the ones contagious from animals to human, animals' and environment's protection, identification and registration of cattle, swine, sheep, goats and equidae, of the actions foreseen in the surveillance and control program in the domain of food safety, as well as of the tariffs related to them, published in the Official Monitor of Romania, Part I, no, 8, from 7th of January 2014. In accordance with art.4 align.(3) of this Document, the equivalent of the rabies vaccine within the above program shall be borne by the budget of the National Sanitary Veterinary and for Food Safety Authority. Also, the rabies vaccination can be done at the initiative of the owner in a free-practice medical office, where the price of the vaccine is borne by the owner.

33. The Court observes that the legislator, by the phrase "only after their identification" contained in the art.13³ of the Government's Emergency Ordinance no.155 / 2001, makes the rabies vaccination action of dogs with owner conditional upon the dog's prior identification by the owner. Given that rabies is a disease transmissible from animals to human, lethal in the absence of an early-stage vaccination, the conditioning of the dog's vaccination upon its prior identification is likely to prejudice art. 34 regarding the right to health protection from the Constitution, in terms of preventive measures that the state has to adopt.

34. The Court notes that the legislator must prioritize the objectives in relation to their importance and impact in respecting the right to health, **so that the rabies vaccination of dogs with owner to precede the identification and not vice versa**. The record of the rabies vaccination will continue to be kept in the dog's health book, which will be issued according to art.13³ align. (3), from the Government's Emergency Ordinance no.155 / 2001, having unique serial and number, as well as in the records of the doctors conducting the vaccination.

35. The Court notes the stipulations of the Regulation (EU) No 576/2013 of the European Parliament and of the Council from 12th of June 2013, regarding the non-commercial movement of pet animals and repealing of the Regulation (EC) No 998/2003 published in the Official Journal of the European Union, Series L, No 178 from 28th of June 2013, which, in Annex III on the validity requirements for rabies vaccines, regulates in point 2 the conditions that a rabies vaccination has to meet. Point 2, digit (d) mentions, in regard to the date of the vaccine administration, that this should not be earlier than the date of application of the transponder (microchip) or the tattoo, or than the date of reading the transponder or the tattoo, indicated in the corresponding section from the identification document. The Court notices that these stipulations concern, however, a particular situation, namely, of pet animals circulating within the territory of the Member States, without being the subject of commercial traffic, requiring special regulation. These animals can not, however, be taken out from the country without a valid passport, and, therefore, they are necessarily identified. The Court, therefore, notes that the rules regulate a special situation (exit and movement within the territory of the Member States) can not be objectively and reasonably extended and can not be applied to the general situation under all aspects of the legal regime applicable to vaccination of dogs with owner found on the national territory, animals which are not traveling outside the country.

36. For the reasons outlined above, under the art.146 digit d) and the art.147 align.(4) from the Constitution, the art.1-3, art.11 align(1) digit A.d) and art.29 from the Law

no.47/1992, by unanimity of votes regarding the art.13³ align.(5) from the Government's Emergency Ordinance no.155/2001 and by majority of votes regarding the art.13⁴ from the Government's Emergency Ordinance no.155/2001,

THE CONSTITUTIONAL COURT

In the name of law

Decides:

1. Rejects, as unfounded, the exception of unconstitutionality raised by the The Electronic Register of Domestic and Pet Animals Association, in the File no.920/33/2015* of the Court of Appeal Cluj- 3rd administrative and fiscal contentious Division and finds that the stipulations of the art.13³ align.(5) from the Government's Emergency Ordinance no.155/2001 regarding the approval of the stray dog management program, are constitutional in relation to the formulated critics.

2. Admits the exception of unconstitutionality formulated by the same author in the file of the same instance and finds that the phrase "*only after their identification*" contained in art.13⁴ from the Government's Emergency Ordinance no.155/2001 regarding the approval of the stray dog management program, by reference to the first thesis of this article, referring to "*the rabies vaccination action of dogs with owner*", is unconstitutional.

Definitive and generally mandatory.

The decision will be communicated to the two Chambers of the Parliament, the Government and the Court of Appeal Cluj – 3rd administrative and fiscal contentious Division and will be published in the Official Monitor of Romania, Part I.

Pronounced in the meeting from 23rd of January 2018.