

## **DECISION C-439/11 The keeping of domestic animals as expression of fundamental right.**

The Constitutional Court declared Constitutional the underlined phrase “Objects that may damage physical integrity of passengers, cannot be carried in public passenger transport vehicles; neither can animals” contained in article 87 of Act No. 769 of 2002, on the understanding that domestic animals are exempt from this ban, provided that they are kept and transported in conditions of health, safety, comfort and tranquility, according to rules applicable.

The Constitutional Court has recognized in different judgments that the keeping of domestic animals is an expression of fundamental rights, since there is no doubt that the close link arising from the coexistence between a man and an animal, is a good expression of the right to free development of one’s personality (Article 16 of the Colombian Constitution), understood as the right to self-determination or the freedom of action. Besides, it is an expression of the right to privacy (Article 15 of the Colombian Constitution), which is characteristic of the private, personal and family life, without external interferences that prevent, for example, the right to live with a pet with no other constraints than those imposed by the rights of others and the legal framework. Therefore, the Court cannot deny that those rights should be granted protection and legal guarantee.

Simultaneously, the Court has acknowledged that the coexistence between human beings and domestic animals is not unrelated to different disputes. Thus, the Court has sometimes mediated to solve the tension that arises between the rights of animal owners and those of people who oppose the animals to be kept in areas open to the public. For example, the Court has endorsed the keeping of dogs in condominiums, provided that the animal owners follow some rules aimed at preserving safe and healthy conditions for the inhabitants of the residential units (Decision T-035 / 97).

Once the Court carried out an assessment of the purpose, appropriateness, necessity and proportionality of the measure taken to prohibit the access of animals to public transport, it found that such prohibition is in conformity with the Colombian Constitution but only in relation to the species classified as “wild fauna” by the National Code on Renewable Natural Resources and other concordant norms, in which there is an express prohibition for individuals to keep these animals.

The Court, instead, considers that such measure is neither proportional nor necessary regarding pets, because there are measures different from those prohibiting to carry them in the public passenger transport, that also allow to achieve high levels of healthiness, safety and comfort for passengers without having to sacrifice fundamental rights of minorities who have a pet.

Accordingly, pets must be transported as set out in the article 108, paragraph (c) of Act No. 746 of 2002. Equally, rules may not set conditions that become stumbling blocks to make this measure possible.