

## PREVENTION OF CRUELTY TO ANIMALS: LATEST DEVELOPMENTS

*The fact that the National Council of Societies for the Prevention of Cruelty to Animals ('the NSPCA') is a juristic person has become an obstacle in its proper functioning. This is because, in terms of the Criminal Procedure Act, only private persons (as opposed to entities/'juristic persons') may pursue private prosecutions in any case where the police or other enforcement agency (via the office of the Director of Public Prosecutions) declines to prosecute an alleged offence. In other words, only private people can become private prosecutors and the NSPCA cannot do so itself.*

The Societies for the Prevention of Cruelty to Animals Act 169 of 1993 regulates the activities of societies that are involved in the prevention of animal cruelty and abuse. The NSPCA was established in terms of this Act. This body is tasked with, amongst other things, preventing the ill-treatment of animals and promoting co-operation between societies that are active in the arena of cruelty prevention.

The fact that only private people can become private prosecutors hinders the NSPCA from performing its duties. It is best clarified with an example: Where Mr A notices that a group of worshippers are maltreating an animal not befitting their religion, he can report this to the police for an investigation and prosecution. If the police (via the Director of Public Prosecution) decide not to prosecute, Mr A may, after a *nolle prosequi* (a Latin phrase meaning "we shall no longer prosecute") certificate had been issued to him, prosecute the alleged transgressors privately, in his own name. If Mr A was an entity, such as ABC (Pty) Ltd (or like the NSPCA), such private prosecution is impossible as the Criminal Procedure Act does not allow the Attorney-General to issue such certificate to a juristic person.

In a matter that has been filed in the North Gauteng High Court: Pretoria, the NSPCA has challenged this provision and argued that it is unconstitutional to allow only private persons to bring private prosecutions and to prohibit juristic persons from also doing so. This, so the organisation states, arbitrarily differentiates between private and juristic persons and there is no rational basis for the distinction; neither is any legitimate purpose served thereby. It has the effect of hampering them (the NSPCA) in their 'policing function' in instances where the State refuses to prosecute. In September this year, the Court ordered the Minister of Justice and the National Director of Public Prosecutions to file answering affidavits. One will have to wait and see what happens when the parties meet each other back in court.

The exclusion of juristic persons from instituting private prosecutions is more than a legal

dilemma and one which very much touches upon society's moral obligations. This is especially true when we acknowledge the fact that animals are placed in our care. Animals are not afforded rights that are equal to human rights but they do have the protection of care guaranteed by the Animal Protection Act and our Constitution.

It will be in the best interests of our animals and society in general if the NSPCA and other entities are allowed to privately prosecute those who make themselves guilty of animal abuse and cruelty.

Contact us at [info@stbb.co.za](mailto:info@stbb.co.za) should you have any queries or require assistance in this regard.

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