

**LEGAL DETERMINANTS FOR ANIMAL SLAUGHTERING
WITH PARTICULAR FOCUS ON RITUAL SLAUGHTER
UNDER POLISH AND ESTONIAN LEGISLATION***

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ABSTRACT

The so-called ritual slaughter is one of the basic religious rules for adherents of Judaism and Islam. An important dimension of religious freedom is the freedom to perform acts of prayer and worship privately and publicly as well. Therefore, this also includes offering sacrifices and acquiring meat in accordance with tradition, which, in the case of adherents of Judaism and Islam, entails the practice of ritual slaughter. In European Union Member States, Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at killing has been effective since 1 January 2013. Under this regulation, animals are to be killed only after prior stunning, in accordance with the methods and detailed requirements related to the use of these methods as set out in Annex 1. The analysis of international law provisions indicates that although international law allows free practice of religious worship and related rites, the national legislature individually regulates the content of this legislation, taking into account the customary rules, principles and values applicable in a given country, as well as the legislation aimed at the protection of animals.

Key words: animal rights, ritual slaughter, stunning, slaughter

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1. GENERAL REMARKS

The so-called ritual slaughter is one of the basic religious rules for adherents of Judaism (*shechita* - slaughter in Hebrew) and Islam (*halal* – means everything that is allowed in Islam: in terms of nutrition, it includes the ban on alcohol, pork, carrion, blood and the requirement that conscious animals are to be slaughtered according to specific rules; it can only be done by a Muslim who speaks a religious formula). In the Polish legal scholarly opinion, ritual slaughter is defined as a slaughter carried out according to religious rules for the needs of adherents of a specific religion¹, or more generally as a slaughter compliant with religious customs².

An important dimension of religious freedom is the freedom to perform acts of prayer and worship privately and publicly as well³. Therefore, this also includes offering sacrifices and acquiring meat in accordance with tradition, which, in the case of adherents of Judaism (*shechita*) and Islam (*halal*), entails the practice of ritual slaughter⁴.

¹ Sławomir Mroczkowski, Anna Frieske, *Prawna ochrona zwierząt gospodarskich*, Bydgoszcz, 2015, p. 89.

² Katarzyna Lipińska, „Czy w Polsce jest dozwolony rytualny ubój zwierząt”, *Przegląd Prawa Ochrony Środowiska*, 1(2011): 11.

³ Tadeusz Zadykowicz, „Wolność religijna jako prawo człowieka w kontekście współczesności”, [in:] „Prawa człowieka. W 60. rocznicę uchwalenia Powszechnej Deklaracji Praw Człowieka. Przesłanie moralne Kościoła”, eds. Krzysztof Jezyna, Tadeusz Zadykowicz, Lublin 2010, p. 149; Anna Frieske, Beata Sitkowska, Dariusz Piwczyński, Sławomir Mroczkowski, „Rytualny ubój zwierząt”, *Przegląd Hodowlany*, 2(2002), p. 32.

⁴ Joanna Cukras-Stelągowska, „Wokół debaty nad ubojem rytualnym w Polsce- analiza dyskursów publicznych”, *Spoleczeństwo i polityka* no. 4 (45)/2015, p. 139. The practice of ritual slaughter is based on commandments set out in the Torah, Talmud and Quran. See e.g. Waldemar Chrostowski, „Dobroć wobec zwierząt w Biblii”, [in:] „Pieśniami dla mnie Twoje przykazania. Księga Pamiętkowa dla Księdza Profesora Janusza Frankowskiego w 50. rocznicę święceń kapłańskich i 75. rocznicę urodzin”, ed. Waldemar Chrostowski. Warszawa 2003, p. 104; E. Prost, „Ubój rytualny”, *Medycyna Weterynaryjna*, 12/1995, p. 727; Alan Unterman, „Szcita”, [in:] „Encyklopedia tradycji i legend żydowskich”, Warszawa 2002, p. 266. More on ritual slaughter in the historical context, see e.g. Edward Lipiński, „Prawo bliskowschodnie w starożytności”, Lublin 2009, p. 5 et seq.; Michał Rudy, Andrzej Rudy, „Normy religijne”, [in:] Michał Rudy, Andrzej Rudy, Paweł Mazur, „Ubój rytualny w prawie administracyjnym”, Warszawa 2013, pp. 17-18. Ritual slaughter has the nature of a religious rite. As proposed by Anna Frieske, Beata Sitkowska, Dari-

The religion of Islam is based on the provisions of the Quran, which is the source of all of its most important doctrinal rules. The Quran prohibits, among other things, the consumption of blood, pork and carrion, and requires animals to be slaughtered in a ritualistic manner. The allowed meat must comply with halal rules, i.e. satisfy the following conditions: during slaughter, the animal must be turned towards the direction of the Muslim prayer, i.e. the city of Mecca; the slaughter must be carried out by a specially licensed Muslim, pronouncing the formula “bismillah” and “Allahu akbar”; the animal must not be stunned or otherwise deprived of consciousness; during the slaughter, a blow to the animal’s carotid arteries should be struck in order to make it bleed out as quickly as possible⁵.

P. Kuczma proposed a thesis that the question of admissibility of ritual slaughter had not been precisely regulated in either international or European laws⁶. International conventions proclaim freedom of conscience and religion, but they fail to specify acceptable forms of exercising it. For example, the Arab Charter on Human Rights of 15 September 1994 completely ignores the issue of ritual slaughter (the practice of ritual slaughter was considered so strongly rooted in the Islamic religion that it was considered that there is no need to note the admissibility of this practice directly in the Convention)⁷, while the Cairo Declaration on Human Rights in Islam

usz Piwczyński, Sławomir Mroczkowski, “Rytualny ubój zwierząt”, *Przegląd Hodowlany*, 2(2002), p. 32.

⁵ An imperative to consume ritually slaughtered meat originates from the Koran, which states: Prohibited to you are dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah, and [those animals] killed by strangling or by a violent blow or by a head-long fall or by the goring of horns, and those from which a wild animal has eaten, except what you [are able to] slaughter [before its death], and those which are sacrificed on stone altars”. (The Quran, Surah The Table spread with Food, 5:3). The rules of religious (ritual) slaughter are specified by the Sunnah (tradition), which as a collection of stories about the deeds and statements of the prophet Mohammed constitutes the Muslim religious tradition, is a source of faith and one of the foundations of Islamic law. http://www.mzr.pl/pl/pliki/uboj_muzulmanski.pdf (accessed on: 20 April 2019).

⁶ Paweł Kuczma, “Ubój rytualny jako prawo mniejszości narodowych w Polsce”, *Przegląd Prawa Konstytucyjnego* 2016/5, p. 184.

⁷ Arab Charter on Human Rights of 15 September 1994, 18 Hum. Rts. L.J. 151 (1997), ref. the text at <http://hrlibrary.umn.edu/instreet/arabcharter.html> (accessed on: 20 April 2019). Article 27 only constitutes an indirect permission to practice ritual slaugh-

of 5 August 1990 merely confirms the existence of human “freedom and right to a dignified life in accordance with the Islamic Shari’ah”⁸. The Declaration of the United Nations A/RES/36/55 on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief directly refers to the right to ritual slaughter⁹. The European Convention on Human Rights of 4 November 1950¹⁰ directly refers to manifesting one’s religion or belief in “observance”; The International Covenant on Civil and Political Rights of 19 December 1966¹¹ in art. 18(1) as a part

ter (the right to freely practice and manifest one’s religion). More on the topic in, e.g.: Rachel Murray (ed.): “The African Charter on Human and Peoples’ Rights: the system in practice, 1986–2000”, West Nyack, NY, USA, Cambridge University Press, 2002; Paweł Kuczma, “Ubój rytualny ...”, pp. 184-185.

⁸ It is an international document signed by more than 40 foreign ministers of the member states of the Organization of Islamic Conference. It sets out in 25 articles the foundations of human rights in the countries in which Islam is the leading religion. The act states that “fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as they are binding divine commands”. Text available at: <https://www.fmreview.org/Human-Rights/cairo>.

⁹ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Resolution 36/55 Proclaimed by General Assembly of 25 November 1981, cf. also: Edmund J. Osmańczyk, “Encyklopedia ONZ i stosunków międzynarodowych”, Warszawa 1986, pp. 704-705; Adam Łopatka, “Prawo do wolności myśli, sumienia i religii”, Warszawa 1995, pp. 74-77; Michał Pietrzak, “Prawo wyznaniowe”, Warszawa 2010, p. 48; Krzysztof Pyclik, “Kwestia uboju rytualnego w świetle Deklaracji ONZ o wyeliminowaniu wszelkich form nietolerancji i dyskryminacji z powodu religii lub przekonań, Europejskiej konwencji o ochronie zwierząt przeznaczonych do uboju oraz Konwencji UNESCO w sprawie ochrony niematerialnego dziedzictwa kulturowego”, 2013, p. 2, <http://www.mzr.pl> (accessed on: 20 April 2019); Krzysztof Warchałowski, “Prawo wyznaniowe. Wybór źródeł”, Warszawa 2000, pp. 46-51, Waclaw Uruszczak, Zdzisław Zarzycki, “Prawo wyznaniowe. Zbiór przepisów”, Kraków 2003, pp. 73-76. Pursuant to Article 6 (h), the right to freedom of thought, conscience, religion or belief includes the right to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief.

¹⁰ Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 4 November 1950. ETS No.005, as amended.

¹¹ International Covenant on Civil and Political Rights, adopted and opened for signature in New York on 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; Article 18 (1), Article 27.

of the right to freedom of thought, conscience and religion, mentions the manifestation of one's religion or belief in worship, observance, practice and teaching; Ritual slaughter is not prohibited by the European Convention for the Protection of Animals for Slaughter, done at Strasbourg on 10 May 1979¹²; under the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities¹³, the persons belonging to national or ethnic, religious and linguistic minorities are vested the right to enjoy their own culture, to profess and practise their own religion, and to use their own language; The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 grants everyone the right to freedom of thought, conscience and religion¹⁴; K. Pyclik believes that ritual slaughter can be considered a manifestation of an "intangible cultural heritage" within the meaning of the UNESCO Convention on the Protection of Intangible Cultural Heritage¹⁵. In European Union Member States, Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at killing¹⁶ has been effective since 1 January 2013. Under this regulation,

¹² The Convention ratified by Poland in 2008. Cf. Oświadczenie rządowe w sprawie mocy obowiązującej Europejskiej Konwencji o ochronie zwierząt przeznaczonych do uboju, sporządzonej w Strasburgu dnia 10 maja 1979 r., z dnia 23 kwietnia 2008 r. [Government Statement of 23 April 2008 on the validity of the European Convention for the Protection of Animals for Slaughter, done at Strasbourg on 10 May 1979] (Journal of Laws of 2008, No. 126, item 810). The issue in question is discussed in Article 1 (2), Article 12-13, Article 17 and Article 19.

¹³ UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, A/RES/36/55 .

¹⁴ Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 4 November 1950. ETS No.005, as amended with Protocols No. 3 (ETS 045), No. 5 (ETS 055) and 8 (ETS 118) and supplemented with Protocol No. 2 (ETS 044); Article 9.

¹⁵ Convention done in Paris on 17.10.2003. Poland ratified the convention without reservations on 8 February 2011 (Journal of Laws No. 172, item 1018), see Article 2 (2) (c). [for more, see: Krzysztof Pyclik, *op. cit.*, p. 4].

¹⁶ O (OJ EU L 2009, no. 303); Under the Community law system, ritual slaughter was regulated for the first time by Council Directive 74/577/EEC of 18 November 1974 on stunning of animals before slaughter. This regulation was replaced by the Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing, and due to the fact that these solutions failed to contribute to the improvement of animal welfare and since the large discrepancies in the implementation of these provisions

animals are to be killed only after prior stunning, in accordance with the methods and detailed requirements related to the use of these methods as set out in Annex 1¹⁷. The analysis of international law provisions indicates that although international law allows free practice of religious worship and related rites, the national legislature individually regulates the content of this legislation, taking into account the customary rules, principles and values applicable in a given country, as well as the legislation aimed at protection of animals¹⁸.

In Europe, since the second half of the 19th century, attempts were taken to ban ritual slaughter in Europe, inspired by strong anti-Semitic sentiment. However, these attempts proved to be unsuccessful in Austria or in Poland between the two World Wars, but they were successful in the Third Reich¹⁹.

The solutions adopted by European lawmakers in the 1970s and 1990s proved to be insufficient²⁰. They failed to contribute to improving animal welfare and have had a negative impact on the competitiveness of businesses due to the large discrepancies in their implementation in individual Member States²¹. They were replaced by the provisions of Council Regu-

adversely affected the competitiveness of businesses, they were replaced by the provisions of the aforementioned regulation. For more on the topic, see: Grzegorz Lubeńczuk, "Die Zulässigkeit der Schlachtung von Tieren ohne Betäubung im Lichte der Verordnung (EG) Nr. 1099/2009 des Rates vom 24. September 2009 über den Schutz von Tieren zum Zeitpunkt der Tötung – polnische Erfahrungen", *TiRuP*, (2019): B-12. DOI:10.25598/tirup/2019-2, p. B-14.

¹⁷ The animals must be maintained in the state of loss of consciousness and sensibility until death. Article 4(4) allows certain exceptions for particular methods of slaughter prescribed by religious rites, provided that the slaughter takes place in a slaughterhouse.

¹⁸ Paweł Kuczma, *op. cit.*, s. 188.

¹⁹ Andrzej Dziadzio, "Zakaz uboju rytualnego jako naruszenie konstytucyjnej zasady wolności religii. Kontekst współczesny i historyczny", „Forum Prawnicze” 2014, no. 1, p. 8. "The development of organised ritual slaughter of animals for slaughter in Polish lands from the 10th century was examined by e.g." Maria Piechotka, Kazimierz Piechotka, *Krajobraz z menora. "Żydzi w miastach i miasteczkach dawnej Rzeczypospolitej"*, Wrocław-Warszawa-Kraków 2008, p. 10 et seq.

²⁰ Council Directive 74/577/EEC of 18 November 1974 on stunning of animals before slaughter, and Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing.

²¹ Grzegorz Lubeńczuk, *op. cit.*, p. B-12.

lation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing²². The provisions of the Regulation have allowed animals to only be killed after stunning, defined as any intentionally induced process that causes painlessly the loss of consciousness and sensibility, including any series of operations resulting in instantaneous death. The possibility to kill an animal without stunning has been allowed for emergency killing outside of a slaughterhouse or where compliance with those provisions would result in an immediate and serious risk for human health or safety; for the killing of an animal during scientific experiments carried out under the supervision of a competent authority; during hunting or recreational fishing activities; during cultural or sporting events; to poultry, rabbits and hares slaughtered outside of a slaughterhouse by their owner for his/her private domestic consumption, as well as for animals subject to particular methods of slaughter prescribed by religious rites²³.

In contrast to the previous solutions, the new rules have introduced solutions that are binding in their entirety and directly applicable in all Member States²⁴. The exception provided for in Article 26(1) of Regulation 1099/2009 allowed Member States to keep national provisions in place on the entry into force of the Regulation to ensure more far-reaching protection of animals at the time of killing. Pursuant to Article 26(2) of the Regulation, Member States were given the possibility of adopting national rules aimed at ensuring more extensive protection of animals at the time of killing, but only with regard to the killing and related operations of animals outside of a slaughterhouse; the slaughtering and related operations of farmed game; and the slaughtering and related operations of animals subject to particular methods of slaughter prescribed by religious rites. Therefore, many Member States undergo a debate on the acceptability of killing animals and the rules of conduct during their killing. The issue of acceptability of slaughtering animals without stunning is the most controversial issue in these debates²⁵.

²² Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, OJ L 303, 18.11.2009, p. 1 (hereinafter referred to as Regulation 1099/2009). The Regulation entered into force on 1 January 2013.

²³ Grzegorz Lubeńczuk, *op. cit.*, p. B-14.

²⁴ Regulation 1099/2009, Article 30.

²⁵ Grzegorz Lubeńczuk, *op. cit.*

Ritual slaughter is strictly forbidden in Latvia, Iceland, Switzerland and Sweden, owing to empathy towards animals and as a manifestation of the protest against the slaughter for commercial reasons.²⁶ In Austria, Belgium, Croatia, Denmark, Estonia, Finland, the Netherlands, Luxembourg, Germany, Slovakia and the United Kingdom, ritual slaughter is admissible, but under certain conditions. Elsewhere, such practices are entirely legal²⁷.

2. CHARACTERISTICS OF THE ESTONIAN LEGAL SYSTEM

With a population of 1.46 million and a surface area of 45,100 square kilometers, Estonia is the smallest of the Baltic States. 47,7% of its surface area consists of forests; 27,07% agricultural land, 20% marshland and 0,67% in built-up areas²⁸.

According to the classic approach, the Estonian legal system belongs to the continental European legal tradition, the Roman-Germanic family, and follows the classic division into private and public branches. However, Estonian law today is significantly influenced by other legal systems, including those of other developed countries. Additionally, generally recognized principles of international law and binding international treaties form an inseparable part of Estonian law. Judicial precedents are also an important source of law in Estonia. Case law of the Supreme Court is decisive with regard to issues of interpretation of law or when gaps in legislation need to be bridged. The Supreme Court has the authority to interpret legal rules and its opinions are taken into account when dealing with similar situations in the future. However, the Estonian legal system is formally norm-based, not a mixed system of precedent and statutory law.

²⁶ Andrzej Dziadzio, *op. cit.*, p. 8.

²⁷ Bogusław Banaszak, "Prawo mniejszości narodowych do kultywowania własnej tożsamości kulinarnej", „Gdańskie Studia Prawnicze” 2014, vol. XXXI, p. 25.

²⁸ See more: Hannes Veinla, Kaarel Relve, *Environmental Law in Estonia*, Wolters Kluwer Law and Business, p. 21-22.

Interpretation of norms is necessary to allow the legal system to keep pace with a rapidly changing modern society²⁹.

The classical distinction between private and public law is difficult. Estonia wishes to attend to the welfare of all members of society. In the process of law-making, this also implies attempting to ensure the rights and interests of the weaker party in legal relationships. Under this principle, legal norms aimed at protecting the interests of the weaker party are usually imperative, so that agreements entered into in contravention of these principles are void. Norms aimed at protecting the public interest increasingly often find their way into private law. At the same time, an opposite trend also exists, with more and more private law principles emerging in public law. This occurs mainly in areas regulating relations between the state and individuals (both natural and legal persons), as such relations should be based on an equal footing, excluding the possibility of abuse of power.

Estonian administrative law consists of general and special parts. General regulations, principles, terms, and legal institutions are important for all of the branches of administrative law. Administrative activities shall be efficient, purposeful and human-friendly in its most general sense. Also, the principle of good governance is based on: legality, human dignity, legal certainty (a clarity and a legitimate expectation), proportionality (interference-free or minimally infringing activities), large discretion and flexibility, freedom of format, expediency and efficiency, the principle of investigation, publicity and transparency, and cooperation between law enforcement agencies. At the same time, the citizen's own duty of care and responsibility and the public interest must be considered³⁰.

In terms of environmental policy, Estonia faces the problem of the legacy of the Soviet era and obsolete industries, while at the same time - in common with most of the CECs it has valuable and untouched natural areas. Environmental protection played a significant role in the early 1990s in Estonia. Because of the economic problems caused by the transforma-

²⁹ Kuusik Jannu, Miil Kart. 2008. „Guide to Estonian Legal System and Legal Research”. Maj 5, 2019 <http://www.nyulawglobal.org/globalex/ESTONIA.html>

³⁰ Tanel Kerikmae, Kristi Joamets, Janis Pleps, Anita Rodina, Tomas Berkmanas, Edita Gruodyte. 2017. *The Law of the Baltic States*, Springer International Publishing, p. 51.

tion and the desire for more consumer goods and mobility, environmental policy has been pushed increasingly into the background despite the large level of interest on the part of the general public³¹.

Estonia has been pursuing an independent environmental policy since the 1980s, although environmental protection was not incorporated in the constitution until the new constitution was adopted in 1992³².

The environmental protection law adopted in 1990 provides the framework for further environmental legislation. It defines the principles and objectives of Estonian environmental policy which are in line with those of the EU. As part of the task force work on enlargement of the EU an “Environmental Policy and Enlargement”³³ has appeared. It discusses the environmental issues connected with enlargement. A compulsory environmental impact procedure has also been introduced. In 1993, 34 environmental compatibility studies were carried out. The environmental compatibility procedure is anchored in the law on sustainable development³⁴ forming part of the environmental policy. Independent environmental compatibility directives were adopted in April 1998, but the Integration Pollution and Prevention Control Directive (IPPC)³⁵ had not taken effect by 2000³⁶.

³¹ Hans Hermann Kraus, Dirk Amtsberg. 1998. “Environmental Policy in Estonia. Directorate-General for Research, Division of the Environment, Energy, Research and STOA”, DOC_EN\DV\354\354237, PE 167.618, BRIEFING No. 5, p. 1.

³² Eerik-Juhan Truuvali et al. 2008. Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne, Tallinn: Juura, p. 67-70 and 395-400.

³³ Environmental Policy and Enlargement, European Parliament, Briefing No 17, PE 167.402.

³⁴ Sustainable Development Act, Passed 22.02.1995, RT I 1995, 31, 384, Entry into force 01.04.1995.

³⁵ Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version), OJ L 24, 29.1.2008, p. 8–29.

³⁶ Hans Hermann Kraus, Dirk Amtsberg, op. cit., p. 3. About the EU Environmental Policy, its origins and development, see: Dennis Rubing. 2017. Are the ‘laggard states’ obstinate or just inefficient? A study of the EU member states’ compliance with EU environmental legislation 2012- 2016. Lund: Lunds Universitet Publications, p. 4.

3. REGULATIONS ON ANIMAL KILLING AND RITUAL SLAUGHTER IN ESTONIA

Under the Estonian Animal Protection Act provisions³⁷, permitted killing of animals means slaughter or killing of a farm animal; killing of day-old chicks and embryos in hatchery waste; emergency slaughter of a farm animal; killing of an animal in a helpless state; slaughter of an animal for religious purposes; animal euthanasia; killing of caught fish; hunting of game; extermination of invertebrates, moles and rodents for the purpose of protection of property or health; diagnostic slaughter of animals and killing animals in order to control the spreading of an infectious animal disease as prescribed by the Infectious Animal Disease Control Act; killing of an animal for self-protection; and killing of an experimental animal.

Even though the legislature permits the slaughter and killing of an animal, it commands choosing a specific method for slaughter - the one that causes the animal the least possible amount of physical and mental suffering. Additionally, an animal may be killed in self-defence if an attack endangers human life or health and cannot be prevented or repelled in any other manner. The specific case is killing of a protected animal. Such situation is regulated by the Nature Conservation Act³⁸.

As regards slaughter of animals for religious purposes, § 17 of the Animal Protection Act provides such possibility for a religious association registered in Estonia under the condition of using a special method in accordance with the requirements set out in Council Regulation (EC) No. 1099/2009 and in the Animal Protection Act itself. The animal needs to be slaughtered in a slaughterhouse and it is necessary for the members of the religious association and a supervisory official to attend the slaughter³⁹.

Estonian law allows a slaughter for religious purposes both with or without electrical stunning, according to religious tradition. It is necessary for a religious association to have an appropriate permit, which is being issued by the Veterinary and Food Board after submitting a written application containing the following information: 1) the species and number

³⁷ Animal Protection Act passed on Dec. 13, 2000, RT I 2001, 3, 4, § 10.

³⁸ Nature Conservation Act, RT I 2005, 61, 477 - entry into force 01.12.2005.

³⁹ Animal Protection Act, 7, § 17.

of the farm animals to be slaughtered and the reasons for the choice of the animal species and the number of animals; 2) the time and place of slaughtering the farm animals and a document issued by the slaughterhouse, which certifies the possibility of such slaughter in the slaughterhouse; 3) a description of the special method of slaughtering farm animals and the reasons of the use of the method, including evidence of the association of the special method of slaughter with religious tradition; 4) a description of the manner of use of the meat for the members of the religious association. The Veterinary and Food Board will decide to grant or refuse to grant a permit for slaughter of farm animals for a religious purpose within 20 working days after the receipt of an application. Permission will not be granted if: 1) the applicant is not in compliance with the requirements provided for in the Animal Protection Act; 2) the circumstances described in the application do not correspond to the relevant requirements established in the Animal Protection Act or in Council Regulation (EC) No. 1099/2009; 3) the slaughter of farm animals without prior stunning as described in the application is not associated with a religious tradition of the religious association; 4) the number of the farm animals to be slaughtered according to the application is disproportionately high, given the needs of the members of the religious association; or 5) the application contains false information⁴⁰.

The special methods of slaughtering farm animals for religious purposes, more detailed substantive and formal requirements for slaughtering for religious purposes and requirements and procedure for slaughtering for religious purposes, pursuant to § 17 (8) of the Animal Protection Act, have been established by a regulation of the Minister of Agriculture⁴¹.

⁴⁰ Animal Protection Act, 7, § 17(4-7). Form of application for the permission for religious slaughter including data on the farm animals to be slaughtered, the place used for slaughter and the special method of slaughter and other data is given in Annex to the Minister of Agriculture's regulation of special methods of religious slaughter of farm animals, more detailed substantive and formal requirements for religious slaughter and requirements and procedure for religious slaughter, RT I, 18.12.2012, 2 - entry into force 01.01.2013.

⁴¹ The regulation of special methods of religious slaughter of farm animals, more detailed substantive and formal requirements for religious slaughter and requirements and procedure for religious slaughter, RT I, 18.12.2012, 2 - entry into force 01.01.2013.

The regulation repeats the provisions of the Animal Protection Act, confirms the possibility to perform a ritual slaughter with or without electrical stunning. Additionally, under the provision of § 4, the regulation sets out precise conditions of the slaughter.

Religious slaughter of a farm animal may be carried out only in an approved slaughterhouse equipped with relevant equipment and tools for religious slaughter and the related procedures.

Tools to restrain the movement of an animal must be suitable for a certain species and size of the animal and in the good working order. For example, for bovine animals, the regulation requires them to be mechanically restrained by a special mechanical device that enables animals to stay in a standing position until loss of consciousness; and sheep and goats are restrained in a manner to prevent falling and fall-related pain and injuries. The material used for ropes and strings must be soft in order to prevent pain⁴². After an animal's movement has been restrained or it has been placed in restraint equipment, its throat must immediately be cut by one rapid uninterrupted movement of the knife, severing both carotid arteries and jugular veins. The cutting device must be sharp (checked directly before each cut) and suitable for the animal: the length of the edge must be at least twice as long as the neck diameter. The whole procedure is supervised by a dedicated Supervisory official who certifies the animals death⁴³.

Persons carrying out religious slaughter of farm animals and the related procedures need to have relevant knowledge and skills, to pass a relevant training and to hold a certificate of competence for such operations meeting the requirements provided for in Council Regulation (EC) No 1099/2009⁴⁴.

⁴² The regulation of special methods of religious slaughter of farm animals, more detailed substantive and formal requirements for religious slaughter and requirements and procedure for religious slaughter, § 4 (1-6).

⁴³ The regulation of special methods of religious slaughter of farm animals, more detailed substantive and formal requirements for religious slaughter and requirements and procedure for religious slaughter, § 3 (4), § 4 (4).

⁴⁴ Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing, OJ L 303, 18.11.2009, p. 1–30, art. 7 and 21.

4. REGULATIONS ON ANIMAL KILLING AND RITUAL SLAUGHTER IN POLAND

In accordance with applicable law, the killing of animals should always have its grounds. The Polish regulation on the process of depriving animals of life is contained in the Act of 21 August 1997 on the protection of animals⁴⁵ and in the Ordinance of the Minister of Agriculture and Rural Development of 9 September 2004 on the qualification of persons entitled to professional slaughter and the conditions and methods of slaughter and killing of animals⁴⁶, issued under the delegation of Article 34 (6) of the Act. The regulation governs not only the mere fact of depriving an animal of life, but also its method and reasons behind this fact⁴⁷.

The provisions of the Animal Protection Act became effective on 24 October 1997. Its essential objective was to regulate the humanitarian protection of animals⁴⁸. The norms of this Act included provisions on the killing of animals, including slaughter. The principle adopted was that the animal can be slaughtered once deprived of consciousness (Article 34, paragraphs 1 and 3) but it is not applicable to particular methods of slaughter prescribed by religious rites (Article 34, paragraph 5). The provision of Article 35, paragraph 6 authorises the minister competent for agriculture to issue secondary legislation in this regard, but the Ordinance of 26 April 1999 on the qualification of persons entitled to professional slaughter, the permissible methods for killing animals respective to species, and the authorities authorised to inspect the activities of persons who professionally slaughter animals or who perform slaughtering in the course of their breeding activity or economic activities⁴⁹, have not regulated the issues in

⁴⁵ Journal of Laws No. 111, item 724.

⁴⁶ Journal of Laws No. 205, item 2102.

⁴⁷ Agnieszka Szelepajło, *Administracyjnoprawna ochrona zwierząt w Polsce*, a Master's thesis written under supervision of Doctor Renata Raszevska-Skałeczka, Wrocław 2010, not published, pp. 73-79.

⁴⁸ The term "humanitarian protection of animals" was developed by the prevailing legal scholarly opinion in the context of the generality of the provisions aimed at the protection of animals against suffering from human activity. See W. Radecki, *Ustawa o ochronie zwierząt z komentarzem*, Wrocław 1998, p. 9.

⁴⁹ Journal of Laws No. 47, item 469.

question. Also, the Polish Sejm, during the work on the government draft of the Law amending the Act on the protection of animals⁵⁰ amended Article 34 paragraph 5 which had permitted skipping the stage of animal stunning before the slaughter⁵¹.

Under the legislation in force at that time, slaughter without a prior stun was not permissible, but this possibility arose after the adoption of the Ordinance of the Minister of Agriculture and Rural Development of 9 September 2004. The subject of regulation covered the methods of stunning animals before slaughter (section 8), with the exception for slaughter carried out in accordance with religious customs of registered religious associations (section 8, paragraph 2). However, the exception raised doubts as to the compliance with the norms of the Act on the protection of animals⁵².

A humanitarian method of killing animals involves the reduction, to the necessary minimum, of the physical and mental suffering of an animal. The provision provides for that each killing of an animal falling outside the scope of the list under Article 33 of the Act is unlawful⁵³. Any other killing of an animal which is not the fulfilment of both of those conditions is considered a criminal offence under Article 35 of the Act on the protection of animals. This primarily concerns situations where the killing was unreasonable, even when the condition of doing so in a humanitarian manner was met. Likewise, the offence will be punishable when the killing was justified, but carried out in a non-humanitarian manner (Article 35, paragraph 1)⁵⁴. Killing an animal in self-defence has also become problematic.

⁵⁰ Sejm Papers of the 4th term of the Polish Sejm, no. 339;

⁵¹ The Act entered into force on 28 September 2002 as the Act amending the Act on the protection of animals (Journal of Laws No. 135, item 1141).

⁵² The doubts concerned the norms of Article 34, paragraph 1 of the Act on the protection of animals (strict requirement of stunning) and Section 8, paragraph 2 of the Ordinance on the qualification of persons entitled to professional slaughter and on the conditions and methods of slaughter and killing of animals (exception).

⁵³ Wojciech Radecki, *Ustawa o ochronie zwierząt. Komentarz*, Difin 2012, pp. 67-76.

⁵⁴ Łukasz B. Pilarz, "Ubój rytualny- aspekty prawne, regulacje krajowe i unijne", *Weterynaria News.pl*, p. 5. <https://weterynarianews.pl/uboj-rytualny-aspekty-prawne-regulacje-krajowe-unijne/>

Economic need is the most prominent reason behind the killing of an animal listed in Article 33 paragraph 1 of the Act on the protection of animals. It should be assumed, after M. Gabriel-Węglowski, that this involves cases when the killing of an animal is within the normal and legal business activity of the enterprise or the situation when livestock is killed for the needs of the household⁵⁵. According to W. Radecki, the economic need undoubtedly occurs in the case of killing livestock for meat or skin. Undoubtedly, the economic need is also the justified killing of pest animals within the meaning of the Act of 18 December 2003 on plant protection⁵⁶.

The term of humanitarian reasons (Article 33, paragraph 2 point 1 of the Act on the protection of animals), as a further condition justifying the killing of an animal, remains in conjunction with the content of Article 4 point 3 of this act, which specifies the definition of immediate killing of an animal, i.e. a situation where an animal should be killed to shorten its suffering. The legislature does not explain in the Act on the protection of animals when the sanitary necessity to kill an animal occurs. The literature on the subject refers here to the relevant sanitary regulations, in particular to the Act of 11 March 2004 on the protection of animal health and combating infectious diseases⁵⁷, and to Article 27 of the Act of 14 March 1985 on the State Sanitary Inspectorate⁵⁸, according to which a state sanitary inspector is competent to order the liquidation of breeding or rearing the livestock in the event of violation of hygiene and health requirements, if it causes a threat to human life or health.

An animal can also be deprived of life because of its excessive aggression posing a direct threat to health or life for livestock or wild animals. W. Radecki explains that this concerns “a specific animal that has actually become aggressive to such an extent that leaving it without supervision, even for a moment, makes it highly probable that it will endanger the life or health of people or livestock or wild animals. (...) A condition justifying the killing of an animal for reasons referred to in Article 33, paragraph 1,

⁵⁵ Michał Gabriel-Węglowski, *Przestępstwa przeciwko humanitarnej ochronie zwierząt*, Toruń 2008, p. 86.

⁵⁶ Journal of Laws of 2004, No. 11, item 94, as amended.

⁵⁷ Journal of Laws of 2018, item 1967.

⁵⁸ Journal of Laws of 2019, item 59.

point 4 of the Act is, in particular, cases (and even just one case) of unprovoked attacks by this specific animal on people or other animals⁵⁹.

The killing of an animal is also justified by scientific needs⁶⁰. This norm should be associated with the Act of 21 January 2005 on experiments on animals⁶¹.

The last permissible reason for the killing of animals mentioned in the Act is the performance of tasks related to nature conservation, regardless of whether it takes place in a protected area or not. In this respect, the minister competent for environmental affairs may authorise the killing of an animal subject to strict or partial species protection⁶². Such a permit may be issued under two conditions: if there is no alternative solution and if there is no threat to the population of animals.

The catalogue of reasons allowing for the killing of an animal is closed, which means that no reason other than the ones mentioned above can justify the killing of animals. However, it should be assumed, citing A. Lipiński, that the above-mentioned principles allowing for depriving an animal of life do not exclude solutions resulting from separate regulations, such as hunting or fishing⁶³.

Where deprivation of life is justified by sanitary necessity or excessive aggression, an animal may be killed with the consent of the owner. If there is no such consent, the animal shall be killed under an appropriate certificate issued by a veterinarian. The justification for waiving the requirement to identify the owner and obtain his consent to kill the animal is the occurrence in a given case of an infectious disease to be controlled ex officio. The legislature in Article 44, paragraph 1, point 4 of the Act on the protection of animals, included an authorisation for a district veterinarian to issue an administrative decision ordering the killing or slaughter of sick or infected animals suspected of being infected or of disease, or animals of species susceptible to a given infectious disease of animals, in order to combat infectious diseases of animals covered by the obligation to control.

⁵⁹ Wojciech Radecki, *Ustawy: o ochronie zwierząt, o doświadczeniach na zwierzętach – z komentarzem*, Warszawa 2007, p. 127.

⁶⁰ Article 33, paragraph 1, point 5 of the Act on the protection of animals.

⁶¹ Journal of Laws of 2005, No. 33, item 289, as amended; Article 2, point 6.

⁶² Act on the protection of animals, Article 56.

⁶³ Aleksander Lipiński, *Prawne podstawy ochrony środowiska*, Zakamycze 2005, p. 203.

If it is necessary to immediately kill an animal to put an end to its suffering, the need to kill it may be stated by a veterinarian, a member of the Polish Hunting Association, an inspector of a social organisation whose registered goal of activity is to protect animals, a Police officer, municipal or communal guard, the Border Guard, an employee of the Forestry Service or National Park Service, an officer of the State Hunting Guard, a hunting guard or an officer of the State Fisheries Guard (Article 33, paragraph 3 of the Act on the protection of animals). It should be kept in mind that each case should be assessed individually, and the real possibility of providing effective medical assistance should rule out the killing of the animal.

Further independent conditions justifying the killing of animals are introduced by Article 33a of the Act on the protection of animals. Although the Act on the protection of animals does not explicitly state this, one of the forms of population control in this case may be “physical elimination of the animals concerned” (e.g. wolf cull)⁶⁴. The legal basis in this case is a resolution of the regional assembly (*sejmik wojewódzki*), as an act of local law within the meaning of the Act of 5 June 1998 on the government of voivodeship⁶⁵ issued on the basis of and within the scope of the authorisation contained in the Act on the protection of animals. Separate requirements apply to the control of cats and dogs that become wild⁶⁶.

The slaughter of animals for economic purposes is also based on individual rules⁶⁷. Legal regulations on vertebrate animals stipulate that they may be killed in a slaughterhouse⁶⁸ only after being made unconscious by appropriately qualified people.

The legislature, in Article 34 paragraph 4 of the Act on the protection of animals, formulated three prohibitions related to the killing and slaughter of animals: a relative prohibition on the killing of animals during the perinatal period, with exceptions; an absolute prohibition on the slaughter

⁶⁴ Michał Gabriel-Węglowski, *op. cit.*, p. 91.

⁶⁵ Journal of Laws of 2001, No. 142, item 1590, as amended.

⁶⁶ Article 33a, paragraph 3 of the Act on the protection of animals.

⁶⁷ Aleksander Lipiński, “Prawne podstawy...” p. 204.

⁶⁸ The definition of a slaughterhouse is provided in Article 4 point 13 of the Act on the protection of animals. A slaughterhouse is “any establishment supervised by the state sanitary and veterinary inspectorate, designed for the slaughter of animals”.

or killing of vertebrate animals with the participation or presence of children; an absolute prohibition on economic activities on an animal killed in a slaughterhouse or slaughtered at home (evisceration, scalding, skinning, smoking and separation of parts of warm-blooded animals) before respiratory and muscular reflexes cease.

On 27 November 2012, the Constitutional Tribunal ruled that §8(2) of the Ordinance of 2004 was inconsistent with Article 34(1) and (6) of the Act on the protection of animals and with Article 92(1) of the Constitution of the Republic of Poland and that the contested provision would expire on 31 December 2012⁶⁹. Thus, the ban on ritual slaughter of animals without stunning was maintained. The problem of ritual slaughter was submitted to the Sejm of the Republic of Poland⁷⁰. On 12 July 2013, after a heated debate, the Sejm deputies rejected the proposal of the Minister of Agriculture to allow ritual slaughter⁷¹.

The decision of the Sejm of the Republic of Poland rejecting the government-proposed draft amendment to the Act on the protection of animals allowing slaughter without stunning for religious reasons created a new legal situation concerning ritual slaughter. The Act on the protection of animals states that “a vertebrate animal in a slaughterhouse may be killed only after it has been made unconscious by duly qualified persons”⁷². However, the Act on the relationship between the State and Jewish religious communities in the Republic of Poland also applies. It stipulates that “to exercise the right to perform rituals and ritual activities related to religious worship, Jewish communities shall take care of kosher food supplies, canteens and ritual baths, and ritual slaughter”⁷³. Thus, the question arose whether the restrictions on ritual slaughter violate the freedom of religion.

⁶⁹ Judgement of the Constitutional Tribunal of 27 November 2012, case ref. no. U 4/12, Journal of Laws of 2012, item 1365.

⁷⁰ Government’s draft Act on the amendment of the Act on the protection of animals (Sejm Papers no. 1370 of 10.05.2013), dismissed by the Polish Sejm at the 45th meeting on 12.07.2013.

⁷¹ Joanna Cukras-Stelągowska, “Wokół debaty nad ubojem rytualnym w Polsce – analiza dyskursów publicznych”, *Społeczeństwo i polityka* no. 4 (45)/2015, p. 143.

⁷² Act on the protection of animals, Article 31(1).

⁷³ Act of 20 February 1997 on the relationship between the State and Jewish Journal of Laws of 1997 No. 41, item 251; Article 9 (2).

In this situation, the Union of Jewish Religious Communities in the Republic of Poland requested the Constitutional Tribunal on 30 August 2013 to state that Article 34(1) and (3) and Article 35(1) and (4) of the Act on the protection of animals) to the extent to which they do not allow animals to be slaughtered in special ways provided for by religious rites of religious denominations with a regulated legal situation and provide for criminal liability of a person slaughtering in such a manner, and Article 34 (1) and (3) in conjunction with Article 6 (1) of the Act on the protection of animals to the extent that, under circumstances justifying the admissibility of slaughter of vertebrate animals without prior stunning do not list specific methods of slaughter of animals provided for by religious rites of religious denominations with a regular legal situation, they are inconsistent with Article 53(1), (2) and (5) and Article 35(1) in conjunction with Article 31(3) of the Constitution of the Republic of Poland, and in conjunction with Article 9(1) and (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms⁷⁴, and Article 32(1) and (2) of the Constitution of the Republic of Poland in conjunction with Article 14 of that Convention, which guarantee freedom of conscience and religion, freedom to manifest religion, freedom of economic activity and the constitutional principle of equality before the law and the prohibition of discrimination for any reason.⁷⁵

By judgement of 10 December 2014, the Polish Constitutional Tribunal⁷⁶ ruled that Article 34(1) of the Act on the protection of animals, in so far as it does not allow animals to be slaughtered in a slaughterhouse according to the special methods required by the religious rites; and art. 35(1) and (4) of the Act on the protection of animals in so far as it provides for criminal liability for such action; is incompatible with Article 53(1), (2) and (5) of the Polish Constitution in conjunction with Article 9 of the Convention for the protection of human rights and fundamental freedoms and discontinued the proceedings for the remaining scope. Therefore, the

⁷⁴ Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 4 November 1950. ETS No.005, as amended.

⁷⁵ Grzegorz Lubeńczuk, *op. cit.*, p. B-14.

⁷⁶ Judgement of the Constitutional Tribunal of 10 December 2014, case ref. no. K 52/13, Journal of Laws of 2014, item 1794.

Constitutional Tribunal ruled that the national legislation providing for absolute prohibition of ritual slaughter and guarded with punitive sanctions infringes the freedom of religion. According to the Constitutional Tribunal, such a prohibition was not necessary for the protection of any value mentioned in the Constitution, in particular public morality. Any method of slaughter, including those that involve prior stunning, is associated with the suffering of the animal and there is no evidence that the ritual slaughter is more painful in that regard⁷⁷.

5. FINAL REMARKS

E. Łętowska et al. stated that “the ambition to make the national system more restrictive than the EU standard proved to be a Pyrrhic victory for animal defenders.”⁷⁸ In addition, such action proved to be inconsistent with the Constitution, not adjusted to the social conditions and unenforceable⁷⁹. The legislation in force formed as a result of the repeal of Article 34 paragraph 5 of the Act on the protection of animals, which resulted in the reinstatement of the complete prohibition of the slaughter of animals without stunning, followed by the entry into force of Regulation 1099/2009, which, in certain situations, permits such slaughter and, finally, the judgement of the Constitutional Tribunal of 10 December 2014, in which the Court declared the prohibition of ritual slaughter to be contrary to the provisions of the Polish Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms enshrining freedom of conscience and religion and the freedom to manifest religion, hinders the possibility of unambiguous determination of the admissibility of slaughter of animals without stunning, including ritual slaughter,

⁷⁷ Marcin Szwed, „Nie tylko Strasburg? Alternatywne międzynarodowe instrumenty ochrony praw człowieka realizowanego przez Helsińską Fundację Praw Człowieka i kancelarię Clifford Chance”, <http://www.hfhr.pl/wp-content/uploads/2018/07/TSUE-orzeczenie-C%E2%80%911426-16.pdf>

⁷⁸ Ewa Łętowska, Monika Namysłowska, Mateusz Grochowski, Aneta Wiewiórska-Domagalska (EMMA), “Prawo UE o uboju zwierząt i jego polska implementacja: kolizje interesów i ich rozwiązywanie (part II)”, *Europejski Przegląd Sądowy*, December 2013, p. 8.

⁷⁹ *Ibidem*.

in the territory of the Republic of Poland. In conjunction with the content of Article 35, paragraph 1 of the Act on the protection of animals, which provides for imprisonment up to 3 years for such slaughter, raises far-reaching concerns in the context of the requirement of legal certainty. G. Lubeńczuk is right when he postulates that the Polish legislature quite quickly corrected the current regulation, and irrespective of the direction of any possible changes, clearly ruled on whether such slaughter was admissible or restricted, and in the event of adoption of solutions to ensure the further protection of animals at the time of killing as compared with the provisions of regulation 1099/2009, has ensured coherence of national regulation with norms of European Union law by applying the procedure referred to in Article 26 (2) of Regulation 1099/2009⁸⁰.

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⁸⁰ Grzegorz Lubeńczuk, *op. cit.*, B-21.

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