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The Status of Ritual Slaughter in the Multicentric Legal System

Introduction

The perception of animal's role in a society has recently changed significantly. In the pre-modern law animals were predominantly treated as things. This view was supported by the influential part of philosophers and theologians. In the *Summa Theologica*, Thomas Aquinas highlighted that "(…) according to the Divine ordinance the life of animals and plants is preserved not for themselves but for man". His opinion interconnects with Aristotle's concept of hierarchy of being. The age of Enlightenment brought another ways of thinking. John Locke was in favour of the view that animals feel pain and can suffer. That belief had its own justification even in ancient times. Pythagoras maintained that animals were in a way equal to people and had immortal souls.

Contemporary law formulates principles of humanitarian treatment of animals and prescribes their rights. Article 1 of the Animal Protection Act (hereinafter referred to as APA)[1] holds that an animal is not a thing. Nevertheless, rights of animals are not absolute. Humans possess the rights to use them in strictly regulated situations for justified purposes. The simple question arises – who has the right to regulate relation of humans towards animals and how it should be done? Clearly, national legislation is the institution that, on the one hand, may enact laws that protect animals, and on

[1] The Animal Protection Act of 21 August 1997 (Journal of Laws of 1997, No. 111, item 724, as amended).

the other, it may allow killing animals for economic reasons, only if such regulations are in accordance with the Constitution. These days, in the age of globalization and interconnection between countries and institutions new law sources have been created. Rights and obligations of citizens are regulated not only by national laws but also by such acts like EU directives or international conventions. A strongly controversial issue, concerning human exploitation of animals, is the legal status of the ritual slaughter. This issue exemplifies not only legal dispute but also a situation in which the status of animals is regulated by many institutions, in other words, in a multicentric way.

Ritual slaughter in Polish law

The slaughter of animals is a procedure of killing animals for economic reasons. Ritual slaughter applies to specific religious procedure of Judaism (*Shechita*) and Islam (*ḎabīḎah*). It involves prescribed method of slaughtering an animal for food production purposes. The definition, according to the Jewish and the Muslim law, comes down to slaughter of a religiously acceptable species, by a slaughterman, by cutting the neck in order to sever the jugular veins and carotid arteries, oesophagus and trachea of a conscious animal, without severing the spinal cord.[2]

The legal regulation of animal slaughter is based on the rule that before the slaughter the animal must be stunned. At the same time, this method takes into account the necessity of animal protection and of providing people with food. If ritual slaughter (which is part of slaughter of animals) is allowed, it is an exemption constructed for religious purposes. When the process of integration with the European Union began, Poland had to implement European legal standards of animal protection in the internal law. In 1997, Poland enacted the Animal Protection Act. Articles 34(1) and 34(3) define that animals shall only be killed after stunning. Initially, the Act contained an exemption regulated in Art. 34(5)of APA. Pursuant to this provision, in the case of animals subjected to particular methods of slaughter used during religious rites, the requirements regarding prior stunning shall not apply. Article 34(5) was a legal basis that allowed ritual slaughter in Poland. The Art. had been repealed in 2002. However, in 2004, the Minister of Agriculture and Rural Development ordered the Regulation that allowed ritual slaughter.[3] Paragraph 8.2 of this Regulation directly excluded stunning requirements for slaughter prescribed by religious rites.

[2] A. Shimshony, M.M. Chaudry, *Slaughter of Animals for Human Consumption*, "Revue scientifique et technique (International Office of Epizootics)" 2005, Vol. 24(2), pp. 693–710.

[3] Regulation of the Minister of Agriculture and Rural Development of 9 September 2004 on the Qualifications of the Persons Entitled to the Professional Slaughter and Conditions and Methods of Slaughter and Killing of Animals (Journal of Laws of 2004, No. 205, item 2102).

The Polish Constitution[4] defines the hierarchy of sources of law. Regulations must be compatible with Statutes and Constitution. Paragraph 8.2 of the 2004 Regulation directly breached the statutory prohibition on the ritual slaughter (introduced in 2002). It was affirmed by the Constitutional Tribunal's adjudication of 27 November 2012.[5]

In Poland, the legal status of ritual slaughter is regulated by: the APA, 2004 Regulation, Act on Relations Between the State and Jewish Religious Communities (ARSJC)[6], European Convention for the Protection of Animals for Slaughter and, first of all, by the Constitution. The ARSJC stipulates that Jewish Communities care about meat supply. This provision is not the sufficient legal basis to draw conclusions that Jewish Communities have the right to ritual slaughter.

Polish Constitution is adapted to European standards when it comes to human and citizen rights. Article 53(1) guarantees freedom of conscience and religion. Article 53(5) stipulates that the freedom to publicly express religion may be limited only by means of law and only where it is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others. Public expression of religion may include such practices like ritual slaughter. The APA might limit this freedom when limitation is proportionate. The ban on ritual slaughter that had been created after legal basis in the APA was eliminated, caused a constitutional problem. Is the lack of possibility for religious communities to execute ritual slaughter compatible with constitutional freedom of religion? This dilemma was resolved by the 2014 judgment of Constitutional Tribunal.[7] Judges decided that the regulation concerning the ban on ritual slaughter executed in specific slaughterhouses was contrary to the Constitution. This decision *de facto* allowed ritual slaughter in Poland not only for religious reasons but also for economic ones. Poland ratified the European Convention for the Protection of Animals for Slaughter.[8] This Act stipulates that animals should be stunned before slaughter (Art. 12). Each Party to the Convention may permit derogations from the provisions concerning prior stunning when slaughtering is in accordance with religious rituals (Art. 17). The State has the power to decide whether it allows ritual slaughter or not.

Legal status of ritual slaughter is also regulated by European Union's sources of law. In Poland, *acquis communautaire* is fully binding. Primarily, legal protection of

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4 The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended).

5 Judgement of the Constitutional Tribunal of 27 November 2012, ref. No. U 4/12 (Journal of Laws of 2012, item 1365).

6 Act on Relations Between the Polish State and the Jewish Religious Communities (Journal of Laws of 1997, No. 41, item 251, as amended).

7 Judgement of the Constitutional Tribunal of 10 December 2014, ref. No. K 52/13 (Journal of Laws of 2014, item 1794).

8 European Convention for the Protection of Animals for Slaughter (Journal of Laws of 2008, No.126, item 810).

animals was included in Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing (Directive 93/119). That Act was superseded by Council Regulation (EC) No. 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (Regulation 1099/2009). It was enacted because the previous Directive 93/119 did not encompass the best available technical conditions to reduce pain experienced by animals.[9] Council Regulation 1099/2009 accepted the rule that animals shall only be killed after stunning in accordance with the methods and specific requirements (Art. 4(1)). Article 4(4) stipulates that in the case of animals subject to particular methods of slaughter prescribed by religious rites, stunning requirements shall not apply provided that the slaughter takes place in a slaughterhouse. The rule is the following: slaughter of animals shall be conducted after prior stunning. Council Regulation 1099/2019, as well as European Convention for the Protection of Animals for Slaughter, encompasses an exemption reserved for religious communities and their specified procedures of slaughter. At the same time, it is possible for Member States to maintain national rules aimed at ensuring more extensive protection of animals at the time of killing (Art. 26(1)). Moreover, pursuant to Art. 26(2), Member States may adopt national rules aimed at ensuring more extensive protection of animals at the time of killing than those contained in this Regulation in relation to strictly described fields:

– the killing and related operations of animals outside of a slaughterhouse;

– the slaughtering and related operations of farmed game, including reindeer;

– the slaughtering and related operations of animals in accordance with Art. 4(4) (exemption to stunning obligation).

Exemption reserved for religious communities is allowed because Art. 10 of Charter of Fundamental Rights of the European Union foresees the right to manifest religion or belief, in worship, teaching, practice and observance. Regulation 1099/2019 respects this standard. At the same time, Member States have the right to extend the protection of animals. European law grants permission to completely ban ritual slaughter for religious aims.[10] Freedom given to the States is in accordance with the European subsidiarity rule. It is worth highlighting that Member States shall not prohibit or impede putting into circulation within its territory of products of animal origin derived from animals that have been killed in another Member State on the grounds that the animals concerned have not been killed in accordance with its national rules aimed at a more extensive protection of animals at the time of killing. Within this standard, supply of meat for religious rites is provided.

[9] Point 1 and 2 of Preamble to the Council Regulation No. 1099/2009.

[10] E. Łętowska, M. Grochowski, M. Namysłowska, A. Wiewiórowska-Domagalska, *Prawo UE o uboju zwierząt i jego polska implementacja: kolizje interesów i ich rozwiązywanie, cz. I.*, „Europejski Przegląd Sądowy" 2013, nr 11, p. 16.

Legal issues concerning the status of ritual slaughter

European law

The multiplicity of law sources raises both problems and opportunities. So, to make use of opportunities that law creates, one should have good interpretative skills. Specific legal problems arise when more than one centre of power regulates the same sphere. Such a situation is common in EU law. The European Union has exclusive, shared and supporting competences. Protection of animal welfare has its own legal justification in Art. 13 of Treaty on the Functioning of the European Union. The EU has the right to enact Regulations and Directives in this sphere.

Before the Constitutional Tribunal's decision K 52/13, the application of the provisions of Regulation 1099/2009 aroused strong emotions in legal and political terms. Polish Minister of Agriculture considered that the Regulation directly allows ritual slaughter in Poland.[11] In legal doctrine, however, a contrary view was predominant.[12] EU Regulations are entirely binding and directly applicable. They standardize the law. The European Court of Justice held that the national court had a duty to give full effect to Community provisions, even if a conflicting national law was adopted later.[13] EU law takes precedence over national law.

Regulation 1099/2009 has its own specificity. It stipulates that Member States have had discretion as to whether or not to accept ritual slaughter. Even if ritual slaughter of animals is allowed by the law, specific restrictions are binding (i.a. slaughter must take place in a slaughterhouse). In Poland, the APA did not allow ritual slaughter. Provisions of internal Regulation allowing such a practice were repealed.[14] In the internal law there were no such norms allowing ritual slaughter of animals. In this situation some politicians were arguing that directly applicable Regulation 1099/2019 can serve as such a norm. This opinion, however, seems erroneous. Regulation gave the right to allow ritual slaughter provided that such a concrete norm (allowing it) exists in the internal system. In 2011, Katarzyna Lipińska rightly highlighted that "(…) currently, ritual slaughter in Poland is not allowed".[15] This view was afterward supported by the

[11] *Ubój rytualny będzie dozwolony na podstawie rozporządzenia UE*, https://www.tygodnik-rolniczy.pl/articles/aktualnosci_/uboj-rytualny-bedzie-dozwolony-na-podstawie-rozporzadzenia-ue/ [access: 5.10.2019].

[12] K. Lipińska, *Czy w Polsce jest dozwolony rytualny ubój zwierząt?*, „Przegląd Prawa Ochrony Środowiska" 2011, Nr 1, pp. 9–31.

[13] Judgement of the European Court of Justice of 9 March 1978, *Simmenthal II*, case No. 106/77, point 24.

[14] Judgement of the Constitutional Tribunal of 27 November 2012, ref. No. U 4/12 (Journal of Laws of 2012, item 1365).

[15] K. Lipińska, *op. cit.*, p. 30.

fact that Poland notified that the country will respect more restrictive standards of animals protection.

Summing up, before 2014, in Poland ritual slaughter was not authorized by the law. Despite the fact that Regulation 1099/2009 allowed the State to make a decision concerning the legal status of ritual slaughter, in Poland there were no provisions that would allow such practice.

Judgement K 52/13

The existing ban on ritual slaughter of animals gave rise to objections formulated by the representatives of the Union of Jewish Religious Communities in Poland (*Związek Gmin Wyznaniowych Żydowskich w Rzeczypospolitej Polskiej*). They claimed that freedom of religion, articulated by the Constitution and international law, covers slaughter of animals for religious purposes. The Community applied to the Constitutional Tribunal so as to derogate from the provisions prohibiting ritual slaughter. The purpose of the motion was to explicitly declare unconstitutionality of the APA provisions which prohibited specific forms of killing animals, provided for by religious practices of religious associations recognized by Polish law. Religious associations, business representatives, animal rights organizations and lawyers were expecting a reasonable judgment which would resolve a very complicated legal situation and determine the boundaries of freedom of religion and animal protection. The ultimate sentence disappointed these hopes.

The first problem with the judgment was a logical one. The Constitutional Tribunal decided that the provisions of APA, which prohibited ritual slaughter, were contrary to the Constitution in terms of prevention of slaughter of animals in a slaughterhouse in accordance with specific methods required by religious rites. These provisions were contrary to the principle of freedom of religion. The Constitutional Tribunal is obliged to respect the rule of accusatorial procedure. It cannot adjudicate beyond the motion. The Jewish Community demanded only a declaration of unconstitutionality of the ban on ritual slaughter reserved for religious needs. Such a statement like in the Tribunal's judgement *de facto* allowed slaughter of animals (carried out in a slaughterhouse according to religious ceremony) for economic reasons – that is to say – for the export. It was highlighted in the legal doctrine that the Tribunal infringed the rule of accusatorial procedure, deciding beyond the motion.[16] These arguments seem to be accurate. The range of motion did not go beyond the principle of freedom of religious communities to supply in meat accordingly with specific requirements. Creating a legal

[16] E. Łętowska, M. Grochowski, A. Wiewiórowska-Domagalska, *Wiąże, ale nie przekonuje (wyrok Trybunału Konstytucyjnego w sprawie K 52/13 o uboju rytualnym)*, „Państwo i Prawo" 2015, Nr 6, p. 54; J. Woleński, *Trybunału Konstytucyjnego kłopoty z logiką*, https://krytykapolityczna.pl/kraj/wolenski-trybunalu-konstytucyjnego-klopoty-z-logika/[access: 13.10.2019].

possibility for exporting meat produced in specific conditions regulated by Judaism and Islam provisions did not fall within the sphere of the Tribunal's competences.

As regards the Tribunal's judgement, it raises serious doubts as far as European law is concerned. When a ban on ritual slaughter was in force, Poland notified higher standards of animal protection to the European Commission. Regulation 1099/2009 does not cover a legal possibility of withdrawal of such notification. It does not mean that such withdrawal is legally impossible.[17] What is really important – the Constitutional Tribunal did not indicate the impact of its adjudication on the prior notification.[18] In judgement K 52/13, no statement can be found as to whether such notification was illegal, whether a new notification is needed or whether the Constitutional Tribunal's adjudication has a direct impact on the notification. Solving these problems is crucial for Poland's compliance with its obligations within the European Union. In this point one can see clearly how multicentric the system of law is. The same field of regulation is not only preoccupied by few sources of law but also by few judiciary institutions. It is easy to imagine the proceeding before the European Court of Justice which will refer to the problem of proper notification and most likely will lead to imposing sanctions on Poland.

The ritual slaughter case may serve as a perfect example of conflict over legal values. Three rudimentary issues are in collision here – freedom to express religion by minorities, protection of animal welfare and taking care of economic issues (export of meat received from ritual slaughter).[19] The way the Constitutional Tribunal resolved that conflict may give rise to doubts. The Polish Constitution and European law adopted the same mechanism that serves the legal resolution of problems of colliding values. This mechanism is based on the proportionality principle. Juridical exemplification of this rule is contained in Art. 31(3) of the Polish Constitution: "Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights". In case of restrictions on public expression of religion, the protection of the natural environment is not included (Art. 53(5)). The Constitutional Tribunal clearly defined the level of protection of mentioned values in a different way in comparison with the European regulation.

According to the Constitutional Tribunal judgement, the freedom of religion prevails over the protection of animals. The Tribunal excluded the thesis that the protection of public morality can justify the ban on ritual slaughter. Moreover, the President of the Tribunal highlighted that the State cannot interfere in the sphere of

[17] E. Łętowska, M. Grochowski, A. Wiewiórowska-Domagalska, *op. cit*., p. 57.

[18] *Ibidem*.

[19] E. Łętowska, M. Grochowski, M. Namysłowska, A. Wiewiórowska-Domagalska, *op. cit*., p. 13.

freedom to express the religion. Judge Teresa Liszcz criticized this statement saying that such reasoning may serve as justification for many controversial practices which may resemble a religious fundamentalism.[20] The Constitutional Tribunal accepted the specific hierarchy of values in which freedom of religion plays a primary role.

The reasoning of the Constitutional Tribunal presented in the verdict K 52/13 does not correspond with the regulation at the European level, specifically with the Regulation 1099/2009. The European lawmaker adopted a balanced statement which includes different axiological claims. Performing ritual slaughter is possible for religious aims. The ban is fully enforceable because the issue of meat supply (intended for religious purposes) is not ignored because of the mechanism that allows kosher and *halal* meat to be imported. It seems that the Constitutional Tribunal fully allows not only slaughtering animals for meat in the context of a religious ritual but also its export. There are many doubts as to whether animals protection standards, especially when it comes to the slaughter for profit, are respected in Polish law after K 52/13 judgement.

Multicentric system of law and friendly interpretation of law directive

Dilemmas which arise in the case at hand are strictly combined with the contemporary complications concerning the multiplicity of law-making institutions. National laws, treaties, conventions are interrelated. Provisions for such acts are often in direct or implicit conflict. The old hierarchical method – "A prevails over B" – is usually insufficient and cannot be used. Today instead of a monocentric legal system there appeared a multicentric one. The new situation means the necessity of accepting the fact that different institutions can operate in the same legal field.[21]

The concept of multicentric (polycentric) legal system is neither a legal doctrine nor a paradigm, it rather describes social and legal reality and indicates certain solutions. The notion was introduced into the Polish legal debate by Ewa Łętowska.[22] The reality of polycentric system is characterized by numerous opportunities and challenges. The application of law may take into consideration different points of view but it requires the actors to have sophisticated skills, especially in combination with interpretation. An additional problem is related with the fact that political and legal culture are at a low level.

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[20] Dissenting opinion of Judge Teresa Liszcz to the judgement of the Constitutional Tribunal, ref. No. K 52/13, p. 73: "(…) in this way the Constitutional Tribunal may legitimize circumcision of women".

[21] E. Łętowska, *„Multicentryczność" systemu prawa i wykładnia jej przyjazna*, [in:] *Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana*, red. L. Ogiegło, W. Popiołek, M. Szpunar, Kraków 2005, p. 1129.

[22] Eadem, *Multicentryczność współczesnego systemu prawa i jej konsekwencje*, „Państwo i Prawo" 2005, nr 4; eadem, *„Multicentryczność" systemu…*, pp. 1127–1146.

A multicentric legal system can be defined as a coexistence in the single legal system of many sources of law which do not constitute a hierarchic structure.[23] One shall agree that the main problem with this coexistence is not about sovereignty but effective and correct interpretation.[24] That means that polycentrism must be accepted. But how to correctly apply the provisions deriving from different sources and regulating the same field?

Generally, this problem cannot be solved. However, there is an indication – the friendly interpretation of law principle. Such interpretation shall enable the coexistence (*współfunkcjonowanie*) between different legal orders.[25] That means not only the obligation to take into consideration the diversity of law systems but also effective application of multiple norms in the single case. Such interpretation can provide *effet utile*– the fundamental principle of EU law.

The fundamental principle in the contemporary law is that the state cannot invoke the provisions of its internal law as justification for its failure to perform international treaty law. The problem of multicentrism has its exemplification in EU law. National courts are obliged to apply directly applicable provisions and to interpret the legislation in conformity with requirements of EU law.[26] If the court does not comply with this commitment, it may give rise to proceedings before the Court of Justice of the European Union. The legislative and judiciary power shall at the same time act for the implementation of obligations adopted by EU institutions.

The multicentric legal system demands an interpretation which leaves a certain new way of understanding norms. In the context of pro-EU interpretation one can see a new "European shadow" – "semantic shadow" or "axiological shadow".[27] The impact of EU law requires a new way of perceiving certain situations. For example, the boundaries of freedom of contract or ethical borders of exploitation of some goods may be reinterpreted in a new situation. One should be ready for that new application because multicentrism is rather necessity than possibility. That means that the legislator (and first of all courts) must include international and EU *acquis* in the complicated process of interpretation. Especially "axiological shadow" may give rise to opposition but solving every situation which is in a way combined with ethical dilemmas is based upon the principle of proportionality. That rule guarantees a balance between different claims. Surely, the result of interpretation may be unusual at different levels, hence the dialogue between legal entities is needed. It seems that the only way to solve the problems deriving from multicentrism is developing a culture of persuasive decisions and dialogue. It may be difficult especially in those countries that did not have a long tradition of democratic governance.

[23] W. Lang, *Wokół „Multicentryczności systemu prawa"*, „Państwo i Prawo" 2005, nr 7.
[24] E. Łętowska, *„Multicentryczność" systemu…*, p. 1130.
[25] Eadem, *Multicentryczność współczesnego…*, p. 9.
[26] Judgement of the European Court of Justice of 10 April 1984, *Von Colson*, case No. 14/83.
[27] E. Łętowska, *„Multicentryczność" systemu…*, p. 1141.

In the analysis presented, the issue of multicentrism refers to two legal difficulties. First – interpretation of the Constitution and EU law which arise from the K 52/13 judgement and second – acts of Polish Sejm (lower house of Parliament) concerning regulation on the ritual slaughter. It should be taken into account that problems arising from the regulations of both the Constitutional Tribunal and Sejm are strictly combined with two factors: 1) the inability to effectively apply European norms, and 2) low possibility of taking into account the axiological differences which characterize the multicentric legal system. Interconnection of sources of law is really demanding for actors in the legal field. Two abilities seems indispensable in effective application of "multicentric norms":

– mutual respect for institutions which enact law (frequently based on different values),

– convincing justification of courts' verdicts.

These measures can serve as an effective tool provided that the following thesis will be understood: mutual dialogue and legal culture are often more important than traditional hierarchical thinking that does not lead to the solution of contemporary problems. Unfortunately, it is necessary to emphasize that the status of ritual slaughter in Poland was not settled upon this rule.

Ritual slaughter in Poland – what went wrong?

The status of ritual slaughter in Poland was uncertain and the constant legal amendments jeopardize the legal certainty. The ritual slaughter case is an example of weighing values in the legal field. In that case this procedure was carried out incorrectly. The first cause of disappointment is that national law-making institutions were not able to take advantage of the opportunities created by EU law. Omission of the European aspect (e.g. when it comes to notification in the K 52/13 case) may be evaluated as an imperfection. Moreover, the lawmaker was not able to justify the grounds for introducing these acts.

The K 52/13 judgement did not resolve any doubts combined with the contradictory claims and created a new uncertainty. The friendly interpretation of law directive was not sufficiently applied. Additionally, the Constitutional Tribunal exposed itself to criticism in terms of compliance with the principle of accusatorial procedure. The way the Constitutional Tribunal decided on the conflict between values did not correspond with the carefulness of the EU legislator. One can say that the reasoning of the verdict did not sufficiently dispel doubts whether the right pertaining to freedom of religion has supremacy over that of animal welfare.

The conclusion of this article is not an optimistic one. The friendly interpretation of law directive was not fully accepted by the Constitutional Tribunal. Moreover, the multicentric legal system did not contribute to any constructive dialogue between the Polish and EU legislature. It is highly probable that in the near future some ethical conflicts will arise between animal protection and economic use of meat.

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Abstract: This article addresses the problem of the legal status of ritual slaughter in Poland. The author presents the complexity of the problem in legal and comparative terms. The case law of Polish and international courts was included. The author analyses the problem with reference to a multicentric legal system concept, and in the conclusion there is a reference to the principle of friendly interpretation of law.

Keywords: ritual slaughter; EU law; the Constitutional Tribunal; multicentrism; proportionality