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## **Religious slaughter of animals in light of the EU and in the Polish law**

### **The concept of religious slaughter**

Religious slaughter, i.e. slaughter without stunning, involves killing the animal by cutting the carotid artery and the jugular vein, cutting off the trachea and esophagus with a very sharp knife. The animal should bleed to death. In addition, animals that are not mechanically restrained after the cut are likely to endure a slower bleeding process and, thereby, prolonged unnecessary suffering. Animals of bovine, ovine and caprine species are the most common species slaughtered under this procedure. Therefore, ruminants slaughtered without stunning should be individually and mechanically restrained<sup>1</sup>. It should be noted that, however, there are situations when the death of an animal does not occur immediately. In such circumstances usually religious slaughter means that the animal is conscious of own pain, fear, anxiety and other forms of suffering, thus violating the animal welfare. While the Jews accept absolutely no stunning, some Muslims have accepted it as long as it can be shown that the animal could be returned to normal living consciousness<sup>2</sup>.

### **Religious slaughter of animals in light of the international law and EU law**

The issue of humanitarian slaughter and killing of animals is of interest to international law and is regulated by the EU laws. In 2018, the World

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<sup>1</sup> Judgment of the Court of Justice of the European Union (Grand Chamber) of 29th May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen VZW and Other*, C-426/16, § 52.

<sup>2</sup> P. Kuczma, *Ubój rytualny jako prawo mniejszości narodowych w Polsce*, *Przegląd Prawa Konstytucyjnego* 2016 no. 5 (33), p. 183.

Organization for Animal Health (OIE) updated Terrestrial Animal Health Code<sup>3</sup>, which – broadly speaking – contains guidelines on the slaughter and killing of animals to combat disease. This international regulation contains, in particular, recommendations on handling animals, restraining, stunning and bleeding animals in slaughterhouses and killing animals in the event of an outbreak of infectious diseases. For the considered issue, it is also important the Council of Europe’s Convention for the Protection of Animals for Slaughter of 10th of May 1979<sup>4</sup>. It provides in Article 12 that animals should be stunned before they are slaughtered. It also provides that Member States may allow derogations from the stunning requirement to allow for ritual slaughter (Article 17).

The protection of animals during slaughter or killing has been taken into account in European law since 1974. First of all, I should mention the Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (hereinafter referred as “Regulation (EC) No 1099/2009”)<sup>5</sup>. According to the Article 1(1) of this act, the Regulation lays down rules for the killing of animals bred or kept for the production of food, wool, skin, fur or other products as well as the killing of animals for the purpose of depopulation and for related operations. The word „animal” means any vertebrate animal, excluding reptiles and amphibians (Article 2c of Regulation No 1099/2009). Religious slaughter is only permitted in approved slaughterhouses. The Article 4(1) of the Regulation No 1099/2009 determines that the general principle is that animals shall only be killed after stunning in accordance with the methods and specific requirements related to the application of those methods set out in Annex I. The loss of consciousness and sensibility shall be maintained until the death of the animal. The methods referred to in Annex I which do not result in instantaneous death (hereinafter referred to as simple stunning) shall be followed as quickly as possible by a procedure ensuring death such as bleeding, pithing, electrocution or prolonged exposure to anoxia.

Such rules result from the fact that proper slaughter and killing of animals are part of ensuring the so-called animal welfare. Animal welfare is a European value contained in the Protocol (No 33) on protection and welfare of animals from 1997 annexed to the Treaty on the EU and the Treaty Establishing the European Community<sup>6</sup>.

However the Article 4(4) 4 this Regulation states that in the case of animals subject to particular methods of slaughter prescribed by religious

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<sup>3</sup> See <http://www.oie.int/international-standard-setting/terrestrial-code/access-online>.

<sup>4</sup> E.T.S. No. 102, <https://rm.coe.int/1680077d98>.

<sup>5</sup> O.J. 2009/L 303, p. 1–33.

<sup>6</sup> Consolidated versions in O.J. 2006/C 321, p. 1–331.

rites, the requirements of paragraph 1 shall not apply provided that the slaughter takes place in a slaughterhouse. Thus, it is clear from a combined reading of Article 4(1) and (4) of Regulation No 1099/2009 and Article 2(k) thereof that the practice of ritual slaughter without prior stunning is authorised by way of derogation in the European Union, so long as such slaughter takes place in an establishment which is subject to authorisation granted by the competent national authorities and which, for those purposes, complies with the technical requirements relating to the construction, layout and equipment required by Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (hereinafter referred as Regulation No 853/2004)<sup>7</sup>.

According to the recital 43 of the Regulation No 1099/2009, slaughter without stunning requires an accurate cut of the throat with a sharp knife to minimise suffering. In addition, animals that are not mechanically restrained after the cut are likely to endure a slower bleeding process and, thereby, prolonged unnecessary suffering. Therefore, animals slaughtered without stunning should be individually and mechanically restrained. All the European animal welfare regulations require that an animal is spared any avoidable pain, distress or suffering during their slaughtering or killing process. Only permitted methods laid down in Annex I of Council Regulations No 1099/2009 should be used. The regulations also require everyone carrying out such operations to have a Certificate of Competence which indicates that they have the knowledge and skill necessary to perform the tasks humanely and efficiently.

The principles of ensuring the welfare of animals and their humane killing often clash – as in the case of religious slaughter – with the freedom of man to participate in traditional rites<sup>8</sup>. EU regulations also guarantee freedom of religion and the right to manifest religion or beliefs by practicing worship, teaching, participating in rites and through the possibility of consuming food derived by aforementioned procedures (Article 10 Charter of Fundamental Rights of the European Union, hereinafter referred as “Charter”<sup>9</sup>).

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<sup>7</sup> O.J. 2004/L 139, p.55. See also Judgment of the Court of Justice of the European Union C-426/16, § 55. See also M. Rudy, P. Mazur, *Obecny stan prawny w zakresie uboju rytualnego zwierząt. Część II. Normy europejskiego prawa wspólnotowego*, Prawo weterynaryjne 2014, no. 89 (1), p. 14.

<sup>8</sup> More – inter alia – P. Kuczma, *Ubój...*, p. 185 and next.

<sup>9</sup> „Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance”. O.J. 2000/C 364, p.1–23.

The Charter uses the word „religion” in a broad sense, covering both the *forum internum*, that is the fact of having a belief, and the *forum externum*, that is the manifestation of religious faith in public<sup>10</sup>. It follows that the specific methods of slaughter prescribed by religious rituals within the meaning of Article 4(4) of Regulation No 1099/2009 fall within the scope of Article 10(1) of the Charter<sup>11</sup>. In that connection, it must be stated that the derogation authorised by Article 4(4) of Regulation No 1099/2009 does not lay down the prohibition on the practice of ritual slaughter in the European Union but, on the contrary, gives expression to the positive commitment of the EU legislature to allow the ritual slaughter of animals without prior stunning in order to ensure effective observance of the freedom of religion<sup>12</sup>. That interpretation is confirmed by recital 18 of Regulation No 1099/2009 which clearly states that that regulation lays down an express derogation from the requirement for stunning animals prior to slaughter, specifically for the purposes of ensuring respect for the freedom of religion and the right to manifest religion or belief in worship, teaching, practice and observance, as laid down in Article 10 of the Charter<sup>13</sup>.

Also the European Court of Human Rights has stated that ritual slaughter is a religious act covered by Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4th November 1950<sup>14</sup>. For example the provisions of the religious law concerning ritual slaughter were widely discussed in the judgment of 27th June 2000 delivered by the European Court of Human Rights in Strasbourg in the case of *Cha'are Shalom Ve Tsedek v. France*<sup>15</sup>. According to this judgment, the ritual slaughter is still an action which is liturgical in character, despite the fact that it is carried out in secular slaughterhouse. Due to the fact that ritual slaughter is a form of observing religious precepts and that it is liturgical in character, actions related thereto are still governed by the norms of religious law and religious traditions<sup>16</sup>. Taking the above into consideration, the ECHR held that this kind of slaughter performed in accordance with the method prescri-

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<sup>10</sup> The judgments the Court of Justice of the European Union of 14 March 2017, G4S Secure Solutions, C 157/15, § 28, and of 14 March 2017, Bougnaoui and ADDH, C 188/15, § 30. See also the judgment of the Court of Justice of the European Union C-426/16, § 44.

<sup>11</sup> The judgment of ECtHR from 27 June 2000, *Cha'are Shalom Ve Tsedek v. France*, CE:ECHR:2000:0627JUD002741795, § 74. See also judgment of the Court of Justice of the European Union C-426/16, § 45.

<sup>12</sup> The judgment of the Court of Justice of the European Union C-426/16, § 56.

<sup>13</sup> *Ibidem*, § 57.

<sup>14</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, amended by Protocols Nos. 3, 5 and 8 as well as supplemented by Protocol no. 2, Journal of Laws (Dz. U.) of 1993 no. 61, item 284 with amendments.

<sup>15</sup> Application no. 27417/95; § 13–20 of the ECHR judgment.

<sup>16</sup> *Ibidem*.

bed by Judaism constitutes a rite covered by the right to manifest one's religion in observance, guaranteed in Article 9 of the Convention<sup>17</sup>.

I would like to express that provisions that guarantee the freedom of belief (in the Polish constitutional order – referred to as the freedom of religion) are common in constitutions of all EU states. The obligation to respect the freedom of religion is closely related to the protection of the inherent and inalienable dignity of the person, which constitutes a source of freedoms and rights of persons and citizens<sup>18</sup>.

### **Legal order of individual EU countries**

According to Article 26 (2) of Council Regulation No 1099/2009, 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 the field of the slaughtering and related operations of animals in accordance with Article 4(4). The final decision in this matter therefore belongs to individual member states.

Ritual slaughter, although with some restrictions, is permitted in 23 European Union Member States. Eleven countries require notification or consent of administrative authorities for such slaughter. Seven EU countries require that religious slaughter should be preceded by stunning the animal. For example, the law allows for religious slaughter – to a varying extent – in such countries as Lithuania, Romania, the Netherlands<sup>19</sup>, Spain, France and Poland.

Slaughter of animals without stunning is banned in Sweden<sup>20</sup> (since 1937), as well as in Norway, Denmark (since the 1st of February of 2014), Belgium (since the 1st of January of 2019 r.), Slovenia<sup>21</sup>, Switzerland and

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<sup>17</sup> Ibidem, § 74. See also J. Sobczak, W. Sobczak, *Ograniczanie człowieka w jego prawach ze względu na przynależność wyznaniową albo bezwyznaniowość*, Annales Universitatis Mariae Curie – Skłodowska, Lublin – Polonia, vol. XIX, 1, Sectio K, 2002, p. 61 and 68.

<sup>18</sup> Judgment of the Polish Constitutional Court of 10 December 2014, ref. no. K 52/13, point 5.1.

<sup>19</sup> Under Law 32/2007 on the Care, Exploitation, Transportation and Sacrifice of Animals (*Ley 32/2007 para el Cuidado de los Animales, en su Explotación, Transporte, Experimentación y Sacrificio*, Boletín Oficial del Estado [B.O.E.], Nov. 8, 2007) Spain allows religious slaughter without previous stunning in approved slaughterhouses, provided that such procedure does not violate fundamental rights, public safety, health, and morality protected by law (Article 6(3) of this Act). Available at <https://www.boe.es/buscar/pdf/2007/BOE-A-2007-19321-consolidado.pdf>, in Spanish.

<sup>20</sup> The slaughter of animals is regulated by Sweden's Animal Protections Act (*Djurskyddslagen*, SFS 1988:534) which provides that animals must be sedated prior to slaughter. 133 There is no exception for religious slaughter. Available at <http://www.notisum.se/rnp/sls/lag/19880534.htm>.

<sup>21</sup> Slovenia's Animal Welfare Act (*Zakon o Zaščiti Živali*) of 28 of November 1999 was amended in 2012 to add provisions banning all ritual slaughter of animals (available at [http://ex-prlegs1.fao.org/docs/html/slv\\_101698.htm](http://ex-prlegs1.fao.org/docs/html/slv_101698.htm), in Slovenian).

Iceland<sup>22</sup>. Switzerland and Lichtenstein require prior stunning except for poultry. Finland requires concurrent sedation; legislation is pending that would require prior stunning. At the subnational level, two of the three regions of Belgium have recently enacted laws requiring prior stunning, which will become effective in 2019 unless overturned by litigation pending in Belgium's constitutional court<sup>23</sup>. In the Netherlands, work on the ban has been underway since the beginning of 2019. Currently in Holland there is only one slaughterhouse where meat is slaughtered for religious consumption and the slaughter is done once a week. Several Member States (for example Austria, Estonia, Greece and Latvia) allow slaughter without pre-stunning, but under conditions such as "immediate" post-cut stunning. Latvia, which exports meat to Sweden, applies post-cut stunning. Germany gives no-stunning permissions to abattoirs, but only if they show they have local religious customers for the request. Very few are in fact given. However, it imports no-stunning meat from – for example – France and Poland. Other EU countries permit derogations from the general requirements to allow for religious slaughter. The cases of Cyprus<sup>24</sup>, France, Germany, Luxembourg, and Spain illustrate different forms that regulation of ritual slaughter may take<sup>25</sup>.

## Religious slaughter in Poland

Poland, where religious slaughter is currently legal, offers an interesting history concerning the legality of religious slaughter.

The discussion on the issues of humanitarian slaughter of slaughter animals on Polish soil began at the turn of the 19th and 20th centuries, in particular as a result of the postulates of animal care associations<sup>26</sup>. On April 17, 1936, the Sejm (lower house of the Polish parliament) passed the Act on the slaughter of farm animals in slaughterhouses<sup>27</sup>, which in art. 1 introduced a rule to stun the animals before slaughter and to start bleeding the animal after they completely lose their consciousness. However, the Act

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<sup>22</sup> The EC reported in 2010 that Ireland also exports non-stunned meat to other Member States. *Legal Restrictions on Religious Slaughter in Europe*, The Law Library of Congress, Global Legal Research Center, March 2018, s. 2, <https://www.loc.gov/law/help/religious-slaughter/religious-slaughter-europe.pdf>, p. 5.

<sup>23</sup> H. Needham, *Religious slaughter of animals in the EU*, Library Briefing - Library of the European Parliament, from 15 of October 2012, Available at [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2012/120375/LDM\\_BRI\(2012\)120375\\_REV2\\_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2012/120375/LDM_BRI(2012)120375_REV2_EN.pdf); *Legal...*, s. 2.

<sup>24</sup> Cyprus generally requires animals to be stunned before slaughter, but an exception is allowed in the case of animals subject to religious methods of slaughter. *Legal Restrictions...*, p. 4.

<sup>25</sup> *Ibidem*, p. 12, 16.

<sup>26</sup> J. Sobczak, W. Sobczak, *Ograniczanie...*, op. cit., p. 82.

<sup>27</sup> *Journal of Laws (Dz. U.)* no. 29, item 237.

contained in art. 5 paragraph 1 of orders the Minister of Agriculture and Agrarian Reforms<sup>28</sup> to issue, in consultation with two other ministers, a regulation establishing a particular manner and conditions for slaughtering animals for consumption purposes of those groups of people whose religion requires special treatment. Art. 5 paragraph 1 of the aforementioned Act states that the regulations should also specify the method of labelling such meat and limit its supply to the level of actual needs. The Act limited the possibility of slaughter only for religious purposes, to administratively designated contingents.

On March 22, 1939, the Act was amended by the Sejm and religious slaughter was banned completely until the end of 1942, but the outbreak of World War II prevented it from being ratified by the Senate. Formally, the Act of 1936 was repealed on December 14, 1997 because the Act of 24 April 1997 on combating infectious diseases of animals, examination of slaughter animals and meat and the State Veterinary Inspection, came into force<sup>29</sup>. In turn, on October 24, 1997, the Act of 21 August 1997 – Animal Protection Act<sup>30</sup>, entered into force, which stipulated that an animal may be slaughtered only following losing consciousness. However, it allowed exceptions in slaughter manner, in the case of specific religious rites. The amendment to the Animal Protection Act, which entered into force on September 28, 2002, ordered slaughtering only after prior stunning and disregarding the exception for religious slaughter. Slaughter was practiced on the basis of the Regulation of the Minister of Agriculture and Rural Development, of 9 September 2004 on the qualifications of persons to carry out a slaughter as well as for slaughtering and killing animals<sup>31</sup>.

At the request of the Public General Prosecutor, with the support of animal rights organizations, on 27 November 2012, the Constitutional Tribunal ruled that the Directive issued by the Minister of Agriculture and Rural Development does not conform with the Act of 21 August 1997 on the protection of animals and that the Minister exceeded his competences by issuing the ordinance without due statutory authorization<sup>32</sup>. The Constitutional Tribunal has ruled in particular that this provision shall expire on 31 December 2012. Therefore, from the 1 January 2013 until 12 December 2014,

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<sup>28</sup> Rozporządzenie Ministra Rolnictwa i Reform Rolnych z dnia 26 sierpnia 1936 r. wydanego w porozumieniu z Ministrem Wyznań Religijnych i Oświecenia Publicznego oraz Ministrem Spraw Wewnętrznych o sposobach i warunkach uboju rytualnego zwierząt gospodarskich, Journal of Laws (Dz. U.) no 70, item 504.

<sup>29</sup> Journal of Laws (Dz. U.) no. 60 item 369 with amendments. This Act was cancelled since the 1st of May 2004.

<sup>30</sup> The Animal Protection Act, Journal of Laws (Dz. U.) consolidated text from 2019 item 122.

<sup>31</sup> Journal of Laws (Dz. U.) no. 205 item 2102.

<sup>32</sup> The judgment of the Polish Constitutional Court of 27 October 2014, ref. no. U 4/12, OTK no 10A/2012, item. 124.

after the CT verdict became final, a complete prohibition of religious slaughter without stunning took effect in Poland.

Israeli government as well as the Israeli parliament issued protests. Cases of violation of the slaughter ban have been reported. In October 2013 during the Muslim Sacrifice Feast in Bohoniki, the religious slaughter of a few lambs took place and was reported to the police. Eventually, the investigation was discontinued, because it was considered relatively harmless. Repeatedly the press and television informed of the presence of kosher meat originating from Poland at Israeli fairs, which suggested that the ban was not observed.

In August 2013 the Association of Jewish Religious Communities filed an application to the Constitutional Tribunal to examine the compliance of the provisions of the Animal Protection Act with the Constitution of the Republic of Poland and the EU Convention for the Protection of Human Rights and Fundamental Freedoms. The President of the Muslim Religious Association in Poland, Tomasz Miśkiewicz, was also present at the CT as an observer. In November 2013, meat producers and two religious associations (Jewish and Muslim) appealed to the European Commission that the Polish regulations prohibiting religious slaughter in their opinion violate European law. On 10 December 2014, the Constitutional Tribunal quashed the ban on religious slaughter. Especially the Constitutional Tribunal adjudicated that Article 34(1) of the Animal Protection Act of 21 August 1997<sup>33</sup> – insofar as it does not permit subjecting animals in a slaughterhouse to particular methods of slaughter prescribed by religious rites – is inconsistent with Article 53(1), (2) and (5) of the Constitution of the Republic of Poland in conjunction with Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This prohibition – according to the CT – violated the freedom of religion and conscience of certain Polish citizens.

However, animal rights advocates did not surrender in order to ensure the welfare of animals and in November 2017 a draft amendment to the Animal Protection Act 1 was submitted to the Polish Sejm, which aimed to limit slaughtering without stunning. According to the project, the religious slaughter would only be practised to furnish the religious followers residing in Poland and not for export. The project was withdrawn as a result of numerous protests by farmers in the summer of 2018.

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<sup>33</sup> Journal of Laws (Dz. U.) of 2013 item 8.



## **Arguments in the discussion on the admissibility of religious slaughter**

### ***Protection against excessive suffering***

In Poland, much discussion about religious slaughter is in progress. Using this form of slaughter raises many emotions and controversy, mainly for social (ethical and cultural) reasons. The Animal Protection Act provides that animals, as living creatures capable of experiencing pain, are not things. People need to respect, protect and look after animals (Article 1(1) of the Act). The provisions of the Act states the requirement of humane treatment of all animals, that is to say treatment that takes account of the needs of animals and guarantees them care and protection (Article 5 and Article 4(2) of the Animal Protection Act).

The ban on ritual slaughter may be justified by the protection of morals; indeed, such slaughter inflicts more suffering, pain and distress on animals. Opponents of the practice feel that animals should be stunned before slaughter – standard industry practice worldwide – since this makes them unconscious and reduces the pain as they are cut and bled to death. In this approach, the ban appears as an expression of empathy towards animals<sup>34</sup>, and the acceptance of religious slaughter seems irreconcilable with the obligation of humane treatment of animals and the principle of avoiding unnecessary suffering of all sentient beings. Therefore, if religious slaughter is associated with inflicting immense pain, it should be rejected as inhumane<sup>35</sup>.

However, proponents of the admissibility of religious slaughter also point to convincing arguments. It is claimed that a part of Polish society accepts slaughter limited only to the needs of the faithful, but strongly opposes slaughter carried out for commercial purposes<sup>36</sup>. According to the Article 53 of the Polish Constitution may not justify derogation from a ban on ritual slaughter carried out as part of the mass production of kosher meat for export.

Persons accepting religious slaughter underline that the ban on slaughter would be an expression of the State's hypocrisy, because Polish law does not prohibit hunting, during which animals are killed for pleasure.

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<sup>34</sup> A. Dziadzio, *Zakaz uboju rytualnego jako naruszenie konstytucyjnej zasady wolności religijnej. Kontekst współczesny i historyczny*, „Forum Prawnicze”, 2014, no. 1, p. 8; P. Kuczma, *Ubój...*, op. cit., p. 188–189.

<sup>35</sup> J. Drath, *Ubój rytualny w polskim systemie prawnym*, Colloquium Wydziału Nauk Humanistycznych i Społecznych. Kwartalnik 2015, no. 3, p. 71; *Legal Restrictions...*, op. cit., p. 1; P. Kuczma, *Ubój...*, op. cit., p. 189; W. Hermeliński, Dissenting Opinion of Judge to the judgment of the Constitutional Court of 10 December 2014, ref. no. K 52/13, Journal of Laws (Dz.U.) of 2014 item 1794.

<sup>36</sup> A. Dziadzio, *Zakaz...*, op. cit., p. 8.

### *Freedom to practice religion in Poland*

Religious slaughter is inherently connected with the basic value of religious freedom<sup>37</sup>. In this aspect, the legal regulation of religious slaughter is one of the elements of the state's relation to minority religious associations, whose tradition allows eating meat dishes only on the condition that they are prepared in a precisely defined way – by bleeding an animal without excluding its consciousness (the so-called stun). However, it should be emphasized that nowadays the respect of the requirements of tradition by the followers of certain religions is increasingly met with a disapproval of people who are sensitive to the fate of animals subjected to this form of slaughter. This sensitivity, however, clashes with the fears of some believers, meticulously obeying their faith and sensitive to possible religious discrimination<sup>38</sup>.

In general, the prevailing view is that a total ban on religious slaughter would be a manifestation of discrimination against several citizens. As a result of its introduction, the Jewish and Muslim community would be forced to buy more expensive imported meat or go for forced vegetarianism<sup>39</sup>. It is considered that religious slaughter – as an important component of the religious belief system of both Islam and Judaism – in Poland benefits from the constitutional protection of the guarantee of freedom of religion and conscience<sup>40</sup>. Each attempt to obstruct the supply of food for cult purposes to believers of both religions can be assessed as a violation of the principle of impartiality of the state in matters of religious beliefs of citizens<sup>41</sup>. The administrative prohibition of religious slaughter by persons who have a religious duty to cultivate this custom is undermining the freedom of religion and conscience. An absolute statutory ban on religious slaughter would be all the more irreconcilable with the requirements of the rule of law, which treats freedom of religion and conscience as an emanation of human dignity<sup>42</sup>.

Halal meat (following Muslim practice) is produced in much greater quantities than Kosher meat (Jewish) in the EU. In some countries Halal and Kosher meat production (like in Poland) seems to be significantly above the requirements of the respective religious populations; some is exported to

<sup>37</sup> See more P. Kuczma, *Ubój...*, op. cit., p. 193.

<sup>38</sup> M. Rudy, P. Mazur, *Obecny...*, op. cit., p. 16; W. Brzozowski, *Dopuszczalność uboju rytualnego w Polsce*, „Państwo i Prawo” 2013, no. 5, p. 47.

<sup>39</sup> E. Łętowska et alia., *Prawo UE o uboju zwierząt i jego polska implementacja: kolizje interesów i ich rozwiązywanie*, part 1st, „Europejski Przegląd Sądowy” 2013, no 11, p. 17 and next. See also W. Hermeliński, Dissenting Opinion of Judge to the judgment of the Constitutional Court of 10 December 2014, ref. no. K 52/13, *Journal of Laws (Dz.U.) of 2014 item 1794*.

<sup>40</sup> P. Kuczma, *Ubój...*, op. cit., p. 183. See also inter alia J. Sobczak, W. Sobczak, *Ograniczanie...*, op. cit., p. 94.

<sup>41</sup> A. Dziadzio, *Zakaz...*, op. cit., p. 11 and next.

<sup>42</sup> *Ibidem*.

other Member States<sup>43</sup>. The right to continue using the ritual slaughter is also strongly contested between members of the Jewish and Muslim faiths and animal rights activists. Their slaughter rituals are deemed so important for their religious observance that outlawing them could be considered an attack on their religions<sup>44</sup>. One can notice that Jews and Muslims represent approximately 6% of the EU population, with Muslims accounting for the far greater proportion. Estimates of numbers in individual Member States vary significantly<sup>45</sup>.

There are provisions in Poland regarding the protection of the rights of national and ethnic minorities and ensuring the protection of religious freedom. The most important is the provision of art. 35 of the Constitution of the Republic of Poland<sup>46</sup>, which provides Polish citizens belonging to national and ethnic minorities, among others freedom to preserve the customs and traditions of one's own culture. In turn, art. 53 of the Constitution of the Republic of Poland provides that the state must ensure that believers are free from obstacles to express and practice religion. We can therefore assume that religious slaughter, as an element of the external layer of religious practice, has thus found itself under constitutional protection. Importantly, it also includes preventing all attempts to make it impossible to carry out such an activity. As mentioned above, the Polish Constitutional Court referred to the issue of religious slaughter in the verdict of 10 December 2014, K 52/13. It ruled that national provisions preventing ruthlessly the religious slaughter, which were strict and subject to criminal sanctions, violate freedom of religion. In the opinion of the Tribunal, such a ban was not necessary to protect any of the values listed in the Polish Constitution, and in particular public morality. Each method of slaughter, including those requiring stunning, is associated with the suffering of the animal. As noted above, there is no clear evidence that religious slaughter is more painful for vertebrates in this regard.

It is also worth paying attention to art. 9 par. 2 of the Act of 20 February 1997 on the Relationship of the State to Jewish Religious Communities in the Republic of Poland, which stipulates that: "In order to exercise the right to observe religious rites and perform ritual activities, Jewish religious communities shall take care of the provision of kosher food, eateries, ritual baths as well as ritual slaughter". The word "care" used in this article is not to be understood differently than as granting powers to the Jewish municipalities, among others to carry out slaughter in the manner prescribed by the reli-

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<sup>43</sup> *Legal Restrictions...*, op. cit., p. 1.

<sup>44</sup> *Ibidem*, p. 1.

<sup>45</sup> *Ibidem*, p. 2.

<sup>46</sup> *Journal of Laws (Dz. U.) 1997 no. 78 item 483 with amendments.*

gious rules, otherwise the final part of the article would be deprived of the normative content<sup>47</sup>.

### ***The economic arguments***

Very often, the economic argument is raised, pointing to the interest of Polish agriculture in maintaining the possibility of producing and exporting meat that meets religious requirements. Religious slaughter is therefore associated with economic entities that are difficult to ignore, dealing with the slaughter of animals and the processing of meat which was produced preserving religious customs<sup>48</sup>. The legal regulation of religious slaughter – both in Poland as well as other EU countries – has never been merely a purely denominational question, but also an economic one – it has always been a point in the battle for meat markets<sup>49</sup>. The EU market for Kosher meat was estimated to be worth around €5 billion in 2008<sup>50</sup>. In Poland, it is carried out on an industrial scale, and meat obtained in this way is mainly for export, since the domestic demand is relatively small due to the small percentage of national minorities, i.e. Muslims and Jews. The possibility of carrying out such slaughter allows to increase production of livestock and poultry in Poland and the revenues and profits of the meat industry. It is also important that, in this way, the greater diversification of outlet markets takes place and with the high instability of world markets it reduces the risk of meat production<sup>51</sup>. Defending domestic production, farmers and producer organizations set up all sorts of protests including road blockades<sup>52</sup>.

## **Literature**

Brzozowski W., *Dopuszczalność uboju rytualnego w Polsce*, „Państwo i Prawo” 2013, no 5.

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<sup>47</sup> W. Brzozowski, *Dopuszczalność...*, op. cit., p. 48–49.

<sup>48</sup> P. Kuczma, *Ubój...*, op. cit., p. 196; H.W. Kaczmarezyk, *Zakaz uboju rytualnego w prawie polskim naruszeniem konstytucyjnego prawa do wolności religijnej?*, „Przegląd Prawa Publicznego” 2014, no. 12, p. 56; M. Grochowski, E. Łętowska, A. Wiewiórowska-Domagalska, *Wiąże, ale nie przekonuje* (wyrok Trybunału Konstytucyjnego w sprawie K 52/13 o uboju rytualnym), *Państwo i Prawo*” 2015, no. 6, p. 61.

<sup>49</sup> *Ibidem*, p. 47.

<sup>50</sup> *Legal Restrictions...*, op. cit., p. 2.

<sup>51</sup> R. Mroczek, *Ubój rytualny w Polsce – wybrane aspekty*, *Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego w Warszawie Problemy Rolnictwa Światowego* tom 17 (XXXII), no. 1, 2017, p. 106.

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## Summary

Summing up the considerations, it should be stated that nowadays the problems of religious slaughter form a platform on which important values protected by international, European and the Polish legal order clash. These include ensuring the welfare of animals and allowing the slaughter and killing only in a humane manner, the protection of religious freedom by enabling participation in traditional rites and consumption of particular types of meat and the protection of economic values by ensuring the use of economic freedom by food producers. The assessment of religious slaughter therefore depends on the adopted system of values. At the same time, it should be noted that today's slaughter is carried out with respect for animal welfare and is only allowed if the conditions laid down in European law and – harmonized with it – national law are met. Due to globalist tendencies and the settlement of Islam and Judaism in Europe, it is rather difficult to imagine a universal and uniform ban on slaughter in all EU countries. For this reason, the EU leaves the regulation of this issue to the national legislation of

individual Member States. As a consequence it varies from a total ban in several countries (including Sweden and Norway) to more or less broad exceptions in others (including Poland, Lithuania and Spain). It is worth noting that even in countries that prohibit completely traditional slaughtering practices, this kind of meat is imported from other EU countries as well as from outside the EU.

## Streszczenie

### Ubój rytualny w świetle prawa europejskiego i polskiego

**Słowa kluczowe:** ubój rytualny, dobrostan zwierząt, wolność religijna.

Prawo UE wymaga, by zwierzęta przed ubojem zostały oszołomione (były nieświadome), tak aby śmierć była dla nich bezbolesna. Prawodawstwo UE pozwala na przeprowadzanie tzw. uboju rytualnego (tj. bez ogłuszania) w celach religijnych, ale ostateczna decyzja w tej sprawie należy do poszczególnych państw członkowskich. Istnieją wyjątki od uboju religijnego, sformułowane zwłaszcza dla szechity (żydowskiej metody zabijania zwierząt przeznaczonych na pożywienie, czyli mięso kosherne) i muzułmańskiego *halal*. Społeczności muzułmańskie i żydowskie, stanowiące w sumie prawie kilka procent ludności Europy, prezentują w tej kwestii podobne podejście filozoficzne. Nie ulega wątpliwości, że korzystanie z tej formy uboju budzi wiele emocji i kontrowersji, głównie ze względów społecznych (etycznych i kulturowych). Celem tego artykułu jest przedstawienie dopuszczalności zastosowania uboju rytualnego na tle obowiązującego stanu prawnego UE, prawa międzynarodowego oraz w świetle prawa polskiego. W szczególności należy również rozważyć, czy przepis art. 4 ust. 4 rozporządzenia Rady (UE) nr 1099/2009 z dnia 24 września 2009 r. w sprawie ochrony zwierząt w czasie uśmiercania, w związku z art. 2(k) stanowi ograniczenie prawa wolności religijnej zagwarantowanej w art. 10 Karty praw podstawowych Unii Europejskiej i polskiej Konstytucji.