



## HUMANITARIAN PROTECTION OF ANIMALS – ETHICAL AND LEGAL CONTEXT

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### ABSTRACT

The aim of the article is to discuss the issue of humanitarian protection of animals especially by the ban on cruelty to and killing of animals. The mentioned issue has been shown simultaneously as a problem that has a reference to established legal solutions as well as a concern of a philosophical, moral and ethical nature.

Moreover, the content of the article is in some way intended to systematise the knowledge in the field of humanitarian protection of animals, not only in the area of law, but also within an utilised conceptual network. Apart from discussing legal regulations in this area at the international level, the evolution of Polish laws on this subject has been exhibited. Furthermore, the article presents terms related to reification, dereification and personification as concepts of regulating the legal status of animals. As a continuation of the above mentioned considerations, there is a mention to issues of killing, putting to death and slaughtering of animals that, *de facto*, lead to taking away of the animals' lives.

### ARTICLE INFO

Available online: 11 December 2016

#### Keywords:

animal,  
humanitarian protection,  
law,  
ban,  
killing

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*Safety is the foundation of everything we do*  
Henry Kissinger

The words quoted above of the former national security advisor to the President of the United States of America undoubtedly capture the essence of the complexity and seriousness of the issue of safety. They are also an attempt to define broadly, thus they indicate its extensive scope. Moreover, their importance and significance is fully reflected by the role and place of man in the area under consideration, i.e. ecology – environmental protection – humanitarian protection of animals.

One of the most important problems of civilization, which has existed for thousands of years, the elements of which can be found in many religions and civilizations, concerns the attitude of man towards animals – the essence

of the man-animal relation<sup>1</sup>. In this context, a good start for further consideration could be the following part of the preamble to the Universal Declaration of Animal Rights, justifying the importance of this issue: “Due to the fact that each animal, as a living being, has rights in the moral sphere, that ignorance and lack of recognition of these rights brought man and still continues to guide him to crimes against nature and animals, that recognising by the human species the right of other animal species to exist provides the basis for co-existence of all living beings”<sup>2</sup>.

Undoubtedly, an important role in defining the attitude of man towards animals plays a practical aspect of this relation. But is the practical aspect just the attitude of instrumental treatment of animals characterised by a lack of sensitivity and pursuit of profit? It appears that it is not. In fact, it should be defined in the framework of ethics and the perception of other organisms than man as such living beings that have fundamental rights, including the right to life and the right to protection against suffering. Of course, this is not in contradiction with the indication of differences that exist between humans and animals.

There are three basic human attitudes towards animals having their source in the main trends in philosophy and ethics. They have been defined as instrumental, subjective and indirect attitudes towards the treatment of animals. As evidenced by Ł. Smaga, opponents of the attitude of subjective treatment of animals “are wrong to accuse its supporters of anthropomorphism aimed at blurring the differences between humans and animals, ignoring the fact that almost all representatives of the concept of conferring the selected rights to animals recognise such differences, opposing only to the use of animals justified by these differences”<sup>3</sup>. At the same time, J. Białocerkiewicz indicates that the differences between representatives of the main trends in philosophy concern four aspects, namely: 1) the existence of animals is connected to and relates to meeting human needs, 2) man has an immortal soul and the animal is regarded only as a machine (Descartes and his metaphysics as the view on the dissimilarity between animals and humans), 3) the awareness of human existence arising from the possession of reason, while the animal has only instinct, 4) the animal as a subject of rights and morality, but not to the same extent as man<sup>4</sup>.

In conclusion, it is the animal care and the form of caring for them by man, or the scope of interference in their existence that determines the attitude of man towards animals, and thus affects their situation. Therefore, in fact, human behaviour and man’s attitude towards animals shape their status. Issues relating to the status of animals include not only the moral aspects, but also, and perhaps especially, the legal aspects. As results from the analysis of the literature<sup>5</sup>, considerations in this regard to a vast extent concerned only the philosophical aspect. However, the intensity of this discussion, deepening in its course the public awareness and active operations in this regard of organisations acting for the animals led to significant changes in the law concerning animals. As a consequence of these actions, the evaluation of the problem of the status of animals began to appear also in the area of theoretical and legal considerations. Thus, a tendency to strengthen the legal status of animals could be observed.

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<sup>1</sup> See Friszke, A. *Zwierzęta a człowiek rozumny*. “Więź”. 1998, No. 7, p. 23

<sup>2</sup> The text of the declaration, among others, in: Radecki, W. *Ustawa o ochronie zwierząt – komentarz*, Warsaw, 2012, p. 39

<sup>3</sup> Smaga, Ł. *Ochrona humanitarna zwierząt*, Białystok, 2010, p. 12

<sup>4</sup> See Białocerkiewicz, J. *Status prawny zwierząt. Prawa zwierząt czy prawna ochrona zwierząt*, Toruń, 2005, pp. 89-91

<sup>5</sup> See, for example, „Etyka”, 1980, vol. 18, p. 4

## ANIMAL PROTECTION IN INTERNATIONAL LAW

Referring to the issue of animal protection at the level of international regulations, it should be stated that it basically covers two areas. The first one assumes the treatment of animals as living biological resources of the Earth, which should be protected for the sake of future generations, and it applies mainly to wild animals with simultaneous actions protecting animals threatened with extinction as well as migratory animals. The second area refers to the principles in which animals are subject to protection as living beings feeling pain and suffering. In this respect, the protection covers all wild, domestic and farm animals<sup>6</sup>. When speaking about the international law of the 20th century in the direct context of animals, one must have in mind, in particular, the Convention on International Trade in Endangered Species of Wild Fauna and Flora established in Washington on 3 March 1973.<sup>7</sup> As evidenced by W. Radecki: “It should be emphasised that the Convention does not ban trade in the species, but imposes restrictions. If the Convention allows for trade in the species of animals, it is obvious that these animals must be transported in conditions that respect humanitarian requirements”<sup>8</sup>.

The animal protection in international documents is primarily provided by the Universal Declaration on Animal Rights proclaimed by UNESCO on 15 October 1978 in Paris, part of the preamble of which was quoted at the outset of this paper. It is not without significance that this document is quoted twice, as one can meet with the views that the Universal Declaration on Animal Rights fulfils a similar role in the animal protection system as the Universal Declaration of Human Rights plays in the international system of human rights<sup>9</sup>. However, looking at how it is connected with the law, where the consequence of adopting the Universal Declaration of Human Rights were the Covenants on Human Rights and other international conventions, the Universal Declaration on Animal Rights has no legal, but only moral significance. Hence, by referring to its title we are talking about a document and not the regulation having a legal force. Nevertheless, its adoption has been recognised as one of the major events which clearly signals a change in the essence of behaviour and attitude of man towards animals. In consequence, the message contained in the Convention is reflected both in the international and Polish regulations, including the Act on the Protection of Animals<sup>10</sup>. Moreover, the declaration contains the idea of dereification and personification of animals. The first one refers to recognising that the animal is not a thing, and the second one – that animals have rights<sup>11</sup>. On the other hand, when it comes to the European law, one should indicate, in particular, the activity of the Council of Europe in this regard. As part of its activity, the European Convention for the Protection of Animals during International Transport was prepared and adopted in Paris on 13 December 1968, being the first international agreement in this regard. Further conventions of the Council of Europe in this area include<sup>12</sup>: The European Convention for the Protection of Animals Kept for Farming Purposes of 10 March 1976<sup>13</sup>, the European Convention for the Protection of Pet Animals of 13 November

<sup>6</sup> See Przyborowska-Klimczak, A. *Ochrona zwierząt w świetle dokumentów międzynarodowych* [in:] Mozgawa, M. (eds.). *Prawna ochrona zwierząt*, Lublin, 2002, pp. 94-96

<sup>7</sup> See the Polish text of the Convention in the Journal of Laws of 1991, No. 27, item 112 – ratified by Poland.

<sup>8</sup> Radecki, W. *Ustawa...*, p. 29

<sup>9</sup> See Białocerkiewicz, J. *Ochrona fauny w prawie międzynarodowym* [in:] „Ochrona Środowiska – Przegląd”, 2001, No. 1, p. 14

<sup>10</sup> See Radecki, W. *Ustawa...*, p. 41

<sup>11</sup> See Białocerkiewicz, J. *Status...*, pp. 180-181; Radecki, W. *Ustawa...*, p. 41

<sup>12</sup> See Radecki, W. *Ustawa...*, p. 29; Przyborowska-Klimczak, A. *Ochrona zwierząt...*, pp. 95-114

<sup>13</sup> ETS No. 087

1978<sup>14</sup>, the European Convention for the Protection of Animals for Slaughter of 10 May 1979<sup>15</sup> and the European Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes of 18 March 1986<sup>16</sup>.

## POLISH LAW ON ANIMAL PROTECTION – THE EVOLUTION OF LEGAL STANDARDS

In an attempt to provide a general outline of directions and the scope of legal solutions in the area of humanitarian protection of animals, it should be noted that granting moral status to animals lies at the heart of its specification at the level of positive law.

The first regulations on the protection of animals in Poland can be found in the Decree of the President of the Republic of Poland on the Protection of Animals of 22 March 1928<sup>17</sup>. It regulated a general ban on cruelty to animals. It is important that it defines the concept of “cruelty” as “causing suffering to animals without an important and legitimate need<sup>18</sup>”. Simultaneously, the document pointed out examples of behaviours towards animals bearing signs of cruelty. They included, among other, “using sick, injured or lame animals to work, and keeping them in the condition of outstanding carelessness, hitting the animals on the head, the lower abdomen, the lower parts of limbs, beating the animals with hard and sharp objects, or with devices for causing special pain, transporting, transferring or chasing animals away or in a way, in the position or in the conditions that cause unnecessary physical suffering, treating animals using unsuitable tools and without observing the necessary caution and circumspection in order to spare them excessive pain, or malicious scaring and teasing the animals as well as causing suffering to animals without an important and legitimate need”.<sup>19</sup>

An important element of the Decree of 1928 was also a broad penalisation of its provisions. Criminal sanctions were introduced for abuse on animals showing an exceptional cruelty of the perpetrator. Such an act constituted an offence punishable by imprisonment for up to 1 year. What is more, the decree stipulated the offence of cruelty to animals<sup>20</sup>.

In the literature, the Decree of 1928 is most often cited as the primary legal act from the inter-war period referring to the humanitarian protection of animals. Nevertheless, this was not the only act regulating this issue at the time. However, it was the first document implementing the humanitarian protection of animals to the Polish legal system especially that it was in force until the mid-90s of the last century. Also, the Decree of the Minister of Public Works and the Minister of the Interior of 26 June 1924 on the use and protection of roads included in its content the provisions in this regard<sup>21</sup>. The Decree of the Commissioner of the Government of the Capital City of Warsaw on Regulating the Speed of Driving and Loading of Horse-Drawn Vehicles of 22 May 1931 was issued on its basis. It introduced a ban on trotting for horse-drawn vehicles, but it did not apply to vehicles with rubber wheels. The essence of this regulation, in terms of the humanitarian treatment of animals, referred

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<sup>14</sup> ETS No. 125

<sup>15</sup> ETS No. 102

<sup>16</sup> ETS No. 123

<sup>17</sup> Journal of Laws of 1932, No. 42, item 417; amended by Journal of Laws of 1971, No. 12, item 115

<sup>18</sup> *Ibid.*, Art. 2 para 1 letter k

<sup>19</sup> Art. 2 of the Decree... of 1928

<sup>20</sup> *Ibid.*, Art. 4

<sup>21</sup> Journal of Laws of the Republic of Poland of 1924, No. 61, item 611

to not overloading a horse drawing the vehicle by specifying the upper limit of the load weight that could be transported by horses. Another legal act in this regard was the Decree of the President of the Republic of Poland<sup>22</sup> on Combating Infectious Animal Diseases of 22 August 1927, or the Decree of the Minister of Agriculture of 9 January 1928 of the same sounding name<sup>23</sup>. They regulated, among others, the process of catching dogs and other animals for veterinary reasons, and the manner of treating animals with infectious diseases. At the same time, they contained regulations imposing the obligation to carry out these activities humanely during catching dogs. In addition, any actions carried out and related to animals were covered by the ban on teasing and causing unnecessary pain to them. However, despite all these legal fortifications in the area of the humanitarian treatment of animals, they also allowed for killing of dogs and cats, although humanely, that have not been bought out within three days<sup>24</sup>. When referring to this problem, it is impossible not to mention the Act on the Slaughter of Farm Animals in Slaughterhouses of 17 April 1936<sup>25</sup>, which related to the humanitarian slaughtering not only in terms of pain relief, but its very consciousness. At the same time, it pointed to the ban on cruelty by frightening animals<sup>26</sup>. For this reason, it specified that animals “should be stunned or otherwise deprived of consciousness before bleeding out”<sup>27</sup>.

Simultaneously, according to the literature, actions aimed at replacing the decree of 1928 with a new one were taken. One of these proposals included taking into account the humanitarian protection of animals in the Nature Conservation Act. As a result, however, another solution was selected – a separate regulation in the form of an act<sup>28</sup>. The result of these considerations based on the contemporary Polish law was the adoption by the Sejm of the Act on the Protection of Animals of 21 August 1997<sup>29</sup>, hereinafter referred to as the APA, which entered into force on 24 October 1997. In the eighteen years of the effective period, the Act was amended twenty times. The first amendment took place in 1998 by the Act of 24 July 1998 on Amending Certain Acts Defining the Competencies of Public Administration Bodies, adjusting the provisions of the Act to the principles of public administration. The last amendment took place in 2015. This is the Act on the Protection of Animals Used for Scientific or Educational Purposes of 15 January 2015. The changes introduced by the Act will be discussed later in the article. As indicated by W. Radecki, this regulation introduces a fundamental change in relation to the decree of 1928. “In the past, the owner could always kill an animal, he was only not allowed to torment it. At present, the owner is not allowed to kill an animal without legitimate reason”<sup>30</sup>. Regulations including, among others, the ban on cruelty to and killing of animals in situations permitted by law, introduced by the Act, are also significant. At the same time, taking into account near-statutory regulations relating, among others, to the issue of international protection of the species and regulations relating to experimental procedures involving animals, “it could have been assessed that the Act on the Protection of Animal is the Act:

<sup>22</sup> Journal of Laws of the Republic of Poland of 1927, No. 77, item 673

<sup>23</sup> Journal of Laws of the Republic of Poland of 1928, No. 19, item 167, as amended The Decree of 15 September 1932

<sup>24</sup> See Smaga, Ł. *Status prawny zwierząt w polskim prawodawstwie międzywojennym* [in:] Gardocka, T., Gruszczynska, A. (eds.). *Status zwierząt. Zagadnienia filozoficzne i prawne*, Toruń, 2012, p. 263

<sup>25</sup> Journal of Laws of the Republic of Poland of 1936, No. 29, item 237

<sup>26</sup> *Ibid.*, Art. 2

<sup>27</sup> Art. 1 of the Act on the Slaughter of Farm Animals in Slaughterhouses of 17 April 1936

<sup>28</sup> See Paczuski, R. *Prawo ochrony środowiska*, Bydgoszcz, 1996, pp. 406-409

<sup>29</sup> Journal of Laws No. 111, item 724

<sup>30</sup> Radecki, W. *Ustawa...*, p. 24

- protecting animals as part of the natural world, thus the environment;
- requiring the humanitarian treatment of animals in all areas of social, economic and scientific life;
- penetrating other regulations (including those relating to farm animals) in terms of sparing unnecessary suffering to animals<sup>31</sup>.

The above issue is also regulated by the Act on the Experiments on Animals (AEA) of 21 January 2005<sup>32</sup>. This legal act includes a definition of putting the animals to death humanely, identifying this act as involving the killing of an animal by causing it the smallest possible physical and mental suffering, taking into account the specificity of a given species<sup>33</sup>. Although the Act took over part of the regulations from the area of the Act on the Protection of Animals, it did not take into account all aspects of this issue, especially EU regulations. Considering the above, on 15 January 2015, the Sejm passed the Act on the Protection of Animals Used for Scientific or Educational Purposes signed by the President of the Republic of Poland on 6 February 2015<sup>34</sup>. The purpose of implementing the new project was to reduce the suffering of laboratory animals by limiting the number of scientific research carried out and preventing the implementation of projects, which can be considered unnecessary or unjustified<sup>35</sup>. In the content of the above Act, the element of putting to death and death of animals used for scientific or educational purposes finds reference starting from the procedure<sup>36</sup>, through specifying the way of putting the animals to death and the qualifications of a person carrying out this action<sup>37</sup>, including the need to monitor cases of putting the animals to death for the purpose of obtaining organs or tissues<sup>38</sup>. It is possible to identify from the aforementioned provisions general principles stating that during planning and executing the above activities death of animals should be avoided, and in the case of the need to implement the procedure of putting to death, the legislature requires to end this procedure early and humanely, while minimising pain, suffering or stress.

It should be emphasised that the requirements for the protection of animals are also found in other legal acts, as part of a multi-faceted and interlinked regulations. This applies at least to animal husbandry or the eradication of infectious diseases of animals. The essential legal acts relating to the environmental protection are: the Environmental Protection Law Act of 27 April 2001<sup>39</sup> and the Nature Conservation Act of 16 April 2004<sup>40</sup>. It shaped the view, also raised by W. Radecki, clearly positioning the humanitarian protection of animals in the area of the environmental protection law. Simultaneously, he points to the views put forward by other experts on the subject, including L. Jastrzębski, R. Paczuski, J. Sommer, J. Boć, A. Lipiński and M. Górski. They all

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<sup>31</sup> Radecki, W. *Ustawa...*, p. 25

<sup>32</sup> Journal of Laws of 2005, No. 33, item 289

<sup>33</sup> Art. 2 para 12 of the AEA

<sup>34</sup> Journal of Laws of 2015, item 266 The Act is intended to implement the provisions of Directive 2010/63/EU of the European Parliament and of the Council of Europe of 22 September 2010 on the Protection of Animals Used for Scientific Purposes into the Polish legal system. In connection with the introduction by the directive of new and more stringent requirements on the protection of animals used for scientific purposes, the Act introduces regulations ensuring higher standards for the protection of welfare of animals used for scientific or educational purposes,

<http://www.prezydent.pl/prawo/ustawy/podpisane/art,55,luty-2015-r-.html>. Accessed 10 May 2016.

<sup>35</sup> See <http://www.biotechnologia.pl/biotechnologia/aktualnosci/rzad-przyjl-nowe-prawo-ochrony-zwierzat-laboratoryjnych,14423>. Accessed 10 May 2016.

<sup>36</sup> Art. 6 of the Act of 15 January 2015

<sup>37</sup> *Ibid.*, Art. 16 and 21

<sup>38</sup> *Ibid.*, Art. 25

<sup>39</sup> Journal of Laws of 2001, No. 62, item 627

<sup>40</sup> Journal of Laws of 2009, No. 151, item 1220, as amended

jointly include the humanitarian protection of animals as part of the environmental protection<sup>41</sup>. The formal and legal scope of that protection concerning, among others animals, was included in the Environmental Protection Law Act<sup>42</sup> and it involves: preserving valuable ecosystems, biodiversity and maintaining the natural balance, creating the conditions for proper development and optimal fulfilment of the biological function in the environment by animals and vegetation, preventing or mitigating the negative impacts on the environment, which could adversely affect resources and the condition of animals and plants as well as preventing natural hazards of complexes and creations of nature.

Regardless of the presented position of the scope of the protection of animals in the regulatory system, it is also important to indicate the development of the position of animals, their status in the considerations on the legitimacy and, in particular, the level and scope of granting them rights.

### SHAPING THE LEGAL STATUS OF ANIMALS

Defining the term “status” as regards the animals “can both indicate that they are different from things, and therefore people have specific responsibilities towards them, and it can be used to describe the diversity of the legal position within the animal kingdom (the special status of great apes, mammals or vertebrates)”<sup>43</sup>. At the same time, H. Izdebski points to another feature of the concept of status. This feature applies to membership in a particular group. For this reason, in the case of defining the rights, one should speak rather about collective than individual rights. “And so it is, in fact, in relation to animals – and the term “animal rights”, having a different subject than “human rights”, has not been used by accident. Thus, as regards animals, the category of subjectivity, and even the category of subjective rights, can be considered as lacking legal significance”<sup>44</sup>.

Notwithstanding the foregoing, noticeable is the general direction of strengthening the legal status of animals with simultaneous consideration of the issue of further proposals of changes in this regard. Currently, the literature suggests three ways to regulate the legal status of animals<sup>45</sup>. The first one, having its origins already in Roman law, is the division into people and things, called the reification, according to which the animal is considered to be a thing, despite the fact that, in accordance with the nature, an animal is a living organism. The second way shaping the status of animals, which is most often used, is the dereification assuming that the animal is not treated as a thing, but as a “material object” not being a thing<sup>46</sup>. Pursuant to Polish law, this issue was readjusted in Art. 1 para 1 of the Act on the Protection of Animals, according to which: “Animal as a living being is able to feel pain. Man owes it respect, protection and care”. Admittedly, the next paragraph stipulates that “in matters not governed in the Act, the provisions relating to things apply accordingly to animals”. However, a specific exclusion of the application of dereification from the areas of human life, which have not been regulated by the content of this Act, should not be applied directly. As evidenced by W. Radecki following E. Łętowska “the appropriateness

<sup>41</sup> Radecki, W. *Ustawa...*, pp. 26-27

<sup>42</sup> Art. 127 para 1

<sup>43</sup> Izdebski, H. *Prawa zwierząt czy prawo zwierząt* [in:] Gardocka, T., Gruszczyńska, A. (eds.). *Status zwierząt. Zagadnienia filozoficzne*, p. 41

<sup>44</sup> *Ibid.*, p. 41

<sup>45</sup> Smaga, Ł. *Ochrona...*, p. 81

<sup>46</sup> See Nazar, M. *Normatywna dereifikacja zwierząt – aspekty cywilnoprawne* [in:] Mozgawa, M. (eds.). *Prawna...*, pp. 128-129, 137-139; Łętowska, E. *Dwa cywilnoprawne aspekty praw zwierząt: dereifikacja i personifikacja* [in:] *Studia z prawa prywatnego. Księga pamiątkowa ku czci Profesora Biruty Lewaszkiewicz-Petrykowskiej*, Łódź, 1997, pp. 70-93

of the application is to result from both the letter and the axiology of the protective legislation on animals. The dereification constitutes the introduction of a general clause differentiating – due to the special subject of the legal relationship – the legal regime created by the legislator in relation to things”<sup>47</sup>.

The third approach refers to granting the animal, under the Act, legal personality (legal status) called the personification of animals. Assuming the undeniable fact that the animal is a living being, capable of feeling pain and suffering, therefore it should be protected by law against arbitrary actions of man carrying in itself the infliction of suffering, pain or even taking away of life<sup>48</sup>. However, it should be pointed out that there is no equal footing of animals and humans in terms of their rights. The interpretation of the scope of rights of animals, or only the legal protection of animals as part of their personification, causes a dispute at this level<sup>49</sup>.

In his commentary to the Act W. Radecki analyses and interprets the area of various views in this regard, of both E. Łętowska and J. Białocerkiewicz. Summing up, he believes that when resolving the issue of whether the scope of activities should lead to ensuring the “animal rights or the legal protection of animals”, we can only talk about the “legal protection of animals”, since we can talk “about animal rights only figuratively, and not literally. On the other hand, I would not mind using the notion of freedom of the animals, as I do not equate the rights and freedom. Quite reasonable is the structure of freedom of animals from the unnecessary pain, suffering, fear and stress. Moreover, this is where the very idea of humanitarian protection of animals lies”<sup>50</sup>.

The reflection on this issue allows to formulate a question, which complements the above position and, at the same time, attempts to summarise this part of the publication. Thus, assuming that the issue of granting the animals rights associated with their full personification is being considered, then: *Should it concern all the animals, and if not all, which ones and why?*

## HUMANITARIAN TREATMENT OF ANIMALS

Each animal requires humanitarian treatment<sup>51</sup>. The definition of the humanitarian treatment of animals states that it is a treatment taking into account the needs of an animal and providing it with care and protection<sup>52</sup>. The Decree on the Protection of Animals of 1928 mentioned many times was a document, in which the word “humanitarian” appeared for the first time in the Polish legal system.

The issues relating to the humanitarian protection in the current legal regulations were included in the Act on the Protection of Animals. In this Act, the word “humanitarian” is used in three situations, namely: the first time in the definition cited above, the second time as an order of humanitarian treatment, and the third use of this term refers to putting to death for humanitarian reasons. Simultaneously, the second basic legal act applying to and containing legal regulations on the humanitarian treatment of animals is the Act on the Experiments on Animals mentioned earlier in the publication.

Whereas, when referring to the etymology of the word “humanitarianism” as acting humanely or mercifully, respecting the dignity of man and animals,

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<sup>47</sup> See Łętowska, E. *Dwa cywilnoprawne aspekty...*, pp. 83-84

<sup>48</sup> Smaga, Ł. *Ochrona...*, p. 89

<sup>49</sup> Radecki, W. *Ustawa...*, pp. 50-52

<sup>50</sup> *Ibid.*, p. 53

<sup>51</sup> Art. 5 of the APA

<sup>52</sup> Art. 4 of the APA



it is important not to confuse it with the word “humanism” from the Renaissance, which referred to stressing the human value and dignity, while highlighting the uniqueness of human nature<sup>53</sup>. By defining the scope of meaning of the phrase “humanitarianism” used in relation to animals in the ethical and moral perspective, it can be assumed that this is a manifestation of the whole spectrum of human attitudes towards other animals co-surrounding and co-existing with him, however, attitudes marked by and filling the essence of humanity.

The humanitarian protection, in addition to other existing types of animal protection, such as the species, utilitarian or veterinary protection, plays a leading role in this regard. In the literature, there is a view that the special nature of this protection stems from the situation that should be each time taken into account when applying other forms of animal protection<sup>54</sup>. It should be noted that this protection applies to and is aimed directly at the animals and should be taken into account in every level of the man-animal relation.

When speaking about the humanitarian protection, it should be considered both in positive and negative terms. The negative interpretation of this protection includes the ban on cruelty to and killing of animals, in other words, refraining from inflicting suffering to and killing of animals. In contrast, a positive aspect covers all the actions of man aimed at preventing animal suffering. This applies to caring for them, or creating appropriate living conditions, thus their appropriate treatment<sup>55</sup>.

An attempt to define the humanitarian protection of animals requires distinguishing those areas that indicate the scope of the humanitarian treatment of animals. It includes such behaviour and action, or its lack, specifying this type of situations as violating the ban on killing of animals and the ban on cruelty to animals.

The analysis of legal regulations indicates that the first and most important area that should be distinguished, raising the essence of the humanitarian treatment, applies to the ban on killing of animals<sup>56</sup>. The current wording “it is forbidden to kill animals” is valid from 1 January 2012 and changed the prior wording, which defined that “unjustified and inhumane killing of animals (...) is banned”. However, the legislator introduced nine exceptions to the ban on killing in the Act on the Protection of Animals. These exceptions, situations justifying the killing of animals, were included in the same article as the general part of the Act. However, the indicated cases do not specify all the situations in which killing of an animal according to the letter of the law is allowed.

Furthermore, the content of the aforementioned Act clarifies that the killing of animals can be carried out only humanely by inflicting as little physical and mental suffering as possible<sup>57</sup>. It is necessary to point here to the existing problems related to the interpretation of the applicable terminology. The title of Section 10 of the above Act – “Slaughter, putting to death and reducing the population” – introduces the distinction of “acts” that cause taking away of the animal’s life. Thus, the division is made to killing of the animal, putting it to death and slaughtering. Therefore, at the level of legal regulations, we have three identical acts, the behaviour of which is materialised in one way, namely, it involves taking away of the animal’s life.

The analysis of legal regulations formulated this way allows to conclude that taking away of the animal’s life is not an illegal act in a situation, where all

<sup>53</sup> [https://pl.m.wikipedia.org/wiki/Humanizm\\_renesansow#Geneza\\_nazwy](https://pl.m.wikipedia.org/wiki/Humanizm_renesansow#Geneza_nazwy) – accessed 10 May 2016

<sup>54</sup> See Lipiński, A. *Prawne podstawy ochrony środowiska*, Kraków, 2005, pp.192-194; Smaga, Ł. *Ochrona...*, p. 81

<sup>55</sup> See Smaga, Ł. *Ochrona...*, p. 110

<sup>56</sup> Art. 6 para 1 of the APA

<sup>57</sup> Art. 33 para 1a of the APA

conditions of such an “act” are fulfilled. It concerns complying with the legal provision indicating exceptions to the ban, while putting animals to death humanely. However, a third condition must be met, arising from a series of rules contained, among others, in the provisions of hunting law, or the Act on Inland Fishery and the Act on the Protection of Animals itself<sup>58</sup>, “thus the consent of a specified person”<sup>59</sup>. In this case one should have in mind, for example, the animal’s owner, the General Director for Environmental Protection and the regional director for environmental protection. Whereas, the entities stating the need to put an animal to death include: a veterinarian, a member of the Polish Hunting Association, an inspector of a social organisation whose statutory objective is the protection of animals, a police officer, an officer of the Railway Security Guard, a municipal police officer, an officer of the Border Guard, an employee of the Forest Service or the National Parks Service, an officer of the State Hunting Guard, a hunting guard or an officer of the State Fishery Guard.

For the purpose of this publication, exceptions to the ban on killing of animals resulting from the content of the Act were systematised, creating their classification in reference to the following criteria:

- humanitarian<sup>60</sup>,
- the state of necessity<sup>61</sup>,
- sanitary<sup>62</sup>,
- economic<sup>63</sup>,
- nature conservation<sup>64</sup>.

Nevertheless, the Act on the Protection of Animals is not the only regulation relating to the foundations introducing killing of animals as permitted. This type of regulations can also be found in the Nature Conservation Act. The Act provides that animals not covered by the forms of nature conservation – the protection of species, can be killed only in connection with:

- executing tasks justified by the nature conservation reasons,
- conducting scientific research or education,
- rational management,
- amateur fishing,
- a collection for own needs,
- conducting rescue actions,
- general safety,
- sanitary and veterinary safety,
- protecting human life and health,
- preventing the effects of natural disasters or their removal<sup>65</sup>.

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<sup>58</sup> Art. 33 paras 1b, 2, 3, 3a and 4 of the APA

<sup>59</sup> Radecki, W. *Ustawa...*, p. 68; Smaga, Ł. *Ochrona...*, p. 138

<sup>60</sup> Art. 6 para 1 points 3 and 7 of the APA; Art. 33 para 3 of the APA; Art. 4 point 3 of the APA

<sup>61</sup> Art. 6 para 1 point 5 of the APA

<sup>62</sup> Art. 6 para 1 point 4 of the APA

<sup>63</sup> Art. 6 para 1 points 1, 2 and 6 and Art. 33a of the APA

<sup>64</sup> Art. 6 para 1 points 8 and 9; Art. 33Para 3a of the APA

<sup>65</sup> Art. 125 of the APA

Moreover, the Hunting Law Act of 13 October 1995 introduces a ban on killing of animals, subject to certain exceptions<sup>66</sup>. A reference in this regard can also be found in the Act on Inland Fishery of 18 April 1985, where this issue concerns the ban on using the prohibited methods and means<sup>67</sup>.

Recapitulating the problem concerning the ban on killing of animals it should be noted that the analysis of regulations included in both the Act on the Protection of Animals and the Nature Conservation Act shows that there are similar, almost identical foundations in both acts, permitting the killing of animals. The existing repetitions in this regard, at least the reason from the Nature Conservation Act – the implementation of tasks justified by the need of nature conservation and the reason from the Act on the Protection of Animals – performing the tasks related to the nature conservation, raise ambiguity in interpretation.

Notwithstanding the above observations that relate more to the interpretation of the provisions itself, one should pay attention, in particular, to the reason for the existence of two catalogues of cases authorising the killing of animals. Thus, a significant number of cases permitting the killing of animals having a reference in the law means that this ban is illusive to the extent that one can always find a legal basis to kill an animal. Therefore, the possibility of protecting animals against killing is significantly reduced, and undoubtedly it has an impact on the level of humanitarian protection<sup>68</sup>.

Another aspect related to the ban on killing of animals, somehow resulting therefrom, concerns the ban on putting to death inhumanely. This principle, as a statutory regulation, determines that putting animals to death “can only be done humanely<sup>69</sup>”. The significance of the humanitarian aspect of putting animals to death was also determined by the fact of clarifying this issue in the already mentioned Act on the Experiments on Animals, which defines the very notion of putting the animal to death humanely. The importance of the issue entitles to cite it again “since it is killing of an animal by causing it the smallest possible physical and mental suffering, taking into account the specificity of a given species<sup>70</sup>”.

Notwithstanding the foregoing, there is a further interpretation problem, as the legislature only referred taking away of the animal’s life humanely to putting it to death, but not to killing or slaughtering the animal. In view of the doubts in this regard, the literature includes the opinion of introducing by the legislature of dictionary values defining this type of situations to the Act on the Protection of Animals<sup>71</sup>. Nevertheless, this ambiguity should be considered using the interpretation broadening the content of Art. 5 of the aforementioned Act. Therefore, all animals, also those to be killed, put to death or slaughtered, should be treated humanely. Thus, the activities related to taking away of the animal’s life should be performed bearing in mind the principles of the humanitarian treatment.

The ban on putting animals to death inhumanely is one of the aspects related to the general principle of the humanitarian treatment of animals. This applies to every human-animal relation, both in terms of caring for the animal and putting the animal to death when justified. The idea of this principle stems from the rights and obligations

<sup>66</sup> Journal of Laws of 2005, No. 127, item 1066, as amended, Art. 9 para 1 point 2

<sup>67</sup> Journal of Laws of 2009, No. 189, item 1471, as amended, Art. 8 para 1

<sup>68</sup> Smaga, Ł. *Ochrona...*, pp. 142-148, 316-317

<sup>69</sup> Art. 33 para 1a of the APA

<sup>70</sup> Art. 2 para 1 of the AEA

<sup>71</sup> See Gruszczyńska, A. *O zabijaniu – zarys problematyki pozbawiania życia zwierząt przeznaczonych do celów gospodarczych* [in:] Gardocka, T., Gruszczyńska, A. (eds.). *Status zwierząt. Zagadnienia filozoficzne i prawne*, Toruń, 2012, p. 320

imposed on man. When speaking of the right to kill, we are talking about the “necessity” of killing of animals, since based on the causes referred to above, the “necessity” meets the conditions of a justified killing of animals. In addition to this statutory right, there is also an obligation on the side of the entitled, which means that if one “has to” kill an animal, it should be accompanied by humanitarianism. The animal being put to death, as a living being, is to be treated humanely, avoiding unnecessary suffering. Of course, according to the mode of lawmaking, it applies to legal standards in force and has been penalised. However, in addition to the written law, the compliance with the principle of the humanitarian treatment of animals, including the ban on putting to death inhumanely, has an impact on a special moral and ethical tone of the relations with animals.

The second area directly resulting from the principle of the humanitarian treatment applies to the ban on cruelty to animals. Already in Art. 1 of the aforementioned Decree of the President of the Republic of Poland on 22 March 1928, a regulation was concluded banning cruelty to animals. The statutory regulations currently in force also expressly prohibit such behaviour, creating a general ban on cruelty to animals<sup>72</sup>. According to those provisions, cruelty is understood as inflicting or consciously permitting the infliction of pain or suffering. In the current wording of the Act on the Protection of Animals<sup>73</sup> the legislator has created a catalogue of seventeen cases of cruelty to animals, but the structure of this provision, due to the use of the expression “in particular”, is an open catalogue and it is not exhaustive<sup>74</sup>. Therefore, the issue of proper interpretation of the behaviour itself as cruelty becomes significant. W. Radecki suggests to be guided in this area by the jurisprudence of the Supreme Court concerning the crime of cruelty to family members or dependants of the offender<sup>75</sup>.

Notwithstanding the foregoing, in the literature we find an additional breakdown of cases of cruelty. They are divided based on the following criteria:

- typical criterion - the division of behaviours is based on the average typical assessments (e.g. beating animals with hard or sharp objects or objects equipped with devices for causing special pain, hitting on the head, the lower abdomen, the lower parts of limbs);
- normative criterion - the division of behaviours arises from breaching the provisions of law or the rules of practice (e.g. using cruel methods in animal farming or husbandry);
- subjective criterion - referring only to the behaviour associated with scaring or teasing animals<sup>76</sup>.

Defining behaviours as cruelty is related to a definition of “cruel treatment” included in the Act on the Protection of Animals”. This definition is part of both the cases of cruelty to animals listed in the Act and other behaviours of the owner or other person, leading to effects comparable with the effects of cruelty<sup>77</sup>. Notwithstanding

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<sup>72</sup> Art. 6 para 2 point 1a of the APA

<sup>73</sup> Art. 6 para 2 points 1-19 of the APA The new wording of Art. 6 para 2 point 1 entered into force on 27 May 2015 (Journal of Laws of 2015, item 266): intentional wounding or mutilation of the animal, not constituting a treatment or procedure permitted by law within the meaning of Art. 2 para 1, item 6 of the Act on the Protection of Animals Used for Scientific or Educational Purposes of 15 January 2015, including the marking of warm-blooded animals by firing or freezing, and any treatments aimed at changing the appearance of the animal and performed for a purpose other than saving its health or life, in particular trimming dogs’ ears and tails.

<sup>74</sup> See Radecki, W. *Ustawa...*, p. 75

<sup>75</sup> See Radecki, W. *Ustawa...*, p. 76, the resolution of the Supreme Court of 9 June 1976 – VI KZP 13/75, OSNKW 1976, journal 7, item 86

<sup>76</sup> *Ibid.*, p. 75

<sup>77</sup> Art. 4 point 8 of the APA

the foregoing, the typification of these cases defined as cruelty to animals, as well as others, due to the open catalogue of behaviours that may take place towards animals, occurs precisely through the effect that this behaviour will cause. In this case, the result is pain or suffering of the animal.

It would seem that the phrase “cruel treatment” refers to behaviour that will constitute a qualified form of cruelty to animals. Therefore, a closer analysis of this issue raises doubts as to the interpretation of the definition of “cruel treatment”. Now, if the phrase “cruel treatment” includes behaviour which is cruelty, and thus resulting in pain or suffering of animals, as well as “other behaviour” “leading to effects comparable with the effects of cruelty”, one is still talking about the effects relating and identical to cruelty. This is confirmed in the interpretation of this issue by Ł. Smaga who believes that “if a given concept is defined by determining the effects, it is pointless to introduce an additional concept that is to cause the same effects, because behaviours determined by these concepts do not differ between each other. Contrary to the definition of cruel treatment, this term should be understood as a synonym for cruelty”<sup>78</sup>. Notwithstanding the foregoing, the scope of qualified form of cruelty finds reference in the scope of the regulation, and it concerns the form of particular cruelty understood as taking an action by the perpetrator characterised by drastic forms and methods, especially acting in a sophisticated or slow manner, calculated deliberately to increase the suffering and its duration<sup>79</sup>.

The legal reference associated with the ban on cruelty can also be found in the Act on the Experiments on Animals. Although these cases are not explicitly indicated in the Act as bearing signs of cruelty, one can certainly separate them from the bans laid down in this Act<sup>80</sup>, where their violation can bear signs of cruelty. For this reason, the legislature prohibits:

- the application of measures or procedures aimed at depriving the animals used for experiments the ability to produce sound;
- conducting experiments for didactic purposes causing the animal to suffer, if this goal can be achieved in other way;
- carrying out experiments to test cosmetics or hygiene products;
- using homeless animals for experiments<sup>81</sup>.

In addition, it is also appropriate to draw attention to another area of legal regulations regarding this matter, but in the context of preventing cruelty to animals that have both a direct and indirect impact on the humanitarian treatment of animals. The first of them apply to introducing the rules of dealing with domestic and farm animals, imposing an obligation to provide them with care and proper living conditions<sup>82</sup>. Further provisions in this area prohibit the marketing of domestic animals at markets and fairs, conducting of markets and fairs at which domestic animals are sold and the marketing of dogs and cats outside their farming or husbandry locations<sup>83</sup>. At this point, in particular, the ban on fattening geese and ducks for fatty livers should be discussed<sup>84</sup>. The behaviour covered by the ban applies to injecting, using violence, a large amount of foods to the birds’ stomachs to enlarge the bird’s liver even more

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<sup>78</sup> Smaga, Ł. *Ochrona...*, p. 128

<sup>79</sup> Art. 4 para 2 points 12 and 35 of the APA

<sup>80</sup> Art. 5 of the AEA

<sup>81</sup> Art. 7 para 1 point 2

<sup>82</sup> Art. 9 and Section 3, Art. 12-14 of the APA

<sup>83</sup> Art. 10a of the APA

<sup>84</sup> Art. 12 para 4 of the APA

than a dozen times. This is done using a special metal tube inserted forcibly into the bird's oesophagus. It is necessary to share the view, which in the literature is called a torture, and it is undoubtedly a manifestation of barbarism<sup>85</sup>.

A significant scope of the regulation relating to the humanitarian treatment of animals, including the ban on cruelty, is covered by Section 4 of the Act on the Protection of Animals, which introduced the principle that the conditions of performing, training and taming as well as methods of dealing with animals used for entertainment, show, film, sports and special purposes cannot endanger their lives and health or cause suffering. In this area, a ban on using pharmacological, mechanical and doping methods on animals has also been introduced, as well as the ban on organising bull, dog and rooster fights<sup>86</sup>. The rules for transporting animals<sup>87</sup> and the regulations requiring a particular emphasis – performing medical and veterinary treatments on animals<sup>88</sup>, where the legislature determines that such treatments on animals can only be carried out by persons authorised and permitted in the case of saving their lives or health and when it is necessary to limit the population, however, maintaining the necessary precautions to ensure reduction of suffering and stress of the animal, have also been specified. Treatments causing pain are carried out under the general or local anaesthesia, with the exception of treatments, which according to the rules of the veterinary practice are carried out without anaesthesia.

It would seem that the penalised ban on killing of animals as the key element of humanitarian protection of animals constitutes a coherent whole, not only in terms of interpretation, but also in terms of the adopted system solutions. As pointed out above, a closer look at this issue raises some difficulties as to answering the basic question: in what circumstances or situations taking away of the animal's life is permitted? Especially that the legislature uses three forms – killing, putting to death and slaughtering relating to one effect, which is taking away of the animal's life, without defining them in a consistent manner.

In the literature one can find an interesting attempt to answer the problem thus posed, most aptly reflecting the complexity of the applicable legal regulations. "One can say that it is prohibited to kill the animal with some exceptions. In the case of animals for farming purposes, the entire group is an exception from the ban. Putting to death is permitted only if it is carried out humanely. The other permitted form of taking away of life is slaughtering, unless the procedures referred to in Art. 34 of the Act on the Protection of Animals were not applied"<sup>89</sup>.

At the same time, the issues of systemic approach to the above question are certainly not positively affected by the functioning of two separate catalogues of situations justifying taking away of the animal's life.

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<sup>85</sup> Białocerkiewicz, J. *Status...*, p. 261

<sup>86</sup> Art. 15-18 of the APA

<sup>87</sup> The rules for transporting vertebrate animals are laid down in Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directive 64/432/EEC and 93/119/EC and Regulation (EC) No. 1255/97 (EU Official Journal L 3 of 5 January 2005, p. 1), hereinafter referred to as the "Regulation No. 1/2005".

<sup>88</sup> Section 8 of the APA

<sup>89</sup> Gruszczyńska, A. *O zabijaniu...* [in:] Gardocka, T., Gruszczyńska, A. (eds.). *Status...*, Toruń, 2012, p. 326

## CONCLUSIONS

The issues covered in this article did not relate to all aspects of humanitarian protection of animals. Only the problems connected with this complex issue were brought closer in a specific context. Therefore, a special attention was given to the bans on killing of and cruelty to animals, showing them to a large extent as affecting the level of humanitarian protection of animals. Their violation is always a specific example of cruel, even barbaric treatment of animals.

The most awaited punch line for the considered issues would be to say that the humanitarian protection of animals in Poland is sufficient in terms of being legally as well as ethically and morally formed. Unfortunately, it is impossible to uncritically draw such a conclusion. On the one hand, the existing regulations relating to the protection of animals offer a suitable framework for the legal protection of animals. On the other hand, due to the existing inconsistencies, they bring an interpretative chaos, thus weakening the quality of humanitarian protection of animals. This is best evidenced by the aforementioned regulations relating to the ban on killing of animals. Strengthening the actions in terms of humanitarian protection also occurs through harmonising the provisions of law in the European Union countries, and thus the necessity to implement these solutions in the Polish legal system.

But is it possible to solve, and thus ensure the appropriate protection of animals with only the laws in the form of bans and orders included at the European or national regulations level? Well, no. The belief established in a larger proportion of society that the animal and its use by man for its own needs is obvious causes that until the society itself does not change the attitude and does not stop treating animals as things, one will talk about the lack of full real protection of life and health of animals.

It seems that the most important role in redefining social attitudes towards animals should be played by education, while exhibiting appropriate ethical and moral attitudes.

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