

## **ANIMALS AS OBJECTS OF RITUAL SLAUGHTER: Polish Law after the Battle over Exceptionless Mandatory Stunning**

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### **1. Animal Slaughter in Polish Law**

The safeguarding of animal welfare includes the reduction of pain inflicted on farm animals when slaughtered. According to the Polish Animal Protection Act of 1997, the killing of animals may be carried out only by means of humanitarian methods which decrease pain to the lowest possible level.<sup>3</sup> This includes mandatory stunning of animals before their slaughter. In 2002, the Polish Parliament abolished an exception to this stunning requirement which had been reserved for killing animals according to religious rites (used by small Jewish and Muslim communities to obtain *kosher* and *halal* meat).<sup>4</sup> At the time, the change did not spark much public controversy or open resistance from those religious minorities. Nonetheless, two years later the Minister of Agriculture reintroduced the same exception by means of statutory

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<sup>3</sup> Art. 33 ust. 1a of the Animal Protection Law of 21 August 1997 (O. J. 1997, No 111, item 724 as amended).

<sup>4</sup> The exceptionless prohibition of slaughter without prior stunning exist in few European countries – such as Switzerland (since XIX<sup>th</sup> century), Sweden and Norway. It had been introduced but later abolished in Latvia. In many countries there are, however, more or less rigorous administrative limitations of the right to slaughter non-stunned animals pursuant to religious rites of Jewish and Muslim minorities.

instrument.<sup>5</sup> Reinstating this exception opened the way for the gradual development of a massive export business of *kosher* and *halal* meat by the Polish food industry. According to the government's estimation, the value of such exports in 2013 could far exceed one hundred thousand tonnes.

Nonetheless, provisions of the statutory instrument issued by the Minister of Agriculture blatantly contradicted the amended Animal Protection Law that required all slaughtered animals to be stunned. In November 2012, the relevant provision of the instrument was challenged before the Constitutional Tribunal as being contrary to the statutory rules; the Tribunal resolved that in such conflict the rules of statute have to prevail and declared the exception invalid. In this way, the prohibition of slaughter without previous stunning has been formally reinstated in Polish law.<sup>6</sup>

However, on January 1<sup>st</sup>, 2013 the new EU Regulation 1099/2009 (adopted in 2009) came into effect<sup>7</sup>. The act aimed to replace individual national laws that regulated the killing of animals within each European country, including Poland, with uniform rules across the European Union. Pursuant to its rules, slaughter must be preceded by stunning, with the exception of killing animals according to specific religious rites. Nonetheless, the Regulation allowed member states to preserve or establish rules of their own national law providing higher standards of animal protection. Such departures from the EU laws must be formally reported to the European Commission. By the end of 2012, Polish law had admitted the exception from mandatory stunning, and the Polish government delivered the relevant notification to the Commission.

At the same time, however, the Minister of Agriculture drafted the bill aiming to reintroduce the exception for religious rituals directly to the Animal Protection Act. The bill was publicly justified mainly for the economic reasons of considerable profits gained by the Polish food industry from the production and export of *kosher* and *halal* meat. After passionate political and public debate, the Parliament rejected the governmental bill. This legislative decision has been clearly based on moral grounds, giving priority to animal welfare over the profits of the

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<sup>5</sup> Regulation of the Minister of Agriculture of 9 September 2004 on qualifications of persons authorized to professional slaughter and on methods and conditions of animal slaughter (O. J. 2004, No 205, item 2102).

<sup>6</sup> Judgment of the Constitutional Tribunal of 27 November 2012 (U 4/12).

<sup>7</sup> Council (EU) Regulation 1099/2009 of 24 September 2009 r. on the protection of animals at the time of killing (EU O.J. L 303, 1-30).

meat industry and the demands of small, albeit vocal, groups of local religious minorities who, in many cases, were directly involved in certifying commercial slaughterhouses as producing meat properly abiding by relevant religious rules.

## **2. Ritual Slaughter before the Constitutional Tribunal (Case 52/13)**

After the Parliament refused to pass the law proposed by the government, organizations representing Jewish religious communities living in Poland brought constitutional complaint against the rule prohibiting slaughter without stunning, claiming that it violates the freedom of religious practice. The complaint initiated the procedure of constitutional review that concluded with the verdict of the Constitutional Tribunal delivered on December 10<sup>th</sup>, 2014.<sup>8</sup>

The claimants argued that the exceptionless duty to stun animals before slaughter breaches Art. 53 of the Polish Constitution. The article stipulates that “freedom of conscience and religion shall be ensured to everyone” (Sec. 1). Its scope includes “freedom to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching” (Sec. 2). Any limitation of that freedom may be imposed only when it is “necessary for the defence of State security, public order, health, morals or the freedoms and rights of others” (Sec. 5).

The Tribunal resolved in favour of the claim finding an absolute ban on slaughter without stunning to be a violation of the constitutional right of free exercise of religious beliefs. The majority of judges backed the decision with the following reasoning. First of all, freedom of religion should be considered a fundamental human right strictly related to the inherent dignity of each human being. Ritual slaughter practiced by Jewish and Muslim communities undoubtedly constitutes an exercise of that constitutional right. The Court emphasized that such rights cannot be limited to practices that are popular and generally appreciated in the society. On the contrary, its very point relates to rites and practices unpopular or even disliked by the predominant part of society. In view of that, the practice of ritual slaughter undeniably falls within the scope of the protection provided by Art. 53 of the Polish Constitution, as well as Art. 9 of the European Convention on Human Rights.<sup>9</sup>

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<sup>8</sup> Judgment of the Constitutional Tribunal of 10 December 2014 (K 52/13).

<sup>9</sup> The Convention on Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

Consequently, the Tribunal held that the legality of exceptionless, mandatory stunning interfering with religious practices of ritual slaughter has to be evaluated in light of the considerations that the Constitution identifies as the only legitimate grounds of restricting freedom of religion. According to Art. 53, Sec. 5, they include the need of the “defence of State security, public order, health, morals or the freedoms and rights of others”. Having discussed their possible relevance to the case, the Court came to the conclusion that only the need to protect morality may be seriously considered applicable to justify the challenged duty. Hence, the observations of judges on the relations between animal welfare, morality and religion turned out crucial for the ultimate outcome of the case.

The Tribunal has not found the ban on ritual slaughter necessary to protect morality. The judges argued that it was important to examine this specific problem in the wider context of socially and legally accepted practices of killing animals. From this perspective, all methods of slaughter applied within industrial farming are painful and stunning does not eliminate the suffering of animals bred for food. Fully humane killing is actually inconceivable. Nonetheless, society accepts industrial farming and the slaughter of animals despite the fact that it inevitably entails animal torment. Moreover, in the actual practice of massive slaughter the very act of stunning is often performed negligently and many animals are not fully unconscious when subsequently slaughtered.

The context that has to be taken into account to properly evaluate the moral necessity of the ban on ritual slaughter also includes many other socially accepted practices that deliberately inflict pain on animals, such as hunting. Animals treated as quarry are killed without any previous deprivation of consciousness and in many cases die slowly and painfully after being injured by non-fatal shots. It proves, the Tribunal held, that it would be incoherent to outlaw ritual slaughter on moral grounds but continue to accept such social practices as hunting or other widespread forms of painful animal exploitation.

The Tribunal also expressed some additional doubts to support the priority of religious freedom over mandatory stunning. While the Constitution unequivocally emphasizes the significance of religious freedom, animal welfare is not explicitly mentioned in its wording. Constitutional relevance of the latter may be inferred from the duty to protect the natural environment. Moreover, according to the judges, it is by no means clear if animal welfare qualifies as a matter of human morality. In contrast, the value of and respect for religion is

undoubtedly an inherent part of the public morality of the Polish society. Finally, based on present knowledge, the Tribunal proposed that based on the present knowledge it is impossible to determine without doubt if a ritual method of animal slaughter is in fact considerably more painful and less humane than standard ways in which animals are killed in slaughterhouses.

On the basis of such arguments, the Tribunal struck down the rule in the Animal Protection Act imposing the duty to stun animals before slaughter. As a result, the stunning of animals became regulated only by the EU Regulation 1099/2009 that was already in effect in all EU member states (including Poland) from 1 January 2013. It requires stunning before slaughter unless an animal is killed by “particular methods prescribed by religious rites” (Art. 4 of the EU Regulation 1099/2009). Also noteworthy is how the Constitutional Tribunal explained that the effects of its ruling include the legality of ritual slaughter irrespective of the purpose and final destination of the meat produced by this method. This part of the judgment was particularly controversial and provoked public critique since it actually means that the exemption from stunning on the basis of freedom to exercise religious beliefs includes massive slaughter performed by commercial companies to deliver *kosher* and *halal* meat abroad. This consequence goes actually far beyond the scope of the constitutional complaint advanced by the claimants. What they pled for was the exemption from mandatory stunning necessary to practice ritual slaughter to supply meat to local religious communities living in Poland. The Tribunal, however, ruled only that mandatory stunning is unconstitutional to the extent it does not allow for slaughter performed by methods required by religious rites. It explained that the ruling does not make the exemption dependent on the destination of the meat obtained by such methods, although the Parliament is free to regulate the detailed scope of the exemption. Nonetheless, until such new legislative means are adopted, ritual slaughter is permitted irrespective of the purposes for which it is performed.

### **3. Dissents and Critiques**

The judgment of the Constitution Court was not unanimous. Seven out of fifteen judges dissented (five with the ruling itself and the other two solely with the justification).<sup>10</sup> Most

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<sup>10</sup> The judges voting for the majority opinion were: Andrzej Rzepliński (the President of the Tribunal), Maria Gintowt-Jankowicz, Małgorzata Pyziak-Szafnicka, Leon Kieres, Zbigniew Cieślak, Marek Zubik, Andrzej Wróbel. Dissent from the verdict (in whole or in part) was declared by the following five judges: Sławomira

dissenting judges argued in favour of the judgment limiting the exception only to the slaughter carried out to provide meat for local Jewish and Muslim minorities living in Poland. Some of them, however, based their objections on the wider scope of exemption mainly on procedural grounds, pointing out that the Tribunal should not be expanding the decision outside of the scope of the claimants' demands. From the opinions of the dissenting judges, some particularly dubious views advanced in the majority opinion have been criticized, such as a lack of decisive scientific evidence that ritual slaughter is substantially less humane than the ordinary methods used in modern slaughterhouses, or contestability of the moral relevance of human attitudes toward animals. Some dissenting opinions disagreed with the verdict insofar as it did not restrict the scope of the exception only to formally recognized denominations nor specify the species of animals to which the exemption may apply. The verdict was also reproached for failing to set clear limits of the constitutional freedom of religion in respect to animal use, as well as not properly applying the principle of proportionality simply assuming absolute supremacy of religious freedom over the moral duty of humane animal treatment.

The majority opinion has also given rise to severe criticism in the public discourse. In particular, the reasoning of the Court has been harshly repudiated by one of the most renowned Polish philosophers and logicians – Jan Woleński.<sup>11</sup> He practically dismissed, sometimes scornfully, all crucial arguments offered by the majority to justify the judgment. Woleński emphasized that the Tribunal was plainly wrong to doubt if the human attitude towards animals is a matter of morality. Such doubt proves nothing less than deep ignorance of those who entertain it. Woleński called it “stunning” that the Tribunal had approvingly referred to the decision of the US Supreme Court defending the constitutional right to sacrifice living animals by followers of the African religion of Santeria.<sup>12</sup> It may suggest, Woleński argues, that the Tribunal actually would be prepared to uphold freedom to inflict any pain on animals if only procured in the name of some religious duties.

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Wronkowska-Jaśkiewicz, Teresa Liszcz, Piotr Tuleja, Wojciech Hermeliński, Stanisław Rymar. The two judges dissenting only with the justification supporting the majority decision were: Stanisław Biernat, Mirosław Granat.

<sup>11</sup> J. Woleński, *Morality, Price of Beef and the Tribunal* (in Polish), *Krytyka Polityczna*, 28 January 2015, <http://www.krytykapolityczna.pl/artykuly/opinie/20150128/wolenski-moralnosc-cena-wolowiny-i-trybunal-konstytucyjny>; idem, *The Constitutional Tribunal's Troubles with Logic* (in Polish), *Krytyka Polityczna*, 26 February 2015, <http://www.krytykapolityczna.pl/artykuly/opinie/20150226/wolenski-waga-trybunalu-konstytucyjnego-nie-byla-wytarowana>.

<sup>12</sup> *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

In his opinion, judges were also guilty of naive and uncritical acceptance of incredible information presented by the Polish agricultural industry depicting the practice of massive slaughter performed for commercial purposes as scrupulously adhering to all conditions required by respective religious rites. There are several reports of reliable scientific research, which had been made available to but ignored by the Tribunal, proving the contrary. Woleński has openly ridiculed that part of the reasoning in which the judges claimed that because no method of slaughter is painless, then the ban on ritual slaughter is unjustified. He compared it to the inference in which from the premise that all human beings are mortal one concludes that there is no point in alleviating suffering in terminal conditions. Similarly, he strongly refuted the argument that the ban on ritual slaughter would be inconsistent with other practices of painful animal killing, such as hunting, which remain to be legally permitted and socially accepted. He claims that it is as if one argued that from the fact that we are not able to cure all diseases it follows that we should not cure any.

In respect to the scope of the exemption resulting from the judgment, Woleński pointed out that the Polish Constitution is not binding outside of Poland's borders and does not apply to foreign religious groups. Therefore, it cannot be construed as protecting the practices of such groups nor actions dedicated to address their religious needs. It means that the judgment is unjustifiable by the constitutional freedom of religious practice at least insofar as it effectively allows to exempt from the mandatory stunning the commercial slaughter performed for export purposes

Apart from two essays by Jan Woleński, there also appeared several other critical comments and reviews disputing the position taken by the Tribunal. Important objections have been raised by Ewa Łętowska – one of the most respected Polish legal scholars (and a former judge of the Constitutional Tribunal herself). Together with two co-authors, she challenged the very assumptions on which the case before the Constitutional Tribunal was based.<sup>13</sup> According to their view, the Tribunal did not have to engage in most of the issues discussed in its ruling. The constitutional problem was presented with illusory. To figure this out it was sufficient to properly construe the provisions of the EU Regulation 1099/2009. It should be interpreted as establishing exemption from stunning only for the non-commercial ritual slaughter carried out

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<sup>13</sup> E. Łętowska, M. Grochowski, A. Wiewiórkowska-Domagalska, *Binding, but not convincing: on the Constitutional Tribunal judgment in case K52/13 on ritual slaughter* (in Polish), *Państwo i Prawo* 2015 No 6, 53-66.

for the purposes of the local religious communities. Therefore, the solution to the case was available simply by the proper interpretation of the European and the Polish law. Instead of recognizing that, the Tribunal produced confused and unnecessary discussion that has led to the ruling that may make Polish law incoherent with the binding EU rules.

Additionally, Łętowska pointed out that the Tribunal neglected to address that the Polish government had notified the European Commission about Poland's stricter standards of animal protection that exclude the exemption for ritual slaughter admitted by the EU Regulation 1099/2009. In her opinion, it was by no means clear whether such notification could be effectively withdrawn so that the locally applicable standards of animal welfare could be decreased. Therefore, the judges may actually have made Polish law inconsistent with the binding standards of EU law without even noticing. In sum, Łętowska called the verdict a plain mistake in judging.<sup>14</sup>

Several other scholars, including Wojciech Radecki – one of leading experts on animal welfare law in Poland – undermined the very essence of the sentence claiming that if the Tribunal had sought for the proper balance between freedom of religion and moral concerns it would have figured out that the former must not include inflicting unnecessary suffering on sentient creatures.<sup>15</sup>

#### **4. Even Worse Yet – Other Fundamental but Neglected Concerns**

We share opinions with most of the above arguments advanced against the judgment of abolishing the exceptionless animal stunning in the Polish law. However, we disagree with this ruling mainly due to other reasons which we find much more fundamental. In our opinion, the Tribunal has overlooked some important constitutional considerations that make its decision morally and legally wrong, and the reasoning behind it very weak.

It goes without saying that the status of ritual slaughter can lead to conflict between freedom of religion and moral duty toward animals. There cannot be any reasonable doubt that animal suffering is morally relevant and the way animals are treated by people is a matter of moral concern; historically this has always been the case (to mention only such examples of giant

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<sup>14</sup> E. Łętowska, *Ruling that has brought confusion*, Rzeczpospolita 9 March 2015.

<sup>15</sup> W. Radecki, *Animal Protection Act with Commentary*, Warszawa 2015, 203.



figures of ethical thought as Bentham, Schopenhauer and Kant) and continues to be even more so today. In a survey conducted in Poland in 2012, more than 65% of the respondents expressed objections to ritual slaughter based on moral concerns (inexplicably, the Tribunal completely ignored this survey). It is also a well-established, scientific fact that the pain and suffering inflicted by slaughter without stunning is much greater than killing animals that have been stunned.<sup>16</sup> Moreover, the extreme suffering of an animal is an inherent and unavoidable part of the very method of ritual slaughter, while in conventional slaughter the intensity of pain depends on the way in which the procedure is carried out and may be, at least theoretically, considerably reduced. This does not mean, clearly, that ordinary stunning is humane. It is just less inhumane provided that adequate methods of stunning are used and administered properly. Moreover, the difference may to some extent differ depending on the species of animals killed with and without stunning and the methods applied to stun an animal. Nonetheless, despite the claims (and beliefs) of religious groups advocating their traditional methods of animal slaughter, killing fully conscious animals remains extremely painful and inhumane even if it is performed properly (in fact, often it is not).

In view of the above, the moral objections against extremely painful methods of slaughter are fully legitimate grounds to restrict freedom to practice religious rituals. This observation has to be combined, however, with another constitutional regulation, namely the principle of impartiality of the state in respect to particular religions, faiths and denominations. The relevant article of the Polish Constitution requires that “public authorities [...] shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life” (Art. 25, Sec. 2). In our opinion, the value of impartiality of the state demands the use of animals as objects of religious rituals to be limited by some relatively neutral criteria, independent of the content of particular beliefs or rites. Hence, the only plausible criterion of such limitations seems to be the pain and suffering inflicted on sentient animals as part of a given ritual (perhaps subject to some *de minimis* exemptions). Otherwise, it is difficult to say what kind of moral concerns relating to the treatment of animals could be ever found as a legitimate ground to limit freedom of religious practices. Pain and suffering is independent of the beliefs, ideas and objectives of those who inflict it. The capability to feel pain and to suffer are relatively neutral moral basis for numerous limitations of the way in which human beings may be

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<sup>16</sup> See e.g. report of international research project DIALREL (<http://www.dialrel.eu/dialrel-results.html>).

legally treated (in particular, but not exclusively, in the cases when they are incapable to grant their consent). It is also the main reason of legal recognition of sentient animals as not-only-things that has taken place in most Western legal systems. Yet the Tribunal has not adopted, nor even considered, such criteria as neutral limits of religious freedom.

It seems to entail rather perplexing consequences. Namely, there are either virtually no limits to the use of animals for religious rituals (irrespective of the level of cruelty) or the use has to be based on an evaluation of the quality of the underlying religious beliefs (whether it should be its reasonableness, oddity, sincerity or some other factor). To illustrate this let us suppose that the next case before the Constitutional Tribunal is brought forth by a group of individuals declaring to be Satanists and claiming that their religion demands the practice of cutting the throats of living cats. Following the views of the Tribunal's verdict, it could approach such a case in two possible ways.

The first would be to consider such religious rituals (along with any other manner in which animals could be used for religious purposes, irrespective of its cruelty) as falling within the scope of the constitutionally protected freedom of practicing religious beliefs. Such an approach would be, however, utterly inconsistent with the idea of "dereification" of animals. This legal term (coined in the Polish legal discourse by Ewa Łętowska) refers to the formal exclusion of animals from the legal category of things. This mentioned above change was introduced to the Polish law by Art. 1 of the Animal Protection Law declaring that "animals are not things but living creatures capable of suffering and a man owes them respect and protection". It is difficult to say how this status can be reconciled with reducing them to the role of mere object of religious rituals in course of which believers are free to do with animals virtually anything that they take to be demanded by their cult.

According to the second option, such use may be prohibited but then the ritual in question and religious beliefs behind it have to be plausibly distinguished from cutting throats of living cows or sheep in the course of Jewish or Muslim slaughter. It is hard to see how it could be achieved without engaging into valuation of particular faiths, creeds or practices as better or worse, respectable or worthless, tolerable or repulsive. This would inevitably involve

considerations blatantly irreconcilable with the principle of impartiality of the state in respect to particular religious views.<sup>17</sup>

There is one more important reason which makes the conclusions of the Constitutional Tribunal deeply confusing. Its ruling not only fails to conform to the requirements of proportionality, it fails even to recognize how it should contribute to the solution of the conflict of constitutional values occurring in the case of ritual slaughter. Taking into account the role proportionality plays in today's constitutional review, there can hardly be a more fundamental mistake in judgment. The principle of proportionality entails that a solution should favour one value in a way that impedes the conflicting values in the least possible manner.<sup>18</sup> The Tribunal has not even attempted to look for such balance. It has simply given unconditional priority to religious freedom suggesting that animal welfare becomes principally irrelevant only if religious practices enter into play.

In our opinion, the correct compromise between freedom of religion and moral duty to care for animals should be outlined as follows. Due to reasons explained above, the infliction of pain or suffering on sentient creatures should be a neutral limitation of freedom to practice any religious rituals (irrespective of which particular religions it concerns). On the other hand, religious freedom should protect all rites that involve using animals in basically harmless ways, irrespective of how bizarre or repugnant they may seem to the rest of society). From this perspective, all religious practices, however odious, should remain within the scope of protection of constitutional freedoms. In respect to the traditional ritual killings practiced by Jewish and Muslim devotees, all elements of such rituals that do not directly increase (or even reduce) animal suffering should be strictly protected. Nonetheless, it does not include the precept of keeping the animals aware during the whole process of being slayed and bled. This one element of ritual slaughter is beyond any reasonable limit of constitutional freedom of religious practice. Therefore, at least some forms of pain alleviation, such as reversible stunning or post-cut stunning, are necessary to make the whole method tolerable from the perspective of properly balanced constitutional values.

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<sup>17</sup> For wider discussion of the concept of impartiality in legal contexts see T. Pietrzykowski, Z. Tobor, *A Claim to Impartiality* (in Polish) [in:] J. Stelmach ed. *Filozofia prawa wobec globalizmu*, Cracow 2002, 57-73; idem, *Impartiality as a Legal Concept* (in Polish) [in:] Z. Tobor, I. Bogucka eds. *Prawo a wartości*, Krakow 2003, 272-291.

<sup>18</sup> See e.g. B. Schlink, *Proportionality in Constitutional Law. Why Everywhere but Here?*, *Duke Journal of Comparative and International Law*, vol. 29 (2012), 291-302.

The prohibition of animal use in rituals, including practices that do not harm animals, would be a disproportionate impediment to religious freedom unjustifiable by necessity to protect animal welfare. On the other hand, the acceptance of any form of harming animals as part of someone's religious duty is the opposite extreme, blatantly inconsistent with the idea of proportionality. No doubt, radical positions are much easier to find and defend than subtle and nuanced compromises. But the judges of the highest juridical authority may be expected to look not for the easiest, but rather the most fair and prudent, solutions.

### **5. Closing Remarks**

The decision of the Constitutional Tribunal in the case described above has closed the dispute on ritual slaughter as an exemption from mandatory stunning in Polish law. It has now excluded Poland from the small number of countries (such as Switzerland, Sweden and Denmark) that admit no exceptions to stunning animals before slaughter. It remains to be seen whether this exemption shall also include massive commercial production of meat. Apart from that, however, we would like to conclude this discussion with some more general remarks on how this case may implicate further debate and development of animal welfare law.

Above all, the situation reveals the striking lack of practical significance of the sole dereification of animals. Despite high hopes attached to that reform, the actual influence on the legal approach to animals turned out to be disappointing. The decision of the Constitutional Tribunal strongly confirms that the exclusion of qualifying animals as mere objects is hardly taken seriously, even in cases involving their extreme suffering and instrumentalization in which even their most basic interests are entirely ignored. In our opinion, it results from an incomplete character of the act of sole dereification. Excluding animals from the category of objects (things), it does not include them in a category of subjects, whose subjective interests and well-being has to count for legal decision-making. On the other hand, we largely share the widespread objections against radical proposals to grant animals the status of persons in law. In our opinion, it is necessary to create a new, intermediate category of non-personal subjects of the law since there are robust reasons to

recognize the existence of a class of entities that essentially differ from both traditional categories of persons and objects (things).<sup>19</sup>

The recognition of animals as non-personal subjects of the law entails making their vital interests legally relevant considerations that must be taken into account in all decisions that could materially impact their well-being. The obvious differences between human beings and non-human animals suggest that the latter should enjoy only one legal right – to have one’s individual, subjective interests taken into account whenever they may be seriously affected by decisions or actions of third persons. The concept of a non-personal subjecthood avoids the obvious difficulties in attributing animals with the whole bundle of rights (most of which are bluntly inconsistent with the nature of even the most developed non-human animals) implicated by the ordinary concept of personhood in law.

Conferring to animals the right to have their interests taken into account does not determine *per se* the outcome of necessary balancing of their subjective interests with other competing considerations. It only requires that they cannot be completely or disproportionately ignored. Thus, the idea of non-personal subjecthood clearly is not intended as a panacea to all of the current legal problems of animal suffering. The deliberate vagueness of its practical implications may be its advantage rather than weakness. It allows for flexibility without which any elevation of the legal status of animals is doomed to fail. This way of thinking aims to reconcile most of the socially accepted forms of exploiting animals while paving the way towards gradual balancing of their interests with human benefits.

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<sup>19</sup> see A. Elżanowski, T. Pietrzykowski, *Animals as Non-Personal Rights-Holders* (in Polish), Forum Prawnicze No 1, 2013 (available online: <https://docs.google.com/viewerng/viewer?url=http://www.forumprawnicze.eu/pdf/15-2013.pdf>); T. Pietrzykowski, *Beyond Personhood. From Two Conceptions of Rights to Two Kinds of Right-Holders*, available on SSRN ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2597028](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2597028)); idem, *Law, Personhood, and the Discontents of Juridical Humanism*, available on SSRN ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2502528](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2502528))