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The Order to Kill (Slaughter) Animals in the Context of the Proportionality Principle *

Introduction

Over twenty years ago, a principle was introduced in Polish law, stating that "an animal, as a living creature capable of experiencing suffering, is not an object" and a human being is obliged to respect, protect and care for animals – Art. 1(1) of the Act of 21 August 1997 on the Protection of Animals (hereinafter referred to as APA).[1] This change led to an increase in the scope of obligations resulting from the precept to treat animals in a humane manner and was a huge step forward, which was an expression of civilisational progress.[2] A provision was also introduced at that time, prohibiting the unjustified and inhumane killing of animals, which was replaced on 1 January 2012 by a clear ban on killing animals, except for the cases specified in the Act (Art. 6 para. 1 APA).

Such exceptional circumstances are listed, *inter alia*, in the provision of Art. 48b para. 1 point 2 of the Act of 11 March 2004 on the Protection of Animal Health and Combating Infectious Diseases of Animals (hereinafter referred to as APAH),[3] which constitutes the legal basis for the ordering by a district (*powiat*) veterinarian – by way of an administrative decision – of the emergency killing (slaughter) of animals. There

* This article was prepared on the basis of the legislation in force as of 17 October 2019.

1 Journal of Laws of 2019, item 122, as amended.

2 A. Nałęcz, *Ochrona zwierząt a postęp cywilizacyjny*, [in:] *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, red. J. Zimmermann, P.J. Suwaj, Warszawa 2013, p. 674f.

3 Journal of Laws of 2018, item 1967, as amended.

are several reasons behind the interest in this. Firstly, the decision is used as an instrument to control the infectious animal disease spreading currently in Poland – African swine fever (ASF). Secondly, because of the very general definition of the statutory conditions, doubts arise as to whether this Act should be adopted. Thirdly, as is rightly pointed out in the prevailing scholarly opinion, the dominant legal form of action by public administration bodies in the field of animal protection is an administrative act in the form of an administrative decision, rather than general administrative act.[4]

It is therefore necessary to indicate, at least partially, the interpretative directives binding the authorities when taking decisions in this manner. Since the Act does not specify these directives, it should be recognised that the assessment in this respect is made by the authorities independently, however, it cannot be arbitrary. The authorities are bound in this respect primarily by constitutional principles, including the principle of proportionality (Art. 31 para. 3 of the Constitution[5]), combined with the constitutional principle of protection of property rights (Art. 31 para. 3 in conjunction with Art. 64 para. 1 and para. 2 of the Constitution).

The thesis hereof is based on the statement that the above decisions, due to the radical nature of the obligation imposed on the individual, should be treated as introducing legal measures *ultima ratio*. For this reason, the duty of the body issuing the order to kill (slaughter) animals is to demonstrate the necessity of taking such a decision, in accordance with the principle of proportionality. The analysis of this issue will be presented on the example of the jurisprudence of administrative courts.

The essence of the decision to order the killing (slaughter) of animals

Any juridical reflection on the limitation of individual rights by public authorities requires a reference to the fundamental values that help to balance the optimal model of adjudication in such cases.

First of all, it should be emphasized that the decision in question is extremely radical. Looking for an analogy in administrative law, it can be compared to a decision ordering the demolition of a building. It may be pointed out that the common denominator of the two decisions described above is, first and foremost, the radical and final nature, consisting in the complete destruction of the substance covered by the obligation imposed by the decision. An analogy can also be found in the fact that the provisions of the law, although in a partially different way, in both cases mentioned above – as a rule – provide for the possibility of remedying the deficiencies noticed

[4] J. Stelmasiak, *Administracyjnoprawne aspekty ochrony zwierząt*, [in:] *Prawna ochrona zwierząt*, red. M. Mozgawa, Lublin 2002, p. 160.

[5] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483, as amended (hereinafter referred to as the Constitution).

during the inspection activities of the authority, in order to avoid the decision of radical nature, because it aims at the annihilation of a building structure or animals. Moreover, similarities may be observed in the oppressive manner of action of authorities obliged to take action *ex officio* in order to guarantee protection of goods ranked higher in the hierarchy of protected values than the property rights of the owner of a building structure or animals. The purpose of both these decisions is also to restore the state of compliance with the law.

However, there is an important difference between these acts, by its very nature "reparative". Namely, the subject of the order for these decisions is different, because the decisions of the Veterinary Inspectorate concern the deprivation of life of living beings, capable of suffering pain and fear. This difference, even if in practice not seen in the grounds for the decision of the authorities, should be fundamental in order to assess whether the circumstances of the case justify the application of this irreversible remedy.

The decision to order the killing (slaughter) of animals is one of the administrative instruments for combating infectious animal diseases which must be eradicated. The catalogue of these instruments is extremely broad, and – as is clear from the provisions of Chapter 8 of APAH – the vast majority of them are preservative. It is assumed that even if an infectious animal disease is found, sick animals are eliminated either by a radical method by killing all the animals of susceptible species on the farm or by a method of gradual elimination and healing of the herd. The latter method consists in killing or slaughtering only sick and infected animals and testing the rest of the herd until it becomes disease-free.[6] It is therefore the duty of the authorities, in any event, to rule out, as a first step, the application of countermeasures other than the killing of animals. Such a decision is particularly negative for the owner of the animals, but also for the State Treasury, which is in principle obliged to pay compensation for the damage suffered on that account.

Consequently, when taking that decision, the administrative authorities are required to consider whether it is justified in the light of the requirements of the principle of proportionality. It follows, *inter alia*, that the limitation of constitutionally protected rights is permissible only when it is necessary to protect such goods as public safety and public health. This principle is fulfilled by the authority when it has used a means which actually serves the purpose specified in the act and is as little harmful to the individual as possible, and the good to be sacrificed is of a lesser value than the good the authority intends to protect.[7]

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[6] I. Lipińska, *Zwalczanie chorób zakaźnych zwierząt gospodarskich – wybrane aspekty prawne*, „Studia Iuridica Agraria" 2017, Vol. 15, pp. 161–163.

[7] See, e.g., the following judgments of the Constitutional Tribunal: of 9 June 1998, K 28/97, OTK 1998, No. 4, item 50; of 26 April 1999, K 33/98, OTK 1999, No. 4, item 71; of 2 June 1999, K 34/98, OTK 1999, No. 5, item 94.

The fundamental issue that arises in such cases is therefore the need to strike a balance between the social interest and the legitimate interest of the individual. Social interest should be considered as an essential interest of the state, including its safety and public health, expressed in the need to maintain health safety, food hygiene and animal health. This category also includes values derived from EU law, as defined, *inter alia*, in the provisions of Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.[8] Pursuant to Art. 3(1) point 1 and (4b) of the Act of 29 January 2004 on Veterinary Inspectorate,[9] these tasks are performed by the Veterinary Inspectorate in Poland. The legitimate interest of the unit is expressed in its expectation of causing the least possible ailment, sufficient to achieve the objective of combating an infectious animal disease.

At the same time, it is obvious that regardless of what has been said above, the obligation of the authorities is to guarantee the only party to the proceedings (the animals owner) the procedural rights to which he is entitled.

Order to kill (slaughter) animals pursuant to Art. 48b para. 1 point 2 APAH

In the light of the provisions of APAH, the order to kill or slaughter animals may result not only from individual but also general administrative acts. For example, it should only be pointed out that pursuant to Art. 45 para. 1 points 8, 8a, 8b and para. 3 of this Act, a district veterinarian issues an ordinance on the order of sanitary cull of wild boars in one district,[10] and pursuant to Art. 46 para. 3 point 1, paras. 2, 3, 4, 7, 8d, 8f APAH, provincial governor issues an ordinance on the order of sanitary cull

[8] Official Journal of the EU 2004, L 165, p. 1, as amended. It should be noted that the provisions of this Act shall be repealed with effect from 14 December 2019 – pursuant to Art. 146 of Regulation (EU) No. 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official acts performed to ensure the application of feed and food law, animal health and welfare rules, plant health and plant protection products, amending Regulations (EC) No. 999/2001, (EC) No. 396/2005, (EC) No. 1069/2009, (EC) No. 1107/2009, (EU) No. 1151/2012, (EU) No. 652/2014, (EU) 2016/429 and (EU) 2016/2031, Council Regulations (EC) No. 1/2005 and (EC) No. 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Control Regulation), Official Journal of the EU 2017, L 95, p. 1.

[9] Journal of Laws of 2018, item 1557, as amended.

[10] Instead of many, see Ordinance No. 3/2019 of the District Veterinarian in Parczew of 10 September 2019 on the ordinance on the sanitary cullof wild boars in the Parczew district, Journal of Laws of Lublin Province, item 5041.

of wild boars in more than one county.[11] In the case of an order to kill (slaughter) animals, the rule is that for animals killed or slaughtered, compensation is payable from the national budget (Art. 49 para. 1 APAH).

A specific basis for ordering the killing of animals is provided for in Art. 48b APAH. If it is found that the animals owner does not comply with the orders, prohibitions or restrictions referred to in the provisions issued on the basis of Art. 45 para. 1, Art. 46 para. 3, Art. 47 paras. 1 and 2, Art. 48 paras. 2 and 3, and Art. 48a para. 3 of this Act, the district veterinarian is obliged to order, by way of a decision, the removal of the identified deficiencies within a specified period (para. 1 point 1) or the killing or slaughtering of animals of specific species and the banning of breeding animals of these species on the farm (para. 1 point 2). Moreover, when the authority determines that the entity will not comply with the order to remove the identified deficiencies within a specified period of time, the authority obligatorily issues a decision referred to in section 1 item 2 (section 3). These decisions are *ex officio* made immediately enforceable, and for animals killed or slaughtered in this manner no compensation is due from the national budget (sections 2 and 5).

Such decisions shall be issued in particular when the district veterinarian stated that the animals owner had not complied with the orders, prohibitions or restrictions resulting from the Regulation of the Minister of Agriculture and Rural Development of 6 May 2015 on measures to be taken in relation to the occurrence of ASF,[12] issued on the basis of Art. 47 para. 1 and Art. 48a para. 3 APAH.

As an example illustrating the doubts related to the application of these provisions, the judgements of the Provincial Administrative Court in Lublin of 8 November 2018 (file No. II SA/Lu 786/18)[13] and of 4 July 2019 (file No. II SA/Lu 233/19)[14] will be cited. As can be seen from the Central Database of Decisions of Administrative Courts,[15] these are the only judgements issued in such cases. In the first of these judgments, upholding the appeal, the court overturned the decisions of the bodies of both instances ordering the killing of animals, while in the second, the court dismissed the appeal against the decision of the appeal body in this respect.

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[11] Instead of many, see Ordinance No. 17 of the Lublin Provincial Governor of 31 July 2019 on combating African swine fever in the territory of the districts of Radzyń and Parczew, Journal of Laws of Lublin Province, item 4589.

[12] Journal of Laws of 2018, item 290, as amended (hereinafter referred to as the Regulation of the Minister of Agriculture and Rural Development of 6 May 2015).

[13] http://orzeczenia.nsa.gov.pl/doc/307E47E763 [access: 17.10.2019].

[14] http://orzeczenia.nsa.gov.pl/doc/6FBAFFFFB1 [access: 17.10.2019].

[15] The Central Database of Administrative Court Decisions was established by virtue of Ordinance No. 9 of the President of the Supreme Administrative Court of 11 July 2007 on establishing the Central Database of Administrative Court Decisions and Information on Administrative Court Matters and Making Decisions Available via the Internet (http://www.nsa.gov.pl/zarzadzenia-prezesa-nsa/utworzenie-centralnej-bazy-orzeczen). It is available on the SAC's website.

In first case (file No. II SA/Lu 786/18) it was undisputed that the applicant had failed to comply with the bio-insurance obligations laid down in the Regulation of the Minister of Agriculture and Rural Development of 6 May 2015. The authorities therefore ordered the applicant to kill or slaughter all the animals of the pig species held by the applicant and prohibited her from breeding animals of the pig species on her farm. By setting aside the decisions of the first and second instance authorities adopted pursuant to Art. 48b para. 1 point 2 APAH, the Court states that the grounds behind the authorities' decisions do not explain why a more radical measure should have been taken immediately. The deficiencies found in the inspection report and not challenged by the applicant did not constitute a prerequisite for the adoption of a decision ordering the slaughter (killing) of animals. Pursuant to Art. 48b para. 1 APAH, the failure to comply with the obligations relating to protection against the spread of an infectious disease resulted in the adoption of both decisions referred to therein. That provision allows the authority to apply one of two alternative decisions: either the authority orders the correction of the deficiencies within a specified period, and only if the deficiencies are not remedied does it order the killing or slaughtering of the animals, or immediately resort to a more radical measure, which is an order to kill (slaughter) the animals. However, the alternative solutions cannot be understood in such a way that would allow an arbitrary choice. The authority must justify why it chose one of the two alternative solutions, and the choice of the authority limits the obligation to respect the principle of proportionality. Moreover, as the court pointed out, which was also important in this case, the post-inspection protocol ordered the correction of the deficiencies found.

A completely different decision was taken by the court in the latter case (file No. II SA/Lu 233/19). In this case, during the inspection carried out on the applicant's farm, it was found that the bio-insurance requirements set out in the Regulation of the Minister of Agriculture and Rural Development of 6 May 2015, as well as the identification and registration of pigs, which resulted from other national provisions, were not met, which, in the opinion of the authorities, resulted in animals being "unidentifiable, i.e. of illegal origin". Although the Court of First Instance did not indicate those other national provisions in the grounds for the judgment, it follows from the search of those files carried out by the author hereof that the provisions in question were those of Art. 12 para. 3, Art. 17 para. 2 point 3, Art. 20 para. 2, Arts. 20a and 23 para. 3 of the Act of 2 April 2004 on the system of identification and registration of animals (hereinafter referred to as the ASIRA) [16] and para. 1 point 4 and 6 of the Regulation of the Minister for Agriculture and Rural Development of 18 September 2003 on detailed veterinary conditions to be met by farms when animals or foodstuffs of animal origin from such farms are placed on the market (hereinafter referred to as the Regulation of the Minister of Agriculture and Rural Development

[16] Journal of Laws of 2019, item 1149, as amended.

of 18 September 2003).[17] Due to these deficiencies, the authority of the first instance obliged the party – in the post-inspection protocol – to remove the deficiencies found. With that in mind, the applicant took a number of measures to comply with that obligation. However, eight days later, the first-instance authority issued a decision ordering the immediate killing of all the pigs, prohibiting the breeding of pigs and recognising the meat obtained by killing those animals as a category 2 animal by-product. That decision was made immediately enforceable. It was served on the applicant a few days later, on the same day as the veterinarian acting on behalf of the authority, assisted by police officers, compulsorily executed the order for the killing of animals. As a result of the fact that the meat obtained by killing the animals was considered to be a category 2 animal by-product, it was disposed of. Having considered the appeal, the second-instance authority overturned that decision because of a flawed indication of the legal grounds and the factual and legal justification. In re-examining the case, the authority of first instance ruled on the merits in the same way. The appeal body overturned that decision in so far as it concerned the order to kill animals and discontinued the proceedings as devoid of purpose in that part and upheld the decision of the first-instance body in the remaining part. The provincial veterinarian stated that since the farm of the party did not meet the requirements of the bio-insurance law, the animals were not properly marked and entered in the relevant registers, and the applicant did not explain the origin of the animals, the meat could not be marketed and the animals should have been considered unidentifiable, thus – illegal. However, in view of the previous killing of animals, the case became devoid of purpose in that part, which justified the annulment in that respect of the decision of the authority of first instance and the discontinuance of the proceedings. On the other hand, as indicated by the provincial veterinarian, the party who breeds animals was legitimately forbidden in the face of the above described deficiencies and the threat of ASF spreading in the region.

Rejecting the complaint, the court stated that the authorities correctly justified the use of the most radical measure among those mentioned in Art. 48b para. 1 APAH. According to the court, the number of infringements of the law committed by the applicant was "enormous". Since the animals were unidentifiable, it was correctly ordered to kill the animals and destroy the remaining meat as unfit for consumption within the meaning of Art. 9 letter f point i in conjunction with Art. 3 point 1 of Regulation No. 1069/2009.[18] In the court's opinion, such a large scale of infringements proved that breeding the animals on the farm alive posed a real risk of ASF's appearance and spread in the future. Therefore, it was not relevant to the outcome of the case that the

[17] Journal of Laws, No. 168, item 1643.

[18] Regulation (EC) No. 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules concerning animal by-products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Regulation on animal by-products), Official Journal of the EU 2017, L 300, p. 1.

inspection report (drawn up by the first-instance authority with the participation of the applicant) contained a recommendation to remedy the identified infringements and the applicant undertook to comply with the recommendation without delay. Such a circumstance, as the court pointed out, is only of such significance that if the applicant remedied the said infringement, then – in accordance with Art. 48b para. 3a APAH – may apply for the lifting of the ban on breeding animals on his farm, but not earlier than one year from the date of issue of that ban. Finally, the court found it appropriate to annul the decision of the authority of first instance and to discontinue the proceedings in respect of the order to kill the animals, in view of the fact that those animals had previously been killed.

With regard to those judgments, the following points should be stated. In the first case (file No. II SA/Lu 786/18), the need for the authority, in accordance with the requirements of the principle of proportionality, to state correctly why it adopted the most radical legal measure of all those provided for in Art. 48b para. 1 APAH, was aptly stated. It was also correctly pointed out by the court that the fact that the inspection report ordered the applicant to remedy the deficiencies found had a significant impact on the outcome of the case. Undoubtedly, such action by the authority showed that, in the event of the rectification of the deficiencies noted during the inspection, it would not take further, more radical decisions.

However, one cannot fully approve the position expressed in the latter case (file No. II SA/Lu 233/19). First of all, the court did not assess the consequences of the infringement by the authorities of the principle according to which the application of Art. 48b para. 1 APAH is possible only if the initial condition specified in this provision is fulfilled, namely if the holder of the animals violated the orders, prohibitions or restrictions referred to in the provisions issued on the basis of Art. 45 para. 1, Art. 46 para. 3, Art. 47 paras. 1 and 2, Art. 48 paras. 2 and 3 and Art. 48a para. 3 APAH. The grounds for the decision referred to in Art. 48b para. 1 point 2 APAH could not be based on improper identification of animals and failure to notify them to the relevant registers, as those obligations were not introduced by the provisions issued under Art. 45 para. 1, Art. 46 para. 3, Art. 47 paras. 1 and 2, Art. 48 paras. 2 and 3 and Art. 48a para. 3 APAH, in particular, they were not imposed by the Regulation of the Minister of Agriculture and Rural Development of 6 May 2015, issued pursuant to Art. 47 para. 1 and Art. 48a para. 3 APAH, as indicated by the authorities. Those obligations, as the appeal body stated in the justification for the contested decision, stemmed from other provisions: Art. 12 para. 3, Art. 17 para. 2 point 3, Art. 20 para. 2, Art. 20a and Art. 23 para. 3 ASIRA and para. 1 point 4 and 6 of the Ordinance of the Minister of Agriculture and Rural Development of 18 September 2003. That is to say, the authorities could not justify the order to kill animals in this case on the ground that the applicant had infringed the latter provisions. Secondly, the Court failed to assess the consequences of the breach by the authorities of the principle of legitimate expectations (Art. 8 para. 1 of the Code of Administrative

Procedure[19]) and of the right to an effective remedy (Art. 13 of the European Convention on Human Rights[20]). Primarily, the authority of first instance was particularly inconsistent in its decision to order the killing of animals. Firstly, during the inspection, it assured the party that immediate elimination of the detected irregularities would be sufficient to remove the illegality. Then, disregarding the fact that the party, acting in confidence with the authority, had taken such action, the authority ordered the immediate killing of all the pigs kept on the farm. Moreover, it is beyond dispute that the authority of the first instance enforced its final decision without even waiting for the expiry of the time limit for its appeal in the administrative course of the instance. Such a measure cannot be justified by the real risk of ASF spreading. Moreover, although the court did not mention it in the justification of the cited judgment, the analysis of administrative files carried out by the author hereof shows that all the animals killed were healthy. This was confirmed by blood tests performed by a specialized research unit commissioned by the first-instance authority. In such circumstances, the instance-based review became "illusory and, in fact, pointless".[21] Thirdly, the court did not pay due consideration to whether it was justified that the authorities did not order an examination of the state of health of the animals before issuing the decision on ordering their killing. This could not be supported only by the "enormous" scale of infringements emphasised by the Court, especially as – as indicated above – the breach of information and registration obligations could not justify the decision referred to in Art. 48b para. 1 point 2 APAH. Fourthly, one cannot accept the Court's position that the origin of those animals was not known at all, so that the authorities correctly assessed that the meat left over after the animals had been killed could only be disposed of as unfit for consumption. Even if the applicant was unable to explain the origin of some of the animals, such a position was simply unreasonable since they were healthy, which the authority could not rule out without first examining them. Fifthly, having regard to all the irregularities committed by the authorities as described above, which have been overlooked by the Court, the Court should not have agreed that in this case there were no grounds for ordering the applicant to remedy the infringements under Art. 48 para. 1 point 1 APAH, and that it was necessary to impose the most radical, i.e. irreversible, administrative penalty.

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[19] Act of 14 June 1960 – The Code of Administrative Procedure, Journal of Laws of 2018, item 2096, as amended.

[20] Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2, Journal of Laws of 1993, No. 61, item 284 as amended.

[21] Instead of many, see the judgements of the European Court of Human Rights: of 3 May 2007 in *Bączkowski and Others v. Poland* – 1543/06 and of 6 December 2018 in *Słomka v. Poland* – 68924/12 (M. Szwast, *Glosa do wyroku Europejskiego Trybunału Praw Człowieka z dnia 6 grudnia 2018 r. w sprawie Słomka przeciwko Polsce (skarga nr 68924/12)*, „Zeszyty Naukowe Sądownictwa Administracyjnego" 2019, Nr 4, *passim*.

Conclusions

That judgment is likely to indicate that the administrative practice for issuing the animal slaughter order does not take sufficient account of the requirements of the principle of proportionality. The reasons for this are as follows.

The lack of interpretative directives binding the authorities when taking decisions under this procedure facilitates the application of the most radical legal measure among those indicated in Art. 48b para. 1 APAH. In case of doubt, the safest solution from the point of view of the authority is to take a decision which should be final and thus, as a rule, respond to the ineffectiveness of earlier lenient legal remedies. It is obvious that when in a situation of threat one usually takes the least risky decision. Such a threat situation is the risk of the emergence and spread of an infectious animal disease, which is to be compulsorily controlled. Possible negative consequences of making an erroneous decision enforce on the authorities a kind of radicalisation of attitudes. It is easier to decide to kill all the animals when there is a likelihood of such a disease occurring than to impose on the holder the obligation to remedy the deficiencies found. Where an order to kill animals has been enforced, there is no longer any basis for even hypothetical consideration as to whether they could constitute a source of danger in this respect in the future.

These doubts could be solved by supplementing the content of Art. 48b para. 1 APAH in such a way as to make it more effective as a guarantee for holders of animals at risk with infectious diseases. In line with the guiding principle of animal welfare, stating that animals must not be killed unless absolutely necessary, this provision should prevent the oversimplified interpretation that has been adopted in the two cases discussed above.

The specificity of the administrative order for the slaughter of animals leads to the conclusion that the emergency killing of animals should be reduced to an absolute minimum as indicated above, i.e. where, in view of the specificity of the contagious disease, this solution is necessary to avoid unnecessary suffering by the animals, the spread of disease, etc. It is incomprehensible and contrary to the constitutional principle of proportionality to order the killing of animals where the irregularities found by the authority can be remedied using other, less intrusive means. This applies in particular to situations where the order is issued for a breach of information or record-keeping obligations. It is always difficult to agree with such a decision when the reason for deciding on the obligation to kill animals is not their disease, but only the risk of its occurrence resulting from, for example, the failure of the animals owner to comply with their bio-insurance obligations. Such an automatic sanction imposed by the veterinary inspection authorities cannot usually be regarded as an absolutely necessary means of restoring legality.

The system of keeping records of animals cannot be absolutised and, as a paradigm, the claim that a healthy animal which is not properly registered with the records is

unidentifiable, justifying its immediate killing and destruction of its meat as unfit for human consumption. Certainly, this was not the purpose of the introduction of the obligation to keep records of livestock. If these animals are healthy, it would be unreasonable to rule out the possibility of slaughtering them for personal use, subject to the rules laid down in this respect. The *a priori* assumption that food which is healthy but not derived from an animal of documented origin is unfit for consumption should be regarded as an excessive simplification. It does not take account of the meaning of that institution, leading to a denial of the idea of justice. The automatic imposition of an order for the killing of animals and the destruction of material left over from the slaughter of animals is a completely disproportionate penalty for failure to comply with the obligation to guarantee the traceability of the animal. Taking the opposing view is based on a misunderstanding of the aims and objectives of the administrative duty described. At the same time, it leads to a kind of objectification of the animal and, consequently, to a different value attached to it, which in this case is its health and, in the long term, food safety.

The source of problems resulting from such an understanding of the essence of the adopted regulation is probably an unconscious tendency to apply methodology and objectives of technical sciences, according to the paradigm which, applied to animals, determines not only the health and functioning of these animals. It was rightly noted, when analysing a similar problem in relation to the degradation of the natural environment, that the application of such a model of action to the whole human and social reality is a symptom of reductionism, which undermines the life of people and societies in many of its dimensions. It is clear that "(…) decisions which may seem purely instrumental are in reality decisions about the kind of society we want to build".[22]

The philosophical and ethical aspects of depriving animals of their lives must not be completely overlooked. The issues discussed in the paper are inevitably connected with the evaluation of the legitimacy of killing animals for the protection of higher-valued goods. In today's world, the ambivalent status of animals is evidenced by the fact that parallel to the appreciation of the position of animals, through the introduction of legislation on animal welfare, there has been a radical intensification of meat production. Thus, as long as the paradigmatic imperative to maximise the economic benefits from animal life prevails, the law serving this free market will ensure a legal regime that treats animals as a form of property.[23]

The value of the life of animals, beings capable of experiencing pain and suffering, should also be an important interpretative guidance for veterinary inspection author-

[22] Franciscus, *Encyclical Letter Laudato Si'* (4 September 2015), 9: AAS 107 (2015), 106–107, Polish edition, Wrocław 2015, p. 95.

[23] T. Menely, *The Animal Claim. Sensibility and the Creaturely Voice*, Chicago 2015, pp. 202–203, and the literature indicated therein.

ities recognising the matters under discussion. Balancing this value is significant from a humanistic point of view. The naturalisation of legal humanism makes it possible to reconcile it with the concept of non-personal subjectivity of animals.[24] We must not forget, therefore, that even when animals are bred for the purpose of slaughter and the economic use of their meat, skins, fur, etc., this cannot justify killing them without a valid reason. This argument also speaks for the claim that the order to kill animals – by administrative decision – should be used only in a state of absolute necessity.

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[24] T. Pietrzykowski, *Problem podmiotowości prawnej zwierząt z perspektywy filozofii prawa*, „Przegląd Filozoficzny – Nowa Seria" 2015, Nr 2, pp. 255–256; see also J. Helios, W. Jedlecka, *Okrucieństwo wobec zwierząt – zarys problemu*, „Przegląd Prawa i Administracji" 2017, Vol. 108; *Prawna ochrona zwierząt*, red. J. Helios, W. Jedlecka, Wrocław 2017, p. 41. I do not share further arguments of the aforementioned authors, who claim that the limited subjectivity of animals does not, however, lead to a complete break with the attitude of species chauvinism, whose quintessence is the metaphysical understanding of human dignity.

Abstract: The paper concerns the issue of application of Art. 48b(1) point 2 of the Act of 11 March 2004 on the protection of animal health and combating infectious diseases of animals (Journal of Laws of 2018, item 1967, as amended), which constitutes the legal basis for the ordering by a district (*powiat*) veterinarian – by way of an administrative decision – of the emergency killing (slaughter) of animals. The thesis hereof is based on the statement that the above decisions, due to the radical nature of the obligation imposed on the individual, should be treated as introducing legal measures *ultima ratio*. For this reason, the duty of the body issuing the order to kill (slaughter) animals is to demonstrate the necessity of taking such a decision, in accordance with the principle of proportionality. The fundamental issue that arises in such cases is therefore the need to strike a balance between the social interest and the legitimate interest of the individual. Social interest should be considered as an essential interest of the state, including its safety and public health, expressed in the need to maintain health safety, food hygiene and animal health. The legitimate interest of the unit is expressed in its expectation of causing the least possible ailment, sufficient to achieve the objective of combating an infectious animal disease. The analysis of this issue will be presented on the example of the jurisprudence of administrative courts.

Keywords: order to kill (slaughter) animals; principle of proportionality; combating infectious diseases of animals; veterinary inspectorate; administrative courts