

## Humanitarian Protection of Animals Used for Economic Purposes\*

Since the most ancient times, animals have been used by humans for vastly understood economic purposes, as they constituted one of the basic sources of food and material for manufacturing different kinds of goods, as well as a means of transport, towing force, hunting tools or source of pleasure. Their economic importance was the reason why they have always been perceived as one of the most precious natural resources and, as such, they were protected by law. The purpose of that protection was to maintain the accessibility of these resources. Simultaneously, the issue of feeling suffering by animals was almost completely disregarded. Such a model of using animals for economic purposes worked for a few thousand years without any greater exceptions. It was only at the turn of 18<sup>th</sup> century, with the development of Enlightenment thought, and, to some extent, probably also under the influence of the progressing industrial revolution, which, on one hand significantly restricted the significance of animals as source of materials for production and as a towing force and means of transport, and simultaneously created conditions for implementing new methods of animal farming and breeding, as well as their more effective use, that attention was paid to a greater extent to the need for protecting animals from unnecessary suffering, which initiated the discussion about the admissible scope and manner of using animals in economy. Currently, the need for

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protecting animals against suffering, defined as humanitarian protection, as to its essence does not raise any doubts and more and more commonly regulations are introduced, which are to secure it. These regulations, introducing the requirement of treating animals humanely, influence the possibility of using animals for economic purposes. In many cases they lead to total exclusion of the possibility of using animals for specific economic purposes, or restricting the use of particular animal species for economic purposes. In each of the cases these restrictions constitute a significant interference in the sphere of economic freedom, which raises questions about their admissibility, scope and usefulness from the point of view of the requirements of humanitarian protection of animals. Answering these questions requires considering the legal possibility of using animals for economic purposes, the adopted model of humanitarian protection of animals and particular solutions resulting in exclusion or restriction of the possible use of particular animal species for economic purposes.

In the Polish legal system, the basis for using animals for economic purposes is formed by Art. 1 pass. 2 of the law of 21 August 1997 On animal protection<sup>1</sup>, ordering to apply to animals respectively, in cases not regulated in the law, regulations concerning things. That regulation makes animals the object of rights of the similar contents to rights in property, including especially the object of ownership, which, as it is indicated in the doctrine, is the absolute right with attributes analogical to ownership as it is understood in Art. 140 of Civil Code, however, different from it in its object and manner of executing its attributes<sup>2</sup>. The statement that an animal can constitute an object of rights with attributes analogical to rights in property leads to the conclusion that the person entitled to an animal can, within limits prescribed by the contents of that right, freely have the animal at their disposal, including use it for economic purposes, in this respect taking advantage of warranties of ownership and economic freedom expressed in the regulations of the Constitution of Republic of Poland of 2 April 1997<sup>3</sup>. Accepting the fact that the possibility of using animals for economic purposes is based on the constitutional warranties of ownership and economic freedom, it should be indicated that restricting this possibility

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<sup>1</sup> Law of 21 August 1997 On animal protection, consolidated text of 2017, item 1840 (hereinafter as a.p.l.).

<sup>2</sup> Cf. with reference to the right of animal ownership, M. Nazar, *Normatywna dereifikacja zwierząt – aspekty cywilnoprawne*, [in:] *Prawna ochrona zwierząt*, M. Mozgawa (red.), Lublin 2002, p. 136.

<sup>3</sup> Constitution of the Republic of Poland of 2 April 1997, Dz.U. (Journal of Laws) No. 78, item. 483 as amended (hereinafter as Constitution of RP).

can take place exclusively when considering requirements referred to in Art. 31 pass. 3 of RP Constitution and, consequently, they can take place only in the statute and only when they are necessary in a democratic state for its safety, public order or for protection of environment, health, public morality, or freedoms and rights of other persons, and the introduced restrictions cannot violate the significance of freedoms and rights. Thus, the principal condition for admissibility of restricting the use of animals for economic purposes in consideration of humanitarian protection requirements is stating that this protection is contained in the catalog of prerequisites specified in the catalog contained in Art. 31 pass. 3 of the Constitution of RP and that restrictions introduced for the needs of that protection in the field of using animals for economic purposes do not violate the principles of proportionality and inviolability of the essence of rights undergoing limitation.

The essence of humanitarian protection of animals is identified with protection against human activities that brings suffering to an animal<sup>4</sup>. In the Polish legal system, the principles of humanitarian protection of animals is defined by the law of 21 August 1997 On the protection of animals. In accordance with Art. 1 pass. 1 a.p.l., an animal is a living being, able to feel suffering, which should be respected, protected and taken care of by humans. The consequence of recognizing an animal as a being able to suffer, is the order expressed in Art. 5 a.p.l. to treat each animal in a humane way and the bans expressed in Art. 6 a.p.l. On unjustified killing of animals and tormenting them. In accordance with Art. 2 pass. 1 a.p.l. the law covers all vertebrates with the humanitarian protection understood in this way.

No doubts should be raised by the fact that humanitarian protection in the presented approach may constitute a prerequisite to restricting freedom to use animals for economic purposes. Although in accordance with the opinion of Constitutional Court (CC) expressed in justification of the CC judgment of 10 December 2014, file number: K 52/13<sup>5</sup>, the prerequisite in the form of “environment protection”, referred to in Art. 31 pass. 3 first sentence of the RP Constitution, in its fundamental meaning concerns exclusively protection of wild animals (living at large), constituting a part of natural environment, however, that opinion cannot be accepted in total. It seems that the reservation made by the CC could be applicable to the term “natural environment”, which, after all, should be distinguished from the term “environment”, used

<sup>4</sup> I.a. L. Jastrzębski, *Prawo ochrony środowiska w Polsce*, Warszawa 1990, p. 106 ff.

<sup>5</sup> Judgment of CC of 10 December 2014, file number: K 52/13 Legalis No. 1123153.

in Art. 31 pass. 3 of RP Constitution. The object of constitutional protection, expressed not only in the contents of Art. 31 pass. 3, but also, among others, of Art. 5 and Art. 74, Art. 68 pass. 5, Art. 74 pass. 2 and 3 of RP Constitution is “the environment”, which should be seen in a broader perspective than “the natural environment”, including also the elements undergoing human activity and transformed by man in the scope of that term. Such a position finds its normative justification in the contents of Art. 3 pt. 39 of the law of 27 April 2001 (Environment protection law)<sup>6</sup>, which defines the environment as all the natural elements, including also those transformed in the effect of human activity, and especially the surface of earth, minerals, waters air, landscape and the remaining elements of biological diversity, as well as mutual interactions between those elements. What is important in this field is also the contents of Art. 81 pass. 1 e.p.l., indicating that protection of environmental resources is accomplished on the basis of law and special regulations, as well as Art. 81 pass. 4 pt. 4 of that law indicating that detailed principles of protecting farm and domestic animals are defined in the regulations of the law of 21 August 1997 On animal protection. Juxtaposing these regulations leads to the unambiguous conclusion that farm and domestic animals constitute environmental resources covered by legal protection. Also in the doctrine, animals are counted as elements of environment, classifying them, besides plants and fungi, as biotic elements<sup>7</sup>. Considering the above, it must be stated that each animal is a part of the environment, and domestication of an animal, as well as using it to satisfy one’s needs, is a manifestation of using that environment. Consequently, animal protection should be treated as an element of environment protection. Besides, no reservations are evoked by the opinion presented in the doctrine, according to which the scope of environment protection should also include the protection of animals used for economic purposes (“intended for slaughter”)<sup>8</sup>. Also humanitarian protection of animals should be regarded as an element of that protection. For as W. Brzozowski aptly remarks, environmental protection is a constitutional value which should not be reduced to providing ecological safety, but also decoded as safeguarding animals against cruel

<sup>6</sup> Law of 27 April 2001 Environment protection law, consolidated text, Dz.U. (Journal of Laws) of 2017 item 519 as amended (hereinafter referred to as: e.p.l.).

<sup>7</sup> Cf. M. Pchałek, *Komentarz do art. 81 ustawy Prawo ochrony środowiska*, [in:] M. Górski, M. Pchałek, W. Radecki, J. Jerzmański, M. Bar, S. Urban, J. Jendrośka, *Prawo ochrony środowiska. Komentarz*, Warszawa 2014, p. 290.

<sup>8</sup> Cf. J. Boć, E. Samborska-Boć, *Ochrona zwierząt*, [in:] *Ochrona środowiska*, J. Boć, K. Nowacki, E. Samborska-Boć (red.), Wrocław 2004, p. 280.

treatment<sup>9</sup>. Fully accepting that opinion, one should indicate that humanitarian protection of animals can become a prerequisite justifying restriction of their use for economic purposes. Assuming after A. Winczorek that values listed in Art. 31 pass. 3 of the RP Constitution are contained in the clause of important public interest, referred to in Art. 22 of the RP Constitution<sup>10</sup>, it should be stated that the requirements of humanitarian protection may constitute a prerequisite for restricting economic freedom<sup>11</sup>.

Recognizing that humanitarian protection of animals may constitute a prerequisite for restrictions in the field of using animals for economic purposes does not, however, mean that it constitutes a superior value to such values as property or economic freedom, and that, therefore, it may justify all the solutions allowing for eliminating suffering of animals used for economic purposes. Admissibility of introducing such solutions in each case requires assessment from the angle of their effect upon freedom of having an animal at one's disposal, resulting from the owner's rights, as well as the scope of economic freedom. The essence of the problem is in some way expressed by the contents of the directive of 20 October 2010 of the European Parliament and Council 2010/63/EU of 22 September 2010 On protecting animals used for scientific purposes<sup>12</sup>, which indicates that it is appropriate to allow Member States for some flexibility, which is favorable for the animals, so that they could maintain domestic regulations providing broader protection of animals used for specific research, with a reservation, however, that it is only possible if these regulations are consistent with the provisions of the Treaty on functioning of the European Union

<sup>9</sup> W. Brzozowski, *Ubój rytualny a Konstytucja RP*, [in:] *Aktualne problemy myśli, sumienia i religii*, P. Stanisław, A.M. Abramowicz, M. Czelný, M. Ordon, M. Zawiślak (red.), Lublin 2015, p. 47.

<sup>10</sup> Cf. A. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warszawa 2008, p. 62.

<sup>11</sup> On the margin of the foregoing arrangements, attention should be paid to the opinion expressed by the CC Judge, W. Hermeliński, in the justification of the opinion different than the judgment of CC of 10 December 2014 (Legalis Nr 1123153), where he indicates the possibility of banning cruel treatment of animals with the value, which is public morality and its possible collision with the principle of freedom of economic activity. Without denying aptness of that opinion in advance, it should be stated that the matter of humanitarian protection of animals, should first of all be treated as an element of environment protection and in this context the limitations in the scope of using animals for economic purposes should be analyzed.

<sup>12</sup> Directive of 20 October 2010 of the European Parliament and Council 2010/63/EU of 22 September 2010 On protecting animals used for scientific purposes, O.J. EUL No. 276, 33 (hereinafter as directive 2010/63/EU).

of 26 October 2012<sup>13</sup> and if it does not affect the internal market. These regulations directly indicate that protecting animals from suffering cannot be treated as a superior value and in some cases it must give way to economic purposes. This leads to the statement that assessing the admissibility of restrictions introduced in using animals for economic purposes each time should be performed with taking particular solutions into consideration. That assessment should take into account both the requirements connected with eliminating suffering of animals, as well as the economic needs, including the necessity of using animals or substances of animal origin, as well as the possibility of replacing them rationally. Due to the especially far-reaching influence upon the sphere of owners' rights and economic freedom, the solutions that exclude using animals for particular economic purposes or restrict the possibility of using certain animal species for economic purposes should undergo assessment as first.

The solution involving total ban on using animals for economic purposes is the ban included in Art. 17 pass. 5 a.p.l. On the activity of mobile menageries, defined in accordance with Art. 4 pt. 4 a.p.l., as the activity of an entrepreneur in the field of organizing mobile exhibitions of animals. That ban is dictated by humanitarian reasons in total, and its essence is contained in aiming at eliminating suffering experienced by animals used for the needs of such an activity. Considering the above referred to the criterion of indispensability of using animals in such kind of activities, as well as the fact that such an activity in fact only serves entertainment purposes, the admissibility of such a ban should not raise any doubts. Assuming that the ban will be observed, its effectiveness should not raise any doubts either as to the humanitarian protection of animals.

An example of excluding the possibility of using certain animal species for economic purposes is the regulation defining the principles of killing animals in order to obtain meat and skins. Art. 6 pass. 1 pt. 1 a.p.l. directly indicates the possibility of slaughtering and killing animals in order to obtain meat and skins, but it allows to kill exclusively farm animals for that purpose, as well as keeping wild birds and mammals for that purpose. The term "farm animals" is defined in Art 4 pt. 18 a.p.l. in connection with Art. 2 pt. 1 in connection with Art. 1 pt. 2 of the law of 29 June 2007 On organizing breeding farms and reproduction of farm animals<sup>14</sup>, which enumerates species included in the

<sup>13</sup> Treaty on the functioning of the European Union of 26 October 2012, O.J. EU C No. 326, 47.

<sup>14</sup> Law of 29 June 2007 On the organization of breeding and reproduction of farm animals, consolidated text, Dz.U. (Journal of Laws) of 2017 item 2132.

group of farm animals<sup>15</sup>. Art. 16 of the law of 13 October 1995 (Hunting law), in turn, forbids rearing and closed breeding of game animals, excluding pheasant and animals regarded as farm animals on the basis of separate regulations. Consequently, the indicated regulation restricts the freedom to use animals as source of meat and skins, allowing to slaughter and kill basically exclusively farm animals for that purpose. The possibility of using animals to obtain meat and skins is extended by regulations concerning fishing and hunting. Art. 6 pass. 1 pt. 2 a.p.l. allows for fishing in accordance with regulations about fishing and inland fishery, as well as Art. 6 pass. 1 pt 6 a.p.l. admits hunting and shooting off, as well as restricting the population of game animals. Regulations concerning fishing and inland fishery, including especially the law of 19 December 2014 On sea fishing<sup>16</sup> and the law of 18 April 1985 On inland fishery<sup>17</sup> do not indicate for what purpose fish are to be caught, which it orders to adopt in accordance with the previously presented principle of having an animal freely at one's disposal for economic purposes that there are no obstacles whatsoever for the fishing to be performed in order to obtain meat and other substances of fish origin. Art. 4 pass. 2 par. 1., defining hunting, indicates that its purpose is to enter into possession of the game. According to Art. 15 pass. 3 par. 3., in turn, the persons performing hunting may use the game that had been ceded to them at their own discretion, except resale. Therefore, there are no obstacles to using that game for obtaining meat. Contrary to the above presented ban on

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<sup>15</sup> According to Art. 2 pt. 1 of the law of 29 June 2007 On organization of breeding and reproduction of farm animals, farm animals are: horse (*Equus caballus*) and donkey (*Equus asinus*); cattle i.e.: domestic cattle (*Bos taurus*) and buffaloes (*Bubalus bubalis*); red deer (*Cervus elaphus*), Dybowski's deer (*Cervus nippon*) and fallow deer (*Dama dama*) kept on farms to obtain meat or skins, if they come from closed breeding farm or rearing referred to in the regulations of hunting law, farm rearing or breeding; poultry, i.e. birds of the following species: hen (*Gallus gallus*), duck (*Anas platyrhynchos*), musk duck (*Cairina moschata*), goose (*Anser anser*), hump-nosed goose (*Anser cygnoides*), turkey (*Meleagris gallopavo*), Japanese quail (*Coturnix japonica*), guinea fowl (*Numida meleagris*) and ostrich kept in farm conditions (*Struthio camelus*); swine (*Sus scrofa*), sheep (*Ovis aries*), goat (*Capra hircus*), honey bee (*Apis mellifera*) and fur animals, i.e. the following species: red fox (*Vulpes vulpes*), Arctic fox (*Alopex lagopus*), American mink (*Mustela vison*), European polecat (*Mustela putorius*), raccoon dog (*Nyctereutes procyonoides*), coypu (*Myocastor coypus*), chinchilla (*Chinchilla lanigera*) and rabbit (*Oryctolagus cuniculus*), kept for producing raw material for fur, meat and textile industry.

<sup>16</sup> Law of 19 December 2014 On sea fishery, consolidated text, Dz.U. (Journal of Laws) of 2015 item 222 as amended.

<sup>17</sup> Law of 18 April 1985 On inland fishery, consolidated text, Dz.U. (Journal of Laws) of 2015 item 652 as amended.

the activities of mobile menageries, the *ratio legis* of the presented regulation is not fully understandable. Special attention should be paid to restricting the possibility of killing animals exclusively to obtain meat and skins, disregarding other tissues, which cannot be obtained without depriving an animal of its life. Treating the possibility of slaughtering and killing animals introduced in Art. 6 pass. 1 pt. 1 a.p.l. as an exception to the general ban on killing them, it should be assumed that in accordance with the rule *exceptiones non sunt extendendae*, the contents of that regulation cannot be interpreted extensively, and, therefore, the existence of the ban on killing animals to obtain other tissues than meat and skins should be recognized. It is incomprehensible because using these tissues can have a substantial economic importance (e.g. for the needs of pharmaceutical industry), and, quite differently from skins, for which Art. 6 pass. 1 pt. 1 a.p.l. introduces an exception, in many cases they might not be replaced by other substances. Similarly incomprehensible is restricting the animal species that can be used to obtain meat and skins. It is difficult to indicate any rational prerequisites of introducing such a restriction, especially in the context of the possibility of acquiring and using any other tissues than meat and skins. Also the very formation of the catalog of species covered by the regulation of Art. 6 item 1 pt. 1 a.p.l. is also incomprehensible. It seems that the only reasons that can be indicated as the prerequisite for its formation are tradition and culture. Certainly, that solution is not dictated by the needs of humanitarian protection of animals. Assuming that this regulation was aimed at restricting the suffering of animals killed to obtain meat and skins, covering only selected animal species, indicated without considering their pain threshold (which, due to the aim, which is acquiring tissues of specific properties, would not be able to play the crucial part in it anyway) by this protection, is incomprehensible. In this field, the admissibility of killing animals to obtain all kinds of tissues that cannot be obtained without slaughtering an animal and giving up defining the catalog of animals, from which these tissues could be obtained, should be postulated. Here an indirect solution, though not fully satisfactory, can be the proposal of Ł. Smaga, who, regarding the solution involving restriction of the catalog of farm animals only to the species indicated in the law as wrong, suggests to base the definition of a farm animal on the criterion of being connected with a farm and, consequently, regard any animal (including fish, reptiles and amphibians) bred or reared to produce food, wool, skins, furs or for other agricultural purposes as a farm animal<sup>18</sup>. Such a solution would not, in fact, totally eliminate the

<sup>18</sup> Ł. Smaga, *Ochrona humanitarna zwierząt*, Białystok 2010, pp. 199–200.



ban on acquiring meat, skins and other animal tissues that could be applied in economy, but it would at least definitely extend the catalog of species covered by protection provided by farm animals.

Another example of limiting the possibility of using certain species for economic purposes is the regulation of law of 15 January 2015 On the protection of animals used for scientific or educational purposes, defining species that can be used for the needs of procedures regulated in that law. Within that regulation, Art. 2 pass. 1 pt. 2 a.p.l. is of special significance, as it defines laboratory animals, i.e. the animals bred exclusively to be used within the procedures, or whose tissues or organs are intended to be used for such purposes and on which, principally, these procedures should be carried out<sup>19</sup>. In accordance with the adopted solution, procedures on other animals can be conducted only when they cannot be conducted on laboratory animals, and in accordance with Art. 7 u.o.z.w.n. in such a case animals of the species included in the category of laboratory animals, not coming from breeding farms of such animals (and thus having no status of laboratory animals), should be used as first. In the explanatory statement to the draft of law of 15 January 2015 On the protection of animals used for scientific or educational purposes the statement can be found that the adopted manner of defining laboratory animals “is connected with the necessity to obtain knowledge about basic genetic, biological and behavioral features of the listed species. Besides, it is aimed both at improving scientific quality and reliability of results of procedures conducted with their participation”<sup>20</sup>. The same justification is revealed by the contents of directive 2010/63/EU, which does not actually introduce the category of laboratory animals, but also indicates the

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<sup>19</sup> In accordance with Art. 2 pass. 1 pt. 2 u.o.z.n., laboratory animals are animals of the following species: mouse (*Mus musculus*); rat (*Rattus norvegicus*); guinea pig (*Cavia porcellus*); Syrian (golden) hamster (*Mesocricetus auratus*); Chinese hamster (*Critetulus griseus*); Mongolian gerbil (*Meriones unguiculatus*); rabbit (*Oryctolagus cuniculus*); dog (*Canis familiaris*); cat (*Felis catus*); common frog (*Rana temporaria*); northern leopard frog (*Rana pipiens*); African clawed frog (*Xenopus laevis*); western clawed frog (*Xenopus tropicalis*); zebra fish (*Danio rerio*); animals from the order of primates constituting the offspring of animals from the order of primates bred in captivity, as well as animals from the order of primates not constituting the offspring of animals from the order of primates, bred exclusively for the needs of procedures specified in this law, or the tissues or organs of which are designed to be used for such purposes.

<sup>20</sup> Explanatory statement to the draft of law of 15 January 2015 On protecting animals used for scientific or educational purposes, parliamentary paper No. 2709 of 26 August 2014 (Lower Chamber of Parliament of the Republic of Poland, 7<sup>th</sup> term).

animal species, which first should be used to conduct the procedures<sup>21</sup>. Not denying that justification, including especially the need for a kind of standardization of scientific research and educational activity achieved by means of conducting procedures on animals with well-known genetic, biological, and behavioral features, it should be expected that the selection of animal species used for scientific or didactic activities will be justified mainly by their applicability for achievement of the expected goals (including, e.g. the genetic similarity to humans), as well as by humanitarian protection which would enforce using animals of species with lowered ability to feel pain for the needs of conducted procedures. Neither the contents of the indicated explanation to the draft of law, nor the contents of directive 2010/63/EU reveal that these elements were taken into account during the formation of the catalog of animal species designed for performing procedures, which makes us suggest that in this field they could only be of secondary importance.

Another restriction concerning species is the ban on reproducing dogs and cats for commercial purposes, if these animals are not registered in the domestic social organizations, whose statutory purpose is activity related to breeding pedigree dogs and cats, contained in Art. 10a pass. 6 in connection with Art. 2 a.p.l., combined with the ban on introducing dogs and cats into the turnover outside the place where they are reared or bred, specified in Art. 10a pass. 1 pt. 3. The indicated regulation was introduced on the basis of the law of 16 September 2011 On changing the law on animal protection and maintaining cleanliness and order in rural communes<sup>22</sup>. According to the justification of the draft of that law, it was intended to restrict the activity of “would-be breeding farms”, which were in fact “factories” producing puppies resembling dog breeds, which were enjoying current demand. They are most frequently run in “outrageous conditions” and without any control whatsoever, the activity of which generates “huge homelessness” of dogs and cats<sup>23</sup>. In the assessment of the author of

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<sup>21</sup> In accordance with annex I to the directive 2010/63/EU these are: mouse (*Mus musculus*); rat (*Rattus norvegicus*); guinea pig (*Cavia porcellus*); Syrian (golden) hamster (*Mesocricetus auratus*); Chinese hamster (*Cricetulus griseus*); Mongolian gerbil (*Meriones unguiculatus*); rabbit (*Oryctolagus cuniculus*); dog (*Canis familiaris*); cat (*Felis catus*); all species of non-human primates; frog (*Xenopus laevis*, *Xenopus tropicalis*); rana (*Rana temporaria*, *Rana pipiens*); zebra fish (*Danio rerio*).

<sup>22</sup> Law of 16 September 2011 On the change of law on animal protection, as well as the law On maintaining cleanliness and order in rural communes, Dz.U. (Journal of Laws) of 2011, item 230, no.1373.

<sup>23</sup> Justification of the law of 16 September 2011 On changing the law on animal protection, as well as the law On maintaining cleanliness and order in rural communes, Druk

the project, the unlimited domestic animals' turnover is paid with their "enormous suffering"<sup>24</sup>. Undoubtedly, these remarks are fully apt and, consequently, the grounds of solutions introduced cannot be denied. However, what can raise doubts, is restricting the objective regulation exclusively to dogs and cats. Undoubtedly, such a restriction was supported by the fact that dogs and cats were the most popular domestic animals, most frequently bought for such purpose and, consequently, proportionally most frequently abandoned or killed by their owners. It seems, however, that humanitarian protection enforces introducing similar restrictions of breeding also with reference to other domestic animal species, e.g. by introducing a ban on breeding and selling them outside the specialized and appropriately inspected breeding farms.

The common feature of the indicated regulations is restricting the possibility of using particular animal species for economic purposes. Their analysis leads to the conclusion that these restrictions can serve different purposes and at least some of them are justified by humanitarian animal protection. The question arises, however, to what extent they are useful for accomplishment of these goals, especially in the context of their effect upon the scope of freedom to use animals for economic purposes. Undoubtedly, the most effective solutions are those based on the total ban on using animals for specific economic purposes, but due to the far-reaching effect of such solutions upon the sphere of rights resulting from constitutionally protected right to ownership and economic freedom, they must be applied only as exceptions and, in principle, only when using animals is not necessary or when animals or substances of animal origin can be replaced in a rational way. If there is no such a possibility, the legislator often refers to measures of indirect nature, including those involving restriction of taking advantage of particular animal species in economy. From the very assumption, these measures cannot be effective to the same extent as an absolute ban on economic use of animals, and their effectiveness is determined to a substantial degree by their formation, including, especially, the manner of defining the catalog of animal species covered by them. The above short analysis of regulations concerning restricting the possibility of using animals to obtain meat and leather, as well as for scientific and educational purposes, or restricting cat and dog breeding, shows that in the effect of having assumed faulty systemic guidelines and, partially, also legislative mistakes, the solutions

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Sejmowy (Lower Chamber of Parliament Print) No. 4257 of 12 May 2011 (6<sup>th</sup> term of the Lower Chamber of Parliament of the Republic of Poland).

<sup>24</sup> *Ibidem*.

applied in this field by the Polish legislator are, to a substantial extent, dysfunctional, restricting freedom to use animals in economic purposes, at the same time not fulfilling their functions and preventing the achievement of purposes they could serve, if formed appropriately, especially failing to contribute to improving the level of humanitarian protection of animals. An especially conspicuous example of such a solution is a regulation limiting the possibility of acquiring animal tissues exclusively to meat and skins of selected animal species, which does not contribute to improving the well being of animals in any way whatsoever. *De lege ferenda* the legislator should be expected to focus on efforts aimed at solutions eliminating the possibility of using animals for economic purposes everywhere where their use can be regarded as unnecessary or, where animals and substances of animal origin can be replaced in a rational way, as well as on defining the ways of dealing with animals used for economic purposes allowing to restrict their suffering to a maximal extent. The possible limitations, as to the possibility of using particular species of animals for economic purposes, should be applied only when it is justified by the requirements of the protection of species or humanitarian protection, with a special consideration of the ability of particular species to suffer (feel pain).

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