

THE PROHIBITION OF RITUAL SLAUGHTER VS. THE FREEDOM OF RELIGION OF NATIONAL, ETHNIC AND RELIGIOUS MINORITIES A CASE STUDY OF POLAND¹

LA PROHIBICIÓN DE LA MATANZA RITUAL VS. LA LIBERTAD DE RELIGIÓN DE MINORÍAS NACIONALES, ÉTNICAS Y RELIGIOSAS UN ESTUDIO DE CASO DE POLONIA

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Abstract

In this essay, through legal analysis, the author assesses whether the prohibition of ritual slaughter complies with international law (and with regional European law), which allegedly limits the freedom of religion of persons belonging to national, ethnic, and religious minorities. Based on the example of the so-called “blanket ban” on ritual slaughter, which was enforced in Poland between 01 January 2013 and 12 December 2014, the author discusses its ramifications for ethnic, national, and religious minorities. In this analysis, it is demonstrated that ritual slaughter is a recognizable part of the religious rites secured by legal provisions enshrined by the freedom of religion, and protected in various international human rights documents, especially concerning the freedom to manifest religion by national, ethnic, and religious minorities.

Keywords: Ritual slaughter; Freedom of religion; National, ethnic, and religious minorities; Animal welfare.

Resumen

En este ensayo, a través de un análisis legal, el autor evalúa si la prohibición de la matanza ritual cumple con el derecho internacional (y con el derecho regional europeo), que supuestamente limita la libertad de religión de las personas pertenecientes a minorías nacionales, étnicas y religiosas. Basado en el ejemplo de la llamada “prohibición absoluta” de la matanza ritual, que se hizo cumplir en Polonia entre el 1 de enero de 2013 y el 12 de diciembre de 2014, el autor analiza sus ramificaciones para las minorías étnicas, nacionales y religiosas. En este análisis, se demuestra que la matanza ritual es una parte reconocible de los ritos religiosos garantizados por disposiciones legales que consagran la libertad de religión, y protegidos en varios documentos internacionales de derechos humanos, especialmente aquellos relacionados con la libertad de manifestar la religión por minorías nacionales, étnicas, religiosas.

Palabras clave: Matanza ritual; Libertad de religión; Minorías nacionales, étnicas y religiosas; Bienestar animal.

Summary

1. Introduction
 - 1.1 Minorities in Poland
 - 1.2 Ritual slaughter in Poland
2. Legal Analysis
 - 2.1 Freedom of Religion, Religious Minorities, and Ritual Slaughter under International and Regional European Law binding on Poland
 - 2.1.1 Main Sources of Law
 - 2.1.2 Auxiliary Sources of Law
 - 2.2 Freedom of Religion, Religious Minorities, and Ritual Slaughter under National Law of the Republic of Poland
 - 2.2.1 Main Sources of Law
 - 2.2.2 Auxiliary Sources of Law
3. Discussion & Conclusion
4. Table of Legal Instruments
5. Table of Cases
6. List of Abbreviations
7. Bibliography

1. Introduction

In this essay, through legal analysis, the author assesses whether the national law of the Republic of Poland that establishes a general prohibition of ritual slaughter and allegedly limits the freedom of religion of persons belonging to national, ethnic, and religious minorities complies with international law (and regional European law).

However, in this paper, the author does not assess issues concerning occurrences of Anti-Semitism and Islamophobia surrounding the discussion of ritual slaughter. Moreover, this paper will not discuss whether animals are adequate ‘holders’ of rights, e.g., when it comes to the limitation of rights the European Convention on Human Rights (ECHR), “for the protection of the rights and freedoms of *others*” (article 9, para. 2). Alternatively, if in any sense, an animal can be perceived as the “other” aforementioned by the ECHR. *Nota bene*, in the case of *People*

v. Frazier, the California Court of Appeal explained that “despite the physical ability to commit vicious and violent acts, dogs do not possess the legal ability to commit crimes”³. Hence, *stricto facto* they cannot also be holders of rights.

Nevertheless, in regard to issues of discrimination and various discriminatory comments targeting Jews and Muslims surrounding the discussion of ritual slaughter, we should be reminded of a statement by Rabbi Jehiel Jacob Weinberg during the outbreak of Nazism in Europe. Rabbi Weinberg stated:

“Devoted Jews [...] would rather suffer and go hungry than defile themselves by eating beef slaughtered by the method prescribed by their evil persecutors [...]. The Jews in Germany must stand this ordeal for our holy religion and for the sake of our brethren all over the world. If God forbids, we rule to be lenient regarding this type of slaughter, we would endanger Jewish kosher slaughter all over the world. We have to show the world that we are prepared to suffer for our religion, and when our enemies see that the prohibition of kosher slaughter does not divert Israel from religion, perhaps they would let it go”⁴.

It is also important to mention that the Nazi–German Governor–General, Hans Frank, prohibited ritual slaughter on the occupied territory of the former Polish Second Republic, on 29 October 1939⁵. Before the outbreak of the Second World War, the Polish parliament was attempting to pass a blanket ban on ritual slaughter⁶. This action was discontinued by the war,

3 California Court of Appeal, *People v. Frazier*, 173 Cal. App. 4th 613 (Cal. Ct. App. 2009).

4 LERNER, Pablo and MORDECHAI RABELLO, Alfredo. “The Prohibition of Ritual Slaughtering (Kosher Shehita and Halal) and Freedom of Religion of Minorities”. In: *Journal of Law and Religion*, Vol. 22, No. 1 2006/2007.

5 ENGELKING, Barbara, LEOCIAK, Jacek, and LIBIONKA, Dariusz, *Prowincja noc. Życie i zagłada Żydów w dystrykcie warszawskim* [in English: *Province night. Life and Extermination of Jews in the Warsaw District*]. IFIS PAN: Warsaw, 2007, p. 649.

6 Proposed Amendment to The Bill on the Protection of Animals, from 17 April 1936, *Dz. U.* from 1936, No. 29, pos. 237.

after the proposed bill of law went to the Senate⁷. The author in this analysis demonstrates that ritual slaughter is a recognizable part of the religious rites that are secured by the legal provisions that enshrine the freedom of religion, which are protected in various international and national human rights documents, especially concerning the freedom to manifest religion by national and religious minorities.

It is essential to point out the dilemma of assessing the issue of ritual slaughter. What is being evaluated is the *lex lata*, not the *lex feranda*, and with this in mind, the assessor should not be 'accused' of lacking empathy towards animals. The appropriate perspective for assessing anti-ritual slaughter is the suffering of natural persons who suffer in husbandry with suffering animals; however, as current laws do not adequately protect animals, that argument is being stricken in favor of promoting the freedom of religion.

1.1 Minorities in Poland

The Constitution of the Republic of Poland from 02 April 1997, in article 35, para. 1, guarantees Polish citizens who belong to national and ethnic minorities the freedom to maintain and develop their own language, customs, and traditions as well as to develop their own culture⁸. Moreover, article 25 enshrines equal rights for religious associations and article 53 stipulates that freedom of conscience and religion shall be ensured to everyone.

Polish domestic law defines national minorities based on article 2, para. 2. of the Bill on national and ethnic minorities (passed 06 January 2005), and on the following regional languages (alphabetically): Armenians, Belarusians, Czechs, Germans, Jews, Lithuanians, Russians, Slovaks, and Ukrainians. Additionally,

7 ŻEBROWSKI, Rafał. "Uboj rytualny" [in English: Ritual Slaughter]. In: Jewish Historical Institute [viewed 03 October 2018], available at: https://www.jhi.pl/psj/uboj_rytualny.

8 The Constitution of the Republic of Poland, from 02 April 1997, Dz. U. from 1997, No. 78, pos. 483: Article 35, para. 1: The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture. Para. 2: National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.

para. 4., stipulates the existence of ethnic minorities including Crimean Karaites [Pol.: *Karaimi*], Lemkos [Pol.: *Łemkowie*], Roma, and Tatars [Pol.: *Tatarzy*]⁹.

1.2 Ritual slaughter in Poland

Ritual slaughter is the slaughter of animals without previously stunning them, followed by specific stipulations. It is a fundamental practice of harvesting *kosher* and *halal* meat that is used by many members of Jewish and Muslim Communities, and constitutes their religious obligation –a religious *conditio sine qua non*. This condition is termed *dhabiha* slaughter by Muslims the *shehitah* slaughter by Jews¹⁰ and prescribes the consumption of meat, which is a subject of exsanguination since “[the stunning] impairs the perfection of the animal”¹¹. This type of slaughter rises an ethical concern by animal rights advocates who advocate for the protection of animal welfare and claim that slaughter without previous stunning causes “unnecessary pain and suffering”¹².

9 In 1977, Francesco Capotorti, the Special Rapporteur of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities defined minority as: “A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members –being nationals of the State– [carry] ethnic, religious or linguistic characteristic differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” (E/CN.4/Sub.2/384/Rev.1, para. 568). Nonetheless, in General Comment No. 23, the Human Rights Committee has noted that migrant workers or even visitors in a State Party constituting such minorities are entitled to those rights. Furthermore, the existence of an ethnic, religious or linguistic minority in a given State Party does not depend upon a decision by that State party, but requires establishment by objective criteria. Human Rights Committee, General Comment 23, Article 27 (Fiftieth Session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 38, 1994.

10 The Torah forbids the consumption of blood, since blood is the medium of life and life must not be absorbed with flesh but poured on the earth like water (Deut. XII, 23 and 24; DYNARSKI, Kazimierz and Maria PRZYBYŁ. Biblia Tysiąclecia [in English: The Millennial Bible], Poznań: Pallottinum, 2002.

11 LERNER, Pablo and MORDECHAI RABELLO, Alfredo. “The Prohibition of Ritual Slaughtering (Kosher Shehita and Halal) and Freedom of Religion of Minorities”, Op. Cit, p. 16.

12 TVN24, “Spór o Ubój Rytualny” [in English: The dispute over Ritual Slaughter], [viewed on 03 October 2018], available at: <http://www.tvn24.pl/raporty/spor-o-uboj-rytualny>, 702.

The tradition of Jewish ritual butcheries on Polish soil dates as far back as the 11th century. In 1264, the Statute of Kalisz gave the Jewish community legal rights to conduct *shehita*¹³, and later regulations also conferred these rights to other religious communities inhabiting Poland¹⁴. On 06 June 2002, the parliament of Poland [in Polish: *Sejm*] passed the amendment to the *Bill on the Protection of Animals* (from 21 August 1997), stipulating that slaughter for food in Poland can only take place after previously stunning the animal¹⁵. This amendment, *ipso facto*, established a general prohibition of ritual slaughter in Poland (without any exceptions given to national, ethnic, and religious minorities). On 09 September 2004, a decree by the Polish Minister of Agriculture (Wojciech Olejniczak) changed this provision to allow for an exception: ritual slaughter for religious purposes¹⁶. This Decree was held unconstitutional on 27 November 2012 (due to procedural reasons) by the Constitutional Tribunal that prolonged the validity of the Decree till 31 December 2013. After this date, the prohibition of slaughter, without previous stunning, was reestablished¹⁷, causing protests by Jewish and Muslim communities. Leaders of minority religious groups claimed that such a ‘blanket ban’ violated religious minority rights to freedom of religion guaranteed by the Polish Constitution and human rights law within the European regional system for the protection of human rights, especially article 9 –Freedom of Thought, Conscience and Religion– enshrined in the ECHR¹⁸.

13 DAVIES, Norman. *Złote ogniwa: Polska–Europa* [in English: *The Golden Links: Poland–Europe*], Warsaw: Rosikon Press, 2004, pp 147–154.

14 TVN24, “Spór o Ubój Rytualny”, Op. Cit.

15 The Bill on the Protection of Animals, from 06 June 2002, Dz. U. from 2002, No. 135, pos. 1141.

16 The Decree of the Minister of Agriculture and Rural Development of the Republic of Poland on qualifications of the people allowed for professional slaughter; circumstances and methods of slaughter and killing of animals, from 09 September 2004, Dz. U. No. 205, pos. 2102 with further changes.

17 The Judgment of the Polish Constitutional Tribunal from 27 November 2012, sygn. akt U 4/12 (Dz. U. from 2012 r., pos. 1365).

18 TVN24. “Zakaz uboju do Trybunału Konstytucyjnego...” [in English: *The prohibition of ritual slaughter goes to the Constitutional Tribunal*], from 30 August 2014 [viewed 03 October 2018], available at: <http://www.tvn24.pl/wiadomosci-z-kraju,3/zakaz-uboju-do-trybunalu-konstytucyjnego-skarga-gmin-zydowskich,350900.html>.

2. Legal Analysis

2.1 Freedom of Religion, Religious Minorities, and Ritual Slaughter under International and Regional European Law binding on Poland

2.1.1 Main Sources of Law

Freedom of Religion and Religious Minorities

The freedom to practice religion is an impartial and interdependent right within the scope of the human rights protection system and a cornerstone of a democratic society. It is stipulated in the non-binding Universal Declaration of Human Rights (UDHR), article 18, and legally-binding International Covenant on Civil and Political Rights (ICCPR), article 18. Furthermore, according to article 4, para. 2 of the ICCPR, it is a fundamental right. Thus, no deviation from it is allowed even in times of “public emergency”¹⁹. Moreover, regarding persons belonging to national minorities, their right to manifest or exercise religion, enshrined in article 27 is even more extensive than for persons of the ‘main’ population because it does not contain the limitations of article 18, para. 3 of the ICCPR²⁰, which are necessary for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. In article 30 of the Convention on the Rights of

19 Poland ratified the ICCPR on 18 March 1977. Para. 1: The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant. Human Rights Committee, General Comment No. 22, Article 18 (Forty-eighth Session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35, 1994.

20 Article 18: para. 1. stipulates that: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of [...] choice, and freedom, either individually or in community with others and in public or private, to manifest [...] religion or belief in worship, observance, practice, and teaching [...]. Para. 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, Vol. 999, 1–14668.

the Child, we find an equivalent provision for a child belonging to a national minority. Furthermore, article 9 of the ECHR stipulates that freedom of religion is a general human right. Additionally, article 7 and article 8 of the Framework Convention for the Protection of National Minorities (FCNM) recognizes freedom of religion, especially for persons belonging to national minorities²¹.

Moreover, broadly understood, freedom of religion "include[s] not only ceremonial acts but also such customs as the observance of dietary regulations"²².

21 Article 1: The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation. Article 5 (1): The parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage. Article 7: The parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression and freedom of thought, conscience and religion. Article 8: The parties undertake to recognize that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organizations and associations. Article 19: The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms following from the said principles [ECHR, article 9, para. 2.: [...] limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. What is left is also the definition of the last word "others" as it may entitle those who suffer from the unnecessary suffering of animals. Framework Convention for the Protection of National Minorities (FCNM), 01 February 1995, ETS No. 157.

22 In Para. 4, the Human Rights Committee has stated that: "The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief [...]. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations". Human Rights Committee, General Comment No. 22, Article 18 (Forty-eighth Session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35, 1994.

The Human Rights Committee, in its General Comment regarding article 27 of the ICCPR, pointed out that positive measures should be taken by the State to

“... protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group”²³.

However, the Committee also noticed that

“... [the States] may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria”. Besides, para. 9 pointed out that “protection of [the rights] is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of the society as a whole”²⁴.

Another document is the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities from 1992. It safeguards the rights of persons belonging to the aforementioned minorities (article 2, para. 1) to “enjoy their own culture, [and] to profess and practice their own religion”²⁵. Although it is a non–legally–binding declaration, passed by the

23 Human Rights Committee, General Comment 23, Article 27 (Fiftieth Session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994). Besides, there are: General Comment 22, regarding the Article 18 Freedom of Religion, Human Rights Committee, General Comment 22, Article 18 (Forty–eighth Session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

24 Furthermore, in para. 7, the Committee stated: “[W]ith regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources [...]. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

25 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities

UN General Assembly without a vote, it puts a political obligation on the states. In article 4, para. 2 we find:

"States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their [...] religion, traditions, and customs, except where specific practices are in violation of national law and contrary to international standards".

The words, "except where", give the State a margin of appreciation to decide if any "practices" violate international and national law.

Ritual slaughter does not violate international provisions nor those within most European countries, in or the United States²⁶. What is remaining, however, is the possibility to yet exercise the margin of appreciation by limiting religious freedoms, or even putting dietary restrictions on minorities.

Within the European Union (EU), the Reform Treaty of Lisbon states in its article 2: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to national minorities". Moreover, the Charter of Fundamental Rights of the EU, from 12 December 2007, enshrines the rights of freedom of religion (article 10 and article 21, Non-discrimination). Poland and the United Kingdom, in the infamous "British-Polish Protocol", claimed reservation from Title IV of this Charter –"Solidarity"– and refused

(1992), A/RES/47/135.

26 On the human methods of slaughter, Act 7 U.S.C.A. § 1902 stipulates: "No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be humane: (a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or (b) by slaughtering in accordance with the ritual requirements of the Islamic and Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering".

to accept the full jurisdiction of the European Court of Justice (ECJ) in regard to the Charter²⁷.

Among the Organization for Security and Cooperation in Europe (OSCE) member states, the *Copenhagen Document on the Human Dimension* covers issues of religious freedom of minorities. Since the OSCE lacks legal personality, the document is non-binding. However, it constitutes the most ‘far-reaching’ coverage of religious minority rights within the international legal framework²⁸.

Ritual Slaughter

Within the scope of the legal framework of the Council of Europe, regarding the provision of ritual slaughter, exist several legally-binding Polish documents. Among them is the European Convention for the Protection of Animals for Slaughter of 1979 that states in article 17: “[E]ach Contracting Party may authorize derogations from the provisions concerning prior stunning in the following cases: slaughtering in accordance with religious rituals [...]”²⁹. Further documents of the Council of Europe include the European Convention for the Protection of Animals kept for Farming Purposes and the Recommendation of

27 Joined cases N.S. v. Home Secretary, No. C-411/10 and M.E. v. Refugee Applications Commissioner, No. C-493/10, 2011, EUECJ C-411/10, the judgment of 21 December 2011; and BEUNDERMAN, Mark, “Poland to join UK in EU rights charter opt-out”, In: EUobserver, from 07 September 2007 [viewed 08 March 2014], available at: <http://euobserver.com/institutional/24723>.

28 The Document stipulates, among others, in 9.4: Everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one’s religion or belief and freedom to manifest one’s religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards [...]; 32. Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempt at assimilation against their will. 32.3 [The right] to profess and practice their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue.

29 The European Convention for the Protection of Animals for Slaughter, 10 May 1979, L 137, 02/06/1988, pp. 0027 – 0038.

the Committee of Ministers to Member States on the Slaughter of Animals –allowing similar exception from the general rule of stunning³⁰.

In the same spirit, the EU developed its laws, which encompass both regulations and directives³¹, all allowing the exception of ritual slaughter for religious purposes³². Among them is the Directive 93/119/EC of 22 December 1993 which stipulates that “at the time of slaughter or killing animals should be spared any avoidable pain or suffering; Whereas, however, it is necessary

30 The European Convention for the Protection of Animals kept for Farming Purposes, 10 March 1976, CETS No. 087; Recommendation No. R (91) 7 of the Committee of Ministers to member States on the slaughter of animals (adopted by the Committee of Ministers on 17 June 1991 at the 460th meeting of the Ministers’ Deputies) stipulating that “Whereas [...] the practice of stunning animals by appropriate recognized techniques should be generalized; whereas, however, it is necessary to take account of the particular requirements of certain religious rites.” Article 4 of the Directive provides: “The present Directive does not affect national provisions related to special methods of slaughter which are required for particular religious rites”.

31 Council Regulation (EC) No. 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, OJ L 303, 18.11.2009, pp. 1–30: the 18th point of this Regulation stipulates that: “Derogation from stunning in case of religious slaughter taking place in slaughterhouses was granted by Directive 93/119/EC. Since Community provisions applicable to religious slaughter have been transposed differently depending on national contexts and considering that national rules take into account dimensions that go beyond the purpose of this Regulation, it is important that derogation from stunning animals prior to slaughter should be maintained, leaving, however, a certain level of subsidiarity to each Member State. As a consequence, this Regulation respects the freedom of religion and the right to manifest religion or belief in worship, teaching, practice and observance, as enshrined in article 10 of the Charter of Fundamental Rights of the EU”. In addition, there is the Regulation (EC) No. 853/2004 of 29 April 2004 laying down specific hygiene rules for food of animal origin, OJ L 139, 30.4.2004, pp. 55–205.

32 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, pp. 22–26; Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing, OJ L 340, 31.12.1993, pp. 21–34; Council Regulation (EC) No. 1099/2009, p. 1–30; 78/923/EEC: Council Decision of 19 June 1978 concerning the conclusion of the European Convention for the protection of animals kept for farming purposes, OJ L 323, 17.11.1978, pp. 12–13.

[...] to take account of the particular requirements of certain religious rites”³³. One should keep in mind that the EU regulations are immediately binding on all of the EU member states and do not require any implementation by the state³⁴.

2.1.2 Auxiliary Sources of Law

Opinio Juris

The ECtHR has developed a broad jurisprudence concerning article 9 – Freedom of thought, conscience and religion– and article 14 –Prohibition of Discrimination– as well as various adjudicated cases in which these articles were concerned in relation to national and religious minorities. The ECtHR pointed out that “only a true democracy could be based on the principles of pluralism and broadmindedness”³⁵. Although ‘definitions’ of what expressions of religiosity and beliefs mean differ between European states³⁶, the ECtHR, in numerous cases, reiterated that article 9 enshrines multiple ways that the right to freedom of religion or belief can be exercised through “worship, teaching, practice, and observance”³⁷. The ECtHR, in its jurisprudence, that

33 WILKINS, David B., ed. *Animal Welfare in Europe: European Legislation and Concerns*. London: Kluwer Law International, 1997, pp. 45–46.

34 WOJTASZCZYK, Konstanty Adam, ANIOŁ, Włodzimierz, BIENIADA, Rafał, and CHOLAWO–SOSNOWSKA, Kamila. *Encyklopedia Unii Europejskiej* [in English: *The Encyclopedia of the European Union*]. Warsaw: Wydawnictwa Szkolne i Pedagogiczne [in English: *School and Pedagogical Publishers*], 2004, pp. 70–71.

35 *Sahin v. Turkey*, para. 100; and in para. 104: “[A]s enshrined in article 9, freedom of thought, conscience and religion is one of the foundations of a ‘democratic society’ within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it”.

36 *Otto–Preminger–Institut v. Austria*, App. No. 13470/87, ECHR of 20 September 1994 (merits), para. 50; and *Dahlab v. Switzerland*, App. No. 42393/98, ECHR 2001–V of 15 February 2001 (decision on inadmissibility).

37 *Kalaç v. Turkey*, App. No. 20704/92, ECHR 1997–IV of 01 July 1997 (merits and just satisfaction), para. 27.

article 9 encompasses religious dietary restrictions, including ritual slaughter³⁸, primarily through its landmark cases: *Cha’are Shalom Ve Tsedek Jewish Liturgical Association v. France*³⁹ and *Jakóbski v. Poland*⁴⁰.

In para. 73 of the judgment in *Cha’are Shalom Ve Tsedek v. France*, the Court stated that

“... ritual slaughter, as indeed its name indicates, constitutes a rite [...] whose purpose is to provide Jews with meat from animals slaughtered in accordance with religious prescriptions, which is an essential aspect of practice of the Jewish religion”. In the case of *Jakóbski v. Poland*, respondent State’s representatives (of the Republic of Poland) in front of the Court stated that “in principle they did not contest that religious precepts relating to a diet might be considered an essential aspect of the practice of one’s religion and as such covered by the right to manifest one’s religion within the meaning of article 9 of the Convention”⁴¹.

This was later reconfirmed by the Court⁴². Notwithstanding, the Court pointed out that “[article 9] does not protect every act motivated or inspired by a religion or belief”⁴³, and “the State’s duty of neutrality and impartiality, as defined in the Court’s case–law, is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs”⁴⁴. In the case of *Cha’are Shalom Ve Tsedek v. France*, the French Government –likewise the Polish one–

38 *Jakóbski v. Poland, Cha’are Shalom Ve Tsedek v. France*; including the outside of the ECtHR jurisprudence, among others: *Church of the Lukumi Babalu Aye, Inc. and Ernesto Pichardo v. City of Hialeah*, 508 U.S. 520 (The Supreme Court of the United States of America).

39 *Cha’are Shalom Ve Tsedek Jewish Liturgical Association v. France*, App. No. 27417, ECHR 2000–VII of 27 June 200 (merits) [GC].

40 *Jakóbski v. Poland*, Op. Cit., App. No. 18429/06, ECHR of 07 December 2010 (merits and just satisfaction).

41 *Ibidem*, para. 37.

42 “Observing dietary rules can be considered a direct expression of beliefs in practice in the sense of article 9” *Cha’are Shalom Ve Tsedek v. France*, para. 73–74.

43 *Sahin v. Turkey*, App. No. 31961/96, ECHR of 25 September 2001 (merits and just satisfaction), para. 78.

44 *Ibidem*, para. 107.

“... did not contest the fact that Jewish dietary prohibitions and prescriptions formed part of the practice of Judaism by its adherents, but argued that although the religious rules imposed a certain type of diet on Jews they did not, by any means, require them to take part themselves in the ritual slaughter of the animals they ate”⁴⁵.

Hence, the import of such meat would be sufficient to satisfy the state obligations enshrined in article 9 of the Convention.

Nevertheless, there is a margin of appreciation, given to the State, to define its own limitations that “are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”⁴⁶. Regarding the “protection of the rights and freedoms of others”, as was discussed beforehand, animals whose rights are protected at the time of slaughter and prior to it, are not the subject of this provision⁴⁷. However, it has not yet been concluded whether those natural persons who are concerned with animal welfare might become a subject of this provision concerning ritual slaughter. *Nota bene*, a Canadian philosopher and legal scholar, Leonard Wayne Sumner, argued that the reason we protect animals is “not because they have rights”, but because we are protecting feelings

45 *Cha'are Shalom Ve Tsedek v. France*, Op. Cit., para. 64.

46 *Jakóbski v. Poland*, Op. Cit., para. 47: “In this respect, the Court reiterates that whether the case is analyzed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant’s rights under para. 1 of article 9 or in terms of an interference by a public authority to be justified in accordance with para. 2, the applicable principles are broadly similar. In both contexts, regard must be [given] to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts, the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of article 9, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance.” In addition, similar ruling concerning the margin of appreciation can be found in the case of *Hatton and Others v. The United Kingdom*, App. No. 36022/97, ECHR 2003–VIII of 08 July 2003 (merits and just satisfaction) [GC], para. 98.

47 *People v. Frazier*, 173 Cal. App. 4th 613 (2009), the California Court of Appeal.

of those humans who suffer from the suffering of animals. Moreover, we can read that those who hold the “choice theory of rights”, believe that in order to have rights, an entity must have the capability of conscious choice between options for action and intentionally implement this choice. For them, an animal cannot choose; therefore, it has no rights⁴⁸.

Furthermore, it was stated by the ECtHR that “an ecclesiastical or religious body may, as such, exercise on behalf of its adherents the rights guaranteed by article 9 of the Convention”⁴⁹. Therefore, Muslim and Jewish organized communities inhabiting Poland can be parties to this debate⁵⁰.

Finally, in its judgment from 29 May 2018, the ECJ stated that the freedom of belief has two aspects: internal (having religious conviction) and external (extrinsic observance of own religion)⁵¹. Thus, ritual slaughter as a particular religious rite falls into the ambit of article 10 of the Charter of Fundamental Rights of the EU. In the light of regulation no. 1099/2009, slaughter without previous stunning is not yet prohibited and is allowed as an exception; however, only if the animal is put to death in a slaughterhouse that has obtained respective permissions from a regulating institution, in accordance with the regulation no. 853/2004.

Scholars Opinion

Asbjørn Eide, a former Norwegian member of the UN Sub-Commission on the Promotion and Protection of Human Rights, in his Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities concluded that:

48 SUMNER, Leonard Wayne. *The moral foundation of rights*. Oxford: Clarendon Press, 1987, pp. 203–204.

49 *Canea Catholic Church v. Greece*, App. No. 25528/94, ECHR 1997–VIII of 16 December 1997 (merits and just satisfaction), para. 31.

50 It is important also to point out that: “The Court’s jurisdiction is [...] subsidiary and its role is not to impose uniform solutions, especially with regard to the establishment of the delicate relations between the Churches and the State”, *Cha’are Shalom Ve Tsedek v. France*, para. 84.

51 *Liga van Moskeën en Islamitische Organisaties Provincie Antwerpen VZW and others v. Vlaams Gewest (Global Action in the Interest of Animals GAIA) VZW (C–426/16)* of 29 May 2018, para. 44.

“The formulation in the Minority Declaration makes it clear that these rights often require action, including protective measures and promotion of the condition for their identity (article 1). Article 4 also requires specified, active measures by the state. Therefore, it is not enough that the state abstains from interference or discrimination, it must also ensure that individuals and organizations of the larger society do not interfere or discriminate”⁵².

In opposition to this view stand scholars who are mostly philosophers; one such scholar is Peter Singer⁵³. Most of the facts discussed in the divagations on ritual slaughter are based on principles of ethics, morality, or veterinary and animal physiology, rather than international legal standards. There are some particular views that are similar to those of the late British philosopher Brian Barry. In *Culture and Equality*, Barry stipulated that the general prohibition of ritual slaughter did not infringe upon the freedom of religion, but rather “the ability to consume meat”⁵⁴. Although the unnecessary suffering of any being should be avoided at all cost, within the current legal framework, the ‘human right’ to observe one’s religion—with everything it entitles, e.g., rites and customs—prevails.

Thus, keeping all the above in mind, the Republic of Poland should secure in its legislature protection for religious customs for its minorities, which are legally defined and protected by the Polish Constitution. Also, Poland should not become a ‘discriminator’ of its own minorities by imposing limits on their religious customs and practices which undoubtedly encompass the dietary needs of certain minorities.

52 EIDE, Asbjørn. Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. 04 April 2005, E/CN.4/Sub.2/AC.5/2005/2, para. 7.

53 SINGER, Peter. *Animal liberation*. New York, N.Y.: New York Review of Books, 1990, pp. 7–8.

54 BARRY, Brian. *Culture and equality: An egalitarian critique of multiculturalism*. Cambridge: Harvard University Press, 2001, pp. 35, 40.

2.2 Freedom of Religion, Religious Minorities, and Ritual Slaughter under National Law of the Republic of Poland

2.2.1 Main Sources of Law

Article 25 and article 53 of the Polish Constitution enshrine the freedom of religion and article 35 enshrines the protection of national and ethnic minorities. Moreover, the *Bill on the Guarantees for the Freedom of Conscience and Religion* from 17 May 1989 secures the freedom of religion for national minorities⁵⁵.

Poland also has separate bills regulating its relations with national minorities, including *The Bill on the Relations between the State and the Muslim Religious Association in the Republic of Poland* (from 21 April 1936), *The Bill on the Relations between the State and the Crimean Karaites Religious Association in the Republic of Poland* (from 21 April 1936), *The Bill on the Relations Between the State and the Jewish Communities in the Republic of Poland* (from 20 February 1997), and *The Bill on National and Ethnic Minorities, and on Regional Languages* (from 06 January 2005) –enshrining the right to ritual slaughter⁵⁶. As a matter

55 In the Polish Constitution, it is stated in article 53 that: "Freedom of conscience and religion shall be ensured to everyone. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services. Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of article 48, para. 1 shall apply as appropriate. The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defense of State security, public order, health, morals or the freedoms and rights of others. No one shall be compelled to participate or not participate in religious practices. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief" The Constitution of the Republic of Poland, from 02 April 1997, Dz. U. from 1997, No. 78, pos. 483.

56 The Bill on the Guarantees for the Freedom of Conscience and Religion, from 17 May 1989, Dz. U. from 2005, No. 231, pos. 1965 with later changes. The Bill on the Relations between the State and the Muslim

of fact, *The Bill on the Relations between the State and the Jewish Communities in the Republic of Poland*, from 20 February 1997⁵⁷, explicitly states in article 9, para. 2 that it is a duty of the Union of the Jewish Communities to provide its adherers with *kosher* food and to facilitate ritual slaughter.

These acts of law have deep roots in the long history of protecting minorities on Polish soil. In 1264, Prince Bolesław the Pious [in Polish: Bolesław Pobożny] proclaimed the first minority rights granted to the Jewish Community inhabiting Poland, including (indirectly) the protection of ritual slaughter⁵⁸. Moreover, the former Kingdom's legislation did not shun itself from protecting animals. It dates as far back in time as to the first Polish King, Bolesław I the Brave [in Polish: Bolesław Chrobry], in the 11th century, when the rights of animals were legally protected on Polish soil, e.g., with the prohibition of hunting for beavers⁵⁹.

However, in accordance with article 35(1) of the *Bill on the Protection of Animals* (amended on 28 September 2002), “killing, putting to death animals, or slaughtering an animal in violation of article 34(1) (obligating to stun animals before killing) [became] a criminal offense subject to a fine, restriction of liberty or imprisonment up to two years”⁶⁰.

On 09 September 2004, Polish Minister of Agriculture Wojciech Olejniczak (Polish agriculture minister between 02 July 2003 and 31 May 2005) issued a

Religious Association in the Republic of Poland, from 21 April 1936, Dz. U. 1936, No. 30, pos. 240. The Bill on the Relations between the State and the Crimean Karaites Religious Association in the Republic of Poland, from 21 April 1936, Dz. U. 1936, No. 30, pos. 241. The Bill on the Relations between the State and the Jewish Communities in the Republic of Poland, from 20 February 1997, Dz. U. from 1997, No. 41, pos. 251. The Bill on National and Ethnic Minorities, and on Regional Languages, from 06 January 2005, Dz. U. from 2005, No. 17, pos. 141.

57 The Bill on the Relations between the State and the Jewish Communities in the Republic of Poland, from 20 February 1997, Dz. U. from 1997, No. 41, pos. 251.

58 The Statute of Kalisz of 16 August 1264 given to the Jews by Prince Bolesław Pobożny.

59 WADOWIŃSKA, Jacqueline and WADOWIŃSKI, Zdzisław. Tropem bobra [in English: The beaver trails]. Warsaw: Powszechnie Wydawnictwo Rolne i Leśne [in English: State Publishing House of Agriculture and Forestry], 1975), p. 27.

60 The Bill on the Protection of Animals, 2002.

decree allowing ritual slaughter by registered religious communities⁶¹. However, Minister Olejniczak went *ultra vires* (as it was stated in the judgment of the Constitutional Tribunal of 27 November 2012) by allowing, in this decree, an exemption for religious ritual slaughter without adequate legal competence. For this reason, on 27 November 2012, the Constitutional Tribunal of the Republic of Poland held Olejniczak’s decree unlawful and unconstitutional due to a lack of competence by the Minister, rather than the incompatibility of religious slaughter with the Polish Constitution, which was not the subject of the Tribunal examination at that moment⁶². The judgment was validated on 01 January 2013 establishing *de facto* and *de iure* the general prohibition of ritual slaughter in Poland.

On 12 July 2013, the Polish parliament rejected the governmental draft amendment of the Bill of law on the *Protection of Animals*, including a new article allowing ritual slaughter in Poland, *ipso facto* reestablishing the general prohibition of ritual slaughter on the territory of Poland and causing protests by Jewish and Muslim communities inhabiting Poland. Among others, the Polish Mufti, Tomasz Miśkiewicz stated that:

“In the 600–years of the history of Islam in Poland there was not a single situation when the freedom of practicing the religion of Muslims had been limited. This situation is not serving democracy, undermines the principles of respect and tolerance, and causes nationalistic and racist outcomes”⁶³.

61 The Decree of the Minister of Agriculture and Rural Development of the Republic of Poland on qualifications of people allowed to professionally slaughter animals; and circumstances and methods of slaughter and killing of animals, from 09 September 2004, Dz. U. No. 205, pos. 2102 with further changes. MINISTERSTWO ROLNICTWA I ROZWOJU WSI RP. Informacja o Uboju według Szczególnych Metod Wymaganych przez Obrzędę Religijne [in English: Information about slaughter according to religious rituals], [viewed 08 March 2014], (available from: <http://www.minrol.gov.pl/pol/Ministerstwo/Biuro-Prasowe/Informacje-Prasowe/Informacja-o-uboju-wedlug-szczegolnych-metod-wymaganych-przez-obrzedy-religijne>).

62 The Judgment of the Polish Constitutional Tribunal, Op. Cit.

63 GAZETA WYBORCZA, “Muzułmański duchowny krytykuje zakaz uboju rytualnego” [in English: A Muslim clergyman criticizes the ban on ritual slaughter], from 15 July 2013 [viewed 08 March 2014], (available from: http://bialystok.gazeta.pl/bialystok/1,35241,14281028,Muzulmanski_duchowny_krytykuje_zakaz_uboju_ry

Furthermore, some of the Polish meat–producers, along with the organizations representing religious minorities, made their complaint to the European Commission claiming violation of Regulation No. 1099/2009 of 24 September 2009 on *the protection of animals at the time of the killing*⁶⁴.

On 05 March 2014, the Speaker of the Polish Parliament, Ewa Kopacz, received the project of a new bill presented by the public sector amending the Bill *on the protection of animals*, which would allow the slaughter of animals performed according to specific methods prescribed by religious rites. Alas, no consensus has been reached for the future of this new bill⁶⁵. On 10 December 2014, The Constitutional Tribunal stated that a general prohibition of ritual slaughter is in violation of the Polish Constitution. This judgment entered into force two days later, *de facto* reestablishing ritual slaughter in Poland. What is more, on 06 March 2018, new amendments were passed to the *Bill on the protection of animals*; yet, none changed any provisions regarding ritual slaughter.

2.2.2 Auxiliary Sources of Law

Opinio Juris

On 27 November 2012, the Constitutional Tribunal denounced the decree of the former Polish Minister of Agriculture *de facto* prohibiting ritual slaughter

tualnego.html#ixzz3871B6RJP). Moreover, in regard to this situation the international Jewish Community intervened even at the Holy See: TVN24, “Papież zaniepokojony zakazem uboju rytualnego w Polsce” [in English: The Pope is concerned about the ban on ritual slaughter in Poland], from 02 September 2013 [viewed 03 October 2018], (available from: <http://www.tvn24.pl/wiadomosci-ze-swiata,2/papiez-zaniepokojony-zakazem-uboju-rytualnego-w-polsce,351650.html>).

64 PULS BIZNESU, “Polscy producenci mięsa skarżą się KE na zakaz uboju rytualnego” [in English: Polish meat producers complain to the EC about the ban on ritual slaughter], from 27 November 2013 [viewed 03 October 2018], available at: <http://www.pb.pl/3446270,70336,polscy-producenci-miesa-skarza-sie-ke-nazakaz-uboju-rytualnego>.

65 TVN24, “Ubój rytualny wraca do Sejmu. Politycy podzieleni” [in English: Ritual slaughter returns to the Sejm. Politicians divided], from 08 June 2014 [viewed 03 October 2018], available at: <http://tvn24bis.pl/informacje,187/uboj-rytualny-wraca-do-sejmu-politycy-podzieleni,437073.html>.

in Poland. It is important to point out the statement made by the Public Persecutor in its application:

"The basic principle of the treatment of animals in Poland is their humane treatment providing care and protection. The Bill on the Protection of Animals stipulates that an animal, as the living being, is not an object, and a human should give to it respect, protection, and care. No one can abuse animals, and their killing can only be justified in prescribed by law instances and executed in a legal way. One of these instances is the need for food harvesting (we speak then about the slaughter). According to the rule stipulated by article 34 of the Bill on the Protection of Animals, all vertebrate animals before the killing, both in slaughterhouses and at homes, have to be previously stunned"⁶⁶.

The ruling of the Tribunal, however, was only on the legality and validity of the ministerial decree and did not stipulate on ritual slaughter *per se* and its legality within the Polish Constitution. The Minister of Agriculture, by allowing on 09 September 2004 the exception for ritual slaughter for religious purposes⁶⁷, violated article 92 para. 1 of the Polish Constitution (on issuance and legality of the executive power decrees in the Republic of Poland) because his decree went beyond provisions enshrined in *The Bill on the Protection of Animals*, from 06 June 2002⁶⁸, and beyond the scope of the power of the minister, the decree was held unconstitutional⁶⁹.

What is more, the Polish District Courts and the Offices of District Persecutors, in many instances, refused to investigate accusations of "illegal" ritual slaughter (based on provisions of the Polish Penal Code) allegedly "committed" by religious minorities⁷⁰, as well as various delations lodged by animal rights

66 The Judgment of the Polish Constitutional Tribunal, Op. Cit.

67 The Decree of the Minister of Agriculture and Rural Development of the Republic of Poland, 2004.

68 The Bill on the Protection of Animals, from 06 June 2002, Dz. U. from 2002, No. 135, pos. 1141.

69 The Judgment of the Polish Constitutional Tribunal, Op. Cit.

70 The Penal Code of the Republic of Poland, from 06 June 1997, Dz. U. 1997, No. 88, pos. 553.

advocates⁷¹ between the years of 2004 and 2008 (due to lapse) and between 2008 and 2012 (due to the lack of offense).

On 30 August 2013, the Union of Jewish Communities in Poland filed a complaint to the Constitutional Tribunal for the lack of allowance of ritual slaughter by religious minorities in Poland⁷². This application, as well as another case, was referred to the Tribunal by the District Court in Białystok (regarding ritual slaughter committed on 12 March 2013 by the Union of the Jewish Communities in Tykocin)⁷³. In its judgment on 10 December 2014, the Constitutional Tribunal stated that a blanket ban on ritual slaughter, encompassed with criminal penalties for those committing it, infringes the freedom of religion. Moreover, the Tribunal adjudicated that imposing such a ban did not serve any purpose for securing values enshrined in the Polish Constitution, including the interest of morals and public order (article 31 para. 3.). Furthermore, the Tribunal highlighted that at that moment, it was impossible to prove that ritual killing was a more ferocious form of slaughter than other types of slaughter performed in Poland⁷⁴.

Scholars Opinion

Among scholars, Marek Chmaj, a respected Polish constitutional law scholar, stated (regarding the blanket ban on ritual slaughter) that:

“Poland does not allow to implement EU regulations fully as well as does not respect the Polish constitution, which is guaranteeing the freedom

71 GAZETA WYBORCZA, “Uboj rytualny był legalny” [in English: The ritual slaughter was legal], from 07 October 2013 [viewed 08 March 2014], available at: http://bialystok.gazeta.pl/bialystok/1,35241,14734591,Uboj_rytualny_byl_legalny__Prokuratura_nie_miala_kogo.html#TRrelSST#ixzz387HytWM4.

72 TVN24, “Zakaz uboju do Trybunału Konstytucyjnego...” Op. Cit.

73 GAZETA WYBORCZA, “Naukowcy z niedowierzaniem o opinii episkopatu w sprawie uboju rytualnego” [in English: Scientists in disbelief about the opinion of the Episcopate regarding ritual slaughter], from 14 October 2013 [viewed 08 March 2014], available at: http://bialystok.gazeta.pl/bialystok/1,35241,14774798,Na_ukowcy_z_niedowierzaniem_o_opinii_episkopatu_w_sprawie.html#TRrelSST#ixzz387HK73I5.

74 The Judgment of the Polish Constitutional Tribunal from 10 December 2014, sygn. akt K 52/13 (Dz.U. from 2014 pos. 1794).

to profess religion to churches and religious associations”⁷⁵.

According to him (based on EU Regulation No. 1099/2009)⁷⁶, Poland was supposed to implement adequate law allowing ritual slaughter till the end of 2012, and since it has not done so, ritual slaughter at this moment is actually permitted in Poland due to the validity of the EU Regulation⁷⁷.

Another respected Polish scholar, late Piotr Winczorek commented that:

“In Poland, constitutionally–guaranteed is the freedom of religion; however, when it comes to the rights of animals, such are guaranteed by the Bill of rights only. The Polish Constitution does not mention animal rights at all. However, possibly in the future, it should so. Therefore, at this very moment, the general prohibition of slaughter without stunning should be a principle, yet with the exception made for religious groups. In deciding about this case, the Constitutional Tribunal will have to look at the possible limitation to this freedom in regard to the public morality”⁷⁸.

Nevertheless, in some instances, the freedom of religion for minorities can be outweighed by the margin of appreciation given to the State in fulfillment of the principles that are fundamental to a particular country. As Nihal Jayawickrama, a distinguished Sri Lankan legal scholar, pointed out:

“The legislature may interfere [...] with the freedom to manifest one’s religion or belief. [...] Limitations may be applied only for those purposes for which they are prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be

75 PULS BIZNESU, “Polscy producenci mięsa skarżą się KE na zakaz uboju rytualnego”, Op. Cit.

76 Council Regulation (EC) No. 1099/2009, pp. 1–30.

77 PULS BIZNESU, “Polscy producenci mięsa skarżą się KE na zakaz uboju rytualnego”, Op. Cit.

78 JABŁOŃSKI, Marcin, “Zakaz uboju rytualnego wymaga zmiany konstytucji. Bez tego nie obowiązują?” [in English: The prohibition of ritual slaughter requires a change to the Constitution. Can it apply without this?]. In: GAZETA WYBORCZA, from 20 October 2013 [viewed 08 March 2014], available at: http://bialystok.gazeta.pl/bialystok/1,35241,14810516,Zakaz_uboju_rytualnego_wymaga_zmiany_konstytucji_.html#ixzz387liRbOc.

imposed for discriminatory purposes or applied in a discriminatory manner. [...] The protection of ‘public order’ has been invoked [...] to require a person wishing to perform the ritual slaughter”⁷⁹.

Moreover, two scholars with broad legal expertise on the freedom of religion: Pablo Lerner and Alfredo Mordechai Rabello, concluded that:

“The debate over the prohibition against the use of religious symbols in French public schools, such as the hijab for Muslim girls, only goes to show that the fundamental principles of a particular society (in this case, the principle of *laïcité* that shapes the secular character of France) are able to outweigh the principles of freedom of religion”⁸⁰.

3. Discussion & Conclusion

Many European countries permit slaughter under regulations which include stunning, but also enable religious communities, among them Jewish and Islamic ones, to slaughter animals in accordance with their religious specifications. This approach of adapting the law to the special needs of a minority group is commonly embraced as the most suitable way to keeping a balance between religious freedom and protecting animals, e.g., in France or Italy. At this moment, a margin of appreciation is given to states to regulate animal welfare within their jurisdictions is used among others in Sweden and Denmark, where ritual slaughter is banned⁸¹.

The Advisory Committee to the Council of Europe on the Framework Convention for the Protection of National Minorities (FCNM) has noticed the issue of generally prohibiting ritual slaughter in Poland. During the third

79 JAYAWICKRAMA, Nihal. *The judicial application of human rights law national, regional and international jurisprudence*. Cambridge: Cambridge University Press, 2002, p. 659.

80 LERNER and RABELLO, Op. Cit., p. 18.

81 THE WORLD JEWISH CONGRESS. “Danish government bans kosher slaughter”. From 13 February 2014 [viewed 03 October 2018], available at: http://www.worldjewishcongress.org/en/news/14440/danish_government_bans_kosher_slaughter.

cycle of periodic review of the Republic of Poland, the committee pointed out its concerns regarding article 8 of the FCNM –*An individual's right to manifest religion*⁸². Among the statements, in para. 91, the Committee “[noticed] with regret that at the end of 2012, ritual slaughter of animals, in accordance with the *kosher* rules in Judaism and *halal* rules in Islam, became effectively illegal in Poland”. In para. 95 of the Report, the Committee asked Polish authorities “to adopt a religiously sensitive approach to the question of ritual slaughter of animals and consider, in consultation with those concerned, solutions, which take into account religious freedom”⁸³.

After all, the need to safeguard ritual slaughter for national, ethnic, and religious minorities comes with EU law (primarily in regard to the aforementioned regulations and directives) and with other regional and international obligations, as well as with Poland’s own Constitution and its bills regarding national and religious minorities. The lack of ability to conduct ritual slaughter for minorities is in clear violation of article 53 (Freedom of Religion) and article 35 (Protection of National Minorities) of the Constitution.

Although the Decree of the Polish Ministry of Agriculture, allowing ritual slaughter, from 09 September 2004⁸⁴, was issued in violation of Polish law, content-wise it was in accordance with regional legislation, including the Convention for *The Protection of Animals for Slaughter* of 1979 and the Directive 93/119 of 1993, *The Protection of Animals at the Time of Slaughter or Killing*. The latter defines “stunning as the proper method of killing animals with the exception of religious slaughter”. The intention of that decree was to allow national and religious minorities to fulfill their religious obligations as well as

82 Para. 71: Finally, it is with regret that the Advisory Committee notes that the public debate on the issue of ritual animal slaughter, including in the media and the political arena, has at times been characterized by intolerant attacks against persons defending this practice. Arguments of “medieval,” “primitive,” and “barbaric” nature of ritual slaughter at times revealed the anti-Semitic and Islamophobic sentiment of some of the most vocal proponents of the ban. In: Advisory Committee on the Framework Convention for the Protection of National Minorities, The Third Opinion on Poland, adopted on 28 November 2013, ACFC/OP/III (2013)004.

83 Ídem.

84 The Decree of the Minister of Agriculture and Rural Development of the Republic of Poland, 2004.

to secure the stake of the Polish meat industry in the global and local market of *halal* and *kosher* food⁸⁵.

Additionally, in this analysis, we can move as far as to the landmark case of *Minority Schools in Albania*, and to the opinion of the former Permanent Court of International Justice (PCIJ) on the closure of all private schools in Albania encompassing both the majority and minorities. The PCIJ stated that this move constituted a disproportionate treatment of minorities⁸⁶, and “highlighted that the core of minority rights protection was to ensure for the minority elements suitable means for the preservation of their traditions and characteristics”⁸⁷. We can observe a similarity concerning the Polish case where the general ban on ritual slaughter applied to all of Poland, but harmed only the members of religious minorities. After all, this matter is about one’s religious identity⁸⁸, and about the freedom of religion, which cannot be easily compromised, and any attempt to compromise it constitutes a legal violation of fundamental human rights.

There is one aspect of this debate yet remaining, which can be enclosed in the words of Peter Singer, an Australian ethicist: “all the arguments to prove [hu]man’s superiority cannot shatter this hard fact: in suffering, the animals are our equals”⁸⁹. Ritual slaughter that leaves the animal conscious while bleeding to death, might not be better than the “industrial” manufacturing of meat or hunting, yet surely it adds “unnecessary” suffering to the process of meat production. Allowing the use of ritual slaughter by the Jewish and the Muslim communities inhabiting Poland, and other minorities who might be in need of such product is a crucial aspect, which is hard to be outlawed. However, the multi-million-euro meat industries that use the methods of ritual slaughter

85 Production of halal and kosher meat in Poland amounts to 2.5 billion złotych (PLN), about 600 million EUR, in: PULS BIZNESU, “Polscy producenci mięsa skarżą się KE na zakaz uboju rytualnego”, Op. Cit.

86 *Minority Schools in Albania* Opinion (1935) P.C.I.J., Ser. A/B, No. 64.

87 PENTASSUGLIA, Gaetano. *Minorities in international law: an introductory study*. Strasbourg: Council of Europe Pub., 2002, p. 50.

88 As Sikhs can be exempted from wearing helmets on motorbikes in certain jurisdictions, Muslims and Jews should be permitted to perform ritual slaughters for their halal and kosher meat, in: KYMLICKA, Will. *Politics in the vernacular nationalism, multiculturalism, and citizenship*. Oxford, UK: University Press, 2001, p. 210.

89 SINGER, Peter. *Animal liberation...* Op. Cit., pp. 7–8.

should be a subject for further examination, scrutiny, and legal regulations, since they go beyond the scope of minority rights protection, and definitely beyond the needs of the minuscule minorities inhabiting Poland.

What is more, the author is concerned about the lack of participation of the Republic of Poland in the EU project on religious slaughter (improving knowledge and expertise through dialogue and debate on issues of welfare, legislation and socio-economic aspects called "DIALREL"), that looked at the legal framework encompassing ritual slaughter and future possibilities for the European Communities⁹⁰.

To conclude, the author considered the rights of religious and national minorities in light of Polish law establishing the general prohibition of ritual slaughter. Concerning the legal protection of minorities, the author notices the shortcomings in the existing system of regional protection in Europe and postulates its enhancement as well as drafting of an adequate Additional Protocol to the ECHR, exclusively dedicated to the rights of minorities. Moreover, the case of ritual slaughter and the compatibility of its ban has to be reviewed on a broader international arena since the rights of minorities more or less "reflect the customary law in *statu nascendi*"⁹¹.

Prohibiting, with no exceptions, ritual slaughter remains in violation of international law and violates human rights obligations of the Republic of Poland to safeguard and respect national and religious minorities. It is in opposition to provisions coming from internationally and regionally recognized acts of law that are binding on the Republic of Poland, such as the ICCPR and the ECHR, and to Poland's own Constitution.

90 The full name of the Project: Religious slaughter: improving knowledge and expertise through dialogue and debate on issues of welfare, legislation, and socio-economic aspects, DIALREL. Country Legislation [viewed 08 March 2014], available from: <http://www.dialrel.eu/dialrel-results/country-legislations>.

91 EUROPEAN CENTRE FOR MINORITY ISSUES. Mechanisms for the implementation of minority rights. London: Council of Europe Pub., 2004, p. 19.

4. Legal Instruments⁹²

International Legal Documents

Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3; 28 I.L.M. 1456, 1989. [Poland ratified this *Convention* on 07 June 1991].

Human Rights Committee, *General Comment No. 22*, Article 18 (Forty–eighth Session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35, 1994.

Human Rights Committee, *General Comment No. 23*, Article 27 (Fiftieth Session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 38, 1994.

International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, Vol. 999, 1–14668 [Poland ratified the ICCPR on 18 March 1977].

Universal Declaration of Human Rights, General Assembly Res. 217A (III), U.N. Doc. A/810 at 71, 1948 [not–legally binding].

UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, A/RES/47/135 [adopted without vote of the General Assembly].

Council of Europe (Poland has been a member State of the Council of Europe since 26 November 1991)

European Convention on Human Rights, Council of Europe Treaty Series, No. 5 (ECHR), 04 November 1950; 213 UNTS 221 [Poland ratified the *ECHR* on 19 January 1993].

European Convention for the Protection of Animals kept for Farming Purposes, 10 March 1976, CETS No. 087 [Poland ratified the *Convention* on 20 February 2008].

European Convention for the Protection of Animals for Slaughter, 10 May 1979, L 137 , 02 June 1988, pp. 0027 – 0038 [Poland ratified the *Convention* on 03 April 2008].

Framework Convention for the Protection of National Minorities (FCNM), 01 February 1995, ETS No. 157 [Poland ratified the *Convention* on 20 December 2000] and the Advisory Committee's *Third Opinion on Poland*, adopted on 28 November 2013, ACFC/OP/III(2013)004.

92 In order to determine the ratification status of each document, author used the following sources: The United Nations Treaty Collection and The Council of Europe Treaty Office [viewed 08 March 2014], (available from: <http://treaties.un.org/pages/ParticipationStatus.aspx> and <http://www.conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>).

Recommendation No. R(91)7 of the Committee of Ministers to member States on the slaughter of animals (adopted by the Committee of Ministers on 17 June 1991 at the 460th meeting of the Ministers’ Deputies).

European Union (Poland is a member State of the EU as of 01 May 2004)

Charter of Fundamental Rights of the European Union, from 12 December 2007, 2012/C 326/02, especially article 10 – Freedom of religion [binding on Poland with exceptions outlined in the so-called “British–Polish Protocol”].

Directive 2000/43/EC of 29 June 2000 implementing the *principle of equal treatment between persons irrespective of racial or ethnic origin*, OJ L 180, 19.7.2000, pp. 22–26.

Directive 93/119/EC of 22 December 1993 on *the protection of animals at the time of slaughter or killing*, OJ L 340, 31.12.1993, pp. 21–34.

Regulation (EC) No. 853/2004 of 29 April 2004 *laying down specific hygiene rules for food of animal origin*, OJ L 139, 30.4.2004, pp. 55–205.

Regulation (EC) No. 1099/2009 of 24 September 2009 on *the protection of animals at the time of killing*, OJ L 303, 18 November 2009, pp. 1–30 [binding on Poland with the power of EU regulation]⁹³.

Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the *European Community*, 13 December 2007, 2007 OJ (C 306) 1, especially article 13 of the Treaty on the Functioning of the European Union – Respect for national customs with regard to religious rites [Poland ratified the *Treaty* on 10 October 2009].

78/923/EEC: Council Decision of 19 June 1978 concerning the *conclusion of the European Convention for the protection of animals kept for farming purposes*, OJ L 323, 17.11.1978, pp. 12–13.

Organization for Security and Cooperation in Europe (OSCE)

(Poland is a participating State since 25 June 1973. The OSCE has no legal personality, henceforth its acts are not legally-binding; they only have the power of political obligation).
Copenhagen Document on the Human Dimension, 29 June 1990.

Polish domestic law

Proposed Amendment to The Bill on the Protection of Animals, from 17 April 1936, Dz. U. from 1936, No. 29, pos. 237.

93 WOJTASZCZYK et al., ref. 31, pp. 70–71.

The Bill on National and Ethnic Minorities, and on Regional Languages; from 06 January 2005, Dz. U. from 2005, No. 17, pos. 141.

The Bill on the Relations between the State and the Muslim Religious Association in the Republic of Poland, from 21 April 1936, Dz. U. 1936, No. 30, pos. 240.

The Bill on the Relations between the State and the Crimean Karaites Religious Association in the Republic of Poland, from 21 April 1936, Dz. U. 1936, No. 30, pos. 241.

The Bill on the Guarantees for the Freedom of Conscience and Religion, from 17 May 1989, Dz. U. from 2005, No. 231, pos. 1965 with later changes.

The Bill on the Relations between the State and the Jewish Communities in the Republic of Poland, from 20 February 1997, Dz. U. from 1997, No. 41, pos. 251.

The Bill on the Protection of Animals, from 21 August 1997, Dz. U. from 1997, No. 111, pos. 724, amended on 06 June 2002, Dz. U. from 2002, No. 135, pos. 1141, amended on 06 March 2018, Dz.U. from 2018 pos. 663.

The Constitution of the Republic of Poland, from 02 April 1997, Dz. U. from 1997, No. 78, pos. 483.

The Decree of the Minister of Agriculture and Rural Development of the Republic of Poland on qualifications of the people allowed to professionally slaughter; circumstances and methods of slaughter and killing of animals, from 09 September 2004, Dz. U. No. 205, pos. 2102 with further changes.

The Penal Code of the Republic of Poland, from 06 June 1997, Dz. U. 1997, No. 88, pos. 553.

The Statute of Kalisz, from 16 August 1264 given to the Jews by Duke Boleslaw the Pious.

5. Cases

PCIJ (1922–1946)

Minority Schools in Albania, Opinion, Permanent Court of International Justice (PCIJ), Series A/B, No. 64, 1935: 17.

ECtHR (the alphabetical list by the State Parties)

Otto-Preminger-Institut v. Austria, App. No. 13470/87, ECHR, 20 September 1994 (merits).

Cha'are Shalom Ve Tsedek Jewish Liturgical Association v. France, App. No. 27417, ECHR 2000–VII, 27 June 200 (merits) [GC].

Chassagnou and Others v. France, App. No. 25088/94; 28331/95; 28443/95, ECHR 1999–III, 29 April 1999 (merits and just satisfaction) [GC].

Canea Catholic Church v. Greece, App. No. 25528/94, ECHR 1997–VIII, 16 December 1997 (merits and just satisfaction).

Hatton and Others v. The United Kingdom, App. No. 36022/97, ECHR 2003–VIII of 08 July 2003 (merits and just satisfaction) [GC].

Jakóbski v. Poland, App. No. 18429/06, ECHR, 07 December 2010 (merits and just satisfaction).

Dahlab v. Switzerland, App. No. 42393/98, ECHR 2001–V, 15 February 2001 (decision on inadmissibility).

Kalaç v. Turkey, App. No. 20704/92, ECHR 1997–IV of 01 July 1997 (merits and just satisfaction).

Sahin v. Turkey, App. No. 31961/96, ECHR of 25 September 2001 (merits and just satisfaction).

ECJ

Joined Cases *N.S. v. Home Secretary*, No. C–411/10 and *M.E. v. Refugee Applications Commissioner*, No. C–493/10, 2011, EUECJ C–411/10, the judgment of 21 December 2011.

Liga van Moskeën en Islamitische Organisaties Provincie Antwerpen VZW and others v. Vlaams Gewest (Global Action in the Interest of Animals GAIA) VZW (C–426/16) of 29 May 2018.

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Church of the Lukumi Babalu Aye, Inc. and Ernesto Pichardo v. City of Hialeah, 508 U.S. 520.

People v. Frazier, 173 Cal. App. 4th 613 (2009).

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The Judgment of the Polish Constitutional Tribunal, 27 November 2012, sygn. akt U 4/12 (Dz. U. from 2012, pos. 1365).

6. List of Abbreviations

App.	Application
CETS	Council of Europe Treaty Series
DIALREL	European Union Project on Religious slaughter: improving knowledge and expertise through dialogue and debate on issues of welfare, legislation and socio-economic aspects
Dz. U.	Dziennik Ustaw [Eng.: The Journal of Laws of the Republic of Poland]
EC	European Communities
ECtHR	European Court of Human Rights

ETS	European Treaty Series
OJ	The Official Journal of the European Union
pos.	Position (in The Journal of Laws of the Republic of Poland)
Sygn. Akt	Sygnatura Akt [Eng.: The Signature of Acts]
UN	United Nations
UNTS	United Nations Treaty Series

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