

**Emil Kruk**

Maria Curie-Skłodowska University, Poland

emil.kruk@umcs.pl

ORCID ID: <https://orcid.org/0000-0002-7954-0303>

## **Industrial Breeding of Animals: Legal and Ethical Issues<sup>1</sup>**

**Abstract:** The main purpose of this article is to discuss the basic legal and axiological problems that are associated with technological advances in animal rearing and breeding. The implementation of this research task required, first and foremost, the definition of the concept of ‘welfare’ and the identification of basic legal provisions determining the welfare of livestock in Poland. Moreover, the article addresses the ethical aspect of the problems associated with the implementation of modern animal welfare technologies, including the role of Christianity in shaping moral attitudes in this area. The paper is also an attempt to define the level of public awareness about the need to protect animals and the perception of problems related to the intensification of livestock production. The need to address the issue stems, above all, from the fact that human life and our attitudes towards animals are changing with the development of civilization. In any event, the changes that have taken place in this area over the past decades make the problem topical and lead to a reflection on the welfare of animals kept in industrial farming conditions. It is assumed that the research carried out will contribute to the development of an optimal legal model for the protection of livestock. Even the mere dissemination of the results will raise public awareness of the humanitarian protection of animals, which is one of the preconditions for further progress in civilization.

**Keywords:** animals, breeding, industry, welfare, law, ethics

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1 This publication was prepared within a research project entitled ‘The Administrative Law Animal Protection Model’ included in the application registered under number 2016/23/D/HS5/01820 in the Funding Stream Service system administered by the National Information Processing Institute, and accepted for financing within the competition announced by the National Science Centre, Poland, ‘SONATA 12’, on the basis of the decision made by the director of the National Science Centre in Krakow on 16 May 2017 (decision no. DEC-2016/23/D/HS5/01820, contract no. UMO-2016/23/D/HS5/01820).

## Introductory Remarks

Most livestock is now kept under conditions of industrial rearing, which have developed intensively since the 1960s. This is largely a result of cooperation between the meat industry and scientists. This cooperation has covered not only the conditions for keeping these animals or the ways in which they are fed, but also genetic selection aimed at increasing their yield, which means greater and faster weight gain, greater milk or egg yield, etc.<sup>2</sup> Unfortunately, all this occurs at the expense of the quality of life of the animals, and generally it proves that technological progress does not always go hand in hand with moral progress – just the opposite. This is perfectly reflected in the words of Israeli historian Yuval Noah Harari, who believes that ‘industrial farming is one of the worst crimes in history’ and the fate of industrially bred animals is one of the most urgent ethical concerns of our time.<sup>3</sup> One cannot help but share this view, especially considering that the methods of industrial breeding are simply cruel, and animals in this process are treated as exploited resources or machines for processing cheap feed into the desired final product – egg, milk, meat, fur. This is the other side of progress that prompts us to address the issues pointed out in the title of this study. It should be noted that its main aim is to discuss the problems related to the humanitarian protection of farm animals, i.e. the protection motivated by ethical, non-economic considerations. The findings made in this regard will allow us to verify the hypothesis that the current model of livestock protection, being both a consequence and a manifestation of civilizational development, requires a thorough change in order to improve both animal welfare and the quality of human life. This will require clarifying the concept of ‘welfare’, discussing the basic legal and axiological problems related to technological progress in animal rearing and breeding, as well as determining the degree of social awareness of the problems related to the intensification of animal production. These issues will be further discussed in the order above.

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- 2 According to the data provided by B. Grabowska, currently 99.9% of broilers, 97% of laying hens, 99% of turkeys, 95% of pigs and 78% of cattle are on industrial farms. As regards the intensification of industrial breeding, for example, between 1935 and 1995 the weight of the average broiler increased by 65%, while its lifetime decreased by 60% and its nutritional requirements decreased by 57%. The fact that these changes have an adverse effect on the welfare of livestock is demonstrated, inter alia, by the fact that they need to have medicines and vitamin supplements continuously administered. As many as 90% of broilers have visible bone disorders and 26% suffer from bone diseases causing chronic pain. See B. Grabowska, *Zmiany relacji człowiek – zwierzę, czyli cena postępu*, ‘Kultura i Wartości’ 2014, no. 2, pp. 111–112 and the literature cited therein.
- 3 Y.N. Harari, *Industrial farming is one of the worst crimes in history*, ‘The Guardian’ 25 September 2015, <https://www.theguardian.com/books/2015/sep/25/industrial-farming-one-worst-crimes-history-ethical-question> (accessed 19.04.2021).

## 1. Animal Welfare

There is no doubt that animal welfare<sup>4</sup> is one of the most important elements of sustainable development. Therefore, it is important to understand it properly. At this point, the opinion of the World Organisation for Animal Health (OIE) may be helpful, according to which, ‘Animal welfare means the physical and mental state of an animal in relation to the conditions in which it lives and dies. An animal experiences good welfare if the animal is healthy, comfortable, well nourished, safe, is not suffering from unpleasant states such as pain, fear and distress, and is able to express behaviours that are important for its physical and mental state.’<sup>5</sup> The issue in question is therefore of a multidimensional nature, and a number of rules are required to ensure animal welfare in animal production systems. These primarily cover the use of appropriate genetic selection, which should take account of animal health and welfare; ensuring that animals have the right environmental conditions; providing animals with conditions to meet the needs typical of their species; adequate animal nutrition; ensuring that animals have sufficient space to move around freely; protecting animals from diseases and parasites; not putting animals at risk of unnecessary pain and stress; and animal handlers having the right qualifications.<sup>6</sup> It is even more important that improving the welfare of livestock can increase the production and safety of food and thus lead to economic benefits. However, the most important thing is to be aware that any use of animals entails ethical responsibility for ensuring their welfare as much as possible.

Unfortunately, as practice shows, many of the solutions used in mass animal breeding do not take the above-mentioned requirements into account. This is the case because industrial animal breeding is driven by one goal: to produce more and cheaper.<sup>7</sup> A simple consequence of this fact is a drastic deterioration in the welfare of livestock. It is sufficient to mention problems associated with the spatial concentration of large-scale farms and the crowding of animals bred for meat, milk,

4 ‘Animal welfare is a term that describes a potentially measurable quality of a living animal at a particular time and hence is a scientific concept.’ See D.M. Broom, *A History of Animal Welfare Science*, “Acta Biotheoretica” 2011, no. 59, pp. 121–137. See also A. Elżanowski, *Czym jest i czym nie jest dobrostan*, (in:) H. Mamzer (ed.), *Dobrostan zwierząt. Różne perspektywy*, Gdańsk 2018, pp. 51–66.

5 The World Organisation for Animal Health (OIE), *Terrestrial Animal Health Code (2018)*, [https://www.oie.int/fileadmin/Home/eng/Health\\_standards/tahc/2018/en\\_sommaire.htm](https://www.oie.int/fileadmin/Home/eng/Health_standards/tahc/2018/en_sommaire.htm) (accessed 19.04.2021).

6 *Ibidem*.

7 On this topic, see J. Mason and M. Finelli, *Nowa, wspaniała ferma?* (in:) P. Singer (ed.), *W obronie zwierząt*, Warsaw 2011, pp. 152–179; P. Lymbery and I. Oakeshott, *Farmagedon. Rzeczywisty koszt taniego mięsa*, Białystok 2020, pp. 197–205; D. De Grazia, *Prawa zwierząt. Bardzo krótkie wprowadzenie*, Krakow 2014, pp. 103–107; E. Herbut and J. Walczak, *Dobrostan zwierząt w nowoczesnej produkcji*, „Przegląd Hodowlany” 2017, no. 5, pp. 3–7.

fur or eggs. For example, the maximum stocking density for broilers ranges from 33 kg/m<sup>2</sup> to as much as 42 kg/m<sup>2</sup> depending on the requirements met by the poultry house concerned. This means that such a small area can hold up to 17 birds weighing 2.44 kg each (the average weight of a broiler sent to a slaughterhouse in Poland).<sup>8</sup> In such a situation, one chicken has at its disposal an area smaller than A4 size. The situation is no better for laying hens, which may be kept in single- or multi-tier cages or without cages on single or multiple tiers. The cage area per laying hen should be at least 0.075 m<sup>2</sup>. In a non-cage system, the maximum stocking density of laying hens per m<sup>2</sup> of floor space in a poultry house is nine hens.<sup>9</sup> Under such conditions, the animals cannot satisfy their ethological needs and are exposed to severe stress, serious physical injury and various infectious diseases.

Another factor affecting the welfare of livestock is genetic selection determining characteristics to meet the demand for meat. For example, fast-growing broilers are used for this purpose in the chicken meat sector in the EU. These birds reach the target weight of 2 to 2.5 kg in about 35–45 days. The genetic selection of broilers over the last few decades has led to a significant increase in their growth rate and meat yield. Today, standard broilers reach a body weight of 1.5 kg in less than 30 days, whereas in the 1950s it took 120 days. The modification of many different metabolic and behavioural traits also leads to various welfare problems in broilers. These include bone deformities, lameness, ascites, sudden death syndrome and contact dermatitis.<sup>10</sup> When discussing the issue of animal welfare in industrial breeding, reference should also be made to animal transport and slaughter, which are essential elements of this production process. During transport, as during rearing, animals are exposed to congestion, hunger, dehydration, inadequate temperatures and various injuries. Moreover, contrary to the current rules, it is common practice in EU countries to transport animals that are unfit for transport to slaughterhouses.<sup>11</sup> Unfortunately, in many cases, animals also bear suffering during slaughter that could be avoided. This is mainly due to the abandonment of the stunning of animals during ritual slaughter or the incorrect stunning of the animal during routine slaughter. According to estimates

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8 Krajowa Izba Producentów Drobiu i Pasz, Różnice w wadze i długości chowu brojlerów w Europie, <https://archiwum.kipdip.org.pl/article/id/1293> (accessed 19.04.2021).

9 Ordinance of the Minister of Agriculture and Rural Development of 15 February 2010 on the requirements and procedures for keeping farm animal species for which protection standards have been defined in EU law (Journal of Laws 2010, No. 56, item 344, as amended).

10 Report from the Commission to the European Parliament and the Council on the impact of genetic selection on the welfare of chickens kept for meat production, COM/2016/0182 final, Brussels 2016.

11 European Commission, Overview report on systems to prevent the transport of unfit animals in the European Union (DG SANTE, 2015–8721 – MR), Luxembourg 2015, p. Iff., <https://op.europa.eu/en/publication-detail/-/publication/2bdfc42c-e33f-409e-8f02-4f0308205ede/language-en> (accessed 19.04.2021). See also M. Rudy, *Traktat o uśmiercaniu zwierząt*, Warsaw 2019, pp. 323–328.

by Stowarzyszenie Otwarte Klatki, in Poland alone, as many as 27 million hens can have full awareness at the time of their slaughter.<sup>12</sup> For the sake of clarity, it should be noted that similar problems apply to all animal species kept in industrial farms.

## 2. Legal Issues

The improvement of the living conditions of livestock<sup>13</sup> is largely dependent on the applicable legislation currently in force.<sup>14</sup> In the Polish legal order, the basic legislation to regulate these matters is the Act of 21 August 1997 on the protection of animals (hereinafter: APA).<sup>15</sup> This act introduced the principle of the dereification of animals (Article 1(1) APA) and the requirement of humane treatment of animals (Article 5 APA).<sup>16</sup> Of course, this obligation also applies to livestock, which, like other categories of animals, must be treated with their needs taken into account, adequately cared for and protected (Article 4(2) APA). At the same time, the legislature has banned the maltreatment of animals, including the use of cruel methods in the rearing or breeding of animals (Article 6(2) Item 12). These include, in particular, human acts or omissions which clearly lead to pathological changes in the animal's body (whether somatic or psychological), in particular in the form of the effects of suffering severe pain or coercion with hunger, thirst, electrical stimulation (except the use of electric fences, tamers and electrical devices for driving the livestock) or other such procedures, especially the force-feeding and watering of animals (Article 4(7) APA).

The APA also sets out the basic duties of livestock keepers and the minimum conditions for keeping livestock. It is primarily about the obligation to provide farm animals with care and appropriate living conditions, i.e. the possibility of existence

12 Stowarzyszenie Otwarte Klatki, Raport o stanie hodowli brojlerów w Polsce, 2018, pp. 15–17. See also European Commission, Overview report, *op. cit.*; J. Szymborski, Ubój rutynowy a rytualny. Podobieństwa i różnice, „Życie Weterynaryjne” 2015, no. 7, pp. 469–471.

13 This refers to livestock in the meaning of the Act of 10 December 2020 on the organization of breeding and reproduction of livestock (Journal of Laws 2021, item 36).

14 See, for example, M.E. Szymańska, Livestock Welfare: Legal Aspects, (in:) E. Kruk, G. Lubeńczuk and H. Spasowska-Czarny (eds.), Legal Protection of Animals, Lublin 2020, pp. 177–187; S. Mroczkowski, A. Frieske, B. Sitkowska, E. Grochowska and D. Piwczyński, Prawne aspekty humanitarnej ochrony zwierząt, „Przegląd Hodowlany” 2015, no. 2, pp. 34–36; S. Mroczkowski and A. Frieske, Regulacje użytkowania zwierząt, Bydgoszcz 2016, pp. 45–47; S. Mroczkowski and A. Frieske, Prawna ochrona zwierząt gospodarskich, Bydgoszcz 2015, pp. 61–63; I. Lipińska, Z prawnej problematyki dobrostanu zwierząt gospodarskich, „Przegląd Prawa Rolnego” 2015, no. 1, pp. 63–77; E. Jachnik, Zasada dobrostanu zwierząt we Wspólnej Polityce Rolnej Unii Europejskiej, „Studia Iuridica Lublinensia” 2017, no. 1, pp. 287–296.

15 For the consolidated text, see Journal of Laws 2020, item 638.

16 For more on these issues, see J. Białocerkiewicz, Status prawny zwierząt. Prawa zwierząt czy prawna ochrona zwierząt, Toruń 2005, p. 61ff.; M. Goettel, Sytuacja zwierzęcia w prawie cywilnym, Warsaw 2013, p. 37ff; P. Waldau, Prawa zwierząt. Co każdy powinien wiedzieć, Warsaw 2021, p. 99ff.

in accordance with the needs of a given species, breed, sex and age. The conditions for rearing or breeding animals may not cause injuries and bodily damage or other suffering. For example, it is forbidden to stock animals in excess of the space norms defined for a given species, age and physiological condition (Article 12 APA). Detailed requirements in this regard are set out in the ordinance of the Minister of Agriculture and Rural Development of 15 February 2010 on the requirements and procedures for keeping farm animal species for which protection standards have been defined in EU law<sup>17</sup> and the ordinance of the Minister of Agriculture and Rural Development of 28 June 2010 on the minimum conditions for keeping livestock species other than those for which protection standards have been defined in EU law.<sup>18</sup> The first of these ordinances sets out the requirements and procedures for keeping calves, pigs, laying hens and broilers. The second ordinance specifies the minimum conditions for keeping cattle (except calves), horses, sheep, goats, ostriches, quails, guinea fowl, polar foxes, red foxes, raccoon dogs, mink, polecats, rabbits, chinchillas, coypu, deer and fallow deer, turkeys, geese and ducks (in farms keeping at least 100 of these birds) – separately for each species, including the density of animals depending on the housing system. The above-mentioned legal acts contain mainly technical standards and define the technical requirements for premises intended for keeping animals (lighting, air circulation, watering and feeding equipment, heating and cooling systems); minimum space standards depending on the housing system; requirements for protection against unfavourable weather conditions and predatory animals; rules for animal care; rules for dealing with sick and injured animals; cleanliness standards; nutritional requirements; rules for keeping records containing a description of the production system, etc. Generally, these regulations outline the minimum livestock living conditions, which, when complied with, can be referred to as ensuring animal welfare, at least in principle. However, there is doubt as to whether this goal is achievable at all in the environment of an industrial farm, especially if we assume that welfare must be understood as meeting the specific species-related needs of animals in the field of their physiology, aetiology and health. In any case, the livestock-keeping standards defined by the legislature are often criticized by representatives of academia and social organizations whose statutory goal is to protect animals. Additionally, the problem is that farms very often do not comply with these requirements. When looking for the reasons for this, it is first necessary to point to the lack of effective supervision of compliance with the provisions of the APA.<sup>19</sup>

17 Journal of Laws 2010, No. 56, item 344, as amended.

18 For the consolidated text, see Journal of Laws 2019, item 1966.

19 See Informacja NIK o wynikach kontroli ‘Funkcjonowanie nadzoru nad obrotem i ubojem zwierząt rzeźnych ze szczególnym uwzględnieniem dobrostanu zwierząt’ (KSR-411400/2004, Ref. no. 201/2004/D04503/KSR), Warszawa, 20 January 2005 r.; Informacja NIK o wynikach kontroli ‘Nadzór nad funkcjonowaniem ferm zwierząt’, (KRR-4101-01-00/2014, Ref. no. 181/2014/P/14/050/KRR), Warszawa, 12 November 2014; Informacja NIK o wynikach kontroli

Referring to the above, it should be pointed out that under Article 34a(1) APA, compliance with the animal protection rules is supervised by the Veterinary Inspectorate (Inspekcja Weterynaryjna).<sup>20</sup> Pursuant to Article 3 of the Act of 29 January 2004 on the Veterinary Inspectorate, the Veterinary Inspectorate has the responsibility of protecting animal health and the safety of products of animal origin in order to ensure the protection of public health. The essential objective of the Veterinary Inspectorate is therefore to protect human health by protecting animal health; it is not motivated by ethical reasons of protecting animals. It is therefore important to agree with the view that ‘there is no public authority in Poland for the supervision of the humane protection of animals, and the Veterinary Inspectorate performs these tasks (if any) only as a spin-off’. This is further supported by the fact that the Veterinary Inspectorate has not been equipped with appropriate powers to play the role assigned to it effectively.<sup>21</sup> For example, it does not have the right to take a maltreated animal away from its owner. This may be all the more surprising given that under Article 7(3) APA, in urgent cases where the continued stay of the animal with the original owner or guardian endangers the animal’s life or health, it is police officers, municipal guards and representatives of social organizations whose statutory goal is the protection of animals who are obliged to carry out such activities. Of course, this does not change the fact that under the applicable law, only the Veterinary Inspectorate is authorized to carry out inspection of compliance with the animal protection provisions.

Actual protection of animals also largely depends on legislative measures which allow holding liable those who violate orders or who fail to comply with prohibitions regarding required conduct in the area concerned. The detailed presentation of this complex issue goes far beyond this study. However, it seems necessary to discuss the problem of the penalties for behaviour involving maltreatment of livestock. This need is supported not only by the scientific value of this issue or its social gravity, but also by the interesting results of a study carried out by Fundacja Czarna Owca Pana Kota in partnership with the Stowarzyszenie Ochrony Zwierząt Ekostraż from Wrocław. The research was based on monitoring the activities of courts, prosecutors and the police in animal protection cases, and the findings were published in a report entitled ‘Jak Polacy znęcają się nad zwierzętami?’ (‘How do Poles abuse animals?’). The

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‘Nadzór nad transportem i ubojem zwierząt gospodarskich’ (KRR.430.009.2016, Ref. no. 96/2017/P/16/043/KRR), Warszawa, 7 July 2017.

20 As part of this supervision, the personnel of the Veterinary Inspectorate and persons appointed by the bodies of the Inspectorate have the powers set out in the Act of 29 January 2004 on the Veterinary Inspectorate (consolidated text in the Journal of Laws 2021, item 306).

21 For more on doubts regarding the nature of the (supervisory and auditing) powers held by the Veterinary Inspectorate and the efficiency of its activities, see: W. Radecki, *Ustawy o ochronie zwierząt. Komentarz*, Warsaw 2015, pp. 204–211; Ł. Smaga, *Ochrona humanitarna zwierząt*, Białystok 2010, pp. 283–289.

authors point out (among other things) that the suffering of farm animals as a result of human activities is rarely the subject of judicial proceedings,<sup>22</sup> even though these animals constitute the largest group of animals kept by humans, often in conditions which prevent their basic needs being met. Undoubtedly, one of the reasons for this is the construction of the subjective elements of the crime of maltreatment of animals and the resulting criterion of direct action by the offender.

To address this issue, it is necessary to remember that, according to the legal definition, animal maltreatment is understood as consciously inflicting or knowingly allowing pain or suffering, in particular intentionally injuring or mutilating an animal; beating animals; transporting animals in a way causing unnecessary suffering and stress; keeping animals in inappropriate living conditions; abandonment of an animal by the owner or by another guardian; using cruel methods in animal rearing or breeding; exposing an animal to weather conditions that endanger its health or life; or keeping an animal without adequate food or water for a period exceeding the minimum needs appropriate to the species (Article 6(2) Items 1–19 APA). These types of behaviour, as well as the act of unjustified or inhumane killing of animals,<sup>23</sup> are classified as crimes.<sup>24</sup> These are generally defined perpetrator offences prosecuted under public indictment, which may be committed only with intentional fault and also as an aggravated type, i.e. committed with particular cruelty, hence with the use of actions characterized by drastic forms and methods of killing or inflicting suffering, premeditatedly aimed at increasing the extent and duration of suffering.<sup>25</sup> Pursuant to the current wording of Article 35 APA, those acts are punishable by imprisonment for up to three years, and if the perpetrator acts with particular cruelty, they are punishable by imprisonment for a term between three months and five years. In the case of a conviction for this type of offence, the court shall or may

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22 For example, a total of 897 cases under the APA were brought to court in the period 2012–2014. Most of these cases concerned pets (83.5%), and a smaller number related to farm animals (12.3%) and wild animals (4.2%). See: D. Karaś, *Jak Polacy zنعją się nad zwierzętami? Raport z monitoringu sądów, prokuratur i policji (wersja rozszerzona)*, Kraków/Wrocław 2016, p. 36ff.; D. Karaś, „Niech zwierzęta mają prawa!” *Monitoring ścigania oraz karania sprawców przestępstw przeciwko zwierzętom*, „Przegląd Prawa i Administracji” 2017, vol. 108, pp. 17–30.

23 It is worth noting that under the legislation currently in force, the killing of a farm animal for a purpose other than obtaining meat and hides does not benefit from the exclusion of punishability under Article 6(1) Item 1 of the APA and is illegal. For more information, see: M. Rudy, *Traktat, op. cit.*, p. 192ff.

24 For more detail on the statutory elements of offences defined in the APA, see: M. Mozgawa, *Prawnokarne aspekty ochrony zwierząt*, (in:) M. Mozgawa (ed.), *Prawna ochrona zwierząt*, Lublin 2002, pp. 168–175; M. Mozgawa, M. Budyn-Kulik, K. Dudka and M. Kulik, *Prawnokarna ochrona zwierząt – analiza dogmatyczna i praktyka ścigania przestępstw z art. 35 ustawy z 21.08.1997 r. o ochronie zwierząt*, ‘Prawo w Działaniu’ 2011, vol. 9, pp. 44–50.

25 For more on the aggravated type of the offence under Article 35 APA (acting with particular cruelty), see: M. Gabriel-Węglowski, *Przestępstwa przeciwko humanitarnej ochronie zwierząt*, Toruń 2008, pp. 104–109.



impose penal measures provided for in the APA, such as forfeiture of the animal, a prohibition on possessing any animal or a specific category of animals, a prohibition on exercising an occupation or activity related to the use of animals or affecting them, and compensation for purposes related to animal protection. These prohibitions are to be imposed in years, from one to fifteen years, and the compensation may be in the amount from PLN 1,000 to PLN 100,000. Less significant infringements of the obligation of humane treatment of animals, in particular concerning the conditions for keeping pets and farm animals, have been classified in Article 37 APA as infractions. For example, it may be noted that the following constitute an infraction: keeping farm animals without providing them with care and appropriate living conditions; fattening geese and ducks for fatty livers; or keeping animals in excess of the room standards defined for a given species, age and physiological state (Article 37 APA). As a rule, these are formal infractions, the essence of which is not dependent on the result.<sup>26</sup> Obviously, if the behaviour specified in Article 37(1) APA has elements of maltreatment of an animal or results in its death inflicted without justification or in an inhumane manner, then a perpetrator acting intentionally will be liable not for the infraction under Article 37(1) APA but for the crime under Article 35 APA. The infractions specified in the APA may be committed both intentionally and unintentionally. For committing such offences, the law provides for the penalty of custody or a fine, as well as the possibility of issuing penal measures (e.g. forfeiture of the animal) and compensation of up to PLN 1,000 for purposes related to animal protection.

Getting back to the above-mentioned problem of the statutory elements of the crime of animal maltreatment, it should be noted that the view that such a crime can only be committed intentionally with direct intent,<sup>27</sup> established in the scholarly opinion and judicature, reduces the criminality of such behaviour only to sadistic acts. In any event, it is difficult to attribute the intention of directly causing pain and suffering to the acts listed in Article 6(2) APA. It is therefore appropriate to accept the postulate proposed in the literature that the legislature should also provide for the possibility of committing acts under Article 6(2) APA with a legal intent (*dolus eventualis*) and that the acts committed with the direct intent (*dolus directus*) of causing pain and suffering should constitute an aggravated offence punishable by a more severe penalty.<sup>28</sup> There is no doubt that such a change would contribute to more effective prosecution and punishment of perpetrators of crimes against

26 On the statutory elements of the infractions under Article 37(1) APA, see for example K. Kuszlewicz, *Prawa zwierząt. Praktyczny przewodnik*, Warsaw 2019, pp. 193–203.

27 See for example the Judgment of the Supreme Court of 14 April 2016, V KK 458/15, LexNo. 2294600.

28 J. Helios and W. Jedlecka, *Znęcanie się nad zwierzęciem w doktrynie prawa karnego i w orzecznictwie sądowym – kilka uwag tytułem wstępu do rozważań o prawnej ochronie zwierząt, „Przegląd Prawa i Administracji” 2017, vol. 108, p. 15.*

animals. Currently, both the prosecuting authorities and courts very often state that a given act does not meet the criteria of a crime due to the lack of an unambiguous intention of the offender to harm the animal.<sup>29</sup> This happens despite the fact that as early as 2009, the Supreme Court interpreted the provisions of the APA regarding the understanding of the subjective side of the crime of animal maltreatment. This court took a clear position, assuming that ‘maltreatment involves... each of the manners of direct conduct towards an animal listed in Article 6(2) of the Act, which must include the direct intent of the perpetrator, the intent therefore referring to the very act of perpetration and not to its effect in the form of suffering or pain.’<sup>30</sup> The Supreme Court’s reason for its position was the fact that the pain or suffering of an animal is of an objective nature, and its actual existence is independent of whether the perpetrator directly strived to achieve this goal or not. The object of statutory protection is the protection of animals from suffering and pain, and their suffering in practice does not depend on the motivation of the perpetrator. The Supreme Court thus points out that the understanding of the perpetrator’s intent should be placed in a broader context, taking into account the purpose of the APA. This refers primarily to the requirement of humane treatment of all animals (Article 5 APA), which should be understood as treatment that takes into account the needs of the animal and ensures its care and protection (Article 4(2) APA). In other words, the Supreme Court takes the position that in order for the crime in question to occur, it is not necessary for the perpetrator to directly aim at inflicting suffering on the animal. Although the crime of animal maltreatment requires intentional fault on the side of the perpetrator acting with direct intent, this intent should be examined with respect to the very act of perpetration (e.g. failure to feed the animal or keeping it in too dense stock) and not to the perpetrator’s intention to inflict pain or suffering. The recognition that ‘involuntary’ harm is also a crime, when the suffering of the animal is not the goal but a side effect of the perpetrator’s actions, is of key importance for the legal protection of livestock. After all, it is rare for keepers of such animals to intentionally inflict pain on them. The suffering of these animals is usually the result of a kind of ‘austerity’ by the keepers who try to increase the cost-effectiveness of production by, for example, increasing the stocking density of caged animals, reducing expenditure on veterinary care or failing to provide rest periods during transport.

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29 See for example the judgment of the Regional Court in Poznań of 14 June 2018, IV Ka 479/18, LexNo. 2528837.

30 Judgment of the Supreme Court of 16 November 2009, V KK 187/09, Lex No. 553896. See also the judgment of the Supreme Court of 13 December 2016, II KK 281/16, Lex No. 2237277 and the judgment of the Supreme Court of 7 July 2020, II KK 222/19, OSNKW 2020, no. 9–10, item 40.

### 3. Ethical Issues

There is no doubt that moral concern about animals has led to the formulation of various rules ensuring and maintaining their welfare. It is therefore worth noting the ethical aspect of the problems associated with the intensification of livestock production and the implementation of modern animal welfare technologies. This is all the more important because with the development of industrial farming, high-yield animals began to be treated as machines, while the fact they are living beings in need of proper care has been ignored. However, the intended use of these animals does not relieve anyone of the obligation to treat them humanely, and the moral relativism seen in such cases is difficult to justify. The causes of this problem can be found for example in the relaxation of the relationship between human and animal, which in a sense determines the empathy necessary in these relations. Unfortunately, most people currently do not have contact with live animals on a daily basis, but only with more or less processed products of animal origin.

The human attitude towards animals is constantly evolving. It changes with the cultural and civilizational development of societies. In the European cultural circle, the principles of moral behaviour are, to a large extent, determined by Christian ethics. It is therefore worth beginning by pointing out the influence of Christianity on shaping people's attitudes towards animals. This is all the more necessary because of the incorrect opinion, expressed by some, that the Christian religion perpetuates the stereotype of thinking about animals as things and is responsible for the current environmental crisis. Such a view was formulated, among others, by the American historian Lynn White, who, in his article 'The Historical Roots of Our Ecologic Crisis', published in 1967, accused Christianity of orthodox arrogance towards nature and extreme anthropocentrism, as well as of unintentionally contributing to the degradation of the natural environment and its resources. This problem, according to White, is rooted in the Book of Genesis, which, in his view, grants man unlimited power over the world and introduces the Christian axiom that the only reason for the existence of nature is to serve man.<sup>31</sup> It would be difficult, however, to share this view, which is undoubtedly the result of a misunderstanding of the biblical call to 'fill the earth and subdue it' (Gen. 1:28).<sup>32</sup> Moreover, it should be pointed out that the attitude of human domination over nature finds its ideological inspiration outside Christianity, more precisely in the naturalistic concept of individualism and liberalism which dominated European thinking in the 18th century, giving form to a materialistic vision of the world. In any case, one has to agree with Jacek Łapiński,

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31 L.T. White, Jr, *The Historical Roots of our Ecological Crisis*, "Science" 1967, vol. 155, pp. 1205–1207.

32 *The Book of Genesis, New Jerusalem Bible*, <https://www.catholic.org/bible/book.php> (accessed 19.04.2021).

who argues that it was the influence of materialistically oriented individualism and liberal economics under which 'a socially fixed model of thinking emerged that favoured an attitude of exploitation and domination of humanity over nature.'<sup>33</sup> As for the position of the Catholic Church on the issue in question, it is now perhaps best expressed in the words of Pope Francis, who in his encyclical *Laudato si'* (entirely devoted to ecology) wrote: 'nowadays we must forcefully reject the notion that our being created in God's image and given dominion over the earth justifies absolute domination over other creatures.... the Bible has no place for a tyrannical anthropocentrism unconcerned for other creatures.'<sup>34</sup>

Two basic trends can be distinguished in the contemporary ethical discussion on animal protection. The first is the trend of respecting animal interests (animal welfare), which developed mainly under the influence of Peter Singer's views. The second is the trend of the protection of animal rights, the main advocate for which is Tom Regan.<sup>35</sup> As regards the first of the aforementioned concepts, its main assumptions are presented by Singer in the book entitled *Animal Liberation*, issued in the United States in 1975. Thanks to this book, millions of people around the world learnt about the shocking scale of animal exploitation in laboratories and on industrial farms. The author, describing human cruelty, points to a kind of 'ethical blindness' and calls for action. Singer argues that a disregard of the suffering of any living creature can by no means be morally justified, and the principle of equality requires that the suffering of any animal, regardless of its nature, is treated like the similar suffering of any other living being.<sup>36</sup> In his opinion, the limit for respecting animal interests is defined only by the ability to experience suffering or pleasure, and all other criteria (such as intelligence or rationality) should be rejected because their use would lead to arbitrary decisions. Singer admits that the inclusion of animals within a principle of equality does not entail the need to equate their rights with those of people or to declare that the life of the animal has the same value as human life. At the same time he warns against species chauvinism (speciesism) based on a conviction about the 'holiness and inviolability' of human life only.<sup>37</sup> According to Singer, most people present such an attitude. In this situation, this author claims, we must incorporate animals into

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33 J. Łapiński, *Etyczne podstawy prawnej ochrony zwierząt*, „*Studia z Prawa Wyznaniowego*” 2002, vol. 4, p. 153 and the literature cited therein.

34 Encyclical letter *Laudato si'* of the Holy Father Francis on care for our common home, [http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20150524\\_enciclica-laudato-si.html](http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html) (accessed 19.04.2021), paragraphs 67 and 68; R.F. Sadowski, *Filozoficzny spór o rolę chrześcijaństwa w kwestii ekologicznej*, Warsaw 2015, pp. 104–111; M. Łuszczynska, *Czyńcie sobie Ziemię poddaną – ekologiczne dylematy w nauczaniu społecznym Kościoła katolickiego*, Lublin 2021, *passim*.

35 A. Brezcko, *Od rzeczy do podmiotu. Praktyczne implikacje etyki ochrony zwierząt*, „*Białostockie Studia Prawnicze*” 2013, vol. 14, p. 19ff.

36 P. Singer, *Wyzwolenie zwierząt*, Warsaw 2018, p. 61ff.

37 *Ibidem*, p. 72ff.

the circle of our moral community and reject the view that we are allowed to sacrifice their lives to the most trivial purposes.<sup>38</sup> Singer points to medical experiments on animals and industrial animal breeding as the most important manifestations of speciesism. Both of these forms of animal exploitation lead to the suffering of a larger number of animals than other human practices. According to Singer, to eliminate them, we must change the policy of our governments and our customs to the same extent as our diet. If we could eliminate the officially supported and most commonly accepted forms of speciesism, the liquidation of other forms would only be a matter of time.<sup>39</sup>

Much more radical in his views is Tom Regan, who is one of the best-known advocates of animal rights. In his view, the moral value of an animal is objective and in any case is not conditioned by its usefulness to humans. Consequently, in their dealings with animals, humans should be guided by the same moral principles as in human relations. In Regan's opinion, animals have the same rights as humans as regards fundamental questions such as the protection of life. Recognition of these rights should result in a total, uncompromising ban on the use of animals. This applies equally to all possible ways of exploiting them (scientific experiments, food production, sport, etc.). Animals are not a resource that humans can use in any way they wish.<sup>40</sup> Regan clearly condemns such objectification of animals and refers to all manifestations of it as 'absolute injustice', 'barbarism', 'despotic discrimination', 'evil'. This author also argues that reforming the injustice is only extending it.<sup>41</sup> This is why, for example, he does not demand humane treatment of farm animals but a 'complete end to all commerce in the flesh of dead animals'. Moreover, Regan refers to facts to strengthen his arguments, pointing out that about 5 billion animals are bred and killed every year in the USA alone. In his view, this situation will change when the animal rights philosophy prevails. For this to happen, people need to change their beliefs and then their habits, in particular their eating habits.

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38 *Ibidem*, p. 75.

39 *Ibidem*, p. 79. See also: T. Turowski, *Zmierzch antropocentryzmu w perspektywie etyki nowej* Petera Singera, Krakow 2019, p. 13ff.; U. Zarosa, *Status moralny zwierząt*, Warsaw 2016, pp. 76–86; D. Malinowski, *Problematyka podmiotowości prawnej zwierząt na przykładzie koncepcji utylitaryzmu Petera Singera*, „Przegląd Prawa Ochrony Środowiska” 2014, no. 2, pp. 185–221.

40 T. Regan, *The Case for Animal Rights*, (in:) M.W. Fox and L.D. Mickley (eds.), *Advances in Animal Welfare Science 1986/87*, Dordrecht 1987, p. 179.

41 T. Regan, *Filozofia praw zwierząt*, (in:) W. Owczarz (ed.), *Antologia praw zwierząt*, Bielsko-Biała 1995, p. 82. See also: D. Probuca, *Prawa zwierząt*, Krakow 2015, pp. 107–174; D. Gzyra, *Teoria praw zwierząt Toma Regana*, (in:) T. Gardocka and A. Gruszczyńska (eds.), *Status zwierzęcia. Zagadnienia filozoficzne i prawne*, Toruń 2012, pp. 45–60.

#### 4. Public Reception

The presentation of the title issue also requires a reference to the question of the perception of problems related to the industrial breeding of animals. However, the presentation of the findings made in this respect should be preceded by general comments on the level of public awareness of the need for animal protection.<sup>42</sup> This is all the more important because people still show different, often extreme, attitudes towards animals – from reification to personification. Fortunately, however, the awareness of Poles in this area is quite high. This is confirmed by the results of surveys conducted by Centrum Badań Opinii Społecznej (CBOS). In the communication of a survey carried out in August 2018, this foundation pointed out that the vast majority of the respondents (79%) believed that all animals feel pain in the same way as humans. About one in eight (12%) believed that some animals feel pain just as much as humans do, and some feel less. Few (2%) said all animals suffer less pain than humans do.<sup>43</sup> However, it turns out that awareness of the suffering of animals does not translate simply into respondents' views on the admissibility of the use of animals for different purposes or into consumer attitudes. For example, 46% of those surveyed believed that keeping animals in zoos is mostly appropriate; 33% of those surveyed believed that testing human medicines on animals is mostly appropriate; 15% believed that animal testing of cosmetics and cleaning products is mostly appropriate. As regards the attitude of respondents towards animal breeding, 48% believed that animals should be reared in both industrial and organic farms, so that people have the choice of from what type of farming and at what price they want to buy food; 42% believed that all animals should be reared in an organic way, as animal breeding conditions are more important than the price of food products; 5% believed that industrial animal breeding should be widespread so as to make food products as cheap as possible. In this context, the findings on the motives for purchasing decisions are particularly interesting. It turns out that only 7% of Poles were concerned with the issue of animal testing when purchasing cosmetics and cleaning products. The situation is definitely better when it comes to buying eggs; in this case, 35% of the respondents declared that, when purchasing eggs, they pay attention to the conditions under which the hens are reared. It is also worth noting that the importance for consumers of whether eggs come from cage rearing or other systems (organic, free-range, barn rearing) increased almost threefold (i.e. from 13%

42 See for example H. Mamzer, *Polacy wobec cierpienia zwierząt*, „Życie Weterynaryjne” 2017, no. 11, pp. 796–798.

43 Since 1996, the opinions of those surveyed about the pain suffered by animals have not significantly changed. As before, currently about 80% of the respondents think that animals feel pain in the same way as humans. Other indications remain at the same level. Cf. *Postawy wobec zwierząt. Komunikat z badań CBOS (BS/79/2013)*, Warsaw 2013, p. 1ff.; *Postawy wobec zwierząt. Komunikat z badań CBOS (No. 112/2018)*, Warsaw 2018, p. 1ff.

to 35%) in the period 2006–2018.<sup>44</sup> The CBOS survey respondents were also asked about the environmental impact of industrial rearing. As regards this issue, 34% of respondents did not have a firm opinion on the subject; 31% believed that industrial livestock rearing can have a negative impact on the environment (including through high greenhouse gas emissions); 25% believed that industrial livestock rearing has little impact on the environment; and 10% believed that this type of livestock rearing has no impact on the environment whatsoever.<sup>45</sup>

Focusing on the problem of industrial rearing, it is also worth citing the results of a survey carried out in the first half of 2019 by Centrum Badawczo-Rozwojowe BioStat on a representative sample of adult Poles. The survey showed that 48.5% of respondents were against industrial farms, while 37% were in favour of this model of animal production. At the same time, 72.1% of those surveyed believed that chickens reared on industrial farms suffer from the high concentration of animals; 73.1% of respondents believed that breeding and killing animals for their fur should not be allowed in Poland.<sup>46</sup> As it turns out, Poles are largely aware of the health and environmental risks associated with the operation of industrial farms, but do not realize the scale of the phenomenon. Despite associating industrial breeding with high animal density, when answering the question about the maximum allowable stocking density a large proportion of respondents indicated very low values compared to reality. For example, as many as 25.6% of respondents believed that up to 350 chickens should be kept on farms, while currently even up to 1 million chickens are kept on some farms.<sup>47</sup>

## Final Remarks

To prevent changes turning agriculture into an industry that is more and more cruel for animals, we need a profound modification of law. Unfortunately, the regulations currently in force which set out the livestock welfare standards are in fact an expression of political clientelism rather than concern for animals. This

44 *Ibidem*, pp. 2–11.

45 *Ibidem*, p. 11.

46 A nationwide trend of public support for the ban on fur farming is also apparent in those municipalities in which many fur farms are located. The factors influencing the opinion of the local communities in this regard include characteristics of the settlement grid, the nuisance of farms to the social and natural environments, the importance of farming to the local economy and the labour market, and the awareness of respondents that farm animals are suffering. See: Mieszkańcy wobec ferm zwierząt futerkowych, Raport z badań w gminach Czarniejewo, Koźmin Wielkopolski i Nowogard, Zachodni Ośrodek Badań Społecznych i Ekonomicznych, *passim*. Cf. M. Michalak and P. Cholewińska, Znaczenie hodowli zwierząt futerkowych w Polsce, „Wiadomości Zootechniczne” 2018, no. 3, pp. 199–202.

47 Sprzeciw społeczny wobec ferm przemysłowych, Raport Koalicji Społecznej Stop Fermom Przemysłowym, 2021, p. 35ff.

is manifested, inter alia, in the protection of the economic interests of certain industries and professional groups, as well as in a willingness to recognize the right of religious minorities to behave contrary to universal norms resulting from human moral development. There is no doubt that the first step to be taken on this path is a radical tightening of the requirements for the living conditions for all species of livestock, a complete ban on breeding animals for fur and a complete ban on killing animals without first rendering them unconscious. The fact that this is possible is best demonstrated by the examples of other countries, such as Great Britain, which banned fur farming in 2000, or Sweden, where ritual slaughter was banned in 1937. The legislature should act with the same resoluteness in this matter as in the case of the technique of forced waterfowl fattening for a fatty liver, which has been prohibited in Poland since 1 January 1999.<sup>48</sup> It is necessary because we are currently facing the greatest ecological crisis in the history of human kind. There is no more time for half-measures, and a profound change is needed in the decades-long models of production and consumption. We must realize that true progress is of a moral nature. This means that it must be done with full respect for the human person and the world of nature. A warning and a guideline in this regard may be the words of Pope Paul VI, who in 1970 spoke about the dire effects of ‘industrial civilization’, emphasizing the urgent need for a radical change in human behaviour because ‘the most extraordinary scientific progress, the most astounding technical feats and the most amazing economic growth, unless accompanied by authentic moral and social progress, will in the long run go against man.’<sup>49</sup>

There is no doubt that the inherent conflict of interests between animal production and the demands of environmental ethics can only be solved in one manner, i.e. by appropriate regulation of human obligations towards animals and liability for non-compliance with these obligations. The development of ethical (philosophical) reflection in this area is of paramount importance, but it is the role of positive law to give a real dimension to the idea of the humane protection of animals by ensuring its implementation.<sup>50</sup> This entails many difficulties. Above all, the development of civilization (including technological progress) is bringing about new moral dilemmas which need to be resolved. However, we do not have a single ethical foundation on which we can base such decisions. On the contrary, with increasing social and cultural diversity, the situation of lawmakers and entities which apply law

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48 See: J. Książkiewicz, Historia tuczu przymusowego drobiu wodnego na stłuszczone wątroby – aspekty badawcze i technologiczne, „Wiadomości Zootechniczne” 2006, no. 3, pp. 82–87.

49 Visit of Pope Paul VI to the FAO on the 25th anniversary of its institution, Monday, 16 November 1970, paragraph 4, [http://www.vatican.va/content/paul-vi/en/speeches/1970/documents/hf\\_p-vi\\_spe\\_19701116\\_xxv-istituzione-fao.html](http://www.vatican.va/content/paul-vi/en/speeches/1970/documents/hf_p-vi_spe_19701116_xxv-istituzione-fao.html) (accessed 19.04.2021).

50 A. Marek-Bieniasz, Zaranie, rozwój oraz perspektywy etyki środowiskowej – wybrane zagadnienia, „Studia Ecologiae et Bioethicae” 2014, no. 1, pp. 59–69; T. Przesławski, Rola etyki w systemie prawnym, „Profilaktyka Społeczna i Resocjalizacja” 2015, no. 28, pp. 37–48.



becomes more and more complicated, and these entities should, after all, take into account the varying interests and values of different social groups. Of course, it seems unlikely that legal solutions could be found that would correspond to the moral views of all members of society.<sup>51</sup> Regardless of this, there is no other way than to seek and invoke universal values such as life or freedom from suffering.

As a conclusion, it should also be noted that any attempt to assess the degree of the development of public morality in the field of animal protection cannot be disconnected from basic legal decisions, especially those of an ideological nature. This is so because, as rightly pointed out by T. Pietrzykowski, such regulations 'may be regarded as the expression of a certain public moral consensus'.<sup>52</sup> The best examples of this are Article 1 and Article 5 APA, which implement the principle of the dereification of animals and the requirement for their humane treatment. One should also agree with the view that the axiological foundations of the legal system are usually the 'clearest expression of public acceptance of certain values or principles'.<sup>53</sup> This does not mean that only law expresses it. Besides, in certain situations, e.g. due to the evolution of standards of public morality, positive law may contradict the moral order, which may lead to various social conflicts. Finally, it is also worth keeping in mind that the mere adoption of a law does not guarantee that the law will be observed. For this to happen, it is necessary, *inter alia*, to develop a moral culture in society, manifested in moral awareness and the ability to implement the applicable moral norms and values.<sup>54</sup>

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51 Cf. for example A. Elżanowski, Polskie problemy ochrony zwierząt, [http://boz.org.pl/art/polskie\\_problemy.htm](http://boz.org.pl/art/polskie_problemy.htm) (accessed 29.06.2021); S. Mroczkowski, Ochrona zwierząt w świetle prawa i etyki, "Przegląd Hodowlany" 2017, no. 1, pp. 4–6; D. Arney and P. Piirsalu, The Ethics of Keeping Fur Animals: The Estonian Context, "Proceedings of the Latvian Academy of Sciences" 2017, no. 1–2, pp. 78–80.

52 T. Pietrzykowski, Moralność publiczna a konstytucyjne podstawy ochrony zwierząt, 'Studia Prawnicze' 2019, no. 1, p. 18.

53 *Ibidem*, p. 17.

54 B. Wrona, Pomiędzy racjonalizmem a sentymentalizmem. Rozważania dotyczące norm etycznych odnośnie zwierząt, 'Zeszyty Naukowe Towarzystwa Doktorantów Uniwersytetu Jagiellońskiego' 2011, no. 1, p. 85 and the literature referred to therein.

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