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The Legal Protection of Wild Animals in the Context of Contemporary Challenges with Particular Emphasis on Global Conditions: Selected Issues

Prawna ochrona dzikich zwierząt w kontekście współczesnych wyzwań ze szczególnym uwzględnieniem uwarunkowań globalnych. Zagadnienia wybrane

ABSTRACT

The article is of a research nature and has been prepared using methods appropriate for this type of publication. Obviously, the formal-dogmatic or legal-comparative method is important in this respect. However, the observation of the actual state related to the implementation of the protection in question is also not without significance. Such an approach is reflected in the adopted aim and formulated research theses. The subject matter of the article is very important from the point of view of the protection of the environment and natural resources, of which the animal world is an important element. The publication concerns issues of international importance and is undoubtedly original in character, which makes it valuable not only for scholarship but also for practice. The protection of animals is connected with saving the environment and the order in which humans live. Therefore, humanitarian and ethical considerations – reflected in legal scholarship and in normative acts – should also be taken into account. This is expressed in Article 1 (1) of the Polish Act of 21 August 1997 on the protection of animals (consolidated text, Journal of Laws 2020, item 638), which states that: "An animal as a living being capable of suffering, is not a thing. Humans owe him respect, protection and care". Such an obligation in Poland also results from the Constitution of the Republic of Poland. Undoubtedly, a very important element in the protection of animals is the development of an appropriate system of national law and international law. Their coexistence is a guarantee of effective legal protection of animals, especially those threatened with extinction. For an optimal model of law in the field of

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animal protection to be formed, it is important to shape an effective system of authorities, services and institutions equipped with rational instruments for action. Effective supranational cooperation seems essential to optimise activities to save animals threatened with extinction.

Keywords: national law; international law; animal protection; wild animals; protection of the environment

INTRODUCTION

The basic aim of the discussion contained in this article is to identify and signal the key determinants of the legal protection of animals, especially wild animals, and to draw attention to the fact that the protection of the environment and natural resources must take into account such protection not only in the context of species protection, but also from the perspective of individual specimens. In this perspective, there is a need to answer the question whether we can talk about rights of wild animals or only about their legal protection. Furthermore, it is necessary to specify in detail those elements which constitute the axiological basis for shaping the relevant regulations and to analyse them in depth. There is no unanimity in this area, therefore not only various international conventions but also national legal systems in various countries of the world are interpreted in a questionable manner. This state of affairs leads to a kind of degradation of the animal environment, which is reflected in the ever-increasing number of animals threatened with extinction. This also concerns animals living on the African continent, which are a kind of gem of the animal world. If it is not possible to create effective instruments for their legal and actual protection of then, they may not exist in a few years. I would therefore like to draw attention to problems that are rarely discussed, although very important, which relate to debates in Latin culture, and there is more to this than just referring to the literature of St. Francis of Assisi, rich in the messages concerning the natural order.

When analysing the above-mentioned problem, not only the formal-dogmatic method, characteristic for this type of legal considerations, was used, but also the legal-comparative method and the historical method. The article also includes descriptive references to the researched reality, connected with personal contacts, experiences and observations of the author of this publication, which are a consequence of his expeditions to many countries of Africa, South America, Asia, Australia, etc. The choice of methods and their application are determined by the specific nature of the subject. It would be an oversimplification to reduce the protection of wild animals solely to an analysis of international and national legal regulations, without taking into account their functioning in practice and contemporary challenges and conditions. The multiplication of legal regulations does not always lead to a more complete – utilitarian or humane – species protection.

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The clarification of the term "wild animals" is undoubtedly important in this context. This is important if only because of the need to define a list of animals subject to species protection. For this article, it has been assumed that the term means non-domesticated animals living in conditions independent of humans. Of course, such a definition is subject to a certain degree of relativity, it is of a conventional character.

In order to adopt an optimal formula for the protection of wild animals, it is important to form the axiological foundations of such protection. It is not enough to look at this problem only from the point of view of species protection or utilitarian protection, although these are exceptionally important. What is also needed here is a certain humanistic sensitivity and understanding of and due respect for the biological order prevailing in the natural world. It is not without reason that the views of St. Francis and the fundamental theses of Latin culture. It is not without reason that the views of St. Francis and the fundamental theses of Latin culture were invoked. When speaking of the axiological foundations of animal protection, attention is usually drawn to the various values that form the basis for the various activities in this area. However, it should be remembered that they should be presented in a proper relation which will lead to a necessary axiological universalisation in this matter. A detailed analysis is not possible in a short article, therefore the author is in a way obliged to make a selection and synthesis of basic theses.

THE PROBLEM OF HUMAN COEXISTENCE WITH NATURE (THE ANIMAL WORLD) IN THE CONTEXT OF AXIOLOGICAL CONDITIONS AND ST. FRANCIS AS THE PATRON SAINT OF ANIMAL PROTECTION

The most optimistic assumption of the modern world is the harmony of its basic elements, or even all of them, forming a specific whole and the conviction that they form an element of the universal order. Its idealistic essence was expressed by St. Francis of Assisi, at the moment of his mystical ecstasy. In his *Canticle of Creation*,[1] he wrote: "Be praised my Lord, for all your creation. […] Be praised my Lord for Sister Earth our Mother, who nourishes us and sustains, bringing forth fruits and vegetables of many kinds and flowers of many colours […]".[2] In the article *A Saint Who Talked to Birds and Greeted Flowers* (Pol. *Święty, który rozmawiał z ptakami i pozdrawiał kwiaty*) M. Lewandowski wrote: "St. Francis

[1] According to the edition *Kwiatki świętego Franciszka z Asyżu*, transl. L. Staff, Warszawa 1978, p. 19, 46–48, 55–57 (reprinted in: *Zrozumieć średniowiecze*, comp. R. Mazurkiewicz, Tarnów 1994, p. 19).

[2] Św. Franciszek, *Pochwała Stworzenia*, www.swietostworzenia.pl/czytelnia/ekologia-franciszkanska/69-sw-franciszka-pochwala-stworzenia [access: 19.04.2021].

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was not an infantile dreamer who loved animals more than people. He had his feet on the ground and believed that animals and plants not only serve man, but are a reflection of Him who created them".[3]

It seems that very often the discourse on animal rights misunderstands both the contents of the Old Testament (especially the Book of Genesis) and the philosophy of thought of St. Francis. It is not noticed that the problem of global order, seen in universal terms, is an important point of reference not only for the metaphysical understanding of natural reality. It does not always involve a detailed definition of the relationship of individual beings, including the human–animal relationship. This is demonstrated by the fact that, despite his great respect for animals, St. Francis of Assisi did not become a vegetarian or a vegan. However, he became a symbol of human respect for animals and plants. And undoubtedly like no one else, not only in the opinion of Christians, he became a symbol of the protection of animals, and also of the whole world. Hence, by a decision (act) of John Paul II in 1979, he was proclaimed the patron saint of ecologists and ecology, and October 4, "being the liturgical commemoration of the death of St. Francis", was proclaimed the World Animal Day.

With this in mind, St. John Paul II, in his Encyclical *Sollicitudo Rei Socialis*, stressed that:

> […] the moral character of development exclude respect for the beings which constitute the natural world, which the ancient Greeks – alluding precisely to the order which distinguishes it – called the "cosmos". […] one cannot use with impunity the different categories of beings, whether living or inanimate – animals, plants, the natural elements – simply as one wishes, according to one's own economic needs. On the contrary, one must take into account the nature of each being and of its mutual connection in an ordered system, which is precisely the cosmos. […] The limitation imposed from the beginning by the Creator himself and expressed symbolically by the prohibition not to "eat of the fruit of the tree" (cf. Gen 2:16–17) shows clearly enough that, when it comes to the natural world, we are subject not only to biological laws but also to moral ones, which cannot be violated with impunity.[4]

NORMATIVE DILEMMAS RELATED TO ANIMAL PROTECTION

Centuries of disputes concerning the protection of animals have also been reflected in various normative acts. First acts giving legal protection to animals in England were introduced under O. Cromwell. Over the centuries, however, a debate continued about animal rights and the legal protection of animals, concepts that are undoubtedly not identical, but which are sometimes equated with one another.

[3] As cited in M. Kowalski, *Święty, który rozmawiał z ptakami i pozdrawiał kwiaty*, https://deon.pl/wiara/swiety-ktory-rozmawial-z-ptakami-i-pozdrawial-kwiaty,495228 [access: 19.04.2021].

[4] Ioannes Paulus PP. II, *Sollicitudo Rei Socialis*, www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html [access: 19.04.2021].

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The range of opinions in this respect varied widely over the centuries, from the total reification of animals to the recognition that they should have rights like humans, including the right to vote. There was a particular absurdity in this area during the Nazi era, when experiments on animals were considered unacceptable if they involved their suffering, while experiments on humans were considered acceptable. Their cruelty is particularly evident in the experiments carried out in Ravensbrück, Auschwitz and other German extermination camps. A vivid testimony of these experiments can be found, e.g., in the book by W. Półtawska (a Polish doctor and friend of John Paul II) entitled *And I Am Afraid Of My Dreams* (Pol. *I boję się snów*).[5]

The problem of animal protection (in some cases animal rights), including wild animals, has been addressed in many old and contemporary works. It has been analysed by, i.a., St. Thomas Aquinas, *Summa Theologiae*, 2–2, Question 64, Article 1; R. Ryder, *Animal Revolution: Changing Attitudes Towards Speciesism*, Berg 2000, p. 17 ff.; E.A. Parry, *The Law and the Poor*, London 2004, p. 2; B. Sax, *Animals in the Third Reich: Pets, Scapegoats, and the Holocaust*, Mount Vernon 2000, p. 35; S. Peer, *Etyka praktyczna*, Warszawa 2007, p. 70 ff.; P. Singer, *Animal Liberation*, New York 1990, p. 5; G.L. Francione, *The Great Ape Project: Not so Great*, www.abolitionistapproach.com/the-great-ape-project-not-so-great [access: 19.04.2021]; M. Kulik, M. Mozgawa, *Zbieg przepisu art. 35 ustawy o ochronie zwierząt z przepisami typizującymi uszkodzenie rzeczy*, "Prokuratura i Prawo" 2011, no. 6, p. 7; G.L. Francione, R. Garner, *The Animal Rights Debate: Abolition or Regulation?*, New York 2010, p. 74; T. Pietrzykowski, *Spór o prawa zwierząt*, Katowice 2007, p. 54, etc. In addition to the publications already mentioned, other studies comprising the body of Polish legal knowledge were also important. It has addressed a number of important issues that point to the essence of animal protection law and fundamental questions of normative and axiological dimensions.[6]

[5] W. Półtawska, *I boję się snów*, Częstochowa 1998.

[6] The following publications are worth mentioning here: J. Białocerkiewicz, *Status prawny zwierząt. Prawa zwierząt czy prawna ochrona zwierząt*, Toruń 2005; M. Brzostek, J. Chojnacki, T. Kaleta, *Ekofilozofia. Wybór tekstów*, Warszawa 1998; Z. Bukowski, *Prawo międzynarodowe a ochrona środowiska*, Toruń 2005; J.M. Coetzee, *Żywoty zwierząt*, Warszawa 2004; B. Ferens, *Nad Światową Deklaracją Praw Zwierzęcia*, "Chrońmy Przyrodę Ojczystą" 1986, no. 2; M. Fikus, J. Nurkowska, *Czy eksperymentować na zwierzętach*, "Wiedza i Życie" 1998, no. 1; M. Gabriel-Węglowski, *Przestępstwa przeciwko humanitarnej ochronie zwierząt*, Toruń 2008; P. Highsmith, *Księga zemsty dla miłośników zwierząt*, Warszawa 2008; F. Koneczny, *Prawa przyrody a ducha*, Krzeszowice 2005; B. Kurzępa, *Ochrona zwierząt. Przepisy, piśmiennictwo*, Bielsko-Biała 1999; *Ochrona zwierząt. Łowiectwo. Ochrona przyrody. Organizmy genetycznie zmodyfikowane. Przepisy i orzecznictwo*, ed. B. Kurzępa, Toruń 2003; T. Liszcz, *Zwierzęta w prawie stanowionym*, "Więź" 1998, no. 7; E. Łętowska, *Dwa cywilnoprawne aspekty praw zwierząt: dereifikacja i personifikacja*, [in:] *Studia z prawa prywatnego. Księga pamiątkowa ku czci Profesor Biruty Lewaszkiewicz-Petrykowskiej*, eds. A. Szpunar, W.J. Katner, T. Pajor, M. Pyziak-Szafnicka, U. Promińska, E. Wojnicka, Łódź 1997; *Prawna ochrona zwierząt*, ed. M. Mozgawa, Lublin 2002; T. Pietrzykowski, *Spór o prawa zwierząt*, Katowice 2007; A. Przyborowska-Klimczak, *Ochrona przyrody. Studium prawnomiędzynarodowe*, Lublin 2004; W. Radecki, *Ustawa o ochronie*

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The issue of the protection of wild animals was raised as early as in the times of Bolesław the Brave (he ordered the protection of beavers), in the Statutes of Warka adopted by Władysław Jagiełło (protection of wild boars, elks and deer) and in the Statutes of Lithuania adopted by Sigismund I, in which the protection of European bison in the Białowieża Forest was decreed. During the period of rapid decline in the population of aurochs at the end of the 16th century, an attempt was made to save them from extinction.[7]

The first fairly comprehensive regulation on this issue was the Regulation of the President of the Republic of Poland of 22 March 1928 on the protection of animals,[8] which regulated, i.a., the abuse of animals and the possibility of carrying out various types of experiments. This law survived until the second half of the 1990s, when the Act of 21 August 1997 on the protection of animals was passed.[9] It refers to and implements a number of EU directives. Of fundamental importance in this Act is Article 1, which creates the axiological basis for the protection of animals, pointing out that "An animal, as a living being capable of suffering, is not a thing" (Article 1 (1) of the Act). Article 3 (1) of the Act imposes on public administration (governmental and self-governmental) bodies the obligation to undertake relevant activities aimed at such protection and, significantly, also tasks related to cooperation with other national and international entities which may increase the effectiveness of relevant activities. Certain problems in this respect may be caused by the proper understanding of Article 1 (2), which states that "in matters not regulated by this Act, the provisions concerning animals shall apply accordingly". Such a formulation, although legitimate, may give rise to various controversies, the resolution of which requires a proper interpretation of the law and an appropriate sense of the law, because these issues are not simple and obvious.

Undoubtedly, also with regard to the protection of wild animals, relevant provisions of the Constitution of the Republic of Poland are important, in particular Article 68 (4) and Article 74 (1) and (2), in the light of which it is primarily the duty of the State and its authorities to "prevent negative […] effects of environmental degradation" and the task of taking care of the "ecological security".[10]

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zwierząt, Wrocław 2003; T. Regan, *Prawa i krzywda zwierząt*, "Etyka" 1980, no. 18; J. Reichel, *Małpa przed sądem. O etyce środowiskowej słów kilka*, "Dzikie Życia" 1999, no. 10/64; G. Rejman, *Ochrona prawna zwierząt*, "Studia Iuridica" 2006, vol. 46; J. Serpell, *W towarzystwie zwierząt. Analiza związków ludzie – zwierzęta*, Warszawa 1999; P. Singer, *Wyzwolenie zwierząt*, Warszawa 2004; D.B. Wetter, *Zwierzęta. Zagrożone gatunki*, Zielona Góra 2000.

[7] See more B. Klimekz, *Przemoc wobec zwierząt i prawna ochrona zwierząt w Polsce*, "Życie Weterynaryjne" 2018, no. 93, p. 608.

[8] Journal of Laws 1928, no. 36, item 332, as amended.

[9] Consolidated text, Journal of Laws 2020, item 638.

[10] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.08.2021]

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INTERNATIONAL CONVENTIONS AND AGREEMENTS

There is no doubt that the international conventions and agreements adopted to date are very important for the protection of animals. Thanks to such acts of international law, it has become possible to achieve such achievements facilitating animal protection as: 1) the inclusion in the process of protection of countries which have not always satisfactorily resolved these problems within the framework of their national legal system; 2) the countries which have signed and ratified such acts have, to a greater or lesser extent, joined the process of shaping global legal order in this matter (as they have become both obliging and obligated states); 3) such a process has led to more effective combating of pathological phenomena (illegal hunting, poaching, etc.); 4) they have made it possible to cooperate within the field of effective implementation of the law and its enforcement.

The most important agreements, conventions and accords in the sphere of the protection of wild animals include:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora drawn up in Washington on 3 March 1973 (so-called Convention CITES),[11]
- Convention on Biological Diversity, drawn up in Rio de Janeiro on 5 June 1992,[12]
- Convention on the Conservation of European Wildlife and Natural Habitats, drawn up in Bern on 19 September 1979,[13]
- Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted at the General Conference of the United Nations Educational, Scientific and Cultural Organisation meeting in Paris from 17 October to 21 November 1972, at its 17th session,[14]
- Convention on the Conservation of Migratory Species of Wild Animals, drawn up in Bonn on 23 June 1979[15] (CMS),
- Convention on Wetlands of International Importance especially as Waterfowl Habitat, drawn up in Ramsar on 2 February 1971.[16]

[11] Journal of Laws 1991, no. 27, item 112.
[12] Journal of Laws 2002, no. 184, item 1532.
[13] Journal of Laws 1996, no. 58, item 263.
[14] Journal of Laws 1976, no. 32, item 190.
[15] Journal of Laws 2003, no. 2, item 17.
[16] Journal of Laws 1978, no. 7, item 24.

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UNIVERSAL DECLARATION OF ANIMAL RIGHTS

What undoubtedly requires a separate discussion is the Universal Declaration of Animal Rights, adopted by UNESCO on 15 October 1978 in Paris, which constitutes a kind of moral and humanitarian manifesto appealing to societies and legislators concerning the protection of animals, including wild animals. The fact that the text was drawn up in 1977 by the International League for Animal Rights is of little significance here. The fact is that, thanks to the UNESCO resolution, it has gained in importance and has been disseminated more effectively. The Declaration is not a universally binding normative act, but it is a very clear appeal to contemporary societies and the relevant state bodies and supranational organisations. In view of its contents, it is appropriate here to cite its most important messages. Already in the introduction of this Declaration, it is pointed out that: "Whereas all animals have rights; Whereas disregard and contempt for the rights of animals have resulted and continue to result in crimes by man against nature and against animals; Whereas recognition by the human species of the right to existence of other animal species is the foundation of the co-existence of species throughout the animal world; Whereas genocide has been perpetrated by man on animals and the threat of genocide continues; Whereas respect for animals is linked to the respect of man for men; Whereas from childhood man should be taught to observe, understand, respect and love animals".[17]

Of key significance in the Universal Declaration of Animal Rights is the content of Article 3, according to which: "a) No animal shall be ill-treated or shall be subject to cruel acts; b) If an animal has to be killed, this must be instantaneous and without distress".

Attention should also be drawn to Article 4, which emphasises that: "All wild animals have the right to liberty in their natural environment, whether land, air or water, and should be allowed to procreate. Deprivation of freedom, even for educational purposes, is an infringement of this right".[18]

A specific consequence of the reasoning adopted in the Declaration is that it adopts several important conclusions.

Firstly, acknowledging that "Any act involving the wanton killing of an animal is biocide, that is, a crime against life" (Article 11).

Secondly, adopting the thesis that "Any act involving mass killing of wild animals is genocide, that is, a crime against the species" (Article 12 letter a).

Thirdly, "Dead animals shall be treated with respect" (Article 13 letter a). This problem is particularly important in the context of poaching and hunting of certain animals whose populations are declining at an alarming rate. The killing of these animals could lead to the extinction of some of them, including rhinoceroses, ele-

[17] Światowa Deklaracja Praw Zwierząt uchwalona przez UNESCO 15 października 1978 r. w Paryżu, http://niechcianeizapomniane.org/swiatowa-deklaracja-praw-zwierzat [access: 19.04.2021].

[18] *Ibidem*.

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phants, giraffes, lions, leopards, cheetahs and even some species of the antelope. Their killing or mutilation leading to death is carried out with particular cruelty. Inhumane behaviour is triggered by the desire to obtain enormous material benefits from horns of rhinoceroses, ivory or wild animal furs.

Fourthly, "Scenes of violence involving animals shall be banned from cinema and television, except for humane education" (Article 13 letter b). What seems repulsive are scenes of the murder of lions, rhinoceroses and buffaloes presented in films, in which individuals committing these acts are presented as heroes and brawny men, with faces unmarked by thought, proudly show themselves on the corpse of a killed animal in photographs taken during a bloody safari.

Fifthly, according to Article 12 letter b of the Declaration "Pollution or destruction of the natural environment leads to genocide". One example of this is the extinction of hippopotamuses in Lake Naivasha in Kenya, where there was the largest concentration of them. They became extinct as a result of the development of land near the lake by Dutch flower growers, which involved lethal fertilisation and spraying.

This Declaration, as well as national regulations and various international conventions, decisions and declarations, should result in a transparent, clear and effective system of legal regulation. There are a number of doubts as to whether it actually exists.

Firstly, the Universal Declaration of Animal Rights, which is the best expression of the essence of animal protection, is not an act of universally binding law, but merely a declaration of will, a proposal, an intention expressed in an appropriate form by an institution very high up in the world hierarchy. The conviction that it is sufficient to adequately shape national legislation seems overly optimistic.

Secondly, contemporary legal solutions very rarely take into account the different social and economic conditions at present, and also the need to adapt measures and actions to the challenges posed by organised crime involving the killing or mutilation of animals, whose individual organs and body parts are becoming an object of profitable international trade, often more profitable than the trade in gold, drugs or psychotropic substances. This is particularly true of powder created from the horns of rhinoceroses, which is sold as an aphrodisiac to Asian countries, mainly China.

Thirdly, effective protection in the countries where it seems to be most needed, i.e. in many African countries, poaching is becoming a significant problem. Very often, it is difficult to combat poaching effectively, due to the fact that national park administrations and rangers are not supported by the state (state services, police or administration). This concerns countries such as Zimbabwe, Sudan, Chad, Uganda, Gabon, Nigeria, Cameroon and even Namibia, Botswana, Kenya and Tanzania. The Mugabe dictatorship in Zimbabwe is particularly notorious. The problem of the fight against armed gangs and poachers of black rhinoceros and elephants is illustrated in one of the books by T. Michniewicz.[19]

[19] T. Michniewicz, *Gorączka w świecie poszukiwaczy skarbów*, Kraków 2011.

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Fourthly, the promotion of bloody safaris and hunting tourism in many countries with a rich tradition of animal protection seems inexplicable. This also applies to Poland. It is surprising that when such hunting is promoted, the possibility of fulfilling a wide range of expectations is clearly emphasised, while at the same time mentioning the ethical dimension of such hunting. It does not seem possible to talk about an ethical dimension when one has in mind the killing of other living beings (animals) for one's own pleasure and to satisfy the vanity of people with limited sensitivity and considerable financial resources.

One should agree with the opinion of T. Kotarbiński, who emphasised that:

> The desire to hunt is a natural, legitimate hunting instinct, a relic from the times when man was a component of the jungle and its laws were reflected in his behaviour. Killing in this environment, which was natural to man was not an end in itself, but a source of life and a means of survival. It is a natural human behaviour.[20]

And today a young man marches not into the jungle but into a suburban forest for a very different purpose. He does not hunt to provide for himself and his family, but wants on whim to shoot at frightened, herded animals. Such behaviour should be classified as a criminal offense.

Fifthly, it seems saddening that for many people the argument for killing animals is supposedly based on a passage from the Book of Genesis (On the Origin of the World and Man 1:1–11:9) which states: "Then God said, Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground".[21] Such an approach when relating the whole Bible to not only the public good and order, but also the natural order, testifies to the exceptional hypocrisy of those who, without bothering to study the Bible, formulate judgements that contradict it and thus try to justify inhumane behaviour. The Catholic Church, Christianity and also the other monotheistic religions see the world in terms of an order seen in the context not only of the relationship between man and God or between people, but also of the relationship between man and animals and the whole natural world.[22] This is why World Animal Day, which is celebrated on October 4, falls on the liturgical day of the commemoration of the death of St. Francis of Assisi, whom not only Christians but the whole world regards as a symbol of natural wellbeing understood in terms of the natural order, of

[20] As cited in B. Wrona, *Pomiędzy racjonalizmem, a sentymentalizmem. Rozważania dotyczące norm etycznych odnośnie zwierząt*, "Zeszyty Naukowe Towarzystwa Doktorantów UJ. Nauki Humanistyczne" 2011, no. 2, pp. 77–86.

[21] *The Bible. Genesis 1*, www.biblestudytools.com/genesis/1.html [access: 19.04.2021].

[22] M. Łuszczyńska, *The Issue of Environmental Protection in the Doctrine of the Catholic Church*, "Studia Iuridica Lublinensia" 2020, vol. 29(4), pp. 165–176.

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which not only humans, but also animals, plants, etc. are essential elements. The idealistic, mystical and metaphysical Manifesto that expresses the essence of this order is the *Canticle of Creation* that comes from St. Francis of Assisi.[23]

It is also important that the Catechism of the Catholic Church clearly states that "Animals are God's creatures. He surrounds them with his providential care (cf. Mt 6:26). By their mere existence, they bless him and give him glory (cf. Dan 3:79–81). Thus men owe them kindness. We should recall the gentleness with which saints like St. Francis of Assisi or St. Philip Neri treated animals" (Catechism of the Catholic Church 2416). And Pope Francis, in his encyclical *Laudato si'* – dedicated to the care of our common home, the Earth – writes:

> It follows that our indifference or cruelty towards fellow creatures of this world sooner or later affects the treatment we mete out to other human beings. We have only one heart, and the same wretchedness which leads us to mistreat an animal will not be long in showing itself in our relationships with other people. Every act of cruelty towards any creature is "contrary to human dignity.[24]

Similarly, St. John Paul II wrote in *Redemptoris hominis*: "It was the Creator's will that man should communicate with nature as an intelligent and noble 'master' and 'guardian', and not as a heedless 'exploiter' and 'destroyer'".[25]

THE ISSUE OF ANIMAL PROTECTION IN AFRICA

A specific determinant of the most important dilemmas related to the protection of animals is the actual experience of African countries, which is a specific symbol of the expectations related to tourism aimed at nature and the animal world, but also of fears related to their preservation and protection.[26] Serious threats associated with it concern the possibility of the extinction of certain species. The underlying reasons for this include:

- non-compliance, not only by the authorities of African countries but also by other authorities (including European and Asian authorities), with the Convention on International Trade in Endangered Species of Wild Fauna and

[23] Św. Franciszek, *Pochwała Stworzenia…*

[24] *Encyclical Letter Laudato Si' of the Holy Father Francis on Care for Our Common Home*, www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html [access: 19.04.2021].

[25] John Paul II, *Redemptor Hominis*, www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_04031979_redemptor-hominis.html [access: 19.04.2021].

[26] In a separate publication I will discuss my reflections in this regard, resulting from my trips to such African countries as South Africa, Lesotho, Mozambique, Uganda, Rwanda, Madagascar, Angola, Botswana, Namibia, Zambia, Zimbabwe, Ethiopia, Nigeria, Niger, Mali, Somalia, Burkina Faso, Sudan, Kenya, Tanzania, etc.

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Flora, drawn up in Washington on 3 March 1973, and with the Convention on Biological Diversity, drawn up in Rio de Janeiro on 5 June 1992,

- widespread poaching on a massive scale aimed at the possibility of making huge profits from selling organs of certain animals. This concerns ivory, horns of rhinoceroses, as well as furs and hides of the most attractive animals (lions, leopards, cheetahs, mongooses, giraffes, brown and white impalas, blue wildebeest, zebras, springboks, hyenas, hippopotamuses, kudu antelopes, baboons, crocodiles, etc.), which find buyers especially in Europe, the USA, and Asia (China, Thailand, Japan),
- lack of effective measures aimed at protecting national parks. The consequence of this is that park ranger are poorly equipped compared to the weapons and equipment at the disposal of poachers and international smuggling gangs. Hence, poachers increasingly enter parks, massacring rhinoceroses, elephants, lions, leopards, etc.,
- it is not uncommon for poaching to be favoured by those in power (Sudan, Chad, Kenya, Namibia, Zimbabwe, Nigeria, Cameroon, Mali, Uganda), who formally accept the legal solutions in force, but in reality often support or even collaborate with criminal groups. An example of this is the administration and services of Mugabe, the dictator of Zimbabwe. As T. Michniewicz writes, his "soldiers slaughtered animals for meat. Mostly antelopes, zebras and giraffes. Others made deals with tourist agencies organising safaris with hunting rifles. These agencies brought in rich clients from Europe who could, off the record, hunt down a buffalo or an elephant captured and brought by soldiers. A frightening union of politics and business with cruelty",[27]
- it seems worrying that, despite the fact that a number of animals in Africa is on the list of the most endangered species, bloody legal, semi-legal and illegal hunting of black rhinoceroses, elephants, giraffes, lions, cheetahs, leopards, crocodiles, zebras, different varieties of buffalo and antelope, as well as rare specimens of monkeys continues. Sometimes inappropriate land management, e.g. around parks, lakes, etc., contributes to a significant decline in an animal population This has led to the extinction of almost the entire population of hippocampus in Lake Naivasha (Kenya). It seems that this state of affairs will lead to the complete extinction of these animals in a few years. Undoubtedly, one form of saving animals today is the idea of creating national parks where they can become safer. One should also hope that both international and national legal acts and the actions of the relevant national and international bodies will become more effective in protecting wild animals from extinction.

[27] T. Michniewicz, *op. cit.*, p. 290.

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CONCLUSION

Acceptance of the thesis of the necessity to search for an optimal model of the law in the field of legal protection of animals is based not only on a simple analysis of national and supranational legal regulations, but also on axiological foundations of this law. Modern knowledge undoubtedly gives us grounds to search for better normative instruments, allowing us to increase the effectiveness of the law concerning the natural order, of which animals are an important element and a specific co-creator. A strong interest of legal scholarship in this issue should be regarded as a positive phenomenon. However, some of the views should be regarded as debatable. One cannot fully agree with those that equate concepts such as animal rights and the legal protection of animals. It is also difficult to accept those theses in legal scholarship which justify bloody safaris or attempt to explain the fact that rhinoceros horn powder can serve human health purposes. This practice has led to the extinction of the white rhinoceros and an alarming decline in the population of the black rhinoceros. It is worrying that the list of animals threatened with extinction is constantly growing, as can be seen from the annexes to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted in Washington on 3 March 1973).

An important problem in the area of animal protection is not only the creation of appropriate national or international legal solutions, but also the formation of appropriate institutions, services and bodies to guarantee the implementation of this right and adequate standards of interpretation during its application.

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ABSTRAKT

Artykuł ma charakter naukowo-badawczy i został przygotowany z wykorzystaniem metod właściwych dla tego rodzaju publikacji. Oczywiście ważna w tym zakresie jest metoda formalno-dogmatyczna czy prawno-porównawcza, jednakże nie bez znaczenia jest też obserwacja stanu faktycznego związanego z realizacją przedmiotowej ochrony. Takie podejście znajduje odzwierciedlenie w przyjętym celu i sformułowanych tezach badawczych. Tematyka podjęta w artykule ma doniosłe znaczenie z punktu widzenia ochrony środowiska i zasobów naturalnych, których istotnym elementem jest świat zwierząt. Publikacja dotyczy problematyki o znaczeniu międzynarodowym i ma niewątpliwie charakter oryginalny, dzięki czemu może mieć wartość poznawczą nie tylko dla nauki, ale i praktyki. Ochrona zwierząt jest związana z ratowaniem środowiska i ładu, w którym żyje człowiek. Należy w związku z tym mieć na uwadze także względy humanitarne i etyczne, które znajdują swoje odzwierciedlenie w doktrynie oraz w aktach normatywnych, czego wyrazem jest art. 1 ust. 1 ustawy z dnia 21 sierpnia 1997 r. o ochronie zwierząt (t.j. Dz.U. 2020, poz. 638), gdzie stwierdza się, że „zwierzę jako istota żyjąca, zdolna do odczuwania cierpienia, nie jest rzeczą. Człowiek jest mu winien poszanowanie, ochronę i opiekę". Obowiązek taki, np. w Polsce, wynika także z Konstytucji RP. Niewątpliwie bardzo istotnym elementem w zakresie ochrony zwierząt jest

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kształtowanie odpowiedniego systemu prawa krajowego i prawa międzynarodowego. Ich współistnienie jest gwarantem skutecznej ochrony prawnej zwierząt, zwłaszcza zagrożonych wyginięciem. Dla ukształtowania się optymalnego modelu prawa w zakresie ochrony zwierząt duże znaczenie ma ukształtowanie skutecznie działającego systemu organów, służb i instytucji wyposażonych w racjonalne instrumenty działania. Dla optymalizacji działań w zakresie dotyczącym ratowania zwierząt zagrożonych wyginięciem konieczna wydaje się efektywna współpraca ponadnarodowa.

Słowa kluczowe: prawo krajowe; prawo międzynarodowe; ochrona zwierząt; dzikie zwierzęta; ochrona środowiska

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