




MARIA JANUSZCZYK

 <https://orcid.org/0000-0001-8509-3418>

University of Warsaw

Doctoral School of Social Sciences

The Problem of African Swine Fever (ASF) in View of the Polish Legislation and Controversies Related to Current Regulations

Problem afrykańskiego pomoru świń (ASF)
w ujęciu polskiego prawodawstwa
i kontrowersje związane
z obowiązującymi regulacjami

Abstrakt

Celem artykułu jest przedstawienie polskich i unijnych regulacji prawnych wprowadzonych w celu zwalczania afrykańskiego pomoru świń (ASF) oraz ocena efektywności zastosowania tych regulacji uwzględniająca także aspekty etyczne i celowościowe. Przedstawiono czynniki prowadzące do utraty kontroli nad rozprzestrzenianiem się choroby, w tym przekrojowo omówiono normy prawne dotyczące uboju trzody chlewnej, zasad bioasekuracji, odstrzałów sanitarnych i polowań (zaprezentowano przykłady nieprzestrzegania norm i skutki takich zachowań). Poruszono też kwestię zaniedbań w nadzorze weterynaryjnym. Wykazano, że decyzje dotyczące prewencyjnego uboju, wydawane w ramach mającego oparcie w obecnie obowiązujących przepisach szerokiego uznania administracyjnego, mają poważne konsekwencje natury etycznej, jak również powodują nieproporcjonalne straty ekonomiczne dla gospodarstw rolnych.

Проблема африканской чумы свиней (АЧС)
в свете польского законодательства
и противоречий, связанных
с действующими правовыми нормами

Абстракт

Цель статьи – представить правовые нормы Польши и ЕС, введенные для борьбы с африканской чумой свиней (АЧС), а также оценить эффективность применения этих норм, принимая во внимание также этические аспекты и определенную целенаправленную деятельность. Автор представляет факторы, приводящие к потере контроля над распространением болезни, в том числе обсуждает упомянутые в статье нормы разных разделов права, касающиеся убоя свиней, правил биобезопасности, санитарных отстрелов и охоты, а также дает примеры несоблюдения этих норм и называет результаты такого поведения. Кроме того, в статье затронута проблема халатности в ветеринарном надзоре. Автор также обращает внимание на то, что решения о превентивном забое, принятые в рамках широкого административного усмотрения, основанного

Słowa kluczowe: afrykański pomór świń (ASF), problemy rolnictwa, ubój trzody chlewnej, myślistwo, zdrowie zwierząt

на действующем законодательстве, имеют серьезные этические последствия и наносят несоразмерный экономический ущерб хозяйствам.

Ключевые слова: африканская чума свиней (АЧС), сельскохозяйственные проблемы, забой свиней, охота, здоровье животных

African swine fever (ASF) is a viral disease with a very high mortality rate that occurs in both wild and domestic pigs. As a result, ASF causes huge economic losses, both as a result of the introduced restrictions and limitations on the export of pigs or their meat, and also has a severe impact on local agricultural production through, for example, significant decrease in pork prices. At the moment, no effective medications or a vaccine against ASF have been introduced to the market, and the fight against this disease is based mainly on the control of its spread, the use of effective disinfectants and compliance with the principles of biosecurity.

Currently, the fight against the African swine fever is one of the priorities of the European Union, where at the beginning of 2014, there were several cases of infection among wild boars—initially in Lithuania, Poland and Estonia. Art. 3 of the Council Directive of 21 December 1982 on the notification of animal diseases within the Community¹ requires each Member State to notify the European Commission and other Member States of confirmed primary outbreaks of diseases included in the list drawn up in Annex I to the abovementioned directive, including African swine fever. According to the ADNS (Animal Disease Notification System) report covering the period from 1 January 2020 to 31 December 2020, ten European countries are currently struggling with ASF in domestic pigs, and fourteen with the same virus in wild boars.²

¹ Council Directive of 21 December 1982 on the notification of animal diseases within the Community (Official Journal L 378, 31/12/1982 P. 0058–0062).

² https://ec.europa.eu/food/sites/food/files/animals/docs/ad_adns_overview_2020.pdf, accessed January 7, 2021.

EU and National Legal Instruments to Fight with African Swine Fever

The basic legal act established by the European Union to fight with African swine fever is Council Directive 2002/60/EC³ of 27 June 2002, which introduces, inter alia, the rules of conduct in cases of suspicion and confirmation of the presence of virus on the farm, as well as the minimum measures to be applied in contact holdings or holdings consisting of many production units and in slaughterhouses or means of transport. According to Art. 4 of Council Directive, in case when a farm is suspected of possible infection, Member States through the competent authorities are obliged to initiate an investigation to confirm or rule out the presence of ASF virus. In a situation where it is not possible to unequivocally state its absence, the farm is under official supervision, which includes numerous orders and prohibitions, such as: the obligation to make a list of the number of sick, dead or suspected pigs, prohibiting the release of animals outside the farm and the movement of people, vehicles, animal products from or to the farm without a permission, as well as an order to follow appropriate hygiene rules to reduce the risk of spreading African swine fever virus. These measures shall be applied both to the farm under surveillance and to contact holdings where virus transmission may be possible, until the presence of ASF is officially excluded.

Art. 5 of the aforementioned directive indicates measures which need to be applied in case the competent authority confirms infection with the virus on the holding. The first point indicates the obligation of immediate killing of all pigs, which should take place under official supervision and in such a way to avoid spreading ASF during transport or killing. According to the principles, meat from slaughtered animals should be disposed, and in some cases can only be processed under official supervision, while the tools used for slaughter should be destroyed. Buildings, vehicles used for transport and farm equipment should be cleaned and disinfected. Resettlement of farms is possible only after forty days from the completion of procedures for disinfecting the entire farm, and in certain cases even after six years. Similar regulations are provided in Art. 14 specifying the procedure in the case of suspicion or confirmation of the presence of ASF in slaughterhouses or vehicles used for transporting animals. If the virus is detected, any animals susceptible to infection must be killed immediately, and further animals may only be introduced after a minimum of twenty-four hours after the end of disinfection.

³ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (Official Journal L 192, 20.7.2002, P. 27).

The most recent, specific measures set for specific regions in individual Member States are contained in the European Commission implementing decision of 9 October 2014⁴ and were last amended due to recent confirmation of ASF presence in new areas by Commission implementing decision 2020/1402 of 5 October 2020.⁵ Member States, in consultation with the European Commission, to prevent the spread of the virus and to avoid unjustified obstacles to trade within the EU, have established infected areas and areas at risk of infection, which have been differentiated according to the level of risk taking into account the size of pig farms and the population of wild boar. Based on the scientific opinion of the European Food Safety Authority of 2010,⁶ it was found that the movement of live pigs, their semen, ova and embryos carries a significantly bigger risk of spreading the virus than the movement of meat and its products and dairy products alone, and hence, specific prohibitions or restrictions on the shipment of live pigs and animal by-products in specific areas have been introduced. In the Art. 16a, the channeling procedure, which assumes that the transport of live pigs should take place without stopping and according to the route designated by the appropriate authority, was introduced. In addition, the official veterinarian competent for the location of the farm of destination to which the pigs are to be transported is obliged to confirm their arrival, and the vehicle and equipment used for the transport of animals should undergo appropriate sanitary procedures in accordance with the provisions of Directive 2002/60/EC, which have been already mentioned.

Currently, Polish domestic regulations in the field of fighting with the infectious animal diseases are predominantly determined by EU regulations.⁷ The basic act which, inter alia, implements the provisions of the Council Directive 2002/60/EC is the Act of 11 March 2004 on the protection of animal health and combating infectious animal diseases.⁸ In the event of a suspicion of an infectious disease, the animal's owner is obliged to immediately notify the Veterinary Inspection authority or the nearest veterinary service provider, as well as provide the indicated authorities with all information and explanations that may be of importance, isolate the animal as

⁴ Commission Implementing Decision of 9 October 2014 concerning animal health control measures relating to African swine fever in certain Member States and repealing Implementing Decision 2014/178/EU (notified under document C(2014) 7222) (Official Journal L 295, 11.10.2014, P. 63).

⁵ Commission Implementing Decision (EU) 2020/1402 of 5 October 2020 amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States (notified under document C(2020) 6914) (Official Journal L 324, 6.10.2020, P. 37–62).

⁶ EFSA Scientific Opinion on African Swine Fever. *EFSA Journal*, vol. 8, no. 3, (2020), 1556, <https://doi.org/10.2903/j.efsa.2010.1556>.

⁷ Michał Rudy, *Traktat o uśmiercaniu zwierząt* (Warszawa: Wydawnictwo SWPS, 2019), 106–107.

⁸ Act of 11 March 2004 on the protection of animal health and combating infectious animal diseases (Journal of Laws 2004, no. 69, item 625).

much as possible and prevent outsiders from contacting the rooms where animals are kept. According to Art. 42 point 3a, similar obligations are imposed on hunters and hunting circuit managers with regard to free-living animals.

In order to control infectious diseases in animals, the aforementioned Act provides district veterinarians with a very wide competence, because according to Art. 44, they may, by their decision, order the isolation of animals, designate places recognized as an outbreak of the disease, order appropriate laboratory tests to be carried out and even temporarily forbid people who had or might have had contact with sick animals.

Competences of Veterinarians and the Purposefulness of Their Decisions

At this point, however, special attention should be paid to the competence given to district veterinarians in Art. 44, item 1, point 4 of the Act, which states that, by the decision, they may: “order the killing or slaughter of sick or infected animals, suspected of being infected or having a disease, or animals of species susceptible to a given infectious animal disease.” Such a decision, as well as the decisions mentioned in the previous paragraph, shall be immediately enforceable. In order to properly analyze the scope of competences of the district veterinarian, it is necessary to look at the legal definitions introduced in the act referring to particular groups of animals that may be killed on the basis of his decisions. According to the wording of the aforementioned Act, an animal with a disease, confirmed by a veterinarian should be considered a sick or infected animal, while a suspected animal is an animal of a sensitive species with “clinical symptoms or post-mortem lesions indicating the occurrence of an infectious disease.” Although the killing of these two groups of animals does not seem to be controversial, because in order to prevent further spread of the virus, the presence of which has been confirmed by testing, an effective measure may be to eliminate the source of infection by killing sick animals, the decision to slaughter animals from susceptible species provokes, in my opinion, legal and ethical doubts. Art. 2, point 25 of the Act defines an animal of a sensitive species as “an animal of a given species that may become or may contaminate or infect.” According to the current scientific knowledge, all species of the porcine family, both wild and domestic, are at risk of becoming infected with ASF infection. When applying this regulation, the rules of interpreting the law should also be taken into account. In the case of Art. 44, item 1, point 4 of the Act on the protection of animal health and combating infectious animal diseases, the use of only a literal interpretation in practice would enable district veterinarians to issue a decision on the basis of which all animals of

the porcine family located in the area of their local property would be slaughtered solely because of their susceptibility for possible infection. The functional interpretation of the Act requires the application of its provisions in order to protect animal health. Therefore, it is not difficult to notice that the preventive use of regulations with the most far-reaching—lethal—effect leads to a contradiction between the *ratio legis* of the Act and the effect of its usage and should be a last resort to be used only in absolutely requiring situations. Dead animals will certainly not fall ill with African swine fever, but it does not seem that the indicated solution has been the intention of the legislator and the desired state of affairs.

Moreover, issued under Art. 61, item 1, point 1 of the Act on the protection of animal health and combating infectious animal diseases Regulation of the Minister of Agriculture and Rural Development of 6 May 2015 on the combating of African swine fever⁹ also does not prove helpful in this matter, as it does not sufficiently specify on what basis these decisions should be taken, and in Art. 3, item 5 of the Regulation only indicated that the decision to order the slaughter of animals may be issued if the epizootic situation requires.

It is worth mentioning that the issue of not killing animals is the basic aspect of their legal protection. In the domestic legal order, the basic act regulating this matter is the Act of 21 August 1997 on animal protection.¹⁰ The general principle introduced by the Act is the prohibition of killing animals, from which the legislator, however, provides certain exceptions. In Art. 6, item 1, points 1–9 situations, in which killing an animal is allowed have been indicated. It should be emphasized that the introduced catalog of situations is a closed catalog, therefore the indicated exceptions should be interpreted narrowly.¹¹ On the basis of the said regulation, slaughter of farm animals for the purpose of obtaining meat, catching fish, as well as killing the animal by hunting or carrying out actions in order to remove a serious health hazard are acceptable. In 2016, the amendment to the aforementioned Act was introduced,¹² which extended the abovementioned catalog by point 4a, providing that a farm animal may be killed or slaughtered because of an order of the district veterinarian, if, as a result of the application of orders or bans issued under the Act on the protection of animal health and combating infectious animal diseases, it is not possible to keep them under the conditions provided for by separate regulations. Due

⁹ Regulation of the Minister of Agriculture and Rural Development of 6 May 2015 on the combating of African swine fever (Journal of Laws 2015, item 754).

¹⁰ Act of 21 August 1997 on animal protection (Journal of Laws 1997, no. 111, item 724).

¹¹ Agnieszka Gruszczyńska, "O zabijaniu – uśmiercanie zwierząt przeznaczonych do celów gospodarczych w świetle przepisów rozporządzenia Rady (WE) nr 1099/2009 oraz regulacji krajowych," *Przegląd prawa i administracji*, no. CVIII (2017): 103–104.

¹² Act of 23 September 2016 amending certain acts to facilitate the combat against infectious diseases in animals (Journal of Laws 2016, item 1605).

to the continuous presence of the virus in the territory of the country, the application of the regulation in question seems to be an oversimplified means of fighting with it. Issuing a decision to slaughter a large group of animals eliminates a given disease outbreak, but it is done by disproportionate and unreasonable costs. Prior examination of animals and selecting individuals who are sick or directly threatened with infection, and limiting the decision to slaughter them, would not only protect pig owners from economic losses and excessive interference with their property rights, but also healthy animals from pointless death.

Insufficiency of the Veterinary Supervision System in the Context of the Spread of the Virus

Veterinary supervision over the activities related to the killing of animals is exercised by the Veterinary Inspection. For example, in 2017, approximately three thousand two hundred veterinarians worked in Polish slaughterhouses, who were assigned to slaughter control with over twenty-two million pigs to be examined. In addition, they are obliged to check the documentation of the slaughterhouse and supervise the process of deafening and bleeding animals.¹³ When killing animals, it is absolutely necessary to follow the principle of humanitarianism coming from Art. 33 of the Act on animal protection, which states that the killing should involve minimum of physical and mental suffering. Correct killing of an animal in accordance with the aforementioned principle requires the fulfillment of a number of conditions provided by law. The method used to slaughter the animal should be effective, easy to perform and irreversible. Moreover, the species, age and health condition of the animal should be taken into account and must be acceptable for ethical reasons,¹⁴ because Polish law provides animals with the status of living creatures capable of suffering.

The quality of controls carried out in slaughterhouses may, therefore, raise reasonable doubts, taking into account the staff statistics of the Veterinary Inspection. In addition, the Supreme Audit Office between the years 2014–2016 undertook an assessment of compliance with the provisions on the protection of animals during slaughter. The summary report indicated that irregularities were found in every fifth slaughterhouse, and as regards the supervision of commercial slaughter, it was stated

¹³ Greenpeace Foundation Report, *Mięso poza kontrolą*, January 2019, 30–31, <https://www.greenpeace.org/static/planet4-poland-stateless/2019/02/368129b1-gp-mi%C4%99so.pdf>.

¹⁴ Anna Frieske and Sławomir Mroczkowski, *Prawne i etyczne aspekty inżynierii biomedycznej-eksperymenty na zwierzętach i badania kliniczne wyrobów medycznych* (Bydgoszcz: Wydawnictwo Uczelniane Uniwersytetu Technologiczno-Przyrodniczego, 2014), 22–23.

that it was practically not performed.¹⁵ Summarizing the above information, it can be stated that the indicated supervision system is inefficient compared to the scale of meat production. Taking into account the limited human resources, it might be questioned that the high level of compliance with the provisions of the abovementioned slaughter determined by the spread of African swine fever virus has been maintained.

Some other concerns related to the transmission of the virus caused by the non-compliance with strict sanitary procedures and the lack of sufficient supervision are arising in relation to the so-called agricultural slaughterhouses established on the basis of the Regulation of the Minister of Agriculture and Rural Development of 20 December 2019 on certain veterinary requirements that should be met when producing animal products in slaughterhouses with low production capacity, located on farms,¹⁶ which came into force on 18 February 2020. Although the number of animals that can be killed in such establishments is limited and, as a rule, it applies to those from a given farm, the regulation provides for the possibility of slaughtering animals also from farms of other entities located in the same district where the slaughterhouse is located or also from neighboring districts. The hygienic requirements for this type of establishments have been relaxed in the abovementioned regulation in relation to those that apply to slaughterhouses with high production capacity. It does not seem appropriate to issue this regulation at a time when the international fight against African swine fever virus is taking place, as it is considered that the factor of sanitary safety on the farm is one of the most effective measures to fight with ASF known to the science. Experts agree that keeping pigs from the contact with pigs from other farms is an important measure to prevent further expansion of the virus into new fields.¹⁷ On the other hand, many field inspections indicate numerous shortcomings in this regard, and taking into account the characteristics of the virus, the risk of local transmission through the carcasses of slaughtered animals or through contaminated tools or even vehicles,¹⁸ also for those agricultural slaughterhouses that are not located in endangered, restricted or protected areas.

¹⁵ Najwyższa Izba Kontroli, Informacja o wynikach kontroli – Nadzór nad transportem i ubojem zwierząt gospodarskich, KRR.430.009.2016, Nr ewid. 96/2017/P/16/043/KRR.

¹⁶ Regulation of the Minister of Agriculture and Rural Development of 20 December 2019 on certain veterinary requirements that should be met when producing animal products in slaughterhouses with low production capacity, located on farms (Journal of Laws 2020, item 56).

¹⁷ Silvia Bellini et al., “Relevant Measures to Prevent the Spread of African Swine Fever in the European Union Domestic Pig Sector,” *Frontiers in Veterinary Science* vol. 5, no. 77 (2018), <https://doi.org/10.3389/fvets.2018.00077>.

¹⁸ Erica Chenais et al., “Epidemiological Considerations on African Swine Fever in Europe 2014–2018,” *Porcine Health Management*, vol. 5, no. 6 (2019), <https://doi.org/10.1186/s40813-018-0109-2>.

Controversies Related to Fighting African Swine Fever Outside the Farms

The problem of the presence and spread of the ASF virus does not only concern pigs, but also its related species—wild boars. The behavior of wild boars was the subject of scientific research carried out in the Białowieża Forest, where has been found that these animals show a very strong attachment to their own territory, usually located a few kilometers from their place of birth. The overlap between the different herds is limited, preventing animals from different groups from coming into direct contact with each other.¹⁹ As a result, the greatest probability of a wild boar getting ASF comes from its direct contact with an already dead representative of its species. The information for the period from January to June 2020 provided by the Chief Veterinary Inspectorate shows that among almost eight thousand dead wild boars that were tested, about half of them were detected with the presence of the virus. In turn, among 69,896 wild boars killed by hunters as a result of hunting, 41,726 were examined, of which only 468 turned out to be infected.²⁰

In 2015, three outbreaks of African swine fever were detected in Poland. In response to this situation, the Regulation of the Minister of Agriculture and Rural Development of 19 February 2016 on sanitary hunting of wild boars was issued.²¹ The minister ordered the sanitary hunting of wild boars with the use of which the population density of this species should be achieved at the level of 0.5 individuals per square kilometer in the areas specified in the annex to the regulation. In the hunting season from 1 April 2016 to 31 March 2017, after the regulation entered into force, 310,000 of these animals were shot.²² In 2017, 81 ASF outbreaks were found in pigs in several voivodeships, so the massive hunting did not eliminate the presence of the virus in the country. That is why, from the same year, an increased slaughter of wild boars began, which covered not only forests, but also national parks. Additionally, by the Regulation of the Minister of Environment of 1 August 2017 amending the regulation on the determination of hunting seasons for game animals,²³ the wording of point 5 of the Regulation of the Minister of Environment of 16 March 2005 on

¹⁹ Łukasz Bocian et al., "African Swine Fever Epidemic, Poland, 2014–2015," *Emerging Infectious Diseases*, vol. 22, no. 7 (2016): 1201–1207, <https://dx.doi.org/10.3201/eid2207.151708>.

²⁰ General Veterinary Inspectorate, African swine fever in Poland – update, PAFF 18–19 June 2020, https://ec.europa.eu/food/sites/food/files/animals/docs/reg-com_ahw_20200618_asf_pol.pdf.

²¹ Regulation of the Minister of Agriculture and Rural Development of 19 February 2016 on sanitary hunting of wild boars (Journal of Laws 2016, item 229).

²² Central Statistical Office, *Forestry* (Warszawa: CSO Agriculture Department 2017), 163–164, https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5510/1/13/1/lesnictwo_2017.pdf.

²³ Regulation of the Minister of Environment of 1 August 2017 amending the regulation on the determination of hunting seasons for game animals (Journal of Laws 2017, item 1487).

the determination of hunting seasons for game animals was changed,²⁴ which consequently completely abolished the protective periods applied earlier on these animals and from then on wild boars could be hunted all year round. It can be assumed that the extermination of the species was largely carried out, while the Chief Veterinary Officer still informs about new outbreaks of African swine fever. Taking into consideration the abovementioned studies on the limited areas where wild boars move, it should be stated that mass hunting led to the scaring of these animals, which resulted in their moving to new areas, which could result in the spread of the virus. The same fact was pointed out in the summary of the results of research conducted by Mammal Research Institute of the National Academy of Sciences. The recommendations appended to the September 2020 report indicated that hunting in endangered zones should be refrained from, especially due to the high mortality rate caused by the ASF virus itself, which can only cause animals to move beyond the infected zone, and thus create new outbreaks of sickness. A solution was also proposed consisting in barriering the areas where the presence of the virus has been detected with a fence with a high efficiency in blocking the movement of wild animals and introducing a hunting ban in these areas, and limiting undertaken actions only to the search for and removal of dead animals, because carcass is responsible for 66% of virus transmission.²⁵

An example of proper proceedings, which includes removing the threat from wild boar, is the Czech Republic, which is the only one to control ASF during the current epidemic. The Czechs, after confirming the first ASF outbreak in June 2017 in the wild boar population, designated management zones, and the infected area was separated by an electric fence, which additionally emitted fragrances that repel wild animals. In a fenced area of around 50 km², hunting was prohibited, and even entrance was forbidden, which allowed for the natural death of wild boar caused by infection. On the other hand, the surveillance of dead animals was strengthened, an intensive and systematic search for the carcasses of animals was started, and a reward system for finding dead boars was introduced. Only after a few months in high-risk areas, hunting for wild boars that could have come into contact with carrion began, and the related activities were carried out by trained police using silent weapons that did not cause excessive scaring of the herds.²⁶ The last case of ASF in the Czech Republic was confirmed in April 2018,

²⁴ Regulation of the Minister of Environment of 16 March 2005 on the determination of hunting seasons for game animals (Journal of Laws 2005, no. 48, item 459).

²⁵ Instytut Biologii Ssaków Polskiej Akademii Nauk Białowieża, Afrykański pomór świń (ASF) w populacji dzików – wyniki badań i rekomendacje dla kontroli ASF, September 1, 2020, 1–6, https://ibs.bialowieza.pl/wp-content/uploads/2020/09/Raport_dziki_ASF_IBS-PAN.pdf.

²⁶ Marisa Arias, Carmina Gallardo, Marta Martinez, and Jovita Fernandez-Pinero, “Afrykański pomór świń: poznaj swojego wroga”, in *Choroby świń o dużym znaczeniu ekonomicznym na tle sytuacji epizootycznej związanej z ASF*, ed. Kinga Urbaniak and Grzegorz Woźniakowski (Puławy: Państwowy Instytut Weterynaryjny – Państwowy Instytut Badawczy, 2019), 22–23.

and the country has been recognized as virus-free since that time. The measures taken in the neighboring country show that with a very well-thought-out management system, it was possible to quickly eliminate the virus itself and prevent it from spreading further without the need to exterminate practically the entire wild boar species. It is also worth noting that scientists assume that it is the inappropriate hunting practice of feeding wild boars and then direct contact with pigs and intensified hunting were the main factors influencing the spread of the virus from Belarus to Poland and Lithuania.²⁷

The controversial solutions introduced in Poland to fight with the African swine fever virus were upheld by the Act of 20 December 2019 amending certain acts to facilitate the combat against infectious diseases in animals²⁸ thanks to which hunters were given priority in usage of forests. The Act supports year-round hunting, while allowing the use of firearms equipped with a silencer. The use of this type of weapon raises some ethical concerns even among hunters themselves, but, above all, it can have a significant impact on public safety. Although it guarantees that the animals will not be scared off due to the lack of sound when firing a shot, thanks to these sounds, hunters are able to communicate with each other and inform others about their location. Every person who enters the forest will be at risk as moves unconsciously around during the hunting or sanitary shooting. Moreover, by means of the aforementioned amending Act, prohibition of “deliberate obstruction or preventing the performance of hunting” was added to Art. 42aa of the Act of 13 October 1995 Hunting law.²⁹ For such an infringement Art. 52 of this Act provides a fine, restriction or imprisonment. In this case, several issues require attention. The first one is that the Act does not specify what it is to intentionally obstruct or prevent hunting, which may in practice turn out to be very harmful from the point of view of an ordinary citizen due to the classification of such an infringement as a crime. At the same time, the Act only provides the possibility, and not the obligation, of submitting an application by managers or lessees of hunting districts to secure the area where the hunting is to take place against unauthorized access by third parties. In the event of failure to take advantage of this option, and as a consequence of the lack of appropriate security measures in the area, many abuses may occur on the part of hunters who perform the shooting. It is also worth pointing out that the provisions of the aforementioned Act, which were introduced with the aim of fighting against the spreading ASF virus, and thus the legal protection of sanitary shots carried out this purpose provided the same protection also for ordinary huntings. Until now,

²⁷ Claire Guinat et al. “Effectiveness and Practicality of Control Strategies for African Swine Fever: What Do We Really Know?” *The Veterinary record*, vol. 180 no. 4 (2017), 97, <https://doi.org/10.1136/vr.103992>.

²⁸ Act of 20 December 2019 amending certain acts to facilitate the combat against infectious diseases in animals (Journal of Laws 2020, item 148).

²⁹ Act of 13 October 1995 Hunting law (Journal of Laws 1995, no. 147, item 713).

most of the irregularities related to the activities of hunters were noted only thanks to the activists of the specialized organizations or ordinary citizens, who decided to fight the arbitrariness of the hunting circles. The introduced Act effectively prevents such monitoring activities, which in practice causes almost the outlawing of hunters due to a significant limitation of the actual possibility of controlling their activities.

Human Activities as the Main Cause of the Continued Circulation of the Virus in the Environment

Based on the above considerations, it is difficult not to get the impression that wild boars were first blamed for the spread of causing huge losses to farmers ASF, and as a result of which their mass extermination by hunters began. When this solution was undermined by pro-animal activists, environmentalists and foremost scientists monitoring the behavior of hunters during hunting, where the hunters did not follow the appropriate biosecurity rules, and thus became responsible for the transmission of the ASF virus from forests to areas where pigs were bred, the legislator, instead of focusing on strengthening the control of these procedures, paradoxically further weakened the actual supervision of all hunts. Moreover, if we summarize the previously granted, broad permissions of hunters and add to them those introduced by the Act of 20 December 2019, consisting of the possibility of engaging uniformed services to secure hunting or intrusion into private property in order to shoot, we will come to quite frightening conclusions.

Non-selective killing of wild boar populations is not only ethically inappropriate, but also, together with the introduction of new regulations, will certainly contribute to the uncontrolled movement of the African swine fever virus, also to areas not yet affected. Both the legislator and the control authorities do not seem to pay enough attention to the fact that apart from the presence of animals considered as carriers of the ASF virus, there are many other factors that may lead to its long-term circulation in the environment. The European Food Safety Authority, conducting an epidemiological analysis of African swine fever in the Baltic countries and in Poland, concluded that human-mediated transmission of the virus played the most crucial role in the expansion of the disease to new areas,³⁰ as no direct contact of wild boars with pigs locked in a pigsty was recorded.

³⁰ Klaus Depner et al., "Epidemiological Analyses of African Swine Fever in the Baltic States and Poland: (Update September 2016–September 2017)," *EFSA Journal*, vol. 15, no. 11 (2017): 40–42, <https://doi.org/10.2903/j.efsa.2017.5068>.

The report of the Supreme Audit Office published at the end of January 2018 on the realization of the biosecurity program introduced already in 2015 in several communes in the Podlaskie voivodeship, and in subsequent years also extended to other voivodeships, revealed many irregularities in this respect. The activities of the Minister of Agriculture and Rural Development and the Chief Veterinary Officer in relation to the preparation of the biosecurity program, and then the supervision over its realization, were critically assessed. It was also shown that in the protocols drawn up by the Veterinary Inspection, correct post-control assessments were also received by those farms that did not meet the requirements specified by law. According to the report, most farms did not have sufficient protection against the African swine fever virus.³¹ Moreover, the cases of failure to report to the Veterinary Inspection both slaughter and death of pigs due to disease and burying the carcass were found to be a frequent problem. It should not be ignored the fact that non-compliance with biosecurity rules by one farm poses a threat also to others, even if appropriate safeguards have been applied in them.

Farmers' non-compliance with biosecurity rules, which is the most important factor contributing to the spread of the ASF virus, is confirmed by numerous rulings of administrative and common courts. Examples of non-compliance of pig owners with the rules include: non-compliance with the rules of hygiene by breeders, non-compliance with technical requirements by disinfecting mats and failure to maintain them in a condition that maintains the effectiveness of the disinfectant, lack of a complete fence farms or gaps in the entrance door to the barn, which pose a risk of contact with free-living wild boar and domestic animals.³² There is also negligence in notifying the veterinarian about the intention to slaughter, its place and the person who kills the animals,³³ as well as in the scope of requirement to keep pigs on the farm in buildings where other farmed ungulates³⁴ are not kept at the same time. There are also known cases of refusal to admit veterinary inspectors to the breeding area in order to carry out control.³⁵

³¹ Najwyższa Izba Kontroli, Realizacja programu bioasekuracji jako element zwalczania afrykańskiego pomoru świń – Informacja o wynikach kontroli, KRR. 430.006.2017, Nr ewid. 184/2017/P/17/046/KRR.

³² Judgement of the District Court in Radzyń Podlaski of 23 December 2019, I C 76/19, LEX no. 3007906, <https://sip.lex.pl/#/jurisprudence/523101602>.

³³ Judgment of the Voivodeship Administrative Court in Olsztyn of 10 March 2020, II SA/OI 902/19, LEX no. 2973650, <https://sip.lex.pl/#/jurisprudence/523067346>.

³⁴ Judgment of the Voivodeship Administrative Court in Lublin of 4 July 2019, II SA/Lu 233/19, LEX no. 2725618, <https://sip.lex.pl/#/jurisprudence/522819314>.

³⁵ Judgement of the Regional Court in Poznań of 16 May 2018, IV Ka 435/18, LEX no. 2515118, <https://sip.lex.pl/#/jurisprudence/522608814>.

Summary

The fight against the African swine fever virus is a fight that can only be successful if it is carried out simultaneously on many levels. The example of the Czech Republic, which is the only one to control ASF during the current epidemic also shows that the introduced legal and practical solutions must be foremost well thought out and synchronized. It is necessary to involve all entities that may have direct or indirect contact with infected animals or carrion. Feeding animals with beakers, gutting next to the pigpen, failure to follow the basic rules of hygiene after returning from forest areas, failure to provide animals with appropriate living conditions are scenarios that are still present in rural areas across the country, despite the restrictions introduced and the damages the virus has already caused. Even the largest farms equipped with biosecurity equipment can become infected if people who work with the animals do not follow certain procedures.³⁶

Six years have passed since the confirmation of the first case of ASF in Poland. Despite the available scientific opinions, it has not been possible to fight with or even stop the expansion of the virus in the country. Although guidelines have been developed for individual, possible hotspots, such as slaughterhouses, meat plants or entities performing sanitary shots, supervision over their compliance has proved to be highly ineffective. Agricultural producers, by killing herds and difficulties related with the selling of the animals, have been forced to change industries, although this also causes many difficulties due to different guidelines for breeding other species of animals.³⁷ With an ineffective control system, eradicating the disease in practice consists only in the depopulation of wild boars, carried out on the basis of regulations that raise ethical doubts not only among representatives of environmental movements, but also among a lot of members of hunting clubs. The slaughter of potentially endangered, but healthy animals is not an effective way of fighting with the virus, but causes unjustified economic losses and most of all pointless death of animals.

³⁶ Erica Chenais et al., "Epidemiological Considerations on African Swine Fever in Europe 2014–2018," *Porcine Health Management*, vol. 5, no. 6 (2019), <https://doi.org/10.1186/s40813-018-0109-2>.

³⁷ Mirosława Tereszczuk, "Rynek mięsa wieprzowego w Polsce w obliczu afrykańskiego pomoru świń (ASF)," *Zeszyty Naukowe SGGW w Warszawie – Problemy Rolnictwa Światowego*, vol. 1 (33), nr. 3 (2018): 306–314, <https://doi.org/10.22630/PRS.2018.18.3.88>.

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Maria Januszczyk – law graduate of the Faculty of Law and Administration of University of Warsaw and a PhD student at the Doctoral School of Social Sciences of University of Warsaw in the discipline of legal sciences. Author of publications and lectures at numerous scientific conferences, co-organizer and participant of events devoted to legal protection of animals. Member of Lawyers for Animals Association (*Stowarzyszenie Prawnicy na Rzecz Zwierząt*).

Maria Januszczyk – absolwentka prawa na Wydziale Prawa i Administracji Uniwersytetu Warszawskiego oraz doktorantka w Szkole Doktorskiej Nauk Społecznych Uniwersytetu Warszawskiego w dyscyplinie nauk prawnych. Autorka publikacji oraz wystąpień na licznych konferencjach naukowych oraz współorganizatorka i uczestniczka wydarzeń poświęconych problematyce prawnej ochrony zwierząt. Członkini Stowarzyszenia Prawnicy na Rzecz Zwierząt.