HCJ 9232/01

1. "Noah" - The Israeli Federation of Animal Protection Organizations

v.

1. The Attorney-General

2. The Minister of Agriculture

3. The Egg and Poultry Board

4. Moshe Benishty and 31 Others

The Supreme Court Sitting as the High Court of Justice
[August 11, 2003]
Before Justice T. Strasberg-Cohen (ret.), Justices E. Rivlin and A.. Grunis

Petition to the Supreme Court sitting as the High Court of Justice

Petition granted.

Facts: Petitioner asked that the Court declare the force-feeding of geese for the production of foie gras to be illegal. Furthermore, they ask that the Court issue an order annulling the Cruelty to Animals Regulations (Protection of Animals), (Force-Feeding of Geese), 2001, and declare them to be in contradiction to section 2(a) of the Cruelty to Animals Law.

Held: The Court declared that the force-feeding of geese, pursuant to the Cruelty to Animals Regulations (Protection of Animals) (Force-Feeding of Geese), 2001, constituted abuse of animals, and a violation of section 2(a) of the Cruelty to Animals Law. As such, the Court annulled the regulations that had regulated the raising and force-feeding of geese.

Foreign Constitutions Cited:

Constitution of India, §51(a)
Constitution of Germany, §20(a)

Statutes Cited:

Cruelty to Animals Law (Protection of Animals), 1994, §§ 2, 2(a), 2(b), 2(c), 3, 3(a), 3(b), 4, 5, 6, 8, 15, 17A, 19, 22(1)
Penal Law, 1977, §§ 61(a)(1), 451, 457, 495, 495(a)(1)
Criminal Ordinance, 1936, § 386
Fishing Ordinance, 1937, §§ 5, 10(3)
Restoration of Lost Property Law, 1973, § 6
Execution of Judgments Law, 1967, § 22
Animal Diseases Ordinance (new version), 1985, § 16
The Shepherd's Ordinance (License Granting), 1946,
Dog Supervision Law, 2002, § 6(e)(2)
Protection of Wildlife Law, 1955, § 2, 5
Cruelty to Animals Law (Experimentation on Animals), 1994, §§ 1, 4, 8(c), 9
Veterinary Doctors Law, 1991, § 2
Real Estate Agents Law, 1996, § 20(a)
Regulation of Investment Advisors and Portfolio Managers Law, 1995
Real Estate Assessors Law, 2001, §7(a)(1), 45(a)(1)
Real Estate Assessors Law, 1962, §6(2)

Regulations Cited:

Cruelty to Animals Regulations (Protection of Animals) (Force-Feeding of Geese), 2001, §§ 1, 3, 4, 5, 5(2)(a), 6, 7, 8
Livestock and Fowl Regulations (Sea Transport), 1936, § 13, 15, 19
Cruelty to Animals Regulations (Protection of Animals) (Exhibitions, Shows, Competitions), 2001
Animal Diseases Regulations (Animal Slaughter), 1964
Nature Reserve Regulations (Orders and Conduct), 1979
Naval Regulations (Seamen), 2002, § 86(a)

Israeli Supreme Court Cases Cited:

[1] HCJ 9374/02 *Let the Animals Live v. Brigadier General Dr. Giora Martinovitch*, IsrSC 57(3) 128
[2] LCA 1684/96 *Let the Animals Live v. Hamat Gader Recreation Enterprises*, IsrSC 51(3) 832
[3] HCJ 6446/96 *The Cat Welfare Society of Israel v. Municipality of Arad*, IsrSC 55(1) 769
[4] HCJ 1715/97 *The Israel Association of Investment Managers v. The Minister of Finance*, IsrSC 51(4) 367
[5] HCJ 5936/97 *Dr. Oren Lamb v. Director of the Ministry of Education*, IsrSC 53(4) 673
[6] HCJ 108/70 *Manor and Colleagues v. The Minister of Finance*, IsrSC 24(2) 442
[7] CA 2313/98 *The Minister of Industry and Trade v. Mincol*, IsrSC 54(1) 673
[8] HCJ 971/99 *The Movement for the Quality of Government in Israel v. The Knesset Committee*, IsrSC 56(6) 117
[9] HCJ 448/85 *Dahr v. The Minister of Interior*, IsrSC 40(2) 701
[10] CA 6024/97 *Fredricka Shavit v. Hevre Kadisha (Jewish Burial Services) of Rishon Le'Zion*, IsrSC 53(3) 600
[11] HCJ 2481/93 *Dayan v. Police Commander of the Jerusalem District*, IsrSC 48(2) 456
[12] CA 6821/93 *Mizrahi Bank v. Migdal*, IsrSC 50(2) 45
[13] LCA 7504/95 *Yassin v. The Party Registrar*, IsrSC 50(2) 45
[14] HCJ 7015/02 *Ajuri v. Commander of IDF Forces in the West Bank*, IsrSC 56(6) 352
[15] HCJ 693/91 *Efrat v. Director of Registration of Inhabitants*, IsrSC 47(1) 749
[16] CrimA 2947/00 *Avraham Meir v. The State of Israel*, IsrSC 56(4) 636
[17] CA 165/82 *Kibbutz Hatzor v. Assessing Officer of Rehovot*, IsrSC 39(2) 70
[18] HCJ 5016/96 *Lior Horeb v. The Minister of Transportation*, IsrSC 51(4) 1
[19] CFH 2401/95 *Ruthie Nahmani v. Daniel Nahmani*, IsrSC 50(4) 661
[20] HCJ2458/01 *New Family v. The Ministry of Health*, IsrSC 57(1) 419
[21] HCJ 3477/95 *Israel Ben-Atiya v. The Minister of Education, Culture and Sports*, IsrSC 49(5) 1
[22] HCJ 3648/97 *Israel Stamka v. The Minister of Interior*, IsrSC 53(2) 738
[23] HCJ 4769/95 *Ron Menahem v. The Minister of Transport*, IsrSC 57(1) 235
[24] HCJ 491/86 *The Municipality of Tel Aviv v. The Minister of Interior*, IsrSC 41(1) 757
[25] HCJ 4769/90 *Amar Salah Zidan v. The Minister of Labor and Social Affairs*, IsrSC 47(2) 147

[26] HCJ 389/80 *The Yellow Pages v. The Broadcasting Authority*, IsrSC 35(1) 421
[27] HCJ 10455/02 *Boaz Alexander Amir v. The Bar Association*, IsrSC 57(2) 729
[28] HCJ 551/99 *Shekem. v. The Director of Customs and Value Added Tax*, IsrSC 54(1) 112
[29] HCJ 6652/96 *Association for Civil Rights in Israel v. The Minister of Interior*, IsrSC 52(3) 117

English Cases Cited:
[30] *Ford v. Wiley* [1889] 23 Q.B. 203

European Court of Justice Cases Cited:
[31] *R v. Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming* [1998] 2 C.M.L.R. 661

Indian Cases Cited:
[32] N.R. Nair v. Union of India (2002) 6 S.C.C. 84

Canadian Cases Cited
[33] Regina v. Menard (1978) 43 C.C.C (2d) 458

Israeli Books Cited:
[34] Z. Levi & N. Levi, Ethics, Feelings, and Animals: The Moral Status of Animals (2002)
[35] 2 A. Barak Interpretation in the Law – Interpretation of Legislation (2d ed. 1993)
[36] 3 A. Barak Interpretation in the Law – Constitutional Interpretation (1994)

Israeli Articles Cited:
[37] A. Ben-Ze'ev, *The Reason for Prohibiting Cruelty to Crocodiles*, 4 Law and Government 763 (1997)
[38] P. Lerner, *Thoughts on Feeding Street Cats – Following* CrimA 897/01 State of Israel v. Urovsky, 16 The Law 74, 83 (2003)
[39] Y. Wolfson *The Moral and Legal Status of Animals*, 5 Law and Government 551 (2000)

Foreign Books Cited:
[40] Tom Regan, The Case for Animal Rights (1988)
[41] Peter Singer, Animal Liberation (1975)

[42] Gary L. Francione, Animals, Property, and the Law (1995)
[43] M. Radford, Animal Welfare Law in Britain (2001)
[44] Peter Singer, Practical Ethics 57-8 (2d Ed. 1994)
[45] A.N. Rowan et al., Farm Animal Welfare – The Focus of Animal Protection in the USA in the 21st Century, 57-61 (1999)

Foreign Articles Cited:
[46] Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. Rev. 1333 (2000)
[47] R. Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 Animal L. 82 (1999)
[48] L.S. Antoncic, *A New Era in Humane Education: How Troubling Youth Trends and a Call for Character Education are Breathing New Life into Efforts to Educate Youth about the Value of All Life*, 9 Animal L. 183 (2003
[49] R. Descartes *Animals are Machines*, *in* Animal Rights and Human Obligations 13-19 (P. Singer and T. Regan Eds 1989)
[50] L. Letourneu, *Toward Animal Liberation? The New Anti-Cruelty Provisions and Their Impact on the Status of Animals*, 40 Alberta L. Rev. 1041, 1042 (2003)
[51] E.L. Hughes & C. Meyer, *Animal Welfare Law in Canada and Europe*, 6 Animal L. 23, 33 (2000)
[52] T. Regan *The Case for Animals Rights*, *in* Animal Rights and Human Obligations 105-14 (P. Singer and T. Regan eds. 1989)
[53] L.H. Tribe, *Ten Lessons Our Constitutional Experience Can Teach Us About the Puzzle of Animal Rights: The Work of Steven M. Wise*, 7 Animal L. 1 (2001)
[54] D.R. Schmahmann & L.J. Polacheck *The Case Against Animal Rights for Animals*, 22 B.C. Envtl. Aff L. Rev. 747 (1995)
[55] P. Singer, *Ethics and Animals*, 13 Behavioral and Brain Sct. 45, 46 (1990)
[56] P.D. Frasch et. al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 Animal L. 69 (1999)
[57] D.J. Wolfson, *Beyond the Law: Agribusiness and the Systematic Abuse of Animals Raised for Food Production*, 2 Animal L. 123, 132 (1996)

Miscellaneous:
[58] Report of the Scientific Committee on Animal Health and Animal Welfare: Welfare Aspects of the Production of Foie Gras in Ducks and Geese (1998)
[59] D. Lahav, "Prohibiting the Forced Molting of Laying Hens – an Economic Perspective" (2001)

[60] European Convention for the Protection of Animals Kept for Farming Purposes (1976).
[61] Council Directive 98/58/EC (1998)
[62] Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes: Recommendation Concerning Domestic Geese and Their Crossbreeds (1999).

Jewish Law Sources Cited:
[63] Babylonian Talmud, Tractate Shabbat 31a; 128b
[64] A.S. Abraham *Medical Experimentation on Animals and Humans*, 10(2) Asya 20 (1984)
[65] Job 5:7

On behalf of petitioner–D. Sherman, A. Peleg
On behalf of respondents 1 & 2–A. Leicht
On behalf of respondent 3–T. Manor
On behalf of respondents 4–B. Naor; A. Hakikat

JUDGMENT

Justice A. Grunis

1. This petition was submitted on July 10, 2002 and an *order nisi* was granted. Petitioner asks us to rule that the force-feeding of geese is prohibited under Israeli law. Petitioner requests a declaration that the Cruelty to Animals Regulations (Protection of Animals) (Force-Feeding of Geese), 2001 are void, an order instructing respondent 2 [hereinafter – the Minister of Agriculture] to issue new regulations prohibiting the practice of force-feeding geese, as well as an order that respondent 1 instruct the police to investigate and prosecute those involved in force-feeding geese.

Facts, Proceedings and Arguments

2. Force-feeding geese is a process aimed at creating an enlarged and fatty liver, which is then used to make a dish called Foie Gras. The process begins when the goose reaches a weight of approximately 4 kilograms, and is 8-10 weeks old. During the force-feeding period the goose is forcibly fed by the insertion of a tube into its esophagus. This

process is repeated several times daily. The geese are fed high-caloric food in order to make their liver especially fatty. The amount of food they are forced to digest is much greater than the amount they require. The process lasts several weeks, until the liver reaches its optimal size. At optimal size the liver is several times the size of a normal liver. During the force-feeding period, the goose is fed exclusively by this method, though it continues to drink normally.

3. Approximately 100 family farms are employed in raising geese in Israel, 45 of which are employed in the actual force-feeding process. The remainder breed the geese and raise the geese prior to the force-feeding period. Respondents 4 include some of these farms. Israel produces over 500 tons of foie gras annually, half of which goes to the local market, while the rest is exported. The annual turnover of the industry reaches tens of millions of shekels. In addition to those who raise the geese, there are businesses that provide secondary services. Thus, the livelihood of several hundred families dependends on this industry, which has been active in Israel for about 40 years. Clearly, these families have invested significant sums of money in developing this specialized agricultural industry. The investment was partially funded by the state; the Ministry of Agriculture supported and encouraged the development of this agricultural industry.

4. The country most closely identified with the production and consumption of foie gras is France, where it is considered a culinary delicacy. France consumes approximately 85 percent of the world's foie gras. Of the European countries, Belgium and Spain also produce foie gras. We mention the European countries since, as we shall see, the matter of force-feeding was taken up by European law. Foie gras is also produced in Tunisia and China, as well as in a number of South American countries. This data is taken from the report of the European Council's Scientific Committee in *The Report of the Scientific Committee on Animal Health and Animal Welfare Aspects of the Production of Foie Gras in Ducks and Geese* (December 16, 1998) [58].

5. Petitioner is an umbrella organization for animal rights

organizations in Israel. In a previous petition submitted by this organization in 1999 (HCJ 8357/99), petitioner requested this Court to order the Minister of Agriculture to issue regulations, pursuant to his authority under the Cruelty to Animals Law (Protection of Animals), 1994 [hereinafter – Protection of Animals Law], which would prohibit the force-feeding of geese. The current regulations were issued while the petition was pending in this Court. Petitioner withdrew the previous petition in order to submit the current one.

The Law

6. The Protection of Animals Law was enacted in 1994. Section 1 of the law defines "animals" as "vertebrae animals, excluding man." Section 2 of the law states:

> (a) A person will not torture an animal, will not be cruel toward it, or abuse it in any way.
> (b) A person will not set one animal against another.
> (c) A person will not organize fights between animals.
> (d) A person will not cut tissue from an animal for decorative purposes

Section 2(a) is the relevant provision for our case. In addition, Section 19 of the law deals with implementation of the law and regulations. *See* para. 19 below. The Minister of Agriculture issued regulations pursuant to this latter section. The Knesset's Education and Culture Committee authorized the regulations, according to the required procedure. Regulation 1 describes the purpose of the regulations:

> "The purpose of these regulations is to prevent the suffering of geese caused by feeding with the aim of producing foie gras, and to freeze the foie gras industry in Israel. This is in the spirit of the Recommendations of the Standing Committee working under the European Council's Convention for Protection of Animals Kept for Farming Purposes."

These recommendations are quoted in para. 10 below. The regulations include several directives which regulate the force-feeding of geese. Regulation 3 provides that force-feeding farms may only operate according to the arrangement set out in the regulations. Forced feeding may only be carried out with a pneumatic machine. The regulations also set a maximum limit for the length and diameter of the feeding tube, and for the amount the geese are fed daily. In addition, in regulation 7, the Minister of Agriculture ordered the foie gras industry to be frozen, i.e. no new farms for force-feeding geese may be established, and the existing ones may not be expanded. Furthermore, the regulations provide that violation of regulation 7 can lead to six months imprisonment or a fine, as per section 61(a)(1) of the Penal Law, 1977. The Regulations came into effect, for a period of three years, on March 12, 2001. Accordingly, they will no longer be in force as of March 11, 2004.

The Arguments

7. Petitioner claims that the force-feeding geese is unlawful under Israeli law. Petitioner singles out certain elements of the process, as well as the damage caused to the geese's liver as a result of the process: inserting a tube down the goose's esophagus, using pressure to force the special food down the feeding tube, and the unnatural enlargement of the liver. Petitioner argues that the force-feeding process affects the goose's movements and the steadiness of its feet. Petitioner makes the further claim that the process of force-feeding constitutes cruel treatment of the animals, which is forbidden by Section 2(a) of the Protection of Animals Law. As mentioned, pursuant to the statute, the Minister of Agriculture issued the Regulations in 2001. Petitioner argues that these regulations were enacted contrary to law, since they permit an agricultural practice that is inconsistent with the law, that the regulations are impractical, cannot be enforced, and in fact are not being enforced at present.

Respondents counter that, were the petition to be accepted, it would bring an end to the entire industry since, without force-feeding, the liver

is not a marketable product. Respondents claim that the method of force-feeding has been used in Israel for dozens of years, and that bringing an end to the industry would put those employed by it out of work. Furthermore it is argued that the method of force-feeding does not constitute cruel treatment of animals, and that the purpose of the regulations is to reduce their suffering during feeding. Moreover, respondents add that the regulations were authorized by the Education Committee, and therefore particular caution should be used when discussing their validity. Respondents point out that the European Council and the European Union did not outlaw force-feeding, and that the Israeli regulations followed those created in Europe. In addition, they argue that the High Court of Justice should not intervene in this case, since petitioner may submit a private criminal complaint pursuant to Section 15 of the Protection of Animals Law; petitioner also has the option of petitioning the Magistrate Court, pursuant to Section 17(a) of the law, for an injunction to prohibit a breach of section 2 of the law.

Cruelty to Animals

8. The relationship between humans and other animals has been the focus of much public interest in recent decades. This subject raises a number of different questions and dilemmas. The question, from a moral perspective, is whether, and to what extent, animals should serve as the needs of men. On one extreme we have the view, unpopular today, which argues that, as the most important and advanced creature on the planet, humans have the right to do anything they wish to other creatures. On the other extreme is the belief that animals, or at least sentient beings, are the legal equals of human beings; according to this view, there should be no animal experimentation. The third view takes a middle ground, accepting neither of the two extreme positions. Rather, it claims that humans should be considerate of animals, and take their welfare into account. In other words, it rejects the first, purely utilitarian view of animals, according to which humans can do whatever they wish to animals. Instead, the third position argues that the use man makes of animals should be restricted, with the aspiration of gradually improving their situation. It seems that the Hebrew phrase "cruelty to animals" (*tza'ar*

ba'alei haim), borrowed from Jewish religious law, is equivalent to what is currently referred to as animal welfare. For a concise description of the various philosophical approaches, see chapter 7 of Z. Levi & N. Levi, Ethics, Feelings, and Animals: The Moral Status of Animals (2002) [34]; For an extensive discussion of the view espousing equality between the rights of humans and animals see Tom Regan, The Case for Animal Rights (1988) [40]. There is no doubt that this latter view does not find expression in Israeli law or in the law of any other country. However, it should be noted that the constitutions of both India and Germany include sections relating to animals. Section 51(a) of the Indian constitution establishes that it is the duty of every Indian citizen "to have compassion for living creatures." Section 20(a) of the German Grundgesetz, as amended in 2002, asserts that, as part of the state's responsibility toward future generations, it is responsible to protect "the natural foundations of life" as well as animals.

Clearly, the status that animals in our society currently enjoy is not the same as it was in the past. As we shall see, Israeli legislation has given expression to this difference in recent years. The problem of the present case has unique characteristics. This is not a case of animal experimentation, or of the use of animals as beasts of burden, nor is it a case of using animals for purposes of entertainment, or of animals as pets. This is a case of raising animals in a certain way, so that eventually they – or to be precise, one of heir organs – will serve as food for humans. We emphasize this element since it differentiates this case from previous ones. In addition, our ruling in this case may have ramifications for other agricultural methods used to raise animals for human consumption.

9. The first edition of the book "Animal Liberation" [41] by the Australian philosopher Peter Singer, published in 1975, caused a great stir and greatly contributed to the growing awareness of animal suffering. We mention this work since a large part of it is dedicated to what can be called industrial agriculture – the industry methods of raising animals for purposes of human consumption. No longer are we concerned with a family farm with chickens roaming freely, cows grazing in the meadow,

and sheep nibbling innocently in search of food. Today when we speak of raising hens for eggs or poultry for meat, we speak of something completely different: thousands of chickens are kept together in very crowded conditions; their movement is greatly restricted; the food they are fed is not natural, but is rather meant to better the quality and price of the animal products.

We will make mention of similar situations. Calf meat (veal), like goose liver, is a culinary delicacy. In order to get high quality veal, calves are raised under special conditions. The calves are kept in narrow stalls, which do not allow them room to move. They are also fed special food that does not contain iron. This is intended to make the meat as light colored as possible. This is done despite the fact that the calves need iron and, as a result of the lack of this necessary dietary element, they become anemic. As we will see below, the issue of raising calves was dealt with in England and by supranational European bodies. Another practice in industrial agriculture is the forced molting of feathers from hens raised for eggs. The purpose of this practice is to renew the hen's ability to lay eggs, and thus to increase the farmer's income. In Israel, molting is accomplished by starving the chickens. For more on this subject, see a study conducted by the Knesset's Research and Information Center: D. Lahav, "Prohibiting the Forced Molting of Laying Hens – an Economic Perspective" (2001) [59].

The European Legal Situation

10. The European Council adopted the "European Convention for the Protection of Animals Kept for Farming Purposes" [60] in 1976, and amended it in 1992. The European Union adopted the Convention, and its members ratified it. The following two rules of the Convention are relevant to our case:

Article 3

> "[N]o animal shall be kept for farming purposes unless it can be reasonably expected, on the basis of its phenotype or genotype,

> that it can be kept without detrimental effects on its health or welfare."

Article 6

> "No animal shall be provided with food or liquid in a manner, nor shall such food or liquid contain any substance, which may cause unnecessary suffering or injury."

As we will see, the phrase "unnecessary suffering," as used in article 6 of the Convention, is referred to in legislation and in court decisions, and is pertinent to the present discussion. It should be noted that the European Court of Justice declared the Convention's provisions to be indicative only. *R v. Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming* [1998] 2 C.M.L.R. 661, para. 34 [31].

Another relevant European document is the 98/58/EC European Union Directive of 1998 [61]. The Directive was meant to implement the Convention. Its provisions, however, are of a general nature, and no mention is made of practices for raising specific animals. Article 3 of the Directive instructs EU members to make arrangements to ensure that animal owners and keepers use all reasonable measures to ensure animals' welfare. Like Article 6 of the Convention, this article prohibits causing "unnecessary pain, suffering or injury." Article 14 of the Directive's annex concerns the feeding of animals. The article provides that an animal should not be given food in a manner that may cause it unnecessary suffering or injury. Neither the Convention [60] nor the Directive [61] makes direct mention of force-feeding geese. This subject, however, was given attention in the Scientific Committee Recommendations [58] (*see* para. 4 *supra*), as well as in the 1999 Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes: Recommendations Concerning Domestic Geese and their Crossbreeds [62]. These detailed Recommendations specify the conditions under which geese should be raised. According to the preface of the Recommendations, certain methods of producing foie gras do not measure up to the requirements of

the Convention. The Recommendations include rules regarding the qualifications required of employees that raise animals, the structures in which animals should be kept, and the conditions under which animals should be raised. Section 25 of the Recommendations specifically refers to foie gras. Section 25(1) provides that countries that allow the production of foie gras should encourage research on the raising of geese, and on alternative methods of foie gras production that would not require force-feeding. Section 25(2) is particularly relevant to our case:

> "Until new scientific evidence on alternative methods and their welfare aspects is available, the production of foie gras shall be carried out only where it is current practice and then only in accordance with standards laid down in domestic law.
>
> In any case, the competent authorities shall monitor this type of production to ensure the implementation of the provisions of the Recommendation."

This provision shows that, although the force-feeding of geese is problematic, the authorized bodies in Europe decided not to ban the practice completely. Accordingly, countries in which geese are raised for foie gras may continue using the force-feeding method. Section 26 of the Recommendation provides that the subject shall be reevaluated after five years. Unquestionably, the regulations of the Minister of Agriculture, which petitioner is contesting, are based, at least partially, on the Standing Committee's Recommendations. For a general discussion of the relation between the Convention [60], the Directive [61] and the Standing Committee's Recommendations [62], concerning the specific case of calf raising, see *R. v. Minister of Agriculture* [31].

Let us return to the 1998 Report of the Scientific Committee [58] (*see* para. 4 *supra*). This 90 page report deals extensively with the raising of geese for foie gras. Throughout the Report the Committee notes that there is too little information regarding the effects of force-feeding on animals. Even so, the Report concludes that force-feeding is "detrimental to the welfare of the birds." Despite this conclusion, the Report does not

recommend completely prohibiting the practice (although one of the Committee members, in a minority opinion, held that force-feeding geese should be completely banned. The Scientific Committee's Report does not refer to any European country that specifically prohibited force-feeding geese. (In the protocol of Education Committee's October 31, 2000 meeting a number of European countries were mentioned as having outlawed this practice. Apart from the Czech Republic, those countries are not mentioned in the Scientific Committee's Report as countries in which the method of force-feeding was used).

To summarize: in Europe, despite an awareness of the problematic nature of force-feeding geese, the various arrangements – the Convention [60], the Directive [61], and the Standing Commission's Recommendations [62] – did not prohibit the practice. *See* also the European Commission's response in September 2001 to questions presented by European Parliament Member David Martin E-2284/01, E-2285/01, and E-2286/01, and the Commission's answer given in April 2003 to Baroness Ludford's query; E-0703/03EN – http://europa.eu.int/. Not only was the practice not banned, but the current situation was also allowed to continue unchanged.

Israeli Legislation Concerning Animals

11. Israeli legislation regarding animals is extensive and varied, and concerns many different topics. We will mention a few.

As mentioned, Section 2(a) of the Protection of Animals Law prohibits the torture, cruel treatment, and abuse of animals. With the enactment of this law, Section 495 of the Penal Law was annulled. Section 495(1) provided that one who "cruelly beats, overburdens, tortures or abuses in any other way a pet, a tame animal, or a wild animal in captivity" violates the law. It should be noted that the Protection of Animals Law imposed a severe penalty for violating Section 2 of the law – a maximum of three years imprisonment. Previously, Section 495 of the Penal Law imposed only one month's imprisonment. In its previous reincarnation, Section 495 appeared as Section 386 of the Criminal

Ordinance, 1936. A comparison of the two would show the similarity between the relevant section of the Criminal Ordinance and the beginning of Section A(1)(1) of the British Animal Protection Act of 1911. This British law, which remains in effect to this day, is based on earlier legislation which dates back to 1822. Here, in Israel, as early as the period of the British Mandate, we find provisions placing certain limits on transporting livestock and fowl by sea. These Regulations remain in effect today. For instance, it was provided that an animal, being imported or exported, should not be beaten with sticks. Section 19 of the Livestock and Fowl Regulations (Sea Transport), 1936. Another Mandatory statute,, still in effect today, is the Fishing Ordinance, 1937 which prohibits the use of explosives for fishing. Sections 5, 10(3).

12. According to one perspective, animals should be seen as property. There are those who argue that this perspective is at the root of people's problematic attitude toward animals. This is the stance taken by the scholar Gary L. Francione in his book Animals, Property, and the Law (1995) [42]. Several provisions of Israeli law may be mentioned in this context. Sections 451 and 457 of the Penal Law concern the offence of causing injury to animals and the offense of infecting an animal with a contagious disease. These two sections specify that they are referring to to an "animal that can be stolen." Another relevant provision is section 6 of the Restoration of Lost Property Law, 1973, which refers to something "lost that is a living creature." Section 22 of the Execution of Judgments Law, 1967 enumerates the items of movable property that cannot be attached, including animals that are necessary for the debtor's profession, and pets, so long as they are not held for commercial purposes. Animals are also viewed as property in rules regarding damages paid to the owner of an animal. For instance, Section 16 of the Animal Diseases Ordinance (new version), 1985, gives animal owners the right to damages from the state if the animal was put to death due to a concern that the animal was carrying a disease.

13. We find a different attitude toward animals in rules concerning the registration of animals. These licensing arrangements, by their very nature, limit property rights. At times those limits are meant to protect

the public interest in its narrow sense, at other times they are meant to protect animals, and in some cases the two purposes are interconnected. We will mention the Animal Diseases Regulations (Animal Imports), 1974, which state that animals cannot be imported without a license issued by the Ministry of Agriculture's Director of Veterinary Services. Another regulation establishes that certain animals (cattle, pigs, sheep, goats and fowl) cannot be brought in or out of a municipality without authorization from a government veterinarian. The Shepherd's Ordinance (License Granting), 1946, establishes that it is only permissible to herd sheep in the areas designated by the Minister of Agriculture after obtaining a license. Another law that requires a license for owning an animal is the Dog Supervision Law, 2002, set to take effect in September 2003. The statute provides that a dog over three months old cannot be kept without a license. The authority that issues licenses must take into account, among other things, the prior criminal convictions of the dog owner, including those relating to the Protection of Animals Law. A further important example of licensing appears in the Protection of Wildlife Law, 1955. Section 2 of this law prohibits hunting wild animals without a license. Section 5 of the law prohibits certain hunting methods. The use of animals for exhibitions, shows, or competitions also requires a license. *See* The Cruelty to Animal Regulations (Protection of Animals) (Exhibitions, Shows, Competitions), 2001 [hereinafter – Cruelty to Animals Regulations (Exhibitions)]. These regulations provide that a show is not to be organized or performed without authorization from the commissioner in charge of the Animal Protection Law. Parenthetically, we note that the Supreme Court of India did not find fault with regulations enacted pursuant to the Prevention of Cruelty to Animals Act, 1960, which prohibited training and exhibiting bears, monkeys, tigers, panthers and lions. *N.R Nair v. Union of India* (2002) 6 S.C.C. 884 [32].

14. Israeli legislation is not consistent in its use of terms or phrases that define when harming an animal is illegal. One phrase, borrowed from Jewish religious law, is *tza'ar ba'alei haim* (cruelty to animals). This phrase is used in the title of two laws, the Protection of Animals Law, and the Cruelty to Animals Law (Experimentation on Animals) [hereinafter – Experimentation on Animals Law]. The phrase also

appears in the Animal Regulations (Exhibitions). The word *tza'ar* (pain, cruelty), apart from the phrase *tza'ar ba'alei haim*, appears in regulation 44 of the Animal Diseases Regulations (Animal Slaughter), 1964. The regulation states that those employed in binding and slaughtering animals will use "methods that will minimize the pain (*tza'ar*) caused to the animal." Another term used in the legislation is "harassment" (*hatrada*). Regulation 2 of the Nature Reserve Regulations (Orders and Conduct), 1979, prohibits harming animals, plants, or objects in a nature reserve. The term "harm," which is defined in regulation 1 includes a long list of prohibitions, among them "harassing a wild animal in its rest; violating its peace or freedom."

Another term is "suffering" (*sevel*). This term is used in Section 2 of the Veterinary Doctors Law, 1991, which establishes that the goal of the veterinarian should be to "prevent and to ease the suffering of animals." Section 4 of the Experimentation on Animals Law defines the responsibilities of the Experimentation on Animals Council. It states that the Council will set rules for experimentation "that will minimize the suffering caused to the animal." Section 8(c) of the law provides that "animal experimentation will be carried out with the utmost care to ensure that only minimal suffering is caused to the animal." *See also* the appendix to the law. We will now refer to a phrase, which is very important in the legal history of animal protection: "unnecessary suffering." This phrase appears in Section 1 of the Experimentation on Animals Law. The phrase "putting to death" is defined there as "putting an animal to death while avoiding unnecessary suffering." Section 6(e)2 of the Dog Supervision Law states that putting a dog to death will be "carried out in a way which will avoid any unnecessary suffering." "Unnecessary suffering" is a phrase of Mandatory origin, and is used in regulations 13 and 15 of the Sea Transport Regulations. With the mention of "unnecessary suffering," let us return to the first statue we mentioned – the Protection of Animals Law – upon which petitioner rests its arguments. The important rule in that statute appears in Section 2(a): "A person shall not torture an animal, will not be cruel to it, or abuse it in any way." The section employs three terms: torture, cruelty, and abuse. Petitioner claims that force-feeding geese comes under the prohibitions

in section 2(a) of the law.

Interim Summary

15. From this short overview of various statutes in Israeli law we learn the following:

A. The law regards animals as subject to property rights. In some cases there are limits to what the animal owner can do to the animal that is his property. The provisions that grant the animal owner the right to damages for harm caused to the animal also take the same perspective of property rights. There are those who claim that this attitude is wrong, since it does not differentiate between animals and real estate or other possessions.

B. Nevertheless, many other statutes, especially those legislated in recent decades, point to a certain shift in attitude. Of course, attitudes that take into account notions of *tza'ar ba'alei haim* or of animal welfare are not new. We mentioned Section 495 of Penal Law (superceded by Section 2(a) of the Protection of Animals Law), which finds its origin in British legislation as far back as 1822. The shift finds expression in new legislation, which prohibits certain uses of animals, and is directed towards bettering the conditions in which they are raised. One instance that exemplifies this trend appears in the Experimentation on Animals Law, passed in 1994, the year in which the Protection of Animals Law was enacted. The law placed certain limits on animal experimentation. *See* HCJ 9374/02 *Let the Animals Live v. Brigadier General Dr. Giora Martinovitch* [1].

Torture, Cruelty and Abuse in the Animal Protection Law

16. The question we must now turn to is whether force-feeding geese comes under the prohibitions in Section 2(a) of the Protection of Animals Law: Does force-feeding constitute torture, cruelty, or abuse? The meaning of these terms was treated extensively and thoroughly in Justice Cheshin's decision LCA 1684/96 *Let the Animals Live v. Hamat Gader*

Recreation Enterprises [2]. This case dealt with whether a performance in which a man battled a crocodile violated Section 2(a) of the law. The judgment set out a three-part test to determine whether an act is proscribed by law. First, a certain act would have to be such that it would seen by a bystander as constituting either torture, cruelty, or abuse. Second, the measure and extent of the pain or suffering caused to the animal do not have to be particularly great. Third, it must be determined whether the means that cause the suffering are proportionate to the purpose towards which they are employed. This third element stands at the center of the discussion in British law when examining whether an act constitutes unnecessary suffering: *See* Chapter 10 of M. Radford, Animal Welfare Law in Britain (2001) [43]. The final element is the most important and the most problematic of the three, since it must be decided whether a certain purpose reflects a worthy social value. *See Hamat Gader*, at 853-54. There, Justice Cheshin stated that:

> It is possible to differentiate between different purposes; one purpose is not like the other. There are purposes that atone for the small amount of suffering they will cause the animal, and there are purposes that will not atone for any suffering at all.

Id., at 868. *In Hamat* Gader [3], it was decided that the show's purpose was to entertain the audience, and that this purpose was not a value that justified the suffering caused the crocodile. How will we apply this test to our case?

17. Let us recall the petitioner's complaint. Force-feeding is accomplished by the insertion of a tube into the esophagus, through which special food is forced with an air pump. The purpose of this process is to enlarge the liver beyond its normal size. Without a doubt, to a bystander, this process would be seen as fulfilling the first part of the test and constituting torture, cruelty, or abuse. The second condition, regarding the measure of pain caused, is also fulfilled in this case. In the petition and its responses, as well as during the deliberations of the Education Committee which authorized the regulations, expert opinions were divided as to whether the force-feeding process causes suffering to

the geese. We see no reason to get involved in this controversy, for it seems, in light of the Scientific Committee's statement, that force-feeding does cause suffering. We have already mentioned the Scientific Committee's conclusion that force-feeding is detrimental to the geese's welfare (*see* para. 10 *supra*). Respondents repeatedly refer to the European supranational bodies – the European Council and the European Union – which did not prohibit force-feeding geese. Respondents also point out that the arrangement in the regulations is similar to the Standing Committee's Recommendations. These Recommendations, as noted, provided that the force feeding of geese would be permitted to continue in countries where it was already in practice, and that a reevaluation of the matter would be undertaken in two years time (1999). Respondents, however, cannot have it both ways. They cannot justify the local arrangement, which is based on the European one, without also accepting the conclusion of the European bodies that force-feeding is detrimental to the geese's welfare. In this context, we would like to comment on the problematic language of section 1 of the Regulations. This section (quoted in para. 6) states that the purpose of the Regulations is "to prevent the geese's suffering." Clearly these regulations do not prevent suffering; at best they minimize, to some extent, the suffering caused.

Even though we admit that the force-feeding process causes the geese to suffer, we must add a reservation. We enumerated other agricultural processes which are problematic as well, such as raising calves under special conditions and causing the molting of egg-laying hens by forced starvation. These processes, in all probability, also cause suffering. It seems a difficult, perhaps an impossible task, to assess the suffering of animals. Is the geese's suffering indeed more severe than that felt by calves and hens?

18. The next question we will consider is at the crux of this case: do the ends justify the means? What, indeed, are the ends? The purpose of the force-feeding process is to produce food for human consumption. This is the same purpose of raising hens for eggs or poultry, raising cattle for food or milk, and raising calves for veal. There are other examples of

animals raised for human consumption. We singled out chickens and calves, for these cases are raised in every discussion about animal welfare. In the United States alone billions of animals are killed each year for the purposes of human consumption. As in other developed countries, the agricultural industry has gone through immense changes in the past decades in order to keep up with the consumption of a society of affluence and an ever-increasing population. Traditional agriculture, based on family farms, has disappeared. It has been replaced by enormous farms, where animals are raised in harsh conditions. Thousands of chickens are crowded together in cages; calves are kept in extremely narrow stalls; their movement is greatly restricted, and they are fed special food. In the case of calves, the purpose of this is to produce meat of higher quality. We mention these examples to demonstrate that imposing a complete ban on a certain agricultural industry may have far-reaching economic and social consequences. It should be noted that the Federal law in the United States of America concerning animal welfare, the Animal Welfare Act of 1966, explicitly excludes farm animals designated for human consumption from the definition of "animal." Clearly, in the hierarchical ranking of purposes, production of food for human consumption will rank above entertainment, as the case of *Hamat Gader*. It is true that foie gras is considered a culinary delicacy, especially in Europe, and thus should not be equated with regular basic foods (Petitioner, in an effort to draw a parallel between this case and that of *Hamat Gader*, referred to foie gras as "gastronomic entertainment"). We may, however, find ourselves entangled in hairsplitting distinctions; what would we say of veal? Clearly substitutes can be found for both foie gras and veal.

Another element that bears mentioning, and which distinguishes the production of foie gras from other agricultural industries, relates to the consequences of accepting petitioner's position. Unarguably, the foie gras industry is based upon the current method of force-feeding geese. To date, an alternative method has not been discovered, although European authorities emphasize the importance of conducting research in this field in the hope of finding such an alternative. As we will see, in the other cases concerning the crowded conditions in which livestock and laying

hens are raised, the regulations that were adopted set minimum standards. Petitioner did not point to any case in which an entire agricultural industry that produced food was eliminated, all at once, for reasons of cruelty to animals.

"Agricultural Needs" and the Approach of the Animal Protection Law

19. We have discussed the terms torture, cruelty and abuse, as used in Section 2(a) of the Protection of Animals Law, focusing on the relation between the means and the ends of force-feeding geese, without looking at the other provisions of this law. We will now turn our attention to these other provisions, which can contribute to and influence the interpretation of the three terms. With regard to force feeding, section 19 of the law provides:

> The Minister of Agriculture is responsible for implementing this law, and he may, with the authorization of the Education and Culture Committee of the Knesset, while taking "agricultural needs" into consideration, issue regulations to implement and to achieve the purpose of this law, including with regard to the following:
>
> (1) The conditions under which animals are kept, including animals in pet shops;
> (2) The conditions under which animals are transported;
> (3) The method with which animals are put to death, with the exception of putting animals to death for human consumption.
> (4) Training animals;
> (5) Animals used in exhibitions, shows and competitions;

The Minister of Agriculture, respondent 2, was granted extensive authority to issue regulations. The law enumerates, without being exhaustive, various areas in which the Minister can act using regulations, all with the authorization of the Education Committee. The regulations,

which petitioner is contesting, were issued by respondent 2 pursuant to Section 19. When the Minister issues regulations, he must take into account both "agricultural needs" and the "purpose of the law," as stated in the preface to Section 19. The purpose of the law is to improve animals' welfare. It seems that the law stated that the Minister and the Education Committee should take agricultural needs into account due to the concern that animal welfare would be given too much weight over other considerations such as food production and farmers' interests. Force-feeding geese is an agricultural need. In this aspect it is no different than raising cows for milk or meat, than raising calves, or than raising hens for eggs or for poultry meat. It should be noted that agricultural needs are not always identical to the farmers' interests. The phrase "agricultural needs" includes food production, which is a general public interest. Of course, it is possible to distinguish between different foods produced from animals according to how essential they are, and to argue that a culinary delicacy like foie gras does not deserve the same measure of consideration as other, more basic, foods. And yet, as we have said, making this type of distinction might open the door to the most microscopic distinctions. The duty to consider "agricultural needs" leads us to conclude that one should not disregard these needs when interpreting the three terms of torture, cruelty and abuse. It is unreasonable to hold that grant of authority to issue regulations pursuant to statute be inconsistent with the interpretation of the statute itself. Since it has been determined that, in issuing regulations, the Minister of Agriculture should take agricultural needs into account, those needs should find expression when discussing the interpretation of the three terms. This point is important in light of the difference between the *Hamat Gader* case and the present case. That case involved a struggle between a crocodile and a man, and the purpose was the entertainment of a spectator audience. There was no need to discuss food production or to interpret the term "agricultural needs." It seems that the purpose of food production should have greater weight than entertainment, particularly when the law specifically ordered that agricultural needs be considered.

20. The Protection of Animals Law takes various measures to improve animals' welfare. One way is by establishing criminal offences.

Sections 2 and 3 of the Law include criminal prohibitions. While Section 2(a) contains a broad prohibition, the other prohibitions are narrow in range. This distinction was made in *Hamat Gader*, at 847 (Cheshin J.), as well as in HCJ 6446/96 *The Cat Welfare Society of Israel v. The Arad Municipality*, at 797 (Goldberg J.). Thus, for instance, Section 2(c) prohibits organizing fights between animals, and Section 3(b) prohibits working animals to the point of exhaustion. As noted, the foie gras industry has been active in Israel for 40 years. Accordingly, this industry practice was already in existence when this law was legislated. And yet, no specific prohibition was issued against force-feeding geese.

21. As we have seen, the Protection of Animals Law includes various criminal prohibitions, one of which is very broad. Moreover, in addition to this broad prohibition, the Minister of Agriculture was granted power to issue regulations with regard to several matters, including the conditions under which animals are held and transported. This system, where administrative regulations coexist with criminal prohibitions, is similar to the one chosen by Britain. The main criminal provisions in England are found in the Protection of Animals Act, 1911. Another relevant statute is the Agriculture (Miscellaneous Provisions) Act, 1968. Section 1 of this statute provides that causing unnecessary pain to animals used for food constitutes a criminal act. This provision, however, does not constitute an addition to the prohibitions of th1 1911 law. The main provision of the latter statute that is relevant to our case is the one authorizing two ministers – the Minister of Agriculture and the Secretary of State – to issue regulations "with respect to the welfare of livestock … situated on agricultural land." Various regulations have been issued pursuant to this statute, the most recent of which, still in force today, are the Welfare of Farmed Animals (England) Regulations, 2000. An examination of these regulations would reveal that they do not merely provide orders of a general nature, but rather make detailed arrangements regarding the keeping of certain animals and the methods used to care for them. Thus, for instance, the second appendix to the regulations sets a minimum for the size of the cages in which egg-laying hens are kept. We have already noted that the issue of raising calves presents difficult questions. The fourth appendix to the regulations defines the minimal

space in which a calf can be kept. It must be noted that transitional provisions were made, so that the order regarding the minimal space for calves did not come into effect immediately. One might ask why it was necessary for England and Israel to have provisions authorizing ministers to issue regulations regarding animals' living conditions. Would the criminal provisions not suffice, especially since some provisions are of general application, so that various agricultural practices could come under their heading? There are three explanations for this system: First, it would be difficult to accept that an existing practice used by farmers for years would be seen as a criminal offence, with all the consequences attendant to such a classification. Second, the criminal offence provisions defined minimal conditions for animals' welfare; the ministers were granted regulatory authority to improve their welfare by setting stricter conditions. Third, granting the ministers authority allows them to deal with specific and local problems that necessitate a consideration of details, such as setting a minimum for every animal's living space.

Transitional Provisions

22. If we were to accept petitioner's legal argument – that force-feeding geese is prohibited under Section 2(a) of the law – it would mean that an entire agricultural industry would become illegal in an instant. As we will see, in cases where the European supranational bodies and England decided to effect a change in widespread agricultural practices, such as raising calves, transitional periods were provided for. This approach is required in our case as well, since we are dealing with a case that concerns the freedom of occupation.

23. We have repeatedly mentioned that raising calves for veal presents problems similar to the ones in our case, due to the conditions under which the calves are kept and the food they are fed. In order to produce a culinary delicacy, these animals were kept in stalls that prevented any movement, and they were fed food whose only purpose was to produce the highest grade meat. In England, the Welfare of Calves Regulations, 1987 provided that the width of the calf's stall be no less than the calf's height, measured at the highest point of its back. Although

the regulations were issued in 1987, they were to be put into effect at the beginning of 1990. The Welfare of Calves Regulations were replaced in 1994, by the Welfare of Livestock Regulations, 1994. These latter regulations established, among other things, that when calves are kept in a herd, they should have a minimal living space of 1.5 square meters for every calf weighing 150 kilograms or more. Concerning calves kept in separate stalls, the regulations prescribed that at least one of the walls of the stall be built such that each calf can see the calf in the next stall. These Regulations also explicitly stated that, for structures in use before 1994, these new conditions would be put into effect starting in 2004. The regulations of 2000 (*see* para. 21) established improved arrangements for the way calves are kept, and they too provided for a transition period. Furthermore, those regulations also established the obligation to provide the calves with food containing a sufficient amount of iron in order to maintain a minimal hemoglobin level. Provisions regarding raising calves were established in the European Union's Directive of 1991 (91/629/EEC), and in the amended Directive of 1997 (97/2/EC). There is no need to describe the Directives in detail; it will sufiice to note that both include transitional provisions. The amended Directive states that certain provisions, regarding the size of calf stalls, be put into effect at the end of 2006.

Why were transitional provisions established in both England and the European Union? It seems that the answer is simple. The new orders were meant to change long-standing arrangements, according to which farmers worked for years. It would be wrong for orders regarding the size of calf stalls to be put into effect immediately. The farmers must be given enough time to reorganize, especially since the changes require new investments. As a result, the price of the veal could rise. Again, the vast difference between the case of calves, roosting hens or poultry chickens, and between this petition concerning geese, must be reiterated. In the matter concerning the calves, the orders and regulations did not result in closing down an entire agricultural industry. The European farmers were forced to modify the stalls of the calves and their food. Farmers that meet the new requirements would be able to continue raising calves for veal, although the quality of the meat may diminish. In contrast, prohibiting

the force-feeding of geese means putting an end to an entire industry, since without the force-feeding, the product is unmarketable. If we accepted petitioner's position, we would be forced to say that force-feeding is a criminal offence, and thus the farmers involved in the industry must stop all activity at once.

24. How does new legislation typically relate to an occupation that was not regulated up to that point, or to a change in the licensing criteria of a certain occupation? Does a person who was legally employed in a certain line of work, such as respondents 4, have to meet the new requirements immediately? Apparently, in such cases it is customary to grant a grace period in order to allow adjustment to the new requirements. When new licensing requirements are instituted for a previously unregulated profession, it is accepted practice to allow for a transition period that allows the previous practice to continue for a limited amount of time without meeting the new criteria. For instance, in the past, there was no legislation regulating the practice of real estate agents. Real estate agents were not required to have a license, or to meet any professional criteria. When the Real Estate Agents Law, 1996 was passed, making licensing a necessary condition for this profession, a transition period was provided for, which allowed agents to continue practicing without the required license for two years from the day the law came into effect. *See* Section 20(a) of the statute. HCJ 1715/97 *Israel Investment Managers v. The Minister of Finance* dealt with the validity of the Regulation of Investment Advisors and Portfolio Managers Law, 1995. In the past, these professions did not require a license. The new statute regulated the profession, and provided that investment advisors and portfolio managers must be licensed. The law came into effect August 10, 1995, but its provisions regarding licensing came into effect at a later date. This date was changed a number of times, and the licensing provisions finally came into effect on July 1, 1997. Regulation of Investment Advisors and Portfolio Managers Law (Amend. 2),1996. The fact that the licensing order was not immediately operative means that, in effect, a transition period was provided for. Furthermore, provisions in the statute permitted those practicing in the profession for over seven years to continue in their practice, even if they failed to meet

the new criteria. This Court, in a decision by President A. Barak, decided that applying a licensing requirement to those already practicing in the profession would violate their freedom of occupation. *Id*. at 406. Concerning the question of when a transitional provision is proportionate, the Court stated:

> Transitional provisions are proportionate if they take into consideration the status of those already working, of their managing experience, and of the relevance of that experience to the new rules; if the harm to those already practicing is appropriate to the purpose of the law; and if the benefit to the public is greater than the harm caused the veteran professionals.

In the end, it was held that it was not proportionate to require seven years of experience as a condition of exemption from the new requirements Following this decision, the statute was amended. Regulation of Investment Advisors and Portfolio Managers Law (amend. 4), 1998.

25. Even when additional licensing requirements are added to professions that are already regulated, a transition period was provided for. For example, when it was decided to change the licensing criteria for real estate assessors and require assessors to hold an academic degree, the new statute provided for a five year transitional period. *See* Sections 7(a)(1) and 45(a)(1) of Real Estate Assessors Law, 2001, and Section 6(2) of the previous law – Real Estate Assessors Law, 1962. A further example can be found in regulation 86(a) of the Naval Regulations (Seamen), 2002, which allowed the previous licensing conditions to continue for a number of years after the new regulations were enacted.

In our case, if we accept petitioner's position, those employed in force-feeding geese will find themselves in a worse position than those professionals who had to adjust to new requirements within a transition period. These farmers, even if they wished, would not be able to accommodate themselves to new requirements in their professional field, but rather would have to find a new field of employment. Therefore, *a fortiori*, the farmers must be given a transition period. Petitioner's

position, that force-feeding geese is torture, cruelty or abuse makes no allowances for a transition period. This stance certainly has ramifications for the correct interpretation of the three terms. It is unacceptable to transform those who have been employed in force-feeding geese for decades into felons in a day. It is possible, however, to view the situation in a different light. Let us ask ourselves how we would relate to an explicit prohibition of force-feeding geese in the Protection of Animals Law. Seemingly, the validity of such a prohibition would be conditioned on a reasonable transitional provision. *See* HCJ 5936/97 *Dr. Oren Lamb v. Director of the Ministry of Education*, [5] at 687-90 (Dorner, J.). Therefore, it cannot be that the general and vague provision prohibiting torture, cruelty or abuse toward animals imposes a ban on force-feeding geese that contains no transitional provision.

The Court's Intervention Regarding Regulations Authorized by Knesset Committees

26. Section 19 of the Protection of Animals Law states that regulations issued by the Minister of Agriculture require the authorization of the Knesset Education Committee. The regulations contested by petitioner were indeed authorized by this committee. Prior to authorization the committee met several times; these meetings were attended by various government ministry officials, including officials from the Ministry of Agriculture, the Ministry of the Environment, and the Ministry of Justice. Also in attendance were representatives of the occupation of force-feeding geese, of the Egg and Poultry Board, and of organizations that advocate animal rights. The decision was made following a thorough and comprehensive discussion. *See* the protocol of the October 31, 2000 and January 2, 2001 Committee meetings. This court will proceed with special caution when examining the validity of regulations authorized by a Knesset committee. *See* HCJ 108/70 *Manor and Colleagues v. The Minister of Finance*, [6] at 445; CA 2313/98 *The Minister of Industry and Trade v. Mincol*, [7] at 686; HCJ 971/99 *The Movement for the Quality of Government in Israel v. The Knesset Committee*, [8] at 170. Let us recall that the regulations were enacted in 2001, and they are to expire after three years. In 2004, the five year

period provided for by the Standing Committee will also end. *See* para. 10. As noted above, the regulations stated that no new force-feeding farms be opened, and existing ones should not be expanded. Here too, the solution is similar to the Standing Committee's Recommendations of 1999. Under these circumstances, we cannot accept that the regulations, authorized by the Education Committee, are invalid. Furthermore, if we were to accept petitioner's position that force-feeding geese is inconsistent with Section 2(a) of the Protection of Animals Law, we would be forced to say that both the Minister of Agriculture and the Education Committee worked in vain and issued regulations that contradict the law.

Enforcement and Implementation of the Regulations

27. Section 1 of the Protection of Animals Law instructs that the Ministry of Agriculture's Director of Veterinary Services appoint an "Officer in Charge" of the law. The law grants the Officer in Charge and his subordinates the authority to enforce the law, including authority to enter premises, to investigate (section 6), as well as the authority to confiscate animals (section 8). Section 5 of the law provides that the Director will appoint inspectors with powers similar to those of the Officer in Charge (sections 6, 8). After the regulations were issued, the Ministry of Agriculture decided that the Officer in Charge would be responsible for enforcing the regulations. Following this decision, an inspector conducted an assessment of geese farms (both for force-feeding and for slaughter). In February 2002, the Officer in Charge at the time, Dr. Hagai Almagor, submitted a detailed report to the Ministry of Agriculture, which analyzed the findings of the inspections. The report concluded that the regulations could not be enforced and that they, in fact, were not adhered to. The Director, Dr. Oded Nir, however, revaluated the data used by the Officer in Charge, and emerged with a very different conclusion. The Director determined that the regulations, for the most part, are enforceable and, for the most part, are adhered to. However, he did add that a number of the regulations should be revaluated or redefined. While respondents' arguments rest on the Director's findings, petitioner argues, in light of the conclusions of the

Officer in Charge, that the regulations are not enforceable and therefore should be annulled. We see no reason to get involved in the technical details of the disagreement between the Officer in Charge and the Director. In any case, it is hard to see what petitioner would gain if it were to be determined that the regulations are not enforceable. This fact, in and of itself, would not make force-feeding geese illegal. Again, as we have already noted, and we will return to this point, the regulations are only valid until 2004, and as this date approaches this subject will be revaluated in any case.

Conclusions Concerning the Requested Remedies

28. Petitioner requests a declaration that the regulations are void, an order instructing the Minister of Agriculture to issue new regulations prohibiting the practice of force-feeding geese, as well as an order to the Attorney-General to instruct the police to investigate and prosecute those involved in force-feeding geese. Petitioner's premise is that the current practice of force-feeding geese violates the Protection of Animal Law, in light of section 2(a) forbidding torture, cruelty and abuse of animals. It is clear from our discussion that we are of the opinion that petitioner's position should not be accepted. Would petitioner's position be accepted, the regulations would be void, for regulations cannot permit that which is prohibited by statute. Had we agreed with petitioner's argument, we would be forced to say that the Animal Protection Law makes those employed in force-feeding geese criminals. These same people have been employed in the profession for many years, with the encouragement and aid of the government. Let us return to our discussion of the legal status of force-feeding geese in the European Union. The European Union did not prohibit force-feeding geese. In 1999, its institutions established that countries, in which force-feeding is practiced, may continue this practice, subject to a revaluation in 2004. In the present case, the purpose of the force-feeding process is production of food, which is clearly not a standard or basic food, but rather a gastronomic delicacy. The purpose of nourishment must have greater weight than that of entertainment, as was the case in *Hamat Gader*. Furthermore, the Protection of Animals Law explicitly provides that the Minister of Agriculture take into account

"agricultural needs" when issuing regulations. Both the farmers' interests and the interest of the general public in food production come under the rubric of agricultural needs. This too, must lead us to the conclusion that the current practice of force-feeding geese is not unlawful. Accordingly, the Attorney-General should not be made to order the police to investigate those farmers involved in this industry. Furthermore, in light of the above, the Minister of Agriculture and the Education Committee should not be forced to issue regulations completely banning the force-feeding of geese.

Alternative Proceedings and Standing

29. Before we conclude, we will relate to a novel argument made by respondents which should not be accepted. The claim is that the Supreme Court should not intervene in this case, since petitioner has other avenues of achieving its goal. Respondents refer us to section 15 of the Protection of Animals Law, which gives animal rights organizations that have been officially recognized by the Minister of the Environment, after consultation with the Minister of Agriculture and with the approval of the District Attorney, the right to file a private criminal complaint for infringement of the law. Respondents also base their claim on section 17(a) of the Protection of Animals Law. This provision provides that animal rights organizations, the Director, and a prosecutor, can ask the Magistrate Court for an injunction prohibiting a certain act or the continuation of a certain act that violate sections 2 and 4 of the law. Respondents therefore argue that petitioner, or other bodies authorized pursuant to section 15 of the law, can take criminal and civil action against those involved in force-feeding geese. We did not see fit to accept this argument, if only because in the alternative proceedings petitioner would not have been able to obtain an order annulling the regulations. Let us add, parenthetically, that the two alternative proceedings – a criminal complaint and a request for an injunction – solves a problem which arises in other countries, when it is argued that animals do not have legal standing. *See* Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. Rev. 1333 (2000)

[46].

Before Closing

30. After studying the judgment of my esteemed colleague, Justice Strasberg-Cohen, it seems that while our legal analyses do not greatly differ, there is a considerable gap between the remedies that we believe should be granted. In my opinion, my colleague's conclusion that the regulations are fatally flawed seems too extreme. As I noted, the arrangement in the regulations follows the European arrangement. Furthermore, we have found no country where force feeding, having been practiced, has been prohibited. Had it been possible to determine, using up-to-date findings, that it was possible to continue this agricultural industry while reducing the pain caused the geese, I too would conclude that the regulations are unlawful. However, there is currently no indication that this industry could continue operating under stricter limitations. One legitimate option open to the regulatory authorities is to prohibit force-feeding geese completely. Of course, as I have noted at length, such a prohibition cannot be put into force immediately. Rather, those involved in the industry should be given a reasonable transition period.

Epilogue

31. The question at issue in this petition was whether force-feeding geese is permissible under Israeli law. As we have seen, during the force-feeding process the goose is forcibly fed through a tube in order to produce an enlarged and fatty liver for human consumption. The livelihood of a few hundred families in Israel depends upon this agricultural industry, which has existed for 40 years. I have concluded that petitioner's argument – that force-feeding geese is torture, cruelty or abuse in violation of Section 2(a) of the Protection of Animals Law – should be rejected. The main issue was whether there is a proportionate relation between the means (force-feeding geese) and the ends (producing food). The premise of the argument was that the force-feeding process does cause suffering. Even so, in the present case, I

believe that the means are proportionate to the ends, even though foie gras is a delicacy and not a basic food. In this connection, the legal situation in the European Union, which allows the practice to continue in countries in which it already existed, was given weight. It should also be remembered that, together with force-feeding, there are other agricultural practices that raise similar problems. We referred to raising calves for veal, where the calves' mobility is restricted and they are fed special food, in order to produce higher quality meat. Another instance is causing hens to molt by starving them. These are not the only problematic cases. We have also seen that the Protection of Animals Law instructed the Minister of Agriculture, and consequently the Knesset Education Committee, to take "agricultural needs" into consideration when regulations, including those regarding the conditions in which animals are kept, are issued under this law. "Agricultural needs" include both the public's interest in food production and the farmers' interests, which in this case are those farmers involved in the foie gras industry. It is unacceptable to have those who raise geese go from lawfully employed farmers to offenders. Let me make clear that I do not mean to say that, in the future, the terms torture, cruelty and abuse will necessarily have the same meaning as they did at the time the law was enacted in 1994. As noted, these are vague terms that are naturally open to flexible interpretation, taking into account economic and social changes, and the prevailing cultural climate.

The regulations issued in 2001 will be void in 2004. A decision will have to be made regarding the near future. The authorized bodies will have a number of options before them. The current arrangement, as it itself notes, is temporary. It should not continue indefinitely, for the suffering of the geese should not be ignored. It is also unacceptable that the regulations go out of force without new ones to replace them, creating a legal vacuum. The authorized body, the Minister of Agriculture with consent of the Education Committee, may issue new regulations with stricter requirements, in an effort to continue to minimize the geese's suffering, on condition that stricter regulations will not bring an end to the industry. It is reasonable to suppose that a new arrangement would take into account any developments in the European

law, as well as the conclusions drawn from the implementation of the current regulations. Another option is to completely ban the current method of force-feeding geese, on condition that a reasonable transitional provision is set. In this case, proper weight must be given to the farmers' interests, who have worked in this occupation for many years with government support and encouragement. Concerning the length of the transition phase, many things have to be considered, including the extent of damage caused to those employed in the industry, as well as the time it would take for them to adjust to an alternative occupation. At the end of the day I have found that the force-feeding process does indeed cause suffering to the geese. And yet, in my opinion, it is unjustified to prevent the suffering of from the geese by bringing suffering upon the farmers – which would be the result of their livelihood being wiped out in an instant.

32. Therefore, if my opinion were accepted, we would cancel the *order nisi* and dismiss the petition, subject to the above.

Justice T. Strasberg-Cohen (ret.):

1. In this petition we shall decide the legality of force-feeding geese for the production of foie gras. Petitioner's position is that force-feeding should be prohibited since it constitutes abuse of animals, forbidden by law. Respondents claim that the practice should not be prohibited.

The issue is complex, the problem intricate, and the decision is not at all simple. It requires balancing different values on several levels, "considering the essence and the importance of the conflicting principles, our perception of their relative priority, and of the degree of protection we seek to confer on each principle or interest." HCJ 448/85 *Dahar v. The Minister of Interior*, [9] at 788. On one side of the balance we find society's interest in protecting animals. On the other side is man's right to make use of animals for his own sustenance and welfare.

I studied the thorough and extensive judgment of my colleague, Justice A. Grunis, with great interest. I do not see eye to eye with my

colleague on all the matters at hand, and I therefore wish to spell out my own approach to the subject.

The Obligation to Protect Animals

2. The premise of our discussion is the obligation to protect animals. This obligation is rooted in Jewish religious law, and has long been a part of our legal system. Jewish law establishes that the prohibition of *tza'ar ba'alei haim* (cruelty to animals) is of Biblical origin: "*tza'ar ba'alei haim* is of Biblical origin, and overrides rabbinic prohibitions." Babylonian Talmud, Tractate Shabbat 31a; 128b [63]; *see* also A.S. Abraham *Medical Experimentation on Animals and Humans*, 10(2) Asya 20 (1984) [64]. The need to protect animals is said to "constitute a part of our culture. We feel the obligation to protect every living being created on this planet." HCJ 6446/96 *The Cat Welfare Society of Israel v. Municipality of Arad*, [3] at 778. It has been said that "an enlightened society is not measured only by its attitude toward people, but also by its attitude toward animals." Explanatory Notes to the Cruelty to Animals Bill, 1992, at 298.

Justice Cheshin, in LCA 1684/95 *Let Animals Live Society v. Hamat Gader Recreation Enterprises*, [2] at 858, has noted that "the sense of compassion we feel toward an animal that is being abused stems from a source deep within our hearts, from our sense of moral right, a sense that is appalled at the sight of the weak and defenseless being harmed. Man is therefore ordered to protect animals as part of the moral duty to protect the weak." There are those who hold that animals themselves have no moral sense, and cannot be the object of human morality. Nevertheless, they should be protected, not due to any moral obligation, but rather due to obligations of man's own sense of compassion:

> The reason for the prohibition of cruelty to animals is compassion, and this reason, as all other emotions, finds its human reflection in animals; it is this emotion which urges man not to be cruel to animals.

A. Ben-Ze'ev, *The Reason for Prohibiting Cruelty to Crocodiles*, 4 Law and Government 763, 780 (1997) [37].

There are those who view protection of animals as part of "man's education so that he will not be cruel, so that man's apathy and cruelty will not seep into his soul," and part of the "educational objective of achieving human perfection." *The Cat Welfare Society of Israel v. The Municipality of Arad*, at 796 (Goldberg J.), and *Hamat Gader* [2], at 861**,** 873. Some research, for example, has seen a connection between cruelty to animals and violence toward people. *See*, *e.g.*, R. Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 Animal L. 82 (1999) [47]; L.S. Antoncic, *A New Era in Humane Education: How Troubling Youth Trends and a Call for Character Education are Breathing New Life into Efforts to Educate Youth about the Value of All Life*, 9 Animal L. 183 (2003)[48]. In this connection, there are those who claim that avoiding cruelty to animals is an expression of human dignity. P. Lerner, *Thoughts on Feeding Street Cats – Following* CrimA 897/01 State of Israel v. Urovsky, 16 The Law 74, 83 (2003) [38].

3. There is a wide range of views regarding the theoretical basis for the protection of animals. On one end of the spectrum are those who believe that man is the master of all and that he has the right to subject animals to his will. *See* R. Descartes *Animals are Machines*, *in* Animal Rights and Human Obligations 13-19 (P. Singer and T. Regan Eds 1989) [49]; L. Letourneu, *Toward Animal Liberation? The New Anti-Cruelty Provisions and Their Impact on the Status of Animals*, 40 Alberta L. Rev. 1041, 1042 (2003) [50]. On the other end of the spectrum are those who hold that animals have rights in their own right. These rights should not be violated, and any "use" of animals as a means of improving man's welfare is morally dubious. *See* E.L. Hughes & C. Meyer, *Animal Welfare Law in Canada and Europe*, 6 Animal L. 23, 33 (2000) [51]; T. Regan *The Case for Animals Rights*, *in* Animal Rights and Human Obligations 105-14 (P. Singer and T. Regan eds. 1989) [52]; L.H. Tribe, *Ten Lessons Our Constitutional Experience Can Teach Us About the Puzzle of Animal Rights: The Work of Steven M. Wise*, 7 Animal L. 1

(2001) [53]; Y. Wolfson *The Moral and Legal Status of Animals*, 5 Law and Government 551 (2000) [39]. Between the two extremes, various positions can be identified. These positions all acknowledge the need to protect animals, on the one hand, as well as the possibility, on the other, that in certain cases this interest will be subordinated to human needs. These intermediate positions are characterized by an attempt to find the right balance between the opposing interests, although there is no consensus regarding what the balance should be.. *See*, *e.g.*, D.R. Schmahmann & L.J. Polacheck *The Case Against Animal Rights for Animals*, 22 B.C. Envtl. Aff L. Rev. 747 (1995) [54].

4., Peter Singer, the utilitarian philosopher, is the most prominent of those who assert that the interest of every living being should be considered when making decisions about "using" them. According to his theory, the degree of protection granted to an animal should be proportionate to its ability to experience pain. Thus, in order to make moral decisions, the interests of every individual – man or animal – able to experience pain should be equally taken into account. P. Singer, Practical Ethics 57-8 (2d Ed. 1994) [44]. In his opinion, rare is the case where animal suffering is justified. However, even he admits that there are cases in which human interests will take precedence over the interest of animal protection, though food production is not among these. *See* P. Singer, *Ethics and Animals*, 13 Behavioral and Brain Sc. 45, 46 (1990) [55]. Other positions also emphasize animals' right to protection due to their ability to suffer. In their eyes, man's use of animals is acceptable, but it must be balanced against the need to treat them humanely:

> The approach in both Canada and Europe is based on the utilitarian notion that human use of animals is acceptable, but should be balanced against the need for humane treatment. There is, however, a broad range of ideas as to what constitutes an acceptable balance between human and animal interests… Even if Western societies are not yet prepared to consider animal "rights" (which is arguable), there has been a clear move away from a Cartesian view of animals as insensate property. There is wide acceptance of the notion that animals

> should be protected "in their own right because they have a capacity to suffer."

Hughes & Meyer, [51] at 48.

The Balance Between Conflicting Interests

5. As we have seen, there is no agreement concerning the status of animals and the degree of protection they are to be afforded. However, it is clear that the extreme views on both sides of the spectrum do not represent the accepted position of Israeli and international scholars, and are not reflected in legislation or legal decisions. It can be said that the tendency is to balance the interest of protecting animals against man's right to use animals for his sustenance. In the words of a document published by the Canadian Justice Department:

> There is also a broad spectrum of attitudes and opinions in our society about how people should treat animals. Some people view animals as independent beings capable of feeling pain and emotion and therefore worthy of consideration in every way that people are, while others view animals as little more than machines or products to use in any way that benefits humans, regardless of the process. Falling somewhere between these two extremes is the great majority who generally feel that it is acceptable to use animals in some circumstances and for some purposes, but that every reasonable effort should be made to reduce or eliminate unnecessary animal suffering and pain.

Dep't of Justice Canada, Crimes Against Animals: A Consultation Paper (1993), at 3.

6. Balance between interests is part and parcel of our legal system. Our premise is that each of the conflicting interests is worthy of some protection, and it is not possible to completely protect one and leave the others defenseless. As such, the conflicting rights or interests are always "relative" and never absolute. This is based on the presumption that "the

values, principles, and freedoms are not all of equal importance." CA 6024/97 *Fredricka Shavit v. Hevre Kadisha (Jewish Burial Services) of Rishon Le'Zion*, [10] at 657. The same applies to human rights that are anchored in Basic Laws. *See* HCJ 2481/93 *Dayan v. Police Commander of the Jerusalem District,*, [11] at 456; CA 6821/93 *Mizrahi Bank v. Migdal*, [12] at para. 72 (Barak J.); LCA 7504/95 *Yassin v. The Party Registrar*, [13] at 45; HCJ 7015/02 *Ajuri v. Commander of IDF Forces in the West Bank*, [14] at 352.

7. The circumstances under which other interests will override the interest of protecting animals cannot be precisely demarcated. They will "depend on the culture, values, and worldview of society and its members, and these are contingent on time, place, and circumstance." *The Cat Welfare Society*, [3] at 779. These factors found expression in my position in *The Cat Welfare Society of Israel* [3] where I insisted that, when considering the authority of municipalities to take steps to reduce the number of street cats "we must remind ourselves of the animals' right to live." *Id.* at 778). I stated that we must infer, from animals' right to life, the duty not to cause them needless suffering while they live. And yet, I noted that this right is relative and may be infringed for a justified cause. Therefore, I determined that, in light of the danger of infectious diseases, it was proper to take steps to dilute the cat population.

Modern Israeli legislation concerning animals also adopts the balancing principle. It should, however, be noted that a number of legislative arrangements which treat animals as property remain in effect, as noted by my colleague, Justice Grunis.

Cruelty to Animals Law

8. The two statutes applicable to our case are the Cruelty to Animals Law (Protection of Animals Law), 1994 and the Cruelty to Animals Law (Experimentation on Animals), 1994. Indeed, the legislature provided a shared explanation for the two laws that were originally meant to be one. The explanation states that the Israeli arrangement is "a compromise between those who object to any experimentation on animals and those

who advocate experimentation on animals without supervision. The proposed solution permits animal experimentation under supervision and attempts to minimize suffering as much as possible." *Id.* at 299.

The Experimentation Law does not prevent experimentation on animals. However, it does set out a number of restrictions regarding the conditions under which such experiments are to be carried out. The purpose of these restrictions is to minimize the suffering of animals used for experimentation. The statute, for example, limits the number of animals that can be used; permits are required for certain experiments. It also established that "a permit for animal experimentation will not be granted if the purpose of the experiment can be achieved through reasonable alternative means." Section 9. In the framework of the statute, the Cruelty to Animals Regulations were promulgated. These regulations set forth detailed arrangements concerning the conditions under which the animals are to be kept, the way the experiments are to be carried out, and prerequisites for registering an employee as a researcher, such as training in the area of minimizing animals' suffering. The regulations provide that a permit will not be granted for an additional experiment to be carried out on the same animal "if the only reason is the additional cost of using a different animal." Section 7.

9. The Cruelty to Animals Law (Protection of Animals Law) sets out a number of prohibitions, the first of which is a general prohibition that "a person shall not torture an animal, be cruel toward it, or abuse it in any way." Section 2(a). Subsequently, the statute contains specific prohibitions against animal abuse, such as the prohibition to cause one animal to fight another, section 2(b); organizing competitive fights between animals, section 2(c); working an animal that is unable to work due to its physical condition, section 3(a); and working an animal to the point of exhaustion, section 3(b). The law, however, excludes the "putting of animals to death for the purposes of human consumption" from its application. From this exception we learn that the legislature took this the needs of human existence into account together with, the interest of protecting animals. The legislature concluded that the needs of human consumption take precedence over the animals' right to live. In a

similar vein, section 19 of the statute establishes that "the Minister of Agriculture is responsible for implementing this law, and he may, with the authorization of the Education and Culture Committee of the Knesset, while taking "agricultural needs" into consideration, issue regulations to implement and to achieve the purpose of this law." The said provision contains a system of checks and balances. Although the Minister of Agriculture is responsible for the law, the regulations he issues must be approved by the Knesset's Education and Culture Committee. The purpose of this, it seems, is to assure that when regulations are issued, proper weight is given to the interest of animal protection. The statute provides that the regulations will be issued to implement and "to achieve the purpose of this law" while "taking agricultural needs into consideration." These needs may conflict with the protection of animals. This is the source of the central difficulty in our case.

The Purpose of "Making Use" of Animals In Contrast to the Prohibition of Abuse

10. How will we interpret the sweeping provisions of section 2(a), which prohibits animal abuse, and how will we reconcile this prohibition with the consideration of "agricultural needs?" The wording of the section is unambiguous; it prohibits any torture, cruelty and abuse of animals. What behavior constitutes animal abuse? Does causing any suffering to animals constitute abuse under section 2(a) of the law? In order to answer this question, we cannot confine ourselves to the language of the law, for interpretive work begins from the language of the law, but never ends there. The purpose of interpreting a piece of legislation is to give it the meaning that fulfills its purpose in the best manner. HCJ 693/91 *Efrat v. Director of Registration of Inhabitants*, [15] at 763. In order to accomplish that, "our interpretation considers the legal background, which may be other provisions in the same piece of legislation, and other pieces of legislation on the same subject … as well as the accepted principles, basic purposes, values and interests of the legal system." CrimA 2947/00 *Avraham Meir v. The State of Israel*, [16] at 644; *see* also CA 165/82 *Kibbutz Hatzor v. Assessing Officer of Rehovot*, [17] at 75; A. Barak Interpretation in the Law – Interpretation

of Legislation, 341-3 (2d ed. 1993) [35]. Our legal system demands a balance between the interest of animal protection and other worthy social values. This is the road taken by the Court in *Hamat Gader*. There, we held that, in order to decide whether causing suffering to an animal constitutes abuse, one must find a balance between the degree of suffering caused to the animal, the purpose of this suffering, and the means used to achieve the purpose:

> [A]fter it has been established that someone has inflicted suffering and pain upon an animal, which *may* constitute torture, cruelty or abuse, we must examine and determine for what *purpose* this act was committed, and whether the purpose is one that represents a worthy social value? And where we find that the purpose is a worthy one, we will proceed to examine whether the *means* used were appropriate. And finally: is there a correct *balance* between the suffering and pain the animal feels and between the purpose and means? Does the case meet the test of proportionality?

Hamat Gader, [2] at 853-4 (emphasis in the original). *See also* HCJ 9374/02 *Let the Animals Live v. Brigadier General Dr. Giora Martinovitch, Chief Medical Officer* [1].

A similar approach is echoed by Judge Hawkins' words in *Ford v. Wiley*:

> [T]he legality of a painful operation must be governed by the necessity for it, and even when the attainment of a desirable and legitimate object is sought to be attained, the magnitude of the operation and the pain caused thereby must not so far outbalance the importance of the end as to make it clear to any reasonable person that it is preferable that the object should be abandoned rather than that disproportionate suffering should be inflicted.

Ford v. Wiley, 23 QBD 203, 220 (1889) [30]. See also the judgment of

the Appeals Court of Quebec in *R. v. Menard*:

> Thus men … do not renounce the right given to them by their position as supreme creatures to put animals at their service to satisfy their needs, but impose on themselves a rule of civilization by which they renounce, condemn and repress all infliction of pain, suffering or injury on animals which, while taking place in the pursuit of a legitimate purpose is not justified by the choice of means employed.

R. v. Menard 43 C.C.C. (2d) 458, 46 (1978) [33].

11. This Court's methodology in *Hamat Gader* – its use of the tests of purpose and proportionality – bears a similarity to the principles that guide this Court when it balances fundamental rights against other rights, values, principles or interests of a public nature. This balance is achieved by weighing the purpose of the violation and the proportionality of the means used to achieve the said purpose. *See* HCJ 5016/96 *Lior Horeb v. The Minister of Transport*, [18] at 388 (Barak J.). These tests are also used by the courts in determining a balance in cases other than those concerning human rights, such as the case before us. In this framework, the tests of purpose and proportionality serve not only to decide whether the harm to the interest of animal protection is justified and is therefore legal, but also for defining the limits of the interest itself.

"Agricultural Needs" and the Protection of "Farm Animals"

12. The petition before us concerns the sharp tensions between the interest of protecting animal and between the intensive use of animals in industries that raise animals for human consumption. The question of the application of the Cruelty to Animals Law to methods – and, in our case, the practice of force-feeding for the production of foie gras – has not yet been discussed by this Court. Deciding the question before us requires answers to complex normative questions. However, since this question was brought before us, we must decide it as we do in other cases where the Court is asked to make difficult ethical decisions. *See, for instance,*

CFH 2401/95 *Nahmani v. Nahmani*, [19] at 661; HCJ 2458/01 *New Family v. The Ministry of Health*, [20] at 433. I will turn, therefore, to the parameters of the Cruelty to Animals Law.

Does the process of raising farm animals come within the parameters of the Cruelty to Animals Law? The answer is not obvious. The law excludes "putting animals to death for purposes of human consumption" from its application. As such, it can be claimed that, if putting an animal to death is not protected by law, then the raising of animals, which will in the end of the day be slaughtered and eaten, is also not protected by law. This position is unacceptable to me. Why? Other than the act of killing an animal for purposes of food (and animal experimentation as regulated in the Experimentation Law) the law does not set any other limits to its application. Thus, we deduce that *raising* animals, either for human consumption or for other needs, falls under the provisions of the law. Furthermore, the fact that the law excludes putting animals to death for human consumption from its application, as well as the fact that the farm animal is destined to be slaughtered does not, in and of itself, justify that the animal's life should be filled with suffering. Furthermore, would the law not apply to farm animals, there would have been no place for Section 19 to provide that "agricultural needs" must be taken into account when issuing regulations pursuant to this law.

Comparative Law

13. If raising farm animals for human consumption falls under the provisions of the Cruelty to Animals Law, can we interpret the prohibition of Section 2(a) of the law such that *accepted* agricultural practices will also be defined as abuse? Comparative law reveals two main trends concerning the application of animal protection laws to agricultural practices. One trend, dominant in the United States and Canada, excludes accepted agricultural practices from the application of animal protection laws. In the United States, where the lion's share of the animal protection regulations have been issued by the states, 30 states have excluded accepted animal husbandry practices from the application of animal protection laws. For a survey of the American state legislation

on animal protection as of 1999, see P.D. Frasch et. al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 Animal L. 69 (1999) [56]; A.N. Rowan et al., Farm Animal Welfare – The Focus of Protection of Animals in the USA in the 21st Century, 57-61 (1999) [45]. Similar rules excluding accepted agricultural practices from the application of the animal protection laws can also be found in Canadian provincial legislation. *See, for instance,* Section 24 of the British Columbia Prevention of Cruelty to Animals Act, R.S.B.C., Ch. 372 § 24(1)-24(2); Section 2(2) of the Animal Protection Law of Alberta: Animal Protection Act, R.S.A., Ch. A-41 (2000) (Can.); Section 11(4) of Nova Scotia's Animal Cruelty Prevention Act, S.N.S., Ch. 22 § 11(4). The existence of such provisions show that, in their absence, these same "accepted" and "reasonable" practices might have been considered animal abuse. The problem with this approach is that cruel practices, even if they are not carried out for an appropriate purpose or even if they inflict a disproportionate degree of suffering, will be protected. See D.J. Wolfson, *Beyond the Law: Agribusiness and the Systematic Abuse of Animals Raised for Food Production*, 2 Animal L. 123, 132 (1996) [57].

14. Another trend, dominant in Europe and other countries, emphasizes animal welfare. It does not exclude agricultural practices from the application of animal protection laws, but establishes specific statuary arrangements, which include rules regarding agricultural methods. In England, rules were set out concerning the way farm animals are to be kept and cared for, including detailed arrangements regarding specific farm animals. *See* The Welfare of Farmed Animals (England) Regulations 2000; The Welfare of Farmed Animals (England) (Amendment) Regulations 2002. Similarly, the Swiss Protection of Animals Ordinance, 1981 and the Swiss Federal Act on Protection of Animals, 1978 established general rules regarding the holding, raising, and caring of farm animals. Similar arrangements can be found in Germany, Denmark, Norway, Finland, Iceland, Sweden and Holland. *See* Rowan, p. 64. The supra-national European framework includes a 1976 Convention, a 1998 Directive, and Recommendations from 1999. These were discussed extensively by my colleague, and I will relate to them below.

15. New Zealand's Animal Welfare Act, 1999 sets out rules for the protection of animals. It regulates the development of Welfare Codes, which are intended to set minimal standards for animal care. One of the codes reads as follows:

> Welfare Considerations are becoming increasingly important for the keeping and farming of animals, both in New Zealand and internationally. Practices which may once have been deemed acceptable are now being reassessed and modified according to new knowledge and changing attitudes. High standards in animal welfare are not only important legally, but also have direct economic benefits by enhancing productivity and facilitating international market access"

Recommendations and Minimum Standards for the Welfare of Pigs – Code of Animal Welfare No. 13 (November 1999). The Animal Welfare Advisory Committee (AWAC) was responsible for developing the Codes, and they were published by the Minister of Agriculture after a public consultation process. Pursuant to this law, a long list of animal welfare codes have been developed, including codes concerning certain farm animals. A violation of the code's provisions is not considered, in and of itself, a violation of the statuary provisions, but it constitutes evidence of such a violation. In the same way, abiding by the welfare code's provisions constitutes a defense to a charge of a violation of the statutory provisions. See Guide to the Animal Welfare Act – Code of MAF Policy Information Paper No. 27, at 1 (December 1999). It is interesting to note that, in the countries that regulate animal welfare, the practice of force-feeding geese is not mentioned. It is possible that this is due to the fact that this practice is not found in those countries.

Regarding farm animals, it seems to me that the Israeli approach is more similar to the European and New Zealand provisions than to American-Canadian legislation. The former does not overlook the need to provide for the protection and welfare of farm animals. Rather, it provides for clear rules regarding the raising of farm animals for food

production. It also provides a flexibility that allows the legislature to tailor the rules and make changes, according to available scientific expertise and changing social ideas.

"Agricultural Needs" and Force Feeding

16. Section 2(a) of the statute sets out the prohibition of harming animals, while section 19 provides that, when issuing regulations, the Minister shall take "agricultural needs" into account. The phrase "agricultural needs" represents the public interest in the existence and development of agriculture, including the production of food. The grant of authority to issue regulations, as per section 19, constitutes a tool for concretizing the balance between the need to protect animals and the opposing interest of "agricultural needs."

How should we interpret the phrase "agricultural needs?" Although agricultural needs do not necessarily coincide with the interests of farmers, the phrase is general enough to include both agricultural needs as well as the interests of farmers that have a stake in the industry on which they rely for their livelihood. As my colleague Justice Grunis stated, "one should not disregard agricultural needs when interpreting the three terms of torture, cruelty and abuse." In other words, causing farm animals to suffer will not be considered abuse as defined in section 2(a) if such suffering is justified by "agricultural needs." Nevertheless, according to my interpretation, "agricultural needs" do not take sweeping precedence over the interest of animal protection Long accepted agricultural practices do not have immunity from the application of section 2(a) of the law, although this may be an indication of society's legitimization of them.

Thus, in every given case, the following should be measured: the relevant "agricultural needs" should be weighed against the suffering inflicted on the animal, as well as the type of suffering and its severity.

17. There is no real disagreement that the practice of force-feeding causes the geese suffering. It is also clear that where it is practiced, this

method sustains an agricultural branch of food production. This is the basis of the approaches of different countries – some give more weight to the welfare of the geese and prohibit the practice, and others give greater weight to human needs and allow the practice. My colleague has already described the process of force-feeding, and the suffering it causes the geese. I will simply note that, during the force-feeding process, the geese are prevented from eating freely, and they are force-fed a number of times daily with a large amount of high-caloric food that exceeds their physical needs. The process is violent and invasive: a metal tube is inserted into the goose by which the food is forced into its stomach. The process causes a degenerative disease in the geese's liver, causing it to grow to ten times its natural size. All agree that, without the injury to the goose liver, it is not possible to produce foie gras today. *See* The Protocol of the Education and Culture Committee's meeting on October 31, 2001; "Background Document for Discussion of: Cruelty to Animals Regulations, Force-Feeding Geese," The Knesset's Research and Information Center. My colleague related to the Report of the European Council's Scientific Committee concerning animal health and welfare, published December 16, 1998. This Report deals extensively with the practice of force-feeding, while surveying and analyzing the scientific data on the subject that was then available. The Report examines the effect of force-feeding on the welfare of the geese using various indicators, such as state of health, productivity, physiological condition, and behavior. Sections 1.2-1.4 of the Report. My colleague adopts the Report's statement that the process of force-feeding causes the geese suffering, and I can only agree. However, he notes that he does not find clear-cut conclusions. Indeed, the Report states that the scientific data regarding the consequences of force-feeding on the geese is incomplete, and in some cases the research results are inconclusive. Even so, the Report's unequivocal conclusion is that the practice of force-feeding is detrimental to the welfare of the geese:

> The Scientific Committee on Animal Health and Animal Welfare concludes that force-feeding, as currently practiced, is detrimental to the welfare of the birds.

Id. [58] at Section 8.2.

Comparative Law: The Practice of Force-Feeding

18. There are a wide range of attitudes and opinions regarding force-feeding. Several European countries permit the practice of force-feeding. *See* Section 2 of the Scientific Committee's Report (listing France, Spain and Belgium as countries in which force-feeding is practiced). In the same vein, the Recommendations of the European Convention's Standing Committee do not prohibit this practice, but rather establish rules and guidelines in order to minimize the suffering of the geese.

In contrast, there are countries that prohibit the force-feeding of animals or establish rules regarding the way they are fed. Norwegian law, for example, prohibits the force-feeding of animals. *See* The Welfare of Animals Act of December 20 1974 No. 73 § 8(4). Similarly, on the basis of the Background Document, Germany, Austria, Denmark, the Czech Republic, Poland, and Luxemburg all prohibited force-feeding. *See also* the Minister of Agriculture's letter to the Attorney-General on September 24, 2000. It seems from the material, although not unambiguously, that the industry of force-feeding did not exist in these latter countries prior to the prohibiting statutes.

General rules regarding the conditions and limits of feeding animals are found in sections 22-4 of the British regulations concerning livestock; in section 5 of the Irish Protection of Animals Kept for Farming Purposes Act 1984 § 5; in sections 1 and 2 of the Swiss Ordinance, and in sections 3 and 4 of Sweden's Protection of Animals Law. *See* the Swedish Code of Statutes, SFS 1988: 534. The European Convention includes general provisions regarding caring for farm animals. It establishes that animals will be kept for agricultural purposes only if they can be held without negative effects on their health. Section 3 of the Convention [60]. Section 6 of the Convention [60] establishes that animals are not to be provided with food in a way that may cause them unnecessary suffering or harm. A similar rule is found in Section 14 of the Annex to the Directive [61].

19. The Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes, which dealt with the issue of force feeding geese, published its recommendations in 1999 in a document called "Recommendations Concerning Domestic Geese and their Crossbreeds" [62]. The Standing Committee did not recommend putting an end to the practice in countries where it already existed. Even so, regarding the countries where the practice does exist, the Recommendations note a concern regarding the geese's welfare. Section 17 of the Recommendations [62] establishes, among other things, that:

> All geese shall have appropriate access to adequate, nutritious, balanced and hygienic feed … Methods of feeding and feed additives which cause distress, injury or disease to the geese or may result in development of physical or physiological conditions detrimental to their health and welfare shall not be permitted.

The Recommendations include detailed rules regarding the equipment to be used, the veterinary care the geese are to receive, the conditions under which they are to be held, raised and fed until the force-feeding period, and the supervision of all these. The Scientific Committee recommended that countries which permit the production of foie gras encourage scientific research on the effects of the force-feeding process on the animals' welfare and on alternative methods for producing foie gras that do not include force-feeding. Section 25(1). The Committee also recommended that, until new scientific evidence is collected concerning alternative methods, the practice of force-feeding should only continue in areas where it was in existence prior to the publication of the Recommendations.

The Law and the Regulations

20. The problematic nature of the practice of force-feeding did not escape the notice of the Israeli legislature. As early as 1999, when the Standing Committee was publishing its Recommendations, the Ministry

of Justice and the Ministry of Agriculture had consultations regarding "the right way to deal with the problematic nature of force-feeding geese." Section 23 of the response brief of respondents 1 and 2. As a result, the Director of Veterinary Services in the Ministry of Agriculture, Dr. Oded Nir, appointed a committee that submitted its recommendations to him in March 2000. The committee recommended adopting the European plan of freezing the industry by limiting the production to farms that already produced foie gras and "setting binding rules that will insure that only a minimal amount of pain is caused during the feeding process." Section 25 of the response brief of respondents 1 and 2. The Education and Culture Committee of the Knesset held two comprehensive meetings to discuss the language of the regulations suggested by the Minister of Agriculture and, after a few changes were introduced, the Committee approved the Cruelty to Animals Regulations (Protection of Animals) (Force-Feeding Geese), 2001. These were meant to regulate the practice of force-feeding geese for the production of foie gras in Israel. Section 1 of the regulations explicitly notes that the regulations are oriented towards the European experience.

> The purpose of these regulations is to prevent the suffering of geese during force-feeding for the purposes of producing foie gras, and to freeze the foie gras industry in Israel, all in the spirit of the Standing Committee's Recommendations, acting according to the European Convention for the Protection of Animals Kept for Farming Purposes.

Section 7 of the Regulations provides that "a person shall not operate a force-feeding farm that was not already active at the time these regulations go into effect, nor will he expand an existing farm." Section 8 of the Regulations sets a penalty of 6 months imprisonment or a fine for offenders of Section 7 of the law. Section 4 of the regulations prohibits operating a force-feeding facility unless "a sufficient number of those working in the farm are skilled in caring for geese, and have the ability to assess the geese's state of health and to understand changes in their behavior." Section 5 of the regulations also include rules that limit the age of the geese, their weight and the way in which the force-feeding is

carried out, such as regulations regarding the minimum age and weight of a goose that is to be brought into the farm, the material of which the feeding tube is made, its length and diameter, and the amount of food that the geese can be force-fed each day of the force-feeding period. Section 6 establishes rules regarding the timing of the geese's slaughter.

21. The Regulations do not prohibit force-feeding geese. Yet, the Regulations prohibit, as noted, opening a new force-feeding farm or expanding an existing one. This attests to the fact that the legislature was not satisfied with the existing practice, and that it did not want the industry to expand. Furthermore, in an effort to take "agricultural needs" into account while also upholding the duty to protect animals, the Regulations set out rules that were meant to allow force-feeding to continue without it constituting abuse. Thus, the Regulations were issued to establish a proper balance between the interest of animal protection and "agricultural needs."

Petitioner claims that the Minister of Agriculture exceeded the limits of his authority when he issued the regulations. It was not argued, and rightly so, that the process of issuing the regulations was faulty. Petitioner simply argued that the authority of the Minister is limited to issuing regulations that fulfill the purpose of the law – that prevent cruelty to animals. This argument does not correctly express the purpose of the law, or its grant of authority to issue regulations pursuant to that purpose. The legislature took into account both the interest of "agricultural needs" and the prohibition of animal abuse. It seems that the legislature wanted the regulations to express a balance between the interest of animal protection and "agricultural needs." This can be seen, for instance, in the freezing of the industry, and in the substantive regulations regarding the process of force-feeding. As such, it cannot be said that the regulations were issued without authority. Furthermore, I am aware of the differences of opinion regarding the quality and measure of the suffering involved in producing foie gras. Despite all of this, however, all seem to agree that the force-feeding process does cause the geese suffering. I am aware, as well, of the difficulty that my colleague, Justice Grunis, points out: defining the practice of force-feeding – a

practice that has been supported by the government authorities for three years – as abuse stains it as a criminal offence. Despite all of the above, I have reached the conclusion that overall the regulations do not stand up to the test of "prohibition of abuse" of the law..

22. The force-feeding regulations are supposed to set out means for achieving the purpose of the law – preventing the abuse of animals. The regulations themselves attest to the fact that they were designed to prevent the suffering of geese, as they state: "the purpose of these regulations is to prevent the suffering of geese during their force feeding for the purposes of producing of foie gras." Clearly, the regulations do not achieve this goal. It is not within the power of the limitations they set to prevent the suffering of the geese. Even if we should settle for a reduction of their suffering, the arrangement set out by the regulations remains far from achieving this purpose. Though they impose several restrictions on the industry, restrictions which may improve the situation, their provisions are not sufficient to achieve a proper balance between the interests involved. When we consider "agricultural needs" – as clarified by my colleague – the regulations should still reflect the price our society is willing to pay in order to produce the delicacy known as foie gras. The price paid at present, the harm caused to the geese, is too high. The regulations greatly harm the interest of protecting animals; as a result, they do not represent a correct balance between the benefit to "agricultural needs" and the harm inflicted on animals. They, to some extent, measure up to the test of appropriateness between the means and the end, but they are not sufficient to stand up to this test. They do not establish the means that will minimize the injury, nor do they answer the test of proportionality, which measures the relation between the benefit and the harm. *See, e.g.*, HCJ 3477/95 *Israel Ben-Atiya v. The Minister of Education, Culture and Sports*, [21] at 10-14; HCJ 3648/97 *Israel Stamka v. The Minister of Interior*, [22] at 776; HCJ 4769/95 *Ron Menahem v. The Minister of Transport*, [23] at 279-80.

23. Examining the relationship between the benefit of producing foie gras and the injury caused the geese requires a discussion of the benefits of the production of foie gras. Indeed, as my colleague noted, "the

production of food should have greater weight than entertainment, particularly when the law specifically ordered agricultural needs to be considered." However, "the production of food" will have greater weight the more the food item is necessary for human existence. Thus, basic foods are different than luxuries. Unlike my colleague, I do not think the distinction between foods should be completely ignored. This is particularly true when the food is a luxury and its production inflicts grave suffering on animals. We find an expression of this notion in the Experimentation on Animals Law, which allows experiments only for medical/health needs. Indeed the legitimate interest of the farmers in maintaining their livelihood as part of an agricultural industry should be considered. This interest, however, cannot automatically override the counter-interest of the protection of animal welfare. The legislature considered both interests, but it seems that it did not give each one the appropriate weight. One was given excessive importance, and the other was given too little.

The Standing Committee's Regulations and Recommendations

24. The Regulations state that they were issued "in the spirit of the Standing Committee's Recommendations, according to the European Convention for Protection of Animals Kept for Farming Purposes." The Regulations, however, do not contain all of the Committee's Recommendations. While the Recommendations establish that countries that permit force-feeding geese should encourage research regarding the welfare of geese and the development of alternative methods of producing foie gras, the Israeli regulations do not relate to this. Furthermore, the Regulations do not relate in any way to the veterinary care the geese are to receive on a daily basis or in situations of distress, to the environmental conditions in which they are to be kept (lighting, temperature, humidity, and sanitation), and to the way they are to be raised and fed up until the force-feeding period. Section 5 relates to the equipment used for force-feeding, and provides that "a goose will not be force-fed except with a pneumatic machine" instead of the traditional mechanical methods. During the discussions regarding the language of the regulations, it was argued that using a pneumatic machine eases the

geese's suffering (see the protocol of the Education and Culture Committee of the Knesset from September 31, 2001). Section 5.3 of the Scientific Committee's Report, however, which dealt with this issue extensively, expressly states the pneumatic machine did not cause any less suffering than the mechanical method. Petitioner's expert, Dr. Martin Kook, confirmed this. The Regulations limit the force-feeding period to 24 days, while the Scientific Committee's Report, which extensively surveys the situation in Europe states in Section 3.2 that the force-feeding period for geese ranges between 15 or 18 days up to 21 days. Section 4 of the regulations, meant to define the qualifications of those that can be employed in force-feeding, is vague and does not provide any real criterion for testing their competence and qualifications. The fact that the regulations claim to be based on the Recommendations leads us to conclude that these omissions mean that the Regulations do not stand up to the test of means that cause the least harm possible.

Conclusion

25. From all of the above, it seems that the Regulations are faulty. The question is whether this fault is sufficient cause to annul them. My colleague, Judge Grunis, insisted – and I share his position – that the Court's intervention concerning regulations that were approved by a Knesset committee will be done only rarely. Yet, it must be noted that regulations are not immune to judicial review, even if they received parliamentary sanction. *See, e.g.*, HCJ 491/86 *The Municipality of Tel Aviv v. The Minister of Interior*, [24] at 773-74; HCJ 4769/90 *Amar Salah Zidan v. The Minister of Labor and Social Affairs*, [25] at 172; CA 2313/98 *The Minister of Industry and Trade v. Mincol*, [7] at 686-87. Regulations can be annulled when they deviate significantly from the purpose of the law. *See Zidan*, [25] at 172-73; HCJ 389/80 *The Yellow Pages v. The Broadcasting Authority*, [26] at 444. This is the case here.

I have carefully examined all the facts before us. The subject is complex, and I have considered the opinions of experts in several fields, the legal situation in various countries and in the international community, the domestic legal situation, and the extra-legal questions

raised by this issue. I have reached the conclusion that the Regulations deviate significantly from the purpose of the law, and thus they should be annulled. Yet, one must give attention to the complexity of the issue, and to the consequences of annulling the Regulations and prohibiting the practice of force-feeding geese on the foie gras industry and those employed in it. All these demand giving respondents time to reevaluate the subject before the annulment takes effect. The situation of a "legislative vacuum," as a result of an immediate annulment of the Regulations, must be avoided. *See* HCJ 1715/97 *The Israel Association of Investment Managers v. The Minister of Finance*, [4] at 415-6.

26. This position is a result of the doctrine of "relative invalidity," which is well-established by the judgments of this Court. This theory is a tool of judicial policy used by the Court while "taking into consideration the circumstances of the given case and the assessment of the possible consequences of alternative decisions within the bounds of reason, all in order to reach, as much as possible, a practical result which does relative justice to all those who may be affected by the decision." HCJ 10455/02 *Boaz Alexander Amir v. The Bar Association*, [27] at 962 (Mazza J.). As per the doctrine of "relative invalidity" the annulment of a piece of legislation may be suspended for a limited period of time, during which the legislature will work to amend the present situation,

> Even when the arrangement must be annulled, the annulment will not necessarily be immediate. It can be prospective. Thus, the Court can declare an arrangement or a provision to be void starting from a specific future date, which the court will set, and until that time the arrangement or provision will remain valid, despite its flaw. Such a future declaration is given when the balance between the different considerations of the case, among them considerations of the rule of law, public interest, and the anticipated harm to those involved, lead to the conclusion that it is best that the present situation continue for a certain period of time, even though it is not legal, until it can be properly amended.

HCJ 551/99 *Shekem. v. The Director of Customs and Value Added Tax*, [28] at 120 (Zamir, J.). According to the theory of relative invalidity, "the question of the exact time of the application of the annulment is subject to the Court's discretion. It may grant the annulment retroactive, immediate, or prospective effect." Barak, [36] at 749. Thus, in *Investment Managers* [4], the Court suspended its annulment of a statuary provision until the legislature could redefine its position. *See* also HCJ 6652/96 *Association for Civil Rights in Israel v. The Minister of Interior*, [29] at 142-43.

27. Thus, I would accept the petition, and hold that the Regulations' provisions concerning force-feeding geese be annulled and that the practice of force-feeding geese be prohibited. Nevertheless, the decision regarding the annulment of the Regulations and the prohibition of the said practice will be suspended until March 31, 2005. The said Regulations, due to expire on March 11, 2004 shall remain in force until that day, or until a different date in the framework of the suspension, should their validity be extended.

During this suspension period those involved will contend with the problem and consider the appropriate policy regarding force-feeding geese. The developments in the field in Israel and abroad will be examined; a follow-up will be made of the said European Standing Committee's activity during 2004 to reassess its position on force-feeding geese, and current material will be gathered on this subject. If it is decided to allow the foie gras industry to continue, the legislature will have to issue regulations that will assure the use of means that will significantly reduce the suffering of the geese.

Justice E. Rivlin:

I have thoroughly read the comprehensive opinions of my colleagues, Justice T. Strasberg-Cohen and Justice A. Grunis. I cannot add to their thorough review. Concerning the questions regarding which they fail to agree – I lean toward the position of my colleague, Justice Strasberg-Cohen, and concur with her.

As for myself, I have no doubt that wild animals and house pets alike have feelings. They possess a soul that experiences the feelings of happiness and grief, joy and sorrow, affection and fear. Some develop feelings of affection toward their friend-enemy, man. Not all would agree with this view. All would agree, however, that these creatures feel the pain inflicted upon them by physical injury or by violent intrusion into their bodies. Indeed, one could justify the force-feeding of geese by pointing to the livelihood of those who raise geese and the gastronomical pleasure of others. Indeed, those wishing to justify the practice might paraphrase Job 5:7 [65]: It is right that man's welfare shall soar, even at the price of troubling birds of light. Except that it has a price – and the price is the degradation of man's own dignity.

Like my colleague, Justice Strasberg-Cohen, I also believe that the force-feeding regulations should be annulled, and that the artificial feeding methods, permitted by the regulations, are forbidden.

Held as per the opinion of Justice T. Strasberg-Cohen
August 11, 2003