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Ritual Slaughter in European Law(s)

Demographic Background

23 % of the world's population are Muslims (= 1,6 billion), 0,2 % are Jews (= 14 million)¹. Muslims and Jews live in all European States; in five countries Muslims form the biggest religious group (Albania, Azerbaijan, Bosnia and Herzegovina, Kosovo, Turkey). Figures for the period 2006 to 2015 show that 0,2 % of the population of the EU 28 were Jews and 3,0 % Muslims. In the same period the figures for the 47 members of the Council of Europe (CoE) were 0,2 % Jews and 13,6 % Muslims². All these figures are quite approximate as the system and the legal basis of collecting data on religious affiliation differ from country to country. Moreover, such data should always be based on the free self-declaration of each person, according to Recommendations of the United Nations Economic Commission for Europe³.

Jews are acknowledged as a religious minority according to the Framework Convention for the Protection of National Minorities (FCNM) in 18 European states⁴; Muslims possess this status in three states⁵.

Religious Background

Both religions have complicated dietary rules, especially with regard to slaughtering quadruped animals, called "kosher" by Jews and "halal" by Muslims. A good introduction into the religious background and the practical aspects of the Jewish rules is given by a decision of the ECtHR⁶:

"Kashrut is the name given to all the Jewish laws on the types of food which may be eaten and how to prepare them. The main principles applying to kosher food are to be found in the Torah, the holy scripture comprising the first five books of the Bible... At the Creation only food from plants could be eaten by man (Gen. i, 29). Eating meat was not authorised until after the Flood (Gen. ix, 3) and then only under very strict conditions. The Torah absolutely forbids the consumption of blood, since blood is the medium of life and life must not be absorbed with flesh but poured on the earth like water (Deut. xii, 23 and 24). In addition, certain animals are regarded as unclean and consumption of certain parts of animals is also forbidden.... The Torah (Lev. vii, 26 and 27; xvii, 10-14) prohibits consumption of the blood of authorised mammals and birds, and slaughter must be carried out "as the [Lord has] commanded" (Deut. xii, 21). It is forbidden to eat meat from animals that have died of natural causes or have been killed by other animals (Deut. xiv, 21). It is likewise forbidden to eat meat from an animal showing signs of disease or blemishes at the time of slaughter (Num. xi, 22) ... With a view to ensuring compliance with all the prohibitions laid down in the Torah, later commentators established very detailed rules concerning, in particular, the approved method of slaughter, initially by handing down the oral tradition but later by compiling an encyclopaedic collection of commentaries – the Talmud.

Observance of the above rules on the eating of meat necessitates special slaughter processes. As it is forbidden for Jews to eat any blood whatsoever, animals for slaughter, after being blessed, must have their throats slit; more precisely, they must be killed with a single stroke of a very sharp knife in such a way that an immediate, clean and deep cut is made through the trachea, the oesophagus, the carotid arteries and the jugular veins, so that the greatest possible quantity of blood will flow. The meat must then be steeped in water and salted, still with the aim of removing any trace of blood. Certain organs, like the liver, must be grilled to remove blood from them. Other parts, like the sciatic nerve, blood vessels or the fat around the vital organs, must be removed. In addition, immediately after slaughter, the animal must

* All views expressed in this publication are personal. The author wants to thank Mr. John Quirke for linguistic advice.

¹ Cf. Worldometer, <https://www.worldometers.info/world-population/#religions>.

² Cf. Bundeszentrale für politische Bildung, Religionszugehörigkeit, <https://www.bpb.de/nachschlagen/zahlen-und-fakten/europa/70539/themengrafik-religionszugehoerigkeit>, on the basis of the Swiss Metadatabase of Religious Affiliation in Europe (SMRE), <https://www.smre-data.ch/>.

³ United Nations Economic Commission for Europe, Conference of European Statisticians Recommendations for the 2020 Censuses of Population and Housing, United Nations: New York/Genf, 2015, § 718.

⁴ Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Finland, Latvia, Lithuania, Republic of Moldova, Norway, Poland, Romania, Slovak Republic, Sweden, Switzerland, Ukraine, United Kingdom.

⁵ Finland (the Tartars), Republic of Moldova, Montenegro.

⁶ ECtHR (Grand Chamber), CHA'ARE SHALOM VE TSEDEK v. FRANCE (Application no. 27417/95), Judgment of 27 June 2000, para 13-19, <https://hudoc.echr.coe.int/eng#{%22fulltext%22:%22ritual%20slaughter%22,%22document-collectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-58738%22}}>.

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незалежний дослідник у галузі захисту меншин, член Консультативного комітету Рамкової конвенції про захист національних меншин (у 2016–2020 роках)

be examined for any signs of disease or anomaly; if there is the slightest doubt on that point, the meat is declared unfit for consumption. Ritual slaughter – shechitah – may be performed only by a shochet, who must be a devout man of unimpeachable moral integrity and scrupulous honesty. Lastly, until it comes to be sold, the meat must be kept under the supervision of a kashrut inspector. The competence and personal integrity of ritual slaughterers and kashrut inspectors are subject to continuous appraisal by a religious authority. In order to guarantee consumers that their meat has been slaughtered in accordance with the prescriptions of Jewish law, the religious authority certifies it as “kosher”...”

With respect to the halal rules there may be differences in opinion in the interpretation of lawful and unlawful animals and in the act of slaughter, according to the different Islamic Schools of Thought. Accordingly, differing rules are to be found on the web¹. Considering this situation, a neutral text, excerpted from the Codex Alimentarius of the FAO, is chosen here to introduce the rules of halal slaughtering. The Codex Alimentarius Commission expects “that the certificates granted by the religious authorities of the exporting country should be accepted in principle by the importing country, except when the latter provides justification for other specific requirements.”²

The rules of this Codex on halal slaughtering read:

“All lawful land animals should be slaughtered in compliance with the rules laid down in the Codex Recommended Code of Hygienic Practice for Fresh Meat and the following requirements:

The person should be a Muslim who is mentally sound and knowledgeable of the Islamic slaughtering procedures.

The animal to be slaughtered should be lawful according to Islamic law.

The animal to be slaughtered should be alive or deemed to be alive at the time of slaughtering.

The phrase “Bismillah” (In the Name of Allah) should be invoked immediately before the slaughter of each animal.

The slaughtering device should be sharp and should not be lifted off the animal during the slaughter act.

The slaughter act should sever the trachea, oesophagus and main arteries and veins of the neck region.”

According to my knowledge from talks with Jews and Muslims, kosher meat is permitted to be eaten by Muslims. This is due to the similarity of both methods of slaughter. But on the other hand, Jews should not eat halal meat, because the halal standards are less stringent than the kosher rules.

Norms on Animal Protection, Especially on Slaughter

The Jewish rules were in force for more than two thousand years and the Muslim rules for more than thousand years, before the idea of animal protection was developed in the 19th century³. This idea was often accompanied by antisemitism or even had its roots in it. Soon after Hitler’s rise to power the German Reichstag passed a “Law on the Butchering of Animals” on the 21 April 1933⁴, which decreed that *warm-blooded animals* had to be stunned before being slaughtered. Thereby ritual slaughter was forbidden, and this law is regarded as one of the first to harass the Jewish part of the population.⁵

Meanwhile the idea of animal protection has spread throughout Europe and found its expression incorporated into many national laws. According to a comparative survey, quite a few European countries require prior stunning as a principle, but many of them allow derogations from that principle in the case of religious slaughter. Some countries (Denmark, Iceland, Lichtenstein, Norway, Switzerland, and Slovenia) do not allow the slaughter at least of quadrupeds without prior stunning at all. Some countries (including Austria, Estonia, Greece, and Latvia) mandate post-cut stunning⁶. The Commission stated in that regard in its written observations submitted to the Court⁷ that the majority of Member States authorise slaughter without prior stunning in the case of particular methods of slaughter prescribed by religious rites. As the issue of ritual slaughter is discussed in many European countries, the number of states, which allow or forbid this method of slaughter, might change in relatively short intervals.

On the European level norm setting from the CoE and from the European Union (EU) has taken place:

¹ For instance from a private enterprise named “Department of Halal Certification EU”, <https://halalcertification.ie/islamic-method-of-slaughtering/>; or by the United Arab Emirates Authority for Standards & Metrology, <https://www.jas-anz.org/uae-halal-certification-scheme-uhcs>.

² FAO, General Guidelines for the Use of the Term “Halal”, CAC/GL 24-1997, <http://www.fao.org/3/Y2770e/y2770e08.htm>.

³ Cf. Law Library of Congress, Legal Restrictions on Religious Slaughter in Europe, 2019, <https://www.loc.gov/law/help/religious-slaughter/europe.php>.

⁴ Gesetz über das Schlachten von Tieren vom 21. April 1933, RGBl. 1933, 203.

⁵ Cf. German Federal Constitutional Court, 1 BvR 1783/99, § 2 = http://www.bverfg.de/e/rs20020115_1bvr178399.html; Markus Vašek, Ritual slaughter and the freedom of religion, in: Vienna Online Journal on International Constitutional Law, Vol 3 3/2009, p. 228-231 = <https://www.yumpu.com/en/document/view/3839092/wwwicl-journal-com-vol-3-3-2009-vienna-online-journal-on->.

⁶ Cf. Law Library of Congress, op. cit.

⁷ Case C-336/19, JUDGMENT OF THE COURT (Grand Chamber) of 17 December 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CJ0336&from=EN>, para 78.

In May 1979, the CoE opened the „European Convention for the Protection of Animals for Slaughter”¹ for signature. This came into force on 11 June 1982. Until now 26 Member States of the CoE have ratified this Convention².

“Article 13

In the case of the ritual slaughter of animals of the bovine species, they shall be restrained before slaughter by mechanical means designed to spare them all avoidable pain, suffering, agitation, injury or contusions.

Article 14

No means of restraint causing avoidable suffering shall be used; animals’ hind legs shall not be tied nor shall they be suspended before stunning or, in the case of ritual slaughter, before the end of bleeding...

Article 17

1 Each Contracting Party may authorise derogations from the provisions concerning prior stunning in the following cases: – slaughtering in accordance with religious rituals;

2 Each Contracting Party availing itself of the provisions of paragraph 1 of this Article shall, however, ensure that at the time of such slaughter or killing the animals are spared any avoidable pain or suffering.

Article 18

1 Each Contracting Party shall make certain of the skill of persons who are professionally engaged in the restraint, stunning and slaughter of animals. ...

Article 19

Each Contracting Party permitting slaughter in accordance with religious ritual shall ensure, when it does not itself issue the necessary authorisations, that animal sacrificers are duly authorised by the religious bodies concerned.”

The EU has introduced animal protection on Treaty level within the framework of the Amsterdam Treaty on 2 October 1997 by the

“Protocol on protection and welfare of animals

THE HIGH CONTRACTING PARTIES,

DESIRING to ensure improved protection and respect for the welfare of animals as sentient beings,

HAVE AGREED UPON the following provision which shall be annexed to the Treaty establishing the European Community,

In formulating and implementing the Community’s agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.”³

The current version of EU norms in respect of welfare and protection of animals is to be found in Article 13 of the **consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU)**:

“In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.”⁴

On the level of secondary law, the Council Regulation (EC) No 1099/2009 of 24 September 2009⁵ on the protection of animals at the time of killing is of importance, the relevant articles read:

“Article 4

Stunning methods

1. Animals shall only be killed after stunning in accordance with the methods and specific requirements The loss of consciousness and sensibility shall be maintained until the death of the animal....

4. In the case of animals subject to particular methods of slaughter prescribed by religious rites, the requirements of paragraph 1 shall not apply provided that the slaughter takes place in a slaughterhouse.

Article 26

Stricter national rules

1. This Regulation shall not prevent Member States from maintaining any national rules aimed at ensuring more extensive protection of animals at the time of killing in force at the time of entry into force of this Regulation....

¹ ETS No.102.

² See daily actualised Chart of signatures and ratifications, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/102/signatures?p_auth=h03Rlvk9.

³ Official Journal C 340, 10/11/1997 P. 0001 – 0144.

⁴ Official Journal C 326, 26/10/2012 P. 0001 – 0390.

⁵ Actual version: Document 02009R1099 – EN – 14.12.2019 – 002.001.

2. Member States may adopt national rules aimed at ensuring more extensive protection of animals at the time of killing than those contained in this Regulation in relation to the following fields:...

(c) the slaughtering and related operations of animals in accordance with Article 4(4).

Member States shall notify the Commission of any such national rules....

4. A Member State shall not prohibit or impede the putting into circulation within its territory of products of animal origin derived from animals that have been killed in another Member State on the grounds that the animals concerned have not been killed in accordance with its national rules aimed at a more extensive protection of animals at the time of killing."

Norms on Freedom of Religion

Freedom of religion is protected by the European Convention on Human Rights (ECHR) of the CoE since 1950:

"Article 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

In the EU, religion is protected by the Charter of Fundamental Rights of the European Union (CFR):

"Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2....

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2....

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection."

The Actual Case of the European Court of Justice (ECJ)

The ECJ decided on the procedure of preliminary ruling on 17 December 2020 at the request of the Belgian Constitutional Court in the proceeding of some Jewish and Muslim organisations and private persons against the Flemish Government¹. Subject of the main proceedings was the validity of the Flemish Decree amending the Law of 14 August 1986 on the protection and welfare of animals, regarding permitted methods of slaughtering animals of 7 July 2017.

Belgium is a complicated federal State composed of Communities and Regions. It comprises three Communities: the Flemish, the French, and the German-speaking Communities. Furthermore, Belgium comprises three Regions: the Flemish, the Walloon, and the Brussels Region. In addition Belgium comprises four linguistic regions: the Dutch-speaking Region, the French-speaking Region, the bilingual Region of Brussels-Capital and the German-speaking Region. Although there exists also a similar Walloon Decree, it was not subject of the case. For the Brussels region no such Decree is reported.

The Court had to decide in essence, whether point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, read in the light of Article 13 TFEU and Article 10(1) of the Charter, had to be interpreted as precluding the legislation of a Member State which requires, in the context of ritual slaughter, a reversible stunning procedure which cannot result in the animal's death.

Advocate General Hogan delivered his opinion on this case on 10 September 2020.² He stated that the above-mentioned subparagraph, read together with Article 4(1) and 4(4) of the Council Regulation

¹ Case C-336/19, JUDGMENT OF THE COURT (Grand Chamber) of 17 December 2020 CURIA – Documents (europa.eu)

² C336/19-Opinion, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=230874&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=6134168>.

in question, and having regard to Article 10 of the Charter and Article 13 TFEU, must be interpreted as meaning that Member States are not permitted to adopt rules which provide, for a prohibition of the slaughter of animals without stunning, including slaughter carried out in the context of a religious rite, nor for an alternative stunning procedure for the slaughter carried out in the context of a religious rite, based on reversible stunning.¹

The Advocate General considers that the wording of point (c) of the first subparagraph of Article 26(2) of the Regulation in question does not contemplate the elimination or quasi-elimination by Member States of the practice of ritual slaughter. To him this is clear from the terms of the derogation contained in Article 4(4) of that regulation which is itself designed to protect freedom of religion. He is of the opinion that point (c) of the first subparagraph of Article 26(2) permits the adoption of additional or stricter national rules over and above the explicit requirement pursuant to Article 4(4) by Member States. These additional rules, while maintaining the derogation of Article 4(4), might for example, include the requirement of the presence of a qualified veterinarian at all times during the ritual slaughter and that the person conducting that particular form of slaughter is appropriately trained, and rules exist on the nature, size and sharpness of the knife used and on the requirement of a second knife in the event that the first one becomes damaged during the slaughter.²

The Advocate General concluded in a very stringent and strict formulation that *“any other interpretation of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, aside from being contrary to the wording itself of the provision in question and the clear intent of the EU legislature, would constitute a limitation on the freedom of religion guaranteed by Article 10(1) of the Charter.”*³

To the surprise of some observers⁴, the Court did not follow the argumentation and opinion of the Advocate General. The Court ruled that *“point (c) ..., read in the light of Article 13 TFEU and Article 10(1) of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding legislation of a Member State which requires, in the context of ritual slaughter, a reversible stunning procedure which cannot result in the animal's death.”*⁵

The Court came to that conclusion inter alia by assuming that the interference resulting from the legislation in question was limited to one aspect of the specific ritual act of slaughter, and that the act of slaughter was not prohibited as such⁶. So, according to the Court, the interference would not compromise the essence of the religious guarantees contained in Article 10(1) of the Charter for the believers of Judaism and Islam. If this is really the case, why did the Jewish and Muslim organisations and private persons take the trouble to file an action against the Flemish Government?

The Court did not explore the importance of halal / kosher meat to the Muslim/ Jewish believers but followed the idea that reversible prior stunning, which cannot result in the animal's death, meets the conditions of necessity. But on the other hand it considered that *“animal welfare, as a value to which contemporary democratic societies have attached increasing importance for a number of years, may, in the light of changes in society, be taken into account to a greater extent in the context of ritual slaughter and thus help to justify the proportionality of legislation such as that at issue in the main proceedings.”*⁷

Another argument of the Court is that – in accordance with the rule laid down in Article 26(4) – the Flemish decree neither prohibits nor impedes the putting into circulation (within the territory in which it applies) of products of animal origin derived from animals which have undergone ritual slaughter, without prior stunning, in another Member State⁸. This argumentation is doubtful under two aspects:

Firstly, not all states, which allow kosher and halal slaughter, permit the export of the meat produced in that way. For instance, Germany gives a permission to slaughter without stunning only in so far, as to meet the needs of specific religious communities within the scope of the Animal Protection Act, which is Germany⁹. The Advocate General reported these circumstances¹⁰, but the Court neglects them.

¹ Ibid, para 88.

² Ibid, para 67-70.

³ Ibid, para 73.

⁴ Cf. Classen, Claus Dieter: Ein zwiespältiges Urteil: Der EuGH und das flämische Schächtverbot, VerfBlog, 2020/12/18, <https://verfassungsblog.de/ein-zwiespaeltiges-urteil/>, DOI: 10.17176/20201218-172635-0; Lena Hehemann, Religious Slaughtering, a Stunning Matter: Centraal Israëlitisch Consistorie van België and Others, European Papers Vol. 6, 2021, No 1, p. 111-119, 116 = Religious Slaughtering, a Stunning Matter: Centraal Israelitisch Consistorie van België and Others (europeanpapers.eu).

⁵ Case C-336/19, JUDGMENT OF THE COURT (Grand Chamber) of 17 December 2020, at the end.

⁶ Ibid, para 61.

⁷ Ibid, para 77.

⁸ Ibid, para 78.

⁹ Bundestierschutzgesetz in the version of 19 June 2020, (BGBl. I S. 1328), § 4a Abs. 2 Nr. 2.

¹⁰ C336/19-Opinion, para 75.

Secondly, the argumentation about the possibility to import kosher and halal meat from abroad reminds one of the “Saint Florian’s principle”¹, as it is called in Germany, in English one would call it a nimby² attitude, which means that persons do not want something unpleasant to be done near where they live. The reference to the possibility of imports is not only nimby, but also counterproductive under the aspect of animal protection: When the slaughter takes place on national territory, it is done to the strict rules of domestic law, which may – even to the opinion of the Advocate General – contain additional provisions in the spirit of animal protection, while maintaining the derogation of Article 4(4). Whereas in the case of importing meat the animal rights activist and the consumer cannot be sure if the utmost is done to protect the animals from avoidable pain.

Even an author, who commented on the decision of the ECJ by assigning herself to a “Centre for Animal Ethics”, criticised the Court’s side note arguing that the restriction of religious slaughtering without stunning was proportionate as long as there are enough Member States and third countries available that import halal and kosher meat without prior (reversible) stunning. She articulates doubts whether the access to this kind of meat for Muslim and Jewish believers can be guaranteed on the long term.³

The legal and demographic situation in Belgium raises additional doubts about the logic of the Flemish Decree and the reasoning of the Court, as it is and will be furthermore possible to “import” meat produced by ritual slaughter from another region within the same state, namely the Brussels Region. But this is the smallest of the three Belgian regions; only 10,5 % of the total Belgian population live there, on an area percentage of only 0,005 %. So, if the enterprises producing kosher and halal meat wish to continue their business on Belgian territory and with Belgian cattle, this can only be exercised in the smallest region.

Some Court Decisions and Opinions Good to Know in the Context of the Case C-336/19 of the ECJ

The reference case of the ECtHR

The Case of Cha’are Shalom Ve Tsedek v. France of the ECtHR⁴ is of interest in respect of Article 52 para 3 of the Charter in conjunction with Article 9 ECHR and it is cited by different parties in the case and by commentators. This case shows some specialities which limit its suitability as a textbook case for the interpretation of the scope of freedom of religion in relation to safeguarding the wellbeing of cattle to be slaughtered. The core of that case was a concurring situation between a young and small association (the applicant) striving for the administrative permission to produce a special version of kosher meat (namely “glatt” kosher⁵) and the big traditional Jewish organisation, which is entitled to slaughter in keeping with the kosher rules. According to the French Ministry of the Interior the applicant association “has not established, as the evidence stands at present, that it subsidises or that it is an offshoot of an association which subsidises the continuation of and public participation in Jewish worship. The fact that it makes kosher meat available for sale in more than twenty retail butcher’s and eighty outlets for the sale of deep-frozen food is not sufficient to give the association the character of a religious body...”⁶ To the Court it emerged from the case file as a whole, and from the oral submissions at the hearing, that Jews who belong to the applicant association could obtain “glatt” meat from other sources; so the Court considered that the refusal of the approval applied for did not constitute an interference with the applicant association’s right to the freedom to manifest its religion.⁷

But the Court expressed its strict opinion that ritual slaughter must be considered to be covered by the right to manifest one’s religion in observance, within the meaning of Article 9 ECHR.⁸

The 1998 case of the Austrian Constitutional Court⁹

In 1996 a farmer had been convicted under the Animal Welfare Act of the Bundesland Vorarlberg (in force at that time) because he had tolerated the ritual slaughter of 26 sheep on his farm. According to the

¹ „Holy Saint Florian, spare our home, set fire to others.”

² Nimby = not in my backyard.

³ Lena Hehemann, op. cit., p. 119.

⁴ ECtHR (Grand Chamber), CHA’ARE SHALOM VE TSEDEK v. FRANCE (Application no. 27417/95), Judgment of 27 June 2000.

⁵ Ibid para 31: The animals are slaughtered according to the most stringent requirements of the Shulchan Aruch, which is a codification of Jewish Law, composed by Rabbi Yosef Karo in the 16th century.

⁶ Ibid, para 38.

⁷ Ibid, para 82 f.

⁸ Ibid, para 74.

⁹ Austrian Constitutional Court, Judgement of Dec. 17th, 1998, B 3028/97, VfSlg 15394 = https://www.ris.bka.gv.at/Dokumente/Vfgh/JFR_10018783_97B03028_01/JFR_10018783_97B03028_01.html.

Bundesland law, the slaughter of animals without anaesthesia was prohibited; in any case the slaughter should be carried out without inflicting needless pain to the animal.¹

The Court took into consideration:

- Art 14 of the Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm² which guarantees complete freedom of conscience and creed,
- Art 63 (2) of the Treaty of Peace between the Allied and Associated Powers and Austria; (St. Germain-en-Laye, 10 September 1919)³, which determines that all inhabitants of Austria shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.
- Art. 9 ECHR.

The Court decided that a prohibition of ritual slaughter by the Animal Welfare Act is an impossible assumption because this would be an unconstitutional interpretation of this Act in respect of freedom of religion. According to the Court ritual slaughter is a thousand of years old common form of butchering certain animals both in Islam and in Judaism. And is not of importance for the protection of religious freedom if there are differences within the Islamic community about whether anaesthesia is allowed or not. The Court recognised a shift in public opinion and values in respect of animal welfare, but animal welfare could not exceed the freedom of religion. According to the Court ritual slaughter is not a threat to public order and is compatible with public morals. So, the Court ruled that the District Administrative Authority had misinterpreted the Animal Welfare Act in the light of constitutional rights in respect of ritual slaughter (i. e. without anaesthesia).

In 2004 the Austrian legislative passed the Federal Act on the Protection of Animals⁴, which replaces the respective Acts of the Bundesländer. § 32 (4) and (5) read:

"(4) Ritual slaughtering is only allowed to be performed in slaughter houses specially established and authorized by the authority for this purpose.

(5) Ritual slaughtering without previous anaesthetization of the animals intended for slaughtering must be performed only if this is necessary on the basis of compelling religious instructions or prohibitions of a religious denomination recognized by the law and the authority has granted approval for slaughtering without anaesthetization...."

§ 32 contains further preconditions for ritual slaughter (presence of a veterinarian, butcher with knowledge and skill etc.), but the new Federal Act follows the fundamental decision of the Austrian Constitutional Court.⁵

The 2002 case of the German Federal Constitutional Court⁶

According to article 4a paragraph (1) of the German Animal Welfare Act,⁷ warm-blooded animals may be slaughtered only if stunned before exsanguination. But by way of derogation from paragraph (1), no stunning shall be required if i.a. the competent authority have granted an exemption for slaughter without stunning (ritual slaughter); this exemption may be granted only when necessary to meet the requirements of members of religious communities in the territory covered by this Act whose mandatory rules require ritual slaughter and prohibit consumption of meat of animals not slaughtered in this way.

The case before the Constitutional Court is that of a Turkish citizen living for 20 years in Germany, running a butcher's shop, which he took over from his father. He is strict Sunnite believer. After he had been initially granted permissions to slaughter without stunning according to the above-mentioned norm of the Animal Welfare Act in earlier years, he was not successful with his applications for further permission since 1995. The case went up the ladder to the Constitutional Court, which decided that the occupation of a strict Muslim believer as butcher who intends to slaughter animals without stunning to serve his clients with halal meat according to their religious belief, must constitutionally be assessed on the basis of the right to personal freedom in connection with the freedom of faith and the right to undisturbed practice of religion. In the light of these constitutional norms the relevant regulations of the Animal Welfare Act are to be interpreted in that

¹ Cf. Markus Vašek, Ritual slaughter and the freedom of religion, in: Vienna Online Journal on International Constitutional Law, Vol 3 3/2009, p. 228-231 = <https://www.yumpu.com/en/document/view/3839092/wwwicl-journal-com-vol-3-3-2009-vienna-online-journal-on->.

² Still in force, https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1867_142/ERV_1867_142.pdf.

³ <http://www.austlii.edu.au/au/other/dfat/treaties/1920/3.html>.

⁴ https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2004_1_118/ERV_2004_1_118.pdf.

⁵ Cf. Barbara Gartner, Ausgewählte islamische Gebote. Vereinbarkeit mit der österreichischen Rechtsordnung, SIAK-Journal – Zeitschrift für Polizeiwissenschaft und polizeiliche Praxis, 2007 (2), p. 82-94 = http://dx.doi.org/10.7396/2007_2_G.

⁶ 1 BvR 1783/99 = http://www.bverfg.de/e/rs20020115_1bvr178399.html.

⁷ Tierschutzgesetz = <http://www.gesetze-im-internet.de/tierschg/TierSchG.pdf>.

way that Muslim butchers are intitled to receive an exemption for butchering without stunning. The Court remitted the case to the Administrative Court of First Instance with the expectation that this court can bring the administrative court proceedings to an end based on the decision of the Constitutional Court.

In 2002 animal protection was introduced into the German constitution as a state objective in the context of the constitutional order (Article 20a Basic Law), which reads since then: *“Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.”*¹ “State objectives” are exclusive duties of the legislative, they are not individual, justiciable rights.

Opinions of the Advisory Committee (ACFC) on the FCNM

The ACFC monitors the implementation of the FCNM by the Contracting States (39 plus Kosovo; Belgium is not a Member State) every five years. The Committee examines the obligatory State reports and makes use of a wide variety of written sources of information from state and non-state actors. The Advisory Committee has also developed the practice of carrying out regular country-visits during which it meets with government and local officials, parliamentarians, representatives of minorities, non-governmental organisations, Human Rights specialised bodies and other relevant interlocutors.² The ACFC analyses all facts and events, which might give reason for criticism or appraisal under the aspects of the protection of national minorities. In respect of freedom of religion, the ACFC points out that the right to hold and manifest a religion or belief, as stipulated in Articles 7 and 8 FCNM, is based on corresponding articles of the ECHR. As the Explanatory Report to the FCNM underlines explicitly that this right applies to every person, whether belonging to a national minority or not. As they are considered to be of such specific importance to persons belonging to national minorities, they were deemed to merit special attention.³

In the case of eight Contracting States⁴, it had well-founded reasons to elaborate on the question of halal/kosher dietary rules and the respective slaughtering. The principal wording in cases of legal and/or administrative deficits in that field read:

*“The Advisory Committee calls on the authorities to continue adopting a religiously sensitive approach to the question of ritual slaughter of animals / to the question of import of halal and kosher meat and consider, in consultation with those concerned, solutions that take into account religious freedom.”*⁵

In the Bulgarian town of Kardzhali the parents of young children had been requesting the municipality and government institutions to allow Muslim children access to halal food in municipal kindergartens. The ACFC encouraged the authorities to adopt a religiously sensitive approach to the observance of dietary practices in educational institutions.⁶

The representatives of the Jews in Norway expressed concern about the difficulty in procuring Kosher products, which are the basic components of their traditional cuisine, especially on religious days of particular importance. The ACFC reports that these difficulties stem in particular from the health regulations governing the import of such products; the Committee noted that an inter-ministerial working group was studying the situation in conjunction with representatives of this minority. The ACFC hoped that suitable solutions would be found so that the difficulties reported could be overcome.⁷

In the case of Poland, the Committee noted with regret in 2013 that the public debate on the issue of ritual slaughter, including in the media and the political arena, had at times been characterised by intolerant attacks against persons defending this practice. Adjectives such as “medieval”, “primitive” and “barbaric” describing ritual slaughter at times revealed the antisemitic and anti-Muslim sentiments of some of the most vocal proponents of the ban. According to the ACFC, such statements undermine the climate of intercultural dialogue and poison the public debate on national minority issues in general.⁸

In respect of Serbia, the Committee had received information from the Bosniac community that difficulties were still reported about respecting religious diversity, in particular with regard to the lack of respect for religious dietary rules in the army. The ACFC urged the Serbian authorities to ensure that the right of persons belonging to a national minority to establish religious institutions, organisations and associations is fully guaranteed both in the legislation and in its subsequent implementation. According to the Committee this includes the need to remove any requirement that would go beyond the limitations foreseen in Article

¹ https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0116.

² Cf. Detlev Rein, Chapter 23, Commentary of Articles 24–26, in Rainer Hofmann/Tove H. Malloy/Detlev Rein (ed.), *The Framework Convention for the Protection of National Minorities. A Commentary*, Brill: Leiden, 2018, p. 324 ff.

³ Cf. ACFC Thematic Commentary No. 4, 2016, para 68.

⁴ Bulgaria, Cyprus, Denmark, Norway, Poland, Switzerland, Serbia, and United Kingdom.

⁵ ACFC 4. Opinion (OP) Switzerland (2018), para 78; 4. OP Denmark (2014), para 70; 3. OP Poland (2013), para 95.

⁶ ACFC 4. OP Bulgaria (2020), para 106, 109.

⁷ ACFC 2. OP Norway (2006), para 68.

⁸ ACFC 3. OP Poland (2013), para 71.

9 paragraph 2 of the ECHR as interpreted by the ECtHR. The Advisory Committee called on the Serbian authorities to ensure that there is no unjustified limitation to the right of persons belonging to national minorities to practice their religion in public and in private, alone or in community with others.¹

In Cyprus, the Committee took note of the need for an interlocutor at governmental level: This was a specific request from the Chief Rabbi of the Jewish community who reported that the absence of a single interlocutor created unnecessary delays in solving very practical issues for this community, such as the provision of kosher food (currently imported from abroad), slaughtering, autopsies and cemeteries.²

Finally, the ACFC noticed in respect of the United Kingdom that there exists a lack of awareness of cultural needs, including dietary and religious needs.³

Comment

Religious freedom and animal welfare play in two different leagues. Under aspects of legal philosophy religious freedom is one of the basic guaranties in the field of Human Rights in every democratic state with a rule of law, whereas animal welfare is one of many topics in the relation of human beings to their environment. This can be also seen under an aspects of systematic legislation: Religious freedom ranks higher in the legal order than animal welfare:

The ECHR, which protects religious freedoms, but not animal welfare, is the basic convention of the CoE and ratified by all Member States. It was a *conditio sine qua non* in the accession negotiations in the 1990s that all candidate states ratify the ECHR. The European Convention for the Protection of Animals for Slaughter has been signed up to now only by 26 Member States. This shows that its ratification by a new Member State is not seen as a stringent necessity.

In the EU, freedom of religion is protected by the CFR, whereas the current version of norms in respect of welfare and protection of animals is to be found in Article 13 TFEU. **Already this difference in location (on the one hand "Fundamental Rights", on the other hand "Functioning of the European Union") shows the difference of importance, which is attributed to freedom of religion on the one hand and animal welfare on the other by the Contracting States.**

Finally, freedom of religion – in contrast to animal welfare – is protected by the Belgian Constitution.⁴

The ECJ did not take this difference in meaningfulness of the norms on freedom of religion in contrast to welfare and protection of animals into account. Instead, the Court tried to find a balance between them as if they were on an equal footing. The result is to the detriment of the protection of freedom of religion because it hinders the observance of basic rules of two religions, which are represented in all Member States of the EU.

The Court took a sociological stand⁵ and stressed that the Charter "... is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic States today."⁶ However while pursuing the sociological line of thought, the Court should have considered that the demand for an interdiction of ritual slaughter could be the outcome of racist or xenophobic ideas in parts of society. Whereas in the first half of the last century antisemitic motives had been connected to the introduction of rules in respect of slaughter, today anti-Muslim motivations may accompany the call for the ban of ritual slaughter.

According to the report of a German Jewish newspaper⁷ the NVA (the dominant party in Flanders) had pushed the prohibition of non-stunning slaughter predominantly with a view more to the Islamic than to the Jewish population. In an interview with that newspaper the Mayor of Antwerp, who is chairman of the said party, had suggested the possibility of an exemption from the ban on ritual slaughter in respect of the needs (only) of the Jewish community.

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¹ ACFC 2. OP Serbia (2009), para 146-148.

² ACFC 5. OP Cyprus (2020), para 193, footnote 179.

³ ACFC 1. OP United Kingdom (2002), para 35.

⁴ Article 19 Belgian Constitution as updated following the constitutional revision of 17 March 2021 (Belgian Official Gazette of 30 March 2021); https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf.

⁵ CF Lena Hehemann, op. cit., p. 118.

⁶ Case C-336/19, JUDGMENT OF THE COURT (Grand Chamber) of 17 December 2020, para 77.

⁷ Jüdische Allgemeine, edited by the Central Committee of the Jews in Germany (Corporation under Public Law) of 17 December 2019, "EuGH: EU-Staaten dürfen das Schächten verbieten" = <https://www.juedische-allgemeine.de/juedische-welt/verbot-des-betäubungslosen-schächstens-in-belgien-ist-rechts/>.