



RELIGIOUS SLAUGHTERING, A STUNNING MATTER: *CENTRAAL ISRAËLITISCH CONSISTORIE VAN BELGIË AND OTHERS*

LENA HEHEMANN*

ABSTRACT: In *Centraal Israëlitisch Consistorie van België and Others* (case C-336/19 ECLI:EU:C:2020:1031) the Court of Justice held that EU Member States are allowed to require, in the context of ritual slaughter, a reversible stunning procedure which cannot result in the animal's death. According to the Court, Regulation 1099/2009 on the protection of animals at the time of killing permits strict animal welfare legislation in relation to religious slaughtering. While the judgement is a welcomed step toward high animal welfare standards in the EU, in certain aspects the Court's argumentation does not seem well thought out.

KEYWORDS: animal welfare – art. 13 – religious rites – halal – animal protection – evolving societal context of fundamental rights.

I. INTRODUCTION

On 17 December 2020¹ the Court of Justice clarified that EU Member States may require a reversible stunning procedure which cannot result in the animal's death in order to promote high animal welfare standards in the context of ritual slaughter. It is the third time within just a few years that the highest Court of the European Union has been asked to seek balance between freedom of religion and animal welfare.² Yet again, the Court acknowledges in its judgment the immense significance of animal welfare when it comes to slaughtering procedures – regardless, which purpose the slaughtering fulfils. Thus, also religious slaughter is bound to respect animal welfare. As the interest in animal welfare is growing, the freedom to manifest religion in form of ritual slaughter is, therefore, to be interpreted in an evolving societal and legislative context.

* PhD, Associate Fellow, Oxford Centre for Animal Ethics, lena.hehemann@posteo.net.

¹ Case C-336/19 *Centraal Israëlitisch Consistorie van België and Others* ECLI:EU:C:2020:1031.

² Case C-426/16 *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* ECLI:EU:C:2018:335; case C-497/17 *Œuvre d'assistance aux bêtes d'abattoirs* ECLI:EU:C:2019:137.



The following *Insight* summarises the background and facts of the case followed by an overview of the judgment itself. Finally, the important aspects of the case are highlighted and briefly commented on.

II. BACKGROUND AND FACTS

On 7 July 2017 the Flemish Government (Belgium) amended the “Law on the protection and welfare of animals, regarding permitted methods of slaughtering animals”. The introduced provisions prohibit animals from being slaughtered without prior stunning. This restriction applies also to slaughter prescribed by a religious rite, which shall solely be performed when using reversible stunning techniques which cannot result in the animal’s death. The Flemish Government argued that “Flanders attaches great importance to animal welfare. The objective [of the law] is, therefore, to eliminate all avoidable animal suffering in Flanders. The slaughter of animals without stunning is incompatible with that principle”.³ Even though it acknowledges the Jewish and Islamic religious rites, that both require the animal to be drained of as much of its blood as possible as cause of death, scientific research had shown that the stunning has no major effects on this requirement. Thus, the Government does not consider the provisions to disproportionately restrict the exercise of religious freedom for these groups. The provisions entered into force on 1 January 2019.

On 17 and 18 August 2018 the Centraal Israëlitisch Consistorie van België, the Unie Mosekeeën Antwerpen VZW, the Islamitisch Offerfeest Antwerpen VZW, JG and KH, the Executief can de Moslims von België, the Coördinatie Comité van Jodse Organisaties von België – Section belge du Congrès juif Mondial et Congrès juif européen (in the following: CICB and Others) sought the annulment of the provisions before the Grondwettelijk Hof (Constitutional Court of Belgium). In their view, in not allowing Jewish and Muslim believers to obtain meat from animals slaughtered in accordance with their religious precepts, which preclude the reversible stunning technique, they are prevented from practising their religion.

CICB and Others supported their claim by referring to Regulation 1099/2009 on the protection of animals at the time of killing (Regulation 1099/2009).⁴ As a rule, animals should be stunned before being slaughtered (art. 4(1) Regulation 1099/2009). However, the obligation to stun does not apply to the slaughter of animals carried out in accordance with methods prescribed by religious rites (art. 4(4) Regulation 1099/2009). According to the Grondwettelijk Hof, this corresponds with art. 10 of the Charter of Fundamental Rights of the European Union (the Charter)⁵ and art. 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)⁶ that both enshrine the freedom of religion.

³ *Centraal Israëlitisch Consistorie van België and Others* cit. para. 13.

⁴ Regulation 1099/2009 of the Council of 24 September 2009 on the protection of animals at the time of killing.

⁵ Charter of Fundamental Rights of the European Union [2012].

⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms [1950].

CICB and Others argued, furthermore, that art. 26(2)(c) Regulation 1099/2009 cannot provide a derogation from the obligation to stun during ritual slaughter. The provision allows the Member States to adopt national rules ensuring more extensive protection of animals at the time of killing in relation to the slaughtering of animals in accordance with art. 4(4).

The Grondwettelijk Hof decided to stay proceedings and referred the matter to the Court of Justice. It posed three questions, whereby questions 1 and 2 were combined: First, in EU law, are Member States permitted to adopt rules which provide for a prohibition on the slaughter of animals without stunning that also applies to the slaughter carried out in the context of a religious rite as long as alternative stunning procedures are carried out meeting the religious rites? Second, the Grondwettelijk Hof asked whether the conditional exception to the obligation to stun animals does not apply to the killing of animals during hunting, fishing or sporting and cultural events, since they are not subject to Regulation 1099/2009.⁷

III. JUDGMENT

In its judgment, the Court, sitting as the Grand Chamber, took a comprehensive stance on the principle that animals should be stunned prior to being killed to meet animal welfare standards. The Court based its decision on Regulation 1099/2009 which seeks to define common rules for the protection of animal welfare at the time of slaughter or killing. The regulation acknowledges the principle that the protection of animals at the time of slaughter is a matter of general concern.⁸ In this context, the Court referred to art. 4(1) Regulation 1099/2009, which stipulates that animals shall only be slaughtered after stunning to spare the animal any avoidable pain, distress or suffering during their killing (art. 3 Regulation 1099/2009). According to the Court, this provision reflects the EU's value of animal welfare, as now enshrined in art. 13 TFEU.⁹

Despite the Court's recognition of the exception laid down in art. 4(4) Regulation 1099/2009, which allows slaughtering without stunning when prescribed by religious rites, it held that this form of slaughter is insufficient given the animal's pain during the

⁷ This insight shall not comment on the second question posed to the Court. The question whether the different treatment of the killing of animals during hunting, fishing, or sporting and cultural events in comparison with religious slaughter is a complex issue which the Court has only briefly addressed. While it dismissed a potentially discriminating character of Regulation 1099/2009 as will be seen in the next paragraph, the Court failed to deal in-depth with the arguments it brought forward to support its stand. Therefore, a comment on its answer to the final question of the *Grondwettelijk Hof* requires an in-depth analysis of the legal, economical, and religious background raised. This cannot be provided for in this brief commentary.

⁸ *Centraal Israëlitisch Consistorie van België and Others* cit. para. 24 ff.

⁹ Treaty of the Functioning of the European Union (TFEU) [2007].

slaughter. The permission of religious slaughter by way of derogation constitutes foremost a “positive commitment of the EU legislature to ensure effective observance of freedom of religion and the right to manifest religion or beliefs in practice and observance, in particular for practising Muslims and Jews”.¹⁰ Art. 4(4) Regulation 1099/2009 is, therefore, mainly a result of compromise between the Member States. The EU legislature has, as a result, maintained a certain level of subsidiarity for each Member State which manifests in art. 26(1) and (2) Regulation 1099/2009. While para. 1 allows the individual Member States to maintain any national rules aimed at ensuring more extensive protection of animals during the slaughter in force at the time of entry into force of Regulation 1099/2009, para. 2, authorizes the Member States to adopt stricter national rules on animal welfare after the entry into force of the regulation. This particularly applies to the slaughtering and related operations of animals in accordance with art. 4(4) Regulation 1099/2009 (art. 26(2)(c) Regulation 1099/2009).

The CJEU continued that Regulation 1099/2009 reflects the requirements of art. 13 TFEU, according to which, since animals are sentient beings, the EU and its Member States shall pay full regard to the welfare requirements of animals. The established framework by the regulation shows “that the regulation does not itself effect the necessary reconciliation between animal welfare and the freedom to manifest religion but merely provides a framework for the reconciliation which Member State must achieve between those two values”.¹¹ As a consequence, the Member States may adopt stricter rules to ensure greater animal protection than provided for in the regulation as long as they respect the fundamental rights enshrined in the Charter.

By prescribing reversible stunning contrary to the religious precepts of Jewish and Muslim believers, the provisions in question entail a restriction on the exercise of the right of those believers to the freedom to manifest their religion.¹² In accordance with art. 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. Limitations need to genuinely meet objectives of general interest recognised by the EU – as animal welfare. Finally, they must be proportionate.¹³ Therefore, in order to elaborate whether the Belgian legislation respects the freedom of religion according to art. 10(1) of the Charter, the Court weighed the freedom of religion on the one side – also taking into consideration the corresponding rights guaranteed in the ECHR – and the public interest of animal welfare on the other side. The Court ticked all these boxes concluding that the Flemish legislation does not infringe the freedom to manifest religion unlawfully.¹⁴ It found “that the measures contained in the decree at issue in the main proceedings allow a fair balance

¹⁰ *Centraal Israëlitisch Consistorie van België and Others* cit. paras 43 and 44.

¹¹ *Ibid.* para. 47.

¹² *Ibid.* para. 54.

¹³ *Ibid.* para. 60 ff.

¹⁴ *Ibid.* para. 75 ff.

to be struck between the importance attached to animal welfare and the freedom of Jewish and Muslim believers to manifest their religion and are, therefore, proportionate".¹⁵ In a sidenote, the CJEU underlined that the Flemish legislation neither prohibits nor hinders the putting into circulation of products of animal origin derived from animals which have undergone ritual slaughter without reversible stunning.¹⁶

In its final remarks, the Court emphasised 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".¹⁷ Regard must be had to changes in values and ideas. As animal welfare has been enjoying an increasing importance for several years, it may, in the light of changes in society, be taken into account to a greater extent in the context of ritual slaughter.¹⁸ Therefore, in an evolving societal and legislative context the Flemish legislature was entitled to adopt the provisions in question "without exceeding the discretion which EU law confers on Member States as regards the need to reconcile art. 10(1) of the Charter with art. 13 TFEU".¹⁹

To answer the last question, the Court touched briefly upon the differences between religious slaughter and killing animals for hunting, fishing, sporting or cultural events. It upheld the validity of Regulation 1099/2009 in the light of the principles of equality, non-discrimination and cultural, religious and linguistic diversity, as guaranteed by the Charter. The fact that the regulation authorises Member States to take measures such as compulsory stunning in the context of ritual slaughter, but contains no similar provision governing the killing of animals in the context of hunting and recreational fishing activities or during cultural or sporting events, is not contrary to those principles.²⁰ Cultural and sporting events result at most in a marginal production of meat which is not economically significant. Consequently, such events cannot reasonably be understood as a food production activity, which justifies them being treated differently from slaughtering.²¹ The Court drew the same conclusion regarding hunting and recreational fishing activities. Those activities take place in a context where conditions for killing are very different from those employed for farmed animals. Finally, an obligation of pre-stunning renders the concepts of hunting and fishing meaningless.²²

¹⁵ *Ibid.* para. 80.

¹⁶ *Ibid.* para. 78.

¹⁷ *Ibid.* para. 77.

¹⁸ *Ibid.* para. 77 ff.

¹⁹ *Ibid.* para. 79.

²⁰ *Ibid.* para. 84 ff.

²¹ *Ibid.* para. 93.

²² *Ibid.* para. 93 ff.

IV. COMMENT

IV.1. RELIGIOUS SLAUGHTER, ANIMAL WELFARE AND STRICT REGULATION

For some, the Court's decision in the present case came as a surprise as it fundamentally contradicts the Advocate General's opinion. Advocate General Hogan claimed that art. 26(2)(c) Regulation 1099/2009 cannot be interpreted in a way that it contemplates the quasi-elimination of the practice of ritual slaughter. According to Hogan, the provision maintains the general derogation in art. 4(4) Regulation 1099/2009.²³ He argued that the derogation remains a dead letter when fundamentally overturned by the Member States.²⁴ In his opinion, art. 26(2)(c) Regulation 1099/2009 rather provides for the possibility to demand additional rules as the requirement of the presence of a veterinarian or a proper training of the person being in charge rather than a re-exemption of the derogation itself.²⁵

Arts 4(4) and 26(2)(c) Regulation 1099/2009 constitute a compromise between the Member States. The wording of art. 26(2)(c) Regulation 1099/2009 permits the Member States to apply a stricter approach when it comes to animal welfare as long as the introduced measures are proportionate, which the Court affirms comprehensibly and rightly in the present case. The prescription of reversible stunning in the context of religious slaughter falls in the scope of art. 26(2)(c) Regulation 1099/2009.

To support its argument, the Court explicitly recalled art. 13 TFEU which obliges the Union and its Member States to take full account of the welfare of animals as "sentient beings" when defining and implementing Union policies in the fields of agriculture, fisheries, transport, the internal market, research, technological development and space, while respecting the laws regulations and administrative provisions and national practices of the Member States.²⁶ The accommodation of animal welfare needs has to respect, however, the Member States' religious rites and heritage as well as cultural practices (art. 13 TFEU). The needs of animal welfare are, therefore, to be embedded in a domestic context when designing and applying animal welfare law.²⁷ The provision clarifies that the EU does not prioritize animal welfare considerations *per se*, but within the limits provided by the article.²⁸ The Court's judgment gives, however, a new dimension to

²³ Case C-336/19 *Centraal Israëlitisch Consistorie van België and Others* ECLI:EU:C:2020:1031, opinion of AG Hogan, para. 37, 49.

²⁴ *Ibid.* para. 50 ff.

²⁵ *Ibid.* para. 69.

²⁶ *Centraal Israëlitisch Consistorie van België and Others* cit. para. 47; M Kotzur 'Art. 13 TFEU' in R Geiger, DE Khan and M Kotzur (eds), *European Union Treaties* (C.H. Beck and Hart 2015) 225 ff.

²⁷ K Sowery, 'Sentient beings and tradable products: The curious constitutional status of animals under Union law' (2018) CMLRev 55 ff.

²⁸ Concerning the role of art. 13 TFEU and the development of animal welfare policy within the European Union especially in relation to religious slaughtering, see M Lottini, M Giannino, 'Slaughtering Without Pre-Stunning and EU Law on Animal Welfare' (2019) EFFLRev 502 ff.

art. 13 TFEU: While Member States may refrain from stricter animal welfare standards in relation to their cultural or religious habits, they are also allowed to adopt – on its basis – stricter legislation on animal welfare provided they are operating in their discretion and not in violation of the Charter.

From an animal welfare perspective, the possibility to adopt stricter regulation is to be welcomed. Yet, the Court's argumentation raises some questions concerning long-term access to kosher and halal meat. The Court claims that only a small number of EU Member States, namely Austria, Belgium, Denmark, Estonia, Finland, Greece, Latvia, Slovenia, and Sweden, has adopted legislation which allows religious slaughtering solely with pre-stunning or post-cut stunning.²⁹ Meat that has been derived from animals which have undergone ritual slaughter without prior stunning can, so the Court, be imported from EU Member States which have not introduced any restrictions. In this context, the Court seems to underestimate the rising number of States which prohibit slaughter without prior (reversible) stunning or restrict the export of halal and kosher meat and the consequences for the Muslim and Jewish communities. As the Court mentioned, Poland – one of the main exporters of halal and kosher meat in the EU – proposed legislation in 2019 to restrict those exports.³⁰ Other Member States are proposing similar legislation.³¹ It is questionable how access to meat derived from animals which have undergone ritual slaughter without prior (reversible) stunning is still guaranteed for Muslim and Jewish believers if more and more Member States adopt stricter legislation.³² The Court's argumentation leaves unanswered whether a prohibition of religious slaughter without prior stunning is still a proportionate restriction of religious freedom when the majority of EU-Member States has introduced similar provisions. It simply refers to imports from third countries ignoring, however, the potentially increasing prices due to custom duties which may, yet again, restrain access to halal and kosher meat and therefore impedes the freedom to manifest religion for Muslim and Jewish communities.

In conclusion, the judgement follows the Court's jurisprudence when indicating that meat which was derived in accordance with religious rites – when performed without prior (reversible) stunning – cannot fulfil high animal welfare standards. Considering other recent judgments regarding art. 13 TFEU,³³ in which the Court of Justice also implied the priority of the horizontal clause on animal protection vis-à-vis the exercise of fundamental rights – as religious freedom – the Court's judgment appears to be comprehensible and coherent with its jurisprudence on animal welfare and the systematic of art. 13

²⁹ *Centraal Israëlitisch Consistorie van België and Others* cit. para. 78; The Law Library of Congress, Report on Legal Restrictions on Religious Slaughter in Europe, March 2018, www.loc.gov.

³⁰ *Centraal Israëlitisch Consistorie van België and Others* cit. para. 34 ff.

³¹ The Law Library of Congress cit.

³² Whether these restrictions are introduced due to a rising awareness of animal welfare issues or only under the guise of animal welfare cannot be answered here.

³³ Case C-424/13 *Zuchtvieh-Export* ECLI:EU:C:2015:259; *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen* cit.; *Œuvre d'assistance aux bêtes d'abattoirs* cit.

TFEU. From the viewpoint of animal welfare this argumentation is another step towards high animal welfare standards within the EU. However, the actual impact of this decision on an unrestricted access to halal and kosher meat will unfold when other similar legislations are challenged in front of the Court.

VI.2. A SECULAR COURT AND THE JUDGMENT OF RELIGIOUS RITES

In his opinion, Advocate General Hogan pointed out that “a secular court cannot choose in relation to the matters of religious orthodoxy [...]. [T]here is a significant body of adherents to both the Muslim and Jewish faiths for whom the slaughter of animals without such stunning is regarded by them as an essential aspect of a necessary religious rite.”³⁴

Being well aware of its incompetence to rule on orthodox aspects of religious freedom – as to whether reversible stunning meets the requirements of ritual rites – the Court did not seek to decide upon religious disputes but assessed the religious matter “from the outside”. It highlighted already in *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen* that the EU adopts “neutral” rules that do not target specific religious practices. Regulation 1099/2009 aims at regulating slaughter in the EU. These provisions, thus, seek to protect animal welfare, not to discriminate religious groups practicing their religious rites.³⁵ This position may result in an approach where “neutral” laws are incapable of infringing the freedom to manifest religion and is to be treated with caution.³⁶

Instead of taking into account religious insides and a theological or orthodox view, the Court took a sociological stand. In its proportionality assessment the Court stressed that the Charter “is a living instrument in the light of present-day conditions and of the ideas prevailing in democratic States today”.³⁷ Thus, changes in values and ideas both in terms of society and legislation must be included when performing the assessment. As science provides data which demonstrate that stunning has a significant effect on the reduction of pain at the animal’s time of death, and that, since the stunning prescribed by the Flemish law shall be reversible, the cause of death remains the bleeding out, the provisions, therefore, seem to be compatible with religious rites in a modern time – in an evolving context. This argument is founded mainly on the evolving character of fundamental freedoms, in particular art. 10(1) of the Charter, within a societal and legislative context, which in the case at hand is characterised by an increasing awareness of the issue of animal welfare.³⁸

Nevertheless, the Court briefly touched upon religious dietary requirements as “essence” of religious freedom. While arguing that the Flemish law solely seeks to regulate

³⁴ *Centraal Israëlitisch Consistorie van België and Others*, opinion of AG Hogan, cit. para. 47 with other references.

³⁵ *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen*. cit. para. 66.

³⁶ A Pin, J Witte, ‘Meet the New Boss of Religious Freedom: The Next Cases of the Court of Justice of the European Union’ (2020) *TextIntLJ* 35 ff.

³⁷ *Centraal Israëlitisch Consistorie van België and Others* cit. para. 77.

³⁸ *Ibid.* para. 79.

the specific ritual act of slaughter and that eating habits are not touched upon by the requirement of reversible stunning since the animal is still dying by the drainage of its blood, the Court acknowledges the (theological) importance of dietary rules in religious rites. With this argumentation its sociological standpoint seems to shift to a rather theological approach. As the Court refuses to extensively discuss dietary requirements as the essence of religious freedom the boundary between societal and theological interpretation becomes permeable. It is, however, time the Court takes on the debate on how far it is willing – as a secular institution – to interpret matters of religious orthodoxy.

V. FINAL REMARKS

Centraal Israëlitisch Consistorie van België and Others reinforced the meaning of animal welfare as an interest of the EU. It connects to the Court's earlier case law and follows the steps already taken towards high animal welfare standards within the EU. In general, this development is to be welcomed. However, the Court's sidenote arguing that the restriction of religious slaughtering without stunning is proportionate as long as there are enough Member States and third countries available that import halal and kosher meat without prior (reversible) stunning foments doubt whether the access to this kind of meat for Muslim and Jewish believers can be guaranteed on the long term.

Also, the pursued sociological approach should be taken with a grain of salt. The general reference to "an evolving societal and legislative context" in order to justify the restriction of the freedom to manifest religion freedom bears the risk to be abused by some political parties, who advocate bans on non-stun slaughter – or other restrictions of the manifestation of Jewish or Muslim rites – under the guise of concern for animal welfare.

