Ritual Slaughter Case: The Court of Justice and the Belgian Constitutional Court Put Animal Welfare First

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INTRODUCTION

The issue of ritual slaughter is particularly sensitive, as it requires balancing the protection of animal welfare against the freedom of religion. As is well known, freedom of religion is enshrined in most European constitutions as well as in Article 9 of the European Convention on Human Rights and Article 10 of the Charter of Fundamental Rights of the European Union. Animal welfare emerged in the late 1960s in the context of intensification of the livestock farming process, as a critical questioning of the living conditions of animals in industrialised systems.[1] In fact, the decision to ban or allow ritual slaughter is one of the issues that has vexed most European policy makers in recent years.[2] In Belgium, the situation is even more complex as animal welfare has been a regional matter since 2014 (sixth reform of the state) and as regionalisation is 'almost

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[1]F. Bergeaud-Blackler, 'New Challenges for Islamic Ritual Slaughter: A European Perspective', *Journal of Ethnic and Migration Studies* (2007) p. 967.

[2]G. van der Schyff, 'Reviewing the Recent Ban on Ritual Slaughter in Flanders', 1 *Recht, Religie en Samenleving* (2017) p. 5. In that sense, *see* among others: J.A. Rovinsky, 'The Cutting Edge: The Debate over Regulation of Ritual Slaughter in the Western World', 45(1) *California Western International Law Journal* (2014) p. 79 ff.; C.E. Haupt, 'Free Exercise of Religion and Animal Protection: A Comparative Perspective on Ritual Slaughter', 39 *George Washington International Law Rev*iew (2007) p. 839 ff.; M. Valenta, 'Pluralist Democracy or Scientistic Monocracy: Debating Ritual Slaughter', 5(1) *Erasmus Law Review* (2012) p. 27; G. van der Schyff, 'Ritual Slaughter and Religious Freedom in a Multilevel Europe: The Wider Importance of the Dutch Case', 3(1) *Oxford Journal of Law and Religion* (2014) p. 76; P. Lerner and A.M. Rabello, 'The Prohibition of Ritual Slaughtering (Kosher Shechita and Halal) and Freedom of Religion of Minorities', 22(1) *Journal of Law and Religion* (2006) p. 1; C. Case, 'Ritual Slaughter and Religious Freedom: Liga van Moskeen', 56 *Common Market Law Review* (2019) p. 803 ff.

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concomitant'[3] with the evolution of European law in this area. Indeed, legislating on the slaughter of animals within the EU means taking account of EU legislation, since the Union is responsible for the common agricultural policy. In that context, the Council Regulation on the Protection of Animals at the Time of Killing[4] (the Regulation), which entered into force in 2013, is central and must be respected by the 27 member states of the EU.

As Belgium is composed of three regions, this means that there could potentially be three different sets of legislation on animal slaughter. Since 2018, the Walloon and Flemish legislation has been are identical: they prohibit any slaughter of animals without prior stunning, which means even when it is a religious slaughter. Both sets of legislation have been the subject of an annulment appeal to the Constitutional Court, which – as we shall see – first referred a preliminary question to the Court of Justice of the European Union. The Brussels Region, which has the largest Muslim population in Belgium, has not yet legislated on the matter: ritual slaughter without stunning is therefore still allowed in slaughterhouses.

The purpose of this article is to comment on the Constitutional Court's rulings of 30 September 2021 in relation to the Flemish and Walloon decrees now applicable to animal slaughter. In order to understand the scope of the rulings, it is first necessary to formulate a few remarks regarding the challenges of protecting both animal welfare and religious freedom, and to present the new Flemish and Walloon legislation relating to the protection of animal welfare in ritual slaughter, which led to the proceedings before the Belgian Constitutional Court. The next section examines the Advocate General's Opinion and the decision of European Court of Justice. The latter seems to confirm a general tendency to favour animal welfare over religious freedom in the EU case law. In contrast, we will see that it is difficult to identify general trends around ritual slaughter in the decisions of the European Court of Human Rights, since only one judgment has been handed down by the Court in this area, and that does not directly address the issue of animal welfare.

Challenges of protecting animal welfare versus religious freedom

Rituals and practices surrounding the consumption of meat according to the precepts of certain religions – principally Islam and Judaism – regularly place in tension the two concerns of respect for the religious freedom of believers and defence

[3] L.-L. Christians, 'Bien-être animal et protection des minorités religieuses en Belgique. Le test de l'abattage rituel entre écarts régionaux et attente constitutionnelle', *Revue du droit des religions* (2021) p. 82.

[4] Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing.

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of animal welfare. Both the Islamic and Jewish religions require that the death of the animal occurs at the time of slaughter by haemorrhaging (and therefore not by stunning) whereas European societal and legal standards for the protection of animal welfare require the animal to be stunned or anaesthetised beforehand in order to minimise its pain, suffering and distress.

Regarding Islam, only that which is '*halāl*' – i.e. permitted by Islamic law called '*sharia*' – can be eaten. As the term *halal* refers to what is permissible as opposed to what is forbidden or unlawful (ie what is '*harām*') it refers not only to the consumption of food or drink but also to all the general habits of life considered permissible by Islam. The most well-known practices are the prohibition of alcohol and pork consumption, as well as the obligation to slaughter animals according to religious prescriptions.

Regarding Judaism, kashrut covers all the rules that apply to food in order for it to be suitable for consumption. Food that is described as '*kosher*' – which means clean, good, satisfying in Hebrew – is therefore allowed to be eaten by virtue of Jewish law (called *Halakha*). Kashrut mainly concerns the eating of animals – although it also applies to certain plants – and primarily requires that ritual slaughter (*Shechita*) take place according to a specific prescription.

The problem remains in relation to the requirement that the animal be conscious at the time of its death. While it seems relatively clear that the animal must be conscious at the time of slaughter in the Jewish religion,[5] it is less clear in Islam. More precisely:

> there are essentially two main interpretations dealing with industrial halal slaughter, with two groups of opinions about the licitness, or acceptability, of meat in relation to the mode of slaughter. The first is based on a verse of the Koran (5:5) that considers Christian and Jewish traditions of industrialised countries are adequate to render their slaughter methods acceptable to Muslims. [...] [T]he second interpretation considers that meat has a status peculiar to Islam. Meat and meat products are recognised as licit for Muslims only under certain conditions specified by Islamic sources. This interpretation is based on a verse in the Koran that explicitly forbids the consumption of meat deriving from an animal slaughtered in the name of any other being than God.[6]

To reconcile respect for religious freedom with the protection of animal welfare, Article 4(4) of the Regulation provides an exception: the principle of prior

[5]For more details, *see* F. Bergeaud-Blackler (ed.), *Les sens du Halal: Une norme dans un marché mondial* (Paris, Ed. CNRS, 2015).

[6]Bergeaud-Blackler, *supra* n. 1, p. 972-973. *See also* M. Hodkin, 'When Ritual Slaughter Isn't Kosher: An Examination of Shechita and the Humane Methods of Slaughter Act', 1 *Journal of Animal Law* (2005) p. 129 at p. 134 ff.

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stunning does not apply to animals subject to specific methods of slaughter prescribed by religious rites, provided that slaughter takes place in a slaughterhouse.

It is also important to mention that since the European Court of Human Rights' decision in 2000 in *Cha'are Shalom Ve Tsedek* v *France* – analysed below – ritual slaughter clearly falls within the protection afforded by Article 9(1) of the European Convention onHuman Rights. According to the Court, 'it is not contested that ritual slaughter, as indeed its name indicates, constitutes a rite [. . .] whose purpose is to provide Jews with meat from animals slaughtered in accordance with religious prescriptions, which is an essential aspect of practice of the Jewish religion'.[7] The European Court of Justice has adopted the same position in its three recent cases about ritual slaughter.[8]

New Flemish and Walloon legislation and proceedings before the Belgian Constitutional Court

In Belgium, the previous legislation – federal law of 14 August 1986 on the protection and welfare of animals – laid down the obligation not to slaughter an animal without prior stunning or, in the event of *force majeure*, to use the least painful method. However, Article 16(2) of the law stated that, by way of derogation, that obligation did not apply to 'slaughter prescribed by a religious rite'. This federal law of 1986 was replaced by the Flemish decree of 7 July 2017 at issue, as animal welfare became a regional competence in 2014 in the sixth reform of the Belgian State.[9] This new decree, which entered into force on 1 January 2019, put an end to that derogation in the case of the Flemish Region. From that date, it provides that 'if the animals are slaughtered according to special methods required for religious rites, the stunning must be reversible and the animal's death must not be caused by stunning'.

The preparatory documents for that decree state as follows:

> Flanders attaches great importance to animal welfare. The objective is, therefore, to eliminate all avoidable animal suffering in Flanders. The slaughter of animals without stunning is incompatible with that principle. [. . .] The gap between eliminating animal suffering, on the one hand, and slaughtering without prior stunning, on the other, will always be very considerable, even if less radical measures were taken to minimise the impairment of animal welfare. Nevertheless, a balance must

[7] ECtHR 27 June 2000, *Cha'are Shalom Ve Tsedek* v *France*, para 73.

[8] *See* ECJ (GC) 29 May 2018, Case C-426/16, *Liga van Moskeeën en Islamitische Organisaties*; ECJ (GC) 26 February 2019, Case C-497/17, *Œuvre d'assistance aux bêtes d'abattoirs*; ECJ (GC) 17 December 2020, Case C-336/19, *Centraal Israëlitisch Consistorie van België and Others* v *Vlaamse Regering*.

[9] For more details, *see* S. Wattier, 'Les animaux', in M. Uyttendaele and M. Verdussen (eds.), *Dictionnaire de la Sixième Réforme de l'Etat* (Bruxelles Larcier 2015) p. 41-45.

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> be sought between the protection of animal welfare and freedom of religion. Both Jewish and Islamic religious rites require the animal to be drained of as much of its blood as possible. Scientific research has shown that the fear that stunning would adversely affect bleeding out is unfounded. Furthermore, both rites require that the animal be intact and healthy at the time of slaughter and that it die from bleeding [. . .]. Electronarcosis is a reversible (non-lethal) method of stunning in which the animal, if it has not had its throat cut in the meantime, regains consciousness after a short period and does not feel any negative effects of stunning [. . .].[10]

In the Walloon Region, the federal law of 1986 was replaced by the 'Code wallon du bien-être des animaux' of 4 October 2018. The new code provides the same obligation as the Flemish legislation: the animal must be stunned before death by religious slaughter in the same way as non-religious slaughter. In other words, in both the Flemish and the Walloon Region, there is no longer any possibility of an exception to the obligation to stun animals, including when a religious rite is being performed.

Electrical stunning was created in the 1920s. Its purpose was to avoid mechanical stunning, which produced lesions in the brain of the animals.[11] Moreover, it has been scientifically demonstrated that electronarcosis ensures that the animal will not die, which is not certain when using other stunning procedures.[12]

Stunning of animals before slaughter is widespread throughout the world: it is an obligatory procedure in several countries such as Australia, New Zealand, South Africa, Brazil, and East Asia countries.[13] This procedure 'supposedly aims to lessen the distress and pain of animals through the use of appropriately accepted stunning methods, based on scientific knowledge and practical experience. China, the world's biggest pork producer and consumer, also uses pre-slaughter stunning of commercially farmed animals'.[14] In the EU, in the early 2010s, Sweden, Finland, Slovenia and Denmark, like Belgium, decided to abolish the exception for ritual slaughter without stunning.[15]

In other words, unlike 'classical' stunning, reversible stunning has the particularity of not causing the death of the animal and therefore, *in principle*,[16] of

[10] Case C-336/19, *supra* n. 8, 13.

[11] S. Espallargas, *De l'étourdissement des ruminants de boucherie par électronarcose. Conséquence pour l'animal et sa carcasse*, Thesis, Ecole nationale vétérinaire de Nantes, 1983, p. 35.

[12] Ibid.

[13] Z. Amjad Aghwan and J. MacRegenstein, 'Slaughter Practices of Different Faiths in Different Countries', 61(3) *Journal of Animal Science and Technology* (2019) p. 111 at p. 121.

[14] Ibid.

[15] C. Sägesser, 'Les débats autour de l'interdiction de l'abattage rituel', 2385 *Courrier hebdomadaire du Crisp* (2018) p. 12.

[16] According to scientific advice obtained by policy makers who, like Belgium, ban ritual slaughter without stunning: *see* Case C-336/19, *supra* n. 8, 75.

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remaining in conformity with the religious prescriptions, which require that the death of the animal occurs at slaughter and not at stunning. This practice is in accordance with some Muslim authorities – but not all of them – who accept that the animal is stunned just before its throat is slit. Nevertheless, it is more complex within the Jewish religion, whose requirements for the slaughter of the animal are much stricter.[17] Besides, under religious rules, any devout Muslim can slaughter an animal, which is not the case in Judaism, where the slaughter must be carried out by a devout and technically qualified man, the *shohet.*[18]

However, in the Brussels Region there is still no ban on religious slaughter without stunning: an exception remains, probably due to the very large Muslim community in Brussels. Such a ban could threaten economic activities and the outcome of future elections, as well as create a network of clandestine slaughters that could continue to take place without prior stunning. In 2015 in Brussels, a draft ordinance was issued to train religious sacrificers in animal welfare as an alternative to the ban on slaughter without stunning. However, this project never came to fruition.

The action for annulment of both decrees was lodged with the Constitutional Court by Muslim and Jewish religious communities and by the representative body of Muslims in Belgium.[19]

According to the applicants, the new Flemish and Walloon decrees are incompatible with the exception contained in Article 4(4) of Regulation No 1099/2009, which provides an exception to the obligation of prior stunning in the context of a religious rite. Conversely, the Flemish and Walloon Governments consider that point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 expressly empowers member states to depart from Article 4(4) of that regulation. The dispute thus turned on the interpretation and the validity of the Regulation.

In its judgment 53/2019, the Constitutional Court decided to refer three questions on the ban on slaughter without stunning to the Court of Justice of the European Union for a preliminary ruling. As Koen Lenaerts wrote, 'if the preliminary reference to the Court of Justice of the European Union were a sporting discipline, the Belgian Constitutional Court would – without question – be

[17]About the precise differences between kosher and halal meat, *see* J. Zurek et al., 'Conventional versus Ritual Slaughter – Ethical Aspects and Meat Quality', 9 *Processes* (2021) p. 1.

[18]Sägesser, *supra* n. 15, p. 6.

[19]In Belgium 'the Constitutional Court is competent to review legislative acts. By legislative acts are meant both substantive and formal rules adopted by the federal parliament (statutes) and by the parliaments of the communities and regions (decrees and ordinances). All other regulations, such as Royal Decrees, decrees of governments of communities and regions, ministerial decrees, regulations and decrees of provinces and municipalities, and court decisions fall outside the jurisdiction of the Court': *see* ⟨https://www.const-court.be/en/court/presentation/jurisdiction⟩ visited 2 July 2022.

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the Olympic champion'.[20] In the vast majority of cases, the questions posed by the Belgian Constitutional Court concern the interpretation of EU law, and this is no different in the current case.

In specie, the three questions can be paraphrased as follows. First, the Constitutional Court asks if Article 26(2) of Regulation No 1099/2009 could be interpreted as meaning that member states are permitted, by way of derogation from Article 4 of that regulation to promote animal welfare, to adopt rules which prohibit the slaughter of animals without stunning including in the case of religious rites and, as alternative, a stunning procedure for the slaughter carried out in the context of a religious rite, based on reversible stunning and on the requirement that the stunning should not result in the death of the animal. Second, if the first question was answered in the affirmative, the Constitutional Court asks whether, interpreted in this way, Regulation No 1099/2009 does not, in that interpretation, violate Article 10 of the Charter, which guarantees freedom of religion. Third, if the first question was answered in the affirmative, the Constitutional Court wonders if the Regulation No 1099/2009 does not, in that interpretation, infringe Articles 20, 21 and 22 of the Charter since the obligation to stun the animal is not required in the case of the killing of animals during hunting and fishing and during sporting and cultural events for the reason that those activities do not fall within the scope of the Regulation No 1099/2009.[21]

Advocate General's Opinion and judgment of the European Court of Justice: *Centraal Israëlitisch Consistorie van België and Others* of 17 December 2020

Advocate General Hogans considers that:

> point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, read together with Article 4(1) and (4) thereof, 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, on the one hand, for a prohibition of the slaughter of animals without stunning that also applies to the slaughter carried out in the context of a religious rite and, on the other hand, for an alternative stunning procedure for the slaughter carried out in the context

[20]K. Lenaerts, 'Le dialogue entre la Cour constitutionnelle et la Cour de justice de l'Union européenne : angle d'approche et limites', in A. Alan et al., *Grondwettelijk Hof 1985-2015 – Cour constitutionnelle 1985-2015*, *Actes du colloque du 1er avril 2015 à l'occasion du trentième anniversaire du premier arrêt de la Cour* (Die Keure 2016) p. 133 (free translation).

[21]Case C-336/19, *supra* n. 8, 32.

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of a religious rite, based on reversible stunning and on condition that the stunning should not result in the death of the animal.[22]

According to the Advocate General, it cannot be denied that 'the preservation of the religious rites of animal slaughter often sits uneasily with modern conceptions of animal welfare'.[23] He finds that the derogation provided for in Article 4(4) of the Regulation is nevertheless a policy choice which the Union legislature was entitled to make. Then, he considers that the policy choice of states adopting particular measures in the name of animal welfare have the material effect of nullifying the derogation in favour of certain members of religious denominations. However, he points out that none of this makes Article 26 of the Regulation incompatible with Article 10 of the Charter.[24]

On the contrary, in its judgment *Centraal Israëlitisch Consistorie van België and Others*, the Court of Justice rules in favour of animal welfare at the expense of freedom of religion. As a matter of fact, the Court judges that the Regulation can be interpreted as meaning that member states – including here the Flemish and Walloon regions – may prohibit the slaughter of animals without stunning, even when it is a religious slaughter.

In its judgment, the Court analyses the first and second questions together and then the third separately.

As regards the first and second questions, the Court recalls that Regulation No 1099/2009 forms part of the Community Action Plan on the Protection and Welfare of Animals 2006–2010. Scientific studies have shown that prior stunning – understood as reversible and not leading to death – is the technique that compromises animal welfare the least at the time of killing.[25] The Court underlines that slaughter without prior stunning is only authorised '*by way of derogation* in the European Union and solely in order to ensure observance of freedom of religion', 'because that form of slaughter cannot eliminate any pain, distress and suffering on the part of the animal as effectively as slaughter with prior stunning'.[26] This derogation is based on the need to respect the national provisions and customs relating to religious rites, cultural traditions and regional heritage when implementing the European policies on agriculture and the internal market. In that sense, according to the European Court, Article 26(2) of Regulation No 1099/2009 does not fail to have regard to the freedom to manifest religion 'to adopt additional rules designed to ensure greater protection for

[22]Opinion of AG Hogan 10 September 2020, Case C-336/19, *Centraal Israëlitisch Consistorie van België and Others* v *Vlaamse Regering*, 77.

[23]Ibid., 87.

[24]Ibid., 87.

[25]Case C-336/19, *supra* n. 8, 39-41.

[26]Ibid., 43 (emphasis added).

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animals than provided for by that regulation, those States may, inter alia, impose an obligation to stun animals prior to killing which also applies in the case of slaughter prescribed by religious rites, subject, however, to respecting the fundamental rights enshrined in the Charter'.[27]

Then, the Luxembourg Court finds that the decrees entail a limitation on the exercise of the right to freedom of Jewish and Muslim believers to manifest their religion. The Court expressly refers to the case law of the European Court of Human Rights to emphasise that 'freedom of thought, conscience and religion protected by Article 9 ECHR is one of the foundations of a "democratic society" within the meaning of that convention, since pluralism, which is integral to any such society, depends on that freedom'.[28]

Insofar as Article 52 of the Charter – like Article 9(2) of the European Convention on Human Rights – authorises limitations on freedom of religion only if they are 'provided for by law', 'respect the essence of [this freedom]' and 'the principle of proportionality', the Court of Justice finds that the restriction in question was provided for by law (in this case the two decrees). The Court finds that the decrees were limited to imposing prior stunning without prohibiting the ritual act as such, that it met an 'objective of general interest' recognised by the Union and that it complied with the requirement of proportionality. As regards this latest requirement of proportionality, the Court of Justice again refers to the case law of the European Court of Human Rights, which states that:

> 'where matters of general policy, such as the determination of relations between the State and religions, are at stake, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight. The State should thus, in principle, be afforded, within the scope of Article 9 of the ECHR, a wide margin of appreciation in deciding whether, and to what extent, a limitation of the right to manifest religion or beliefs is 'necessary'.[29]

Regarding the necessity test, the Luxembourg Court refers to the scientific opinions of the European Food Safety Authority to underline that a scientific consensus has emerged that prior stunning is the optimal means of reducing the animal's suffering at the time of killing. Furthermore, the preparatory documents of the Flemish decree have shown that 'electronarcosis is a non-lethal, reversible method

[27]Ibid., *supra* n. 8, 48.

[28]Ibid., *supra* n. 8, 57, quoting ECtHR 18 February 1999, *Buscarini and Others* v *Saint-Marino*; 17 February 2011, *Wasmuth* v *Germany* and the case law cited.

[29]Case C-336/19, *supra* n. 8, 67, quoting ECtHR 1 July 2014, *SAS* v *France*, §§ 129 and 131 and the case law cited.

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of stunning, with the result that if the animal's throat is cut immediately after stunning, its death will be solely due to bleeding'.[30]

Judging that the Belgian measure strikes a fair balance between animal welfare and the freedom of Jewish and Muslim believers to manifest their religion, the Court rules that it was proportionate and finds no violation on the first and second preliminary questions.

As regards the third question, the European Court of Justice first assesses the argument that ritual slaughter is subject to discriminatory treatment in Regulation No 1099/2009 compared with the killing of animals during cultural and sporting events. Judging that a cultural or sporting event cannot reasonably be understood as a food production activity for the purposes of Article 1(1) of Regulation No 1099/2009, the Court concludes that 'in the light of that difference, the EU legislature did not disregard the prohibition on discrimination, in not treating cultural or sporting events in the same way as slaughtering, which must, as such, be subject to stunning, and in thus treating those situations differently'.[31] Then, the Court judges that it cannot be argued that the activities of 'hunting' and 'recreational fishing' are capable of being carried out in respect of animals that have been stunned beforehand. The Court therefore considers that these activities are not comparable to slaughter and judges that the examination of the third question referred for a preliminary ruling has disclosed nothing capable of affecting the validity of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009.

A general tendency to favour animal welfare over religious freedom in the EU case law?

By answering the three questions of the Belgian Constitutional Court in the negative, the Court of Justice considers that the ban on ritual slaughter without prior stunning complies with EU law – contrary to what was suggested by the Advocate General – and therefore, after a careful balancing of the interests involved, gives priority to the promotion of animal welfare over religious freedom. This primacy of animal welfare had already been observed in the *Œuvre d'assistance aux bêtes d'abattoirs* judgment of 26 February 2019, in which the Court ruled that meat from ritual slaughter without stunning, insofar as it is not obtained by ensuring the highest degree of compliance with European standards for the protection of animal welfare, could not benefit from an 'organic farming' label. In that case, the Court of Justice had to rule on a preliminary reference from the Administrative Court of Appeal of Versailles. According to the Court, it must be underlined that 'slaughter

[30]Case C-336/19, *supra* n. 8, 75.

[31]Ibid., *supra* n. 8, 90.

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without pre-stunning requires an accurate cut of the throat with a sharp knife to "minimise" the animal's suffering, the use of that technique does not allow the animal's suffering to be kept to "a minimum" within the meaning of Article 14(1)(b)(viii) of Regulation No 834/2007'.[32] Therefore, 'the particular methods of slaughter prescribed by religious rites that are carried out without pre-stunning and that are permitted by Article 4(4) of Regulation No 1099/2009 are not tantamount, in terms of ensuring a high level of animal welfare at the time of killing, to slaughter with pre-stunning which is, in principle, required by Article 4(1) of that regulation'.[33] However, the Advocate General's Opinion had considered in the *Œuvre d'assistance aux bêtes d'abattoirs* case that there was no objection to granting the 'organic farming' label to halal or kosher meat.

Those two judgments of the Court of Justice on ritual slaughter of animals seem to reveal a tendency of the Court to favour animal welfare over freedom of religion. Without denying the importance of religious freedom in the EU, these decisions show that religious freedom can legitimately be restricted in order to guarantee the general interest objective of protecting animal welfare.

In our view, this pro-animal welfare position is in line with the spirit of Regulation No 1099/2009 in the sense that the possibility under Article 4(4) to derogate from stunning remains an *exception*. One of the questions referred in the *Centraal Israëlitisch Consistorie van België and Others* case was whether the Regulation did not infringe the Charter if it was to be interpreted as allowing member states to prohibit non-stunned slaughter entirely. Where the Advocate General concludes that it cannot be interpreted as prohibiting all slaughter without stunning, the Court upholds subsidiarity,[34] holding that the Regulation can be interpreted as allowing such a ban. In that sense, the Court considers that the Flemish and Walloon decrees adopted on the basis of Article 26 of the Regulation are compatible with the Charter. This prevalence of subsidiarity – and therefore of the margin of appreciation of the member states – is probably justified by the 'wide variety of constitutional models'[35] governing the relationship between the state and religions. In the case of many religious issues, it is difficult to find a common solution for all states, both at the level of the EU and the Council of Europe, given the weight of the sometimes very different religious traditions in each state. One of the best proofs of this is to be found in the Charter itself, since

[32]Case C-497/17, *supra* n. 8, 49.

[33]Ibid., *supra* n. 8, 50.

[34]Case C-336/19, *supra* n. 8, 69.

[35]This is regularly recalled by the European Court of Human Rights: 'the Court takes note of the wide variety of constitutional models governing relations between States and religious denominations in Europe. Having regard to the lack of a European consensus on this matter, it considers that the State enjoys a wider margin of appreciation in this sphere': ECtHR 9 July 2013, *Sindicatul 'Păstorul cel Bun'* v *Romania*, § 171.

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Article 10(2) recognises the right to conscientious objection 'in accordance with the *national laws* governing the exercise of this right'.

The one decision of the European Court of Human Rights on the issue: *Cha'are Shalom Ve Tsedek* v *France* of 2000

The *Cha'are Shalom Ve Tsedek* v *France* judgment is the only decision regarding ritual slaughter in the jurisprudence of the European Court of Human Rights. It concerned the refusal of the French Government to grant approval to an Orthodox Jewish religious community for Glatt ritual slaughter on the pretext of an approval previously granted to the Beth-Din of Paris for kosher slaughter. The applicant – a religious association – therefore claimed a violation of Article 9 of the European Convention on Human Rights in that the state authorities refused to 'grant it the approval necessary for access to slaughterhouses with a view to performing ritual slaughter in accordance with the ultra-orthodox religious prescriptions of its members', as well as a violation of Article 14 of the Convention 'in that only the Jewish Consistorial Association of Paris (*Association consistoriale israélite de Paris*), to which the large majority of Jews in France belong, had received the approval in question'.[36]

In its judgment, the Court considered that there was no distinction between the two competing religious rites and found that the ritual slaughter method used by the applicant association was strictly the same as that used by the Association consistoriale israélite de Paris, the only difference resulting from the post-mortem inspection of the animal's lungs. For the applicant, the meat must not only be kosher but must also be certified as 'glatt'. It should be noted that the expression 'glatt kosher' means that the meat comes from an animal that is 'without defect', i.e. an animal whose lungs have been inspected without any doubt as to its quality. On the other hand, the qualification 'glatt kosher' does not exist for poultry, for which only an inspection of the intestines is carried out. With regard to the requirement of "glatt" certification, the Court held that 'there would be interference with the freedom to manifest one's religion only if the illegality of performing ritual slaughter made it impossible for ultra-orthodox Jews to eat meat from animals slaughtered in accordance with the religious prescriptions they considered applicable'; 'But that is not the case. It is not contested that the applicant association can easily obtain supplies of "glatt" meat in Belgium. Furthermore, it is apparent from the written depositions and bailiffs' official reports produced by the interveners that a number of butcher's shops operating under the control of the ACIP make meat certified "glatt" by the Beth Din available to Jews'.[37] In other words, the Court did not consider the refusal of approval to be an

[36]ECtHR (GC) 27 June 2000, *Cha'are Shalom Ve Tsedek* v *France*, 2.
[37]Ibid., 80-81.

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interference with freedom of religion and held that there had been no violation of either Article 9 or Article 14 of the Convention insofar as the applicant religious community could travel to obtain 'glatt' meat in the neighbouring country, namely Belgium, at that time.

However, the judgment was given with a narrow majority and was the subject of a dissenting opinion by the seven judges who, contrary to the majority, considered that there was a violation of Articles 9 and 14 read in combination. According to them, 'the fact that the applicant association is able to import "glatt" meat from Belgium does not justify in this case the conclusion that there was no interference with the right to the freedom to practise one's religion through performance of the rite of ritual slaughter; the same applies to the fact that Jews are able to obtain supplies of "glatt" meat, if necessary, from the few butcher's shops run by the Association consistoriale israélite de Paris which sell it under the aegis of the Beth Din'.[38] Furthermore, the *Cha'are Shalom* case has been highly criticised by several authors.[39]

Now that ritual slaughter without stunning is no longer allowed in the Flemish and Walloon Regions, it would be interesting to see how the European Court of Human Rights would react if a similar appeal were to be submitted to it. Nevertheless, the Court could always argue that slaughter without stunning is still allowed in the Brussels Region and that religious communities in France remain free to go there.

Nevertheless, it seems to us that one should be cautious in drawing too many parallels between the issue of animal welfare protection and the *Cha'are Shalom Ve Tsedek* v *France* judgment insofar as it was about obtaining approval and not directly about animal welfare. The significance of the judgment in *Cha'are Shalom* and the criticism made of it should not be exaggerated, as it remains an isolated judgment while a general trend towards animal welfare is emerging in EU case law in the direct line of Regulation No 1099/2009.[40] As Jean-Pierre Marguénaud has shown, the *Cha'are Shalom* case cannot be presented

[38]Joint dissenting opinion of judges Bratza, Fischbach, Thomassen, Tsatsa-Nikolovska, Pantîru, Levits and Traja in ECtHR (GC), *Cha'are Shalom Ve Tsedek* v *France*, 27 June 2000.

[39]*See* J.-F. Flauss, 'Abattage rituel et liberté de religion: le défi de la protection des minorités au sein des communautés religieuses', note sous Cour eur. D.H., 27 June 2000, Rev. trim. D.H., p. 195-217; P. Rolland, 'Liberté de religion et abattage rituel de la viande', note sous Cour eur. D.H., 27 June in 2000, *Cahiers du CREDHO*, n° 7, 2000; H. Panken, Obs. sous Cour eur. D.H., 27 June 2000, R.W., 2002-2003, p. 397-398; J. Ringelheim, *Diversité culturelle et droits de l'homme* (Bruylant 2006) p. 317 ff; J.-P. Schouppe, 'La dimension collective et institutionnelle de la liberté religieuse à la lumière de quelques arrêts récents de la Cour européenne des droits de l'homme', *Revue trimestrielle des droits de l'homme* (2005) p. 616.

[40]Moreover, it should not be forgotten that the Council of Europe has a convention on the protection of animal welfare as well – dating from 10 May 1979 – which also provides for the principle of prior stunning of animals, while leaving states the option of providing for derogations from this principle in the context of slaughter (Art. 17).

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as a judgment protecting animals from the suffering that religious tradition requires to be inflicted on them.[41] Its contribution must therefore remain modest and must not, in our view, detract from the goal of protecting animal welfare, which the EU has made a general objective.

The Belgian Constitutional Court's Judgments: Nos 117/2021 and 118/2021 of 30 September 2021

Ruling 117/2021 concerns the Flemish decree and ruling 118/2021 concerns the Walloon decree.[42] To the extent that the arguments put forward by the applicants are identical and insofar as the Constitutional Court reaches the same conclusions in both cases the judgments are here discussed together. The applicants claim more precisely that the general obligation of pre-stunning entails a fivefold violation: (1) of Regulation 1099/2009 on the protection of animals at the time of killing; (2) of the freedom of religion;[43] (3) of the principle of the separation of church and state;[44] (4) of the right to work and the free choice of a profession, the freedom of enterprise and the free movement of freedom of enterprise and the free movement of goods and services;[45] and (5) of the principle of equality and non-discrimination.[46]

[41] J.-P. Marguénaud, 'Le droit européen des droits de l'Homme et la protection des animaux', *Revue des Affaires Européennes/Law & European Affairs* (2017) p. 86.

[42] C.C., n° 117/2021, 30 September 2021 and C.C., n° 118/2021, 30 September 2021, available at ⟨https://www.const-court.be/en⟩ visited 2 July 2022.

[43] As guaranteed 'by Article 19 of the Constitution, whether or not read in conjunction with Article 9 of the European Convention on Human Rights, Articles 18 and 27 of the International Covenant on Civil and Political Rights, Article 18 of the Universal Declaration of Human Rights and Articles 10 and 22 of the Charter of Fundamental Rights of the European Union' (C.C., n° 117/2021, 30 September 2021, B.14.1, C.C., n° 118/2021, 30 September 2021, B.14.1, free translation).

[44] As guaranteed 'by Articles 19, 21 and 27 of the Constitution, whether or not read in conjunction with Articles 9 and the European Convention on Human Rights, Articles 18 and 27 of the International Covenant on Civil Articles 10 and 12 of the Charter of Fundamental Rights of the European Union' (C.C., n° 117/2021, 30 September 2021, B.29.1, C.C., n° 117/2021, 30 September, B.29.1 2021, free translation).

[45] As guaranteed 'by Articles 10, 11, 19, 21 and 23, paragraph 3, 1°, of the Constitution, whether or not read in conjunction with Articles II.3 and II.4 of the Code of Economic, Articles 8, 9 and 14 of the European Convention on Human Rights, Articles 18, 26 and 27 of the International Covenant on Civil and Political Rights, Articles 10, 20 and 21 of the Charter of Fundamental Rights of the European Union and Articles 26, 28 to 37 and 56 to 62 TFEU' (C.C., n° 117/2021, 30 September 2021, B.35, C.C., n° 117/2021, 30 September 2021, B.35, free translation).

[46] As guaranteed by Arts. 10 and 11 of the Constitution and Articles 21 and 22 of the Charter of Fundamental Rights of the European Union (C.C., n° 117/2021, 30 September 2021, B.45.2, C.C., n° 117/2021, 30 September 2021, B.45.2).

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Given the judgment of the European Court, it was predictable that the Constitutional Court would rule that the Flemish and Walloon decrees do not violate the Constitution read in combination with EU law. Indeed, a national court that submits a question for a preliminary ruling is bound by the interpretation given by the Court of Justice.[47] The Court's judgment likewise binds other national courts before which the same problem is raised.[48] However, the Belgian Constitutional Court could have decided to condemn the Flemish and Walloon legislators on the basis of a violation of the Belgian Constitution, but the Court is more accustomed to following the teachings of the supreme courts, especially because it considers, in matters of fundamental rights, that the articles of the Belgian Constitution form an 'indissociable whole'[49] with the rights protected in an identical way by international conventions and treaties (here religious freedom).

The absence of violation of Regulation 1099/2009 on the protection of animals at the time of killing

It is important to underline that the Constitutional Court cannot directly review whether a Belgian law complies with European law: the Court must always combine it with articles of the Constitution. In other words, in Belgian constitutional law, there is no conventionality review (only constitutionality).[50]

Unsurprisingly, quoting the judgment of the European Court of Justice, the Constitutional Court considers that the general obligation of prior stunning provided by the Flemish and Walloon decrees does not violate Articles 10 and 11 of the Constitution (principle of equality and non-discrimination) read in combination with Regulation 1099/2009, insofar as the Luxembourg court judges that the states can impose a reversible process of stunning insusceptible of causing the death of the animal.

The absence of violation of the freedom of religion

Just as unsurprisingly, the Constitutional Court also finds that the decrees do not violate religious freedom. Once again, the Belgian judges follow the reasoning of

[47]ECJ 3 February 1977, Case 52/76, *Benedetti*.

[48]For details of the effects of references for preliminary rulings, *see* C. Denizeau, 'L'autorité des arrêts de la Cour de justice de l'Union européenne', *Zbornik radova Pravnog fakulteta u Splitu* (2014) p. 308.

[49]*See* C. C., n° 136/2004, 22 July 2004; C.C., n° 201/2011, 22 December 2011; C.C. n° 31/2018, 15 March 2018; C.C., n° 58/2022, 21 April 2022.

[50]This is why both judgments state that constitutional provisions are always 'read in combination with or without' a particular provision of an international convention.

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the Court of Justice, which indicates that the obligation of prior stunning constitutes an interference with freedom of religion, but that this interference pursues a legitimate goal of general interest, namely the welfare of animals. This objective is an ethical value to which Belgian society attaches more and more importance.

Scientific opinions from the European Food Safety Authority show that there is a scientific consensus according to which pre-stunning is the optimal way to reduce the suffering of animal at the time of killing. The Flemish and Walloon legislators felt that less drastic measures could not prevent a very serious violation of animal welfare. They also balanced between the protection of animal welfare and the respect of the freedom of thought, conscience and religion. In order to address as much as possible the concern of the religious communities involved, a reversible stun has been provided for religious slaughter.

The Court concludes that the restrictions on religious freedom meet a compelling social need and are proportionate to the objective of promoting animal welfare.

The absence of violation of the principle of the separation of church and state

Quoting the Belgian Council of State, the Constitutional Court states that the principle of separation of church and state is deduced, *inter alia*, from Articles 19 and 21 of the Constitution and includes the obligation of neutrality and impartiality of the state regarding the legitimacy of religious convictions.

Since the decrees only offer the possibility of using the technique of reversible stunning when slaughtering animals as part of a religious rite, the Court considers that it cannot be interpreted as defining the particular slaughter procedures required for religious rites. Such an interpretation would not be reconcilable with the obligation of neutrality and impartiality of the legislator with regard to the legitimacy of religious convictions or the ways in which they are manifested. The existence of different views within the Jewish and Islamic religious communities concerning the religious precepts to be respected during ritual slaughter has no influence on this finding. In other words, the Court emphasises the importance of religions' autonomy and the impossibility for the state to pronounce on the legitimacy of beliefs, which is consistent with the majority of case law and doctrine.

As we have already written with other authors, it is quite surprising that the Court considers that Belgium is characterised by a *separation between Church and state* such as it is the case in France. Belgium is much more characterised by a 'benevolent neutrality'[51] between state and religions. There are two main reasons

[51]L.-L. Christians, 'Le financement des cultes en droit belge. Bilan et perspectives', 1 *Quaderni di Diritto e Politica Ecclesiastica* (2006) p. 83; S. Wattier, 'Inscrire le principe de laïcité dans la

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for this: the state funding of recognised religions[52] and the constitutional requirement that civil marriage takes place before religious marriage.[53] Unlike in France, where laïcité is a principle enshrined in Article 1 of the Constitution, in Belgium the philosophical organisation called '*laïcité organisée*' is legally recognised[54] and receives funding in the same way as recognised religions. The French regime of separation and the Belgian regime of pluralism are therefore very different.[55] Where France does not recognise or pay any religion,[56] Belgian law[57] recognises and finances six religions (Catholic, Protestant, Jewish, Anglican, Muslim, and Orthodox faiths) and one philosophical organisation (*laïcité organisée*).[58]

The absence of violation of the right to work and the free choice of a profession, the freedom of enterprise and the free movement of goods and services

According to the applicants, the general prohibition of slaughter without stunning prevents butchers from carrying on their business and offering meat from animals slaughtered according to religious precepts. There would be a distortion of competition between slaughterhouses established in the Walloon Region and

Constitution belge ? Quelques pistes pour une réflexion juridique', *Cahiers du CIRC* (2020) p. 77. *See also* V. Vandermoere and J. Dujardin, *Fabriques d'église* (La Charte 1991) p. 1. *See also* C. Sägesser, 'The Challenge of a Highly Secularized Yet Multiconfessional Society', in *Religion and Secularism in the European Union. State of Affairs and Current Debates* (Peter Lang 2017) p. 22; H. Hasquin, *Inscrire la laïcité dans la Constitution belge ?* (Académie royale de Belgique 2016) p. 22.

[52]Imposed by Art. 181(1) of the Belgian Constitution since 1831. About that funding, *see also* S. Wattier, *Le financement public des cultes et des organisations philosophiques non-confessionnelles. Analyse de constitutionnalité et de conventionnalité* (Bruylant 2016) p. 990.

[53]Imposed by Art. 21(2) of the Belgian Constitution since 1831.

[54]Relative au Conseil central des communautés philosophiques non confessionnelles de Belgique, aux délégués et aux établissements chargés de la gestion des intérêts matériels et financiers des communautés philosophiques non confessionnelles reconnues.

[55]H. Dumont, 'Que peut prescrire la Constitution belge à propos du caractère de l'Etat et des valeurs fondamentales de la société ?' Commission de révision de la Constitution et de la réforme des institutions, Audition of 17 May 2016, p. 13; S. Wattier, 'Inscrire le principe de laïcité dans la Constitution belge ? Quelques pistes pour une réflexion juridique', *Cahiers du Centre interdisciplinaire de recherches constitutionnelles* (2020) p. 77.

[56]French law of 9 December 1905 on the Separation of the Churches and State, Art. 2.

[57]*See* law of 4 March 1870 on the temporal aspects of religions; law of 19 July 1974 recognising the administrations responsible for managing the temporal aspects of the Islamic religion; law of 17 April 1985 recognising the administrations responsible for managing the temporal aspects of the Orthodox religion.

[58]*See* law of 21 June 2002 on the Central Council of Non-Denominational Philosophical Communities in Belgium, the delegates and establishments responsible for managing the material and financial interests of recognised non-denominational philosophical communities.

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slaughterhouses established in the Brussels-Capital Region or in another member state of the EU that authorises the slaughter of animals without stunning.

According to the Constitutional Court, freedom of enterprise cannot be conceived as an absolute freedom. It does not prevent the competent legislator from regulating the economic activity of individuals and companies. The legislator would only intervene unreasonably if it limited the freedom of enterprise without any necessity or if this limitation was disproportionate to the aim pursued. Referring to its analysis of freedom of religion, the Court holds that the legislator was able to find that the restrictions imposed by the contested decree on the right to work and free choice of occupation and on freedom of enterprise were necessary and that no less drastic measures could be envisaged to achieve the objective pursued (i.e. protection of animal welfare).

This reasoning was rather predictable: it was difficult for the Court to find a violation of these three freedoms, which are not absolute, when the Court had found no violation of freedom of religion. Contrary to the *Cha'are Shalom Ve Tsedek* v *France* case, the Constitutional Court – like the Court of Justice – does not argue the issue of freedom of movement and therefore the potential for religious communities to travel to buy halal or kosher meat in another country. The question of freedom of movement was raised in the parliamentary discussions leading up to the adoption of the decrees in question. The Walloon legislator indicated that 'given the requirements of animal welfare as sentient beings among the general principles to be taken into account within the Union, the protection of animal welfare is a legitimate aim of general interest'.[59] Nevertheless, it must not be forgotten that Article 26(4) prevents member states from prohibiting the export of meat by providing that:

> 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.

The absence of violation of the principle of equality and non-discrimination

According to the applicants, the decrees create a discrimination because Jewish and Muslim believers are treated the same way as people who do not eat in accordance with specific religious precepts. The Court considers that this criticism amounts in substance to a denunciation of a violation on which it has already

[59]Projet de décret relatif au Code wallon du Bien-être des animaux, *doc. parl.*, Parl. w., sess. ord. 2017-2018, n° 1150, p. 67 (free translation).

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ruled. The fact that Jewish and Muslim believers follow different dietary precepts is not sufficient, according to the Court, to consider that they are in different situations.

The applicants also claim that the exception to the stunning requirement for hunting and fishing is discriminatory. The Court finds the applicants wrong on this argument as well, again relying on the judgment of the Court of Justice: hunting and fishing cannot be compared to the slaughter of animals. This is obviously a purely factual analysis based on the difference that harvested and hunted animals are not immobilised at the time of killing, unlike slaughtered animals. While the Court's analysis is understandable, it could have been further substantiated. In any case, the position of the Constitutional Court follows the reasoning of the Court of Justice that:

> if the concepts of 'hunting' and 'recreational fishing' are not to be rendered meaningless, it cannot be argued that those activities are capable of being carried out in respect of animals which have been stunned beforehand. As stated in recital 14 of Regulation No 1099/2009, those activities take place in a context where conditions of killing are very different from those employed for farmed animals[60].

While this argument is understandable in relation to fish that move freely in watercourses, the question remains in relation to farmed fish, which are not affected by Regulation No 1099/2009 insofar as they are not subject to a 'slaughter' for killing. However, there are still 'farmed' animals whose fate should be regulated at European level. In this regard, in its judgment, the Luxembourg Court explains that 'the EU legislature made it abundantly clear that scientific opinions on farmed fish were insufficient and that there was also a need for further economic evaluation in that field, which justified the separate treatment of farmed fish'.[61]

Conclusion

The recent case law of the Court of Justice of the European Union, as well as the ruling of the Belgian Constitutional Court, demonstrates the increasing importance of animal welfare protection in Europe. This was not so prevalent when the *Cha'are Shalom Ve Tsedek* v *France* judgment was handed down in 2000, a judgment which is still highly criticised and does not directly address the issue of animal welfare. In our view, the comparison between the case law of the Luxembourg Court – which shows a clear position in favour of animal welfare in relation to

[60] Case C-336/19, *supra* n. 8, 91.
[61] Ibid., 93.

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freedom of religion – and the single judgment of the European Court of Human Rights should not be exaggerated. Moreover, there is a gap of almost 20 years between the *Cha'are Shalom Ve Tsedek* judgment and the recent case law of the Court of Justice.

The Muslim and Jewish communities and the Executive of the Muslims of Belgium, who were applicants to the Belgian Constitutional Court, failed in their case and decided to lodge an appeal with the European Court of Human Rights, where the case is now pending. We would not be surprised, giving the balancing exercise carried out by the Belgian Constitutional Court in light of the judgment of the Court of Justice, if the Strasbourg Court were also to conclude that there was no violation of freedom of religion.

Insofar as animal welfare has come to the forefront in Belgian and EU legislation and jurisprudence, as the judgments discussed above show, the new reversible stunning process using electronarcosis is an important tool for *trying* to reconcile respect for freedom of religion – by preventing the death of the animal by stunning – while guaranteeing the welfare of animals by avoiding unnecessary fear and suffering. However, the Flemish and Walloon decrees, as well as the rulings of the Constitutional Court and the Court of Justice, are disapproved by the Jewish communities and a part of Muslim communities because they make it impossible to slaughter animals without stunning, even in the framework of a religious rite. As explained, there remains the problem of the requirement that the animal be conscious at the time of slaughter in the Jewish religion.

In conclusion, there are two central legal issues with the regulation of ritual slaughter of animals. First, electronarcosis techniques, presented as a solution to prevent the animal from dying at the moment of stunning, are criticised by certain authors[62] insofar as they imply that the state pronounces in part on the legitimacy of beliefs or, at the very least, interferes in religious practices in order to be able to claim that the use of this reversible procedure meets religious requirements. However, the European Court of Human Rights has consistently held that 'the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed'.[63] So, these authors consider that legislation

[62]van der Schyff (2017), *supra* n. 2, p. 5 ff; M. El Berhoumi, 'Abattage rituel : la liberté religieuse sacrifiée sur l'autel du bien-être animal ?' (2017) ⟨ https://www.justice-en-ligne.be/Abattage-rituel-la-liberte⟩ visited 2 July 2022.

[63]ECtHR 8 April 2014, *Magyar Keresztény Mennonita Egyház and others* v *Hungary*, § 76; ECtHR 7 July 2011, *Bayatyan* v *Armenia*, § 120; ECtHR 5 October 2006, *Branche de Moscou de l'Armée du Salut* v *Russia*, § 56 ; ECtHR 10 November 2005, *Leyla Şahin* v *Turkey*, § 107; ECtHR 13 December 2001, *Eglise métropolitaine de Bessarabie et autres* v *Moldova*, § 123; ECtHR 27 June 2000, *Cha'are Shalom Ve Tsedek* v *France*, § 84.

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prohibiting slaughter without stunning is not compatible with Article 9 of the Convention, which implies the neutrality and impartiality of the state.

Second, according to some authors,[64] the balance of interests that must be made between freedom of religion and animal welfare is not a conflict of rights, which implies that freedom of religion would have a stronger weight than animal welfare. Nevertheless, freedom of religion is not absolute on the side of its manifestation. Since ritual slaughter is a manifestation of religious freedom, restrictions are permitted if they are – as classically provided in the case law – prescribed by law, pursue a legitimate aim and are necessary in a democratic society. However, insofar as animals are increasingly recognised as sentient, the question arises of whether the conflict becomes a conflict of rights.[65] The choice to impose a requirement to stun the animal would then amount to making one fundamental right prevail over the other. However, the reasoning remains the same: such a choice is a political choice that can be legitimately justified in the light of scientific studies that show how much animals suffer and are frightened during slaughter without prior stunning.[66]

In Belgium, this must also be understood in relation to a major development in the Civil Code: since 2021, it provides that 'things, natural or artificial, corporeal, or incorporeal, are distinguished from animals. Things and animals are distinct from persons. Animals are sentient and have biological needs. The provisions relating to tangible things apply to animals, with due respect for the legal and regulatory provisions protecting them and for public order'.[67] This is a 'major symbolic step'[68] insofar as the federal legislator recognises that animals are sentient. This development is in line with Austria, France, Lithuania, Netherlands, Switzerland, and United Kingdom, all of whom recognise the sentience of animals. In Belgium, increased concern for animal welfare is not limited to the issue of ritual slaughter: as Louis-Léon Christians points out, the number of legislative dossiers has multiplied, including the ban on fur farming, the compulsory sterilisation of cats, the ban on wild circus animals and fairground animals,

[64]El Berhoumi, *supra* n. 62. *See also* Christians, *supra* n. 3, p. 100 ff.

[65]In that sense, *see* Sägesser, *supra* n. 15, p. 1.

[66]As Damien Baldin explains, the 19th and 20th centuries were 'dominated by two major social emotions that intertwined and followed each other over time: the horror of the blood that flowed during the necessary bleeding of the animal and the ever-increasing sensitivity to the suffering (real or supposed) of animals. Both will gradually determine the thresholds of what can or cannot be tolerated in terms of slaughter. These thresholds of tolerance, which are thresholds of sensitivity, are expressed in discourse and representations, and are reflected in practices and regulations. Their transformation into standards is the result of a long process, both social and political': D. Baldin, 'De l'horreur du sang à l'insoutenable souffrance animale', *Vingtième siècle. Revue d'histoire* (2014) p. 52 (free translation).

[67]Arts. 3.38 and 3.39 of the new book nr 3 of the Belgian Civil Code (free translation).

[68]Christians, *supra* n. 3, p. 98.

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the ban on cutting the tails of dogs or horses, the ban on bird of prey shows and the ban on having sexual relations with animals.[69]

It remains to be seen what the reaction of the European Court of Human Rights will be and whether it will distance itself from the recent Luxembourg case law. In the near future, it will also be necessary to pay attention to the potential evolution of the legislation in the Brussels Region, where the Muslim religious communities are much more numerous than in the rest of the country.

[69]Ibid.

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