

The Constitutional Court's "Traditional Slaughter" Decision: The Muslims' Freedom of Faith and Germany's Freedom of Conscience

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A. Introduction

[1] With its *Schaechten* (traditional slaughter) decision from 15 January 2002, (1) the First Senate of the *Bundesverfassungsgericht* (Federal Constitutional Court) nudged Germany further in the direction of an integrated, multi-cultural society. This theme alone, described by one commentator in the German press as the "explosive question of integration," (2) would be enough to demand our attention. According to this story-line, a modest and faithful immigrant butcher, (3) quietly took-on a grave social evil (the illiberal *oppression of his religion*) and won. In so doing, he left Germany a better place. (4)

[2] There is more to the Constitutional Court's decision. Set in the context of the post-September 11th climate, all too often and far too easily described as a "clash of civilizations," (5) the case represents a more subtle, far-reaching victory. Underlying the sensationalism associated with the Constitutional Court's decision is the fact of the confident participation of Muslims in the machinery of Germany's civil society, patiently availing themselves of the judicial process in spite of unfair, unjust and illogical set-backs, (6) clearly willing to accept the rules as well as the terms offered by a democratic society. This is the image of Islam functioning within a democracy, an image that some in the West and some within Islamic-Fundamentalist movements would like to reject as impossible. (7) Viewed in this light, as a religious minority's yearning for justice and the surrender of those aspirations to the will of the majority, it is by no means an exaggeration to describe the case as the real front-line in the "war against terrorism," regardless of the outcome. (8) In this sense, the victory had been won, by Germany and its significant Muslim community, before the Court issued its decision.

B. Background

1. Facts

[3] The complainant was a Turkish butcher, resident in Germany for the last twenty years, who since 1990, operated the Frankfurt butcher's shop once operated by his father. (9) In order to serve his Muslim clientele, the complainant applied for and, until 1995, routinely received an *Ausnahmegenehmigung* (special authorization) permitting him to slaughter livestock in accordance with traditional Muslim methods. (10) The traditional method of slaughtering livestock is "performed without stunning the animal. The windpipe, gullet and neck artery of the sheep or cow are severed with a single cut, and the sudden drop in blood pressure render the animal unconscious." (11) The process arises out of the Koran's dietary commands, including a prohibition on the consumption of an animal's blood; (12) and the method is intended "to ensure that the blood is completely drained from the animal." (13) The special authorization is necessary because Germany's *Tierschutzgesetz* (Animal Protection Act) prohibits the slaughter of livestock unless, "before the beginning of the flow of blood, the animal is anesthetized." (14) Strict Muslims reject pre-slaughter anesthesia out of concerns that the anesthesia (in Germany, normally a strong electric shock) will inhibit the thorough draining of all of the animal's blood. (15)

2. Germany's Animal Protection Act

[4] The Animal Protection Act provides for a number of exceptions to the general requirement that animals be anesthetized before they are slaughtered. (16) The complainant had received (between 1990 and 1995) the special authorization to slaughter livestock in accordance with the traditional Muslim method, pursuant to the following exception:

The responsible agency may issue a special authorization for a slaughter without anesthesia (traditional slaughter); it may issue the special authorization only in so far as it is necessary to fulfill the requirements of members of specific religious communities in the scope of the applicability of this Act, members of such religious communities whose mandatory rules of the religious community proscribe traditional slaughter or prohibit the consumption of meat from animals not slaughtered according to the traditional method, (. . .) (17)

[5] The Federal Constitutional Court explained that the responsible agencies, and on appeal, the ordinary courts, began rejecting the complainant's requests for special authorization to perform the traditional method of slaughter after the June, 1995, ruling of the *Bundesverwaltungsgericht* (Federal Administrative Court) in a similar case. (18) In fact, the Federal Constitutional Court's decision in the complainant's case serves as a direct repudiation of the legal

and philosophical reasoning of the Federal Administrative Court's controlling precedent on this subject.

3. Precedent of the Federal Administrative Court

[6] In its 1995 decision, the Federal Administrative Court found the language of the "traditional slaughter" exception to the general anesthesia requirement of the Animal Protection Act to have an extremely narrow scope. The Federal Administrative Court reached this conclusion after interpreting, in the strictest possible way, the relevant elements of the exception permitting traditional slaughter. The exception creates a two part test. It is only available to (a) members of a *religious community*; (b) for whom the mandatory rules of the religious community prohibit the consumption of meat taken from animals that have not been traditionally slaughtered. (19) The Federal Administrative Court held, in its 1995 decision, that the appellant in that case did not satisfy either of these elements. First, the Court concluded that the appellant had not satisfactorily established her membership in a "religious community." The appellant (a butcher and operator of a Kiosk) identified herself and her clients as Sunni Muslims, which the Federal Administrative Court labeled a "branch of Islam". (20) The Federal Administrative Court applied the definition of a "religious community" from German Church-State jurisprudence in concluding that Sunni Muslims lacked the "clear external distinction and necessary internal coherence" necessary to qualify as a "religious community." (21)

[7] The Federal Administrative Court also concluded that the appellant had failed to establish that the religious prohibition on the consumption of meat from animals not slaughtered according to the traditional method was *mandatory*. The Court concluded that the nature of a religious community's regulations (whether voluntary or mandatory) must be judged by an objective standard. (22) The Court explained that the wording of the exception implicates mandatory rules imposed on the members of a religious community by the religious community itself: "The wording of the Act leaves no room for relativizing, allowing individual religious convictions to be determinative." (23) The Court also found that the object and purpose of the Animal Protection Act justified the application of an objective standard in determining whether the religious rule was mandatory, because applying a subjective standard to determining the applicability of the exception would lead to the exception's too frequent invocation and the result in the wide-ranging abandonment of the law's general prohibition on the use of traditional methods of slaughter. (24)

[8] Finally, the Federal Administrative Court dismissed the two constitutional elements of the case. First, the Court held that its (objective) evaluation of the nature of the religious rules invoked by the appellant did not constitute an intrusion upon the constitutional right to freedom of religion. (25) The Court concluded that the legislature's use of the phrase "religious community" anticipated, as in the case of German Church-State jurisprudence, the state's evaluative "intervention" in the religious community. The Court explained: "The concept 'religious community' necessitates, in any event, the state's evaluation of the community's actual living conditions, cultural traditions and general and religious scholarship." (26) Second, the Court held that the prohibition on the practice of traditional methods of slaughter, itself, did not constitute a violation of the constitutional right to freedom of religion. The Court found that nothing in the Animal Protection Act *required* someone to eat meat from an animal that had not been slaughtered in accordance with the traditional methods. In fact, the Court remarked, incredibly, that those observing the prohibition on such meat could also "switch to [eating] vegetarian based food and fish as well as depend on imported meat from countries that do not prohibit the traditional methods of slaughter." (27) Ultimately, the Court was impressed that the prohibition on slaughter without anesthesia applies equally to everyone, without drawing impermissible distinctions on the basis of religion. (28)

[9] The Federal Constitutional Court, in its decision from January 15th, focused particularly on the reasoning of the Federal Administrative Court's 1995 decision. The denial of the complainant's request for special authorization followed shortly and was largely based upon that decision. The Federal Administrative Court has, however, slightly loosened its standard for determining the mandatory nature of a religious rule relating to the slaughter of livestock. (29) It continues, nonetheless, to apply a narrow definition of the "religious community" element of the anesthesia exception provision. In the case from 2000, the Court ruled that the appellant, who claimed membership in the Islamic Community of Hessen, had failed to satisfy the religious community requirement because the local Islamic community amounted to no more than an Islamic regional association that could not represent all Muslims. (30)

C. Decision of the Federal Constitutional Court

[10] The complainant asserted that the denial of his request for special authorization to slaughter livestock in accordance with traditional methods constituted a violation of a number of diverse constitutional rights, including: (a) his right to freely develop his personality (Article 2.1); (31) (b) his right to equality (Articles 3.1 and 3.3); (32) (c) his right to freedom of religion (Articles 4.1 and 4.2); (33) and (d) his right to occupational freedom (Article 12.1). (34)

[11] The Court held that the relevant provisions of the Animal Protection Act are in conformity with the constitution, but that the ordinary court's interpretation and application of the statute did not meet with constitutional standards of review. (35)

[12] Noting that the complainant is not a German citizen, the Constitutional Court summarily disposed of his direct assertion of the Article 12 right to occupational freedom, which applies only to German citizens. (36) As is common, however, the Court found the issue of occupational freedom to have resonance as part of the complainant's Article 2 right to freely develop his personality, and thereby consolidated the two claims. (37) The Article 2 right, unlike Article 12, protects "everyone" and is not limited in its applicability to Germans. The Court then emphasized that the principle constitutional right at issue in the complainant's case was the right to occupational freedom, arising as it does through the general right to freely develop one's personality found in Article 2 of the Basic Law. The Court explained that in the specific context of the complainant's case (a butcher whose religious beliefs significantly impact his occupation) this constitutional interest directly touched upon and was therefore enhanced by the complainant's constitutional right to freedom of religion. (38)

[13] The Constitutional Court then engaged in a careful analysis of the proportionality of the relevant provisions of the Animal Protection Act, over and against this constitutional value. (39) The result being that the Court found both the prohibition on using traditional methods of slaughtering livestock and the exceptions the Act creates to this general prohibition to be proportional. However, the interpretation the Court gave the terms of these statutory provisions, especially in light of its characterization of the constitutional values at issue in the complainant's case, led it to conclude (counter to the decisions of the ordinary courts in the case) that the complainant's request for special authorization to employ the traditional method of slaughtering livestock was fully justified and should have been granted.

1. Proportionality

[14] The Court first concluded that the statute's prohibition and exception provisions are internally proportionate, that is, that they constitute appropriate means for the achievement of the objective of the Animal Protection Act. The Court explained that the Act's over-arching objective is to ensure, in light of the responsibility humans owe animals as living beings, that no one harm an animal without a reasonable basis. (40) The Court recognized that there is some debate, even within scientific circles, whether the slaughter of livestock with anesthesia spares the animals any considerable amount of pain. Nonetheless, the Court found the anesthesia requirement firmly within the legislature's margin of appreciation, citing regulations promulgated in international conventions and by the European Union that also require the slaughter of livestock under anesthesia. (41) The Court explained that the exception provisions are also proportionate to the objective of the Animal Protection Act because they permit the state to monitor, and thereby better promote the law's aims, the limited cases in which slaughter without anesthesia is allowed. (42)

[15] The Court also concluded that the statute's prohibition and exception provisions are externally proportionate, that is, that they do not have too great an impact on the very important constitutional protections at stake. (43) The Court's characterization of the potential conflict between the statutory provisions and the constitutional values at stake in the present case clearly establish, however, that the statutory provisions remain proportionate only if appropriate (and quite considerable) weight is attributed to the right to occupational freedom as it is enhanced by religious freedom. The Court explained that too strict an interpretation of the terms of the statute would effectively block the complainant from freely practicing his occupation as a butcher. (44) Furthermore, the Court noted, this consequence would have an effect on the complainant's customers and their freedom to live in accordance with their religious beliefs. On this point, the Court explicitly took odds with the Federal Administrative Court's conclusion that this effect could be mitigated by the options of becoming a vegetarian or using imported meat from livestock slaughtered according to the traditional method in other countries. (45) The Court ridiculed the idea, saying that "for [the Administrative Court] to suggest that the appellant essentially give up the consumption of meat, does not represent a realistic appreciation for eating habits in the Federal Republic of Germany." (46)

[16] The Court also noted that there are numerous exceptions provided by the Animal Protection Act to the general objective of sparing animals from unnecessary pain and suffering. (47) Often, as with the exception invoked by the complainant, these are based upon issues of tradition or are generally based on social acceptance of one or another form of killing animals without concern for the pain caused. (48) The Court found that the existence of these various exceptions further supports its conclusion that a less strict interpretation of the terms of the statute is appropriate, particularly in light of the important constitutional values at stake in the complainant's case.

2. Constitutional Court's Standards

[17] The Constitutional Court then provided its own interpretation of the two elements of Section 4a.2(2)[2] of the Animal Protection Act, the exception invoked by the complainant. (49)

First, the Court distinguished the definition of a "religious community" as this phrase is used in the context of the Animal Protection Act from the use of this phrase in the jurisprudence relating to Germany's grant of quasi-public

status to some "religious communities" under the terms of Article 140 of the Basic Law. (50) "It is much more appropriate," the Court explained, to find this element satisfied if "the applicant belongs to a group of people who are bound together by a shared belief system." (51) This definition, the Court explained, included groups that differentiate themselves under the broader umbrella of the Islamic faith. (52) The Court affirmatively held that the "religious community" element of the Animal Protection Act's exception to the anesthesia requirement is not to be defined as *all* Muslims, or even as *all* Sunni or Shiite Muslims. (53)

[18] Second, the Court found that the ordinary courts' insistence upon the application of an *objective* evaluation in the determination of the mandatory nature of a religious community's rules (regarding diet) did not do justice to the meaning and scope of constitutional values at issue. The court explained that an objective, rather than a subjective, evaluation disproportionately emphasized the statute's aims such that it would render the constitutional protections of occupational and religious freedom meaningless. The Court insisted, instead, on the application of a subjective standard. The state, the Court concluded, has no right to judge the content of a religious conviction. (54)

D. Conclusion

[19] The Constitutional Court's decision was heralded in the press as a victory for liberalism and pluralism. (55) The decision, at this level, is really less shocking than that. Without being blind to the history of religious intolerance in Germany in the last century, it is fair to say that those values are firmly established in Germany society today. None-the-less, they are entrenched in the jurisprudence of the Federal Constitutional Court. It has, after all, only been a handful of months since the Court issued its decision in the Jehovah's Witnesses case, in which it articulated many of the same principles.

[20] More significant, in the present era, is that the case depicts the participation of Germany's Muslim community in the functioning of the social apparatus through which those values find their practical expression. Maybe the Islamic community in Germany will lose its next bout in the courts over the next step forward, but the present case clearly shows that an important part of that community is satisfied to wage the struggle for equality in the courts. The Muslims certainly won a measure of religious freedom from the Court's "traditional slaughter" decision. Democracy and civil society, however, appear to be the have the advantage.

(1) 1 BvR 1783/99, 15 January 2002, <http://www.bverfg.de>.

(2) Christian Geyer, *Kein Opium fuer's Tier*, FRANKFURTER ALLGEMEINE ZEITUNG, p. 41 (16 January 2002).

(3) Germany, as is often noted in German public life, is not an immigration state. See, FACTS ABOUT GERMANY (Press and Information Office of the Federal Government), 25 (1997) ("The Federal Republic of Germany is not an immigration country."). This fiction is, incredibly, maintained by a semantic sleight-of-hand, in the form of draconian immigration and naturalization laws that neatly designate the nearly 10 million non-Germans living in Germany (many of whom, like the complainant in the present case, for more than twenty years) as *Ausländer* (foreigners) or *Asylbewerber* (asylum seekers).

(4) "The German Minister for Consumer Protection, Food and Agriculture, Renate Künast, said the decision was in fact 'a victory for animal welfare' . . . The Central Council of Muslims in Germany welcomed the decision as a further step toward the integration of Germany's approximately 3.2 million Muslims into the broader society." Germany's Muslim Butchers Win Right to Slaughter Animals by Ritual Method, *Frankfurter Allgemeine Zeitung* (English Edition), p. 1 (16 January 2002). For other national versions of this plot, see especially, Jackie Robinson's integration of American professional baseball and Zinedine Zidane's hard-won prestige in France following his success leading the French national soccer club to the World Cup and European championships.

(5) The reference derives from Samuel P. Huntington's 1996 book of the same title (*The Clash of Civilizations and the Remaking of the World Order*).

(6) The unspoken, cruel irony of the history of the present legal struggle is the insistence, by the ordinary German courts, on the elevation of *animal rights* above the *human rights* (the free expression of religious and cultural values) of Germany's Muslim community.

(7) "In the 1980s and 1990s the overall trend in Islam has been in an anti-Western direction . . . [Muslims instead] stress the differences between their civilization and Western civilization, . . ." Samuel P. Huntington, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF THE WORLD ORDER*, 213 (1996).

(8) As Prof. Jutta Limbach, President of the Federal Constitutional Court, remarked following the terrorist attacks on the United States: "We honor these victims best when we understand their deaths as a challenge to our shared, fundamental Western values; and we respond by championing these values. In this way, in our parting with these victims, we guarantee that every human matters." Jutta Limbach, *Every Human Matters – Comments on the Occasion of the Terrorist Attacks in America*, 2 GERMAN LAW JOURNAL 15 (15 September 2002), www.germanlawjournal.com.

(9) 1 BvR 1783/99, 15 January 2002, Para. 14, <http://www.bverfg.de>.

(10) 1 BvR 1783/99, 15 January 2002, Para. 14, <http://www.bverfg.de>.

(11) Uta Rasche, *The Method of Slaughter*, FRANKFURTER ALLGEMEINE ZEITUNG (English Edition), p. 2 (16 January 2002).

(12) "Believers, eat of the wholesome things with which We have provided you and give thanks to God, if it is Him you worship. He has forbidden you carrion, blood, and the flesh of swine; also any flesh consecrated other than in the name of God." (2:168, 173); "You are forbidden carrion, blood, and the flesh of swine; also any flesh dedicated to any other God." (5:3); "Say: 'I find nothing in what has been revealed to me that forbids men to eat of any food except carrion, running blood, and the flesh of swine – for these are unclean – and any flesh that has been profanely consecrated to the gods other than God.'" (6:145). The Koran's dietary rules are directly related to those of the Jews, with approving cross-references to Jewish dietary commands in the text itself: "All wholesome things have this day been made lawful for you. The food of those whom the Book was given [Jews] is lawful for you, and yours for them." (5:5); "We forbade the Jews all animals with undivided hoofs and the fat of sheep and oxen, except what is on their backs and intestines and what is mixed with their bones. Such is the penance We imposed on them for their misdeeds." (6:145). Citations to the Koran are from THE KORAN (N.J. Dawood trans., 1999).

The Torah, sets out these dietary rules: "This is a lasting ordinance for the generations to come, wherever you live: You must not eat any fat or any blood." (Leviticus 3:17); "The Lord said to Moses, 'Say to the Israelites: '(. . .)And wherever you live, you must not eat the blood of any bird or animal. If anyone eats blood, that person must be cut off from his people.'" (Leviticus 7:22-27); "Nevertheless, you may slaughter your animals in any of your towns and eat as much of the meat as you want, as if it were gazelle or deer, according to the blessing the Lord your God gives you (. . .) But you must not eat the blood; pour it out on the ground like water." (Deuteronomy 12:15-16); "Do not eat any detestable thing. These are the animals you may eat: the ox, the sheep, the goat, the deer, the gazelle, the roe deer, the wild goat, the ibex, the antelope and the mountain sheep. You may eat any animal that has a split hoof divided in two and that chews the cud. However, of those that chew the cud or that have a split hoof completely divided you may not eat the camel, the rabbit or the coney (. . .) The pig is also unclean; although it has a split hoof, it does not chew the cud. You are not to eat their meat or touch their carcasses." (Deuteronomy 14:1-8). Citations to the Old Testament are from THE LIFE APPLICATION BIBLE -- NEW INTERNATIONAL VERSION (1991).

The relationship between Islam and Judaism is not limited to dietary principles; despite the antagonistic nature of the contemporary relationship between the two faiths, there is a strong historic bond between them. As Karen Armstrong explains: "Muhammad had been greatly excited by the prospect of working closely with the Jewish tribes [in Medina], and had even, shortly before the *hijrah* [migration from Mecca to Medina] introduced some practices (. . .) to align Islam more closely with Judaism. His disappointment, when the Jews of Medina refused to accept him as an authentic prophet, was one of the greatest of his life (. . .) But some of the Jews in the smaller clans were friendly and enhanced Muhammad's knowledge of Jewish scripture." Karen Armstrong, ISLAM: A SHORT HISTORY 14-15 (2000). Armstrong notes, even after the clear split in the theological and doctrinal directions of the two faiths, that the antagonism between Islam and Judaism is of relatively recent vintage: "The Muslims assumed that Islam was a religion for the descendants of Ismail, as Judaism was the faith of the sons of Isaac (. . .) [but] The Quran continued to revere Jewish prophets and to urge Muslims to respect the People of the Book [Jews]. Smaller Jewish groups continued to live in Medina, and later Jews, like Christians, enjoyed full religious liberty in Islamic empires. Anti-semitism is a Christian vice. Hatred of the Jews became marked in the Muslim world only after the creation of the state of Israel in 1948 and the subsequent loss of Arab Palestine. Is it significant that Muslims were compelled to import anti-Jewish myths from Europe, (. . .)" Karen Armstrong, ISLAM: A SHORT HISTORY 18-19 and 26 (2000).

(13) Uta Rasche, *The Method of Slaughter*, FRANKFURTER ALLGEMEINE ZEITUNG (English Edition), p. 2 (16 January 2002).

(14) "Ein warmbluetiges Tier darf nur geschlachtet werden, wenn es vor Beginn des Blutentzugs betaeubt worden ist." ("A warm blooded animal may only be slaughtered if, before the beginning of the flow of blood, the animal is anesthesized.") (Sect. 4a.1 Animal Protection Act) (Translation by the author).

(15) Uta Rasche, *The Method of Slaughter*, FRANKFURTER ALLGEMEINE ZEITUNG (English Edition), p. 2 (16 January 2002).

(16) The Court identified the following exceptions to the general anesthesia requirement of the Animal Protection Act: emergency slaughter, slaughter of fowl, killing animals in the course of a hunt and pest control. 1 BvR 1783/99, 15 January 2002, Para. 47, <http://www.bverfg.de>.

(17) "die zuständige Behörde eine Ausnahmegenehmigung fuer ein Schlachten ohne Betaeubung (Schaechten) erteilt hat; sie darf die Ausnahmegenehmigung nur insoweit erteilen, als es erforderlich ist, den Beduerfnissen von Angehoerigen bestimmter Religionsgemeinschaften im Geltungsbereich dieses Gesetzes zu entsprechen, denen zwingende Vorschriften ihrer Religionsgemeinschaft das Schaechten vorschreiben oder den Genuss von Fleisch nicht geschaechteter Tiere untersagen (. . .)" Animal Protection Act, Sect. 4a.2(2) (Translation by the author).

(18) BVerwGE 99, 1.

(19) Section 4a.2(2) of the Animal Protection Act provides alternative bases for the application of the exception, one being the mandatory *proscription* of the methods of traditional slaughter and the other being the mandatory *prohibition* of eating meat from animals that have not been slaughtered according to the traditional methods. The Federal Administrative Court concluded, apparently without objection from the appellant, that only the second of these alternatives applied in the case. BVerwGE, 99, 1 (2) ("(. . .) nur der zweite als Grundlage fuer das Begehren der Klaegerin in Betracht." ["(. . .) only the second is relevant to the appellant's case.]). (Translation by the author).

(20) BVerwGE 99, 1 (4). ("sunnitischen Zweig des Islam."). (Translation by the author).

(21) BVerwGE 99, 1 (4). (Citations omitted). (Translation by the author). The definition of a "religious community" cited by the Federal Administrative Court is used in German Church-State jurisprudence: "Unter einer Religionsgemeinschaft wird in Staatskirchenrecht ein Verband verstanden, der die Angehoerigen ein und desselben Glaubensbekenntnisses – oder mehrerer verwandter Glaubensbekenntnisse – zu allseitiger Erfuellung der durch das gemeinsame Bekenntnis gestellten Aufgaben zusammenfasst (. . .) dass es sich bei der dort genannten Religionsgemeinschaft um eine Gemeinschaft handeln muss, die sich nach aussen eindeutig abgrenzt und nach innen in der Lage ist, ihre Mitglieder zwingenden Vorschriften zu unterwerfen." (In Church-State law, a religious community is understood to be an association in which the members have one and the same confession of faith – or several related confessions of faith – brought together by the work of completely fulfilling the shared work of the faith (. . .) that it, by the term "religious community" as it is used, must refer to a community that is clearly distinct externally and that is in the position, internally, to subject its members to regulations."). BVerwGE, 99, 1 (3-4). (Translation by the author).

(22) The Court used the phrase "*individuelle Sicht*" ("individual perspective") to characterize the subjective standard proffered by the appellant in that case. BVerwGE 99, 1 (5) (Translation by the author).

(23) BVerwGE 99, 1 (5) ("Fuer eine Relativierung im Sinne der Massgeblichkeit individueller religioeser Ueberzeugungen laesst dieser Wortlaut keinen Raum."). (Translation by the author).

(24) BVerwGE 99, 1 (6).

(25) Article 4 of the *Grundgesetz* (Basic Law) reads: "(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable. (2) The undisturbed practice of religion shall be guaranteed."

(26) BVerwGE 99, 1 (4). ("Der Begriff der Religionsgemeinschaft unterliegt jedenfalls der staatlichen Beurteilung nach aktueller Lebenswirklichkeit, Kulturtradition und allgemeinem wie auch religionswissenschaftlichem Verstaendnis.") (Citations omitted). (Translation by the author).

(27) BVerwGE 99, 1 (8). ("Sie koennen sowohl auf Nahrungsmittel pflanzlichen Ursprungs und auf Fisch ausweichen als auch auf Fleischimporte zurueckgreifen, die aus Laender ohne Schaechtungsverbot stamen."). (Translation by the author).

(28) BVerwGE 99, 1 (8).

(29) BVerwGE, 112, 227. See, Reinhard Mueller, *Im Zweifel fuer die Minderheit*, FRANKFURTER ALLGEMEINE ZEITUNG, p. 12 (18 January 2002).

(30) Reinhard Mueller, *Im Zweifel fuer die Minderheit*, FRANKFURTER ALLGEMEINE ZEITUNG, p. 12 (18 January 2002).

(31) Article 2 of the Basic Law reads: "(1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law."

(32) Article 3 of the Basic Law reads: "(1) All persons shall be equal before the law (. . .) (3) No person shall be favored or disfavored because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavored because of disability."

(33) See, note 25, *supra*.

(34) Article 12 of the Basic Law reads: "(1) All Germans shall have the right freely to choose their occupation or profession, their place of work, and their place of training. The practice of an occupation or profession may be regulated by or pursuant to a law."

(35) 1 BvR 1783/99, 15 January 2002, Para. 30, <http://www.bverfg.de>.

(36) 1 BvR 1783/99, 15 January 2002, Para. 32, <http://www.bverfg.de>.

(37) "The personality right is so broad in its phrasing that almost any content could be poured into it, and it could easily function as the first and last resort of constitutional arguments. Recognizing this, the Constitutional Court has sought to confine its reach. As a general rule, the personality clause is subordinate to those positive rights of liberty expressly mentioned in the Basic Law." Donald P. Kommers, *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY* 313 (1997).

(38) 1 BvR 1783/99, 15 January 2002, Para. 32, <http://www.bverfg.de>. ("Dem ist, auch wenn das Schaechten selbst nicht als Akt der Religionsausuebung verstanden wird, dadurch Rechnung zu tragen, dass der Schutz der Berufsfreiheit des Beschwerdefuehrers aus Art. 2 Abs. 1 GG durch den speziellen Freiheits gehalt des Grundrechts der Religionsfreiheit aus Art. 4 Abs. 1 und 2 verstärkt wird." [It must also be appreciated, even in the event that the traditional method of slaughtering livestock is not considered a protected exercise of religion, that the protection of the complainant's occupational freedom through Art. 2.1 of the Basic Law is enhanced by the freedoms promoted by the basic rights, particularly the right to religious freedom in Arts. 4.1 and 4.2 of the Basic law.]). (Translation by the author).

(39) "Proportionality plays a role similar to the American doctrine of due process of law. The Basic Law contains no explicit reference to proportionality, but the Constitutional Court regards it as an indispensable element of a state based on the rule of law. The court consistently invokes the principle of proportionality in determining whether legislation and other governmental acts conform to the values and principles of the Basic Law (. . .) applying an ends-means test for determining whether a particular right has been overburdened in the light of a given set of facts (. . .) the means used must be appropriate (*Eignung*) to the achievement of a legitimate end (. . .) the means used to achieve a valid purpose must have the least restrictive effect (*Erforderlichkeit*) on a constitutional value (. . .)" Donald P. Kommers, *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY* 46 (1997).

(40) 1 BvR 1783/99, 15 January 2002, Para. 36, <http://www.bverfg.de>. In defining the relationship between humans and animals that gives rise to this responsibility the legislature used the German term *Mitgeschoeopf*, which is here translated, although unsatisfactorily, as "living beings." The term actually makes reference to the similarities between humans and animals, especially in light of the fact that they were "created" (*Schoepfer*) together. Significantly, the term does not depend on some notion of humankind's paternalistic responsibility for animals.

(41) 1 BvR 1783/99, 15 January 2002, Para. 39, <http://www.bverfg.de>. (*Citing*: Article 12 of the 10 May 1979 European Convention on the Protection of Livestock; and Article 5.1(c) of the European Council's Regulation of the Protection of Livestock at the Time of Slaughter or Killing [93/119/EC, 22 December 1993 Regulations].)

(42) 1 BvR 1783/99, 15 January 2002, Paras. 40-41, <http://www.bverfg.de>.

(43) 1 BvR 1783/99, 15 January 2002, Para. 42, <http://www.bverfg.de>.

(44) 1 BvR 1783/99, 15 January 2002, Para. 43, <http://www.bverfg.de>. ("voellige berufliche Umorientierung" ["complete occupational disorientation"]). (Translation by the author).

(45) See, note 27, *supra*.

(46) 1 BvR 1783/99, 15 January 2002, Para. 44, <http://www.bverfg.de>. ("Von ihnen zu verlangen, im Wesentlichen dem Verzehr von Fleisch zu entsagen, truege den Essgewohnheiten in der Gesellschaft der Bundesrepublik

Deutschland nicht hinreichend Rechnung.") (Translation by the author).

(47) 1 BvR 1783/99, 15 January 2002, Para. 47, <http://www.bverfg.de>.

(48) 1 BvR 1783/99, 15 January 2002, Para. 36, <http://www.bverfg.de>. For this point, the Court especially referred to the exception to the anesthesia requirement of the Animal Protection Act provided for *Schaedlingsbekaempfungsmassnahmen* (pest control).

(49) As outlined in Para. 6, *supra*, the two elements are: (a) membership in a religious community; and (b) mandatory rules of that community prohibiting the consumption of meat taken from animals not slaughtered in accordance with the traditional methods.

(50) Article 140 of the Basic Law incorporates Articles 136-139 and 141 of the *Weimar Reichs Verfassung* of 1919 into the Basic Law. For a discussion of the concept, in German constitutional law, of an *oeffentlichrechtliche Koerperschaft* (quasi-public body), see, Donald P. Kommers, THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY 489-491 (1997). See, also, the discussion of the Constitutional Court's recent decision granting Jehovah's Witnesses quasi-public status in GERMAN LAW JOURNAL: *From the Outside Looking In: The Jehovah's Witnesses' Struggle for Quasi-Public Status Under Germany's Incorporation Law*, 2 GERMAN LAW JOURNAL 1 (15 January 2002), www.germanlawjournal.com; *Federal Constitutional Court Hears Arguments in Church/State Case: Should the Jehovah's Witnesses be Granted Status as Quasi-Public Entity?*, 1 GERMAN LAW JOURNAL 1 (15 October 2000), www.germanlawjournal.com.

(51) 1 BvR 1783/99, 15 January 2002, Para. 55, <http://www.bverfg.de>. ("Sei viel mehr ausreichend, dass der Antragsteller einer Gruppe von Menschen angehoert, die eine gemeinsame Glaubensueberzeugung verbindet.") (Citation omitted). (Translation by the author).

(52) 1 BvR 1783/99, 15 January 2002, Para. 55, <http://www.bverfg.de>.

(53) 1 BvR 1783/99, 15 January 2002, Para. 56, <http://www.bverfg.de>.

(54) 1 BvR 1783/99, 15 January 2002, Para. 57, <http://www.bverfg.de>.

(55) Christian Geyer, *Kein Opium fuers Tier*, FRANKFURTER ALLGEMEINE ZEITUNG, p. 41 (16 January 2002). *supra*