Provisional text

OPINION OF ADVOCATE GENERAL
HOGAN
delivered on 10 September 2020(1)

Case C−336/19

Centraal Israëlitisch Consistorie van België and Others,
Unie Moskeeën Antwerpen VZW,
Islamitisch Offerfeest Antwerpen VZW,
JG,
KH,
Executief van de Moslims van België and Others,
Coördinatie Comité van Joodse Organisaties van België, Section belge du Congrès juif mondial et Congrès juif européen VZW and Others
joined parties:
LI,
Vlaamse Regering,
Waalse regering,
Kosher Poultry BVBA and Others,
Global Action in the Interest of Animals VZW (GAIA)

(Request for a preliminary ruling from the Grondwettelijk Hof (Constitutional Court, Belgium))

(Reference for a preliminary ruling — Regulation (EC) No 1099/2009 — Protection of animals at time of killing — Article 4(1) Requirement that animals shall only be killed after stunning — Derogation — Article 4(4) — Particular methods of slaughter prescribed by religious rites — Article 26 — Stricter national rules — Imposition by Member State of a ban on slaughter without prior stunning — Slaughter according to special methods required for religious rites — Reversible stunning without death of animal caused by stunning or post-cut stunning — Freedom of religion — Article 10(1) Charter)

I. Introduction

1. The present request for a preliminary ruling arises from five joined actions seeking the total or partial annulment of the decreet van het Vlaamse Gewest van 7 juli 2017 houdende wijziging van de wet van 14 augustus 1986 betreffende de bescherming en het welzijn der dieren, wat de toegelaten methodes voor het slachten van dieren betreft (Decree of the Flemish Region of 7 July 2017 amending the Law of 14 August 1986 on the protection and welfare of animals, regarding permitted methods of slaughtering

animals) (‘the contested decree’) brought before the Grondwettelijk Hof (Constitutional Court, Belgium) on 16 January 2018. The effect of this law is, in essence, to prohibit the slaughtering of animals by means of traditional Jewish and Muslim rites and to require that such animals be stunned prior to slaughter in order to reduce their suffering. The principal question for the Court is whether such an outright ban, in the absence of stunning, is permissible under Union law, not least having regard to the guarantees of religious liberty and freedom contained in the Charter of Fundamental Rights of the European Union (‘the Charter’).

2. The actions were brought by the Centraal Israëlitisch Consistorie van België (Central Israelite Consistory of Belgium) and Others, the Unie Moskeeën Antwerpen VZW, the Islamitisch Offerfeest Antwerpen VZW, JG, KH, the Executief van de Moslims van België and Others, the Coördinatie Comité van Joodse Organisaties van België, and VZW and Others (‘the applicants’). In addition, a number of other parties, namely LI, Vlaamse regering (the Flemish Government), Waalse regering (the Walloon Government), Kosher Poultry BVBA and Others, and Global Action in the Interest of Animals VZW intervened in the proceedings.

3. The relevant provisions of the contested decree provide that a vertebrate (2) may only be killed following prior stunning. If, however, the animals are slaughtered according to special methods required for religious rites, the stunning must be reversible and the death of the animal must not be caused by stunning. By way of derogation to the obligation of prior reversible stunning of animals, the stunning of cattle slaughtered by special methods required for religious rites may currently take place immediately after the cutting of the animal’s throat (post-cut stunning).

4. The contested decree thus abolished from 1 January 2019 the derogation in respect of the requirement of prior stunning of animals which had previously existed under national law for slaughter prescribed by religious rites. (3) It is this to which the applicants take exception: they maintain that the abolition of this derogation compromises in a material fashion a key feature of their religious practices and beliefs.

5. The present request for a preliminary ruling, which was lodged at the Registry of the Court on 18 April 2019, concerns, in essence, the interpretation of Article 4(4) and point (c) of the first subparagraph of Article 26(2) of Council Regulation (EC) No 1099/2009 (4) and the validity of the latter provision in the light of Article 10(1) of the Charter.

6. In that regard, it must be noted that Article 4(1) of Regulation No 1099/2009 provides in unequivocal terms that ‘animals shall only be killed after stunning’. Article 4(4) of that regulation provides, by way of derogation, (5) that in the case of animals subject to particular methods of slaughter prescribed by religious rites, ‘the requirements of paragraph 1 shall not apply provided that the slaughter takes place in a slaughterhouse’. However, point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 provides that Member States may adopt rules aimed at ensuring more extensive protection of animals at the time of killing than those contained in that regulation in relation, inter alia, to the slaughtering of animals in accordance with Article 4(4) thereof.

7. Certain of the applicants have argued before the referring court that the Member States cannot rely on point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 in order to eliminate or empty of meaning the exception for slaughter prescribed by religious rites contained in Article 4(4) of that regulation. By contrast, the Flemish and Walloon Governments contended before that court that point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 specifically empowers the Member States to depart from the terms of Article 4(4) of that regulation.

8. The referring court thus wishes to ascertain, in essence, whether Article 4(4) of Regulation No 1099/2009 – which seeks to ensure freedom of religion in accordance with Article 10(1) of the Charter (6) – and point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 permit a national measure which bans the killing of vertebrates without prior stunning and imposes the requirement of prior reversible stunning of animals before slaughter which does not cause their death or post-cut stunning in the context of particular methods of slaughter prescribed by religious rites.

9. The present reference for a preliminary ruling provides the Court with a unique opportunity to revisit and expand upon its case-law on Regulation No 1099/2009 and the reconciliation of the objective of protecting animal welfare and an individual's right under Article 10(1) of the Charter to comply with dietary rules imposed by their religion.

10. In that regard, the Court has recently had occasion to examine the validity and provide an interpretation of certain provisions of Regulation No 1099/2009 in its judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335) and that of 26 February 2019, *Oeuvre d'assistance aux bêtes d'abattoirs* (C−497/17, EU:C:2019:137) in the context of the slaughtering of animals without prior stunning where the method of slaughter is prescribed by religious rite.

11. These cases focused in particular on the interpretation and the validity of the derogation contained in Article 4(4) of Regulation No 1099/2009 to the prohibition laid down in Article 4(1) of that regulation.

12. The Court in its judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335) examined and ultimately upheld the validity of the requirement under Article 4(4) of Regulation No 1099/2009 that ritual slaughter be carried out in approved slaughterhouses. In the judgment of 26 February 2019, *Oeuvre d'assistance aux bêtes d'abattoirs* (C−497/17, EU:C:2019:137), the Court held that the Organic logo of the EU could not be used on products derived from animals which had been slaughtered in accordance with religious rites without first being stunned despite the fact that such slaughter was permitted under Article 4(4) of Regulation No 1099/2009. The effect of this decision was that the Organic logo of the EU may not be used where the product is not obtained in observance of the highest standards, in particular in the area of animal welfare.

13. The focus of the present preliminary reference is somewhat different as it is directed for the first time at the interpretation and validity of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 which expressly empowers Member States to adopt rules aimed at ensuring more extensive protection of animals at the time of killing than those contained in Article 4(4) of that regulation.

14. This case requires the Court to consider the delicate question of whether and, if so, to what extent a Member State, in the light of particular national sensitivities to animal welfare, may adopt measures designed to provide greater protection to animals at the time of killing than those laid down in Article 4(4) of Regulation No 1099/2009 which allegedly impinge on the freedom of religion enshrined in Article 10(1) of the Charter. In particular, the Court may have to consider the question of whether the possibility, in accordance with Article 26(4) of Regulation No 1099/2009, of importing products derived from animals slaughtered in accordance with the particular methods of slaughter prescribed by religious rites is sufficient to ensure that the right to religious freedom is upheld.

15. It is, however, first necessary to set out the relevant legislative and Treaty provisions before considering these questions.

II. Legal framework

A. EU law

1. The Charter and the TFEU

16. Article 10 of the Charter entitled 'Freedom of thought, conscience and religion', provides:

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

…’

17. Article 21 of the Charter entitled ‘Non-discrimination’ provides:

‘1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

…’

18. Article 22 of the Charter entitled ‘Cultural, religious and linguistic diversity’ provides:

‘The Union shall respect cultural, religious and linguistic diversity.’

19. Article 52 of the Charter entitled ‘Scope and interpretation of rights and principles’ provides:

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

…

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

…’

20. Article 13 TFEU (formerly Protocol No 33 to EC Treaty on protection and welfare of animals (1997)) provides:

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

2. Regulation No 1099/2009

21. Recitals 2, 4, 18, 20, 43, 57, 58 and 61 of Regulation No 1099/2009 provide:

‘(2) Killing animals may induce pain, distress, fear or other forms of suffering to the animals even under the best available technical conditions. Certain operations related to the killing may be stressful and any stunning technique presents certain drawbacks. Business operators or any person involved in the killing of animals should take the necessary measures to avoid pain and minimise the distress and suffering of animals during the slaughtering or killing process, taking into account the best practices in the field and the methods permitted under this Regulation. Therefore, pain, distress or suffering should be considered as avoidable when business operators or any person involved in the killing of animals breach one of the requirements of this Regulation or use permitted practices without reflecting the state of the art, thereby inducing by negligence or intention, pain, distress or suffering to the animals.

…

(4) Animal welfare is a Community value that is enshrined in the Protocol (No 33) on protection and welfare of animals annexed to the Treaty establishing the European Community (Protocol (No 33)). The protection of animals at the time of slaughter or killing is a matter of public concern that affects consumer attitudes towards agricultural products. In addition, improving the protection of animals at the time of slaughter contributes to higher meat quality and indirectly has a positive impact on occupational safety in slaughterhouses.

…

(18) Derogation from stunning in case of religious slaughter taking place in slaughterhouses was granted by Directive 93/119/EC. Since Community provisions applicable to religious slaughter have been transposed differently depending on national contexts and considering that national rules take into account dimensions that go beyond the purpose of this Regulation, it is important that derogation from stunning animals prior to slaughter should be maintained, leaving, however, a certain level of subsidiarity to each Member State. As a consequence, this Regulation respects the freedom of religion and the right to manifest religion or belief in worship, teaching, practice and observance, as enshrined in Article 10 of the Charter of Fundamental Rights of the European Union.

…

(20) Many killing methods are painful for animals. Stunning is therefore necessary to induce a lack of consciousness and sensibility before, or at the same time as, the animals are killed. Measuring the lack of consciousness and sensibility of an animal is complex and needs to be performed under scientifically approved methodology. Monitoring through indicators, however, should be carried out to evaluate the efficiency of the procedure under practical conditions.

…

(43) Slaughter without stunning requires an accurate cut of the throat with a sharp knife to minimise suffering. In addition, animals that are not mechanically restrained after the cut are likely to endure a slower bleeding process and, thereby, prolonged unnecessary suffering. Animals of bovine, ovine and caprine species are the most common species slaughtered under this procedure. Therefore, ruminants slaughtered without stunning should be individually and mechanically restrained.

…

(57) European citizens expect a minimum of welfare rules to be respected during the slaughter of animals. In certain areas, attitudes towards animals also depend on national perceptions and there is a demand in some Member States to maintain or adopt more extensive animal welfare rules than those agreed upon at Community level. In the interest of the animals and provided that it does not affect the functioning of the internal market, it is appropriate to allow Member States certain flexibility to maintain or, in certain specific fields, adopt more extensive national rules.

It is important to ensure that such national rules are not used by Member States in a way to prejudice the correct functioning of the internal market.

…

(61) Since the objective of this Regulation, namely to ensure a harmonised approach with regard to animal welfare standards at the time of killing, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, it is necessary and appropriate for the achievement of that objective to lay down specific rules for the killing of animals

for the production of food, wool, skin, fur or other products, and for related operations. This Regulation does not go beyond what is necessary in order to achieve that objective.'

22. Article 1 of Regulation No 1099/2009, entitled 'Subject matter and scope' provides:

'1. This Regulation lays down rules for the killing of animals bred or kept for the production of food, wool, skin, fur or other products as well as the killing of animals for the purpose of depopulation and for related operations.

…'

23. Article 2 of that Regulation, entitled 'Definitions', provides:

'…

(b) "related operations" means operations such as handling, lairaging, restraining, stunning and bleeding of animals taking place in the context and at the location where they are to be killed;

…

(f) "stunning" means any intentionally induced process which causes loss of consciousness and sensibility without pain, including any process resulting in instantaneous death;

(g) "religious rite" means a series of acts related to the slaughter of animals and prescribed by a religion;

…

(j) "slaughtering" means the killing of animals intended for human consumption;

…'

24. Article 3(1) of that regulation provides that animals shall be spared any avoidable pain, distress or suffering during their killing and related operations.

25. Article 4 of Regulation No 1099/2009, entitled 'Stunning methods', provides that:

'1. Animals shall only be killed after stunning in accordance with the methods and specific requirements related to the application of those methods set out in Annex I. The loss of consciousness and sensibility shall be maintained until the death of the animal.

The methods referred to in Annex I which do not result in instantaneous death (hereinafter referred to as simple stunning) shall be followed as quickly as possible by a procedure ensuring death such as bleeding, pithing, electrocution or prolonged exposure to anoxia.

…

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

26. Article 26 of Regulation No 1099/2009, entitled 'Stricter national rules', states:

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

Before 1 January 2013, Member States shall inform the Commission about such national rules. The Commission shall bring them to the attention of the other Member States.

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

…

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

Member States shall notify the Commission of any such national rules. The Commission shall bring them to the attention of the other Member States.

…'

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

B. Belgian law

27. Article 1 of the contested decree provides:

'The present decree regulates a regional matter.'

28. Article 2 of that decree provides:

'Article 3 of the Law of 14 August 1986 on the protection and welfare of animals, as amended by the Laws of 4 May 1995, 9 July 2004, 11 May 2007 and 27 December 2012, is amended as follows:

1° points 13 and 14 are replaced by the following:

"13° killing: any procedure applied intentionally which results in the death of an animal;

14° slaughter: the killing of animals intended for human consumption;".

2° a point 14*bis*, which provides as follows, is inserted:

"14*bis* stunning: any procedure intentionally applied to an animal which causes a state of unconsciousness and insensibility without pain, including any procedure resulting in immediate death;"

29. Article 3 of the contested decree provides:

'Article 15 of the same Law is replaced by the following:

"Art. 15. § 1. A vertebrate may only be killed after prior stunning. It may be killed only by a person having the required knowledge and skills, and by the least painful, rapid and most selective method.

By way of derogation from paragraph 1, a vertebrate may be killed without prior stunning:

1° in case of *force majeure*;

2° in the case of hunting or fishing;

3° in the context of pest control.

§ 2. If the animals are slaughtered according to special methods required for religious rites, the stunning must be reversible and the death of the animal must not be caused by stunning”.’

30. Article 4 of the contested decree provides:

‘Article 16 of the same Law, as amended by the Law of 4 May 1995, the Royal Decree of 22 February 2001 and the Law of 7 February 2014, is replaced by the following:

“Art. 16. § 1. The Flemish Government shall determine the conditions for:

1° the methods for stunning and killing animals according to the circumstances and the animal species;

2° the construction, layout and equipment of slaughterhouses;

3° guaranteeing the independence of the person responsible for animal welfare;

4° the ability of the person responsible for animal welfare, of the personnel in slaughterhouses and of persons associated with the killing of animals, including the content and organisation of training and examinations, and the issue, withdrawal and suspension of certificates issued in connection thereto.

§ 2 The Flemish Government may approve establishments for the group slaughter of animals intended for private domestic consumption and determine the conditions for the slaughter outside a slaughterhouse of animals intended for private domestic consumption.”.’

31. Article 5 of the contested decree states:

‘In the same Law, as last amended by the Law of 7 February 2014, an Article 45ter is inserted, which provides as follows:

“Art. 45ter By way of derogation from Article 15, the stunning of cattle slaughtered by special methods required for religious rites may take place immediately after the cutting of the throat, until such date on which the Flemish Government decides that reversible stunning is practically applicable for these animal species.”’

32. Article 6 of the contested decree provides that it enters into force on 1 January 2019.

III. The facts of the main proceedings and the request for a preliminary ruling

33. The applicants in the main proceedings brought a number of actions for the annulment of the contested decree before the Grondwettelijk Hof (Constitutional Court).

34. In support of their actions for annulment before the Grondwettelijk Hof (Constitutional Court), the applicants in essence plead:

Firstly, infringement of Regulation No 1099/2009, read in conjunction with the principle of equality and non-discrimination, in that Jewish and Muslim believers are being deprived of the guarantee contained in Article 4(4) of Regulation No 1099/2009 to the effect that ritual slaughter cannot be made subject to the requirement of prior stunning, and in that the contested decree, contrary to Article 26(2) of the aforementioned regulation, was allegedly not notified to the European Commission in time;

Secondly, infringement of freedom of religion, by making it impossible for Jewish and Muslim believers, on the one hand, to slaughter animals in accordance with the rules of their religion and, on the other hand, to obtain meat from animals slaughtered in accordance with those religious rules;

Thirdly, infringement of the principle of separation of Church and State, because the provisions of the contested decree allegedly prescribe the manner in which a religious rite is to be carried out;

Fourthly, infringement of the right to work and to the free choice of occupation, freedom to conduct a business and the free movement of goods and services, because it is impossible for religious butchers to practise their occupation, in that it is impossible for butchers and butcher's shops to offer meat to their customers with the guarantee that it comes from animals that have been slaughtered in accordance with religious rules, and because it distorts competition between slaughterhouses located in the Flemish Region and slaughterhouses located in the Brussels Capital Region or in another Member State of the European Union where the slaughter of animals without stunning is permitted;

Fifthly, infringement of the principle of equality and non-discrimination, in that:

Jewish and Muslim believers are treated, without reasonable justification, in the same way as people who are not subject to the specific dietary laws of a religion;

the people who kill animals while hunting or fishing or controlling harmful organisms, on the one hand, and the people who kill animals according to special slaughter methods prescribed by the customs of religious worship, on the other hand, are treated differently without reasonable justification, and

Jewish believers, on the one hand, and Muslim believers, on the other hand, are treated in the same way without reasonable justification.

35. 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 the Member States to depart from Article 4(4) of that regulation. (7)

36. The referring court notes that the exception to the principle of the obligation to stun animals prior to slaughter provided for in Article 4(4) of Regulation No 1099/2009 is based on the principle of freedom of religion, as guaranteed by Article 10(1) of the Charter.

37. However, according to the referring court, Member States may derogate from the aforementioned exception. After all, point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 authorises Member States, with a view to promoting animal welfare, to derogate from the provision contained in Article 4(4) of that regulation. In that regard, no limits are specified within which the Member States of the Union are required to remain. (8)

38. The referring court observes that the question therefore arises as to whether point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 may be interpreted as authorising EU Member States to adopt national rules such as those contained in the contested decree, and whether that provision, if interpreted in that way, is compatible with freedom of religion, as guaranteed by Article 10(1) of the Charter.

39. In addition, the referring court notes that Regulation No 1099/2009 provides only for a conditional exception to the obligation of prior stunning as regards the killing of animals by ritual slaughter methods, whereas the killing of animals during hunting, fishing and sporting and cultural events is fully exempt from the same obligation in accordance with Article 1(3)(a)(ii) of Regulation No 1099/2009. In that regard, the referring court wishes to know whether Regulation No 1099/2009 results in unjustified discrimination by allowing Member States to restrict the exception in the case of slaughter prescribed by religious rites, whereas the killing of animals without stunning is permitted in hunting, fishing and sporting or cultural events.

40. In these circumstances, the Grondwettelijk Hof (Constitutional Court) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Should point (c) of the first subparagraph of Article 26(2) of [Regulation No 1099/2009] be interpreted as meaning that Member States are permitted, by way of derogation from the provision contained in Article 4(4) of that regulation and with a view to promoting animal welfare, to adopt rules such as those contained in the [contested decree], 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 of a religious rite, based on reversible stunning and on condition that the stunning should not result in the death of the animal?

(2) If the first question referred for a preliminary ruling is to be answered in the affirmative, does point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, in the interpretation referred to in the first question, infringe Article 10(1) of the [Charter]?

(3) If the first question referred for a preliminary ruling is to be answered in the affirmative, does point (c) of the first subparagraph of Article 26(2) read in conjunction with Article 4(4) of Regulation No 1099/2009, in the interpretation referred to in the first question, infringe Articles 20, 21 and 22 of the [Charter], since, in the case of the killing of animals by particular methods prescribed by religious rites, provision is only made for a conditional exception to the obligation to stun the animal (Article 4(4), read in conjunction with Article 26(2)), whereas in the case of the killing of animals during hunting and fishing and during sporting and cultural events, for the reasons stated in the recitals of the regulation, the relevant provisions stipulate that those activities do not fall within the scope of the regulation, or are not subject to the obligation to stun the animal when it is killed (Article 1(1), second subparagraph, and Article 1(3))?’

IV. Procedure before the Court

41. Written observations on the questions referred by the Grondwettelijk Hof (Constitutional Court) were lodged by the Centraal Israëlitisch Consistorie van België and Others, the Executief van de Moslims van België and Others, the Coördinatie Comité van Joodse Organisaties van België, Section belge du Congrès juif mondial et Congrès juif européen VZW, LI, the Vlaamse Regering, the Waalse Regering, Global Action in the Interest of Animals VZW (GAIA), the Danish, Finnish and Swedish Governments, the Council of the European Union and by the European Commission.

42. At the hearing of the Court on 8 July 2020, the Centraal Israëlitisch Consistorie van België and Others, the Unie Moskeeën Antwerpen VZW, the Executief van de Moslims van België and Others, the Coördinatie Comité van Joodse Organisaties van België, Section belge du Congrès juif mondial et Congrès juif européen VZW, LI, the Vlaamse Regering, the Waalse Regering, Global Action in the Interest of Animals VZW (GAIA), the Danish and Finnish Governments, the Council and the Commission submitted oral observations. In the case of the Finnish Government, its agent was allowed to make oral submissions by video-conference.

V. Analysis

43. In its request for a preliminary ruling the Grondwettelijk Hof (Constitutional Court) referred three questions to this Court. As requested by the Court, this Opinion will focus on the first and second questions raised by the referring court in its request for a preliminary ruling.

44. By its first question, the Grondwettelijk Hof (Constitutional Court) seeks an interpretation of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009. In particular, the referring court seeks to ascertain the scope of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 and whether it permits Member States, by way of derogation from Article 4(4) of that regulation and with a view to promoting animal welfare, to adopt rules such as those contained in the contested decree. Depending on the interpretation furnished in respect of point (c) of the first subparagraph

of Article 26(2) of Regulation No 1099/2009, the Grondwettelijk Hof (Constitutional Court), by its second question seeks to ascertain whether that provision of EU law infringes Article 10(1) of the Charter.

45. Given the intrinsic link between the first two questions, I consider that they can be more conveniently answered together.

A. Preliminary remarks

46. It would appear from the request for a preliminary ruling that the contested decree was notified to the Commission on 29 November 2017 (9) in accordance with the second subparagraph of Article 26(2) of Regulation No 1099/2009. It has been argued in the written pleadings before the Court that the notification in question was tardy (10) and that the contested decree is thus invalid. I would note in that regard that the Grondwettelijk Hof (Constitutional Court) specifically referred to the notification in question in its request for a preliminary ruling. The referring court did not, however, raise any doubt as to the validity of the contested decree in that regard. Moreover, none of the questions posed specifically refer to that matter or seek an interpretation of the second subparagraph of Article 26(2) of Regulation No 1099/2009. I therefore consider that this issue, particularly in the absence of a real debate between the parties on the matter, is beyond the scope of the present proceedings.

47. There has also been some debate before the Court as to whether the prior reversible stunning which does not lead to the death of an animal or post-cut stunning of vertebrates satisfies the particular methods of slaughter prescribed by religious rites of both the Muslim and Jewish faiths. In that regard, it would seem that there are divergent views on the matter within both faiths. (11) As I pointed out in my Opinion in Case C-243/19 *A. v. Veselibas Ministrija*, (12) a secular court cannot choose in relation to the matters of religious orthodoxy: it is, I think, sufficient to say that there is a significant body of adherents to both the Muslim and Jewish faiths for whom the slaughter of animals without such stunning is regarded by them as an essential aspect of a necessary religious rite. I propose, accordingly, to proceed on that basis. (13)

48. The Court, in any event, has clearly stated at paragraph 51 of the judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335), that the existence of possible theological differences in respect of that subject cannot in itself invalidate the classification as a ‘religious rite’ of the practice of ritual slaughter as described by the referring court. (14)

49. Despite the fact that the referring court has explained in great detail that the contested decree was adopted following extensive consultation with representatives of different religious groups and considerable effort over a prolonged period (since 2006) was expended by the Flemish legislature in order to reconcile the objectives of promoting animal welfare while respecting the spirit of ritual slaughter, (15) that court has indicated in its request for a preliminary ruling that the contested decree provides for a ban on ritual slaughter without stunning which was previously permitted under national law and under the derogation contained in Article 4(4) of Regulation 1099/2009. (16)

B. Article 4(1) and (4) of Regulation No 1099/2009 and the current case-law on these provisions

50. Regulation No 1099/2009 lays down rules, inter alia, for the killing of animals bred or kept for the production of food. As can be seen from the title of the regulation itself and from Article 3(1) thereof, the principle objective of the regulation is to protect animals and to spare them any avoidable pain, distress or suffering during the course of slaughter and related operations.

51. Article 4(1) of Regulation No 1099/2009 thus provides in unequivocal terms that ‘animals shall only be killed after stunning’.

52. In my view, Article 4(1) of Regulation No 1099/2009 is the cornerstone of that regulation and reflects and gives concrete expression to the clear obligation imposed by the first part of Article 13 TFEU on both the Union and the Member States to pay full regard to the welfare requirements of animals, which are sentient beings. In that regard, the Court stated at paragraph 47 of the judgment of 26 February 2019,

Oeuvre d'assistance aux bêtes d'abattoirs (C−497/17, EU:C:2019:137), that scientific studies have shown that pre-stunning is the technique that compromises animal welfare the least at the time of killing.

53. Despite the strict terms of Article 4(1) of Regulation No 1099/2009, Article 4(4) of that regulation nonetheless provides that, *by way of derogation* from that rule, in the case of animals subject to particular methods of slaughter prescribed by religious rites, 'the requirements of paragraph 1 shall not apply provided that the slaughter takes place in a slaughterhouse'. (17) Article 4(4) of Regulation No 1099/2009 therefore addresses the necessity to guarantee the entitlement of those of certain religious faiths to preserve essential religious rites and to consume meat of animals which have been slaughtered in this religiously prescribed fashion.

54. The validity of the entitlement under Article 4(4) of Regulation No 1099/2009 to carry out ritual slaughter in a slaughterhouse having regard to the provisions of Article 10(1) of the Charter was examined by the Court in its judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335). At paragraphs 43 to 45 of that judgment, the Court recalled that, according to settled case-law, the right to freedom of conscience and religion enshrined in Article 10(1) of the Charter includes, inter alia, the freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. In addition, the Charter uses the word 'religion' in a broad sense, covering both the *forum internum*, that is the fact of having a belief, and the *forum externum*, that is the manifestation of religious faith in public. The Court therefore concluded that the specific methods of slaughter prescribed by religious rituals within the meaning of Article 4(4) of Regulation No 1099/2009 fall within the scope of Article 10(1) of the Charter as part of that public manifestation of religious faith. (18)

55. The Court considered that the derogation authorised by Article 4(4) of Regulation No 1099/2009, which is subject to the requirement that slaughter takes place in a slaughterhouse, (19) does not lay down any prohibition on the practice of ritual slaughter in the EU but, on the contrary, gives expression to the positive commitment of the EU legislature to allow the ritual slaughter of animals without prior stunning in order to ensure effective observance of the freedom of religion. (20)

56. The derogation in Article 4(4) of Regulation No 1099/2009 to the rule laid down in Article 4(1) of that regulation therefore permits the practice of ritual slaughter as part of which an animal may be killed without first being stunned *solely in order to ensure observance of the freedom of religion* given that that form of slaughter is *insufficient to remove all of the animal's pain, distress and suffering as effectively as slaughter with pre-stunning,* which, in accordance with Article 2(f) of that regulation, read in the light of recital 20 thereof, is necessary to cause the animal to lose consciousness and sensibility in order significantly to reduce its suffering. (21)

57. Article 4(4) of Regulation No 1099/2009 thus reflects the desire of the EU legislature to respect the freedom of religion and the right to manifest religion or belief in worship, teaching, practice and observance, as enshrined in Article 10 of the Charter, despite the avoidable suffering caused to animals in the context of ritual slaughter in the absence of prior stunning. (22) That provision thereby gives effect, in my view, to the EU's commitment to a tolerant, plural society where divergent and, at times, conflicting views and beliefs subsist and must be reconciled.

58. It is clear nonetheless from paragraph 56 et seq. of the judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335), that *technical conditions or specifications* which seek to minimise the suffering of animals at the time of killing and ensure the health of all consumers of meat which are neutral and non-discriminatory in their application may be imposed on the freedom to carry out slaughter without prior stunning for religious purposes in order to organise and manage that slaughter. Thus, as already indicated, the Court considered at paragraph 68 of the judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335), that the requirement that such slaughter take place in a slaughterhouse (23) does *not* place a restriction on the right to freedom to practice one's religion. (24)

59. Moreover, in the judgment of 26 February 2019, *Oeuvre d'assistance aux bêtes d'abattoirs* (C−497/17, EU:C:2019:137, paragraphs 48 to 50), the Court, in essence, states that while animal welfare may be compromised to a certain degree in order to permit the practice of ritual slaughter, the derogation provided for by Article 4(4) of Regulation No 1099/2009 does not extend beyond what is *strictly necessary* in order to ensure observance of the freedom of religion. The substance of the beliefs in question extends to the consumption of the meat from animals slaughtered in accordance with religious rites.

60. In addition, it is clear, in my view, from that judgment that the practice of ritual slaughter of animals without prior stunning will result, in certain circumstances, in the products derived from that ritual being treated differently than products that have been derived from slaughter carried out in a manner which observes higher standards in the area of animal welfare.

61. It is evident that Article 4(4) of Regulation No 1099/2009, as a derogation to the rule contained in Article 4(1) of that regulation, must be interpreted strictly. This is necessary in order to protect animals to the greatest degree possible at the time of killing while at the same time ensuring observance of the freedom of religion and deeply held religious beliefs. Despite the obvious tension between these two – at times conflicting – objectives, the most striking aspect of the interplay between those provisions of Regulation No 1099/2009 is, in my view, the very strict language employed by Article 4(1) of that regulation and the scope of the prohibition contained therein. This is in contrast with the lack of any concrete or specific limits to the derogation contained in Article 4(4), other than the requirement that the slaughter in question be prescribed by religious rite and take place in a slaughterhouse. (25)

62. In this context, I cannot avoid observing that the terms 'in the case of animals subject to particular methods of slaughter prescribed by religious rites' contained in Article 4(4) of Regulation No 1099/2009 are regrettably vague and thus open to wide interpretation to the detriment of animal welfare. (26) The protection of animal welfare which is envisaged by Article 13 TFEU must, of course, be given real weight and meaning by the EU legislature. While it must yield in certain circumstances to the even more fundamental objective of securing religious freedoms and beliefs, these circumstances should themselves be clear and precise. One could legitimately ask whether all products derived from animals slaughtered under the guise of the derogation provided for in Article 4(4) of Regulation No 1099/2009 are indeed destined for consumption by persons who require such slaughter in order to comply with the prescriptions of their religion? There is evidence in the file before the Court that products derived from animals which have been slaughtered without being previously stunned are destined for consumption by members of the public who, aside from being unaware of this fact, do not require such slaughter in order to comply with any dietary rules prescribed by religion. (27) Indeed, there may well be consumers who would have religious, conscientious or moral objections to consuming such products given the avoidable suffering endured by the animals in question.

63. Despite the clear terms of Article 4(1) of Regulation No 1099/2009, it is difficult to avoid the conclusion that the only way for an EU consumer to ensure that animal products comply with Article 4(1) of Regulation No 1099/2009 is to consume products bearing the EU Organic logo. All of this is to say that while Member States are obliged to respect the deeply held religious beliefs of adherents to the Muslim and Jewish faiths by allowing for the ritual slaughter of animals in this manner, they also have obligations for the welfare of these sentient creatures. Specifically, a state of affairs whereby meat produce resulting from the slaughter of animals according to religious rites is simply allowed to enter the general food chain to be consumed by customers who are unaware – and who have not been made aware – of the manner in which the animals came to be slaughtered would not comply with either the spirit or the letter of Article 13 TFEU.

64. The file before the Court indicates that increasing numbers of Member States seek to qualify or limit in a variety of ways the scope of the derogation contained in Article 4(4) of Regulation No 1099/2009. This includes banning the slaughter of animals without prior stunning or banning the slaughter of animals in the absence of either prior (reversible) or post-cut stunning, on the basis of, inter alia, point (c) of the first subparagraph of Article 26(2) of that regulation.

65. It is the legitimacy of this practice in the light of the provisions of Regulation No 1099/2009, and in particular point (c) of the first subparagraph of Article 26(2) of that regulation, that is at the heart of the present reference for a preliminary ruling and to which I now turn.

C. Point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009

66. Article 26(1) of Regulation No 1099/2009 and Article 26(2) of that regulation permit Member States to maintain or adopt national rules aimed at ensuring more extensive protection of animals (28) at the time of killing than those contained in that regulation. Point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 provides in effect that more extensive protection of animals at the time of killing may be enacted by Member States in relation to the slaughtering and stunning (29) of animals in accordance with Article 4(4) of that regulation.

67. I consider that the wording itself of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 does *not* contemplate the elimination or quasi-elimination (30) by Member States of the practice of ritual slaughter. This is clear from the terms of the derogation contained in Article 4(4) of that regulation which is itself designed to protect freedom of religion. The general words of Article 26(2) cannot be read in such a manner as would take from the specific provisions of Article 4(4).

68. Rather, point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 maintains that derogation while permitting, pursuant to the principle of subsidiarity and in order to take into account national sensibilities to animal welfare, the adoption by Member States of additional or stricter national rules over and above the explicit requirement pursuant to Article 4(4) of that regulation that the slaughter of animals subject to particular methods of slaughter prescribed by religious rites take place in a slaughterhouse.

69. These additional rules might, for example, include the requirement of the presence of a qualified veterinarian at all times during the ritual slaughter (in addition to the requirements relating to a welfare officer contained in Article 17 of Regulation No 1099/2009) and that the person conducting that particular form of slaughter is appropriately trained, rules on the nature, size and sharpness of the knife used and the requirement of a second knife in the event that the first one becomes damaged during the slaughter.

70. Thus the adoption by Member States of stricter rules pursuant to point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 must take place *within the context of and with full regard to the nature of the derogation provided for by Article 4(4) of that regulation*. This does not mean, however, that Member States may avail of the power contained in Article 26(2) of Regulation No 1099/2009 in such a manner as would effectively nullify the derogation provided for in Article 4(4) of that regulation, a derogation which, after all, was itself designed to respect the religious freedoms of those adherents to the Jewish and Muslim faiths for whom ritual slaughter of animals was a key feature of their religious traditions, practices and, indeed, identity.

71. Indeed, recital 18 of Regulation No 1099/2009 explains that the possibility for Member States to maintain or adopt stricter national rules reflects the will of the EU legislature to 'leave a *certain level* of subsidiarity to each Member State' *while nonetheless maintaining the derogation from stunning animals prior to slaughter contained in Article 4(4) of Regulation No 1099/2009*. (31)

72. Point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 thus permits the adoption of stricter national rules in order to protect animal welfare provided that the 'core' of the religious practice in question, namely ritual slaughter, is not encroached upon. It thus does not authorise Member States to prohibit the slaughter of animals as prescribed by religious rites and explicitly permitted by Article 4(4) of Regulation No 1099/2009. (32)

73. In my view, any other interpretation of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, aside from being contrary to the wording itself of the provision in question (33) and the clear intent of the EU legislature, (34) would constitute a limitation on the freedom of religion

guaranteed by Article 10(1) of the Charter and would require explicit, detailed justification in accordance with the three-pronged test laid down in Article 52(1) of the Charter. It is sufficient here to observe that such a justification is absent from Regulation No 1099/2009.

74. Given that both the recitals of Regulation No 1099/2009 and the legislative language of Article 4(4) itself clearly indicate a desire to preserve the ritual slaughter of animals, the further jurisdiction granted to Member States pursuant to the provisions of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 (35) in respect of the slaughtering of animals in accordance with Article 4(4) is simply designed to enable them to take such additional measures as they may see fit designed to promote the welfare of the animals in question.

75. To repeat, therefore, these additional measures do not extend to prohibiting ritual slaughter without prior or post-cut stunning, since to do so would amount to negating the very nature of the exemption provided for in Article 4(4) of Regulation No 1099/2009. This in turn would compromise the essence of the religious guarantees contained in Article 10(1) of the Charter for those adherents of Judaism and Islam respectively for whom, as we have seen, these religious rituals are of profound personal religious importance. I therefore consider that in accordance with point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 and in line with the judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335), Member States may, for example, adopt technical conditions or specifications (36) which seek to minimise the suffering of animals at the time of killing and promote their welfare in addition to the requirement under Article 4(4) of that regulation that ritual slaughter take place in a slaughterhouse.

76. I do not consider it fruitful to speculate on which type of measures could lawfully be adopted by Member States on the basis of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, or indeed any other legal basis, as this is clearly beyond the scope of the current proceedings and has thus not been subject to any real debate in that context. (37) It is not the role of the Court to give advisory opinions on the matter. It is simply sufficient to say that this power does not extend as far as prohibiting ritual slaughter without stunning in the manner contemplated in the present proceedings by the Flemish legislature.

77. My interim conclusion is thus 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 of a religious rite, based on reversible stunning and on condition that the stunning should not result in the death of the animal.

78. Examination of the questions has not disclosed any issues capable of affecting the validity of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, having regard to Article 10(1) of the Charter.

79. These conclusions are not affected by the fact that it would always be open – in principle at any rate – for the Jewish and Muslim communities to import kosher meat and halal meat respectively. Quite apart from the fact that reliance on such imports would be somewhat precarious – the Court was, for example, informed at the hearing on 8 July 2020 that some Member States such as the Federal Republic of Germany and the Kingdom of the Netherlands have imposed export bans in respect of such meat products – it could hardly be satisfactory if this approach were to be adopted by every Member State. The fact remains that the core of the right guaranteed by Article 4(4) of Regulation No 1099/2009 applies without qualification in every Member State and the power to adopt additional rules in accordance with point (c) of the first subparagraph of Article 26(2) of that regulation cannot take from that.

80. The present proceedings nevertheless in their own way draw attention to the weakness of the present regulatory regime. If the requirements of Article 13 TFEU are to be treated as imposing real obligations on

Member States (as I believe that they must), then it behoves the EU legislature at a minimum to ensure that it is clearly and unequivocally indicated to all consumers when products have been derived from animals which have been killed without prior stunning.

81. Such an approach, which is *neutral and non-discriminatory*, by providing additional information to *all consumers* through the traceability and labelling of products derived from animals will allow them to make free and informed choices in relation to the consumption of such products. (38) This, moreover, would advance the case of animal welfare by reducing the suffering of animals at the time of killing while at the same time also protecting freedom of religion. (39)

D. Article 26(4) of Regulation No 1099/2009

82. The power granted to Member States to adopt additional or stricter national rules is, moreover, *also* qualified or limited by Article 26(4) of Regulation No 1099/2009. This provision states that such national rules may not hinder the free movement of the products of animal origin killed in another Member State with less extensive protection. Thus, as outlined in recital 57 of Regulation No 1099/2009, more extensive protection of animals at the time of killing is permitted, provided it does not prejudice the functioning of the internal market.

83. The referring court indicated in its request for a preliminary ruling that the Flemish legislature considered 'that the contested decree did not have any impact on the possibility for believers to obtain meat derived from animals slaughtered as prescribed by religious rites, given that no provision prohibits the importation of such meat into the Flemish region'.

84. I consider that the requirement imposed by Article 26(4) of Regulation No 1099/2009 that rules adopted by Member States on the basis of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 do not hinder the functioning of the internal market does not alter the fact that measures adopted by Member States on the basis of the latter provision *must operate* within the context of and in full compliance with the derogation provided for in Article 4(4) of that regulation. The fact that animal products which comply with particular methods of slaughter prescribed by religious rites can be obtained from another Member State will thus not in itself remedy a failure to comply with the requirements of Article 4(4) of Regulation No 1099/2009.

85. It is true that the ECtHR in *Cha'are Shalom Ve Tsedek v. France* (ECtHR, 20 June 2000, CE:ECHR:2000:0627JUD002741795) considered that there would be an interference with the freedom to manifests one's religion *only* if the illegality of performing ritual slaughter *made it impossible to eat meat from animals slaughtered in accordance with the relevant religious prescriptions*. Thus, according to the ECtHR, there is no interference with the freedom to manifest one's religion if meat compatible with a person's religious prescriptions can be easily obtained from another State. (40)

86. While the right guaranteed in Article 10(1) of the Charter corresponds to the right guaranteed in Article 9 of the ECHR, to which all Member States are signatories and, in accordance with Article 52(3) of the Charter, has the same meaning and scope, it is clear that the EU legislature, by adopting Article 4(4) and requiring Article 26 of Regulation No 1099/2009 to operate within the confines of the former provision, intended to grant a more specific protection to the freedom of religion than that which may have been required by Article 9 of the ECHR.

87. There is, I think, no avoiding the fact that the preservation of the religious rites of animal slaughter often sits uneasily with modern conceptions of animal welfare. The Article 4(4) derogation is, nevertheless, a policy choice which the EU legislature was certainly entitled to take. It follows that this Court cannot allow this specific policy choice to be hollowed out by individual Member States taking specific action in the name of animal welfare which would have the substantive effect of nullifying the derogation in favour of certain religious adherents. None of this, however, renders Article 26 of Regulation No 1099/2009, and in particular point (c) of the first subparagraph of Article 26(2) of that regulation, incompatible with Article 10(1) of the Charter.

VI. Conclusion

88. I would accordingly propose that the first and second questions referred by the Grondwettelijk Hof (Constitutional Court, Belgium) be answered as follows:

Point (c) of the first subparagraph of Article 26(2) of Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, read together with Article 4(1) and 4(4) thereof, and having regard to Article 10 of the Charter of Fundamental Rights of the European Union 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 of a religious rite, based on reversible stunning and on condition that the stunning should not result in the death of the animal.

Examination of the questions has not disclosed any issues capable of affecting the validity of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, having regard to Article 10(1) of the Charter.

---

1 Original language: English.

---

2 The scope of the national rules in question are limited to vertebrates rather than animals in general. The scope of the proceedings before the Court are accordingly limited.

---

3 The referring court also indicated that by the decree of 18 May 2017 ‘amending Articles 3, 15 and 16 and inserting an Article 45ter into the Law of 14 August 1986 on the protection and welfare of animals’ the Walloon Region adopted rules whose content is very similar to that of the decree of the Flemish Region. Moreover, it is clear from the file before the Court that a number of Member States have enacted similar bans on the killing of animals without stunning in order to protect animal welfare.

---

4 Regulation of 24 September 2009 on the protection of animals at the time of killing (OJ 2009 L 303, p. 1).

---

5 See recital 18 of Regulation No 1099/2009 and judgments of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335, paragraphs 53 and 55 to 57), and of 26 February 2019, *Oeuvre d’assistance aux bêtes d’abattoirs* (C−497/17, EU:C:2019:137, paragraph 48).

---

6 See recital 18 of Regulation No 1099/2009.

---

7 For a more detailed presentation of these arguments, as well as the arguments of the other parties before the referring court, see the request for a preliminary ruling to the present case.

---

8 See point B.23.2 of the request for a preliminary ruling and page 6 of the English translation.

---

9 The Commission states that the said notification took place on 27 November 2018.

---

10 It must be noted in that regard that the Grondwettelijk Hof (Constitutional Court) considered at point B.22.3 of the request for a preliminary ruling that the contested decree had been notified to the Commission on time given that no deadline was set by the second subparagraph of Article 26(2) of Regulation No 1099/2009 and in accordance with Article 6 of that decree, the contested decree did not enter into force until 1 January 2019.

---

11 See also Opinion of Advocate General Wahl in *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2017:926, points 51 to 54), and Opinion of Advocate General Wahl in *Oeuvre d'assistance aux bêtes d'abattoirs* (C−497/17, EU:C:2018:747, points 46 and 47). At point 51 of the latter opinion, Advocate General Wahl stated: 'There are at present on the market products labelled "halal" which come from the slaughter of animals carried out with prior stunning. Likewise, it has been shown that meat from animals slaughtered without being stunned is distributed through normal channels, without customers being informed. … Ultimately, the placing of a "halal" label on products says very little about the use of stunning when the animals were slaughtered and, where relevant, about the method of stunning chosen.'

---

12 C−243/19, EU:C:2020:325, point 5.

---

13 I do accept that this approach – which is rooted in the necessary respect for different religious views and traditions which is an indispensable feature of the guarantee of religious freedom contained in Article 10(1) of the Charter – may sit somewhat uneasily with the fact that Article 4(4) of Regulation No 1099/2009, as a derogation to Article 4(1), must be interpreted strictly.

---

14 See also Opinion of Advocate General Wahl in *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2017:926, point 57). See also the European Court of Human Rights (the 'ECtHR') joint dissenting opinion, Judges Bratza, Fischbach, Thomassen, Tsatsa-Nikolovska, Panţîru, Levits and Traja in *Cha'are Shalom Ve Tsedek v. France* (ECtHR, 20 June 2000, CE:ECHR:2000:0627JUD002741795, §1) in which they stated that 'while it is possible for tension to be created where a community, and a religious community in particular, is divided, this is one of the unavoidable consequences of the need to respect pluralism. In such a situation the role of the public authorities is not to remove any cause of tension by eliminating pluralism, but to take all necessary measures to ensure that the competing groups tolerate each other'. The ECtHR in its judgment of 17 March 2014, *Vartic v. Romania* (CE:ECHR:2013:1217JUD001415008), stated at paragraph 34 that '[the] freedom of thought, conscience and religion denotes views that attain a certain level of cogency, seriousness, cohesion and importance … Still, the Court has held that the State's duty of neutrality and impartiality, as defined in its case-law … is incompatible with any power on the State's part to assess the legitimacy of religious beliefs …'.

---

15 This accommodation of religious beliefs is evidenced by the exceptions contained in the contested decree for reversible stunning not causing the death of the animal and the post-cut stunning of cattle.

---

16 The referring court stated in its request for a preliminary ruling that it is clear from the legislative history that the Flemish legislature started from the principle that slaughter without stunning causes the animal avoidable suffering. By the contested decree, the legislature therefore intended to promote the welfare of animals. Moreover, the Flemish legislature was aware that the contested decree affects freedom of religion and sought to strike a balance between, on the one hand, its objective of promoting the welfare of animals and, on the other, respect for freedom of religion.

---

17 See judgments of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335, paragraphs 53 and 55 to 57), and of 26 February 2019, *Oeuvre*

d'assistance aux bêtes d'abattoirs (C−497/17, EU:C:2019:137, paragraph 48).

---

18 In the judgment of 14 March 2017, *G4S Secure Solutions* (C−157/15, EU:C:2017:203, paragraph 27), the Court stated that as is apparent from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the right guaranteed in Article 10(1) of the Charter corresponds to the right guaranteed in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. It is settled case-law that the ECHR does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law. Thus an examination of the validity of Regulation No 1099/2009 may be undertaken solely in the light of the fundamental rights guaranteed by the Charter. See judgment of 28 July 2016, *Ordre des barreaux francophones et germanophone and Others* (C−543/14, EU:C:2016:605, paragraph 23 and the case-law cited).

---

19 That is an establishment which is subject to authorisation granted by the competent national authorities and which, for those purposes, complies with the technical requirements relating to the construction, layout and equipment required by Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55, and corrigendum OJ 2004 L 226, p. 22).

---

20 Judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335, paragraph 56).

---

21 Judgment of 26 February 2019, *Oeuvre d'assistance aux bêtes d'abattoirs* (C−497/17, EU:C:2019:137, paragraph 48). The Court noted at paragraph 49 of that judgment that 'while recital 43 of Regulation No 1099/2009 states that slaughter 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" …'.

---

22 See recital 18 of Regulation No 1099/2009.

---

23 See, by analogy, ECtHR, 27 June 2000, *Cha'are Shalom Ve Tsedek v. France* (CE:ECHR:2000:0627JUD002741795, § 76 and 77), in which the Grand Chamber of the ECtHR stated '… that by establishing an exception to the principle that animals must be stunned before slaughter, French law gave practical effect to a positive undertaking on the State's part intended to ensure effective respect for freedom of religion. The 1980 decree, far from restricting exercise of that freedom, is on the contrary calculated to make provision for and organise its free exercise. The Court further considers that the fact that the exceptional rules designed to regulate the practice of ritual slaughter permit only ritual slaughterers authorised by approved religious bodies to engage in it does not in itself lead to the conclusion that there has been an interference with the freedom to manifest one's religion. The Court considers, like the Government, that it is in the general interest to avoid unregulated slaughter, carried out in conditions of doubtful hygiene, and that it is therefore preferable, if there is to be ritual slaughter, for it to be performed in slaughterhouses supervised by the public authorities …'.

---

24 Given that the requirement in question did *not* constitute a limitation or a restriction on the freedom of religion recognised by Article 10(1) of the Charter, that requirement did not have to be examined in the light of the three-pronged test laid down in Article 52(1) of the Charter. That test requires that a limitation on the exercise, inter alia, of the freedom of religion (i) be provided for by law, (ii) respect the essence of that freedom and (iii) respect the principle of proportionality pursuant to which limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the EU or the need to protect the rights

and freedoms of others. While it may be difficult to surmount the three-pronged test in question in certain circumstances, it is clear in my view from the Court's reasoning in paragraph 58 et seq. of the judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C−426/16, EU:C:2018:335), that the requirement that ritual slaughter take place in a slaughterhouse would – if it had been considered a restriction – have met that three-pronged test.

---

25 This is not to suggest that ritual slaughter is not subject to any other conditions under Regulation No 1099/2009 in order to limit the suffering of animals at the time of death. As indicated by Advocate General Wahl in his Opinion in *Oeuvre d'assistance aux bêtes d'abattoir*s (C−497/17, EU:C:2018:747, points 79 and 80), the ritual slaughter of animals in accordance with Article 4(4) of Regulation No 1099/2009 must 'be carried out in conditions that ensure that the suffering of animals will be limited. Thus, recital 2 of Regulation No 1099/2009 states, in particular, that "business operators or any person involved in the killing of animals should take the necessary measures to avoid pain and minimise the distress and suffering of animals during the slaughtering or killing process, taking into account the best practices in the field and the methods permitted under this Regulation". Recital 43 of that regulation states that "slaughter without stunning requires an accurate cut of the throat with a sharp knife to minimise suffering". Furthermore, in accordance with Article 9(3) and the first paragraph of Article 15(2) of that regulation, animals must be individually restrained and may be restrained only when "the person in charge of stunning or bleeding is ready to stun or bleed them as quickly as possible". Last, under Article 5(2) of Regulation No 1099/2009, "where, for the purpose of Article 4(4), animals are killed without prior stunning, persons responsible for slaughtering shall carry out systematic checks to ensure that the animals do not present any signs of consciousness or sensibility before being released from restraint and do not present any sign of life before undergoing dressing or scalding"'.

---

26 This is particularly the case when what is in question is a derogation to the very strict and unequivocal rule contained in Article 4(1) of Regulation No 1099/2009.

---

27 For example, the Commission indicated in its observations to the Court that the statistics relating to animal slaughter in Flanders between 2010 and 2016 produced during the legislative procedure leading to the adoption of the contested decree 'seem to indicate clearly that a high proportion of the meat from ritual slaughter without stunning probably found its way into the ordinary food chain, which is, of course, not subject to any religious "requirement"'. The Commission also stated that the reason for this is economic as the slaughter industry has an interest in keeping the final destination of meat derived from an animal slaughtered without stunning as open as possible and, for example, in offering certain cheaper parts of the animal on the halal market (in the form of merguez sausages, for example), while other more expensive parts (such as the fillet) end up in the ordinary food chain. Moreover, according to the Commission, as a general rule, about half of a slaughtered animal is rejected as not meeting the requirements for kosher meat, so that this meat will most likely end up in the regular food chain.

---

28 These terms are undefined. I have no doubt, however, that by requiring prior reversible stunning of animals or post-cut stunning of cattle, the contested decree provides more extensive protection than that of Article 4(4) of Regulation No 1099/2009 and thus, in principle, falls within the terms of point (c) of the first subparagraph of Article 26(2) of that regulation.

---

29 See use of the term 'related operations'. I would note that that term which refers also to the handling of the animal at the time of slaughter is very broad in scope and is by no means limited to or indeed primarily focused on the 'stunning' of animals.

---

30 Thus undermining the *effet utile* of the derogation contained in Article 4(4) of Regulation No 1099/2009.

---

31 See also recital 57 of Regulation No 1099/2009 which refers to the fact that it is 'appropriate to allow Member States *certain flexibility* to maintain or, in certain specific fields, adopt more extensive national rules'. Emphasis added.

---

32 Moreover, despite the considerable effort expended by the Flemish legislature to accommodate as far as possible the views of the Muslim and Jewish communities by the introduction of the exceptions in relation to prior reversible stunning not leading to the death of the animal or post-cut stunning in the case of cattle, it is clear from the file before the Court, subject to verification by the referring court, that such accommodation does not satisfy the core tenets of the religious rites in question as far as certain representatives of those communities are concerned.

---

33 And thus *contra legem*.

---

34 Recital 18 of Regulation No 1099/2009 states that 'this Regulation respects the freedom of religion and the right to manifest religion …, as enshrined in Article 10 of the Charter …'.

---

35 And indeed the principle of subsidiarity. It is clear that the EU legislature did not envisage full harmonisation of this particular matter.

---

36 The file before the Court indicates that many Member States have interpreted the concepts of 'more extensive protection' or 'stricter national rules' as enabling them to impose additional technical requirements on the manner in which animals are slaughtered, most notably, by requiring prior or post-cut stunning. I consider that more extensive protection or such rules can also relate to measures which are not directed specifically at the manner in which individual animals are slaughtered but rather at measures which seek to ensure that the number of animals slaughtered in accordance with the derogation contained in Article 4(4) of Regulation No 1099/2009 does not exceed what is necessary in order to satisfy the dietary requirements of particular religious groups. In that regard, I do accept that there is a degree of conceptual overlap between Article 4(4) and point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009. This is due undoubtedly to the somewhat vague nature of the former provision. What is clear, however, is that the substance of these rites – which are for many adherents of both the Jewish and Muslim faiths a key part of their religious tradition and experience – must enjoy protection under Regulation No 1099/2009 as interpreted by reference to Article 10(1) of the Charter.

---

37 Examples of such technical measures have been outlined at point 69 of this Opinion. The labelling of the products in question in order to clearly inform consumers that meat is derived from an animal which was not stunned might also be a desirable legislative change. An indication that meat is kosher or halal is directed only at certain religious groups rather than at all consumers of products derived from animals and is thus not, in my view sufficient in that regard. See points 80 and 81 of this Opinion.

---

38 See by analogy, Article 3(1) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18), which provides that 'the provision of food information shall pursue a high level of protection of consumers' health and interests by providing a basis for final consumers to make informed choices and to make safe use of food, with particular regard to health, economic, environmental, *social and ethical considerations*'. Emphasis added. The role of ethical considerations in the labelling of foodstuffs in the context of Regulation No 1169/2011 was examined by

the Court in its judgment of 12 November 2019, *Organisation juive européenne and Vignoble Psagot* (C−363/18, EU:C:2019:954) and by me in my Opinion in that case (C−363/18, EU:C:2019:494).

---

39 Of *both* those whose religion requires ritual slaughter and of those who have religious, conscientious or moral objections to the slaughter of animals without stunning.

---

40 In their joint dissenting opinion in *Cha'are Shalom Ve Tsedek v. France* (ECtHR, 20 June 2000, CE:ECHR:2000:0627JUD002741795), Judges Bratza, Fischbach, Thomassen, Tsatsa-Nikolovska, Panţîru, Levits and Traja considered that the mere fact that approval to conduct ritual slaughter had already been granted to one religious body did not absolve the French authorities from the obligation to give careful consideration to any later application made by other religious bodies professing the same religion. They considered that withholding approval from the applicant association, while granting such approval to another association and thereby conferring on the latter the exclusive right to authorise ritual slaughterers, amounted to a failure to secure religious pluralism or to ensure a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. Moreover, the fact that 'glatt' meat (the slaughtered animal must not have any impurity) could be imported to France from Belgium did not justify, in their view, the conclusion that there was no interference with the right to practise one's religion through the performance of the rite of ritual slaughter. They found that the possibility of obtaining such meat by other means was irrelevant for the purposes of assessing the scope of an act or omission on the part of the State aimed at restricting exercise of the right to freedom of religion.