

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

17 December 2020 (1)

(Reference for a preliminary ruling – Protection of animals at the time of killing – Regulation (EC) No 1099/2009 – Article 4(1) – Obligation to stun animals before they are killed – Article 4(4) – Derogation in the context of ritual slaughter – Article 26(2) – Power of Member States to adopt national rules aimed at ensuring more extensive protection of animals in the case of ritual slaughter – Interpretation – National legislation requiring, in the case of ritual slaughter, stunning which is reversible and cannot cause death – Article 13 TFEU – Charter of Fundamental Rights of the European Union – Article 10 – Freedom of religion – Freedom to manifest religion – Limitation – Proportionality – Lack of consensus among the Member States of the European Union – Discretion afforded to Member States – Principle of subsidiarity – Validity – Differing treatment of ritual slaughter and the killing of animals during hunting or recreational fishing activities and cultural or sporting events – No discrimination – Articles 20, 21 and 22 of the Charter of Fundamental Rights)

In Case C-336/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Grondwettelijk Hof (Constitutional Court, Belgium), made by decision of 4 April 2019, received at the Court on 18 April 2019, in the proceedings

**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,**

v

**Vlaamse Regering,**

intervening parties:

**LI,**

**Waalse Regering,**

**Kosher Poultry BVBA and Others,**

**Global Action in the Interest of Animals VZW (GAIA),**

## THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal, E. Regan, M. Ilešič, L. Bay Larsen and A. Kumin, Presidents of Chambers, T. von Danwitz, C. Toader, M. Safjan, D. Šváby (Rapporteur), L.S. Rossi, I. Jarukaitis and N. Jääskinen, Judges,

Advocate General: G. Hogan,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 July 2020,

after considering the observations submitted on behalf of:

- the Centraal Israëlitisch Consistorie van België and Others and Kosher Poultry BVBA and Others, by E. Maes and C. Caillet, advocaten, and by E. Jacobowitz, avocat,
- the Unie Moskeeën Antwerpen VZW and the Islamitisch Offerfeest Antwerpen VZW, by I. Akrouh, advocaat,
- the Executief van de Moslims van België and Others, by J. Roets, advocaat,
- the Coördinatie Comité van Joodse Organisaties van België – Section belge du Congrès juif mondial et Congrès juif européen VZW and Others, by E. Cloots, advocaat,
- LI, by himself,
- the Vlaamse Regering, by V. De Schepper and J.-F. De Bock, advocaten,
- the Waalse Regering, by X. Drion, advocaat,
- Global Action in the Interest of Animals VZW (GAIA), by A. Godfroid, advocaat,
- the Danish Government, by J. Nymann-Lindgren, P. Jespersen, P. Ngo and M. Wolff, acting as Agents,
- the Finnish Government, by J. Heliskoski and H. Leppo, acting as Agents,
- the Swedish Government, by H. Eklinder, C. Meyer-Seitz, H. Shev, J. Lundberg and A. Falk, acting as Agents,
- the Council of the European Union, by F. Naert and E. Karlsson, acting as Agents,
- the European Commission, by H. Krämer, A. Bouquet and B. Eggers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 September 2020,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2009 L 303, p. 1) and the validity of that provision in the light of Articles 10, 20, 21 and 22 of the Charter of Fundamental Rights of the European Union ('the Charter').

- 2 The request has been made in proceedings between, on the one hand, the Centraal Israëlitisch Consistorie van België and Others (together, ‘the CICB and Others’), the Unie Moskeeën Antwerpen VZW and the Islamitisch Offerfeest Antwerpen VZW, JG and KH, the Executief van de Moslims van België and Others, and the Coördinatie Comité van Joodse Organisaties van België – Section belge du Congrès juif mondial et Congrès juif européen VZW and Others and, on the other, the Vlaamse Regering (Flemish Government, Belgium) concerning the validity of the decreet 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 amending the Law of 14 August 1986 on the protection and welfare of animals, regarding permitted methods of slaughtering animals), of 7 July 2017 (*Belgisch Staatsblad*, 18 July 2017, p. 73318).

## Legal context

### *EU law*

- 3 Recitals 2, 4, 6, 11, 14 to 16, 18, 20, 21, 43, 57 and 58 of Regulation No 1099/2009 state:

(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 [an EU] value that is enshrined in the Protocol (No 33) on protection and welfare of animals annexed to the [EC Treaty]. 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.

...

(6) The European Food Safety Authority (EFSA), established by Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [(OJ 2002 L 31, p. 1)], has adopted two opinions on the welfare aspects of the main systems of stunning and killing of certain species of animals, namely on the welfare aspects of the main systems of stunning and killing the main commercial species of animals, in 2004, and on the welfare aspects of the main systems of stunning and killing applied to commercially farmed deer, goats, rabbits, ostriches, ducks, geese and quail, in 2006. [EU] law in this area should be updated to take into account those scientific opinions. ... Recommendations on farm fish are not included in this Regulation because there is a need for further scientific opinion and economic evaluation in this field.

...

(11) Fish present substantial physiological differences from terrestrial animals and farmed fish are slaughtered and killed in a very different context, in particular as regards the inspection process.

Furthermore, research on the stunning of fish is far less developed than for other farmed species. Separate standards should be established on the protection of fish at killing. Therefore, provisions applicable to fish should, at present, be limited to the key principle. Further initiatives by the [European Union] should be based on a scientific risk assessment for the slaughter and killing of fish performed by EFSA and taking into account the social, economic and administrative implications.

...

- (14) Hunting or recreational fishing activities take place in a context where conditions of killing are very different from the ones used for farmed animals and hunting is subject to specific legislation. It is therefore appropriate to exclude killings taking place during hunting or recreational fishing from the scope of this Regulation.
- (15) Protocol No (33) underlines the need to respect the legislative or administrative provisions and customs of the Member States relating, in particular, to religious rites, cultural traditions and regional heritage when formulating and implementing the [European Union's] policies on, *inter alia*, agriculture and the internal market. It is therefore appropriate to exclude from the scope of this Regulation cultural events, where compliance with animal welfare requirements would adversely affect the very nature of the event concerned.
- (16) In addition, cultural traditions refer to an inherited, established, or customary pattern of thought, action or behaviour which includes in fact the concept of something transmitted by, or acquired from, a predecessor. They contribute to fostering long-standing social links between generations. Provided that those activities do not affect the market of products of animal origin and are not motivated by production purposes, it is appropriate to exclude the killing of animals taking place during those events from the scope of this Regulation.

...

- (18) Derogation from stunning in case of religious slaughter taking place in slaughterhouses was granted by [Council] Directive 93/119/EC [of 22 December 1993 on the protection of animals at the time of slaughter or killing (OJ 1993 L 340, p. 21)]. Since [EU] 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].

...

- (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.
- (21) Monitoring stunning efficiency is mainly based on the evaluation of consciousness and sensibility of the animals. The consciousness of an animal is essentially its ability to feel emotions and control its voluntary mobility. Despite some exceptions, such as electro-immobilisations or other provoked paralysis, an animal can be presumed to be unconscious when it loses its natural standing position, is not awake and does not show signs of positive or negative emotions such as fear or excitement. Sensibility of an animal is essentially its ability to feel pain. In general, an animal can be presumed to be insensitive when it does not show any reflexes or reactions to stimulus such as sound, odour, light or physical contact.

...

- (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 [EU] 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.

- (58) In some areas within the scope of this Regulation, the Council needs further scientific, social and economic information before establishing detailed rules, in particular, in the case of farmed fish and concerning the restraint by inversion of cattle. As a consequence, it is necessary that the Commission provide this information to the Council before proposing any amendment in those areas of this Regulation.'

4 Article 1 of that regulation, 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.

However as regards fish, only the requirements laid down in Article 3(1) shall apply.

...

3. This Regulation shall not apply:

(a) where animals are killed:

- (i) during scientific experiments carried out under the supervision of a competent authority;
- (ii) during hunting or recreational fishing activities;
- (iii) during cultural or sporting events;

(b) to poultry, rabbits and hares slaughtered outside of a slaughterhouse by their owner for his/her private domestic consumption.'

5 Article 2 of Regulation No 1099/2009, entitled 'Definitions', provides:

'For the purposes of this Regulation, the following definitions shall apply:

...

- (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;
- (h) “cultural or sporting events” means events which are essentially and predominantly related to long established cultural traditions or sporting activities, including racing or other forms of competitions, where there is no production of meat or other animal products or where that production is marginal compared to the event as such and not economically significant;
- ...
- (j) “slaughtering” means the killing of animals intended for human consumption;
- ...’

6 Article 3 of that regulation, entitled ‘General requirements for killing and related operations’, provides in paragraph 1 thereof:

‘Animals shall be spared any avoidable pain, distress or suffering during their killing and related operations.’

7 Article 4 of Regulation No 1099/2009, which is devoted to ‘stunning methods’, provides:

‘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 ... 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.’

8 Article 5 of that regulation, entitled ‘Checks on stunning’, provides in paragraph 2 thereof:

‘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.’

9 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.'

10 Article 27 of that regulation, entitled 'Reporting', provides in paragraph 1 thereof:

'No later than 8 December 2014, the Commission shall submit to the European Parliament and to the Council a report on the possibility of introducing certain requirements regarding the protection of fish at the time of killing taking into account animal welfare aspects as well as the socioeconomic and environmental impacts. This report shall, if appropriate, be accompanied by legislative proposals with a view to amending this Regulation, by including specific rules regarding the protection of fish at the time of killing.

Pending the adoption of these measures, Member States may maintain or adopt national rules regarding the protection of fish at the time of slaughter or killing and shall inform the Commission thereof.'

### ***Belgian law***

11 The first subparagraph of Article 16(1) of the Wet betreffende de bescherming en het welzijn der dieren (Law on the protection and welfare of animals) of 14 August 1986 (*Belgisch Staatsblad*, 3 December 1986, p. 16382), in the version in force before the decree at issue in the main proceedings was adopted, laid down the obligation not to slaughter an animal without prior stunning or, in the event of *force majeure*, to use the least painful method. However, the second subparagraph of Article 16(1) stated that, by way of derogation, that obligation did not apply to 'slaughter prescribed by a religious rite'.

12 The decree at issue in the main proceedings, which entered into force on 1 January 2019, brought that derogation to an end in the case of the Flemish Region. Article 15(2) of the Law on the protection and welfare of animals, in the version amended by Article 3 of that decree, provides that 'if the animals are slaughtered according to special methods required for religious rites, the stunning must be reversible and the animal's death must not be caused by stunning'.

13 The preparatory documents for that decree state as follows:

'Flanders attaches great importance to animal welfare. The objective is, therefore, to eliminate all avoidable animal suffering in Flanders. The slaughter of animals without stunning is incompatible with that principle. Although other measures, less drastic than a ban on slaughtering without prior stunning, could somewhat limit the negative impact of that method of slaughter on animal welfare, such measures cannot prevent a very serious impairment of that welfare from continuing to exist. The gap between eliminating animal suffering, on the one hand, and slaughtering without prior stunning, on the other, will

always be very considerable, even if less radical measures were taken to minimise the impairment of animal welfare.

Nevertheless, a balance must be sought between the protection of animal welfare and freedom of religion.

Both Jewish and Islamic religious rites require the animal to be drained of as much of its blood as possible. Scientific research has shown that the fear that stunning would adversely affect bleeding out is unfounded ...

Furthermore, both rites require that the animal be intact and healthy at the time of slaughter and that it die from bleeding. ... Electronarcosis is a reversible (non-lethal) method of stunning in which the animal, if it has not had its throat cut in the meantime, regains consciousness after a short period and does not feel any negative effects of stunning. If the animal's throat is cut immediately after stunning, its death will be purely due to bleeding. In view of this, the conclusion set out in Mr Vanthemsche's report may be followed. According to that conclusion, the application of reversible, non-lethal stunning during the practice of ritual slaughter constitutes a proportionate measure which respects the spirit of ritual slaughter in the framework of freedom of religion and takes maximum account of the welfare of the animals concerned. At the very least, the obligation to use electronarcosis for slaughter carried out in accordance with special methods required by religious rites does not, therefore, constitute a disproportionate interference with freedom of religion.'

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 14 By applications lodged on 17 and 18 January 2018, the applicants in the main proceedings brought actions before the Grondwettelijk Hof (Constitutional Court, Belgium), the referring court, seeking the annulment of the decree at issue in the main proceedings, on the ground that it infringes, inter alia, Article 4(4) and Article 26(2) of Regulation No 1099/2009, in that it deprives Jewish and Muslim believers of the guarantee that ritual slaughtering may not be subject to a requirement of prior stunning. That decree, it is argued, prevents all those believers, not just a minority of them, from practising their religion, in not allowing them to obtain meat from animals slaughtered in accordance with their religious precepts, since those precepts preclude the reversible stunning technique.
- 15 As is apparent from the order for reference, the applicants in the main proceedings explain that, under Article 4(1) of Regulation No 1099/2009, read in conjunction with recital 20 of that regulation, animals should, as a rule, be stunned before being slaughtered, that is to say, the loss of consciousness and sensibility should be maintained until the animal's death.
- 16 However, in accordance with Article 4(4) of that regulation, the obligation to stun does not apply to the slaughter of animals carried out in accordance with particular methods prescribed by religious rites. According to recital 18 of that regulation, that exception is dictated by the objective of respecting freedom of religion, guaranteed in Article 10(1) of the Charter, as the Court noted in the judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C-426/16, EU:C:2018:335, paragraphs 56 and 57).
- 17 The Grondwettelijk Hof (Constitutional Court) observes in that regard that since 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'), the Court of Justice inferred from this that the concept of 'religion' may cover both the *forum internum*, that is, the holding of beliefs, and the *forum externum*, that is, the manifestation of religious faith in public.
- 18 According to the Grondwettelijk Hof (Constitutional Court), the particular methods of slaughter prescribed by religious rites and the respect for religious dietary rules fall within the scope of freedom of religion and can be regarded as a manifestation of a religious belief in public, as provided for in Article 9



of the ECHR and Article 10(1) of the Charter. In particular, ritual slaughter is intended to provide the faithful concerned with meat from animals slaughtered in accordance with their religious beliefs. The European Court of Human Rights has indeed held, in that regard, in the judgment of 27 June 2000, *Cha'are Shalom V<sup>e</sup> Tzedek v. France* (CE:ECHR:2000:0627JUD002741795, § 82), that, where believers are not deprived of the possibility of obtaining and consuming meat from animals slaughtered in accordance with their religious beliefs, the right to freedom of religion cannot extend to the right to take part in person in the performance of ritual slaughter.

19 However, the applicants in the main proceedings submit that the Member States cannot use point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 to render meaningless the derogation from the obligation to stun, during ritual slaughter, provided for in Article 4(4) of that regulation.

20 In addition, the applicants submit that the decree at issue in the main proceedings disproportionately restricts freedom of religion, particularly because meat from bovine animals slaughtered in accordance with religious precepts represents only 0.1% of the total amount of meat produced in Belgium and the cases in which prior stunning fails exceed that percentage. In addition, it is argued that the Jewish community is not certain of being able to obtain sufficient meat from animals slaughtered in accordance with the precepts of the Jewish religion. The Legislation Division of the Raad van State (Council of State, Belgium) has moreover deduced from this that the prohibition on slaughter without prior stunning interferes disproportionately with freedom of religion.

21 The applicants further submit that the decree at issue in the main proceedings also infringes freedom of religion in that it prevents adherents to the Jewish religion from slaughtering animals in accordance with the *shechita*, namely the rite of slaughter specific to that religion. In that regard, the fact that meat from animals slaughtered in accordance with religious precepts may be imported from abroad cannot be taken into consideration.

22 Lastly, the applicants dispute the Flemish legislature's premiss that the reversible stunning procedure which does not result in the animal's death complies with ritual slaughter requirements.

23 Conversely, the Flemish and Walloon Governments consider that point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 expressly empowers Member States to depart from Article 4(4) of that regulation.

24 The referring court notes, first, that the derogation from the obligation in principle to stun prior to killing, provided for in Article 4(4) of Regulation No 1099/2009, is intended to ensure respect for freedom of religion, guaranteed in Article 10(1) of the Charter and, secondly, that point (c) of the first subparagraph of Article 26(2) of that regulation, read in conjunction with recitals 18 and 57 thereof, authorises Member States, with a view to promoting animal welfare, to derogate from Article 4(4) of that regulation, without however specifying the limits which Member States must observe in that regard.

25 The question therefore arises whether point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 may be interpreted as authorising Member States to adopt national rules such as those at issue in the main proceedings and, if so, whether that provision is compatible with freedom of religion as guaranteed in Article 10(1) of the Charter.

26 In that regard, the referring court states that the decree at issue in the main proceedings brought to an end, with effect from 1 January 2019, the derogation, in the case of ritual slaughter, from the obligation of prior stunning. It is also apparent from the preparatory documents for that decree that the Flemish legislature started from the position that slaughtering without stunning causes an animal avoidable suffering. It therefore sought to promote animal welfare and to strike a balance between the objective of promoting animal welfare and the objective of guaranteeing freedom of religion.

27 From that point of view, in order to reflect the wishes of the religious communities concerned as far as possible, Article 15(2) of the Law of 14 August 1986, as amended by the decree at issue in the main

proceedings, now requires, in the context of ritual slaughter, reversible stunning which cannot result in the animal's death. The preparatory documents for that decree thus show that the Flemish legislature considered that that provision reflects the wishes of the religious communities concerned, since where reversible stunning is applied, the religious precepts requiring that the animal not be dead at the time of slaughter and that its blood be completely drained are respected.

28 The legislative amendment made cannot, however, be interpreted as requiring all religious communities to accept the reversible stunning technique. In addition, as is apparent from the preparatory documents for the decree at issue in the main proceedings, that decree does not affect the possibility for the members of those communities of obtaining meat from animals slaughtered without prior stunning, given that there is no provision prohibiting the importation of such meat into the Flemish Region. In any event, such a ban on imports would be contrary to Article 26(4) of Regulation No 1099/2009.

29 The applicants in the main proceedings submit, however, that an increasing number of Member States, following the example of the Flemish Region, prohibit the slaughter of animals without stunning or, at the very least, the export of meat from animals slaughtered in accordance with religious precepts, which jeopardises the supply of that type of meat to the Flemish Region. Furthermore, certification of the imported meat does not provide certainty that the meat actually comes from animals slaughtered in accordance with religious precepts.

30 The Flemish and Walloon Governments counter that a number of Member States do not have a general prohibition of that sort on killing without prior stunning and that trade in meat does not stop at the borders of the European Union.

31 Lastly, the applicants in the main proceedings submit that if point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 were to be interpreted as authorising Member States to take measures such as those provided for by the decree at issue in the main proceedings, it would infringe the principles of equality, non-discrimination and religious diversity, guaranteed in Articles 20, 21 and 22 of the Charter respectively. In that context, the applicants observe that the above decree, adopted pursuant to that regulation, treats differently, without any reasonable justification, those who kill animals while hunting or fishing or in the context of pest control and those who kill animals in accordance with particular methods of slaughter prescribed by a religious rite.

32 In those circumstances the Grondwettelijk Hof (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice 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 ... Article 4(4) of that regulation and with a view to promoting animal welfare, to adopt rules such as those contained in the decree [at issue in the main proceedings], rules which provide, on the one hand, for a prohibition on the slaughter of animals without stunning that also applies to the slaughter carried out in the context of a religious rite 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 the requirement 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) [of that regulation]), 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) [of that regulation])?’

### **The application for the oral procedure to be reopened**

33 By document lodged at the Court Registry on 2 October 2020, the CICB and Others and Kosher Poultry and Others applied for the oral procedure to be reopened pursuant to Article 83 of the Rules of Procedure of the Court of Justice.

34 In support of their application, the CICB and Others and Kosher Poultry and Others submit, in essence, that on 18 September 2020 the Sejm (lower house of parliament, Poland) adopted a draft law prohibiting the export of meat from animals killed in the context of ritual slaughter. Since that Member State represents, for the Belgian Jewish community, the largest supplier of kosher meat and there is no practical alternative solution available, the adoption of such a draft law further establishes the disproportionate nature of the decree at issue in the main proceedings and, consequently, constitutes a new fact which is of such a nature as to be a decisive factor for the Court’s decision.

35 Under Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the Court’s decision, or where the case must be decided on the basis of an argument which has not been debated between the interested parties.

36 That is not the case here.

37 At the hearing, the Court, by means of a question put to the Flemish Region, to which all the participants were able to respond, envisaged the hypothetical situation, which goes beyond that relied on by the CICB and Others and Kosher Poultry and Others in their application for the oral procedure be reopened, in which all the Member States were to adopt a measure which, like the decree at issue in the main proceedings, prohibited the killing of animals without prior stunning in the context of ritual slaughter.

38 In the light of the foregoing, since the draft law mentioned in paragraph 34 above cannot constitute either a new fact which is of such a nature as to be a decisive factor for the Court’s decision or a fact relating to an argument which has not been debated between the interested parties, within the meaning of Article 83 of the Rules of Procedure, the Court finds, after hearing the Advocate General, that there is no need to order the reopening of the oral procedure.

### **Consideration of the questions referred**

#### ***The first and second questions***

39 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, read in the light of Article 13 TFEU and Article 10(1) of the Charter, must be interpreted as precluding the legislation of a Member State which requires, in the context of ritual slaughter, a reversible stunning procedure which cannot result in the animal’s death.

40 As a preliminary point, it should be noted that Regulation No 1099/2009, which has its legal basis in Article 37 EC (now Article 43 TFEU) and forms part of the Community Action Plan on the Protection and Welfare of Animals 2006-2010 (COM (2006) 13 final of 23 January 2006), seeks to define common rules for the protection of animal welfare at the time of slaughter or killing in the European Union, and, as stated

in recital 4 of that regulation, is based on the idea that the protection of animals at the time of slaughter is a matter of general concern.

- 41 In that regard, it should be borne in mind, first of all, that Article 4(1) of Regulation No 1099/2009, read in conjunction with recital 20 of that regulation, lays down the principle that an animal should be stunned prior to being killed and goes so far as to establish this as an obligation, since scientific studies have shown that prior stunning is the technique that compromises animal welfare the least at the time of killing (see, to that effect, judgment of 26 February 2019, *Œuvre d'assistance aux bêtes d'abattoirs*, C-497/17, EU:C:2019:137, paragraph 47). As follows from recital 4 of that regulation, the principle of prior stunning provided for in that provision reflects an EU value, namely animal welfare, as now enshrined in Article 13 TFEU, according to which the European Union and the Member States must pay full regard to the welfare requirements of animals, when formulating and implementing animal welfare policy.
- 42 That principle of prior stunning meets the main objective of the protection of animal welfare pursued by Regulation No 1099/2009, as is clear from the very title of that regulation and from recital 2 thereof, in accordance with Article 13 TFEU (see, to that effect, judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others*, C-426/16, EU:C:2018:335, paragraphs 63 and 64).
- 43 Next, Article 4(4) of Regulation No 1099/2009 provides that the principle of prior stunning does not apply to animals subject to particular methods of slaughter prescribed by religious rites, provided that slaughter takes place in a slaughterhouse. Although that provision, read in the light of recital 18 of Regulation No 1099/2009, permits the practice of ritual slaughter in accordance with which an animal may be killed without first being stunned, that form of slaughter is, however, authorised only by way of derogation in the European Union and solely in order to ensure observance of freedom of religion. This is because that form of slaughter cannot eliminate any pain, distress and suffering on the part of the animal as effectively as slaughter with prior stunning, 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 (see, to that effect, judgment of 26 February 2019, *Œuvre d'assistance aux bêtes d'abattoirs*, C-497/17, EU:C:2019:137, paragraph 48).
- 44 That derogation is based, as is apparent from recital 15 of Regulation No 1099/2009, on the need to respect the legislative or administrative provisions and customs of the Member States relating, in particular, to religious rites, cultural traditions and regional heritage when formulating and implementing the European Union's policies on, inter alia, agriculture and the internal market. It thus gives expression, in accordance with Article 10(1) of the Charter, to the positive commitment of the EU legislature to ensure effective observance of freedom of religion and the right to manifest religion or beliefs in practice and observance, in particular for practising Muslims and Jews (see, to that effect, judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others*, C-426/16, EU:C:2018:335, paragraphs 56 and 57).
- 45 In addition, it is apparent from recital 18 of that regulation that, in view of the fact that '[EU] provisions applicable to religious slaughter[, stemming from Directive 93/119,] 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', the EU legislature decided that 'derogation from stunning animals prior to slaughter should be maintained, leaving, however, a certain level of subsidiarity to each Member State'. To that effect, Article 26(1) of Regulation No 1099/2009 authorises Member States to maintain 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 that regulation, while point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 provides that Member States may adopt national rules aimed at ensuring more extensive protection of animals at the time of killing than those contained in that regulation in relation, in particular, to 'the slaughtering and related operations of animals in accordance with Article 4(4)'. Under Article 2(b) of that regulation, the related operations thus referred to include stunning.

46 Lastly, Article 26(4) of Regulation No 1099/2009 provides that a Member State must 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 ground that the animals concerned have not been killed in accordance with its national rules aimed at ensuring more extensive protection of animals at the time of killing.

47 Thus, the framework established by Regulation No 1099/2009 reflects the requirements of Article 13 TFEU, according to which ‘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’. That framework shows that the regulation does not itself effect the necessary reconciliation between animal welfare and the freedom to manifest religion, but merely provides a framework for the reconciliation which Member States must achieve between those two values.

48 It follows from the considerations set out in paragraphs 44 to 47 above (i) that point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 does not fail to have regard to the freedom to manifest religion, as guaranteed in Article 10(1) of the Charter, and (ii) that in the context of the power afforded Member States, under that provision of Regulation No 1099/2009, to adopt additional rules designed to ensure greater protection for animals than provided for by that regulation, those States may, inter alia, impose an obligation to stun animals prior to killing which also applies in the case of slaughter prescribed by religious rites, subject, however, to respecting the fundamental rights enshrined in the Charter.

49 Indeed, in accordance with Article 51(1) of the Charter, Member States are required to respect the fundamental rights enshrined in the Charter when they are implementing that power.

50 As regards the compatibility of national measures adopted on the basis of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 with freedom to manifest religion, it should be borne in mind that Article 10(1) of the Charter provides that everyone has the right to freedom of thought, conscience and religion, and specifies that that 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.

51 In that regard, national legislation adopted on the basis of point (c) of the first subparagraph of Article 26(2) of that regulation and requiring, in the context of ritual slaughter, reversible stunning which cannot result in the animal’s death, falls within the scope of the freedom to manifest religion, guaranteed in Article 10(1) of the Charter.

52 The Charter uses the word ‘religion’, referred to in that provision, 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, and the Court has already held that ritual slaughter falls within the scope of freedom to manifest religion, guaranteed in Article 10(1) of the Charter (judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others*, C-426/16, EU:C:2018:335, paragraphs 44 and 49).

53 As the applicants in the main proceedings submit, by imposing the obligation to stun the animal beforehand during ritual slaughter, while stipulating that that stunning should be reversible and not cause the animal’s death, the decree at issue in the main proceedings, adopted on the basis of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, appears to be incompatible with certain Jewish and Islamic religious precepts.

54 In that regard, it is apparent from the request for a preliminary ruling that, in the view of the applicants in the main proceedings, ritual slaughter is governed by specific religious precepts which require, in essence, that believers consume only meat from animals slaughtered without prior stunning, in order to ensure that

those animals are not subjected to any procedure which may result in their death before they are slaughtered and that their blood is drained.

55 Consequently, the decree at issue in the main proceedings entails a limitation on the exercise of the right of Jewish and Muslim believers to the freedom to manifest their religion, as guaranteed in Article 10(1) of the Charter.

56 In that regard, it should be borne in mind that Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed in the ECHR, without adversely affecting the autonomy of EU law and that of the Court of Justice of the European Union. Account must, therefore, be taken of the corresponding rights of the ECHR for the purpose of interpreting the Charter, as the minimum threshold of protection (see, to that effect, judgments of 21 May 2019, *Commission v Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 72 and the case-law cited, and of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraph 124). Since it is apparent from the explanations relating to Article 10 of the Charter that the freedom guaranteed in paragraph 1 thereof corresponds to the freedom guaranteed in Article 9 of the ECHR, that freedom must be taken into account for the purpose of interpreting Article 10(1) of the Charter.

57 According to the case-law of the European Court of Human Rights, freedom of thought, conscience and religion protected by Article 9 ECHR is one of the foundations of a ‘democratic society’ within the meaning of that convention, since pluralism, which is integral to any such society, depends on that freedom (see, to that effect, ECtHR, 18 February 1999, *Buscarini and Others v. Saint-Marino*, CE:ECHR:1999:0218JUD002464594, § 34 and the case-law cited, and 17 February 2011, *Wasmuth v. Germany*, CE:ECHR:2011:0217JUD001288403, § 50). Thus, Article 9(2) ECHR provides that ‘freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others’.

58 To the same effect, in accordance with the first sentence of Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by that charter must be provided for by law and respect the essence of those rights and freedoms. The second sentence of Article 52(1) states that, 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 European Union or the need to protect the rights and freedoms of others.

59 It is in the light of those considerations that it must be examined whether national legislation, which lays down the obligation to stun the animal beforehand during ritual slaughter, while stipulating that that stunning should be reversible and not cause the animal’s death, fulfils the conditions laid down in Article 52(1) and (3) of the Charter, read in conjunction with Article 13 TFEU.

60 In the first place, since it flows from the decree at issue in the main proceedings, the limitation on the exercise of the right to the freedom to manifest religion identified in paragraph 55 above is provided for by law, within the meaning of Article 52(1) of the Charter.

61 In the second place, national legislation which lays down the obligation to stun the animal beforehand during ritual slaughter, while stipulating that that stunning should be reversible and not cause the animal’s death, respects the essence of Article 10 of the Charter, since, according to the information in the documents before the Court, set out in paragraph 54 above, the interference resulting from such legislation is limited to one aspect of the specific ritual act of slaughter, and that act of slaughter is not, by contrast, prohibited as such.

62 In the third place, as regards whether the limitation of the right guaranteed in Article 10 of the Charter resulting from national legislation such as that at issue in the main proceedings meets an objective of general interest, it is apparent from the information in the request for a preliminary ruling that the Flemish

legislature intended to promote animal welfare. It is stated in the preparatory documents for the decree at issue in the main proceedings that ‘Flanders attaches great importance to animal welfare’, that ‘the objective is, therefore, to eliminate all avoidable animal suffering in Flanders’, that ‘the slaughter of animals without stunning is incompatible with that principle’ and that ‘although other measures, less drastic than a ban on slaughtering without prior stunning, could somewhat limit the negative impact of that method of slaughter on animal welfare, such measures cannot prevent a very serious impairment of that welfare from continuing to exist’.

63 It is clear both from the case-law of the Court (see, to that effect, judgments of 17 January 2008, *Viamex Agrar Handel and ZVK*, C-37/06 and C-58/06, EU:C:2008:18, paragraph 22; of 19 June 2008, *Nationale Raad van Dierenkwekers en Liefhebbers and Andibel*, C-219/07, EU:C:2008:353, paragraph 27; of 10 September 2009, *Commission v Belgium*, C-100/08, not published, EU:C:2009:537, paragraph 91; and of 23 April 2015, *Zuchtveeh-Export*, C-424/13, EU:C:2015:259, paragraph 35), and from Article 13 TFEU that the protection of animal welfare is an objective of general interest recognised by the European Union.

64 In the fourth place, as regards observance of the principle of proportionality, that principle requires that the limitations on freedom to manifest religion, brought about by the decree at issue in the main proceedings, do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by that legislation; where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 46 and the case-law cited, and of 30 April 2019, *Italy v Council (Fishing quota for Mediterranean swordfish)*, C-611/17, EU:C:2019:332 paragraph 55).

65 Where several fundamental rights and principles enshrined in the Treaties are at issue, such as, in the present case, the right guaranteed in Article 10 of the Charter and animal welfare enshrined in Article 13 TFEU, the assessment of observance of the principle of proportionality must be carried out in accordance with the need to reconcile the requirements of the protection of those various rights and principles at issue, striking a fair balance between them (see, to that effect, judgment of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, paragraph 50 and the case-law cited).

66 In that regard, it should be noted that national legislation which lays down the obligation to stun the animal beforehand during ritual slaughter, while stipulating that that stunning should be reversible and not cause the animal’s death, is appropriate for achieving the objective of promoting animal welfare referred to in paragraph 62 above.

67 It is apparent from the case-law of the European Court of Human Rights that where matters of general policy, such as the determination of relations between the State and religions, are at stake, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight. The State should thus, in principle, be afforded, within the scope of Article 9 of the ECHR, a wide margin of appreciation in deciding whether, and to what extent, a limitation of the right to manifest religion or beliefs is ‘necessary’. The margin of appreciation thus afforded to the Member States in the absence of a consensus at EU level must, however, go hand in hand with a European supervision consisting in determining whether the measures taken at national level were justified in principle and proportionate (see, to that effect, ECtHR, 1 July 2014, *S.A.S. v. France*, CE:ECHR:2014:0701JUD004383511, §§ 129 and 131 and the case-law cited).

68 As may be seen from recitals 18 and 57 of Regulation No 1099/2009, it is precisely the lack of consensus among Member States as to how they perceive ritual slaughter which led to the adoption of Articles 4 and 26 of that regulation.

69 Recital 18 of Regulation No 1099/2009 states, as noted in paragraph 45 above, that it is important that the derogation from stunning animals prior to slaughter should be maintained, leaving, however, a certain level of subsidiarity to each Member State.

- 70 After referring to the fact that European citizens expect a minimum of welfare rules to be respected during the slaughter of animals, recital 57 of that regulation states, for its part, that 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 EU level. Recital 57 further states that, 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 a certain flexibility to maintain or, in certain specific fields, adopt more extensive national rules.
- 71 Consequently, by referring to the existence of different ‘national perceptions’ in relation to animals and to the need to leave a ‘certain flexibility’ or ‘a certain degree of subsidiarity’ to Member States, the EU legislature intended to preserve the specific social context of each Member State in that respect and to give each Member State a broad discretion in the context of the need to reconcile Article 13 TFEU with Article 10 of the Charter, for the purposes of striking a fair balance between, on the one hand, the protection of the welfare of animals when they are killed and, on the other, respect for the freedom to manifest religion.
- 72 As regards, more specifically, the necessity of the interference with the freedom to manifest religion resulting from the decree at issue in the main proceedings, it is apparent from the scientific opinions of the European Food Safety Authority (EFSA), cited in recital 6 of Regulation No 1099/2009, that a scientific consensus has emerged that prior stunning is the optimal means of reducing the animal’s suffering at the time of killing.
- 73 It was in that perspective that the Flemish legislature stated, in the preparatory documents for the decree at issue in the main proceedings, that ‘the gap between eliminating animal suffering, on the one hand, and slaughtering without prior stunning, on the other, will always be very considerable, even if less radical measures were taken to minimise the impairment of animal welfare’.
- 74 It follows that the Flemish legislature was entitled, without exceeding the discretion referred to in paragraph 67 above, to consider that the limitations placed by the decree at issue in the main proceedings on freedom to manifest religion, by requiring prior stunning which is reversible and cannot result in the animal’s death, meet the condition of necessity.
- 75 As regards, lastly, whether the interference with the freedom to manifest religion resulting from the decree at issue in the main proceedings is proportionate, first, as is apparent from the preparatory documents for that decree, as cited in paragraph 13 above, the Flemish legislature relied on scientific research which demonstrated that the fear that stunning would adversely affect bleeding out is unfounded. In addition, those same preparatory documents show that electronarcosis is a non-lethal, reversible method of stunning, with the result that if the animal’s throat is cut immediately after stunning, its death will be solely due to bleeding.
- 76 Furthermore, by requiring, in the context of ritual slaughter, prior stunning which is reversible and cannot result in the animal’s death, the Flemish legislature also intended to be guided by recital 2 of Regulation No 1099/2009 – in the light of which Article 4 of that regulation, taken as a whole, must be read – which states, in essence, that, in order to spare animals avoidable pain, distress or suffering during the killing process, preference should be given to the most up-to-date method of killing that is authorised, where significant scientific progress has made it possible to reduce the animal’s suffering at the moment of killing.
- 77 Secondly, like the ECHR, the Charter is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic States today (see, by analogy, ECtHR, 7 July 2011, *Bayatyan v. Armenia* [GC], CE:ECHR:2011:0707JUD002345903, § 102 and the case-law cited), with the result that regard must be had to changes in values and ideas, both in terms of society and legislation, in the Member States. Animal welfare, as a value to which contemporary democratic societies have attached increasing importance for a number of years, may, in the light of changes in society, be taken



into account to a greater extent in the context of ritual slaughter and thus help to justify the proportionality of legislation such as that at issue in the main proceedings.

78 Thirdly, in accordance with the rule laid down in Article 26(4) of Regulation No 1099/2009, the decree at issue in the main proceedings neither prohibits nor impedes the putting into circulation, within the territory in which it applies, of products of animal origin derived from animals which have undergone ritual slaughter, without prior stunning, in another Member State. The Commission indeed stated, in that regard, in its written observations submitted to the Court, that the majority of Member States authorise, pursuant to Article 4(4) of that regulation, slaughter without prior stunning. Moreover, as the Flemish and Walloon Governments have, in essence, argued, national legislation such as the decree at issue in the main proceedings neither prohibits nor hinders the putting into circulation of products of animal origin derived from animals which have undergone ritual slaughter, where those products originate in a non-Member State.

79 Thus, in an evolving societal and legislative context, which is characterised, as pointed out in paragraph 77 above, by an increasing awareness of the issue of animal welfare, the Flemish legislature was entitled to adopt, following a wide-ranging debate organised at the level of the Flemish Region, the decree at issue in the main proceedings, without exceeding the discretion which EU law confers on Member States as regards the need to reconcile Article 10(1) of the Charter with Article 13 TFEU.

80 Consequently, it must be found that the measures contained in the decree at issue in the main proceedings allow a fair balance to be struck between the importance attached to animal welfare and the freedom of Jewish and Muslim believers to manifest their religion and are, therefore, proportionate.

81 In those circumstances, the answer to the first and second questions is that point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, read in the light of Article 13 TFEU and Article 10(1) of the Charter, must be interpreted as not precluding legislation of a Member State which requires, in the context of ritual slaughter, a reversible stunning procedure which cannot result in the animal's death.

### *The third question*

82 By its third question, the referring court in essence raises the validity of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 in the light of the principles of equality, non-discrimination and cultural, religious and linguistic diversity, as guaranteed by Articles 20, 21 and 22 of the Charter respectively. Indeed, if that provision of Regulation No 1099/2009 were to authorise Member States to adopt measures such as compulsory stunning for animals killed in the context of ritual slaughter, that regulation would contain no similar provision governing the killing of animals in the context of hunting and recreational fishing activities or during cultural or sporting events.

83 It follows from the wording of that question that the referring court is uncertain whether point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 complies with Articles 20, 21 and 22 of the Charter, inasmuch as, while that regulation provides for only a conditional exception to the prior stunning of animals, in the context of ritual slaughter, it excludes from the regulation's scope, or exempts from the obligation of prior stunning laid down therein, the killing of animals during hunting, recreational fishing, and sporting and cultural events.

84 In that regard, first, it is necessary to assess the argument that ritual slaughter is subject to discriminatory treatment in Regulation No 1099/2009 compared with the killing of animals during cultural and sporting events.

85 First of all, it must be borne in mind that the prohibition on discrimination is merely a specific expression of the general principle of equality which is one of the fundamental principles of EU law, and that that principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, to that effect,

judgments of 19 October 1977, *Ruckdeschel and Others*, 117/76 and 16/77, EU:C:1977:160, paragraph 7, and of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 23).

86 In the present case, the first subparagraph of Article 1(1) of Regulation No 1099/2009 states that the purpose of that regulation is to lay 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’, and Article 1(3)(a)(iii) of Regulation No 1099/2009 states that that regulation does not apply to a number of activities, which include the killing of animals during cultural or sporting events.

87 Article 2(h) of that regulation defines ‘cultural or sporting events’ as ‘events which are essentially and predominantly related to long established cultural traditions or sporting activities, including racing or other forms of competitions, where there is no production of meat or other animal products or where that production is marginal compared to the event as such and not economically significant’.

88 It is apparent from that definition that cultural and sporting events, within the meaning of Article 2(h) of that regulation, result at most in a marginal production of meat or animal products compared to the event as such and that such production is not economically significant.

89 That interpretation is borne out by recital 16 of Regulation No 1099/2009, according to which the fact that those events do not affect the market for products of animal origin and are not motivated by production purposes justifies their being excluded from the scope of that regulation.

90 In those circumstances, a cultural or sporting event cannot reasonably be understood as a food production activity for the purposes of Article 1(1) of Regulation No 1099/2009. Consequently, in the light of that difference, the EU legislature did not disregard the prohibition on discrimination, in not treating cultural or sporting events in the same way as slaughtering, which must, as such, be subject to stunning, and in thus treating those situations differently.

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

92 In those circumstances, the EU legislature also did not infringe the principle of non-discrimination in excluding from the scope of that regulation the non-comparable situations of killing referred to in the preceding paragraph.

93 Thirdly, in Article 27(1) of Regulation No 1099/2009 and recitals 6, 11 and 58 thereof, the EU legislature made it abundantly clear that scientific opinions on farmed fish were insufficient and that there was also a need for further economic evaluation in that field, which justified the separate treatment of farmed fish.

94 Fourthly, in the light of the considerations set out in paragraphs 84 to 93 above, it must be held that Regulation No 1099/2009 does not disregard the cultural, religious and linguistic diversity guaranteed in Article 22 of the Charter, in providing only for a conditional exception to the prior stunning of animals, in the context of ritual slaughter, while excluding from that regulation’s scope, or exempting from the obligation of prior stunning laid down therein, the killing of animals during hunting, recreational fishing, and sporting and cultural events.

95 It follows that the examination of the third question referred for a preliminary ruling has disclosed nothing capable of affecting the validity of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009.

## Costs

96 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **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 in the light of Article 13 TFEU and Article 10(1) of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding legislation of a Member State which requires, in the context of ritual slaughter, a reversible stunning procedure which cannot result in the animal's death.**
2. **The examination of the third question referred for a preliminary ruling has disclosed nothing capable of affecting the validity of point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009.**

[Signatures]

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<sup>1</sup> Language of the case: Dutch.