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Equal Treatment, not just Religious Freedom: On the Methods of Slaughtering Animals for Human Consumption

The way to overcome antisemitism is by elucidation; elucidation of—in order to illustrate this point immediately by an example—a Jewish custom which every now and then sparks off antisemitic sentiments: שחיטה, *shechita*, the Jewish traditional method of slaughtering animals for human consumption;¹ Islamic tradition being related hereto.² In the following considerations, this topic will be treated from a legal perspective not just because it is of a genuinely legal nature, but also because it regularly triggers various legal consequences, most recently the prohibitive regulations of Wallonia³ and Flanders,⁴ challenged before the Belgian Constitutional Court, which requested a preliminary ruling of the Court of Justice of the European Union (CJEU).⁵

1 Cf. only P. Krauthammer, *Das Schächtverbot in der Schweiz 1854–2000: Die Schächtfrage zwischen Tierschutz, Politik und Fremdenfeindlichkeit* (Zürich: Schulthess 2000), passim.

2 Cf. e.g. L. Bezoušková, “Práva zvířat, nebo náboženská svoboda? Rituální porážky,” in *Kapitoly o právech zvířat. ‘My a oni’ z pohledu filosofie, etiky, biologie a práva*, ed. H. Müllerová, D. Černý, A. Doležal et al. (Praha: Academia, 2016), 608–29.

3 Most recently Article D.57(1) of *Code wallon du Bien-être des animaux*, *Moniteur belge* 2018, 106772: “Un animal est mis à mort uniquement après anesthésie ou étourdissement [...] Lorsque la mise à mort d’animaux fait l’objet de méthodes particulières d’abattage prescrites par des rites religieux, le procédé d’étourdissement doit être réversible et ne peut entraîner la mort de l’animal.” [An animal may be put to death uniquely after anesthesia or stunning [...] Where the killing of animals is the subject of special methods of slaughter prescribed by religious rites, the stunning procedure must be reversible and may not result in the death of the animal.] According to Art. 28 *leg. cit.* this code entered into force as from 1 January 2019. According to Art. 26 *leg. cit.* Art. D.57 does not apply to religious slaughter until 31 August 2019.

4 Art. 15 of *Wet betreffende de bescherming en het welzijn der dieren, wat de toegelaten methodes voor het slachten van dieren betreft*, *Belgisch Staatsblad* 2017, 73317: “Een gewerveld dier mag alleen worden gedood na voorafgaande bedwelming. [...] Als dieren worden geslacht volgens speciale methoden die vereist zijn voor religieuze riten, is de bedwelming omkeerbaar en is de dood van het dier niet het gevolg van de bedwelming.” [A vertebrate may only be killed after prior stunning. [...] If animals are slaughtered according to special methods prescribed by religious rites, the stunning must be reversible and may not result in the death of the animal.]

5 *Grondwettelijk Hof · Cour Constitutionnel · Verfassungsgerichtshof* 4 April 2019, 52/2019 and 4 April 2019, 53/2019.

The purpose of this article is however to shed light not onto individual players' opinions and deeds but onto the law itself, as it is used both to protect and to oppress. Justice is traditionally symbolised by a pair of scales, which implies that legal solutions are meant to opt not for the extremes but for balance. The geographical approach shall be European, because both the author's quill is wielded in Europe, and the most recent incidents were recorded on this very continent.

A European Regulation with an Exceptional Cause

The slaughter of animals for human consumption is regulated by Council Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing,⁶ which is of relevance to the European Economic Area. In the first place, Regulation (EC) No. 1099/2009 seems to accommodate traditional religious approaches through its Art. 4(4). Pursuant to its Art. 26(2)c, Member States are permitted to “adopt national rules aimed at ensuring more extensive protection of animals” in this regard, which led to a wide spectrum of national rules as a consequence; these rules were partially transferred from the previous regime of Directive No. 93/119/EC⁷ and range from allowance to prohibition.

An example for the former would be the Estonian animal protection act,⁸ section 17 (2) of which allows the slaughtering of a farm animal electrically stunned or not stunned for a religious purpose, taking into account the tradition of the religious association concerned. Implementing provisions are laid down by both section 17 leg. cit. and a regulation concerning special methods of religious slaughter of farm animals, more detailed substantive and formal requirements for religious slaughter and requirements and procedure for religious slaughter.⁹

Reference for the latter would be Lithuanian, Danish, and Polish law. While Art. 17(2) of the Lithuanian act on animal welfare¹⁰ required from 1997 onwards that domestic animals be slaughtered for religious purposes only after having

⁶ Official Journal of the EU L 303/2009, 1–30 as amended.

⁷ Council Directive No. 93/119/EC on the protection of animals at the time of slaughter or killing, Official Journal of the European Union L 340/1993, 21–34, as amended.

⁸ *Loomakaitse seadus*, Riigi Teataja I 2001, 3, 4 as last amended by Riigi Teataja I, 13.03.2019, 2.

⁹ *Põllumajanduslooma religioosel eesmärgil tapmise erimeetodid, religioosel eesmärgil tapmise loa taotluse täpsemad sisu- ja vorminõuded ning religioosel eesmärgil tapmise läbiviimise nõuded ja kord*, Riigi Teataja I, 29. 12. 2012, 53.

¹⁰ *Gyvūnų globos, laikymo ir naudojimo įstatymas*, Valstybės žinios 1997/108–2728 as amended by Valstybės žinios 2012/122–6126.

been stunned according to the prescribed stunning methods,¹¹ the Danish and Polish prohibitions were introduced by reversing original authorisations.¹²

Danish law increased restrictions up to a point where they actually turned into a proper prohibition, although leaving unchanged the legal bases for this regulation, namely section 13(2) of the animal protection act,¹³ authorising the minister for environment and food to decree more detailed rules on slaughter and to prohibit certain forms of killing. Whereas section 7 of the 1994 regulation¹⁴ focused on slaughterhouse, fixation and control, section 7 of the 2007 regulation¹⁵ introduced obligatory post-cut stunning. Section 9 read together with sections 10 and 11 of the 2014 regulation,¹⁶ finally, requires prior stunning effected by non-penetrative captive bolt device for cattle, sheep, and goats and by electrical water-bath for poultry. In this regard, section 10/3 of the 2014 regulation may be of particular interest with regard to the further considerations. Accordingly, the animal must immediately be shot with a penetrative bolt device or electrically stunned, if the animal is not stunned after the first shot with a non-penetrative bolt device.

An Issue of Religious Freedom

With respect to Jewish law, such regulations are tantamount to a simple prohibition. While their wording¹⁷ might still indicate a remaining scope of application, the prescribed stunning methods cause severe if not irreversible damage to the brain, which would thereafter render the animal unfit for slaughter and consumption.¹⁸

The original Polish exemption for religious slaughter in Art. 34(5) of animal protection act¹⁹ was abolished in 2002.²⁰ While the Constitutional Court held the

11 Cf. W. Wieshaider, “Europäischer Überblick,” in *Schächten: Religionsfreiheit und Tierschutz*, ed. R. Potz, B. Schinkele, and W. Wieshaider (Freistadt: Plöchl & Egling: Kovar, 2001), 174 f.

12 *Ibid.*, 169, 177.

13 *Dyreværnsloven* (consolidated act), Lovtidende A No. 20/2018.

14 *Bekendtgørelse om slagtning og aflivning af dyr*, Lovtidende A No. 1037/1994.

15 *Bekendtgørelse om slagtning og aflivning af dyr*, Lovtidende A No. 583/2007.

16 *Bekendtgørelse om slagtning og aflivning af dyr*, Lovtidende A No. 135/2014.

17 See *ibid.*, section 9(1): “*Kun dyr som omfattet af §§ 10 og 11, må slagtes efter religiøse ritualer.*”

18 Cf. *Shulkhan Arukh*, Yoreh De’ah 17; *b. Hul.* 32a–38b. I. M. Levinger, “Die jüdische Schlachtmethode—das Schächten,” in *Schächten: Religionsfreiheit und Tierschutz*, ed. R. Potz, B. Schinkele, and W. Wieshaider (Freistadt: Plöchl & Egling: Kovar, 2001), 4.

19 *Ustawa o ochronie zwierząt*, Dziennik Ustaw 1997/111 poz. 724.

20 Amending act, Dziennik Ustaw 2002/135 poz. 1141.

prohibition which resulted therefrom, unconstitutional in 2014,²¹ the legislator has not repaired the animal protection act since but just added a footnote to its Art. 34, referring to the decision—the most recent amendments dating though from 2018,²² the last consolidated version from 2019.²³

Each of these norms have yet to withstand scrutiny on the basis of superior levels of legislation, in particular to human rights standards. Art. 10(1) of the Charter of Fundamental Rights of the European Union²⁴ (CFREU) protects the right to manifest religion or belief, in worship, teaching, practice, and observance. Art. 52(1) of CFREU justifies limitations of a manifestation of religion if they are “provided for by law and respect the essence” of religious freedom. They have to be “necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”

The scope of Art. 10(1) of CFREU matches the one of Art. 9(1) of the European Convention on Human Rights (ECHR),²⁵ as underlined by Art. 52(3) of CFREU with regard to all corresponding rights and freedoms.²⁶ With reference to the preparatory work of ECHR,²⁷ it is explicitly reiterated that the traditional religious method of slaughtering animals for human consumption is embraced by the protected manifestations of religion.

With regard to the Islamic tradition, the Court of Justice of the European Union recently had the opportunity to develop its legal arguments in the field. Both decisions were handed down by the Grand Chamber. In the first case,²⁸ the validity of the restriction of religious slaughter to slaughterhouses—as provided both by Art. 4(4) of Regulation (EC) No. 1099/2009 and Belgian law²⁹—was scrutinised by the Court, having particular regard to the augmented request

21 Trybunał Konstytucyjny 10 December 2014, K 52/13, Dziennik Ustaw 2014 poz. 1794.

22 Dziennik Ustaw 2018 poz. 663 & 2245.

23 Dziennik Ustaw 2019 poz. 122.

24 Official Journal of the EU C 202/2016, 389–407; cf. thereto H. D. Jarass, *Charta der Grundrechte der EU* (München: C. H. Beck, 32016), Art. 10, §§ 6–10.

25 Convention for the Protection of Human Rights and Fundamental Freedoms, ETS no. 005.
26 I. Augsberg, “Art. 10 GRCh., § 3,” in *Europäisches Unionsrecht*, vol. 1, ed. H. von der Groeben, J. Schwarze, and A. Hatje (Baden-Baden: Nomos 2015); Jarass, *Charta*, Art. 10, § 1.

27 Cf. A. Verdoodt, *Naissance et signification de la Déclaration universelle des droits de l’homme* (Louvain, Paris: Éditions Nauwelaerts, 1964), 178, 183; N. Blum, *Die Gedanken-, Gewissens- und Religionsfreiheit nach Art. 9 der Europäischen Menschenrechtskonvention* (Berlin: Duncker & Humblot, 1990), 45–49; Jarass, *Charta*, Art. 10, § 7.

28 CJEU (Grand Chamber) 29 May 2018, C-426/16 (*Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen VZW and Others v / Vlaams Gewest*).

29 See the references *ibid.*, § 13; cf. Wieshaider, “Europäischer Überblick,” 167f. and above fn. 4–5.

at the Muslim Feast of Sacrifice, for which additional slaughterhouses were licenced.³⁰ The Court confirmed that religious slaughter falls within the scope of Art. 10(1) of CFREU,³¹ but held that this restriction does not violate religious freedom, because it

does not lay down any prohibition on the practice of ritual slaughter in the European Union 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.³²

The Court refers to recital 18 of Regulation (EC) No. 1099/2009 which stresses the purpose of its Art. 4(4), namely “of ensuring respect for the freedom of religion and the right to manifest religion or belief in worship, teaching, practice and observance.”³³

In the second case,³⁴ the Court was requested to rule whether halal beef products should by default not be allowed to be certified with the label of organic production, as regulated by Council Regulation (EC) No. 834/2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91,³⁵ which was implemented by Commission Regulation (EC) No. 889/2008.³⁶ Deducing from the construction of Regulation (EC) No. 1099/2009 itself as rule and exception that religious slaughter “is insufficient to remove all of the animal’s pain, distress and suffering as effectively as slaughter with pre-stunning,”³⁷ the Court came to the conclusion that

the particular methods of slaughter prescribed by religious rites that are carried out without pre-stunning and that are permitted by Article 4(4) of Regulation No 1099/2009 are not tantamount, in terms of ensuring a high level of animal welfare at the time of killing, to

30 § 14 of the judgement C-426/16.

31 Ibid. §§ 42–51, hereby referring also to ECtHR 27 June 2000, 27417/95 (*Cha’are Shalom Ve Tsedek / France*) in § 45 of the judgement C-426/16, thus confirming the parallelism of both Art. 10(1) of CFREU and Art. 9 of ECHR.

32 § 56 of the judgement C-426/16.

33 Ibid., § 57.

34 CJEU (Grand Chamber) 26 February 2019, C-497/17, (*Œuvre d’assistance aux bêtes d’abattoirs / Ministre de l’Agriculture et de l’Alimentation, Bionoor SARL, Ecocert France SAS, Institut national de l’origine et de la qualité*).

35 Official Journal of the EU L 189/2007, 1–23 as amended.

36 Official Journal of the EU L 250/2008, 1–84 as amended.

37 § 49 of the judgement C-497/17.

slaughter with pre-stunning which is, in principle, required by Article 4(1) of that regulation.³⁸

Therefore, continued the Court, products from animals slaughtered according to Art. 4(4) of Regulation (EC) No. 1099/2009 ought not to be labelled with the Organic logo of the EU.³⁹

The underlying assumption will be challenged by the considerations thereafter. Without doubt and despite their different nuances, both judgements reiterate that Art. 4(4) of Regulation (EC) No. 1099/2009 is a necessary consequence of religious freedom as guaranteed by Art. 10(1) of CFREU.

An Issue of Equal Treatment

In the same vein, the European Court of Human Rights (ECtHR) as well as constitutional courts confirmed religious slaughter to be a protected and legitimate manifestation of religion.⁴⁰ Opponents of these findings deplored that the courts had attributed too little weight to the public interest of the protection of animals,⁴¹ whereupon constitutional legislation upgraded this interest.⁴² This move seemed to invite opinions to call for a ban alleging that there is now a

38 Ibid., § 50.

39 Ibid., § 52.

40 See the Austrian Verfassungsgerichtshof 17 December 1998, B 3028/97, VfSlg. 15394; cf. the commentaries by R. Potz and W. Wieshaider in *Schächten*, 223–26 and 226–30; ECtHR 27 June 2000, 27417/95 (*Cha'are Shalom ve Tsedek / France*); cf. V. Coussirat-Coustère, “La jurisprudence de la Cour européenne des droits de l’homme en 2000,” *Annuaire français du droit international* 46 (2000): 608f.; P. Lerner and A. M. Rabello, “The Prohibition of Ritual Slaughtering (Kosher Shechita and Halal) and Freedom of Religion of Minorities,” *Journal of Law and Religion* 22 (2006/7): 39–40; further the German Bundesverfassungsgericht 15 January 2002, 1 BvR 1783/99, BVerfGE 104, 337–56; cf. commentary of M. Rohe in *Österreichisches Archiv für Recht & Religion* 49 (2002): 69–84; K. A. Schwarz, *Das Spannungsverhältnis von Religionsfreiheit und Tierschutz am Beispiel des “rituellen Schächten”* (Baden-Baden: Nomos, 2003), 33–40.

41 Cf. Bundestagsdrucksache 14/8860; R. Scholz “Art. 20a GG, § 84,” in *Maunz-Dürig. Grundgesetz. Kommentar*, ed. R. Herzog, R. Scholz, M. Herdegen, and H. D. Klein (München: C. H. Beck, 1958 ff.).

42 Cf. Art. 20a of the German *Grundgesetz*, as amended by Bundesgesetzblatt I 2000, 2862; thereto section 2 of the Austrian *Bundesverfassungsgesetz über die Nachhaltigkeit, den Tierschutz, den umfassenden Umweltschutz, die Sicherstellung der Wasser- und Lebensmittelversorgung und die Forschung*, Bundesgesetzblatt I No. 111/2013.

strong constitutional interest to do so. Such an approach ignores, though,⁴³ important elements of the case.

First, the interest to protect animals is inherent in both approaches to slaughter. From a religious perspective, it may suffice to refer to the Biblical story of Noah. After the Deluge, God established a covenant with Noah and allowed him and all following generations of humankind to eat meat. A compromise that involved the seventh of the Noahide Laws not to eat flesh from a living animal.⁴⁴

Second, the custom to eat meat is not an exclusively religious one, but practised—with exceptions—throughout the world regardless of cultural background. This has indeed an effect on the scrutiny for it is not a matter of Art. 9 of ECHR taken alone, but of Art. 14 in conjunction with Art. 9 of ECHR in case there are more than one cultural manifestations at stake, or of Art. 21(1) of CFREU respectively. The cultural label was used here intentionally, because this is the only legal way to correlate a minority's exercise of religion with a practice that comprises similar acts but happens not to be regarded as of a religious character.

Third, to this perspective, a thorough reading of Regulation (EC) No. 1099/2009 will provide additional insight. Its recital No. 18 takes up the derogation from stunning in case of religious slaughter as already granted by the previous governing legal act, Directive No. 93/119/EC.⁴⁵ While a certain level of subsidiarity is left to the member states, the importance “that derogation from stunning animals prior to slaughter should be maintained.” Through this principle,

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.

In this regard it seems appropriate to point to Art. 27(2) of Regulation (EC) No. 1099/2009, according to which the Commission was liable to submit by 8 December 2012 to both the European Parliament and to Council a report comparing

⁴³ Cf. Schwarz, *Spannungsverhältnis*, 27–49.

⁴⁴ See Gen. 9, 1–18; cf. I. M. Levinger, *Schechita im Lichte des Jahres 2000: Kritische Betrachtungen der wissenschaftlichen Aspekte der Schlachtmethode und des Schächtens* (Jerusalem: Machon Maskil L'David, 1996), 13–16; Lerner, Rabello, “The Prohibition,” 3–5, 49; N. Solomon, “Conservation,” in *Encyclopaedia Judaica*, vol. 5, ed. M. Berenbaum and F. Skolnik (Detroit: Macmillan Reference, 2007), 165f.; with regard to Islamic tradition cf. Bezoušková, “Práva zvířat, nebo náboženská svoboda?” 610–14.

⁴⁵ Cf. J. Budischowsky, “Europarechtliche Aspekte des Schächtens,” in *Schächten: Religionsfreiheit und Tierschutz*, ed. R. Potz, B. Schinkele, and W. Wieshaider (Freistadt: Plöchl & Egling; Kovar, 2001), 137f.; Schwarz, *Spannungsverhältnis*, 85f.

systems restraining bovine animals. This report had to be based on scientific research and to

take into account animal welfare aspects as well as the socio-economic implications, including their acceptability by the religious communities and the safety of operators.

This paragraph follows the aforementioned permission to member states to adopt stricter national rules in this regard; it does not precede it. But an “acceptability by the religious communities” would not make any sense, were a member state entitled simply to prohibit religious slaughter according Art. 26(2)c of Regulation (EC) No. 1099/2009. A systematic interpretation from the sequence of the provisions of Art. 26 and Art. 27 of Regulation (EC) No. 1099/2009 indicates rather that the permission to adopt rules aimed at ensuring more extensive protection of animals in fact excludes an approval to prohibit religious slaughter.

What Regulation (EC) No. 1099/2009 understands by the process of stunning is defined in its Art. 2/f. Accordingly, it

means any intentionally induced process which causes loss of consciousness and sensibility without pain, including any process resulting in instantaneous death.

Interestingly, Art. 2/5 of Directive No. 93/119/EC had defined the concept of stunning differently, namely as “any process which, when applied to an animal, causes immediate loss of consciousness which lasts until death,” whereas painlessness had clearly not been a constituent element of this definition.

If Art. 2/f of Regulation (EC) No. 1099/2009 is read alone and without reference to Annex I, where the methods are explained in more details, the definition leads to the assumption that stunning is applied in order to prevent the animals from being exposed to pain. While a closer look at the methods referred to in Annex I will reject this assumption, the definition’s distinction of methods which result in instantaneous death and methods which do not do so, will be echoed by the further provisions of Regulation (EC) No. 1099/2009. Accordingly, its Art. 4(1) will call the latter simple stunning, which has to be followed as quickly as possible by another procedure that eventually ensures the death of the animal. In other words, and still without regard to religious implications, there are recognised methods both of stunning and of killing, which result in instantaneous death.

Chapter I of Annex I enumerates mechanical, electrical, gas, and other stunning methods. Among the mechanical ones, table 1 lists the penetrative and the non-penetrative captive bolt device, the firearm with free projectile, maceration, cervical dislocation, and a percussive blow to the head. Both captive bolt device

methods are classified as simple stunning, while the penetrative device still damages the brain irreversibly, as indicated in table 1.

Among the electrical stunning methods, table 2 lists head-only and head-to-body electrical stunning as well as the electrical water-bath. All these methods are classified as simple stunning except where the frequency is equal to or less than 50 Hz, as indicated in table 2. Chapter II of Annex I adds specific requirements for certain methods. It is only there, where division 6.2. explains that “[b]irds shall be hung by both legs.” In this regard, it had been observed in the past that the time poultry had hung head-down at the conveyor amount to several minutes and that the stunning effect had often not lasted long enough to fade to death by bleeding.⁴⁶ Division 5.2. therefore requires that

birds [...] will not remain hung conscious longer than one minute. However ducks, geese and turkeys shall not remain hung conscious longer than two minutes.

Among the gas methods table 3 of Chapter I lists carbon dioxide at high concentration, in two phases or associated with inert gases, further carbon monoxide either pure or associated with other gases. Carbon dioxide at high concentration or associated with inert gases or the latter taken alone are classified as simple stunning for pigs and poultry partially only under certain additional conditions, as indicated in table 3. The only other method, as indicated in table 4, is a lethal injection which does not apply to slaughter and can be neglected in the present context.

A supplementary argument with regard to the relative character of the aforementioned stunning methods is provided by Annex A No. 5 of the Austrian ordinance on the protection of animals at the time of slaughter and killing⁴⁷ read in conjunction with section 32(5) of animal welfare act.⁴⁸ While the latter requires post-cut stunning in cases of religious slaughter and the application of a method provided by Regulation (EC) No. 1099/2009 that will be immediately effective, the ordinance allows further manipulation five minutes after the cut at the earliest, although the bleeding takes between 2.5 and 3.5 minutes.⁴⁹

Hence, when religious slaughter is presented as slaughter without prior stunning, irrespective of the actual stunning effect of a properly performed שחיטה

⁴⁶ K. Troeger, “Schlachten von Tieren,” in *Das Buch vom Tierschutz*, ed. H. H. Sambras and A. Steiger (Stuttgart: Enke, 1997), 523.

⁴⁷ *Tierschutz-Schlachtverordnung*, Bundesgesetzblatt II No. 312/2015.

⁴⁸ *Tierschutzgesetz*, Bundesgesetzblatt I No. 118/2004, as last amended by Bundesgesetzblatt I No. 86/2018.

⁴⁹ Levinger, “Die jüdische Schlachtmethode,” 9.

[shechita] *uno actu*,⁵⁰ it can be asserted that there are indeed stunning methods that actually kill. A closer look into the law confirms that in such cases no additional stunning is mandatory.

Finally, a detailed comparison of methods in relation to animals does not bring about a clear preference for industrial slaughter—if not the opposite,⁵¹ as it was observed

[w]hen the cattle were restrained in a comfortable upright position, a skillful cut made with the special, long kosher knife caused less behavioral reaction than a hand waved in the face of the animal.⁵²

A similar undecided picture is provided by research into the relation of slaughter methods and meat quality.⁵³

While a legislator seems free to allow the consumption of meat of any kind of animal and hence to regulate the methods of slaughter, a well-balanced position has to be taken up in a democratic society, based on human rights, where different cultural approaches are at stake. Well-balanced implies to be generalisable. An obligation to provide lists of local individuals who intend to consume meat produced according to religious tradition, clearly transcends the state's legitimate margin of appreciation. The market is already regulated by the increased cost of production that its additional stages inevitably bring about. Moreover, a prohibition of exportation would contradict the findings of the ECtHR, according to which the possibility for a minority to import meat from an

50 Levinger, *Schechita*, 58–112.

51 Troeger, "Schlachten von Tieren," 523: "*Dabei muß anerkannt werden, daß das Schächten nach mosaischem Ritus durch Sachverständige, eigens dazu ausgebildete Personen mittels spezieller und nur für diesen rituellen Akt vorgesehener Werkzeuge vorgenommen wird ('Chalaf') und somit dem Tier möglicherweise geringere Schmerzen zugefügt werden.*" [Herein it has to be acknowledged that slaughter according to mosaic law is carried out by a skilled slaughterer who has received special training for the procedure and only with tools intended for this ritual act ('chalaf') and that this procedure is therefore possibly less painful for the animal.]

52 T. Grandin, "Making Slaughterhouses More Humane for Cattle, Pigs, and Sheep," *Annual Review of Animal Biosciences* 1 (2013): 503.

53 E. M. C. Terlouw et al., "Pre-slaughter Conditions, Animal Stress and Welfare: Current Status and Possible Future Research," *Animal* 2 (2008): 1501–17; M. M. Farouk et al., "Halal and Kosher Slaughter Methods and Meat Quality: A Review," *Meat Science* 98 (2014): 505–19; K. Nakyinsige et al., "Influence of Gas Stunning and Halal Slaughter (no Stunning) on Rabbits' Welfare Indicators and Meat Quality," *Meat Science* 98 (2014): 701–8.

other country shall be a sufficient justification to restrict the licence to slaughter to a central body.⁵⁴

The language of the law itself declaring a hierarchy by virtue of defining a rule and establishing an exception is not helpful in overcoming prejudice. A positive example in this respect is the American formula of § 1902 Humane Methods of Livestock Slaughter Act,⁵⁵ according to which there are simply two legal ways of slaughter:

No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be humane:

(a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.

Or in other words, somewhat more bluntly: As long as a society does not become completely vegetarian, there is no justification for the prohibition of the religious slaughter of animals for the purpose of human consumption of their meat.⁵⁶ Such a prohibition hence constitutes a breach of both Regulation (EC) No. 1099/2009 and Art. 10 and 21 of CFREU within the European Economic Area, for the rest of Europe of Art. 9 and 14 of ECHR.

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⁵⁴ ECtHR 27 June 2000, 27417/95 (*Cha'are Shalom ve Tsedek / France*), §§ 80–5; cf. Lerner, Rabello, “The Prohibition,” 39, 57–58.

⁵⁵ 7 USCS §§ 1901–1907; cf. *Jones v. Butz* (1974, SD NY) 374 F Supp 1284, aff'd (1974) 419 US 806, 42 L Ed 2d 36, 95 S Ct 22; R. Kuppe, “Schächten und Tieropfer im Recht der Vereinigten Staaten von Amerika,” in *Schächten. Religionsfreiheit und Tierschutz*, ed. R. Potz, B. Schinkele, and W. Wieshaider (Freistadt: Plöchl & Egling: Kovar, 2001), 183–206.

⁵⁶ In a similar vein, M. Rohe, *Der Islam—Alltagskonflikte und Lösungen: Rechtliche Perspektiven* (Freiburg, Basel, Wien: Herder, 2001), 177; Lerner, Rabello, “The Prohibition,” 19–20; Bezouškova, “Práva zvířat, nebo náboženská svoboda?” 628.

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