

Opinion of Advocate General Hogan in Case C-336/19 *Centraal Israëlitisch Consistorie van België and Others*, ECLI:EU:C:2020:695

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Advocate General (AG) Hogan advised the Court of Justice (ECJ) on 10 September 2020 that the Flemish legislation prohibiting the slaughter of animals without stunning, including animals slaughtered using special methods required for religious rites, is contrary to EU law.

Flemish Decree on Unstunned Slaughter

The Decree of the Flemish Region of 7 July 2017 ‘amending the Law of 14 August 1986 on the protection and welfare of animals, regarding permitted methods of slaughtering animals’ (Flemish Decree on Unstunned Slaughter)¹ installed a prohibition of the slaughter of animals without stunning that also applies to the slaughter carried out in the context of a religious rite². In particular, as from the first of January 2019 it is prohibited in the Flemish Region to slaughter an animal without prior stunning.³ Yet, to alleviate the consequences of this prohibition for religious communities an alternative stunning procedure for the slaughter carried out in the context of a religious rite was provided. This alternative is based on reversible stunning and must not result in the death of the animal. However, many Jewish and Muslim believers and organisations felt being deprived of their religious freedom. As a consequence, they urged the Constitutional Court to annul the contested prohibition and reinstate the previous legislation which allowed to deviate from the obligation to previous stunning in the context of a religious rite.⁴

Request for a preliminary ruling from the Belgian Constitutional Court

In support of their actions for annulment, the applicants in essence plead five infringements: disregard of the European regulation (No 1099/2009)⁵ on the killing of animals, freedom of religion, the principle of separation of Church and State, the right to work and to the free choice of occupation and the principle of equality and non-discrimination.⁶

In a judgment of no less than 63 pages, the Constitutional Court dealt with the appeal for annulment of the Flemish Decree on Unstunned Slaughter. However, the Constitutional Court concluded that

¹ Decr.VI. 7 juli 2017 houdende wijziging van de wet van 14 augustus 1986 betreffende de bescherming en het welzijn der dieren, wat de toegelaten methodes voor het slachten van dieren betreft [Decree of the Flemish Region of 7 July 2017 amending the Law of 14 August 1986 on the protection and welfare of animals, regarding permitted methods of slaughtering animals], *Belgian Official Gazette* 18 July 2017, 73.317, <http://www.ejustice.just.fgov.be/eli/decreeet/2017/07/07/2017030639/justel> (BE).

² Art. 3 Flemish Decree on Unstunned Slaughter.

³ Art. 6 Flemish Decree on Unstunned Slaughter.

⁴ Belgian Constitutional Court 4 April 2019, No 53/2019, www.const-court.be.

⁵ Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing [2009] OJ L 303/1.

⁶ *Ibid.*, Cons. B.15.

before it can rule on the substance of the case further clarification by the ECJ is essential.⁷ In this regard, a preliminary ruling was submitted to the ECJ by the Belgian Constitutional Court. The questions concerned the proportionality of the Flemish prohibition, the compatibility with the right to freedom of religion (Article 10 of the Charter of the Fundamental Rights of the European Union) and the possible discriminatory treatment between ritual slaughter and the killing of animals during hunting, fishing and sporting and cultural events.⁸

The Constitutional Court is placing its finger on a sore spot especially with this last question. Instead of only focusing on symbolic cases which receive great public interest, other existing dreadful practices which currently escape examination should also be critically evaluated. For example, from an animal welfare point of view both unstunned slaughter and hunting are morally reprehensible.

Opinion of AG Hogan

AG Hogan proposes that the Flemish Decree prohibiting slaughter of animals without stunning including those subject to particular methods of slaughter prescribed by religious rites is not permitted under EU law.⁹ Although Member States may adopt stricter rules than those contained in EU law¹⁰, the prescribed derogation in favour of religious rites must be respected¹¹.

First of all, AG Hogan recognises the precedent value of the case and calls it a “unique opportunity to revisit and expand the case-law on Regulation No 1099/2009 and the reconciliation of the objective of protecting animal welfare and an individual’s right under Article 10(1) of the Charter to comply with dietary rules imposed by their religion”.¹² Despite Hogans' statement on reconciliation between animal welfare and religious freedom, he remarks at the end of his opinion that “the preservation of the religious rites of animal slaughter often sits uneasily with modern conceptions of animal welfare”.¹³ The fact that animal welfare has to give way to ritual slaughter is a policy choice of the Union legislature which, according to AG Hogan, reflects the EU’s commitment to a tolerant, plural society where divergent and, at times, conflicting views and beliefs subsist and must be reconciled.¹⁴ Nevertheless, the Advocate General also recalls the recent bio-label judgment (*OEuvre d'assistance aux bêtes d'abattoirs*, C-497/17)¹⁵ of the ECJ arguing that, although religious freedom is an even more fundamental objective than the protection of animal welfare (which is envisaged by Article 13 TFEU),

⁷ *Ibid.*, Cons. B.27.

⁸ Request for a preliminary ruling from the Grondwettelijk Hof (Belgium) lodged on 18 April 2019 in Case C-336/19, <http://curia.europa.eu/juris>.

⁹ Opinion of Advocate General Hogan in Case C-336/19 *Centraal Israëlitisch Consistorie van België and Others*, ECLI:EU:C:2020:695, Cons. 88.

¹⁰ Art. 26 Regulation No 1099/2009.

¹¹ Art. 4(4) Regulation No 1099/2009.

¹² Opinion of Advocate General Hogan in Case C-336/19 *Centraal Israëlitisch Consistorie van België and Others*, ECLI:EU:C:2020:695, Cons. 9.

¹³ *Ibid.*, Cons. 87.

¹⁴ *Ibid.*, Cons. 57.

¹⁵ ECJ Judgment of 26 February 2019, *Oeuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation and Others*, Case C-497/17, ECLI:EU:C:2019:137. *See* Elien Verniers, ‘Dierenwelzijn in de Europese Unie. Geen Europees biologisch logo voor ritueel geslacht vlees’ [Animal Welfare in the European Union: No biolabel for ritual slaughtered meat] (2019) 407 *Nieuw Juridisch Weekblad* 590, 590-593.

Member States should also have an obligation to inform consumers about animals that have been ritually slaughtered and enter the general food chain.¹⁶

The main subject of the AG's examination is to what extent Member States can adopt measures aimed at more extensive protection of animals at the time of killing without disregarding the freedom of religion enshrined in the Charter. The question referred by the Constitutional Court for a preliminary ruling on the possible discriminatory treatment between the ritual slaughter, on the one hand, and the killing of animals during hunting, fishing and sporting and cultural events, on the other, was not answered.

AG Hogan suggests that while Member States may adopt rules that are stricter than those contained in EU law, the exception for religious rites laid down in Regulation No 1099/2009 should be respected. For instance, it emerges from the ECJ judgment regarding temporary slaughter floors (*Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen*, C-426/16)¹⁷ that the requirement that ritual slaughter must take place in a slaughterhouse is compatible with the EU Regulation on the killing of animals.¹⁸ Other technical conditions or specifications which seek to minimise the suffering of animals at the time of killing, such as the presence of a qualified veterinarian at all times during the ritual slaughter, are also permissible.¹⁹ The Flemish ban on unstunned slaughter conversely involves, according to AG Hogan, additional measures which affect the essence and very nature of the exemption relating to ritual slaughter, since any slaughter, including in the context of a religious rite, can only be carried out after (reversible) stunning.²⁰

Notwithstanding the considerable efforts made by the Flemish legislature to reconcile animal welfare with ritual slaughter by providing for an alternative stunning process, the Advocate General emphasises that this is not sufficient.²¹

The observation that there is a significant body of adherents to both the Muslim and Jewish faiths for whom the slaughter of animals without such stunning is regarded by them as an integral aspect of a necessary religious rite is decisive for Hogan.²² Similarly, although the Flemish Region does not

¹⁶ Opinion of Advocate General Hogan in Case C-336/19 *Centraal Israëlitisch Consistorie van België and Others*, ECLI:EU:C:2020:695, Cons. 12, 52, 59, 62-63 and 80-81.

¹⁷ ECJ Judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen, VZW and Others v Vlaams Gewest*, Case C-426/16, ECLI:EU:C:2018:335. See Anne Peters, 'Religious Slaughter and Animal Welfare Revisited: CJEU, *Liga van Moskeeën en islamitische Organisaties Provincie Antwerpen* (2018)' (2019) 5 *Canadian Journal of Comparative and Contemporary Law* 269-298.

¹⁸ Opinion of Advocate General Hogan in Case C-336/19 *Centraal Israëlitisch Consistorie van België and Others*, ECLI:EU:C:2020:695, Cons. 58.

¹⁹ *Ibid.*, Cons. 69.

²⁰ *Ibid.*, Cons. 75 and 77.

²¹ Piet Vanthemsche, *Rapport over de dialoog met de geloofsgemeenschappen met het oog op een significante verbetering van het dierenwelzijn bij de praktijk van ritueel slachten en de overgang naar een algemeen verbod op onbedwelmd slachten* [Report on the dialogue with religious communities in order to significantly improve animal welfare with regard to the practice of ritual slaughter and the transition to a general ban on unstunned slaughter], March 2017, 62p, <https://dierenwelzijn.vlaanderen.be/onverdoofd-slachten>.

²² *Ibid.*, Cons. 47-48.

prohibit the import of kosher or halal meat, this does not remedy the failure to comply with the exception relating to ritual slaughter, said the Advocate General.²³

AG Hogan is aware that this view goes beyond what the European Court of Human Rights (ECtHR) decided in the case of *Cha'are Shalom Ve Tsedek v. France*²⁴ as, according to the ECtHR, there is no interference with the freedom to manifest one's religion if meat compatible with a person's religious prescriptions can be easily obtained from another State.²⁵ Nevertheless, AG Hogan is convinced that the EU legislature intended to grant a more specific protection to the freedom of religion than that which may have been required by Article 9 of the European Convention on Human Rights (ECHR).²⁶

While it is likely that the Court of Justice will comply with the non-binding opinion of AG Hogan, a reversal of the position is not entirely out of the question. In particular, it remains to be seen whether the Court will endorse the Advocate General's remarkable assertion that Article 10(1) of the Charter is interpreted more restrictively than Article 9 ECHR.

The EU Member States keep a close watch on what the ECJ will decide, because the ECJ's judgement will affect the entire EU. The Flemish ban is by no means the only one of its kind. In Slovenia, for instance, the Slovenian Constitutional Court upheld a ban on unstunned slaughter, which is quasi-identical to the Flemish ban, as both contain a total ban on unstunned slaughter.²⁷ At the end of this year ECJ will have to show its colours and it will become clear whether or not the sword of Damocles will fall.

²³ *Ibid.*, Cons. 79, 82-84.

²⁴ ECtHR, 20 June 2000, *Cha'are Shalom Ve Tsedek v. France*, CE:ECHR:2000:0627JUD002741795.

²⁵ Opinion of Advocate General Hogan in Case C-336/19 *Centraal Israëlitisch Consistorie van België and Others*, ECLI:EU:C:2020:695, Cons. 85.

²⁶ *Ibid.*, Cons. 86.

²⁷ Slovenian Constitutional Court 25 April 2018, No U-I-140/14-21, www.us-rs.si/.