EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Ban on ritual slaughter of animals without prior stunning in Flemish and Walloon Regions does not breach Convention

The case Executief van de Moslims van België and Others v. Belgium (applications nos. 16760/22 and 10 others) concerned a ban on the ritual slaughter of animals without prior stunning in the Flemish and Walloon Regions of Belgium.

In today's **Chamber** judgment[1] in this case the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 9 (freedom of religion) of the European Convention on Human Rights**, and no violation of Article 14 (prohibition of discrimination) taken together with Article 9.**

The Court found in particular that by adopting the decrees in question, which had had the effect of banning the slaughter of animals without prior stunning in the Flemish and Walloon Regions, while allowing reversible stunning for ritual slaughter, the national authorities had not exceeded their discretion ("margin of appreciation") in the case. They had taken a measure which was justified as a matter of principle and could be regarded as proportionate to the aim pursued, namely the protection of animal welfare as an element of "public morals". The Court pointed out that this was the first time that it had addressed the question whether the protection of animal welfare could be linked to one of the aims under Article 9 of the Convention.

A legal summary of this case will be available in the Court's database HUDOC (link)

Principal facts

The applicants are 13 Belgian nationals and seven non-governmental organisations based in Belgium. The applicants are organisations purporting to represent Belgium's Muslim communities as well as national and local religious authorities from Belgium's Turkish and Moroccan Muslim communities, Belgian nationals of Muslim faith and Belgian nationals of Jewish faith residing in Belgium.

In Belgium the Law of 14 August 1986 on animal protection and welfare provides that, except in cases of force majeure or necessity, vertebrates cannot be slaughtered without being anaesthetised or stunned (section 15 of the Law). This requirement did not apply, however, to slaughter prescribed by religious rite (former section 16).

In 2014, after a reform of the State, animal welfare – which had hitherto fallen under the remit of the Federal State – became a regional competence.

Following that reform, two regions adopted decrees (17 July 2017 for the Flemish Region and 4 October 2018 for the Walloon Region) putting an end to the exception which permitted the ritual slaughter of animals without stunning.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The exception provided for by the Law of 14 August 1986 remained in force in the Bruxelles-Capitale Region, as the Brussels Parliament had, in June 2022, rejected a proposed amendment to the law of 1986.

Some of the applicants in the present case sought the judicial review of the Flemish and Walloon decrees in the Constitutional Court, which in 2019 submitted a number of preliminary questions to the Court of Justice of the European Union (CJEU), in particular as to whether slaughter without stunning was compatible with EU law in the light of the freedom of religion provided for in the EU Charter of Fundamental Rights.

In 2020 the CJEU delivered a judgment[2] in which it found that EU law did not preclude legislation of a member State which required, in the context of ritual slaughter, a reversible stunning procedure which could not result in the animal's death. Then in 2021 the Constitutional Court dismissed the judicial review applications of the applicants concerned.

The applicants complained before the Court that their right to freedom of religion had been violated on account of the ban on the ritual slaughter of animals without prior stunning under the relevant decrees in the Flemish and Walloon Regions. They argued that it would be hard, if not impossible, for Jewish and Muslim believers to slaughter animals in accordance with the precepts of their religion or to obtain meat from such animals.

Complaints, procedure and composition of the Court

Relying on Article 9 (freedom of thought, conscience and religion), the applicants complained that the ban in question constituted an unjustified interference with their right to respect for their freedom of religion.

Relying on Article 14 (prohibition of discrimination) taken together with Article 9, they complained that they had been discriminated against in terms of their freedom of religion.

The 11 applications, listed in an annex to the judgment, were lodged with the European Court of Human Rights on 28 and 30 March 2022.

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*,
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Saadet **Yüksel** (Türkiye),
Lorraine **Schembri Orland** (Malta),
Frédéric **Krenc** (Belgium),
Diana **Sârcu** (the Republic of Moldova),

and also Hasan **Bakırcı**, *Section Registrar.*

Decision of the Court

Admissibility

The Court rejected two applications (nos. 16871/22 and 17314/22) lodged by two individuals living in the Bruxelles-Capitale region where slaughter without stunning was not prohibited, as those

[2] Judgment of 17 December 2020, *Centraal Israëlitisch Consistorie van België and others*, C-336/19, EU:C:2020:1031.

applicants were not part of a group that would directly be affected by the Flemish and Walloon decrees.

Right to freedom of religion

The Court found that there had been an interference with the applicants' freedom of religion and that this was prescribed by legislation, namely the Flemish and Walloon decrees.

As to whether the interference pursued a legitimate aim, the Court observed that this was the first time that it had had to rule on the question whether the protection of animal welfare could be linked to one of the aims referred to in Article 9 of the Convention.

Article 9 of the Convention did not contain an explicit reference to the protection of animal welfare in the exhaustive list of legitimate aims that might justify an interference with the freedom to manifest one's religion.

However, the Court considered that the protection of public morals, to which Article 9 of the Convention referred, could not be understood as being intended solely to protect human dignity in the sphere of inter-personal relations. The Convention was not indifferent to the living environment of individuals covered by its protection and in particular to animals, whose protection had already been considered by the Court. Accordingly, the Convention could not be interpreted as promoting the absolute upholding of the rights and freedoms it enshrined without regard to animal suffering.

Emphasising that the concept of "morals" was inherently evolutive, the Court did not see any reason to contradict the CJEU and the Constitutional Court, which had both found that the protection of animal welfare was an ethical value to which contemporary democratic societies attached growing importance.

It followed that the Court could take that fact into consideration when examining, as in the present case, the legitimacy of the aim pursued by a restriction on the freedom to manifest one's religion. Consequently, the Court considered that the protection of animal welfare could be linked to the concept of public morals, which constituted a legitimate aim within the meaning of Article 9 of the Convention.

As to whether the interference was necessary in a democratic society, the Court considered that in circumstances such as those of the present case, which, on the one hand, concerned relations between the State and religions and, on the other, did not disclose a clear consensus within the member States but nevertheless showed a gradual evolution in favour of greater protection of animal welfare, the national authorities certainly had to be afforded a margin of appreciation which could not be a narrow one. In this connection, the quality of the parliamentary and judicial scrutiny of the necessity of the measure carried out at national level was of particular importance, in particular in determining the application of the relevant margin of appreciation.

As regards the quality of the parliamentary scrutiny, the Court noted that the decrees had been adopted following extensive consultation with representatives of various religious groups, veterinarians and animal protection associations and that considerable efforts had been made over a long period by the federal, Flemish and Walloon legislatures, in turn, in order to reconcile the objectives of promoting animal welfare and respect for freedom of religion as effectively as possible. The regional legislatures had sought to weigh up the competing rights and interests in a duly analytical legislative process. It was also apparent from the drafting history of the decrees that the decisions of the Flemish and Walloon legislatures had been expressly reasoned in the light of the requirements of freedom of religion, as they had examined the impact of the measure on that freedom and, in particular, had carried out a lengthy proportionality analysis.

As regards the judicial scrutiny of the interference, the Court observed that a two-tier review had preceded its own examination under the Convention. The CJEU had held that the imposition of a reversible and non-lethal stunning method was compatible with Article 10 of the Charter of

Fundamental Rights. Secondly, the Constitutional Court had upheld the constitutionality of the two decrees on the basis of reasoning which, in the Court's view, could clearly not be regarded as superficial in the light of the requirements of Article 9 of the Convention.

The Court noted that both decrees were based on a scientific consensus that prior stunning was the optimum means of reducing the animal's suffering at the time of slaughter. It saw no serious reason to call this finding into question.

The Court further observed that the Flemish and Walloon legislatures had sought a proportionate alternative to the obligation of prior stunning, as the decrees provided that, if the animals were slaughtered according to special methods required by religious rites, the stunning process used would be reversible, without causing the animal's death. On the basis of scientific studies and extensive consultation with interested parties, the parliamentary work concluded that no less radical measure could sufficiently achieve the objective of reducing the harm to animal welfare at the time of slaughter.

It considered that the authorities concerned had thereby endeavoured to weigh up the rights and interests at stake and to strike a fair balance between them, and that the measure complained of fell within the margin of appreciation afforded to the national authorities in this area.

As regards the applicants' complaint that it would be difficult, if not impossible, to obtain meat in conformity with their religious beliefs, the Court noted that the Flemish and Walloon Regions did not prohibit the consumption of meat from other regions or countries in which stunning prior to the killing of the animals was not a legal requirement and that the applicants had not shown that access to such meat had become more difficult.

The Court concluded that, in adopting the decrees which had had the effect of prohibiting the slaughter of animals without prior stunning in the Flemish and Walloon Regions, while prescribing reversible stunning for ritual slaughter, the national authorities had not exceeded the margin of appreciation afforded to them in the present case. They had taken a measure which was justified in principle and which could be considered proportionate to the aim pursued, namely the protection of animal welfare as an aspect of "public morals". There had therefore been no violation of Article 9 of the Convention.

Prohibition of discrimination

As regards the applicants' situation as Jewish and Muslim believers compared to that of hunters and fishermen, the Court noted that thy had not shown that they were in an analogous or relevantly similar situation to that of hunters and fishermen. As noted by the CJEU, since ritual slaughter was carried out on farmed animals, their killing took place in a context distinct from that of wild animals which were slaughtered in the context of hunting and recreational fishing.

As regards the applicants' situation as Jewish and Muslim believers compared with that of the general population – who were not subject to religious dietary precepts – the Court noted that the decrees specifically provided for an alternative stunning process in the case of special methods of slaughter prescribed by religious rites: the decrees provided for reversible and non-lethal stunning. There was therefore no question in the present case of a lack of distinction in the way in which the different situations were treated.

As regards the situation of those applicants who were Jewish, as compared with Muslims, the Court considered, like the Constitutional Court, that the mere fact that the dietary precepts of the Jewish religious community and those of the Muslim religious community were of a different nature was not sufficient for it to find that persons of Jewish and Muslim faiths were in relevantly different situations in relation to the measure at issue in terms of religious freedom.

The Court found that there had been no violation of Article 14 of the Convention taken together with Article 9.

Separate Opinions

Judge Koskelo, joined by Judge Kūris, expressed a concurring opinion, as did Judge Yüksel. These opinions are annexed to the judgment.

The judgment is available only in French.

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