

**Case C-336/19**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

18 April 2019

**Referring court:**

Grondwettelijk Hof (Belgium)

**Date of the decision to refer:**

4 April 2019

**Applicants:**

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

**Intervening parties:**

LI

Vlaamse regering

Waalse regering

Kosher Poultry BVBA and Others

Global Action in the Interest of Animals VZW

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## **Subject matter of the main proceedings**

The main proceedings concern various actions for the annulment of the decreet van het Vlaamse Gewest van 7 juli 2017 houdende wijziging van de wet van 14 augustus 1986 betreffende de bescherming en het welzijn der dieren, wat de toegelaten methodes voor het slachten van dieren betreft (Decree of the Flemish Region of 7 July 2017 amending the Law of 14 August 1986 on the protection and welfare of animals, regarding permitted methods of slaughtering animals; ‘the Decree of 7 July 2017’), instituted by the Centraal Israëlitisch Consistorie van België (Central Israelite Consistory of Belgium) and others, by the not-for-profit association ‘Unie Moskeeën Antwerpen’ (‘Union of Mosques, Antwerp’) and the not-for-profit association ‘Islamitisch Offerfeest Antwerp’ (‘Islamic Feast of Sacrifice, Antwerp’), by JG and KH, by the Executief van de Moslims van België (Muslim Executive of Belgium) and others, and by the not-for-profit association ‘Coördinatie Comité van Joodse Organisaties van België. Section belge du Congrès juif mondial et Congrès juif européen’ (‘Coordinating Committee of Belgian Jewish Organizations. Belgian Section of the World Jewish Congress and the European Jewish Congress’) and others.

## **Subject matter and legal basis of the request for a preliminary ruling**

The request for a preliminary ruling concerns the question whether the prohibition of slaughter without stunning in the context of slaughter conducted during a religious rite, and the introduction of an alternative stunning procedure for such slaughter, as contained in the Decree of 7 July 2017, are compatible with EU law, more specifically with point (c) of the first subparagraph of Article 26(2) of Council Regulation No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, and with Article 10(1) (freedom of religion), Articles 20 and 21 (right to equality and non-discrimination), and Article 22 (principle of religious diversity) of the Charter of Fundamental Rights of the European Union.

The request is made pursuant to Article 267 TFEU.

## **Questions referred for a preliminary ruling**

1. Should 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 be interpreted as meaning that Member States are permitted, by way of derogation from the provision contained in Article 4(4) of that regulation and with a view to promoting animal welfare, to adopt rules such as those contained in the decreet van het Vlaamse Gewest van 7 juli 2017 ‘houdende wijziging van de wet van 14 augustus 1986 betreffende de bescherming en het welzijn der dieren, wat de toegelaten methodes voor het slachten van dieren betreft’ (Decree of the Flemish Region of 7 July 2017 ‘amending the Law of 14 August 1986 on the protection and welfare of animals,

regarding permitted methods of slaughtering animals'), rules which provide, on the one hand, for a prohibition of the slaughter of animals without stunning that also applies to the slaughter carried out in the context of a religious rite and, on the other hand, for an alternative stunning procedure for the slaughter carried out in the context of a religious rite, based on reversible stunning and on condition that the stunning should not result in the death of the animal?

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

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 of Fundamental Rights of the European Union, since, in the case of the killing of animals by particular methods prescribed by religious rites, provision is only made for a conditional exception to the obligation to stun the animal (Article 4(4), read in conjunction with Article 26(2)), whereas in the case of the killing of animals during hunting and fishing and during sporting and cultural events, for the reasons stated in the recitals of the regulation, the relevant provisions stipulate that those activities do not fall within the scope of the regulation, or are not subject to the obligation to stun the animal when it is killed (Article 1(1), second subparagraph, and Article 1(3))?

### **Provisions of EU law and international law cited**

Treaty on the Functioning of the European Union: Articles 13, 26, 28 to 36, 49, 56 to 62, and 267

Treaty on European Union: Article 4(3)

Charter of Fundamental Rights of the European Union: Articles 10, 12, 15, 16, 20, 21, 22 and 52

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): recitals 4, 11, 14, 15, 16, 18, 20; Articles 1, 2, 3, 4, 7, 18, 20, 21 and 26

European Convention on Human Rights: Articles 8, 9, 11 and 14

International Covenant on Civil and Political Rights: Articles 2, 18, 26 and 27

Universal Declaration of Human Rights: Articles 18 and 27

International Covenant on Economic, Social and Cultural Rights: Article 15

### **Provisions of national law cited**

Grondwet (Constitution): Articles 10, 11, 19, 21, 23 and 27

Wet van 14 augustus 1986 betreffende de bescherming en het welzijn der dieren (Law of 14 August 1986 on the protection and welfare of animals (B.S., 3.12.1986, p. 16382): Articles 3, 14a, 15, 16, 36 and 45b

Decreet van het Vlaamse Gewest van 7 juli 2017 houdende wijziging van de wet van 14 augustus 1986 betreffende de bescherming en het welzijn der dieren, wat de toegelaten methodes voor het slachten van dieren betreft (Decree of the Flemish Region of 7 July 2017 amending the Law of 14 August 1986 on the protection and welfare of animals, regarding permitted methods of slaughtering animals (B.S., 18.7.2017, p. 73317): Articles 1, 3, 4, 5 and 6

Decreet van het Waalse Gewest van 18 mei 2017 tot wijziging van de artikelen 3, 15 en 16 en tot invoeging van een artikel 45 ter in de wet van 14 augustus 1986 betreffende de bescherming en het welzijn der dieren (Decree of the Walloon Region of 18 May 2017 amending Articles 3, 15 and 16 and introducing an Article 45b in the Law of 14 August 1986 on the protection and welfare of animals (B.S., 1.6.2017, p. 60638)

### **Brief summary of the facts and the procedure in the main proceedings**

- 1 On 7 July 2017, the Flemish Region adopted the Decree of 7 July 2017. That decree introduces a prohibition in principle of the slaughter without stunning of vertebrate animals, even when the slaughter takes place in the context of a religious rite. It also stipulates that the stunning procedure in the case of ritual slaughter must be reversible and must not result in the death of the animal.
- 2 In January 2018, the applicants brought proceedings before the Grondwettelijk Hof (Constitutional Court, Belgium) for annulment of the Decree of 7 July 2017.
- 3 LI, the Flemish Government, the Walloon Government, and the bvba Kosher Poultry and others intervened in the proceedings.

### **The essential arguments of the parties in the main proceedings**

- 4 In support of their actions for annulment, the applicants in essence plead infringement of:

(1) Regulation No 1099/2009, read in conjunction with the principle of equality and non-discrimination, in that Jewish and Muslim believers are being deprived of the guarantee contained in Article 4(4) of Regulation No 1099/2009 to the effect that ritual slaughter cannot be made subject to the requirement of prior stunning, and in that the Decree of 7 July 2017, contrary to Article 26(2) of the

aforementioned regulation, was allegedly not notified to the European Commission in time;

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

(3) the principle of separation of Church and State, because the provisions of the Decree of 7 July 2017 allegedly prescribe the manner in which a religious rite is to be carried out;

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

(5) the principle of equality and non-discrimination, in that

- Jewish and Muslim believers are treated, without reasonable justification, in the same way as people who are not subject to the specific dietary laws of a religion;
- the people who kill animals while hunting or fishing or controlling harmful organisms, on the one hand, and the people who kill animals according to special slaughter methods prescribed by the customs of religious worship, on the other hand, are treated differently without reasonable justification, and
- Jewish believers, on the one hand, and Muslim believers, on the other hand, are treated in the same way without reasonable justification.

5 In response to the applicants' arguments, the Flemish Government and the Walloon Government make the following submissions:

(1) The Flemish Government argues that Article 26(2) of Regulation No 1099/2009 explicitly states that Member States may adopt national rules aimed at ensuring more extensive protection of animals at the time of killing, including slaughter according to ritual methods. In other words, EU law does not guarantee that slaughtering by ritual methods cannot be subject to the obligation of prior stunning. The Walloon Government takes the view that the arguments put forward by the applicants deprive Article 26(2) of Regulation No 1099/2009 of any meaning.

(2) The Flemish Government argues that it follows from the case-law of the European Court of Human Rights (ECtHR) that freedom of religion does not include the right to slaughter an animal according to religious rules (judgment of the ECtHR of 27 June 2000, *Cha'are Shalom Ve Tsedek v. France*, CE:ECHR:2000:0627JUD002741795). It also considers that the prohibition of slaughter without stunning, in so far as there is interference with freedom of religion, is necessary in a democratic society, meets an imperative social need and is proportionate to the objectives pursued. The Walloon Government points out that the contested provisions pursue a legal objective, namely, the promotion of animal welfare.

(3) The Flemish Government argues that freedom of religious organisation does not prevent the government, when organising the operation of the State, from intervening in the practice of religion to the extent that this is compatible with religious harmony and tolerance. The Walloon Government is of the opinion that the legislature did not intend in any way to pass judgement on the religious rites and practices of any religion.

(4) The Flemish Government argues that the general prohibition of the slaughter of animals without stunning does not result in a restriction on the right to work. In so far as a restriction may be considered to exist, it is justified by the objective of preventing all avoidable suffering in the slaughter of animals. The Walloon Government considers that it has not been shown that the applicants who are employed as butchers would experience the loss of their economic activity because the provisions in question do not apply a criterion based on nationality or the State of origin and because the objective of pursuing animal welfare is specifically mentioned in Article 13 TFEU. It also argues that restrictions on the free movement of goods can be justified on the basis of mandatory requirements such as the protection of the environment.

(5) The Flemish government argues that there is no question of discrimination. In the alternative, it argues that the fact that the Decree of 7 July 2017 does not distinguish between adherents of the Jewish faith and those who are not subject to specific dietary laws is reasonably justified because numerous scientific studies have shown that the slaughter of animals without prior stunning seriously compromises animal welfare. As regards the difference in treatment in relation to hunting, fishing and the control of harmful organisms, it considers that such activities are not comparable to those of the applicants since, given the nature of such activities, it is impossible to comply with an obligation of prior stunning.

As regards the argument that Jewish and Muslim believers are being discriminated against, the Walloon Government argues that the contested provisions are appropriate to achieving the intended objective of animal welfare and that the difference in treatment alleged by the applicants is reasonably justified. As regards the difference in treatment relating to hunting, fishing and the control of harmful organisms, it argues that that context is different from that concerning the slaughter of animals.

- 6 LI argues, in essence, that the contested decree does not infringe freedom of religion because the Jewish faith contains no prohibition of the slaughter of animals with stunning. In addition, he argues that any difference in treatment between killing animals during hunting and fishing, on the one hand, and slaughtering in accordance with religious rites, on the other, is justified because in the first case there is no possibility of stunning the animal in advance.
- 7 The vzw Global Action in the Interest of Animals argues, in particular, that the contested decree does not infringe the principle of the separation of Church and State, respects freedom of religion and is proportionate to the objective pursued, namely the removal of unnecessary suffering and pain in animals.
- 8 The bvba Kosher Poultry and others emphasise that the slaughter of animals in accordance with Jewish religious rules is more animal-friendly than regular slaughter methods. Furthermore, the exception to the requirement of slaughter with stunning provided for in Regulation No 1099/2009 is aimed at ensuring that freedom of religion is respected.

### **Brief summary of the reasons for the referral**

#### ***Question 1***

- 9 Article 3 of the Decree of 7 July 2017 provides that vertebrate animals may only be killed after prior stunning. Exceptions to this are force majeure, hunting or fishing and the control of harmful organisms. That article also stipulates that when animals are slaughtered using special methods required for religious rites, the stunning must be reversible and the death of the animal must not result from stunning. In other words, the Decree of 7 July 2017 provides for a ban on ritual slaughter without stunning.
- 10 EU law also imposes restrictions on slaughtering practices. Thus, in accordance with Regulation No 1099/2009, when slaughtering, it is, in principle, compulsory to stun the animals concerned. That obligation is contained in Article 4(1) of that regulation, which provides that ‘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’. Ritual slaughter without prior stunning is allowed as an exception. In fact, Article 4(4) of Regulation No 1099/2009 provides that, in the case of animals subject to particular methods of slaughter prescribed by religious rites, the requirements of Article 4(1) of that regulation are not to apply provided that the slaughter takes place in a slaughterhouse. That exception is based on the principle of freedom of religion, guaranteed by the Charter.
- 11 The referring court observes that, in accordance with point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, Member States have a certain degree of policy freedom to adopt national rules with regard to religious

slaughter aimed at ensuring more extensive protection of animals than those contained in the regulation. The second subparagraph of Article 26(2) requires Member States to bring those national rules to the attention of the Commission, which, according to the referring court, has happened.

- 12 By its first question referred for a preliminary ruling, the referring court in essence wishes to know from the Court of Justice whether the permission contained in Regulation No 1099/2009 for Member States to provide more extensive protection for animals can be interpreted as meaning that Member States may introduce a general ban on slaughter without stunning, as contained in the Flemish decree. After all, one possible interpretation is — as various applicants claim — that Member States of the European Union cannot use point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 to render ineffective the exception to the obligation of slaughtering with stunning contained in Article 4(4) of the regulation.

### *Question 2*

- 13 By its second question referred for a preliminary ruling, the referring court wishes to know whether, if the first question is to be answered in the affirmative, point (c) of the first subparagraph of Article 26(2) of the aforementioned regulation, in the interpretation referred to in the first question, is contrary to Article 10(1) of the Charter, according to which everyone has the right to freedom of religion.
- 14 The referring court states, first of all, that the exception to the principle of the obligation to stun animals before slaughter provided for in Article 4(4) of Regulation No 1099/2009 is based on the principle of freedom of religion, as guaranteed by Article 10(1) of the Charter.
- 15 However, according to the referring court, Member States may derogate from the aforementioned exception. After all, point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 authorises Member States, with a view to promoting animal welfare, to derogate from the provision contained in Article 4(4) of that regulation. In that regard, no limits are specified within which the Member States of the European Union are required to remain.
- 16 The referring court observes that the question therefore arises as to whether point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 may be interpreted as authorising Member States of the European Union to adopt national rules such as those contained in the contested decree, and whether that provision, if interpreted in that way, is compatible with freedom of religion, as guaranteed by Article 10(1) of the Charter.

### *Question 3*

- 17 Several applicants submit that if point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009 is interpreted as allowing Member

States of the European Union to take measures such as those contained in the contested decree, then that provision is contrary to the principle of equality and non-discrimination, as guaranteed by Articles 20 and 21 of the Charter, and the principle of religious diversity, as guaranteed by Article 22 of the Charter.

- 18 The referring court notes that Regulation No 1099/2009 provides only for a conditional exception to the obligation of prior stunning as regards the killing of animals by ritual slaughter methods (Article 4(4), read in conjunction with Article 26(2) of Regulation No 1099/2009), whereas the killing of animals during hunting, fishing and sporting and cultural events is fully exempt from the same obligation (Article 1(3) of Regulation No 1099/2009).
- 19 In that regard, the referring court wishes to know whether, if the first question is to be answered in the affirmative, point (c) of the first subparagraph of Article 26(2), read in conjunction with Article 4(4), of Regulation No 1099/2009 is contrary to Articles 20, 21 and 22 of the Charter. In other words, it questions whether in that case the regulation causes unjustified discrimination by allowing Member States to restrict the exception in the case of religious slaughter, whereas the killing of animals without stunning is permitted in hunting, fishing and sporting or cultural events.

WORKING DOCUMENT