Religious Slaughter and Animal Welfare Revisited: CJEU, *Liga van Moskeeën en islamitische Organisaties Provincie Antwerpen* (2018)

Anne Peters*

The article comments on a Grand Chamber judgment by the Court of the European Union on animal slaughter according to Islamic prescriptions. The relevant European Union laws prescribe that religious slaughter without stunning of the animal may only take place in approved slaughterhouses. This causes a shortage during the Muslim Feast of Sacrifice in the Belgian province of Antwerp. The EU law provisions are in conformity with the animal welfare mainstreaming clause of the Treaty on the Functioning of the European Union. *Moreover, the EU regulation and its application in the concrete case does not violate the fundamental right of free exercise of religion as guaranteed by the* EU Fundamental Rights Charter. *Finally, the refusal to make an exception for the peak demand for slaughter facilities during the Feast of Sacrifice does not constitute an indirect discrimination against Muslims. The paper agrees with the outcome of the judgment but criticises the Court for failing to consider the rights of religious minorities more broadly, and for not addressing the animal welfare point sufficiently.*

* Anne Peters is Director at the Max Planck Institute for Comparative Public Law and International Law Heidelberg, a professor at the universities of Heidelberg, Freie Universität Berlin, and Basel, and a William W Cook Global Law Professor at the University of Michigan. She has been a member of the European Commission for Democracy through Law (Venice Commission) in respect of Germany (2011–2015), served as the President of the European Society of International Law (2010–2012), and currently presides over the German Association of International Law.

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I. Introduction

The tension between respect for religious and cultural practices on the one side and animal welfare on the other is particularly acute when it comes to slaughter. From a legal perspective, this tension translates into a juridic conflict between the fundamental rights of religious believers on the one hand and the legally recognised objective of animal protection on

the other.[1] The prevailing view — shared by this contribution — is that the conventional modern slaughter with prior or simultaneous stunning and killing, as routinely practiced in Europe, is better for the animals than un-stunned killing as practiced by various religious groups, notably Muslim and Jewish communities (see in detail on this point below Part II). The question then arises to what extent religious demands should nevertheless be satisfied — at the expense of animal welfare.

This question was recently examined by the Court of Justice of the European Union ("CJEU"). In *Liga van Moskeeën en islamitische Organisaties Provincie Antwerpen VZW v Vlaams Gewest*,[2] the CJEU (Grand Chamber) found to be valid an EU law prescribing that religious slaughter without stunning of the animal may only take place in approved slaughterhouses. According to the Court, the relevant provisions do not violate primary law, notably neither the freedom of religion as guaranteed in Article 10 of the *European Charter of Fundamental Rights* ("*EUCFR*") nor the animal welfare mainstreaming clause of Article 13 of the *Treaty on the Functioning of the European Union* ("*TFEU*").[3]

This article first contextualises the legal questions and gives some facts on slaughtering (Part II). It then agrees with the Court's conclusion in *Liga van Moskeeën* that the relevant secondary law and its application in a

1. See *e.g.* Johannes Caspar & Jörg Luy, eds, *Tierschutz bei der religiösen Schlachtung / Animal Welfare at Religious Slaughter* (Baden Baden: Nomos, 2010); Olivier Le Bot sees a trend towards a stronger protection of religious slaughter or sacrifice practices, to the detriment of animals: Olivier Le Bot, "The Limitation of Animal Protection for Religious or Cultural Reasons" (2016) 13:1 US – China Law Review 1 at 3–6; Stefan Kirchner & Nafisa Yeasmin, "Ein Recht auf Schächten? Tierschutz und Religionsfreiheit in der EMRK aus nordeuropäischer Sicht" (2018) 24:1 Kirche und Recht 114. On conflicts and synergies, see: Tom Sparks, "Protection of Animals Through Human Rights: The Case-law of the European Court of Human Rights" in Anne Peters, ed, *Global Animal Law* (Heidelberg: Springer, 2019).
2. *Liga van Moskeeën en islamitische Organisaties Provincie Antwerpen VZW v Vlaams Gewest* (29 May 2018), C-436/16, ECLI:EU:C:2018:335 (CJEU) [*Liga van Moskeeën*].
3. EU, *Charter of Fundamental Rights of the European Union of 7 December 2000* [2007] OJ, C 303/01 [*EUCFR*].

concrete context is in conformity with the animal welfare mainstreaming clause (Part III). This article will then discuss and confirm the regulation's compatibility with the fundamental right to the free exercise of religion (Part IV). It additionally enquires (which the Court did not) whether *Liga van Moskeeën* involves indirect discrimination against Muslims (Part V). The article finds that neither the existence of these European Union-law provisions nor their application in a concrete situation violates fundamental rights of members of the Muslim community. Ultimately, I do not disagree with the outcome of the case but criticize the Court (and to a lesser extent the Advocate General's opinion) for failing to consider the rights of religious minorities more broadly, and for not addressing the animal welfare point sufficiently. We need to remain wary *both* of vilifying socially disadvantaged groups of humans (such as Muslim residents in Northern European countries) and of brutalising animals, because, speaking with Theodor Adorno, both harms might in psychological and ethical terms be related and even intertwined (Part VI).[4]

II. Background, proceedings, and facts on slaughter

The Dutch speaking Court of First Instance of Brussels had requested a preliminary ruling under Article 267 of the *TFEU*. The request was triggered by a change in practice of the Flemish authorities on the issuance of permits for ritual slaughtering. Since 1998, the competent authorities had allowed slaughter in temporary slaughterhouses during the peak time of the Muslim holiday Eid al-Adha, or the Feast of Sacrifice. Following a Belgian constitutional reform, competences in matters of animal welfare were transferred to the regions in 2014. The new government of the Flemish region, elected in 2014, appointed a minister for animal protection (member of the Nieuw-Vlaamse Allantie). The new Flemish regional minister announced that he would stop issuing approvals for temporary slaughterhouses in 2015, relying on the strict requirement of Article 4(4) of Regulation No 1099/2009, in conjunction with Article

4. Theodor W Adorno, *Minima Moralia: Reflexionen aus dem beschädigten Leben,* 7d vol 4 (Frankfurt am Main: Suhrkamp, 2003) (original 1951), Aphorismus 68 (translation by the author).

2(k) of that same regulation.[5] The Flemish minister argued that the temporary slaughterhouses did not satisfy the hygienic requirements of EU law (laid down in Regulation No 853/2004) when referring to a 2015 report issued by the EU Commission's Directorate General Health and Food Safety ("DG SANTÉ Report").[6] That report was critical of groupings of 'home slaughtering' at public sites outside slaughterhouses.[7] However, the DG SANTÉ Report did not explicitly recommend the prohibition of such private slaughter.

The applicants in the original proceedings are a group of Muslim organisations in the Flemish region. They argued that Article 4(4) of Regulation No 1099/2009, in conjunction with Article 2(k), infringed their freedom of religion.[8] Article 4 of Regulation No 1099/2009, entitling '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. ...
>
> 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*.[9]

Article 2(k) of the same regulation says: "'[s]laughterhouse' means any establishment used for slaughtering terrestrial animals which falls within

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5. EC, *Council Regulation (EC) 1099/2009 of 24 September 2009 on the protection of animals at the time of killing*, [2009] OJ, L 303/1, art 4(4) [Regulation No 1099/2009].
6. EC, *Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin*, [2006] OJ, L 226/22.
7. EC, Directorate-General for Health and Food Safety (DG SANTÉ), *Final report of an audit carried out in Belgium from 24 November 2014 to 03 December 2014 in order to evaluate the animal welfare controls in place at slaughter and during related operations* (audit) at para 44, online (pdf): EC <ec.europa.eu/food/fvo/act_getPDF.cfm?PDF_ID=11804> [DG SANTÉ Report].
8. Regulation No 1099/2009, *supra* note 5.
9. *Ibid* [emphasis added].

the scope of Regulation (EC) No 853/2004".[10] The referring court had doubts as to the validity of the two provisions read together.

Although the case is superficially about places of slaughter, the real issue is the method of slaughter. The Halal slaughter during the Feast of Sacrifice (outside of approved slaughterhouses) occurs by cutting and bleeding without prior stunning. The welfare implications of un-stunned slaughter have been examined by the Scientific Panel on Animal Health and Welfare of the European Food Safety Agency resulting in a 240-page scientific report and a scientific opinion on welfare aspects of animal stunning and killing methods, as requested by the EU Commission.[11] The Panel took care to circumscribe its mandate by emphasising that it "did not consider ethical, socio-economic, cultural or religious aspects of this topic".[12] It reached the conclusion that "if not stunned, [the animals'] welfare will be poor because of pain, fear and other adverse effects".[13] The explanation is the following:

> Most animals which are slaughtered in the EU for human consumption are killed by cutting major blood vessels in the neck or thorax so that rapid blood loss occurs. *If not stunned, the animal becomes unconscious only after a certain degree of blood loss has occurred* whilst after greater blood loss, death will ensue. The animals which are slaughtered have systems for detecting and feeling pain and, as a result of the cut and the blood loss, if not stunned, their welfare will be poor because of pain, fear and other adverse effects. The cuts which are used in order that rapid bleeding occurs involve *substantial tissue damage in areas well supplied with pain receptors. The rapid decrease in blood pressure which follows the blood loss is readily detected by the conscious animal and elicits fear and panic.* Poor welfare also results when conscious animals inhale blood because of bleeding into the trachea. Without stunning, the time between cutting through the major blood vessels and insensibility, as deduced from behavioural and brain response, is up to 20 seconds in sheep, up to 25 seconds in pigs, up to 2 minutes in cattle, up to 2 1/2 or more minutes in poultry, and sometimes

10. *Ibid*, art 2(k).
11. EFSA Scientific Panel on Animal Health and Welfare, "Opinion of the Scientific Panel on Animal Health and Welfare on a Request from the Commission Related to Welfare Aspects of the Main Systems of Stunning and Killing the Main Commercial Species of Animals" (2004) 45 EFSA Journal 1.
12. *Ibid* at 1.
13. *Ibid* at 5.

> 15 minutes or more in fish.[14]

The Panel asserted: "Due to the serious animal welfare concerns associated with slaughter without stunning, pre-cut stunning should always be performed".[15]

Along the same lines, the professional association of the Federation of Veterinarians of Europe, pronounced:

> the opinion that from an animal welfare point of view, and out of respect for an animal as a sentient being, the practice of slaughtering animals without prior stunning is *unacceptable* under any circumstances, for the following reasons: Slaughter without stunning increases the time to loss of consciousness, sometimes up to several minutes. During this period of consciousness the animal can be exposed to unnecessary pain and suffering due to: exposed wound surfaces; the possible aspiration of blood and, in the case of ruminants, rumen content; the possible suffering from asphyxia after severing the *n. phrenicus* and *n. vagus*. Slaughter without prior stunning requires in most cases additional restraint, which may cause additional stress to an animal that is almost certainly already frightened.[16]

In conclusion, from a purely veterinarian standpoint, slaughter without stunning should be avoided. The relevant EU regulation nevertheless allows it under limited circumstances. The question in the *Liga van Moskeeën* case is whether the exception goes far enough.

III. Compatibility of the EU regulation with Article 13 *TFEU*

One benchmark for the regulation's provisions is Article 13 *TFEU*, the EU animal mainstreaming clause.[17] It did not play a big role for the case

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14. *Ibid* [emphasis added].
15. *Ibid* at 2.
16. Federation of Veterinarians of Europe (FVE), "Slaughter of Animals Without Prior Stunning: FVE Position" (2005) Paper FVE/02/104 at 1, online (pdf): *FVE* <www.fve.org/cms/wp-content/uploads/fve_02_104_slaughter_prior_stunning.pdf> [the opinion of the FVE] [emphasis added].
17. *Consolidated Version of the Treaty on the Functioning of the European Union*, of 13 December 2007 (version of the 'Treaty of Lisbon'), art 13 (OJ 2008 C 115/47) [*TFEU*].

but shall be mentioned for the sake of completeness.[18] Article 13 *TFEU* provides:

> In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, 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.[19]

This mainstreaming clause addresses both the EU and Member States, but it does not relate to all EU policies (notably not to trade policy). The interesting questions are what 'paying full regard' exactly means, and also what 'animal welfare' is. But these questions were not at issue in *Liga van Moskeeën*. The proceedings were only about the second part of the clause, the exception ('while respecting'). The referring court opined that the EU Regulation No 1099/2009 did not sufficiently accommodate the relevant Belgian laws. However, it was not clear which laws in Belgium "relating in particular to religious rites, cultural traditions and regional heritage"[20] were concerned by the application of the controversial Regulation No 1099/2009.[21] Therefore, the CJEU did not find any disrespect of Belgian laws on religious slaughter, and hence no incompatibility with the savings clause of Article 13 *TFEU*.[22] This seems fully correct.

IV. Compatibility of the EU regulation with the freedom of religion

The centrepiece of the judgment is the examination of the validity of Regulation No 1099/2009 in light of Article 10 of the *EUCFR*.[23] The regulation interferes with freedom of religion by relegating ritual slaughter to approved slaughterhouses. Such a requirement constitutes interference because ritual slaughter is a manifestation of religion (*forum externum*).

18. *Liga van Moskeeën*, *supra* note 2 at paras 81–83.
19. *TFEU*, *supra* note 17, art 13.
20. *Ibid*.
21. *Liga van Moskeeën*, *supra* note 2 at para 81.
22. *Ibid* at para 83.
23. *Ibid* at paras 38–80; see Part V.C. for discussion on Article 9 of the *European Convention on Human Rights* ("*ECHR*").

Notably, during the Muslim Feast of Sacrifice, one of the holiest holidays of the Muslim Religion, the slaughter is an important component of the feast (however, it may not be compulsory). This means that a law which regulates the place for performing religious slaughter falls within the scope of Article 10(1) *EUCFR*.[24]

The next question is whether the regulation actually restricts the freedom of religion. At this point we need to distinguish between the mere existence of the rule as such (section A), and its application to the concrete case during the Feast of Sacrifice (section B).

A. No actual restriction of the fundamental right by the rule "as such"

The Court said that the rule "does not *in itself* give rise to any restriction on the right to freedom of religion of practicing Muslims",[25] because religious slaughter is not prohibited. On the contrary, the regulation contains an express derogation from the requirement of stunning, specifically for the purposes of ensuring respect for the freedom of religion and the right to manifest religion or belief in worship, teaching, practice, and observance.[26]

The obligation to use an approved slaughterhouse facially appears 'perfectly neutral'. As the Advocate General Nils Wahl stressed, it applies to any party irrespective of any connection with a particular religion.[27] It "concerns in a non-discriminatory manner all producers of meat in Europe", says the Court.[28] In sum, both Advocate General Wahl and the Court denied that the legislation at issue constituted any restriction of

24. *Ibid* at para 45.
25. *Ibid* at para 68 [emphasis added].
26. *Ibid* at para 57.
27. *Liga van Moskeeën en islamitische Organisaties Provincie Antwerpen VZW v Vlaams Gewest* (30 November 2017), C-426/16, ECLI:EU:C:2017:926, Opinion of AG Wahl at para 78 [Opinion of AG Wahl].
28. *Liga van Moskeeën*, *supra* note 2 at para 61.

the freedom of religion.[29]

This reasoning should be questioned. It could be argued that the regulation does indeed limit (or restrict) the freedom of religious practice of Muslims, as it in fact hinders the practice of religious slaughter. This was the view of the referring court.[30] The CJEU answered that it is a mere question of capacity. The approved slaughterhouses in the Flemish region do not have sufficient slaughter capacity during the four days of the Feast of Sacrifice. Additional slaughterhouses would require huge financial investments, and would not be viable, especially because they would be needed for only a few days per year. The validity of an EU law cannot depend on what the court called "retrospective assessments of its efficacy".[31] The capacity problem arises only in a limited number of municipalities in the Flemish region, and is not inherently related to the application of the regulation throughout the EU. However, the validity of a regulation must be examined taking into account the situation in the entire EU.[32] The CJEU concluded that the EU regulation, as such, "does not in itself create any restriction" of the freedom of religion.[33]

Indeed, Regulation No 1099/2009 specifically accommodates religious slaughter (in Article 4(4) cited above) but leaves a leeway to the Member States. The regulation's preamble puts it as follows:

> Since Community 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 of

29. Opinion of AG Wahl, *supra* note 27 at para 89. Advocate General Wahl did not stop here but entered into a further discussion in case the Court should find that there had been a restriction of the fundamental right (at para 90 et seq).
30. *Liga van Moskeeën*, *supra* note 2 at para 69.
31. *Ibid* at para 71.
32. *Ibid* at paras 73–74.
33. *Ibid* at para 79.

Fundamental Rights of the European Union.[34]

Dimensions 'beyond the purpose' of the regulation seem to be, on the one hand, the accommodation of religious freedom and, on the other hand, heightened animal welfare sensibilities in some Member States.

The Regulation 1099/2009 therefore allows Member States to completely ban un-stunned slaughter. This is currently the state of the law, for example, in Slovenia and Denmark. In contrast, Germany follows the line of the regulation and allows short term electroshocks that run only through the head of the animal "if this is necessary to cater for the needs of members of specific religious communities where compelling rules of their religious community prohibit the use of other methods of stunning".[35] The explanation of this provision is that Muslim slaughter prescriptions allow stunning before bleeding the animal, provided that the animal is sure to be still alive when bleeding out, and therefore prefers this 'weaker' stunning method.[36] The member States' different modalities of implementing the regulation confirm the Court's finding that the mere existence of the regulation, with its explicit accommodation for religious demands and the leeway it gives to EU Member States on this point, does not in itself restrict the freedom of religion.[37] The Court's findings are sound.

B. Strict application of the provisions during the Feast of Sacrifice in Muslim populated areas

A different question is whether the application of the regulation in a concrete situation — during the Feast of Sacrifice — constitutes a

34. Regulation No 1099/2009, *supra* note 5 at preamble, para 18 [emphasis added].
35. Verordnung zum Schutz von Tieren im Zusammenhang mit der Schlachtung oder Tötung und zur Durchführung der Verordnung of 20 December 2012 at §13(3) (BGBl I 2012 S 2982) at §13(1)(3) [translation by the author].
36. See Part V.D.
37. Opinion of AG Wahl, *supra* note 27 (Advocate General Wahl even found it "paradoxical" to call into question the *validity* of the provisions from the perspective of religious freedom at para 70).

restriction, and possibly a violation, of the freedom of religion. This is a serious question, but it was not asked by the referring court. The First Instance Court of Brussels had only posed the question of *validity* of the regulation. Under Article 267 *TFEU*, the Court could have asked a different question, namely how the regulation must be *interpreted*. Only the question of interpretation, the second variant of the referral for a preliminary ruling, could have opened the way for examining the effects of applying the regulation in a specific context.

However, in this affair, the Advocate General Wahl had advised the Court *not* to give an answer on the interpretation of the relevant regulations because judicial interpretative guidelines could — in his opinion — ultimately undermine the precise rules and thus overstep the competence of the Court.[38]

I doubt this, because the CJEU is, as a matter of principle, allowed and even required "to reformulate the questions referred to it and, in that context, to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court by those courts".[39]

So the Court could have, without acting *ultra vires*, asked an interesting question: does the strict and across-the-board *application* of the prohibition of home slaughter (also during these four days and in Muslim-populated areas) constitute an interference with and a *de facto* restriction of a religious practice? Must we therefore read into this regulation an unwritten exception leading to non-application during the Feast of Sacrifice for reasons of freedom of religion and non-discrimination? These questions can be discussed under the heading of freedom of religion as a liberty, but it is rather the aspect of discrimination on religious grounds which stands out. In any case, the relevant considerations are similar (both for freedom of religion *tout court* and for non-discrimination on the basis of religion). This Article therefore shifts the focus on the latter

38. *Ibid* at para 140.

39. *Isabel González Castro v Mutua Umivale, ProsegurEspana SL, Instituto Nacional de la Seguridad Social (INSS)* (19 September 2018), C-41/17, ECLI:EU:C:2018:736 (CJEU) at para 54.

fundamental right — which was not discussed by the CJEU.

V. Indirect discrimination of a religious group through strict application of the regulation?

The case raises the spectre of a *de facto*, indirect discrimination of Muslims through the disproportionate impact on this specific group brought about by the application of Regulation 1099/2009. The benchmarks are the fundamental right not to be discriminated against (Article 21(1) *EUCFR*) and the anti-discrimination mainstreaming clause of Article 10 *TFEU*, which forms a guideline for the making, interpretation, and application of secondary legislation.[40]

How does discrimination come into play? The freedom of religion does not grant believers a positive legal entitlement to obtain a permission to perform slaughter without stunning.[41] But *if* a state decides to allow slaughter without stunning it must avoid the discrimination of members of particular groups in this context, for example, Muslim groups in comparison to Jewish communities.

A. The test for indirect discrimination

The requirement of slaughter in official, authorised slaughterhouses does not target any religious group. This requisite is facially neutral in its wording. However, it might deploy a disproportionate negative impact on Muslims, because this is the only group which needs or wants to slaughter during a feast and for whom this activity forms part of their belief. Only this group has the increased demand during four days of the year.

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40. *EUCFR*, *supra* note 3 ("Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited", art 21(1)); *TFEU*, *supra* note 17 ("In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation", art 10).
41. Kirchner & Yeasmin, *supra* note 1 at 121.

An inattention to specific demands of the Muslim community could *in extremis* even constitute a so-called passive discrimination which occurs by omission or neglect of the State (as opposed to active measures).[42] Sometimes, structurally disadvantaged groups need positive state measures, especially financial support, in order to *de facto* enjoy a fundamental right on an equal footing with groups which are socially better placed, for example, subsidies for minority schools. But in our case it would go too far to postulate an affirmative duty to provide for additional slaughter facilities so as to avoid the 'passive' discrimination of Muslims.[43]

However we conceptualise the issue (as potentially indirect discrimination through inflexible and strict application, or as potentially passive discrimination through lack of extra funding), such a verdict cannot be easily pronounced. On the contrary, the standard of justification for apparently neutral rules or practices, which put members of protected groups at a disadvantage, is fairly lenient.[44] According

42. Anne Peters & Doris König, "Das Diskriminierungsverbot" [comparative commentary on article 14 ECHR/article 3 para. 2 and 3 German Constitution] in Oliver Dörr, Rainer Grote & Thilo Marauhn, eds, *Konkordanzkommentar EMRK/GG*, 2d vol 2 (Tübingen: Mohr Siebeck, 2013) at 1335–37.

43. See *Association Les Témoins de Jéhovah c France* (30 June 2011) No 8916/05, ECLI:CE:ECHR:2011:0630JUD000891605 (ECtHR) at para 52 (a Strasbourg judgment involving tax measures against the French association of Jehovah's witnesses, in which the ECtHR stated that the freedom of religion does not require that churches or their members must be accorded a special fiscal status); Advocate General Wahl in *Liga van Moskeeën* read this judgment as saying that freedom of religion does not entail any obligation to financial support, see: Opinion of AG Wahl, *supra* note 27 at para 80.

44. See European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Non-Discrimination Law* (Luxembourg: Publications Office of the European Union, 2018) at 53–59, online (pdf): EU FRA <fra.europa.eu/sites/default/files/fra_uploads/fra-2018-handbook-non-discrimination-law-2018_en.pdf>.

to EU law,[45] and the case law of both the CJEU[46] and the European Court of Human Rights ("ECtHR"),[47] the disparate negative impact of a uniform state policy on members of a particular religious group, or on persons of a particular ethnic origin, does not constitute indirect discrimination if the policy is "objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary", to quote the wording of the EU Racial Equality Directive.[48] The test under

45. EC, *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* [2000] OJ, L 180/22, art 2(2)(b) [*Council Directive*]. The case law rarely relies on the *EUCFR* but rather on the more specific provisions of EU secondary law. The key provision is Article 2(2)(b) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. It defines indirect discrimination on the basis of racial or ethnic origin (but not on the basis of religion) as follows: "indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary" (art 2(2)(b)).
46. See *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia* (16 July 2015) C-83/14 (CJEU) (special placement of electricity meters in Roma-populated district so that the metres cannot be manipulated or damaged) [*CHEZ Razpredelenie Bulgaria AD*].
47. See *DH v The Czech Republic* (13 November 2007) No 57325/00 (ECtHR) at paras 196–201 on the negative effects of the application of one and the same psychological test for schooling on Roma children. The tests were conceived for the majority population and did not take Roma specifics into consideration. The use of the test led to 80 to 90 percent of those children being sent to special schools.
48. *Council Directive*, *supra* note 45, art 2(2)(b).

the *EUCFR* is similar.[49] In the words of the ECtHR, "a failure to treat differently persons in relevantly different situations ... is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised".[50]

If we apply these principles to the case, we see that the non-attention to specific Muslim demands during those four days "works to the disadvantage of far more persons possessing the protected characteristic than persons not possessing it".[51] This is because it disadvantages those who wish to slaughter, and these are exclusively Muslims.

However, this disadvantage would only then violate the prohibition of (indirect) discrimination of Muslim believers if the state's across-the-board prohibition of 'free' slaughter would not satisfy the three-pronged test as established by the Strasbourg case law, namely, a sufficient legal basis, a legitimate aim, and proportionality.

The strictness of the proportionality test is heavily determined by the group that is placed at a disadvantage. In our case, it is not a specific racial or ethnic group but rather a religious group (although the characteristics overlap). Clearly, any potential direct or indirect discrimination on the basis of ethnic or racial origin must be strictly scrutinised. The CJEU stated in a case concerning Roma in Bulgaria: "where there is a difference in treatment on the grounds of racial or ethnic origin, the concept of

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49. *EUCFR*, *supra* note 3, art 52(1) contains the general principle for limitations/restrictions of fundamental rights (including the right not to be discriminated against: "[a]ny limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. 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 Union or the need to protect the rights and freedoms of others".
50. See *Eweida v United Kingdom* (15 January 2013), Nos 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR) at para 88 on rules on employee clothing in state-held enterprise (British Airways) and the enterprise's failure to take into account special needs of religious groups.
51. *CHEZ Razpredelenie Bulgaria AD*, *supra* note 46 at para 101.

objective justification must be interpreted strictly".[52] Inversely, distinctions (or lacking distinctions) on the basis of religion are normally scrutinised more leniently, granting the state a broad margin of appreciation.[53]

Applying the three-pronged test shows that its first condition is met: the obligation to use authorised slaughterhouses has its formal basis in the EU regulations. The second prong is the legitimate aim. Here we need to distinguish two objectives of the regulation: food safety on the one hand and animal welfare on the other hand.

With regard to the first objective (food safety for public health), the Advocate General found the obligation to use approved slaughterhouses not to be necessary and proportionate.[54] Some of the rules, for example, on the refrigerated storage of the meat, are superfluous for meat that will be given directly to the final consumer during the Feast of Sacrifice.[55] Temporary slaughter plants with precise sanitary standards could offer sufficient health guarantees.[56] But the Advocate General discussed all this only *arguendo.* He had — followed by the Court — already denied any interference with fundamental rights.[57] We need not further comment on the public health considerations. Even if the application of the regulation were not necessary to protect public health, it could still be necessary to protect animal welfare and be justified on this ground. We therefore turn to the regulation's second objective, the protection of animal welfare, in more detail.

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52. *Ibid* at para 112.
53. See *Palau-Martinez v France* (16 December 2003) No 64927/01 (ECtHR) at paras 39, 41; *Ismailova v Russia* (29 November 2007) No 37614/02 (ECtHR) at para 62; *Religionsgemeinschaft der Zeugen Jehovas v Austria* (31 July 2008) No 40825/98 (ECtHR) at para 99; *Löffelmann v Austria* (12 March 2009) No 42967/98 at para 49; *Savez Crkava "Riječ* života*" v Croatia* (9 December 2010) No 7798/08 (ECtHR) at paras 85–86.
54. Opinion of AG Wahl, *supra* note 27 at paras 129–33; see also paras 97, 100.
55. *Ibid* at para 127.
56. *Ibid* at para 132.
57. *Ibid* at para 89.

B. The prohibition of home slaughter as a suitable and necessary measure to further animal welfare as a legitimate objective in the public interest

The regulation *inter alia* seeks to protect animal welfare. This goal has been recognised by the EU animal welfare mainstreaming clause (Article 13 *TFEU*) and in the settled case law of the CJEU as "a legitimate objective in the public interest" to be pursued by EU legislation.[58]

The next legal question is whether the regulation's prohibition of home slaughter is apt to further this legitimate goal. At first sight, a more pertinent and suitable measure would be a stunning requirement. As explained above (Part II), animal welfare is better protected in slaughter with stunning than in un-stunned slaughter.[59] Based on these veterinarian insights, it can quite safely be said that strict prohibitions of un-stunned slaughter are suitable measures for furthering animal welfare. On these grounds some EU Member States, for example, Slovenia and Denmark, do not allow slaughter without prior stunning and thus completely

58. *Viamex Agrar Handel and ZVK (C-37/06), Zuchtvieh-Kontor GmbH (ZVK) (C-58/06) v Hauptzollamt Hamburg-Jonas* (17 January 2008), in joined cases C-37/06 and C-58/06, EU:C:2008:18 (ECJ) at paras 22–23; *Nationale Raad van Dierenkwekers en Liefhebbers VZW and Andibel VZW v Belgische Staat* (19 June 2008), C-219/07, EU:C:2008:353 (ECJ) at para 27; *Herbert Schaible v Land Baden-Württemberg* (23 April 2013), C-101/12, EU:C:2013:661 (ECJ) at para 35; *Zuchtvieh-Export GmbH v Stadt Kempten (Landesanwaltschaft Bayern intervening)* (23 April 2015), C-424/13, EU:C:2015:259 (ECJ) at para 35.

59. See in this sense also *Opinion of AG Wahl*, *supra* note 27 (reporting that the pleadings in the proceeding made it "difficult to challenge ... that the slaughtering of an animal that has not been stunned is undeniably likely to cause the animal greater pain and suffering" at para 102).

prohibit some forms of religious slaughter. [60]

Next, we need to enquire whether the prohibition or strict regulation of religious slaughter is *unnecessary* for securing animal welfare, because non-religious industrial slaughter with conventional stunning methods (such as electroshock through the heart of the animal or gassing) has deficits, by design and due to poor implementation, and causes enormous welfare problems.[61] This argument was formulated by the General Advocate in *Liga van Moskeeën* as follows:

> There is nothing to rule out the possibility that slaughtering without stunning, carried out in proper circumstances, will be less painful for the animal than slaughtering the animal after stunning it in circumstances in which, for obvious reasons of profitability, and given the widespread industrialisation of the production of food of animal origin, the stress and suffering experienced by the animal when it is killed are exacerbated.[62]

Indeed, cruel lengthy transports to slaughter plants, extreme time pressure during slaughter, faulty equipment, and untrained personnel cause immense suffering. In European slaughterhouses, frequent mishaps in the shooting of cattle is reported, and the asphyxiation of pigs and

60. In a recent judgment, the Slovenian Constitutional Court upheld this prohibition as being in conformity with freedom of religion (judgment (U-I-140/14) of 25 April 2018). See also Robert J Delahunty, "Does Animal Welfare Trump Religious Liberty? The Danish ban on Kosher and Halal" (2015) 16:2 San Diego International Law Journal 341; see also Christos Kypraios & Pallavi Arora, "Ritual Slaughter in Europe: Towards Reconciling Animal Welfare and religious Pluralism" (2018) 45:2 L' Observateur des Nations Unies: Revue de l'Association francaise pour les Nations Unies 44.

61. See also EFSA Panel on Animal Health and Animal Welfare (AHAW), "Guidance on the Assessment Criteria for Applications for New or Modified Stunning Methods Regarding Animal Protection at the Time of Killing" (2018) EFSA Journal 16:7 (which prescribes how to perform and document new or modified stunning methods that are not among the methods 'approved' by the EU Slaughter Regulation No 1099/2009).

62. Opinion of AG Wahl, *supra* note 27 at para 107 [footnotes omitted].

the electrocution of poultry are not quick and painless either.[63] These problems, however, cannot exonerate the practice of slaughter without stunning.

It remains the case that un-stunned slaughter is not equally suited to reach the objective of relative animal welfare. From the perspective of animal welfare, we need to compare the suffering caused by conventional stunning/killing and religious un-stunned slaughter in *real conditions*. Although the sheer number of killing in observation of religious rules is probably lower than the quantity of 'worldly' killing, it is not the case that religious slaughter is less industrialized and therefore inevitably performed with more care than other slaughter. Unfortunately, the problems owed to the logics of industrialisation, automatization, and pressure to lower the costs affect both 'worldly' slaughter and religious slaughter.[64]

It would therefore not be correct to compare apples with pears, and point to idealised religious practices in order to criticise the non-religious slaughter practices as they happen in the real world. The two types of slaughter practices (stunned and un-stunned) are not identical in their effect on animal welfare. Veterinarians agree that stunning is better for

63. The frequent scandals have led some countries to prescribe video recording in slaughterhouses, other states encourage voluntary video documentation. See for a comparative overview: Wissenschaftliche Dienste des Bundestages, "Videoaufzeichnungen in Schlachthöfen" (Academic Services of the German Parliament, expert opinion WD 5 - 3000 - 042/18) (27 March 2018).

64. See for welfare problems of current practices in the context of Islamic slaughter: Halal Slaughter Watch, *Compatibility between the OIE standards and the requirements of Islamic Law with special reference to the prevention of cruelty to animals during transport and slaughter*, at 5, online (pdf): <www.halal-slaughter-watch.org/wp-content/uploads/2013/11/OIE-Paper_A_Religious_slaughter.pdf>. Al-Hafiz Basheer Ahmad Masri identifies the "real problem" as "the general members of the Muslim public who buy their meat from the shops in their countries never get a chance to see for themselves the un-Islamic and inhumane scenes within some of their slaughter houses. If they knew what was happening there, they would stop eating meat or, at least, start lobbying the powers that be to have the Islamic rules implemented" in *Animals in Islam* (Petersfield: Athene Trust, 1989) at 57.

the animals.[65]

Short of a total ban against un-stunned slaughter, the strict requirement of slaughtering only in approved facilities helps to protect animal welfare (relatively speaking). Un-stunned slaughter that is done unprofessionally causes more pain and suffering than professionally performed killing.[66] If proper shackling facilities, trained personnel, and good equipment are lacking, animals will suffer more pain and anxiety.[67] It is therefore very important to continue the ongoing attempts to improve animal welfare in religious slaughter by developing best practices. Recommendations for best practices include post-cut stunning, reversible stunning, and better restraining methods.[68] The EU's prohibition of home slaughter helps to ensure a certain degree of professionalism and works towards establishing these best practices. It is therefore apt to further animal welfare. Concomitantly, a policy to minimise and professionalise un-stunned killing cannot be qualified as unnecessary.

C. Relevant case law of the ECtHR

In order to determine whether the refusal to relax the prohibition of home slaughter during the four days of the Feast of Sacrifice is not only a suitable and necessary but moreover a proportionate measure for protecting animal welfare at the expense of burdening Muslim believers, we should distinguish relevant prior case law. This comprises the case law of the ECtHR on the ECHR. In *Liga van Moskeeën,* the CJEU

65. See the opinion of the FVE, *supra* note 16.
66. *Cf.* on aspects of professionality in un-stunned slaughter: DG SANTÉ Report, *supra* note 7 at para 39 (finding that the training of the staff in Belgian slaughterhouses did not adequately cover the differences between slaughter with stunning and without stunning. The report concluded that "[t]he system of certificates of competence assures a good level of competence among operators, although the training and examination lacks elements on the important differences where slaughter without stunning is relevant" at 18).
67. See the opinion of the FVE, *supra* note 16.
68. See Antonio Velarde et al, "Improving Animal Welfare during Religious Slaughter", *Dialrel Reports* (Cardiff: Cardiff University School of City and Regional Planning, 2010).

completely left aside freedom of religion as codified in Article 9 ECHR, because the *Convention* is not binding on the EU as long as the EU has not acceded it.[69] However, Article 52(3) of the *EUCFR* prescribes that the *Charter* rights' "meaning and scope ... shall be the same as those laid down by the said Convention", and the *Charter*'s preamble reaffirms "the rights as they result, in particular, from ... the case-law ... of the European Court of Human Rights".[70] Following these prescriptions, the CJEU has frequently relied on the case-law of the ECtHR.

In a recent affair before the ECtHR, the Court had qualified the Turkish state's refusal to formally recognize the Alevi community as a religious denomination to be an unlawful discrimination of that group (in violation of Article 14 in conjunction with Article 9 of the ECHR).[71] The lack of recognition of the Alevi community was a targeted and an incisive state policy. In contrast, the incidental effect of the prohibition of slaughter in irregular slaughterhouses, within the framework of explicit and specific legal exemptions for religious Halal slaughter, is much less serious for the Muslim community in Belgium.

Another case to distinguish is *Cha'are Shalom*.[72] That judgment was about everyday religious slaughter following particularly strict rituals by a group of ultraorthodox Jews in France. The group had not been admitted to slaughterhouses, because the state did not consider the group to be sufficiently representative. The ECtHR had also (similarly to the CJEU in *Liga van Moskeeën*) denied any interference with Article 10 ECHR (alone and in conjunction with Article 14 ECHR), with the argument that there "would be interference with the freedom to manifest one's religion *only if* the illegality of performing ritual slaughter made it impossible for [the religious group] to eat meat from animals slaughtered in accordance with the religious prescriptions they considered applicable"[73] which is

69. *Liga van Moskeeën*, *supra* note 2 at para 40.
70. *EUCFR*, *supra* note 3, art 52(3).
71. *İzzettin Doğan v Turkey*, (26 April 2016) No 62649/10 (ECtHR) at paras 155–85.
72. *Cha'are Shalom Ve Tsedek v France*, (27 June 2000) No 27417/95 (ECtHR) [*Cha'are Shalom*].
73. *Ibid* at para 80 [emphasis added].

not the case if such meat can be imported.[74] The alternative, namely, the importation of meat, is readily available because goods can freely circulate in the EU. So the open market helps to safeguard the fundamental right. As a side-note, it is doubtful whether reliance on meat importation is a more animal-welfare alternative. Rather, it simply outsources animal cruelty.

Can the reasoning of *Cha'are Shalom* then be transferred to the case at hand, namely, that barriers to slaughtering are acceptable as long as meat can be procured from elsewhere? Such transfer seems impossible, because *Liga van Moskeeën* is not about *eating* the meat but about performing the act of slaughter, specifically as a component of the high religious feast.[75] This feature of the case makes it impossible to dismiss the religious claim simply by pointing out that the believers can buy the meat elsewhere.

Another dictum of *Cha'are Shalom* might be applicable to our case. The ECtHR had taken "the view that the right to freedom of religion guaranteed by Article 9 of the Convention *cannot extend to the right to take part in person in the performance of ritual slaughter* and the subsequent certification process ...".[76] Admittedly, the Court made this statement with regard to completely different context in which the ritual of festive slaughter was not at issue. The issue in *Cha'are Shalom* was rather the need for the ultraorthodox group to rely on slaughter performed by other licensed slaughterers for them according to their rites, without being able to examine in person whether their stricter rites had been duly observed. So the Court's remark may not too easily be read as a plain statement that the freedom of religion does not comprise the right to slaughter with one's own hands. Nevertheless, it does show the proper direction, namely, that not every behaviour of an overall religious activity (such as celebrating the Feast of Sacrifice) is covered by the fundamental right.

74. *Ibid* at paras 80–81.
75. *Liga van Moskeeën*, *supra* note 2 at para 45.
76. *Ch'are Shalom*, *supra* note 72 at para 82 [emphasis added].

D. Proportionality of the refusal to make an exception

The key question is whether the *de facto* obstacle for the exercise of the religious rite created by the refusal to grant a temporary permission for home slaughter and the resulting failure to accommodate the unusually high demand for religious slaughter during the days of the Muslim Feast of Sacrifice is proportionate.[77]

Advocate General Wahl had opined — *arguendo* — that (should the Court find a limitation of the fundamental right) the requirement of using only approved slaughterhouses would *not* be proportionate to reach the objective of animal welfare, and would therefore have to be qualified as an unjustified limitation and thus as a violation of the freedom of religion.[78] The Advocate General thought that the use of temporary plants might even be better for animals, because they create less stress (although he did not make it clear why this should be the case).[79] Overall, the Advocate General was "of the opinion that the obligation for slaughtering to be carried out in an approved slaughterhouse may go beyond what is strictly necessary in order to attain the objective of protecting animal welfare pursued when it is a case of slaughtering an animal in the performance of a religious rite at a very precise time of the year".[80]

I respectfully disagree and submit that the strict requirement of slaughtering only in approved plants does not unduly curtail the free exercise of religion. Religious opinion diverges whether slaughter is compulsory during the Feast of Sacrifice or not.[81] Concomitantly, there seems to be a trend, particularly among younger practising Muslims, to consider that the slaughtering of an animal during the Feast of Sacrifice may be substituted by a monetary donation.[82] It is of course not the

77. *Cf. EUCFR, supra* note 3, art 52(1) (see the wording of the provision, *supra* note 49).
78. Opinion of AG Wahl, *supra* note 27 at paras 98–128; see also paras 91, 97, and 133.
79. *Ibid* at para 119.
80. *Ibid* at para 124.
81. *Cf. Liga van Moskeeën*, *supra* note 2 at para 50.
82. Opinion of AG Wahl, *supra* note 27 at para 54 (this point was intensely discussed in the hearings).

province of courts to determine this religious controversy. But courts may take into account that inside a religious community, various views exist on this point, and factor this into their balancing decision.

Numerous Islamic authorities have pronounced themselves in favour of pre-slaughter reversible stunning. According to a 1986 recommendation by the Muslim World League (Rabitat al-Alam-al-Islam) jointly with WHO, "[p]re-slaughter stunning by electric shock, if proven to lessen the animal's suffering, is lawful, provided that it is carried out with the weakest current that directly renders the animal unconscious, and that it neither leads to the animal's death nor renders its meat harmful to consumers".[83] The pioneering and most authoritative Muslim writer on animal welfare in the context of the Islamic tradition and expert on slaughter techniques, Al-Hafiz Basheer Ahmad Masri, established that "the main counsel of Islam in the slaughter of food animals is to do it in the least painful manner, and numerous Qur'anic and *Ahadith* injunctions have been cited to that effect".[84] According to Masri, pre-slaughter stunning which does not kill the animal is perfectly compatible with the Islamic method of slaughter as it does not affect the flow of the blood. Masri opines that had pre-slaughter stunning been

83. WHO, *Joint meeting of the League of Muslim World (LMW) and the World Health Organization (WHO) on Islamic rules governing foods of animal origin* (held on 5–7 December 1985), WHO Doc WHO-EM/FOS/1-E (January 1986) at 8, online (pdf): WHO <apps.who.int/iris/bitstream/handle/10665/116451/who_em_fos_1_e_en.pdf>. See the list of the 24 Muslim members of that committee in Masri, *supra* note 64, at 199. This recommendation had been preceded by a 1960 *Fatwa* (unanimous verdict) adopted by a committee of jurists of the Al-Azhar University in Cairo which held: "Muslim countries, by approving the modern method of slaughtering [i.e. with pre-slaughter stunning that is not lethal], have no religious objection in their way" (at 191). Masri cites further Islamic authors in favour of pre-slaughter stunning (at 191–92). See also Richard C Foltz, *Animals in Islamic Tradition and Muslim Cultures* (Oxford: One World, 2006) at 105–27. See for a critique of modern, ostensibly 'Halal' slaughter from the perspective of Islam scholars Lisa Kemmerer, *Animals in the World Religions* (Oxford: Oxford University Press, 2011) at 241, 259–60.

84. Masri, *supra* note 64 at 188.

invented during the time of the Holy Prophet Muhammad, he would have prescribed stunning.[85] Indeed, slaughter practices minimising suffering would seem to be encouraged by a modern reading of the Koran which shows that the holy text does not consider animals as inferior to humans and does not confer humans any authority over them.[86]

Also, the religious rule or custom apparently provides that meat should be shared with neighbours (which could be understood as implying that the neighbours themselves do not slaughter). Or, maybe believers could travel to other parts of Belgium where the slaughter facilities are not overcrowded.

Another aspect is that the products of slaughter are not fully consumed only by religious believers. It has been assessed that normally half of the animal slaughtered in observance of a religious prescription is sold on the ordinary meat market for consumption by people who do not care for the religious rule. Arguably, already this fact creates more animal suffering than necessary.[87] To conclude, taking these aspects into account, the burden on the exercise of the freedom of religion created by the application of the controversial regulation seems not too high in proportion to the objective of animal welfare.

E. Summary

Overall, the EU regulation seeks to assure proper and professional slaughter by relegating it to authorised slaughterhouses which offer more guarantees for using the right equipment and trained personnel than

85. *Ibid* at 189–90; see also 157–204 generally on slaughter.
86. Sarra Tlili, *Animals in the Qur'an* (Cambridge: Cambridge University Press, 2012) at 82–83, 91, 136–37.
87. See Jörg Luy, "DIALREL Ethics Workshop 1: Ethical Evaluation of Six Political Options for Religious Slaughter" in Caspar & Luy, *supra* note 1 at 203–209 (Luy constates a "violation of the principle of proportionality which is ethically not acceptable" at 209).

non-authorised facilities.[88] The weak point of the regulation is that the strict monopoly for authorised slaughter plants is not exactly tailored to the objective of animal welfare. A strict requirement of stunning would be a much better targeted rule. Such a requirement would, as explained, not necessarily offend Muslims, but it would trod further into the sphere of religious doctrine. In order to avoid this, reliance on professionalism, in different manifestations, seems to be a proper 'proxy' for making a contribution to improve animal welfare — both in religious and in non-religious slaughter.

All aspects considered, and based on the rather generous standard of justification that is pertinent for our case, the regulation and its application offers a sufficiently reasonable justification for tolerating the adverse impact on the Muslim population of the region during the four days of the Feast of Sacrifice. [89] In conclusion, no indirect discrimination of Muslims in the region is present.

Issues of Halal slaughter will continue to occupy the Court of Justice of the EU. In a recent proceeding upon question for reference by the Administrative Court of Appeals of Versailles (France), the Court decided that the European label 'organic farming' may not be conferred on products deriving from meat of animals that had been slaughtered without stunning.[90] The tension between freedom of religion and animal welfare will need constant readjustment.

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88. But see Advocate General Wahl who is "not convinced ... that the use of approved slaughterhouses is always an effective bulwark against animal suffering" (Opinion of AG Wahl, *supra* note 27 at para 109). This is of course correct. However, the requirement goes at least in the right direction.
89. *CHEZ Razpredelenie Bulgaria AD*, *supra* note 46 at para 112.
90. *Oeuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'agriculture et de l'alimentation, Premier minister, Bionoor, Ecocert France, Institut national de l'origine et de la qualité (INAO)* (26 February 2019) C-497/17 ECLI (CJEU). The case concerned "Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and 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.

VI. Conclusion

In *Liga van Moskeeën,* Advocate General Nils Wahl duly noted that in debates about religious slaughter "the spectre of stigmatisation very swiftly appears. It is historically prevalent and care must be taken not to encourage it".[91] Indeed, the current political and societal climate in Europe is conducive to hostility towards Muslims. In this context, we must pay attention that concern for animal welfare is not played out against respect for human dignity and against religious and cultural pluralism.

Such easy but false antagonism can be avoided, because there is no necessary contradiction between the agendas of humanism and animal protection. Quite to the contrary, they can even be seen as aligned. The reason is that the de-humanisation of humans which can foreshadow discrimination, stigmatisation, and even extermination, finds its model and training-ground in the debasement of animals. When extreme violence against animals, as the prototypical 'other', is tolerated, condoned, and entrenched, it becomes difficult to uphold the cultural ban on violence against humans, especially against those groups that are likened to animals. In that sense, Theodor Adorno wrote that "the recurring stance about savages, blacks, or Japanese [or Muslim immigrants, we might add] resembling animals already contains the key to the pogrom. The defiance with which the perpetrator pushes aside this glance - '[i]t is only an animal' - repeats itself in his cruelty towards humans, in which the perpetrator constantly has to confirm 'only an animal' — because he could not fully believe it with regard to the animal either".[92]

Some readers might find that un-stunned slaughter constitutes extreme violence against animals. Could it be seen as a training ground for violence against humans as practised, for example, by soldiers of the Islamic State? Or rather, do not all forms of mass slaughter of animals ultimately constitute extreme violence which makes the consumers of such meat complacent towards the suffering of weaker members of society, which in turn could result in indifference towards the fate of

91. Opinion of AG Wahl, *supra* note 27 at para 106.
92. Adorno, *supra* note 4.

weaker humans or even fuel violence against them?

Awareness of the danger of demeaning and debasing humans, by condemning 'their' cruelty towards animals can be employed as a positive force for sharpening our consciousness and improving our consideration for the 'other'. Along that line, the way forward seems to be the inter-cultural and inter-religious dialogue on matters of slaughter — and an overall reduction or even abandonment of the consumption of animal meat where healthy and ethical alternatives exist. [93]

93. See *e.g.* Velarde et al, *supra* note 68.