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Some remarks on the ‘Shechita case’ of the ECJ

The study strives to answer why the European Court of Justice’s (ECJ) ‘Centraal Israëlitisch Consistorie van België’ judgment delivered on 17 December 2020 – in which the Court stated that ‘[the law of the European Union] must be interpreted as not precluding legislation of a Member State which requires, in the context of ritual slaughter, a reversible stunning procedure which cannot result in the animal’s death’ – triggered heated reactions. Similarly, sharp criticisms were articulated regarding the recent decision of the Belgian Constitutional Court (Grondwettelijk Hof), where the Court upheld the national legislation on the ban of slaughter without prior stunning per the aforementioned ECJ judgment. This ECJ judgment is of interest to experts in European Union (EU) law, because, as highlighted by Advocate General Gerard Hogan in his opinion, it was the first case where the ECJ analysed Article 26 (2/1) point ‘c’ of Regulation No. 1099/2009/EC of the Council and decided on its validity. First, it should be noted that according to Article 4 (1) of the Regulation, the legislature of the European Union considers slaughter with prior stunning as a rule and only allows ritual slaughter as an exemption based on Article 4 (4). Contrarily, Article 26 (2/1) point ‘c’ of the Regulation allows the Member States, ‘[to] adopt national rules aimed at ensuring more extensive protection of animals at the time of killing than those contained in this Regulation in relation to the following fields […] the slaughtering and related operations of animals in accordance with Article 4 (4).’ These rules, aimed at promoting animal welfare, typically impose severe restrictions on the exemption granted by Article 4 (4) of the Regulation. Due to this contradiction between the two paragraphs, the question arise, where the ‘scale-beam’ finds its point of equilibrium when the considerations of animal welfare and the right to religious freedom are placed on this ‘theoretical scale.’

In its first part, the study examines the historic, theological, and scientific background of shechita and halal slaughter with reference to the aforementioned framework. Regarding the historic background one may find that there is nothing new under the sun. Debates focused on the conformity of shechita and ‘European values’ have been ongoing since the end of the 19th century. Although some who advocated against shechita were truly driven by animal welfare concerns, sadly enough, anti-Semitic overtones were audible from the very beginning. Dark eras of history still cast their shadows on debates about shechita, and more recently on debates about halal slaughter. It is up to the legislature to find the proper balance between the right to religious freedom and animal welfare considerations, which is backed by ever-growing societal support. Consequently, the latter one too, can be considered as public interest. While the religious groups claim the primacy of shechita and halal slaughter as core elements of their religion, there is increasing pressure from the other side to consider animal protection and welfare concerns as far as possible. All of these are expected to be achieved in an era when anti-Semitism, and generally xenophobia, are on the rise. The latter induces the ‘same old fears’ in the Jewish community for obvious reasons. Furthermore, the study strives to introduce the scientific pros and cons of the issue to help the reader decide whether the ritual slaughter — the slaughter of animals without prior stunning but following certain rules aimed at sparing animals from useless suffering — is as humane as the modern non-religious method, where the slaughter is conducted with prior stunning.

To find the equilibrium – mentioned above in the first paragraph –, the legislature needs to be acquainted with the religious freedom-related case-law of the European Court of Human Rights (ECtHR) and the ECJ alongside the two religious slaughter-related decisions delivered by the German and Polish constitutional courts respectively. The findings are introduced in the second part of the article. Despite the ECtHR's long-established case law in protecting human rights, it was not until the last quarter of a century that the Court had elaborated on the issue, and provided an extended and precise case law. This study presents a brief overview of the ECtHR's case law and analyses only the most relevant judgment in detail. Contrary to the ECtHR, the ECJ did not deliver a single judgment on the freedom of religion from 2009 — when the Charter of Fundamental Rights of the European Union (EU Charter) was vested with binding legal power — until 2017. However, the ECJ remedied this omission and delivered several decisions related to religious freedom; three of them concerned religious slaughter. Two of these three judgments delivered by the ECJ on religious slaughter are introduced in part two of the article, while the third one is introduced in section three. This was decided because of the judgment's novelty, and the significant difference in the interpretation of EU law by the Advocate General and the Court. Therefore, the author believes that the said case deserves a more thorough examination and a separate section.

Lastly, the author introduces the research findings, including the scientific and religious arguments, introduced in the first section — pro and con. When doing so, the author wishes to indicate that he will dispense with expressing any personal views on the topic for two reasons: first, he does not possess thorough knowledge in either the field of theological or veterinary sciences. Second, neither Islamic scholars nor veterinary professionals can reach a consensus within their own circles, even if some tendencies may be observed in the case of scientific opinions. Thus, the summarizing part evaluates only the proper or improper nature of evaluating EU law by the Advocate General and court.