EUROGROUP FOR ANIMALS

Summary of the Court of Justice of the European Union (CJEU) case C-336/19

The publication of a Court of Justice of the European Union (CJEU) ruling on the legitimacy of the Flemish Government (Belgium) banning slaughter without stunning is expected for the beginning of 2021

In the EU the welfare of the animals at the time of killing is regulated by Council Regulation 1099/2009, that requires animals to be killed only after being stunned; nevertheless, a derogation (Art 4.4) allows for the production of meat coming from animals slaughtered without prior stunning, to accommodate the needs of local religious communities. Since the entry into force of the Regulation, this derogation has not been implemented uniformly across the EU, and certain Member States (e.g Finland, Denmark, Slovenia, and Sweden) on the basis of Art 26 and the principle of subsidiarity as set forth by Recital 18 with regards to Art 4.4, introduced mandatory stunning also for animals being slaughtered in the context of religious rites.

The same position was adopted on July 7th 2019 by the Flemish Region, with a decree prohibiting the slaughtering of animals without prior-stunning also for the production of meat by means of traditional Jewish and Muslim rites.

Following this decree the Belgian Constitutional Court referred to the CJEU to know if such a ban is permissible under EU law and compatible with the principle of religious liberty and freedom contained in the Charter of Fundamental Rights of the EU.

It must be stressed that the Flemish decree does not aim at banning ritual slaughter, but only slaughter without stunning: latest development in reversible stunning makes now possible to slaughter animals in the full respect of the animals well-being without alternating the rites *per se* (HSA, 2014).

Indeed, by reversibly stunning animals it is possible to meet the needs of religious communities: the animal being still alive at the time of the cut and, at the same time, to spare the animals the pain and suffering which are scientifically proven to be associated with slaughter without stunning (FVE, 2002; EFSA, 2004; BVA, 2020); as also acknowledged by the CJEU in C-497/17.

The potential of reversible stunning remains forgotten in the Advocate General opinion, which concluded that the Court should rule that Member States are not permitted to prohibit slaughter without stunning or replace this by reversible stunning methods in the context of religious rites. In his view Art 26.2 only legitimates Member States to introduce stricter rules to improve animal welfare, and not to adopt a ban on slaughter without stunning.

However, the interpretation of Art 26.2 allowing Member States to require mandatory pre-slaughter stunning also in the context of religious rites, is corroborated by the existence of Art 26.4: "*A Member State shall not prohibit or impede the putting into circulation within its territory of products of animal origin derived from animals that have been killed in another Member State on the grounds that the animals concerned have not been killed in accordance with its national rules aimed at a more extensive protection of animals at the time of killing*." If a ban on slaughter without stunning was not foreseen as legitimate by Member States to adopt under Art 26.2, there would have been no need to lay down Art 26.4, meant to guarantee the entering in a EU Member State' territory of a type of meat that is presumably not produced by that Member State itself, because of different rules on animal welfare.

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Additionally, the Advocate General excluded *a priori* the introduction of reversible stunning as he is of the opinion that such a technique would imply the elimination of ritual slaughter. However, reversible stunning shall to all effect be considered as an alternative "aiming at ensuring more extensive protection" foranimals, compatible with ritual slaughter practices.

Indeed, New Zealand since the beginning of the 2000's has in place a ban on slaughter without stunning and a mandatory implementation of reversible stunning. The meat produced is not only certified as Halal by the country's local communities, but also to all effects certified as such by religious communities in Malaysia, India, Middle East, Canada and China, which import halal meat produced by New Zealand.

Another proof of compatibility of reversible stunning with ritual slaughter, is the fact that the Halal Food Authority declares this method to be Shariah compliant, and it reiterates its commitment to "support and approve recoverable/reversible stunning for halal purposes".

On 21st October 2020 an Amicus Curiae was submitted to the CJEU by Professor Alberto Alemanno (HEC Paris - Tax & Law) and Professor Nicolas Michel de Sadeleer (Saint-Louis University) arguing that "a legislation [...] prescribing an alternative stunning procedure for the slaughter carried out in the context of a religious rite is permissible under Union law, not least having regard to the guarantees of religious liberty and freedom contained in the Charter." This contribution presents "reversible stunning as a method that successfully balances the apparently competing values of religious freedom expressed in ritual slaughtering on the one hand, and the concern for animal welfare on the other under current EU law."

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