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REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-140/14
25 April 2018

DECISION

At a session held on 25 April 2018 in proceedings to review constitutionality initiated upon the petition of the Slovene Muslim Community, Ljubljana, represented by Dr Andraž Teršek, Kamnik, and of Edin Kumalić, Ljubljana, the Constitutional Court

decided as follows:

The second paragraph of Article 25 of the Animal Protection Act (Official Gazette RS, No. 38/13 – official consolidated text) is not inconsistent with the Constitution.

REASONING

A

1. The petitioners allege that the second paragraph of Article 25 of the Animal Protection Act (hereinafter referred to as the APA) is inconsistent with Articles 7 and 41 of the Constitution “in conjunction” with Articles 1, 2, and 14 of the Constitution and Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette RS, No. 33/94, MP, No. 7/94 – hereinafter referred to as the ECHR). They explain that the petitioner the Slovene Muslim Community was

established in order to preserve Islamic values among Muslims in Slovenia, and also to connect with Muslims around the world. Its members are allegedly Slovene nationals who are Muslims. The petitioner Edin Kumalić filed the petition as a Muslim (i.e. a person of the Islamic faith). The petitioners allege that the ritual slaughter of animals without prior stunning is an essential part of the Islamic faith, and hence also of freedom of religion and in the interest of religious worship by Muslims in Slovenia, whom the petitioner represents. The inadmissibility of prior stunning is allegedly very clearly expressed in the fundamental Islamic source [i.e. the Quran]. Allegedly, Islam prescribes the consumption of the meat of animals slaughtered in a special manner. The petitioners extensively describe the content and sources of Islamic religious rules that allegedly prohibit the stunning of animals prior to their slaughter and regulate ritual slaughter. In such framework, they draw attention to the religious holiday Kurban Bayram, when one sacrificial animal should be slaughtered per household (a camel, a cow, a sheep, or a goat). The second paragraph of Article 25 of the APA allegedly directly unconstitutionally interferes with the constitutional rights and interests of the petitioner and Muslims in Slovenia, whom the petitioner represents.

2. The petitioners allege that the constitutional right to the free functioning of an organised religious community and to the free profession of faith includes the freedom to decide on the “what” and “how” of the religion. They opine that religious rituals fall within the core of freedom of religion and of religious worship. The substantive definition of religious belief and the manner of its expression are allegedly inseparable. The petitioners draw attention to the fact that the substance of faith and religious worship must be established according to subjective criterion – by taking into account the self-determination and self-definition of the organised religious community and its believers.

3. In the opinion of the petitioners, there is no legitimate objective for prohibiting the ritual slaughter of unstunned animals. Allegedly, the state expressed merely in passing the argument as to the protection of animals from cruelty, and did not provide substantive grounds therefor. The petitioners consider the “cultural conditioning” of the substance of the free functioning of a religious community and the freedom to privately and publicly profess religious beliefs to be inconsistent with Articles 7 and 41 of the Constitution. Allegedly, the state can thereby only achieve that Muslims in Slovenia will perform their rites abroad. Allegedly, Muslims in Slovenia who consider and experience the ritual slaughter of unstunned animals to be a component of their religion are treated unequally under the challenged provision.

4. The petitioners stress that ritual slaughter is carried out professionally, in a controlled manner, and in an authorised facility. They opine that the Constitution does not contain provisions on the specific legal protection of animals, and even less do animals enjoy constitutional rights. Allegedly, the constitutional order is based on the concept of animals’ well-being, which only protects animals from unnecessary damage, pain, and suffering. The petitioners refer to the case law of the Federal Constitutional Court of the Federal Republic of Germany (hereinafter referred to as the BVerfG). The petitioners draw attention to the fact that it is only legitimate to discuss special, [allegedly] animal-friendly, methods of carrying out slaughter. They express concerns as to the traceability and appropriateness of religiously suitable

meat products that are available in supermarkets for Muslims in Slovenia. In the assessment of the petitioners, the challenged provision does not follow from the legal order of the European Union (hereinafter referred to as the EU) and does not entail harmonisation with the legislation of comparable European states.

5. The petitioners present a brief selection of positions from the veterinary literature from which it allegedly follows that a correctly carried out ritual slaughter without stunning can be painless and that, from the aspect of the suffering of the animal, it does not differ significantly from slaughter after stunning. With respect to the freedom of the functioning of religious communities, the petitioners refer to specialist literature and (above all) to Decision of the Constitutional Court No. U-I-92/07, dated 15 April 2010 (Official Gazette RS, No. 46/10, and OdlUS XIX, 4). They claim that the state must not assess the value acceptability of the substance of a faith.

6. The National Assembly submitted a reply to the petition. It stresses that the purpose of the challenged provision is to prevent the unnecessary suffering of animals during slaughter. It states that the protection of animals is imposed by the Constitution. Allegedly, the second paragraph of Article 25 of the APA does not interfere with the rights of the petitioners determined by Article 7 and 41 of the Constitution. In the opinion of the National Assembly, it cannot result in Muslims in the Republic of Slovenia not consuming meat acquired in accordance with religious rules. If the availability of meat acquired through the slaughter of unstunned animals is poor, it is allegedly not the state that is responsible. Allegedly, the second paragraph of Article 25 of the APA does not prohibit the import of meat acquired in accordance with the religious rules to which the petitioners refer.

7. The Government submitted an opinion as regards the petition. It states that Council Regulation (EC) No. 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (OJ L 303, 18 November 2009 – hereinafter referred to as the Protection Regulation) allows Member States wider protection of animals in the field of ritual slaughter. The Government draws attention to the fact that in the thirteen years during which the previous regulation was in force (which allowed exceptional permission for ritual slaughter without stunning), only one application for such manner of slaughter was submitted. Allegedly, multiple slaughterhouses with a *halal* certificate are operative in the Republic of Slovenia.^[1] The Government advocates that a distinction should be made between the performance of ritual slaughter, on the one hand, and the consumption of meat and other products made from animals slaughtered in accordance with religious rules, on the other. Since the petitioners allegedly do not perform the registered activity of processing food products, it allegedly does not demonstrate legal interest for a review of the constitutionality of the rules regulating ritual slaughter. As regards the consumption of *halal*^[2] meat, the Government claims that the challenged regulation does not prevent the import thereof from EU Member States or third countries. In practice, due to the issued certificates, also Slovene food processors can allegedly ensure a supply of these products. Allegedly, states should not interfere with private-law systems for the certification of these products precisely in order to secure the autonomy of religious communities.

8. Allegedly, the second paragraph of Article 25 of the APA does not limit religious freedom. It is allegedly motivated by protection of the well-being of animals. The

Government describes in detail the available methods and techniques for slaughtering animals and the main risks to the well-being of animals during slaughter (i.e. the pain and the infliction of fear in conjunction with the duration of the period until the animal loses consciousness). Allegedly, scientific research shows that, during slaughter, animals experience tremendous pain, which cannot be entirely avoided by merely choosing the correct tool and method of slaughter. The purpose of stunning prior to slaughter is allegedly to ensure that while carrying out the slaughter the animal is unconscious and does not feel the pain. The Government explained the difference between stunning methods that cause immediate death and simple stunning methods that must be followed by a special slaughter procedure (usually by bleeding to death); the latter can either be irreversible (i.e. the animal can no longer wake up from unconsciousness and would, after a certain period of time, die merely due to the application of the stunning technique – even without bleeding to death) or reversible (if the animal does not bleed to death, it could become conscious again and function normally). In any event, according to the Protection Regulation, stunning should always cause the momentary loss of consciousness before the brain is able to feel the pain. In connection therewith, the Government underlines that animals that are not stunned prior to slaughter lose consciousness much later (on average, after more than a minute and in certain instances even more than two minutes after their neck has been cut). This is the extra amount of time during which the animal is exposed to pain, fear, and stress related to its slaughter. The Government alleges that the petitioners either incorrectly quote specialist literature or refer to outdated or otherwise deficient literature.

9. The Constitutional Court served the reply of the National Assembly and the opinion of the Government on the petitioners. Only one petitioner, namely the Slovene Muslim Community, responded. It explains that it considers two out of seven *halal* certificates disputable. It describes how Muslims in Slovenia have to go to Croatia during Kurban Bayram in order to obtain *halal* meat from a slaughterhouse located there. It expresses doubt as to whether it is possible to scientifically precisely measure the amount of pain that animals experience.

B – I

The Procedural Requirements and the Scope of Assessment

10. In light of the content of their petition, the petitioners in fact only challenge the part of the second paragraph of Article 25 of the APA that reads as follows: “Notwithstanding the fourth paragraph of Article 4 of Regulation 1099/09/EC, the stunning of animals must also be carried out in ritual slaughter.” They challenge the mentioned provision because by preventing the performance of Islamic religious slaughter in the Republic of Slovenia, i.e. slaughter that under Islamic rules must be carried out without stunning (hereinafter referred to as ritual slaughter), it allegedly prevents Muslims living in Slovenia from enjoying a supply and consumption of *halal* meat on a daily basis, and [in particular] on the occasion of Kurban Bayram.^[3] Hence, the petitioners dispute the regulation that, in accordance with point c of the second paragraph of Article 26 of the Protection Regulation, departs to a permitted degree from the fourth paragraph of Article 4 of the Protection Regulation^[4] and the requirement of the first paragraph of Article 4 of the Protection Regulation^[5] – and

thereby also extends the requirements of all rules determined by the Protection Regulation that regulate the stunning of animals before slaughter to all slaughter in slaughterhouses, without an exception for ritual slaughter. The petitioners allege, *mutatis mutandis*, that in accordance with the Constitution, Muslim believers have the possibility to obtain *halal* meat from slaughterhouses in Slovenia both for consumption on a daily basis, and, on the occasion of Kurban Bayram, for consumption and the appropriate division of the meat into thirds (see Paragraph 14 of the reasoning of this Decision).^[6] In their opinion, this can be achieved by abrogating the challenged prohibition on slaughtering unstunned animals insofar as it also applies to Islamic ritual slaughter.

11. All of the above entails that the petitioners propose a review of the constitutionality of the second paragraph of Article 25 of the APA insofar as it requires the prior stunning of animals as regards slaughter in slaughterhouses,^[7] without an exception for ritual slaughter^[8] carried out in accordance with the Islamic religion.^{[9] [10]}

12. The two petitioners are a religious community whose objective is to preserve Islamic values and a natural person who is a Muslim. Anyone who demonstrates legal interest may lodge a petition for the initiation of a procedure for the review of constitutionality (the first paragraph of Article 24 of the Constitutional Court Act, Official Gazette RS, No. 64/07 – official consolidated text and 109/12 – hereinafter referred to as the CCA). In accordance with the second paragraph of the cited Article, legal interest is deemed to be demonstrated if a regulation or general act issued for the exercise of public authority whose review has been requested by the petitioner directly interferes with his or her rights, legal interests, or legal position. Since the petition was filed by two petitioners, in order to fulfil the condition of having a legal interest for a substantive review of the second paragraph of Article 25 of the APA, it would suffice that at least one of them demonstrates such legal interest. However, both petitioners, who allege an interference with their [right to] religious freedom, also enjoy this human and constitutional right.^[11] The challenged provision regulates certain actions and conduct that according to the convincing allegation of the petitioners are a part of the system of obligations and prohibitions of the Islamic faith, or the Islamic faith has an influence thereon. Therefore, it is impossible to deny that there is a direct interference with their legal position.

13. The Constitutional Court accepted the petition to initiate proceedings for the review of the constitutionality of the challenged part of the second paragraph of Article 25 of the APA and, since the conditions determined by the fourth paragraph of Article 26 of the CCA were fulfilled, it proceeded to decide on the merits of the case.

B – II

The Substantive Starting Points and Some Methodological Issues

14. In cases such as the case at issue, the Constitutional Court cannot question the substance of religious teachings, rules, and beliefs such as they are presented in proceedings by members of a religious community. Firstly, it is irrelevant to the review of the Constitutional Court whether the presented religious regulations are

adopted by all members of a certain religion or only individual groups or fractions within that religion.^[12] Secondly, and even more importantly, the Constitutional Court inherently cannot be an arbiter in matters concerning religious teachings. In this respect, it must observe the autonomy of the religious community. Therefore, in the proceedings at issue, the Constitutional Court deemed the alleged content of the Islamic religious rules as true and authentic; the petitioners presented it in a substantiated and understandable manner as binding.^[13] Consequently, the Constitutional Court proceeded from the assumption that (also) the following allegations of the petitioners plausibly represent the content of Islamic rules: that Islam only allows consumption of the meat of animals that were ritually slaughtered without being stunned beforehand, and that an integral part of the religious holiday Kurban Bayram is the slaughter of a sacrificial animal without prior stunning, after which one third of the meat obtained in such manner is distributed among the poor, one third among relatives, neighbours, and friends, and one third can be retained by the household that carried out or requested the slaughter of the animal.

15 The petitioners refer to Articles 7 and 41 of the Constitution in conjunction with Articles 1, 2, and 14 of the Constitution and Article 9 of the ECHR.

16. In paragraph 111 of Decision No. U-I-92/07, the Constitutional Court established the general methodological guidelines for deciding in cases in which questions relating to freedom of religion and the constitutional position of religious communities arise. When a statutory provision is challenged with regard to aspects that are simultaneously the content of some of the constitutional principles determined by Article 7 of the Constitution^[14] and the right determined by Article 41 of the Constitution (in particular, with regard to the aspect of the right of religious communities to operate freely), first a review of conformity with Article 41 of the Constitution must be carried out. This right is the foundation of the entire regulation of the position of religious communities and has in this sense priority over constitutional principles that determine the position of religious communities in relation to the state. If the statutory measure passes the review of constitutionality determined by Article 41 of the Constitution, it is necessary to also carry out, within the framework of the allegations of the applicant or petitioner, a review of conformity with the first and second paragraphs of Article 7 of the Constitution, i.e. those aspects thereof that – although their origin and purpose are to protect the right determined by Article 41 of the Constitution – are not the direct content of that right. These are in particular the requirements as to the neutrality of the state and the equality of religious communities.

17. The reference of petitioners to Articles 1, 2, and 14 of the Constitution is so generalised and void that the Constitutional Court does not need to carry out a review from the aspect of the mentioned constitutional provisions.^[15] With respect to Article 7 of the Constitution, the petitioners only invoke the aspect of the free functioning (i.e. autonomy) of religious communities, which is an independent component of the right determined by Article 41 of the Constitution (to which the petitioners also refer in this framework). The Constitutional Court thus established the conformity of the second paragraph of Article 25 of the APA with the first paragraph of Article 41 of the Constitution, which reads as follows: “Religious and other beliefs may be freely professed in private and public life.”

18. The mentioned provision (in conjunction with the second and third paragraphs of Article 41 of the Constitution) safeguards freedom of religion (freedom of conscience or religious beliefs). From the aspect of the outward manifestation of internal personal decisions (the so-called *forum externum*),^[16] freedom of religion guarantees the right to the free profession of religious beliefs or religious affiliation (e.g. by spreading religious truth) and the right to the free exercise of one's religious beliefs (i.e. the performance of actions that are an integral part of a religion – observance, ceremonies, rituals, other rules of conduct that follow from religious teachings, the fulfilment of religious duties, associating in communities, etc.).^[17] Article 41 of the Constitution protects those types of conduct that are outwardly perceivable and to a significant degree connected with the religious beliefs of individuals, without which the freedom of religion of individuals becomes significantly compromised. Therefore, the generally binding and religiously neutral statutory obligations and prohibitions intended for the protection of other common human values entail a limitation of the human right at issue only when they refer to those manifestations of religious beliefs that attain the mentioned quality threshold. The obligations and prohibitions of conduct that do not attain the mentioned quality threshold cannot entail an interference with freedom of religion.^[18]

19. Within freedom of religion, also the collective dimension thereof is protected; this encompasses the interaction between believers who share the same religious beliefs (in particular, in the form of rituals), with whom they associate in religious communities.^[19] Not only individuals who compose religious communities, but also religious communities themselves have the right to freely and according to their own rules profess religious beliefs and perform religious rites.^[20]

20 The first paragraph of Article 9 of the ECHR substantively ensures freedom of religion in an equal manner as the first paragraph of Article 41 of the Constitution. However, it should be borne in mind that the limitations on freedom of religion under the second paragraph of Article 9 of the ECHR are only admissible due to exhaustively stated objectives (i.e. public safety, the protection of public order, health, or morals, or the protection of the rights and freedoms of others). Therefore, when assessing the admissibility of the limitations on the right to freedom of religion determined by the first paragraph of Article 41 of the Constitution, it is necessary that the Constitutional Court take into consideration, in view of the fifth paragraph of Article 15 of the Constitution, stricter regulation of the admissible objectives due to which an interference with freedom of religion is admissible.

B – III

The Review of the Challenged Provision

21. The petitioners substantiate their claim as to the inconsistency of the second paragraph of Article 25 of the APA with the first paragraph of Article 41 of the Constitution with the allegation that the challenged provision prevents Muslims (those who concur with the religious position stated by the petitioners) from enjoying a daily supply and consumption of *halal* meat, as well as from a supply of *halal* meat for the occasion of Kurban Bayram, which is an Islamic religious holiday, in order to consume such meat or to divide it into thirds.

22. The Islamic faith as presented by the petitioners, within the framework of the rules of daily consumption of food, limits the consumption of meat to *halal* meat of animals that were slaughtered without prior stunning. Furthermore, Islamic religious significance is also found in the celebration of Kurban Bayram; as regards this [religious holiday], for the purposes of the present review, the petitioners (only) underline access to the meat of one sacrificial animal slaughtered without stunning once a year for every Muslim household, in order for the households to be able to use that meat in conformity with religious rules (consumption of one third and donation of two thirds). The petitioners demonstrated that these rules are significantly and essentially connected with Islamic affiliation. The Constitutional Court deemed regular consumption of the meat of animals slaughtered in conformity with Islamic rules and the consumption and donation of meat of animals slaughtered in such manner during Kurban Bayram to entail the fulfilment of religious duties that are reasonably connected with the essence of the religious belief at issue. Therefore, both are protected by the right to freedom of religion determined by the first paragraph of Article 41 of the Constitution.

23. The Constitutional Court accepted [the claim] that unhindered access to the meat of ritually slaughtered animals for the purposes of the daily consumption thereof and especially for enabling the full and unhindered celebration of Kurban Bayram in environments where believers live is an essential and significant part of the Islamic faith. The challenged provision hinders such access, as it results in Muslims being obliged to supply themselves with *halal* meat of animals that are ritually slaughtered without stunning abroad. Since the second paragraph of Article 25 of the APA hinders the fulfilment of key religious duties, it interferes with the freedom of religion of members of the Islamic faith.

24. A statutory regulation that interferes with a human or constitutional right is only constitutionally admissible if it is based on a constitutionally admissible objective. Furthermore, in accordance with the established constitutional case law, it is always also necessary to assess whether an interference, even if it pursues an admissible objective, is consistent with the principles of a state governed by the rule of law (Article 2 of the Constitution), namely with that principle that prohibits excessive interferences by the state (the general principle of proportionality). The Constitutional Court performs an assessment of whether the interference is possibly excessive on the basis of the so-called strict test of proportionality. This test comprises a review of three aspects: (1) whether the assessed interference is appropriate for attaining the pursued objective; (2) whether the interference is even necessary in order to attain the objective, and (3) whether the weight of the consequences of the assessed interference with the affected human right is proportionate to the value of the pursued objective or the benefits that will ensue as a result of the interference (the principle of proportionality in the narrower sense). Only an interference that passes all three aspects of the test is constitutionally admissible.[\[21\]](#)

25. The Government states that the well-being of animals is the constitutionally admissible objective of the assessed interference. Allegedly, slaughter without prior stunning causes animals significantly greater suffering than the slaughter of animals that were previously stunned. Allegedly, the reason for that is the longer period of time during which the unstunned animal remains conscious (two minutes or even

longer). The time the animal is exposed to pain, stress, and fear is allegedly this amount of time longer.

26. The fourth paragraph of Article 72 of the Constitution determines that the protection of animals from cruelty shall be regulated by law. The protection of animals is regulated by the APA. The lack of normative regulation of the protection of animals would entail a violation of the fourth paragraph of Article 72 of the Constitution.^[22] From the fact that the Constitution requires legislative regulation of the protection of animals, it logically follows that the protection of animals is a constitutionally protected value and that it entails the substance of the constitutionally admissible public interest, which can also justify interferences with human and constitutional rights (the third paragraph of Article 15 of the Constitution).^[23] Actually, the Slovene constitutional order does not require that animals enjoy equal legal protection as human beings, but it does require that they be protected. The task of interpreting the fourth paragraph of Article 72 of the Constitution in accordance with tradition, the outlook of society, and the general level of development of social consciousness is, on the basis of the statutory reservation, conferred on the legislature and reflected in Article 3 of the APA. Therefore, in the Constitution it is prohibited, without a justifiable reason, to make animals suffer or to inflict illness or death thereon, or to cause them suffering that is avoidable without serious technical issues or disproportionate costs. The definition of the constitutionally required “protection of animals from cruelty” also includes the efforts of the legislature to prevent, ease, or alleviate unpleasant feelings of pain, stress, and fear that people cause animals. The Constitutional Court understands (the potentially very broad) term “well-being of animals” such that for the purposes of the present Decision this term refers precisely to the results of the mentioned endeavours – i.e. the protection of animals from cruelty.

27. The requirement that prior to slaughter animals be stunned stems from morals as an ensemble of rules that characterise and direct the interpersonal relations between people based on conceptions of good and bad.^[24] In modern times, it is not possible to interpret morals so narrowly as to only assess in light thereof relations between people in the literal sense of the word, but not, for instance, the actions of people in relation to animals and the natural environment. In modern society, concern for the well-being of animals and nature is an aspect of morals.^[25] In the context of the case at issue, a rule that protects living beings that can suffer from avoidable suffering protects public morals.

28. Within the framework of a review of the appropriateness of an interference with a right, the Constitutional Court reviews whether the interference can actually attain the pursued objective. Within the framework of the review of the necessity of the interference, the Constitutional Court reviews whether the interference is necessary in the sense that the same objective cannot be attained either without a measure in general or by means of a milder measure that would less intensively interfere with the affected right.

29. By claiming that there is no difference between slaughter without stunning and slaughter with stunning (taking into account the criterion of the suffering of animals), the petitioners oppose the conclusion that the interference with their freedom of religion is appropriate. If prior stunning does not reduce the animal’s pain and fear

compared to professionally executed religious slaughter without stunning, then the obligation of prior stunning is incapable of attaining the objective (i.e. to secure the well-being of animals).

30. In matters of difficult scientific questions, the Constitutional Court cannot be an arbiter. The question of the perception of pain in animals is an expert question falling within animal physiology. In such matters, [\[26\]](#) the Constitutional Court must, on the one hand, grant the legislature [\[27\]](#) some leeway. On the other hand, such entails that it may only examine the appropriateness and necessity of the disputed measure for attaining the pursued objective (in a complex scientific or expert field) if from the claims in the petition it is manifest that the extreme limits of the legislature's margin of appreciation were exceeded.

31. In view of the assessment conducted by the legislature (regarding which the Government reasonably explained in the reply to the petition that it was scientifically based and not, for instance, an entirely political decision), the petitioners failed to demonstrate that by stunning an animal prior to slaughter it is not possible to increase the well-being of the animal compared to slaughter without stunning, or that it is possible to obtain an at least equal effect with regard to the well-being of the animal in another manner (i.e. without an interference or by a milder interference with the freedom of religion of Muslims). As a result, the reviewed measure is appropriate and necessary for achieving the pursued objective.

32. In order to assess proportionality in the narrower sense, it is decisive whether protection of the well-being of animals (and thus also the protection of morals) outweighs the damage, i.e. that the second paragraph of Article 25 of the APA hinders the access of Muslims in the Republic of Slovenia – those who concur with the position expressed by the petitioners – to *halal* meat and thus interferes with their freedom of religion.

33. The protection of animals from cruelty (the fourth paragraph of Article 72 of the Constitution) is a constitutional value. [\[28\]](#) In practice, protection of the well-being of animals is ensured thereby as an important moral obligation. The APA establishes high criteria for the protection of animals in a generally binding, internally consistent, and religiously neutral manner. The second paragraph of Article 25 of the APA prohibits not only Islamic ritual slaughter but also any slaughter of unstunned animals in slaughterhouses (see paragraph 10 of the present Decision).

34. Within the framework of balancing proportionality in the narrower sense, the constitutional weight of the benefits gained from the second paragraph of Article 25 of the APA is great. The absence of the rule determined by the second paragraph of Article 25 of the APA in the legal order would signify that, in exception, unstunned animals can be slaughtered, which would expose animals to be slaughtered in such manner to additional pain, stress, and suffering from the moment their neck is cut to the moment they lose consciousness. On the other scale, however, access to *halal* meat is rendered more difficult, which has additional weight in conjunction with the importance of the donation and consumption of such meat during the celebration of Kurban Bayram in conformity with religious obligations. The consequences of the challenged provision for religious freedom are limited already due to its religious neutrality. Furthermore, access to *halal* meat is merely rendered more difficult for

Muslims and not rendered impossible. According to the first petitioner, the ritual slaughtering of animals during Kurban Bayram can be ordered abroad.

35. The fact that the prohibition of the ritual slaughter of unstunned animals entails a prohibition on inflicting pain that can be prevented is of decisive importance in the process of balancing the benefits of the challenged limitation and the weight of the challenged limitation. Thereby, the challenged rule protects an important moral obligation in the Slovene cultural environment. Consequently, the state is permitted to prohibit conduct that is incompatible with the fundamental rules and the moral framework of the society, provided that concurrently it does not excessively interfere with the right to freedom of religion.

36. The challenged regulation therefore does not excessively interfere with the right to freedom of religion determined by the first paragraph of Article 41 of the Constitution. In view of the above, the second paragraph of Article 25 of the APA is not inconsistent with the Constitution.

C

37. The Constitutional Court adopted this Decision on the basis of Article 21 of the CCA, composed of: Dr Jadranka Sovdat, President, and Judges Dr Matej Accetto, Dr Dunja Jadek Pensa, Dr. Dr. Klemen Jaklič, Dr Rajko Knez, Dr Etelka Korpič – Horvat, Dr Špelca Mežnar, Dr Marijan Pavčnik, and Marko Šorli. The Decision was adopted unanimously. Judges Accetto, Jadek Pensa, Jaklič, Knez, Mežnar, and Pavčnik submitted concurring opinions.

Dr Jadranka Sovdat
President

[1] A *halal* certificate is a private document attesting that the meat has been acquired in a manner consistent with the rules of the Islamic faith.

[2] The expression “*halal*” designates that which is admissible or allowed under traditional Islamic law. In relation to meat, the Constitutional Court uses the word “*halal*” within the meaning of the practice that the petitioners deem consistent with the rules of the Islamic faith. In that sense, *halal* meat is the meat of animals that were slaughtered without prior stunning. Therefore, the fact that a slaughterhouse has a *halal* certificate does not necessarily imply that the meat [produced there] is *halal* meat as referred to by the petitioners and the Constitutional Court.

[3] The Slovene language does not have a special expression for the mentioned Islamic holiday of sacrifice, therefore the Constitutional Court – as well as the petitioners – use the Bosnian term (e.g., in Arabic, *Eid al-Adha*, in Turkish, *Kurban bayrami*, etc.).

[4] This provision determines that in the case of animals subject to particular methods of slaughter prescribed by religious rites, the requirement of prior stunning shall not apply provided that the slaughter takes place in a slaughterhouse.

[5] This provision determines 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 of the Protection Regulation. The loss of consciousness and sensibility shall be maintained until the death of the animal. The methods referred to in Annex I which do not result in instantaneous death (i.e. methods of so-called simple stunning) shall be followed as quickly as possible by a procedure ensuring death such as bleeding, pithing, electrocution, or prolonged exposure to anoxia.

[6] On page 25 of the petition the petitioners explain that the religion restricts Muslims as to which type of food they may consume and prescribes which days in the year meat of a ritually slaughtered animal must be distributed among the poor, neighbours, and friends, and a part of it retained.

[7] In accordance with point (k) of Article 2 of the Protection Regulation, 'slaughterhouse' means any establishment used for slaughtering terrestrial animals which falls within the scope of Regulation (EC) No. 853/2004 of 29 April 2004 laying down specific hygiene rules for the hygiene of foodstuffs (OJ L 139, 30 April 2004).

[8] Actually, in point 30 of Article 5 of the APA, slaughter of an animal is defined as the killing of an animal for human consumption, whereas ritual slaughter is defined as the slaughter of an animal involving a religious ritual. The Protection Regulation defines a religious rite in point (g) of Article 2 as a series of acts related to the slaughter of animals and prescribed by a religion.

[9] In accordance with the Protection Regulation, and hence also in accordance with the second paragraph of Article 25 of the APA, stunning is always carried out beforehand (see footnote 5). Also in the Slovene legal order it is necessary to directly apply, on the basis of the principle of the primacy of EU law, the definition of stunning as set out in point (f) of Article 2 of the Protection Regulation (i.e. any intentionally induced process which causes loss of consciousness and sensibility without pain, including any process resulting in instantaneous death), and not the (substantively essentially similar) definition set out in point 12 of Article 5 of the APA, which entered into force prior to the accession of the Republic of Slovenia to the EU.

[10] "Animals" within the meaning of point (c) of Article 2 of the Protection Regulation are vertebrate animals excluding reptiles and amphibians. In line with recital 11 and the second subparagraph of the first paragraph of Article 1 of the Protection Regulation, this Regulation only applies to fish to the extent that it determines the requirements laid down in the first paragraph of Article 3, i.e. that they shall be spared any avoidable pain, distress, or suffering during their killing and related operations (but it does not prescribe stunning prior to "slaughter"). Hence, the challenged regulation refers to mammals and birds.

[11] In paragraph 81 of Decision No. U-I-92/07, the Constitutional Court stated that the freedom to profess and practice one's religious beliefs is ensured to individuals and also religious communities or associations, regardless of whether they have a legal personality or not. In paragraph 91 of the mentioned Decision, it stated that also religious communities have the right to freely and in accordance with their own rules profess religious beliefs and carry out religious practices.

[12] Cf. Paras. 54 and 55 of BVerfG Judgment No. 1 BvR 1783/99, dated 15 January 2002.

[13] Cf. *ibidem*, Para. 56.

[14] These are the principle of the separation of the state and religious communities (the first paragraph of Article 7 of the Constitution), the principle of the freedom of activity of religious communities, and the principle of the equality of religious communities (the second paragraph of Article 7 of the Constitution). However, the principle of the separation of the state and religious communities determined by the

first paragraph of Article 7 of the Constitution in the broader sense comprises three elements: (1) the religious or ideological neutrality of the state, (2) the autonomy of religious communities in their field of functioning, and (3) an equal attitude of the state towards all religious communities as regards their rights. The autonomy and equality of religious communities are in fact components of the broader principle of the separation of the state and religious communities, but they can also be considered separately and they are, accordingly, determined as special constitutional principles in the second paragraph of Article 7 of the Constitution (Paras. 95 and 99 of the reasoning of Decision No. U-I-92/07).

[15] See the insufficiently concretised reference of the petitioners to Articles 1, 2, and 14 of the Constitution (pp. 17 and 24 of the petition). On page 24 of the petition, as regards the principle of equality determined by Article 14 of the Constitution, the petitioners merely summarises the general position of the Constitutional Court in Decision No. U-I-92/07.

[16] In the present Decision, the Constitutional Court considers freedom of religion exclusively from that perspective.

[17] Decision No. U-I-92/07, Paras. 81 and 84 of the reasoning.

[18] *Ibidem*, Para. 84.

[19] *Ibidem*, Para. 87.

[20] *Ibidem*, Para. 91.

[21] Decision of the Constitutional Court No. U-I-18/02, dated 24 October 2003 (Official Gazette RS, No. 108/03, and OdlUS XII, 86), Para. 25 of the reasoning.

[22] Order of the Constitutional Court No. U-I-137/04, dated 9 September 2004, Paragraph 13.

[23] In Paragraph 25 of the reasoning of Decision No. U-I-52/16, dated 12 January 2017 (Official Gazette RS, No. 5/17), the Constitutional Court stated that in accordance with the established interpretation of the third paragraph of Article 15 of the Constitution, the public interest can be a separate, independent, constitutionally admissible objective of a limitation of human rights.

[24] Cf. the definition of morals in *Slovar slovenskega knjižnega jezika* [Dictionary of Slovene Literary Language] and in the lexicon of M. Pavčnik (Ed.), *Pravo* [Law], 2nd edition, Cankarjeva založba, Ljubljana 2003, p. 189. Cf. also M. Pavčnik, *Teorija prava, Prispevek k razumevanju prava* [Theory of Law: A Contribution to Understanding Law], 5th revised edition, Ius Software and GV Založba, Ljubljana 2015, p. 274, where it is stated that the interpretation of a law in practice must also necessarily be a moral act. If one is aware of that and recognises it, it is necessary that we do not disregard the natural differences between law and morals and act accordingly. It is also necessary that we only take into account generally accepted moral conceptions that can be categorised [...]. The morality of the law requires that one rise above individual cases and generalise them (the principle of equality!).

[25] C. M. Zoethout, Ritual Slaughter and the Freedom of Religion: Some Reflections on a Stunning Matter, *Human Rights Quarterly*, No. 3 (2013), p. 668.

[26] Also the BVerfG stated the same in Judgment No. 1 BvR 1783/99, Para. 39 of the reasoning, precisely as regards the doubts of the scientific community as to whether stunned animals are exposed to significantly less suffering and pain than unstunned animals; it stressed that as regards the assessment of the appropriateness and necessity of the means for achieving the legislative objectives, the legislature has a certain leeway (*Einschätzungsspielraum*) – also as regards the assessment of “the factual basis of the statutory regulation.”

[27] Both the Slovene legislature and the EU legislature. Not only the APA, but also the Protection Regulation stems from assessment of the appropriateness of prior stunning to relieve the distress of animals (although the Protection Regulation, once the balancing of interests is completed, in and of itself gives priority to the right to ritual slaughter).

[28] As regards an animal as an important value, see the significant monography N. Visković, *Životinja i čovjek: prilog kulturnoj zoologiji*, Književni krug, Split 1996.