

Federal Constitutional Court Decision Regarding Animal Slaughter as a Religious Practice (2002)

Abstract

In Germany, the ritual slaughter method prescribed in Islam (halal) and Judaism (kosher), was long largely forbidden. According to the Animal Protection Act, warm-blooded animals may not be slaughtered without prior stunning. At the beginning of 2002, the Federal Constitutional Court allowed ritual slaughter as an expression of religious freedom under certain conditions. Central to this decision is the freedom of occupation, which is guaranteed in article 12 paragraph 1 of the Basic Law.

Source

This complaint regarding the infringement of the constitution involves the granting of special authorization for religious slaughter—that is, the killing of warm-blooded animals without prior anesthetization.

At the beginning of the twentieth century, the slaughter of animals for religious purposes in keeping with Jewish rituals was largely permitted. The appropriate regulation thereof recognized predominant exceptions to the primary ban on religious slaughter without anesthetization. After National Socialism came to power in Germany, more and more states moved to ban religious slaughter. Eventually the imperative to anesthetize warm-blooded animals prior to butchering was implemented throughout Germany according to the law of April 21, 1933.

According to the findings of the Federal Constitutional Court, the law's goal was to insult and violate the religious feeling and customs of the Jewish portion of society. Exceptions to the ban on religious slaughter were granted only in the case of emergency killings.

After the end of World War II, religious slaughter was for the most part tacitly tolerated, though state law did not expressly reauthorize it (for example, butchering in accordance with Islamic Sharia). Nationwide regulations regarding religiously motivated, unanesthetized slaughter were first established with the enactment of the Slaughter Law, as part of the Animal Protection Law. Since the implementation of the first Law to Amend the Animal Protection Law of August 12, 1986, the Animal Protection Law's article 1 fundamentally bans the slaughter of warm-blooded animals without anesthetization. However, article 2.2 allows the possibility of granting special exceptions on religious grounds. [...]

The plaintiff is a Turkish citizen and, according to his statement (which is not disputed in these proceedings), a strict Sunni Muslim. He has lived in the Federal Republic of Germany for 20 years and operates a butcher shop in Hessen, which he took over from his father in 1990. In order to provide for his Muslim customers, he was specially authorized to perform ritualistic religious slaughters without anesthetization until September 1995 (in accordance with article 2.2 of the Animal Protection Law). The butchering was carried out on his premises under veterinary supervision. In the period following, the plaintiff undertook additional applications for the granting of such authorizations. Since the June 15, 1995, decision of the Federal Constitutional Court, the requests have remained unsuccessful. [...]

It is alleged that the plaintiff's freedom to choose and pursue a career has been violated. Even though he is a

Turkish citizen, he claims to have unlimited and unrestricted residency [in Germany]. In view of the duration of his residence in the Federal Republic of Germany, as well as his de facto German roots and his professional activities as a butcher, he claims protection under article 2.1 of the Basic Law. In addition, he claims fundamental rights protection under article 12.1 of the Basic Law.

The job of a Muslim butcher is an independent occupation, which requires certain qualifications that a normal butcher does not need to have. This occupation involves the quick and clean execution of the slaughter itself, so that the animal does not suffer unnecessarily. The job is, however, characterized much more by its religious elements, including the invocation of Allah.

The ban on religious slaughter thus affects the plaintiff as a manifest ban on his profession and thereby objectively restricts his job choices. If the decisions in question were able to persist and he were perpetually denied special authorizations, he would have to search for a new occupation. Constitutional law could only justify such a far-reaching intervention if it served to defend against demonstrable or severe danger to the good of the community. This, however, is not the case.

The Central Council of Muslims in Germany emphasizes the important meaning of animal welfare in Islam and explains that unanesthetized religious slaughter is stipulated as a mandatory component of Muslim religious practice. All significant Islamic groups in Germany share this opinion. According to a report from the Al-Azhar University of Cairo, the consumption of animal flesh not slaughtered in religious rituals is valid only in emergency situations. Such a situation, however, does not exist for Muslims in Germany. The principle of equal treatment with Jewish believers demands the authorization of religious slaughter for Muslims as well (in accordance with the Animal Protection Law). [...]

The court decisions in question violate the fundamental rights of the plaintiff as defined in article 2.1 in conjunction with articles 4.1 and 4.2 of the Basic Law. The authorities and the civil court have misjudged the necessity and possibility of a constitutional interpretation of article 4 of the Animal Protection Law. Therefore, applying the special-exceptions rule regarding bans on religious slaughter, they arrived at a disproportionate restriction of said fundamental right.

This decision was unanimous.

Justices: Jaeger, Haas, Hömig, Steiner, Hohmann-Dennhardt, Hoffmann-Riem, Bryde.

Source of the German original text: BVerfG, Urteil des Ersten Senats vom 15. Januar 2002
- 1 BvR 1783/99 - Rn. (1-61), http://www.bverfg.de/e/rs20020115_1bvr178399.html

Source of English translation: Deniz Göktürk, David Gramling, and Anton Kaes, eds., *Germany in Transit. Nation and Migration 1955-2005*. Berkeley: University of California Press, 2007, pp. 226-228.

Translation: Hilary Menges

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