

# A Stunning Decision: How the E.C.J. Butchered Both Religious Freedom and Animal Welfare

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## I. BACKGROUND

All European Union member states require animals to be stunned—still alive yet inanimate—before slaughtered for consumption, although the majority of these states allow for religious exceptions to the stunning requirement.<sup>1</sup> In the Flemish Region of the Kingdom of Belgium, a new law took effect January 1, 2019, banning ritual slaughter of animals as performed by Muslim and Jewish religious practices.<sup>2</sup> The Flemish Parliament’s animal welfare minister, Ben Weyts, introduced the

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1. THE LAW LIBRARY OF CONGRESS GLOBAL RESEARCH CENTER, LEGAL RESTRICTIONS ON RELIGIOUS SLAUGHTER IN EUROPE 1 (2018).

2. Milan Schreuer, *Belgium Bans Religious Slaughtering Practices, Drawing Praise and Protest*, N.Y. TIMES (Jan. 5, 2019), <https://www.nytimes.com/2019/01/05/world/europe/belgium-ban-jewish-muslim-animal-slaughter.html> [<https://perma.cc/D6P2-3MRT>].

legislation due to his belief that animal welfare should be prioritized over religious rights.<sup>3</sup>

A similar ban subsequently took effect in southern Belgium's Wallonia region on September 1, 2019.<sup>4</sup> When the law was originally passed in 2017, before it even took effect, the Coordinating Committee of Jewish Organizations in Belgium (CCOJB), the nation's branch of the European Jewish Congress, filed a lawsuit with Belgium's Council of State, asking the nation's highest constitutional court to strike down the regulations.<sup>5</sup> The Belgium Muslim Executive, speaking on behalf of the local Muslim community, similarly expressed its opposition to the ban, advocating for the "pure and simple cancellation of these laws in Flanders and Wallonia . . . in that they completely violate freedom of worship for the Jewish and Muslim communities in Belgium."<sup>6</sup>

On April 4, 2019, Belgium's Constitutional Court decided to refer the case to the Court of Justice for the European Union ("CJEU" or "ECJ"), "to determine whether the ban is in conflict with the EU's Charter of Fundamental Rights and other relevant pan-European laws."<sup>7</sup> As the court was considering the case, a law review article was published, offering food for thought in addressing these contentious issues.<sup>8</sup>

Before the ECJ issues a ruling, an Advocate General often first issues an advisory opinion. This opinion is not binding on the court but is highly influential; the court follows the Advocate General's Advisory Opinion in

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3. Rachel Elbaum, *Ritual Animal Slaughter Law Leaves Belgium's Muslims and Jews Facing Shortages, Price Hikes*, NBC NEWS (Mar. 10, 2019), <https://www.nbcnews.com/news/world/ritual-animal-slaughter-law-leaves-belgium-s-muslims-jews-facing-n975566> [<https://perma.cc/XFT6-VPZA>].

4. Jack Parrock, *Belgian Region Bans Halal and Kosher Slaughter of Animals*, EURONEWS (Mar. 9, 2019), <https://www.euronews.com/2019/09/03/belgian-region-bans-halal-and-kosher-slaughter-of-animals> [<https://perma.cc/E7YZ-EKCP>].

5. Yonah Jeremy Bob, *Belgian Court Questions Ban on Jewish Ritual Slaughter*, THE JERUSALEM POST (Apr. 5, 2019), <https://www.jpost.com/printarticle.aspx?id=585754> [<https://perma.cc/DDP4-9JE8>].

6. Hanan Ben Rhouma, *The Belgian Muslims Executive Calls for the Cancellation of the Laws Prohibiting Ritual Slaughter*, SAPHIR NEWS (Feb. 14, 2019), [https://www.saphirnews.com/L-Executif-des-musulmans-de-Belgique-appelle-a-l-annulation-des-lois-d-interdiction-de-l-abattage-rituel\\_a26014.html](https://www.saphirnews.com/L-Executif-des-musulmans-de-Belgique-appelle-a-l-annulation-des-lois-d-interdiction-de-l-abattage-rituel_a26014.html) [<https://perma.cc/UZW5-Z22C>]; Robert-Jan Bartunek, *Belgian Region's Plan to Ban Ritual Slaughter Upsets Religious Minorities*, REUTERS, (Mar. 30, 2017), <https://uk.reuters.com/article/uk-europe-religion-belgium-slaughter/belgian-regions-plan-to-ban-ritual-slaughter-upsets-religious-minorities-idUKKBN17126N> [<https://perma.cc/XSN9-TUT>].

7. Bartunek, *supra* note 6.; Bob, *supra* note 5.

8. See Jeremy A. Rovinsky, *Don't Have a Cow, Flanders: Guidance for the European Court of Justice as It Considers the Flemish Parliament's Ban On Ritual Slaughter*, 97 UNIV. DET. MERCY L. REV. 180, 181 (2020).

about 80% of cases.<sup>9</sup> In this matter, the court asked the Advocate General to opine, and on September 10, 2020, the Advocate General released its advisory opinion in Case C-336/19, noting that the effect of Belgium’s laws “is, in essence, to prohibit the slaughtering of animals by means of traditional Jewish and Muslim rites.”<sup>10</sup> The Advocate General asserted that allowing these laws to stand “would constitute a limitation on the freedom of religion guaranteed by Article 10(1) of the [EU] Charter [of Fundamental Rights]” and that European nations are therefore “obligated to respect the deeply held beliefs of adherents to the Muslim and Jewish faiths by allowing for the ritual slaughter of animals in this manner.”<sup>11</sup>

On December 17, 2020, the court issued its judgment in Case C-336/19. Disregarding the Advocate General’s opinion, the court ruled that the Belgian laws “allow a fair balance to be struck between the importance attached to animal welfare and the freedom of Jewish and Muslim believers to manifest their religion” and that European law “does not preclude Member States from imposing an obligation to stun animals prior to killing which also applies in the case of slaughtering prescribed by religious rights.”<sup>12</sup>

## II. THE ESSENCE OF THE ADVOCATE GENERAL’S ADVISORY OPINION

Article 253 of the Treaty on the Functioning of the European Union (TFEU) defines the role of the Advocate General, outlining the duty to act with complete impartiality and independence and to make “reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement.”<sup>13</sup>

In this case, the Advocate General first referenced to the applicable EU law, starting with Article 10 of the EU Charter of Fundamental Rights

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9. Rafał Mańko, *Role of Advocates General at the CJEU*, EUR. PARLIAMENTARY RSCH. SERV., Oct. 2019, at 2; Struan Robertson, *How Often Does the ECJ Follow Advocates General?*, PINSENT MASONS (Oct. 18, 2010), <https://www.pinsentmasons.com/out-law/analysis/how-often-does-the-ecj-follow-advocates-general-or-should-that-be-cjeu> [<https://perma.cc/K936-CTPT>]; *Advocate General of the CJEU*, EURWORK (July 7, 2020), <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/advocate-general-of-the-cjeu> [<https://perma.cc/FV5P-WE3M>] (“Although the CJEU is not bound by the opinions of the advocates general, it seems that in the majority of cases judges tend to follow the solution put forward in the opinions”).

10. Case C-336/19, *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, ECLI:EU:C:2020:695, ¶ 1 (Sept. 10, 2020) (Opinion of Advocate General Hogan).

11. *Id.* at ¶¶ 63, 73.

12. Case C-336/19, at ¶ 1.

13. Consolidated Version of the Treaty on the Functioning of the European Union arts. 252-53, June 7, 2016, 2016 O.J. (C202) 158 [hereinafter TFEU].

(Charter), entitled “Freedom of Thought, conscience and religion.”<sup>14</sup> Article 10(1) provides: “Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.”<sup>15</sup> The Advocate General then cited Article 21 of the Charter, entitled “Non-discrimination.”<sup>16</sup> Article 21(1) provides: “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.”<sup>17</sup> Similarly, Article 22 of the Charter, entitled “Cultural, religious and linguistic diversity,” provides: “The Union shall respect cultural, religious and linguistic diversity.”<sup>18</sup> Finally, the Advocate General referenced Article 52 of the Charter, entitled “Scope and interpretation of rights and principles,” which provides that

[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.<sup>19</sup>

The Advocate General also cited to Article 13 of the Treaty on the Functioning of the European Union, which provides for animal welfare protection. Article 13 states that

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.<sup>20</sup>

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14. Case C-336/19, at ¶ 16.

15. Charter of Fundamental Rights of the European Union, art. 10, Oct. 26, 2012, 2012 O.J. (C326) 397 [hereinafter Charter].

16. Case C-336/19, at ¶ 17.

17. Charter art. 21(1).

18. Charter art. 22.

19. Case C-336/19, at ¶ 20.

20. TFEU art. 13.

After citing the relevant Belgian law, specifically Regulation No. 1009/2009, requiring, *inter alia*, that “animals shall only be killed after stunning,” the Advocate General noted that an unconditional requirement to stun animals before slaughter—even if it may contribute to animal welfare—runs contrary to “the religious freedoms of those adherents of the Jewish and Muslim faiths for whom ritual slaughter of animals was a key feature of their religious traditions, practices, and, indeed, identity.”<sup>21</sup> Thus, according to the Advocate General opinion, if Member States would be allowed to prohibit Jewish and Muslim ritual slaughter of animals, such a law “would constitute a limitation on the freedom of religion guaranteed by Article 10(1) of the Charter.”<sup>22</sup> The opinion concludes by acknowledging that there is “no avoiding the fact that the preservation of the religious rights of animal slaughter often sits uneasily with modern conceptions of animal welfare”; nevertheless, “this Court cannot allow . . . individual states taking specific action in the name of animal welfare which would have the substantive effect of nullifying the derogation in favour of certain religious adherents.”<sup>23</sup>

### III. THE EUROPEAN COURT OF JUSTICE’S STUNNING DECISION

On December 17, 2020, the Court of Justice for the European Union issued its judgment in *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*. Disregarding the Advocate General’s opinion, the Court ruled that, “[i]n order to promote animal welfare in the context of ritual slaughter, Member States may, without infringing the fundamental rights enshrined in the [EU] Charter [of Fundamental Rights], require a reversible stunning procedure which cannot result in the animal’s death.”<sup>24</sup> The court declared that the “interference” in ritual slaughter “meets an objective of general interest recognized by the European Union, namely the promotion of animal welfare.”<sup>25</sup>

This judgment was quite stunning. Although the court claimed that its holding strikes “a fair balance . . . between the importance attached to animal welfare and the freedom of Jewish and Muslim believers to manifest their religion,” the decision itself acknowledged that “in the view

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21. Case C-336/19, at ¶¶ 50-70.

22. *Id.* at ¶¶ 72-73.

23. *Id.* at ¶ 87.

24. Court of Justice of the European Union Press Release No. 163/20. In order to Promote Animal Welfare in the Context of Ritual Slaughter, Member States May, without Infringing the Fundamental Rights Enshrined in the Charter, Require a Reversible Stunning Procedure which Cannot Result in the Animal’s Death (Dec. 17, 2020).

25. Case C-336/19, at ¶ 61.

of the applicants in the main proceedings, ritual slaughter is governed by specific religious precepts which require, in essence, that believers consume only meat from animals slaughtered without prior stunning.”<sup>26</sup>

In simpler terms, the ECJ first acknowledged that the purported victims may not remain devoted to their religious observance if they consume pre-stunned meat, then held that Member States may nevertheless pass legislation such as Belgium’s that completely prohibit slaughter without pre-stunning.<sup>27</sup> The court then declared that its ruling establishes a proper balance between animal welfare and religious freedom when, to the contrary, it clearly strikes no balance whatsoever, noting itself that Regulation No. 1099/2009 “appears to be incompatible with certain Jewish and Islamic religious precepts.”<sup>28</sup>

*A. How the Decision Fails to Protect Religious Freedom*

As the Advocate General’s Opinion illustrated, the EU Charter of Fundamental Rights protects freedom of religious observance, prohibits discrimination based on religion, and restricts limitations on religious freedom to proportional measures that genuinely meet objectives of a recognized general interest or the need to protect the rights of others.<sup>29</sup> By permitting states to require stunning of animals without a religious practice exception, the court’s decision, at best, only pays lip service to these guarantees of religious freedom.

In response to the court’s decision, the President of the Conference of European Rabbis, Rabbi Pinchas Goldschmidt, expressed his profound disappointment. In his words: “The bans have already had a devastating impact on the Belgian Jewish community, causing supply shortages.”<sup>30</sup> He noted that bans on religious slaughter have historically not been passed to protect animal welfare, but rather can be traced back to societies such as 1800s Switzerland, attempting to stop Jews fleeing pogroms from entering the country, as well as Nazi Germany;<sup>31</sup> and in 2012, the Netherlands attempted to ban ritual slaughter in order to curtail the spread of its Muslim

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26. *Id.* at ¶¶ 54, 80.

27. *Id.*

28. *Id.* at ¶ 54.

29. *See generally* Charter.

30. Lahav Harkov, *European Court of Justice Approves Belgian Kosher Slaughter Ban*, THE JERUSALEM POST (Dec. 17, 2020), <https://www.jpost.com/diaspora/european-court-of-justice-approves-belgian-kosher-slaughter-ban-652402> [<https://perma.cc/SV3B-WTML>].

31. *Id.*

population.<sup>32</sup> He lamented how the court’s decision to uphold the ban on kosher slaughter practices “will be felt by Jewish communities across the continent”, and proclaimed that “Europe needs to reflect on the type of continent it wants to be. If values like freedom of religion and true diversity are integral, then the current system of law does not reflect that and needs to be urgently reviewed.”<sup>33</sup>

Similar sentiments were expressed by the Director of Public Affairs for the European Jewish Association, Alex Benjamin: “a clear decision was made today: Jewish rights are now ranked behind animal rights . . . How morally reprehensible it is to us to be told that we are important and that we matter, while they legislate our way of life out of existence in Europe.”<sup>34</sup> Similarly, a popular Jewish blogger, Nathan Slifkin, expressed his ‘beef’ like this: “Given the amount of animal suffering which is perfectly legal in every country in the world, one can only conclude that the targeting of shechitah [Jewish slaughter practice] has less to do with compassion for animals and more to do with hostility to religion.”<sup>35</sup>

### B. *How the Decision Fails to Protect Animal Welfare*

Not only does the court’s decision impede upon religious freedom, but it also fails to adequately protect animal welfare, after having placed so much emphasis on it. The entire judgment consists of ninety-six paragraphs.<sup>36</sup> After eighty-five paragraphs of its opinion justifying the prioritizing of animal wellbeing over minority populations’ religious obligations, the court then confronts Article 1(3)(a)(iii) of Regulation 1099/2009, stating that “that regulation does not apply to a number of activities, which include the killing of animals during cultural or sporting events” as well as “hunting and recreational fishing.”<sup>37</sup> The court justifies these exceptions to the stunning requirement, as opposed to the religious

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32. See Raphael Ahren, *Crusading Against Muslim Rituals and Rites, Dutch Populist Alienates the Jews*, THE TIMES OF ISRAEL (Aug. 27, 2012), <https://www.timesofisrael.com/crusading-against-muslim-rituals-and-rites-geert-wilders-alienates-the-jews/>.

33. Harkov, *supra* note 30.

34. Alex Benjamin, *The Moment the Jew Became a Second-class Citizen in Europe Again*, THE TIMES OF ISRAEL (Dec. 17, 2020), <https://blogs.timesofisrael.com/the-moment-the-jew-became-a-second-class-citizen-in-europe-again> [ <https://perma.cc/DB3R-X62R>].

35. Natan Slifkin, *The Battle for Shechitah*, RATIONALIST JUDAISM (Dec. 21, 2020), <http://www.rationalistjudaism.com/2020/12/the-battle-for-shechitah.html?sref=fb&fbclid=IwAR0CmKbKtO85wexB8Ncf1Ufi9SWwWifFGIctXy9qkFiBWY9rlFRiyx9tfxY> [ <https://perma.cc/7E9A-TA5Q>].

36. See Case C-336/19, *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, ECLI:EU:C:2020:1031 (Dec. 17, 2020).

37. *Id.* at ¶¶ 86, 91.

exception, because “cultural and sporting events . . . result at most in a marginal production of meat or animal products . . . that . . . is not economically significant,”<sup>38</sup> and “hunting and recreational fishing . . . take place in a context where conditions of killing are very different from those employed for farmed animals.”<sup>39</sup>

The court’s logic at the very end of its opinion undermines its entire premise of valuing animal welfare.<sup>40</sup> Whether something is moral or not should not—and does not—depend on whether it is “economically significant” in the aggregate.<sup>41</sup> If a person believes that killing animals is immoral, the morality does not depend on the number of animals killed. Likewise, if a person believes that slaughtering animals for consumption purposes without pre-stunning is cruel, logic dictates that every such act is cruel, whether or not there is an economically significant food production.

Furthermore, the court’s logic is flawed in that cultural and sporting events, as well as hunting and recreational fishing, may very likely constitute a much more significant economic impact in the European Union than the religious ritual slaughter performed without stunning. The Jewish population of Europe, which has declined by 60% in the past fifty years, is estimated to be only 1.3 million, or 0.1% of the population of 2020 Europe.<sup>42</sup> In Belgium, there are only 29,000 Jews, and only about half of this population is religiously observant.<sup>43</sup> Europe’s Muslim population, while currently on the rise, is still only estimated to comprise less than 5% of Europe’s overall population, and this population is also quite diverse in terms of its members’ degrees of religious observance.<sup>44</sup>

On the other hand, Europe produced around 400,000 tons of game meat in 2013, valued at around \$850 million, and the export value of game

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38. *Id.* at ¶ 88.

39. *Id.* at ¶ 91.

40. *Id.* at ¶¶ 88-91.

41. *Id.* at ¶ 88.

42. Harriet Sherwood, *Europe’s Jewish Population Has Dropped 60% in Last 50 Years*, THE GUARDIAN (Oct. 25, 2020), <https://www.theguardian.com/world/2020/oct/25/europes-jewish-population-has-dropped-60-in-last-50-years> [<https://perma.cc/C45D-DWD9>].

43. Cnaan Liphshiz, *European Jewish Population At Lowest Share for a Millennium and Declining*, THE JERUSALEM POST (Oct. 22, 2020), <https://www.jpost.com/diaspora/european-jewish-population-as-low-for-a-millennium-declining-still-646517> [<https://perma.cc/N85B-77U3>].

44. *Europe’s Growing Muslim Population*, PEW RSCH. CTR. (Nov. 29, 2017), <https://www.pewforum.org/2017/11/29/europes-growing-muslim-population/> [<https://perma.cc/VW7K-GUUD>] (It is worth noting that the Pew Research Center defines Europe as the 28 nations of the EU plus Norway and Switzerland; Norway and Switzerland both have estimated Muslim populations well above the European total, meaning that the percentage of only the EU’s Muslim population is actually lower).



meat in the region has almost doubled in the past decade from US \$190 million in 2001 to US \$365 million in 2011.<sup>45</sup> According to a 2020 report: “Each year, hunters from 12 of the 27 European Union (EU) countries and the UK shoot over 6 million large game mammals, 12 million rabbits and hares and over 80 million birds.<sup>46</sup> They support an international game meat market worth over 1.1 thousand million Euros.”<sup>47</sup> Filippo Segato, Secretary General for the Federation of Associations for Hunting and Conservation of the EU (FACE), has stated that “the link between hunting and food has been gaining momentum across the EU.”<sup>48</sup> Because EU legislation permits hunters to market animals that have been hunted, the availability of game meat products, mainly as cold cuts, has been steadily growing at both restaurants and grocery stores. The EU counted 7 million hunters and 25 million anglers in 2014.<sup>49</sup> It would be hard to make a good-faith argument, based on these figures, that non-stunned religious slaughter is more economically significant than the activities exempted under Article 1(3)(a)(iii).

Of additional interest, the court’s judgment noted that “separate treatment of farmed fish” (meaning, a legal exemption from the stunning requirement) was justified because “the EU legislature made it abundantly clear that scientific opinions on farmed fish were insufficient.”<sup>50</sup> What the court failed to consider, however, was the insufficient scientific consensus regarding the stunning of animals! In January 2019, the *New York Times* quoted Dr. Febe Armanios,<sup>51</sup> a professor at Middlebury College, who stated that “the research on what is more ‘humane’ was inconsistent, with studies that can support either position.”<sup>52</sup> The article also mentioned how

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45. *Game Meat - Production and Trade in the UNECE Region*, UNECE (Mar. 19, 2018), <https://unece.org/fileadmin/DAM/timber/meetings/2018/20180321/game-meat-draft-2018-03.pdf> [<https://perma.cc/7FFE-7P9R>].

46. Vernon G. Thomas et. al, *Setting Maximum Levels for Lead in Game Meat in EC Regulations: An Adjunct To Replacement of Lead Ammunition*, 49 *AMBIO* 2026, 2026 (2020), <https://doi.org/10.1007/s13280-020-01336-6>.

47. *Id.*

48. Kristen A. Schmitt, *Want the Ultimate In Local Food? Hunt It*, *NAT’L GEOGRAPHIC* (Apr. 10, 2015), <https://www.nationalgeographic.com/culture/food/the-plate/2015/04/30/want-the-ultimate-in-local-food-hunt-it/>.

49. *Id.*

50. Case C-336/19, *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, ECLI:EU:C:2020:1031, at ¶ 93.

51. See Faculty Profile of *Febe Armanios*, MIDDLEBURY COLL. DEP’T OF HIST. <http://www.middlebury.edu/academics/hist/faculty/node/56221> [<https://perma.cc/Y3NJ-C39P>].

52. Karen Zraick, *Is Stunning an Animal Before Slaughter More Humane? Some Religious Leaders Say No*, *N.Y. TIMES* (Jan. 9, 2019), <https://www.nytimes.com/2019/01/09/world/europe/halal-kosher-humane-slaughter.html> [<https://perma.cc/9MJW-ZVG6>].

some people argue that stunning itself “can cause great suffering [to the animals], particularly if it is not carried out properly.”<sup>53</sup> Others have shown how pre-stunning fails in up to ten percent of cases, causing more pain than the Jewish ritual of “the swift cutting of the throat by a razor-sharp knife.”<sup>54</sup> One organization, in publicly criticizing the court’s decision, similarly stated: “Jewish law scrupulously safeguards the humane treatment of animals, and its rules regarding kosher slaughter require a swift and painless kill. There is no need to require, as the Belgian laws do, prior stunning, a practice which compromises Jewish law and makes kosher certification impossible.”<sup>55</sup>

Furthermore, in terms of morality in general, a true advocate for animal welfare should perhaps argue that human beings can survive without consuming meat (in fact, a vegetarian diet may even be healthier), and that the entire infrastructure of organized killing of animals for consumption is archaic and grotesque. Perhaps the focus of animal welfare should not be on regulating ways to possibly limit an animal’s pain as it is killed; rather, the effort should be on investing financial support, scientific research, political capital, and social activism into developing bona fide alternatives to the killing of animals, such as the promising developments that have been made recently in plant-based meat alternatives and cell-based “cultured” lab-grown meat alternatives.<sup>56</sup> Perhaps the entire focus

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53. *Id.*

54. Ivana Secularac, *Dutch Vote to Ban Ritual Animal Slaughter, Jews and Muslims Unite In Protest*, REUTERS (June 28, 2011), <http://blogs.reuters.com/faithworld/2011/06/28/dutch-vote-to-ban-ritual-animal-slaughter-jews-and-muslims-unite-in-protest/> [<https://perma.cc/YJD3-8PW9>].

55. *Agudath Israel Condemns EU Court for Upholding Belgium Shechita Ban*, THE YESHIVA WORLD (Dec. 23, 2020, 2:00 PM), <https://www.theyeshivaworld.com/news/headlines-breaking-stories/1931099/agudath-israel-condemns-eu-court-for-upholding-belgium-shechita-ban.html> [<https://perma.cc/5NAH-JCFZ>].

56. Eliza Savage, *The 7 Best Plant-Based Meat Alternatives of 2020, According to a Dietitian*, VERYWELLFIT (Feb. 08, 2021), <https://www.verywellfit.com/best-plant-based-meat-alternatives-4846665> [<https://perma.cc/4PXC-YX6G>] (“With a shift towards less meat consumption and more plant-based eating, the need for high-quality plant-based meat alternatives has increased exponentially . . . Plant and meat-eaters alike can agree that great-tasting plant-based meat alternatives are an easy substitution at mealtime”); Elie Dolgin, *Will Cell-based Meat Ever Be a Dinner Staple?*, NATURE (Dec. 9, 2020), <https://www.nature.com/articles/d41586-020-03448-1> [<https://perma.cc/EP5P-2ZM8>] (“Investors have poured hundreds of millions of dollars into cultured-meat research in the past few years, bringing hype and breathless news coverage about an agricultural revolution that could bypass the environmental and animal-welfare issues of conventional meat production”); Lina Saigol & Callum Keown, *Is Cell-based Meat the Next Big Thing?*, MARKETWATCH (Oct. 8, 2020, 7:23AM), <https://www.marketwatch.com/story/is-cell-based-meat-the-next-big-thing-here-are-5-companies-leading-the-revolution-2020-10-06> [<https://perma.cc/K2GT-8J65>] (“The race to move meat grown in laboratories onto supermarket shelves and onto dinner plates is heating up, as companies work in labs to cultivate cell-based meat and

of this legislation and litigation is misplaced from a true animal welfare perspective.

#### IV. A MEATIER APPROACH

A more just approach is that proposed in the Advocate General's Opinion.<sup>57</sup> Instead of disregarding the issue, the Advocate General acknowledges that “there is a significant body of adherents to both the Muslim and Jewish faiths for whom the slaughter of animals without such stunning is regarded by them as an essential aspect of a necessary religious rite.”<sup>58</sup> Additionally, the Advocate General also acknowledges “that increasing numbers of Member States seek to . . . ban[] the slaughter of animals without prior stunning.”<sup>59</sup>

On the other hand, the Advocate General also asserts that the “protection of animal welfare which is envisaged in Article 13 [TFEU] must, of course, be given real weight”<sup>60</sup> and laments how evidence shows “that products derived from animals which have been slaughtered without being previously stunned are destined for consumption by members of the public who, aside from being unaware of this fact, do not require such slaughter in order to comply with any dietary rules prescribed by religion,” noting that “there may well be consumers who would have religious, conscientious or moral objections to consuming such products.”<sup>61</sup>

To reconcile these issues, the Advocate General proposes a real and fair balancing of religious freedom and animal welfare rooted in transparency and individual choice. In order to prevent “a state of affairs whereby meat produce resulting from the slaughter of animals according to religious rites is simply allowed to enter the general food chain to be consumed by customers who are unaware . . . of the manner in which the animals came to be slaughtered,” all meat products should be properly labeled so a consumer can know with certainty that an “EU Organic” logo on meat testifies to the animal having been stunned prior to slaughter, and a kosher label testifies to adherence with kosher slaughter requirements,

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seafood—also known as “clean” or “cultured.” Unlike plant-based meats, which have grown in popularity in the U.S. and around the world, cultured meat is a lab-grown meat alternative produced from animal cells”).

57. Case C-336/19, *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, ECLI:EU:C:2020:695, ¶ 47 (Sept. 10, 2020) (Opinion of Advocate General Hogan).

58. *Id.*

59. *Id.* at ¶ 64.

60. *Id.* at ¶ 62.

61. *Id.*

one of which is the prohibition of pre-slaughtered stunning.<sup>62</sup> Consumers can then make their own educated choices based on their religious, moral, scientific, and/or ethical preferences. “Such an approach,” the Advocate General notes, “is neutral and non-discriminatory, by providing additional information to all consumers through the traceability and labelling of products derived from animals,” which ultimately “will allow them to make free and informed choices in relation to the consumption of such products” as well as “advance the case of animal welfare by reducing the suffering of animals at the time of killing while at the same time also protecting freedom of religion.”<sup>63</sup>

## V. CONCLUSION

There was a time in recent history of broad optimism among nations in the conviction that international institutions could be constructed and empowered to solve humanity’s common problems and protect human rights. More recent history has demonstrated a more jaded attitude among many political leaders and a retreat from international cooperation in favor of populist and nationalist agendas. For international institutions to earn and retain their legitimacy, they must remain faithful to their founding objectives. The European Court of Justice does a disservice to itself when it alienates minority religious populations by failing to protect their most fundamental rights. To maintain constitutional stability in Europe, and indeed even its own relevance, the court must achieve buy-in from the diverse populations of Europe by affording their bona fide religious practices proper deference. The *Centraal Israëlitisch Consistorie van België* judgment regrettably prioritized recreation over religion, and, in so doing, butchered both religious freedom and animal welfare.

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62. *Id.* at ¶¶ 62-63.

63. *Id.* at ¶ 81.