

# Ritual slaughter and (in)equality



Gerard A.S. Maduro  
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**Supervisors:**

dr. B.M.J. van der Meulen  
ms. I. van Rijn, Msc

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## **Preface**

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## Summary

In general, animals that are to be slaughtered should be stunned first. An exception to this rule is made for Jews and Muslims. They may slaughter animals in accordance with Article 2.10 of the Animals Act without stunning the animals beforehand. Although there are other religious groups in the Netherlands, like the Sikhs and the Armenian Apostolic Church, that have a form of ritual slaughter, the exception for ritual slaughter is granted only to Jews and Muslims. This paper, therefore, will answer the question, *is there a legal justification for the exemption granted to the Dutch Jews and Muslims, regarding the slaughter of animals without prior stunning? And how is ritual slaughter regulated in countries where the Jews and Muslims are not exempted or where ritual slaughter is banned?*

In order to the answer this question, the arguments for the exemptions have been investigated. Then, the principles of freedom of religion, equality, and the separation of Church and State were examined in more detail. The research also entailed a comparative study among the Netherlands, the United States, and other countries where ritual slaughter is banned in which it was investigated if the exceptional position of Jews and Muslims provided a form of discrimination against other religious people and secularists.

The investigation revealed that the United States has an open clause concerning ritual slaughter. Ritual slaughter in the US is allowed for Jews and other religious practitioners. Given the freedom of religion and the recommendations of the EU in the European directives, the provision of slaughtering without prior stunning, and thus enabling types of ritual slaughter in the Dutch governments law for Jews and Muslims can be justified. However, only providing this exception to Jews and Muslims, given the European Court of Human Rights and the Netherlands Institute for Human Rights' criteria, forms a breach of the prohibition of discrimination towards other religions who have ritual slaughter as their rite. Still, the government can exclude non-believers because they cannot appeal on the basis of freedom of religion. Therefore, the welfare of animals outweighs personal interests or preferences related to ritual slaughter of non-believers. Non-believers cannot appeal on the strong rights of freedom of religion. It is recommended to allow ritual slaughter to all believers who can prove that ritual slaughter forms an essential part of their religion. In this way some groups are not exempted and this will not be seen as discrimination.

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## Chapter 1: Introduction

### 1.1 The Problem

Since the beginning of the 1950s, various populations immigrated to the Netherlands. One of the first groups that came to the Netherlands in the early '50s were the Moluccans. This group was followed in the '60s and '70s by migrant workers who came from Mediterranean regions such as Spain, Italy, Turkey, and Morocco. After the independence of Suriname in 1975, many Surinamese immigrated to the Netherlands. This group was followed by the Antilleans and Arubans, in the early '80s. Since the '90s, the Netherlands has become a refuge for asylum seekers (Snel & Scholten, 2005). Many of these groups took their cultures and religions with them to the Netherlands. Consequently, a multicultural and pluralistic society resulted (Oldenhuis et al., 2007).

Sometimes, outside cultural values come into conflict with the dominant values in the Netherlands. Therefore, "cultural clashes" arose (Strijbosch, 1991). Cultural clashes are acts that are accepted by the immigrant group performing them but are forbidden by Dutch law. For example, in some religions, force can be used to raise children. This can be used to correct children so that they behave well. However if the use of force is disproportional than this act is forbidden by Article 300 (1) of the Dutch Penal Code where it is stated that mistreatment of an another person is forbidden.

The Dutch legislature sometimes considers the cultural and/or religious backgrounds of a group. This is clearly seen in the former Article 44 (3) of the Animal Health and Welfare Act (Gezondheids- en welzijnswet voor dieren). This article stated that, "*the slaughter of animals without prior stunning according to the Israelite and Muslim rites is permitted*". Since 1 July 2014, this exemption for Jews and Muslims has been regulated in Article 2.10 (4) of the Animals Act.

Initially, in the Meat Inspection Act of 1919 (*Vleeschkeuringswet*), stunned slaughter was stipulated as a standard method to slaughter animals. An exception was made for three categories: slaughter due to necessity, in-house slaughter, and ritual slaughter.

One Jewish religious food regulation is that animals should not be stunned before slaughter in order to be kosher (Walter, 2012). It was also the Jewish community that used the exemption related to ritual slaughter. From 31 July 1940, because of anti-Semitic laws related to the German occupation, ritual slaughter was banned in the Netherlands. After the occupation period, ritual slaughter was again allowed for Jews. Due to the increase of Muslims in the Netherlands in the '60s and '70s, and many successful court cases (based on the already existing exception for the Jews) by the Muslims aimed to allow them to ritual slaughter on basis of the freedom of religion, the Dutch legislature exempted the Muslims in 1977 from the obligation to stun animals before slaughtering. The provision of Article 44 (3) in the Animal Health and Welfare Act was then established. The

Muslims also have religious food regulations, called halal meat, by which animals may not be stunned before slaughter (Havinga, 2011).

In recent years especially, many animal rights activists criticized this method of slaughtering animals without prior stunning. On 2 June 2009, members of the *Partij voor de Dieren* (PVDD: the Party for the Animals) sent a bill to the House of Representatives (in Dutch: De Tweede Kamer der Staten-Generaal) to ban slaughtering without prior stunning.<sup>1</sup> On 28 June 2011, a PVDD bill was supported by the majority of the members of the House of Representatives. However, the majority of the members of the *Eerste Kamer* (the Senate) could not agree with banning slaughter without prior stunning. The political parties the *Christen-Democratisch Appèl* (CDA), the *Staatkundig Gereformeerde Partij* (SGP), and the *ChristenUnie* (CU) voted on 19 June 2012 against the slaughter without prior stunning bill. They believed freedom of religion would be infringed upon. Additionally, several representatives of Jewish and Islamic organisations (with or without political influence) were against the proposal (Janssen, 2014).

The purpose of this thesis is to investigate whether the exemption of the prohibition to slaughter without prior stunning given to (only) Jews and Muslims can legally be justified. Slaughter without prior stunning has been made possible for Jews and Muslims by the legislature. It is not clear why only the aforementioned groups were exempted. After all, people who want also slaughter animals without prior stunning and who are not of the Jewish or Muslim religions cannot make use of the exception. This raises the question whether the exemption in the law is compatible with the principle of equality. In this way, certain tension can exist between Muslims and Jews, on one side, and non-Jews or non-Muslims on the other. In the US, ritual slaughter is allowed for Jews and other religious groups that can prove the act is a part of their rituals (Havinga, 2011; Title 7 USC 1902b of the Humane Slaughter Act<sup>2</sup>). This raises the question which factors were of influence to enable slaughtering without stunning and thus ritual slaughter for only Jews and Muslims. In this aspect, it is also important to examine countries like Switzerland, Norway and Poland who banned ritual slaughter. The right to freedom of religion in those countries is apparently not that strong so that religious groups can be allowed to ritual slaughter.

Equality is difficult to define. It has no independent value and exists only in certain borders. Article 1 of the Dutch Constitution stipulates, "*All persons in the Netherlands shall be treated equally*

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<sup>1</sup> Retrieved on 18 September 2014 from <https://www.partijvoordedieren.nl/tweedekamer/wetsvoorstellen/i/3>

<sup>2</sup> "§ 1902. Humane methods

*No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be humane:*  
*(a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or*  
*(b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering."*



*in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, gender or on any other grounds whatsoever shall not be permitted"* (Article 1 of the Dutch Constitution<sup>3</sup>). The first sentence of this article describes the basis of equality and the second defines discrimination. According to Post (2010), checking the standard of Article 1 of the Constitution means a review of interests based on the criteria that are used. The question is whether the distinction is a legally acceptable means to pursue the purpose that the concerned government has set within the framework of its powers or the implementation for which it is dedicated.

It is important to examine whether making the distinction is useful and necessary to achieve the objective. Additionally it will be tested whether there is a reasonable relationship between the intended effects on the interests to serve and the adverse effects of other interests that are important.

The question is whether the exemption to slaughter without prior stunning given to Jews and Muslims could be justified. In this thesis, the focus is not on the (in) equality of members within a group, but on the equality between Jews and Muslims on the one hand and non-Jews and non-Muslims (other religious groups with strict food regulations and groups without strict food regulations such as most Christians and secularists) who are not exempted from the obligation to stun before slaughtering an animal on the other hand.

## **1.2 The central question of the thesis**

*Is there a legal justification for the exemption granted to the Dutch Jews and Muslims, regarding the slaughter of animals without prior stunning? And how is ritual slaughter regulated in countries where the Jews and Muslims are not exempted or where ritual slaughter is banned?*

## **1.3 Explanation of the central question**

The Dutch culture is known for its pluralism. Pluralism implies that individuals and groups in a society can differ from each other, but these differences are accepted (Oldenhuis et al., 2007, p. 65). The legal anchoring of the exemption for Jews and Muslims in connection to ritual slaughter of animals is an example of this. However, this Dutch pluralism is under pressure due to influences of secularism and individualism (Valenta, 2012, p. 32). The Dutch Government also presupposes the Dutch culture as leading.<sup>4</sup> Religious rights are increasingly being questioned in public debate (Beer,

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<sup>3</sup> For an English translation, see: <http://www.government.nl/documents-and-publications/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.html>

<sup>4</sup> Retrieved on 10 May 2014 from <http://www.rijksoverheid.nl/documenten-en-publicaties/notas/2011/06/16/integratienota.html>

2008; Valenta, 2012). The opponents of ritual slaughter state that ritual slaughter does not belong in the Dutch culture, is contrary to Dutch norms and values, and is scientifically not conducive to the welfare of animals (Walter, 2012). Consequently, the central question essentially concerns whether the exception given to Jews and Muslims is outdated and must be removed from the law or must be open to all religions because of the principle of equality. The justification for the exemption will be examined by comparing ritual slaughter in the Netherlands and in the US and several European countries where ritual slaughter is banned. Also, the criteria of the European Court of Human Rights (ECtHR) will be used to investigate if the exemption is discriminatory.<sup>5</sup>

Ritual slaughter of animals is an important aspect in the food chain. In the Book *Private Food Law* (edited by B.M.J. van der Meulen, 2011) ritual slaughter is examined from an international and human rights (freedom of religion and principle of equality) perspective. Therefore, the topic falls within the possible topics of the University of Wageningen's Law and Governance research group.

To answer the central question, several partial questions have been formulated:

1. What is the difference between slaughter and ritual slaughter?
2. What does ritual slaughter, in connection to Dutch Jews, mean in the Netherlands?
3. What does ritual slaughter, in connection to Dutch Muslims, mean in the Netherlands?
4. How is the exemption of ritual slaughter for the Jews and Muslims regulated in the law?
5. Is there a difference, with respect to the approach of the government, between Dutch Jews and Muslims in connection to ritual slaughter?
6. What do the principles of equality and freedom of religion mean?
7. When are the principles of equality and freedom of religion infringed upon?
8. Is there an infringement of the principle of equality regarding the special position that the legislature has granted to Muslims and Jews regarding slaughtering without stunning?
9. When is there a conflict between the principle of equality and freedom of religion?
10. How is ritual slaughter regulated in the US and some European countries (like Switzerland, Poland and Norway)?

#### **1.4 The methodology**

For lawyers, desk research is the main method of research (Tijssen, 2009, p. 71). Research can consist of formal sources of law, literature, or other genres. The formal sources of law consist mostly of legislation and jurisprudence. In law, this concerns certain standards related to the law.

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<sup>5</sup> Retrieved on 22 February 2015 from [http://webcache.googleusercontent.com/search?q=cache:CPz0S-kU630J:fra.europa.eu/sites/default/files/fra\\_uploads/1510-FRA\\_CASE\\_LAW\\_HANDBOOK\\_NL.pdf+&cd=1&hl=nl&ct=clnk&gl=nl](http://webcache.googleusercontent.com/search?q=cache:CPz0S-kU630J:fra.europa.eu/sites/default/files/fra_uploads/1510-FRA_CASE_LAW_HANDBOOK_NL.pdf+&cd=1&hl=nl&ct=clnk&gl=nl)

Case law is important because new rules are formulated or existing ones are reformulated. One can sometimes speak of a settled case law. Based on legal certainty and equality, judges will usually decide in accordance with earlier decisions (Tijssen, 2009). Literature consists mostly of scientific publications, law-journals, etc.

In this thesis, desk research was chosen, especially research related to formal sources of law, literature, and jurisprudence. Desk research provides the opportunity to accessibly gain the information needed to answer the central question. Some court cases were studied. Court cases provide the opportunity to discover how judges interpreted the law and made this applicable for citizens.

The United States and countries where ritual slaughter is banned were used as case study. The United States was chosen because in the US ritual slaughter is permitted not only for Jews but for every religion that can prove that ritual slaughter is a part of that religion. In the Netherlands, the law only provides an exemption to Jews and Muslims for ritual slaughter. The United States thus provides a good case to investigate why ritual slaughter is open to other religions. In the US, freedom of religion, which can be seen as a universal right, allows every religion the right to appeal for ritual slaughter. In Europe, however, there are some countries that prohibit ritual slaughter. Although in the Netherlands, freedom of religion makes ritual slaughter possible for Muslims and Jews, this same argument is not used in Poland, Switzerland, and Norway. Poland was chosen because its ban on ritual slaughtering is particularly interesting due to the rich history that Poland has regarding Jews. Given this history, it would be expected that Poland would be more considerate towards Jews. Switzerland is also interesting to study because the country enjoys a neutral status in Europe. The decision to ban ritual slaughter was decided in a referendum. The neutral status could indicate that ritual slaughtering would not be a problem there. Norway was chosen because, after the rise of Nazi Germany, many Jews fled to Scandinavian countries. It is interesting to investigate why Norway's Jewish community has not been able to achieve legislation in favor of ritual slaughter, as has happened in the Netherlands.

First, comparative research will examine the ritual slaughter views in the Netherlands versus the views in the US. The way the principle of equality, freedom of religion, and the separation between Church and State are applied in the US will be important. Ritual slaughter and some court cases related to ritual slaughter will be focused on.

Regarding the study of countries in the EU where ritual slaughter is banned, a framework, mentioned in the previous chapter, will be used. The framework is also used by the ECtHR and the NIHR (Judgment No. 2014-39, Date: 02-04-2014) to examine if an illegal distinction has been made in a case. This framework will be used to examine if the arguments of the studied countries are

reasonable justifications to ban ritual slaughter in those countries. There are three objective grounds used to make a distinction:

- Legitimacy: the aim must correspond with a real necessity
- Efficiency: the aim must be adequate to reach the goal
- Proportionality: the aim must be useful and necessary

### **1.5 The objective**

Slaughtering animals without prior stunning is forbidden for non-Jews and non-Muslims in the Netherlands. However, in other European Union countries, such as Denmark<sup>6</sup> and Poland<sup>7</sup>, slaughter without prior stunning is banned for both religious and secular people. In the US, every religion that can prove that ritual slaughter is required in their faiths can ritually slaughter animals.

The objective of this paper is to examine whether the exceptional position of Dutch Jews and Dutch Muslims can be justified. In the Netherlands, the special position of Jews and Muslims proved feasible. In countries such as Denmark, Poland, Norway, and Switzerland, this has not proved feasible. The exception for Jews and Muslims in the law excludes other (religious/not religious) groups who might wish to ritually slaughter animals. Also, it is difficult for secularists to understand that acts that are religiously motivated are treated differently. Secularists can feel they are not being treated equally.

### **1.6 The social and scientific relevance**

The research in this thesis is socially relevant. The proponents of ritual slaughter usually indicate that freedom of religion should prevail over other interests in society. In addition, they argue that ritual slaughter has a long tradition in the Netherlands.

Still many people do not understand why some behaviors are prohibited but can still be carried out if the believer can prove that it is a religious act. This can lead to a distrust among citizens. The argument that some religious acts originated centuries ago is rejected by the opponents. They say that, although certain acts are centuries old, due to changes in society, they slowly can ebb away or are no longer relevant.

In this context, the Black Pete (Dutch: *Zwarte Piet*) discussion is a good example addressing the rapid growth of multicultural society. Black Pete is the helper of Saint Nicholas (Dutch:

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<sup>6</sup> Retrieved on 29 March 2014 from <http://www.trouw.nl/tr/nl/4720/Jodendom/article/detail/3597017/2014/02/14/Denemarken-verbiedt-religieuze-slacht.dhtml>

<sup>7</sup> Retrieved on 29 March 2014 from <http://www.nieuws.nl/algemeen/20130712/Rituele-slacht-blijft-taboe-in-Polen>

Sinterklaas). People who perform as Black Pete put on blackface make-up, curly wigs, red lipstick and golden earrings. The court (in Dutch: *de rechtbank*) on 3 July 2014 (ECLI:NL:RBAMS:2014:3888) stated that using Black Pete is a negative stereotyping of black people. However the verdict was overturned on 12 November 2014 by the Council of State (no. 201406757/1/A3). The use of Black Pete is still heavily debated in the Netherlands.

Another example is beating children as a form of discipline by religious people. The Bible book Proverbs 23:13 states in this context: *“Do not hold back discipline from the child, Although you strike him with the rod, he will not die”*. Also the Pope stated in February 2015 that spanking a child is no problem if it is done with dignity.<sup>8</sup> In the past, spanking was not seen as an abuse in the Netherlands.<sup>9</sup> This was seen only as a part of the education/upbringing of children. This exception is no longer applicable. There is now even a provision in the Dutch Civil Code, which states that beating children is not seen as a part of educating children (1:247 paragraph 2 of the Dutch Civil Code: *“In the care and upbringing of children parents do not use mental or physical violence or any other humiliating treatment”*).

Also, the protests from animal welfare organizations cannot be ignored; these organizations state that ritual slaughter is barbaric. This discussion was mainly fueled by the PVDD.

The scientific relevance is seen in the fact that there are various principles of law that have an influence on ritual slaughter: freedom of religion, the principle of equality, and the separation of Church and State. In the literature, there are usually fierce discussions regarding freedom of religion and animal welfare. The principles of equality and the separation of Church and State remain underexposed in these discussions. However, those principles are important to examine. The principle of equality is important because it states that equal cases must be treated equally. The separation of Church and State is important to investigate if the government intervenes in religious issues. The exclusion of Jews and Muslims in slaughtering animals without prior stunning seems a breach of these two principles.

## 1.7 Contents of the thesis

The thesis is organized as follows. In Chapter 2, the background of ritual slaughter will be described. Chapter 3 will discuss the following legal principles: freedom of religion, separation of Church and State, and the principle of equal treatment. In Chapter 4, a comparative study with the

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<sup>8</sup> Retrieved on 14 February 2015 from <http://www.volkskrant.nl/buitenland/paus-ouders-mogen-hun-kinderen-slaan~a3845616/>

<sup>9</sup> When the provision of mistreatment (Article 300 Dutch Penal Code) was constructed the former Minister of Justice stated that the spanking of children by parents could not be qualified as mistreatment. The purpose of the spanking is not giving pain or injury but has a rational goal (Smidt 1881 (deel 2), p. 451)

US will be completed. How ritual slaughter is addressed in law in the US and how the principle of the separation between Church and State is implemented will be reviewed. In addition, a number of countries where ritual slaughter is prohibited, as well as a lawsuit that occurred at the European Court regarding ritual slaughter, will be discussed. The thesis will conclude in chapter 5 with a conclusion. The conclusion provides an answer to the central question. In the conclusion, also recommendations are offered.

## Chapter 2: Ritual slaughter

### 2.1 Introduction

According to Janssen (2014, p. 35), ritual slaughter means the slaughtering of animals in a ritual context. It can involve the slaughtering of animals to gain favour or blessings from one or multiple gods. It is also possible to use the flesh of slaughtered animals for human consumption. In this thesis, ritual slaughter is defined as the slaughter of animals without prior stunning (Havinga, 2011, p. 272).

Jews and Muslims are known for their special ways of slaughtering animals. In this chapter, the background of Dutch Jews' and Dutch Muslims' special regulations related to animal slaughtering will be examined. This includes the Jews' and Muslims' history of ritual slaughter in the Netherlands and the regulations that made these ritual slaughters possible. The regulations' explanatory memorandums will also be addressed and the question as to whether there is a distinction of treatment between Jews and Muslims regarding the ritual slaughtering of animals in the Netherlands will be answered. In Section 2.2, Dutch Jews and ritual slaughter will be discussed. Afterward, Dutch Muslims' ritual slaughter practices in the Netherlands will be examined in Section 2.3. In Section 2.4, the practices of ritual slaughter will be addressed. Then, in Section 2.5, the certification of kosher/halal products will be reviewed. Next, in Section 2.6, ritual slaughter in the law will be addressed. Afterward, in Section 2.7, the government's treatment of ritual slaughter will be examined. This will be followed by Section 2.8, where a few court cases will be discussed. The chapter will be concluded in Section 2.9.

### 2.2 Dutch Jews and ritual slaughter

Ritual slaughter had always played an important role in the Jewish community in the Netherlands (Walter, 2012, p. 168). Ritual slaughter is called *Sjechieta* by Jews. In the Jewish community, food is strongly related to identity. Not all food is permitted. Also, food has to be prepared in a special way. One of the origins of ritual slaughter can be found in the Bible:

*“When the Lord your God enlarges your territory, as he promised you, and you say: I am going to eat some meat, because you wish to eat some meat, you may eat meat whenever you have the desire. If the place where the Lord your God will choose to put his name is too far from you, and you slaughter as I have commended to you any of your herd or flock that the Lord has given you, then you may eat within your towns whenever you desire. Indeed, just as gazelle or deer is eaten, so you may eat it; the unclean and the clean alike may eat it. Only*

*be sure that you do not eat the blood; for the blood is the life, and you shall not eat the life with the meat. Do not eat it, you shall pour it out on the ground like water.” (Deuteronomy 12:20-24; The New Oxford Annotated Bible 3d ed., 2007)*

The text shows that God permitted the Jews to eat meat and that the animals had to be bled out before consumption. The text does not mention the consciousness of the slaughtered animal or the consumption of meat of animals that were not stunned before slaughtering.

According to Ozari (1984), the proscription for Jews related to the slaughtering of animals most likely derived from the Talmud and the Torah. The Torah does include the proscription of ritual slaughter but does not clarify the art and the method of its practice. The basis of the proscriptions on ritual slaughter was probably the prohibition not to eat meat from a live animal nor an animal that had been taken from the field. Also, there are certain dogmas related to ritual slaughter. These dogmas include the following:

- The choice of the animals that are to be slaughtered
- The qualifications of the slaughterer
- The quality of the instruments that should be used by the slaughterer
- The special rules for the execution of the throat cut

In the 19<sup>th</sup> century, national public law related to ritual slaughter was lacking. This changed under the influence of two issues:

- New bureaucratic factors: The meat and food industry were obliged to follow new rules
- New health factors: More attention to hygiene after the discovery of bacteria by Pasteur (Wallet, 2012, p. 169)

Measures were taken to fight illnesses, investments were made for good sewers, parks were created, and rules were implemented for food quality. A heavy debate was raised on ritual slaughter. It was seen as a superior method for slaughtering animals. The Minister of War of the Netherlands stipulated in 1869 that the military abattoirs had to follow the rules that were based on the Jewish slaughter method.

At the end of the 19th century, there was much criticism related to ritual slaughter. This was based on three factors:

- The lobby of animal welfare organisations
- The rising of science: modern techniques against ancient techniques
- Anti-Semitic feelings present in the community

In the Netherlands, the *Vleeschkeuringswet* (Meat Approval Law) was adopted in 1919. The basic aim of this law was regulating and securing the health of the consumer (not the welfare of the animal). Stunning of animals was the standard method. Three exemptions were made:



- Slaughtering because of an emergency
- Slaughtering at home
- Slaughtering by ritual

Ritual slaughtering by Jews received special attention: the chief Rabbi was the supervisor and the examiner for the ritual slaughter in the slaughterhouses. Because of the secularization process and the open climate in the Netherlands, minorities like Jews also could exercise their cultural rights in the Netherlands. These rights were formulated in this law (Meat Approval Law; in Dutch *Vleeschkeuringswet*).

During the German occupation of the Netherlands several anti-Semitic laws were implemented in the Dutch laws. The Germans prohibited Jewish slaughtering on 31 July 1940. The anti-Semitic climate was strengthened by anti-Semitic films like *Der Ewige Jude*. In this film, it was propagandized that ritual slaughter was cruel to animals. Jews were compared to rats, and they were seen as a plague that covered the continent of Europe. The film was made under the supervision of Hitler and Goebbels. Remarkably, the chief Rabbi in the Netherlands in this period offered a solution: electric stunning became temporarily accepted for Jews.

After 1945 (the end of the Germany occupation period), Jews lobbied to reinstate the ritual slaughter of animals. This was made possible by the Dutch Government (KB, 9 February 1948; Havinga, 2008). However, there were still strict rules. Ritual slaughter could only occur in a slaughterhouse and in a place where sufficient Jews were living that wanted to eat ritually slaughtered meat (because of the deportation of many Jews from the Netherlands, there were few Jews living in the Netherlands; thus, ritual slaughtering was not allowed everywhere).

Due to the creation of the Israel-state in 1948, the prohibition of ritual slaughtering in Switzerland, and the Jewish community' lobby in the Netherlands, the export of ritually slaughtered meat was made possible in the Netherlands by the Dutch Government. Also, other companies that, in the past, could not produce kosher meat due to the lack of Jews living nearby the company, converted their production system and produced kosher meat.

### **2.3 Dutch Muslims and ritual slaughter**

Since the 1960s, the Islamic minority in the Netherlands has been growing. Islam followers also use ritual slaughter for their animals. The question was raised by Dutch policymakers if Islamic ritual slaughter also had to be regulated in the Dutch Law. Not everybody was convinced that ritual slaughter was a basic belief of Muslims. In the following section, some of the religious grounds of Muslim ritual slaughter will be discussed.

According to Ozari (1984), the Muslim food prescriptions have been influenced by Jewish and Christian religions. According to the Islamic tradition, the basis for ritual slaughtering proscriptions has been laid down in the Qurán. The necessity that an animal has to be conscious before it's slaughtered can be found in Surat Al-Ma'idah (The Table Spread) that stipulates this:

*“Prohibited to you are dead animals, blood, the flesh of swine, and which has been dedicated to other than Allah, and those animals killed by strangling or by which a violent blow or by a head-long fall or by the goring of horns, and those from which a wild animal has eaten, except what you (are able to) slaughter (before its death), and those which are sacrificed on those alters, and (prohibited is) that you seek decision through divining arrows. That is a grave disobedience. This day those who believe have despaired of (defeating) your religion; so fear them not, but fear Me. This day I have perfected for you your religion and completed. My favour upon you and have approved for you Islam as religion. But whoever is forced by severe hunger with no inclination to sin, then indeed Allah is Forgiving and Merciful.”*

For Muslims, there are four sources of Muslim laws concerning halal, or permitted, products: The Quran, the hadith (instructions by the prophet Muhammad), the Sunnah (religious tradition), and fiqh (a summary of Islamic learnings). There also are fatwas (Islamic religious rulings by Muslim experts regarding certain issues) that do accept stunning because, according to these rulings, under Islamic law, it is enough that the animal stays alive.<sup>10</sup>

After the Second World War, the regulations for ritual slaughter were focused on Jews. In the study, *Nederland en zijn Islam* (The Netherlands and Islam), Rath, Pennix, Groenedijk, and Meijer (1996) observed that, at first, ritual Islamic slaughtering was not regulated in Dutch Law. During the Muslim Festival of Sacrifice (Offerfeest), there were always problems. Different court cases occurred in the '60s and '70s against Muslims that ritually slaughtered goats or sheep during or just before this festival. The Supreme Court of the Netherlands (*de Hoge Raad*) stated in 1969, that freedom of religion was no excuse to break the law.

Since 1975, ritual slaughter has been permitted to Muslims during the Feast of Sacrifice provided the slaughter occurred in slaughtering houses that were under the supervision of the Dutch government. First, this was accomplished by obtaining permission of the Dutch Government. Since 1977, Islamic ritual slaughter has been made possible by an adaptation of the Meat Approval Act (*Vleeschkeuringsbesluit*).

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<sup>10</sup> Retrieved on 11 October 2014 from <http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/44-what-is-a-fatwa.html>

## 2.4 The practices of ritual slaughter

Kosher and halal ritual slaughter processes consist of similar methods:

- The binding of the animal
- The requirements for the knives and methods of cutting
- The actions needed to stimulate the bleeding out of the animal
- The possibility of (reversible) interruption of consciousness prior to or directly after the cut (Zoethout, 2013, p. 656).

Jewish and Islamic slaughterers use a sharp knife to cut the throats of animals in order for those animals to bleed out entirely. For the ritual slaughter of Muslim food, the slaughterer must be a Muslim. Regarding Jews, the slaughterer must be accredited by the Jewish authority.



Figure 1. (left) A drawing of the Jewish Ritual, slaughter of a cow; (right) Drawing of ritual slaughter of the Jews in the 15<sup>th</sup> century<sup>11</sup>

According to Jewish tradition, an animal must be alive when the neck is cut (Kijlstra & Lanbooi, 2008). There are some Muslim organisations that allow intoxication before cutting the neck. The Jewish requirements are more strict because the animal must also be checked for health deviations; small deviations can quickly lead to the rejection of the flesh.

The Israelite rite is performed under the auspices of a specially trained *schochet*. The neck is cut with a special knife. This is called the *khalaf*. The aim is that with the use of one cut both jugular veins and carotid arteries are cut. The *schochet* is responsible for the condition of the *khalaf*. After the animal has finished bleeding, then the animal is carefully inspected for defects. The animals that have defects are rejected, as well as animals that were dead before cutting the neck, or in which the cutting of the neck was not performed as required. Rejected animals are still placed on the market. This means that the meat enters the regular circuit. As a result, it is possible that consumers unwittingly purchase meat from ritually slaughtered animals (Kijlstra & Lanbooi, 2008, p. 2).

<sup>11</sup> Retrieved on 5 July 2014 from [http://nl.metapedia.org/wiki/Joods\\_ritueel\\_slachten](http://nl.metapedia.org/wiki/Joods_ritueel_slachten)

For Muslims, the slaughter of halal meat means that the head of the animal must be directed to Mecca. The cutter must be a Muslim and should express religious words during the cutting of the animal. The animal is neutered first. In addition, both arteries and carotid arteries are cut with a sharp knife. The animal quickly loses considerable blood and, subsequently, consciousness. The animal may not come into contact with pigs or their parts (Kijlstra & Lanbooi, 2008, p. 2).

## **2.5 Certification of kosher/halal products**

In the Netherlands, halal and kosher food certification is left to private individuals (Havinga, 2011, p. 277). Halal and kosher certification is not regulated by public law. The governmental agencies are not involved in monitoring or enforcing halal and kosher certification. The certification in the Netherlands' kosher/halal industries is dominated by commercial actors. The certification is verified by religious authorities. Kosher certifications are supervised by the Chief Rabbinate of the Netherlands.

In the United States, religious authorities dominate the kosher and halal certification industry. State laws and state enforcements are in place. The regulations in the United States protect consumers from kosher and halal food fraud (Havinga, 2011, p. 278).

The United States can be seen as a liberal market economy. One could expect that there are not many regulations related to the kosher and halal industries. In the Netherlands, that can be seen as a welfare State, one would expect a lot of regulations related to halal and kosher food.

A comparison between the way the control of kosher and halal certification occurs in the two countries shows different patterns. In the United States, the regulation of kosher/halal certification is more state-centred than in the Netherlands. Many states in the United States have laws to protect the kosher or halal logo. Also, there are special enforcement agencies to ensure that kosher/halal regulations are met.

In the Netherlands, kosher and halal certification has entirely been left to commercial and religious organisations. Kosher and halal are not legally defined and do not have the status of protected designations. State authorities do not find it their task to become involved in religious matters.

In 1999, there was an interesting case that occurred in the Netherlands.<sup>12</sup> A Muslim woman bought a snack purported to be halal. After she discovered that the snack meat was not ritually slaughtered, she brought the snack bar to court. The snack bar company claimed that the meat was halal because it did not contain pork. The judge refused to decide what was to be understood as

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<sup>12</sup> Rechter buigt zich over religieus gehalte van kroket. Het Parool 1 September 1999; Geen straf voor foute kroketten. Het Parool, 11 September 1999; Havinga, 2011, p. 279.

halal. The snack bar chain organisation convinced the snack bar to no longer use the word halal in the snack's marketing. This example shows what problems can arise when determining what can be viewed as halal.

The Dutch Food and Consumer Products Safety Authority (NVWA) does not want to become involved in religious matters. They are not involved in examining if a food is halal or kosher. They only enforce legal requirements. The Dutch Ministry of Agriculture adopted the recommendation of a consumer platform to determine a single halal certificate in the Netherlands and to define halal in the law (Smits and Van den Berg, 2003) .

The European Association of Halal Certifiers (AHC-Europe) wanted to bring order and unity to the halal food sector in Europe. The founders stated that governments have to take the necessary steps to force certifiers to operate within the rules defined by AHC-Europe. The Netherlands Normalization Institute (NEN) is exploring the possibilities for a European Union Standard or halal standardization.

Havinga (2011) noted, in this context, the problems between Church and State. Who determines what can be called kosher or halal? The problem is more complex when the religious groups themselves have not reached uniform standards regarding halal or kosher meats (Havinga, 2011). As stated, the Dutch Government does not have an active role in this. The definition of halal is not clarified by the Dutch Government (Van Waarden & Van Dalen, 2010). This also creates problems regarding the information that is given to the consumers. This is caused by two issues: the historical context of the concept of halal and the diversity under the Muslim population. Concerning the historical context, the Koran is seen as sacred by Muslims. The words of the Koran are seen as holy. The sharia acknowledges that there are different interpretations of halal and haram (prohibited).

### **2.5.1 Kinds of markets**

Three kinds of markets related to halal products can be distinguished:

- The informal market: This market is between a group of people that know each other well and are mostly former generations of immigrants
- The formal and anonymous internal market: This market is handled by larger organisations, like supermarkets. The consumers are the younger generations that were born in the Netherlands;
- The export market: This market is aimed at Muslims living in a Muslim-oriented country

The first market is aimed at Muslims living in a Western non-Muslim oriented society. There are many products that have haram and halal components. The last two markets are dominated by large companies such as Albert Heijn and Casino (Van Waarden & Van Dalen, 2010, p. 264).

The problem for Muslims is that their dietary laws not only relate to the origin of the food but also to the processes by which the product is created, such as harvesting, processing, storing, preserving, and transporting. The composition of the product can easily be tested. This does not apply to the process standards (Van Waarden & Van Dalen 2010), such as the habitat of the animals and the ways in which the slaughter and transport occurred.

The mode of production and distribution of halal products is costly. This is only affordable for companies that either specializes in halal products or large companies that have access to multiple production lines. More money can be saved when less strict rules are applied regarding the production of halal products. It is, therefore, appealing to people who involve themselves with halal fraud to be less strict in implementing the correct process methods related to halal because these methods are difficult to control.

### **2.5.2 Factors that increase uncertainties for Muslims**

There are a number of factors that can increase uncertainties for Muslims (Van Waarden & Van Dalen 2010):

- **The globalization of the food chain:** The consumption of food and the distribution of halal food is becoming more complex due to the internationalization of markets. The food producers are thus more difficult to trace.
- **The danger of composite products:** Globalization is accompanied by new methods of producing natural products. This leads to a huge range of artificial halal food products that may contain traces of haram animals.
- **Muslims in Western multicultural societies:** The risk of eating haram products is increased when Muslims migrate and settle in Western countries. In Islamic countries, usually only halal products are sold. The danger of not being able to distinguish halal products from haram is hardly present there. However, Muslim minorities in non-Islamic countries do not have such certainties. They are confronted with an ever increasing range of products that can be haram.

### **2.5.3 Public or private labelling?**

The question can be asked whether there should be public regulation of halal product certification (Van Waarden & Van Dalen, 2010, p.266). Because the Dutch government is not active in this sphere, the market itself is trying to provide more security. Halal labels were introduced. There are three types of certifications (Van Waarden & Van Dalen, 2010, p. 267):

- Self-certification: This is done by the producer. With the brand, the product and producer can be identified
- The traditional informal logo: This is provided by the imam of the local food producer or supplier described as halal
- An official halal certificate granted to a producer or a plant that is suitable for halal production/distribution by an independent third party

Confidence in Halal suppliers is of great importance. However, there are a number of problematic factors:

- **Easy entry and exit markets:** There is an easy entry and exit from the market; investments are not really necessary. If a person has a printer and a market (e.g., family and employers), he or she can enter the market. In the Netherlands, there are many suppliers, so it is difficult to distinguish the good from the bad.
- **Transparency:** The assessment of the quality is not easy. This is due to the non-transparency of the market. This is a consequence of the different ideas about what is halal. Therefore, there are many different certifiers. Some are strict; some are not. Some do not know the rules; some do. These differences depend on the origin of the certifier (e.g., ethnicity, immigrant generation, and/or training). Therefore, there is a lack of transparency between the certifiers. The certificate itself does not indicate whether there is a strict interpretation of rules regarding the Quran. There is also a lack of transparency regarding the inspection body (e.g., are there samples taken? How many? Are there reports made? Who is checking the auditors?)
- **Price competition:** There is a race to the bottom; there are low prices because most marketing is done within the sphere of personal relationships.

Van Waarden and Van Dalen (2010) stated that a public good as a certificate cannot be handled well by the market. An important factor is that the certificates are paid by the producers. This can be dangerous to the objectivity and reliability of the labels. Van Waarden and Van Dalen (2010), therefore, proposed that certificates be involuntarily paid by the consumers, so that they are obliged to pay by the authorities (just like for street lights and street vergers).

It is important that a halal product has a high quality. When halal products are exported to Muslim countries, those countries demand high quality products. However, consumers of halal products in the Netherlands also want reliable products. Therefore, it is important that public goods are controlled by public authorities. This is also done in the United States. From 1954, in 22 states, Kosher fraud laws were adopted under pressure from the Jewish lobby. These laws were a reaction to problems similar to those in the halal market. Non-kosher food was sold as kosher, so they wanted

to protect the consumers. It was a private-public responsibility. Orthodox Jews and Rabbis defined what was kosher. The enforcement of the standards was done by public authorities (Havinga 2010).

Van Waarden and Van Dalen (2010) suggested forming an organisational platform between the halal organisations. In the Netherlands, the NVWA can act as law enforcer or certifier. Currently, Malaysia has taken up the role of an international halal regulator. The advantage is that Malaysia is a Muslim country and works effectively.<sup>13</sup> An international standard may arise when countries are forced to adopt the Malaysian rules regarding halal.

It is striking in this context that, in Malaysia, the halal certification and logo are seen as protection for the public and as confirmation that the products are halal and according to the rules of the Sharia.<sup>14</sup> Generally, the consumers in Malaysia have confidence in the authenticity of the halal certificates because they are issued by the Malaysian Department of Islamic Development (*Jakim*), which is in charge of the Ministry in the Prime Minister's Department. Rules must be enforced; only then will the halal logo provide more authority.

From the above, it can be concluded that the confidence of consumers in halal certificates is extremely important. It is not wise to leave the certification of the labelling process entirely to the private market. A label or certification is a public good and this can be better accomplished by the government. Until the government takes responsibility, the concerned parties (government, consumers, and producers) always must take care that if the label states something is halal, then it must be halal.

## 2.6 Ritual Slaughter and the Law

According to Regulations 93/119/EC and 1099/2009/EC related to the slaughtering or killing of animals of production, actions that can cause stress or pain to animals must be prevented. For that reason, animals are stunned before slaughter. Regulation 1099/2009/EC gives countries the possibility to make exceptions on the basis of religious reasons. In the Netherlands, Jews and Muslims were allowed to ritually slaughter animals on the basis of Article 44 of the Health and Welfare Law for Animals (*Gezondheids- en Welzijnswet voor Dieren*) (Janssen, 2014, p. 34). Since 1 July 2014 Jews and Muslims are allowed to ritually slaughter on the base of Article 2.10 (4) Animals Act.

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<sup>13</sup> Retrieved on 30 November 2014 from <http://webcache.googleusercontent.com/search?q=cache:aT4Q24epgu4J:novintarjome.com/wp-content/uploads/2013/08/852056855.pdf+&cd=1&hl=nl&ct=clnk&gl=nl>

<sup>14</sup> Retrieved on 30 November 2014 from <http://webcache.googleusercontent.com/search?q=cache:aT4Q24epgu4J:novintarjome.com/wp-content/uploads/2013/08/852056855.pdf+&cd=1&hl=nl&ct=clnk&gl=nl>



Experts in Europe have failed to reach an agreement as to whether and to what degree animal suffering is acceptable. Several countries, such as Switzerland (from 1893), Norway (from 1937), Sweden (from 1938), Luxembourg, and Poland, prohibit ritual slaughter. France, the UK, Belgium, Denmark, Italy, Ireland, Portugal, Spain, and the Netherlands accept ritual slaughter (Zoethout, 2013).

It is important to note that the council of European Convention for the protection of Animals for Slaughter emphasizes the well-being of animals during slaughtering. The Convention states, *"In the case of the ritual slaughter of animals of the bovine species, they shall be restrained before slaughter by mechanical means designed to spare them avoidable pain, suffering, agitation, injury or contusions."*<sup>15</sup> It also states that the means of restraint causing avoidable suffering shall not be used and outlines the following proscription:

*"[Animals] hind legs shall not be tied nor shall they be suspended before stunning or, in the case of ritual slaughter, before the end of bleeding. Poultry and rabbits may, however, be suspended for slaughtering provided that stunning takes place directly after suspension"* (see Article 14 of the Convention).

Article 5 (2) of the Council Directive no. 93/119 deals with the protection of animals at the time of slaughtering and defines stunning as the proper method of killing animals with the possibility of an exemption for religious reasons.

Importantly, Article 13 of the *Treaty on the Functioning of the European Union* states the following:

*"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."*

Animal welfare is on the same level as other principles, like gender equality, guaranteed social protection, protection of human health, etc. (Zoethout, 2013, p. 662).

When the first Dutch laws prohibiting slaughtering without prior stunning were adopted, an exemption was made for Jewish slaughter. Since 1977, a similar exemption has been made for Islamic slaughtering. The ritual slaughtering can only occur in authorised slaughtering houses after the notification of the Dutch Food and Consumer Product Safety Authority (*de Nederlandse Voedsel*

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<sup>15</sup> Convention of the protection of Animals for Slaughter, signed 10 May 1979, alert. 13 Official Journal L 137,27 effective 11 June 1982

*en Warenauthoriteit; NVWA*). The detailed requirements are stated in special regulations related to religious slaughter.

These requirements held, in the avoidance of suffering, instructions on handling and restraining animals, as well as slaughter techniques (*Besluit Ritueel Slachten*; Decree Ritual Slaughter). The NVWA's veterinarians supervise noncompliance with the above mentioned requirements. The former Regulation Ritual Slaughter (*Besluit Ritueel Slachten*) only controls the practical slaughtering, focusing on animal welfare; religious requirements are not considered. Noncompliance with the requirements may result in a warning, a fine, or the stoppage of slaughtering.

### **2.6.1 The cause of the exception**

As previously stated, the cause of the Jewish ritual slaughter exemption was due to, according the Dutch government, a society based on plurality and secularism. Minorities also had to have their cultural or religious rites protected. For the Muslims, they were also a growing minority. They had several problems during the Festival of Sacrifice because slaughtering without prior stunning was done illegally. In the study "*the Netherlands and the Islam*", Rath, Pennix, Groendijk, and Meijer (1996) stated that ritual Islamic slaughtering was blocked by Dutch law. After several court cases, the *Vleeschkeuringsbesluit* (the Meat Approval Law) was adopted in 1977. Those cases acquitted the Muslims based on freedom of religion.

### **2.6.2 The Explanatory Memorandum of the Health and Welfare Act for Animals and the Explanatory Memorandum of the Regulation Ritual Slaughter**

In this section, the following laws and explanatory memorandums will be explained:

- The Health and Welfare Act for Animals (*Gezondheids- en welzijnswet voor dieren*; Article 44);
- Regulation Ritual Slaughter (*Besluit Ritueel Slachten*);

These laws were applicable before July 2014. They have been replaced by Articles in the Animals Act and the Act of Animal Keepers.

#### **Health and Welfare Act for Animals (*Gezondheids- en Welzijnswet voor Dieren*), Article 44:**

This law stated that control of complying with the rules related to ritual slaughter, would be maintained by the Civil Service of the Approval of Stock and Meat of the Ministry of Agriculture, Environmental Issues, and Foodquality (*Rijksdienst voor de Keuring van Vee en Vlees* (RVV) van het *Ministerie van Landbouw, Natuur en Voedselkwaliteit*). Slaughter could only be performed in places

where the Civil Service could supervise. A special permit was required from the Civil Service in order to perform the slaughter.

Ritual slaughtering could only occur when there was a necessity for ritual meat. Export of ritually slaughtered meat was only permitted to countries where ritual slaughtering is forbidden or where the country depends on imported meat that is ritually slaughtered. A declaration of the Israel and Muslim representative for importing meat was needed. The organisation must represent Jews or Muslims.

### **Regulation Ritual Slaughtering (*Besluit Ritueel Slachten*)**

This regulation was an elaboration of Article 44 of the Health and Welfare Act for Animals (*Gezondheids- en Welzijnswet voor Dieren*). It focused on three aspects:

- The formal ability for the authority that provides approval to give directions
- The proscription against the use of certain materials
- The limitation to the number of observers to a ritual slaughter

The memorandum explained that the purpose of Article 44 of the Health and Welfare Act for Animals (*Gezondheids- en Welzijnswet voor Dieren*) was to protect animal welfare. The government acknowledged that the religious beliefs of Jews and Muslims required animals to not be stunned before slaughtering. To guarantee freedom of religion stated in Article 6 of the Dutch constitution, Article 44 (3) was constructed.

The government noted that in some Islamic divisions certain stunning before slaughter is permitted. The government wanted to sustain these developments, and by focusing on flock policy, the number of ritually slaughtered animals could be lowered. The acknowledgment of ritual slaughter by the Dutch Government still means that the usual norms for slaughtering also applied to ritual slaughtering.

However, non-ritual slaughtering is mainly a mechanical process, whereas ritual slaughtering is mainly a manual process. Extra provisions are required for the individual workers that are involved with this process. Additional rules for restraining and manipulating the animal must be created. The government suggested a machine with a time code so that no other slaughter measures would occur before the animal was conscious. Further, not many people could be present during the ritual slaughtering of animals. Only one observer and a religious person could be present at the process.

### 2.6.3 The Animals Act, the Act of Animal Keepers, and the Explanatory Memorandum

As of 1 July 2014, the old provisions relating to ritual slaughter are no longer in force. The old provision related to the exception has been replaced by Article 2.10 (4) in the Animals Act. It states, *“It is permissible to kill, according to the Israelite or the Islamic rite, animals without prior stunning”*. The explanatory memorandum<sup>16</sup> to this article states the following:

*“For the killing (GM: of animals) according to the Israelite or Islamic rite is, compared with the current law, the Health and Welfare Act for Animals, proposed a more simple regulation in the fifth and sixth paragraph of the Article (GM: Article 2.10 (5)(6)). The current rules are complex and contain unnecessary, especially administrative requirements, including the need to ask a permit every year to kill according to the before mentioned rites. Already the law makes it possible to ask for an exemption on the base of the Exemption Regulation Animal welfare. Now there is a general exemption. The desire to regulate the killing of animals according to certain rites has its base in the constitutional right of freedom of religion. As society becomes more and more multicultural, it cannot be excluded that also appeals of other beliefs are possible to ritual slaughter. However, to this date, a desire or need to do so has not yet been found. If this is the case, an amendment of the law could provide in this”*.

It is noteworthy that apparently it is possible for other religions to also ask for an exemption to ritual slaughter. Still a system where other religions could ask a permit to ritual slaughter would be better because amending the law is a very difficult and time-consuming process. Also when a certain religion would try to lobby with the governmental parties to change the law because they also want to be in the position to ritual slaughter animals, this religion will be put in the spotlight.

The conditions referred to in Article 2.10 (4) and (5) of the Animals Act are set out in the Act of Animal Keepers. Article 5.4 of the Act of Animal Keepers states, *“The killing of animals without prior stunning, referred to in Article 2.10, fourth paragraph, of the Act shall be complied with in Sections 5.5 to 5.9”*.

The Minister must receive a report that animals are to be slain (Article 5.5). According to Islamic rites or Israelite rites, competent people can slaughter, and according to the Israelite rites, people appointed by the Chief Rabbi can slaughter; these are people who are designated by one or more organisations that represent all or certain groups in the Netherlands (Article 5.6). Instructions

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<sup>16</sup> Retrieved on 30 November 2014 from <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2008/12/14/memorie-van-toelichting-bij-het-wetsvoorstel-wet-dieren.html>

are to be followed by the supervisors of the Minister (Article 5.7), the maximum time in relation to the animal being restrained is regulated (Article 5.8), and a sharp knife must be used for the slaughter by a person that is also not burdened with restraining the animal (Article 5.9).

The article's explanatory memorandum states that the schemes are based on Regulation no. 1099/2009/EC that allows animals in a slaughterhouse to be slain without prior stunning if it is prescribed by religious rites.

#### **2.6.4 Attempts to criminalize ritual slaughter**

Several attempts have been made to criminalize ritual slaughter. One of the first attempts was made during the Nazi regime. In the Nazi regime, ritual slaughter was forbidden. After the Second World War, the rules to ritually slaughter animals became more flexible but still strict. The attempts of the animal rights organizations are also important; they focus on the inhumane and painful treatment of animals. They want an official ban on religious slaughter, while others are trying to convince Islamic and Jewish organizations to accept a form of reversible stunning. Some right-wing politicians and political organizations object to the growing Islamisation in the society. The Federation of Veterinarians of Europe believes the practice of slaughtering animals without prior stunning is unacceptable under any circumstances (see Havinga, 2011, p. 272).<sup>17</sup> A motion in favour of a prohibition on slaughter without prior stunning gained a majority in the Dutch House of Representatives in April 2011. The bill was rejected by the Dutch Senate on religious grounds and due to the lobbying of Jews/Muslims Organisations. The Deputy Minister of Economic Affairs agreed in a covenant with the concerned parties that the welfare of animals was important when using ritual slaughter processes. The European Parliament and the Council on the provision of information to consumers wanted to include labels on products derived from animals that had not been stunned prior to slaughter. The council did not adopt this. In December 2012, the Dutch Parliament accepted a similar provision to urge the government to construct provisions to obligate the labelling of halal meat to enable the free choice for consumers to avoid ritually slaughtered meat (Kamerstukken II 2010/11 32 500 XIII, nr. 111).

#### **2.6.5 The Codex Alimentarius**

The General Guidelines On Claims (CAC/GL 1-1979) states in article 5.1 (iv) that Religious or Ritual Preparation (e.g. Halal, Kosher) of a food may be claimed provided that the food conforms to the requirements of the appropriate religious or ritual authorities (see also the *General Guidelines for*

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<sup>17</sup> The Federation of Veterinarians in Europe (slaughtering of animals without prior stunning (fifth position paper FVE/02/102(2002) available at <http://www.fve.org>

*the Use of the Term “Halal”, CAC/GL 24-1997). In the General Guidelines For Use Of The Term “Halal” (CAC/GL 24-1997) further details are given for using the term halal. It states: “The Codex Alimentarius Commission accepts that there may be minor differences in opinion in the interpretation of lawful and unlawful animals and in the slaughter act, according to the different Islamic Schools of Thought. As such, these general guidelines are subjected to the interpretation of the appropriate authorities of the importing countries. However, the certificates granted by the religious authorities of the exporting country should be accepted in principle by the importing country, except when the latter provides justification for other specific requirements”.*

## **2.7 Treatment by the government of Jews and Muslims in the context of ritual slaughter**

The Dutch Government used different strategies to achieve ritual slaughter acceptance for Jews and Muslims. The Jewish exemption was given due to the long tradition with Jews in the Netherlands and the freedom of religion that is a constitutional law and guaranteed in treaties. Muslim ritual slaughter was accepted because Jews also received an exemption. The principle of equality was at stake. The Muslims also won several court cases against the obligation to stun before slaughter. The Muslims won these cases due to the principle of freedom of religion. In the next section, the problems with certification related to Muslims will be discussed in depth.

## **2.8 Lawsuits and ritual slaughter**

When “ritual slaughter” is entered into the search engine rechtspraak.nl, six results appear<sup>18</sup>. Two of these results will be discussed below.

### **Forgery with halal meat<sup>19</sup>**

On 2 May 2013, the defendant was convicted of forgery. He had horse meat sold as (halal) slaughtered beef. The defence argued that there was a discussion among Muslims as to what was understood as halal. The Court found the discussion to be irrelevant:

*“The court rejects this argument because in this case it has been beyond dispute that the meat that the defendant sold, as a whole has not undergone that was intended to be consistent with what is generally be understood as halal, after all, this was not meat from ritually slaughtered animals. Nevertheless by using -either by mentioning or on sales invoices-*

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<sup>18</sup> Retrieved on 11 October 2014 from <http://uitspraken.rechtspraak.nl/#zoekverfijn> (search term: *ritueel slachten*)

<sup>19</sup> Gerechtshof 's-Hertogenbosch 02 February 2013; ECLI:NL:GHSE:2013:BZ9218;

*this term either by enclosing a HCFT document the indication for halal meat and the falsehood thereof has been proven.”*

The court found that the defendant was guilty because *“the accused has thus contributed to the potential to mislead consumers and severing of the traceability of the origin of the meat”*. He was sentenced to a suspended sentence of six months and a fine of 50.000 Euros.

It is striking that the court considered it irrelevant that there is no single definition of halal. The court based its decision on well-known facts as to what was generally understood to be halal meat. However, this is still a heavily debate among Muslims.

### **Ritual slaughter without all the conditions of the law**

The second case concerns the District Court in the Centre of the Netherlands.<sup>20</sup> The accused was sentenced to a two months imprisonment and 40 hours community service. The man slaughtered sheep on his farm in an Islamic manner without stunning. Slaughter in this manner is not forbidden; however, it must be conducted in a facility that is suitable and must be in accordance with the approval of the Minister. This was not the case. Several regulations were violated, like an adequate building and the slaughter by adequate persons. The court ruled that the suspect and his accomplices compromised food safety by slaughtering sheep and bringing the unapproved meat to the market. They also caused unnecessary distress to the sheep. This statement is important because animal welfare becomes equally important to the protection of the consumer.

There is much discussion in the Netherlands about ritual slaughter and animal cruelty. The question is whether ritual slaughter causes much suffering for the animal. Jews and Muslims say that ritual slaughter is better for the animal. They cite several reports of animal welfare related to ritual slaughter. This was also the purpose of Muslim and Jewish organisations that filed a lawsuit against the producers of the Wageningen University report (Kijlstra & Lanbooij, 2008). The report concluded that ritual slaughter creates unnecessary suffering and stress to animals because they are conscious just before the slaughter. The proponents of ritual slaughter filed a case in court. They argued that many other reports concluded the opposite of what appeared in Wageningen University's.<sup>21</sup> The court dismissed the organisations' claim. The court stated that the Wageningen report was appropriately constipated. In addition, scientists may have a certain freedom to ventilate ideas that are not immediately related to scientific facts.

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<sup>20</sup> Rechtbank Midden-Nederland, 29 March 2013; ECLI:NL:RBMNE: 2013:BZ7309

<sup>21</sup> Rechtbank Arnhem, 07 July 2011; ECLI: NLRBARN: 2011:BR0659

## 2.9 Conclusion

In this chapter, the successes and difficulties of ritual slaughter were clarified. In the past, there was a tolerant attitude toward Jews in the Netherlands. The Dutch acknowledged that ritual slaughter is part of the Jewish belief system. Also, in 1919, animal stunning by Jews before slaughtering was accepted in the Law. Although the law did not explicitly refer to Jews, it was generally known that Jews were practicing ritual slaughter. Only in the Nazi period did this again become an issue; ritual slaughtering of animals without stunning was forbidden. Remarkably, the Chief Rabbi allowed other forms of slaughtering in the Netherlands. After the Nazi period, Jews were under strict conditions when performing ritual slaughter. In the 1960s and 1970s, more Muslims immigrated to the Netherlands. After winning several court cases, Muslims were allowed to ritually slaughter animals in the Netherlands. Jews and Muslims were explicitly exempted from the requirement to stun animals before slaughter.

Hence, the acceptance of ritual slaughter depends on the political regime or climate in the Netherlands towards Muslims or Jews. If there is a tolerable climate, then it will be accepted. If this is not the case, questions will be raised by critics. After the 2001 attacks on the World Trade Center in New York, Dutch politics focused on the Muslims and their rituals; ritual slaughter was also questioned. The House of Representatives adopted a bill to ban ritual slaughter, and because of the freedom of religion, this was not accepted in the Senate. Still, the Secretary of the Minister of Economic Affairs tried to achieve an accord where the concerning parties agreed that strict animal welfare rules would be applied when animals were ritually slaughtered.

Furthermore, it is preferable that the halal certification shall be handled by the Dutch Government. Now, it is completed by private institutions that also pay for the auditing process. There is reason to believe that the auditors are not objective. Although, there are many Muslim certifiers in the Netherlands, it is difficult for the consumer to trust a certificate or a label. This mistrust is also caused by a lack of clarity as to what halal means. There are different interpretations of this word in the Muslim community. This can cause confusion with consumers. Some Muslims also believe that eating haram meat can cause a problem for the salvation of the soul. The Muslim consumer could think that he or she is eating a halal product on basis of the product's certification or the label, when, in fact, he or she is eating a product where haram components are also used.



## **Chapter 3: The principle of equality, the freedom of religion, and the separation between Church and State**

### **3.1 Introduction**

The central question in this thesis is as follows: *is there a legal justification for the exemption granted to the Dutch Jews and Muslims, regarding the slaughter of animals without prior stunning? And how is ritual slaughter regulated in countries where the Jews and Muslims are not exempted or where ritual slaughter is banned?*

To answer this question, a further study of the following principles is required: equality, freedom of religion, and separation between Church and State. After all, non-Jews and non-Muslims could feel that they are not treated equally regarding the possibility of ritual slaughter. Jews and Muslims may rely on the principle of freedom of religion, which gives them the opportunity to practice ritual slaughter. Also, a study of the separation between Church and State is necessary to understand whether there is a breach with the intervention of the State in matters related to ritual slaughter. In this chapter, the question of what the principles of equality, freedom of religion, and separation between Church and State means and to what extent these principles can be exercised will be answered.

In Section 3.2, the principle of equality will be examined. In Section 3.3, freedom of religion will be discussed. In Section 3.4, the clashes between the principle of equality and freedom of religion will be addressed. Afterward, in Section 3.5, the separation between Church and State will be examined. This chapter will close with a conclusion in Section 3.6.

### **3.2 The principle of equality**

Equality was one of the slogans of the French Revolution of 1793. Equality itself is difficult to define. In general, total equality is a difficult aim because everyone is different. The principle of equality is what Walter Bryce (1956) called an essentially contested concept. In an abstract sense, there is a certain common understanding, but in a practical sense, there is no common ground.

A common understanding in the abstract sense is the Aristotelian formula of equality: *“equal treatment of equal persons and situations and not equal treatment of not equal persons and situations”* (Gerards 2005, p. 81). However, Gerards (2002, p. 66-67) stated in her thesis that it is also possible to formulate the principle of equality, not on an Aristotelic way but in another way: *“equal treatment means that a person or group can be treated not equally only if there is an objective and reasonable justification for this.”*

### **3.2.1 Article 1 of the Dutch Constitution**

The principle of equality is regulated in Article 1 of the Dutch Constitution: *“Everyone that resides in the Netherlands will be treated equally. Discrimination on the grounds of religion, conviction, political preferences, race, gender, or any other ground is not permitted”*. The first sentence of this article describes the basis of equality and the second describes in which cases discrimination is not permitted. The words *“or any other ground”* indicate that the before mentioned grounds are not limitative. According to Post (2010), the standard of Article 1 of the Constitution means a review of interests based on the criteria that are used. According to him, the question *“whether the distinction is legally acceptable”* means to pursue the purpose that the concerned government has set within the framework of its powers or the implementation of which it is dedicated.

According to Post (2010), it is important to determine whether making the distinction is useful and necessary to achieve the objective. Additionally, it will be tested whether there is a reasonable relationship between the intended effects on the interests to serve or adverse effects on other important interests. In addition to Article 1 of the Constitution, the principle can be found in the Universal Declaration of Human Rights. This Declaration states that all people are free, equal, and born in dignity. Also, it is stipulated in Article 26 of the International Covenant on Civil and Political Rights (ICCPR) that all people are equal according to the law and have, without exemption, equal rights of protection. Discrimination, on any ground, is forbidden. Post (2010) emphasized two issues: equality before the law and the prohibition to discriminate against people on specific grounds.

The government has the obligation to treat all citizens equally (Post, 2010, p. 71). This is called a formal obligation. Dworkin (2012) stated about this obligation: *“The Government must not only treat people with concern and respect, but with equal concern and respect”*. Equality must not be examined alone but rather always connected with human dignity. The government has the obligation to treat everyone equally. Additionally, the government also has the obligation for effective protection against discrimination in its citizens’ daily lives (Post, 2010, p. 72). The government can achieve this by implementing law that is opposed to discrimination and by making and implementing policy.

### **3.2.2 Limitation of the principle of equality**

Inequality is only possible when it has an objective justification. There is no consensus regarding what is an objective justification for inequality. For example, everyone has the same right to become a physician; the right to become a physician is not only a right of a particular group of people. However, only physicians can perform medical operations. This inequality is a result of some people’s education and also involves the equal rights of people to a specialist. The right to become a

physician, and having the correct medical training, is less connected to the capacities of people than to the right to perform surgery (Terpstra, 2012, p. 81).

Weaker and stronger equality rights can be distinguished. Equality in the weaker form is the formal acknowledgment of the natural equality between individuals and groups without a specific right that is connected to that. There is no reason to deny someone the right to exist because, ultimately, he or she is a person. The stronger elements of equality are grounded in this concept. The Universal Declaration of Human Rights states in its first article that everyone is born equal and with dignity. Everyone thus has equal rights; the treatment of everyone is equal, and everyone has a right to own goods.

The principle of equality becomes stronger when people have equal rights on an issue. In other words, every right is not equal, but everyone has an equal chance. The government has a positive obligation to give people the chance to achieve their goals. Equality is almost equal to extorted rights: Rights in the sense of a claim. When one has rights, that person can demand to exercise these rights. An individual or an institution has the obligation to take care that that person can exercise his or her rights. Complete liberty clashes with righteousness. If someone wants to provide everyone with the same income, then people's individual performances or achievements are not well differentiated.

Terpstra (2012) stated that when one discusses achievements, he or she makes optimal use of his or her capacities. A physician earns more than a mailman because of his capacities. Differences in knowledge, power, and income are justified on the basis of differences in achievements or experiences (Terpstra, 2012, p. 108).

What is discrimination? When the last changes in the constitution occurred, discrimination was seen as a distinction of traits related to people that is reasonably irrelevant. The judge clarified what a reasonable justification is and what it is not. There are three objective grounds to make a distinction:

- Legitimacy: the aim must correspond with a real necessity
- Efficiency: the aim must be adequate to reach the goal
- Proportionality: the aim must be necessary

There are three types of equality: the principle of equality as a reasonable political decision-making process, a human protection principle, and a proactive discrimination and diversity right. The type of equality that is investigated in this thesis is a combination of the first and the second concepts: a reasonable decision-making process and a human protection principle. A breach of the principle of equality is only possible when there is an objective justification for it. Additionally, some traits are common or fundamental for all humans, so discrimination against these traits is seen as

suspicious, for example gender and religion are seen as aspects that do not correspond with a choice but with the identity of a person.

### **3.2.3 The Netherlands Institute for Human Rights**

The Netherlands Institute of Human Rights (NIHR) has its legal basis in the AWGB (*Algemene Wet Gelijke Behandeling*; General Law on Equal Treatment). The AWGB is a law that defines discrimination. In general, direct or indirect discrimination is not permitted. However, direct discrimination is permitted if the law provides exemptions, and indirect discrimination is permitted if there is an objective ground for discrimination or if there is an exemption given in the AWGB.

The NIHR consists of nine members and is a dispute settlement commission. One can file a complaint on the grounds of discrimination. The complaints procedure within the NIHR is less formal and less costly than in a civil court case. The decisions of the NIHR are not binding so they cannot be enforced. In practice, the decisions are respected by the parties. The NIHR states that religion is not only a belief but can also be acted on. Only acts based on a direct origin of the religion are protected by freedom of religion (Oldenhuis et al., 2007, p. 49). The NIHR does not see acts as religious that have an individual subjective origin. An act becomes individually subjective when the act is not recognized as an act that is exercised by a religious group.

### **3.3 Freedom of religion**

Freedom of religion is stated in Article 6 of the Constitution. Article 6(1) of the Constitution reads, *"Everyone has the right to his religion or belief, either individually or in community with others, to profess freely, without prejudice to his responsibility under the law"*. Furthermore, freedom of religion is regulated in Article 9 (1) of the ECHR (European Convention on the Protection of Human Rights and Fundamental Freedoms) and Article 27 of the ICCPR (International Covenant on Civil and Political Rights). Article 9 (1) of the ECHR states the following:

*"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone, or with others, to profess and in public or private, or religion in worship, teaching, practice and beliefs expressed in keeping commandments and regulations."*

Article 27 of the ICCPR also states this:

*"In states where ethnic, religious or linguistic minorities are located, persons belonging to those minorities shall not be denied the right to enjoy their own culture in their community with the other members of their group, to profess their own religion, and to apply this in practice."*

Freedom of religion is composed of three levels or shells:

- The freedom of religion or freedom of conscience (believe what one wants to believe) (forum internum)
- The freedom to perform religious acts or rituals (forum externum)
- The freedom to live and act according to one's own convictions (forum externum)

The first shell cannot be limited, so the states cannot stop persons from having a particular faith; limitations can be made on the last two shells.

Freedom of religion has always been recognized in the Netherlands, but freedom of confession was not explicitly recognized until the Dutch Constitutional reform of 1983 (Heijman, 2004). According to Walt (2012), the question is no longer whether a new minority rite can exist but whether a religious rite fits within the Dutch society. The debate related to ritual slaughter is a debate about the scope of religious freedom and restrictions on this freedom (Walt, 2012, p. 175).

### **3.3.1 Restrictions on freedom of religion**

The scope of religious freedom is determined in Article 6 (1) of the Constitution by the words "*subject to exceptions in the law*". In other words, religious freedom can be restricted if there's a (formal) law that supports it, such as the Dutch Criminal Code. If the conduct of the believer clashes with the Dutch Penal Code, then the appeal to freedom of religion will not lead to the believer's impunity. According to Article 9 (2) of the ECHR, religious freedom may be restricted under the following conditions:

*"The freedom to manifest one's religion or beliefs shall be subject to express to such limitations than those prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of the public order, health or morals or for the protection of the rights and freedoms of others"*

Therefore, the origin is that a person is free to profess his or her faith, unless this is excluded by provisions in the law. The ECHR stipulates less stringent requirements for the limitations compared to Article 6 of the Constitution. These may also relate more to rules of local governments than to the legislature. On the other hand, the limitations of Article 9 (2) of the ECHR are more specified:

- Prescribed by law
- Necessary in a democratic society
- In the interests of public safety
- For the protection of public order, health or morals
- For the protection of the rights and freedoms of others.

If the restriction does not meet one or more of these conditions, then there is no legal restriction permitted on the basis of freedom of religion, though there could be a statutory basis.

### **3.3.2 Pre-stunning and freedom of religion**

The question is whether to require pre-stunning is a restriction on principle of freedom of religion and if so, if it is justified. First, it must be assumed that ritual slaughter is a manifestation of a religion, in this case, the practice of the Muslim Religion and Judaism. There is also now the possibility of unconsciousness that is reversible. This means that the animal can be brought back to consciousness within five minutes after stunning. The animal is thus not slain by the anesthetic itself. Because of the loss of consciousness, the animal is not dead before it is slaughtered. However, there is no single answer among believers whether this form of anesthesia may be given when examining the strict rules of the religion. The Mufti of Delhi's statement in 1935 in a fatwa is important to consider. He said that anesthesia did not violate any religious principles because, after being given anesthesia, the animal is not dead, only stunned. Also, according to a statement from the Rector of Al-Azhar University of Cairo in 1982, slaughtering animals by anesthesia does not make the food haram (Zoethout, 2013, p. 666.). That is why Zoethout (2013) states that reversible pre-stunning is not regarded by everyone as contrary to the religion. Should ritual slaughter be banned, this ban will have to meet with the conditions set out in Article 9 (2) of the ECHR.

An important point of discussion has always been animal welfare. Can it be said that the ban is a necessary goal to establish? With regard to the condition of "*necessary in a democratic society*", there must be a pressing social need. Furthermore, the principles of proportionality and subsidiarity must be applicable. Zoethout (2013) noted a number of important issues. First, the amount of faithful users of ritual slaughter must be considered. According to a rough estimate of the Chief Rabbinate in the Netherlands, only 300 to 400 households currently keep a kosher kitchen. In the Netherlands, the influx of immigrants has also led to a growing number of Muslims. In 2006, it was estimated that almost 6% (950.000) of the population in the Netherlands were Muslim. Also, ritual slaughter is not considered acceptable by European butchers. Dutch butchers find that minimum conditions should be in place to allow ritual slaughter. In addition, there are alternative methods to slaughter, such as reversible stunning and instantly anesthetizing animals after slaughtering.

From the above it can be concluded that according to the limitation grounds of the freedom of religion (Article 6 of the Dutch Constitution and Article 9 (2) of the ECHR) it is possible to ban ritual slaughter.

### 3.4 Collisions between the principle of equality and freedom of religion

Unlike Article 6, Article 1 of the Dutch Constitution has no limitations. The words “*exceptions of the law*” are not included in Article 1. Therefore, Van der Burg (1991) states that the principle of equality has priority over the principle of freedom of religion. The principle of equality is seen as meta-standard by which other rights derive their value. If this principle is violated, then the other principles follow.

These rights and freedoms may lead to collisions. When examining the Dutch Constitution, the principle of equality is paramount. According to Post (2010), this does not mean that there is a mutual order of fundamental rights that can be derived.<sup>22</sup> Bill 13782 provides that the order of the fundamental rights “*is only a matter of external appearance*”.<sup>23</sup>

Although the legislature seems to be neutral, Van der Burg (1991) does not share this opinion. He stated that the equality norm is the fundamental premise of any other form of democracy. The equality principle is, therefore, fundamental and should prevail over other constitutional norms (Van der Burg, 1991, p. 176).

For example, the ECtHR seems to implement the principle of equality between men and women before freedom of religion, according to Post (2010). Two principles are important:

- Proportionality: There must be a balance between the infringement of a fundamental right and the importance that it serves
- Restraint interpretation (in Dutch: *interpretatieve terughoudendheid*): The judge has only a marginal power to review whether an act is religious

#### 3.4.1 Some examples of collisions between the two principles

In this section, three cases of the NIHR related to clashes between the mentioned principles will be examined. These cases provide good insight into when a belief can be seen as a religion. This distinction is important if there is a breach of freedom of religion. Also, the cases will clarify on what conditions a breach of freedom of religion or the principle of equality is possible.

#### Judgement No. 2005-28

Date: 23-02-2005

The complainant believed in a former Jewish religion called “*consecration*”. He practiced his belief by not shaving his beard or cutting his hair, unless it was necessary. He was not allowed in a cafeteria because people thought his hygiene was poor. The complainant filed an action against the cafeteria for discrimination on the basis of his right to practice his religion.

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<sup>22</sup> Kamerstukken II 1981-1982, p. 281.

<sup>23</sup> Kamerstukken II 1990-1991, 22014, nr. 3 p. 6.

The Commission argued that there was no religious act. After all, there was no question of a coherent set of ideas that concerned a fundamental belief in human existence. There was also no question of exercising the faith by a group. Therefore, the Commission did not have to investigate whether there was an objective justification to discriminate. The Committee decided that the complaint was inadmissible.

**Judgement No. 2014-39**

Date: 02-04-2014

The complainant filed a complaint because he was discriminated against by the government for his beard. Also, the government did not want to put effort into giving him a project in the security branch; the government stated that it did not accept people working on a security company project with a beard because of the danger that the beard would be pulled.

The Commission claimed that the inappropriate comments about the complainant's beard by several municipality staff members were unjust. The act remained unjust notwithstanding the fact that apologies were offered. The Commission added that the municipality used indirect discrimination by failing to offer him the project. Indirect discrimination is only possible if the law provides an exemption (which is not the case here) or when there is an objective justification for the distinction.

To investigate if there was an objective justification, it must first be determined if there is a reasonable aim. In this case, the municipality stated that a distinction was made to increase the possibility of outflow. The Committee believed this was legitimate. Secondly, it must be determined whether the government used adequate means of achieving that aim. The municipality referred to the means of representation and security. The means of security were appropriate, according to the Commission. However, there was no evidence that representativeness was appropriate. Regarding this, the question must also be asked whether it was necessary. Indeed, with regard to representativeness, the municipality argued that not all firms set safety requirements. The municipality should, according to the Commission, have asked these companies if that plaintiff could possibly work.

From the Commission's decision, it can be understood that direct discrimination is not possible unless there is a statutory exception; indirect discrimination is possible, if there is a legal basis or objective justification. Therefore, the following questions must be asked in the case of indirect discrimination:

1. Is the objective legitimate? If yes,
2. Are the resources used suitable (efficient)? If so,
3. Were the resources necessary (proportional)?



If that is the case, a distinction can be made.

### **Judgement No. 2014-93**

Date: 07-08-2014

The complainant wished to work as an intern in a school. However, because of her faith, she could not shake hands with men. The school stated that she could not have an internship because shaking hands was an essential element of the school. The complainant filed a complaint with the Commission. The Commission stated that there was no unjustified indirect discrimination on the basis of religion. This may be the case if there is a good reason (objective justification) or if there is a statutory exception. In this case, there was a statutory exception. The law provided an exception to discriminate if the act formed an essential part of the school's policy. In this case, the school had a policy that hands must be shaken. Therefore, the distinction could be made.

### **3.5 The principle of separation of Church and State**

The principle of separation between Church and State defined by Oldenhuis et al. (2007, p.16) is as follows:

*“That the government and the church are two separate spheres, but that they are mutually intertwined. Believers take part in the public debate and represent social ideas. The state assumes a neutral position so that it can establish neutral rules and philosophical ideas in it...The principle also implies the recognition of freedom of religion and belief and freedom of religious communities to shape their own organization. The principle also implies that the church is not a public authority. Exercises of the state are neutral, which means that every religion and belief is treated equally. There is no privileged church and the state does not impose religion on it. The separation of church and state means historically therefore that there are two separate spheres, but this does not mean that there is a watertight separation between the two spheres.”*

The principle described by Stipthout (2012, p. 16) is as follows:

*“The civil public authorities, the legislative, executive and judicial powers, regardless the level of government are unable or unwilling to exert any direct influence on the internal organization of the philosophies that are present within the territory of the state concerned. The philosophies can also not influence in a direct or indirect way civil public authorities, the legislative, executive and judicial powers in a particular secular state.”*

The separation of Church and State is not exercised in all countries in the same way. In Europe, there are three forms (Oldenhuis et al., 2007, p. 5). The first category includes countries with

an established church; these are countries with a State church. One or more religions have privileged status of religion and their teachings are seen as the normative basis of society (examples are the United Kingdom, Denmark, and Norway). The second model is a strict separation between Church and State. These include countries such as Turkey and France. A third category is a pluralistic cooperation. These are countries like the Netherlands and Belgium. These countries have diverse religious communities. The government has a neutral position regarding the various religions.

### 3.5.1 The separation between Church and State and ritual slaughter

The question is whether the separation between Church and State legally prohibits regulating ritual slaughter by the government. The question arises why are food requirements of other religions, for example the Hindus (who are not allowed to eat cow meat), not included in the law. In the Animal Act's explanatory memorandum the government discusses this:

*“As society becomes more and more multicultural, it cannot be excluded that also appeals of other beliefs are possible to ritual slaughter. However, to this date, a desire or need to do so has not yet been found. If this is the case, an amendment of the law could provide in this.”*

There is a strange relationship between Church and State in the Netherlands because there is no interference in religious issues, for example, with respect to the requirements of halal certification and labeling. The government states that it is not its task to engage in religious issues. This same line of reasoning, however, could be used with regard to exceptions for certain religions so that ritual slaughter may be exercised. Jews and Muslims have a privileged status over non-Muslims and non-Jews and/or non-believers. The government determines how ritual slaughter can occur. Although in the Netherlands there is not a strict separation, such as in France and Turkey, there is a certain separation.

From the statements of the European Court of Human Rights (ECtHR) it can be concluded that the ECtHR sees a State as a *“neutral organizer[s] or religions”* or a *“neutral and impartial organizer[s] of religions”* in religious measures<sup>24</sup> (Van Bijsterveld, 2013, p. 44). The specification is normative. According to the ECtHR, however, States have a space in order to act differently; the so-called *“margin or appreciation”*. An indication as to whether member States generally agree on the measures is important. If the Member States think the same about a certain measure, then there is not much room for treating religions differently. In the Refah Partisi case<sup>25</sup>, the ECtHR stated this with respect to legal pluralism:

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<sup>24</sup> ECtHR (Former Second Section), case of 97 Members of the Glani Congregation of Jehovah's Witnesses & 4 others vs. Georgie (Appl.nr. 71156/01), 3 May 2007.

<sup>25</sup> ECtHR 13 februari 2003 (GK), Refah Partisi and others v. Turkey, appl. nrs. 41340/98, 41342/98, 41343/98 & 41344/98.

*“Firstly, it would do away with the State's role as the guarantee of individual rights and freedoms and the impartial organizers of the practice of various beliefs and religions in a democratic society... Secondly, such a system would undeniably infringe the principle of non-discrimination between individuals as regard their enjoyment of public freedoms, which is one of the fundamental principles of democracy.”*

Van Bijsterveld (2013) suggested that a government with a particular political color could prefer or reject a certain religion. In Turkey, for example, the ruling party, the AK party of Prime Minister Erdogan, is more in favour than its predecessors were of the Islam and Islamic values. In addition, Stipthout (2012) stated that the separation of Church and State is not static. It is a form of governing that is always evolving. Van der Burg (2009) posed the following question: what is neutrality? He described neutrality as a State where no religion, ideology, culture, or belief about what constitutes good and valuable life is privileged (Van der Burg, 2009). In this regard, Post (2010, p. 47) stated, *“The prevailing principle of impartiality implies that what the government, as representative of the entire society, permits to some, the others also should be allowed, and that what they forbid to some, the others also should be forbidden”*.

According to Post (2010), this leads to the following conclusions: 1) different religions should be treated equally; 2) religions and non-religious philosophies should be treated equally; 3) there is no preference or rejection for any religion or philosophy of life or a direction therein; and 4) individuals or groups may not discriminate on the basis of their religions or belief systems.

The model of the Dutch State can best be described as a pluralistic society (Post, 2010). Religion does not only refer to a separate private atmosphere without being relevant to the public good, it can and should be important to the whole of social life. Important values are the freedom of religion and belief. The government recognizes the role of religion in the public domain, and a plurality of beliefs in this domain. The State can facilitate religious and philosophical organizations. Such support will not be deemed in violation of the separation between Church and State. The government must do so on the basis of equality. The neutrality of the State is ensured, although the government is not strictly present nor strictly absent.

According to Van der Burg (2009), three variants of neutrality can be noted in an ideal State: the inclusive, the exclusive, and the compensatory. Van der Burg (2009) preferred inclusive neutrality. Inclusive neutrality means that, in principle, a person can freely experience his or her religion and culture and, in political discussions, can draw on philosophical arguments. It is connected to the idea of proportionality. The government gives every citizen the same support for the experience of his or her religious or cultural identity. This means that everyone can have his or her own religious clothes to wear, that public schools and other religions are not mutually exclusive, and there are opportunities for financial assimilation of special or public schools. Exclusive neutrality

implies that the State is strictly apart from religion, culture, and lifestyles. The French *laïcité* is a good example of exclusive neutrality. Compensatory neutrality means that the government, in special cases, supports minorities.

The paper *“Fundamental Rights in a Plural Society”* (2004, in Dutch: *Nota Grondrechten in een Pluriforme Samenleving*)<sup>26</sup> showed that the Dutch government chooses the model of pluralistic society and an inclusive and compensatory neutrality. The Hague's member of the municipal council Alderman *Baldewinsingh* has no problems with granting applications from religious organizations if they are related to social activities. Also the Former Minister of Internal Affairs, Ter Horst argued that between Church and State there is not a “watershed”: *“We as government are neutral. That means that we do not subsidize evangelism activities. As for the government it only subsidizes activities that contribute to the social well-being”* (Post, 2010, p. 53-55). Therefore, the State, in some cases, is reluctant and, in some cases is, not reluctant. The State is expected to be neutral to all believers. Interestingly, in respect to ritual slaughter, the government apparently wants to offer certain groups protection. This can be seen as a pluralistic cooperative; the government allows people to exercise their faith.

In a State, two rules can be applied: religious dietary laws, aimed at the fulfillment of religious duties (eat halal food, avoid haram) and legal requirements, focusing on fair trade, protection of public health, and consumer protection (Havinga, 2011, p.5). There are two norms that can be applicable: government legislation and religious standards. Furthermore, there are several possibilities between the two norms: the same standards, i.e., both norm standards contain a commandment or prohibition; just one standard, i.e., a value system contains a commandment or prohibition, the other has no mandatory form; or conflicting standards, i.e., both norm standards have a commandment or prohibition with each other.

With regard to halal food, it can be said that it is a religious norm. Most Islamic food rules concern only the religious domain; there is no statutory standard. On the other hand, legal rules contain no religious norms; they apply only to the preparation of the meat, method of slaughter, etc. With regard to slaughter, there are conflicting standards. Slaughtering without stunning is forbidden, however, for Jews and Muslims, an exception is made. According to Havinga (2011), this is a way to avoid conflicts in a situation of opposing standards. The involvement of the government through legislation, law keepers, and judges is a delicate matter because of the separation between Church and State. The Dutch government is not always reluctant regarding religious interests and habits that do not interfere with public interests.

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<sup>26</sup> <https://zoek.officielebekendmakingen.nl/kst-29614-2.html>

Is ritual slaughter a religious duty? In Judaism, this is clear. However, the Muslims are divided. First, the government's position was that for Muslims the exception was not applicable (Havinga, 2011, p. 18). What makes the issue more complex is that, within the religious community, there is also a discussion about standards, in this case, food standards.

However, there are different interests that play a role in this. Ritual slaughter was seen as less painful for animals and the process was faster than the usual slaughtering methods. In the Jewish slaughter ritual, it was also stated that the butchers were better educated and better material was used; now, that is no longer the case. Currently, experts say that unanaesthetized slaughtering is unnecessarily cruel to animals. Also, there are experts who argue that a well-performed ritual slaughter results to more stress or pain. Additionally, the interests in export is important; now, it is no longer necessary to prove how great the need is to ritually slaughter animals within the community.

Within the Muslim community, there are suspicions that many halal products that are sold are not actually halal. Many people believe at national or European level, a halal label would need to be included. The government would then need to prepare rules with regard to certification and labelling of halal food products and should also verify this (Havinga, 2011). Companies themselves have attempted to access a federation with regard to halal and halal labels. However, this was not successful. In 2009, the European Association of Halal Certifiers sought to harmonize and cooperate with the halal food sector in Europe. This institute supported the creation of a European halal institute that focused on standardization, training, and accreditation (Havinga, 2011).

In December 2010, the Dutch organization NEN organized a meeting to evaluate if the Dutch market had a need for the development of an EU-halal standard on the basis of the Austrian standard. Also, a motion of the Member of Parliament, Mr. Graus (a member of the PVV), was brought forward), in which it was requested that the government compulsorily labels halal meat so that consumers had a free choice and were not ignorant that animal unfriendly meat was sold. The minister did not want to execute this because, according to him, this was a matter that would need to be arranged at the European level. The mandatory labeling of halal meat at the European level was a proposal to which the European Parliament asked the European Commission to oblige. The mandatory labeling was, however, not adopted by the Council.<sup>27</sup> The Dutch government left the compulsory labeling of halal food entirely to private parties. Nevertheless, the government supported<sup>28</sup> initiatives to achieve the standardization of halal standards (Havinga, 2011, 15).

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<sup>27</sup> Retrieved on 26 December 2014 from <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-001661&language=NL>

<sup>28</sup> Het Nederlandse normalisatie-instituut (NEN) organiseert halal-norm bijeenkomst', retrieved on 21 Februari 2015 from <http://www.evmi.nl/marketing-sales/nen-organiseert-halal-norm-bijeenkomst/>

The possibility exists that non-halal food is sold as halal. The NVWA can supervise the correct way of slaughtering, according to Dutch law. The NVWA checks whether there is compliance with the legal requirements. The NVWA does not check whether a product is falsely offered as halal or kosher because the NVWA does not involve itself in religious matters. This is why consumers cannot file a complaint concerning religious issues with the NVWA. So it can be concluded that, there is no sharp separation between Church and State. On the one hand, the Dutch government is strict with the rules for the way in which the animals are slaughtered; on the other hand, there are no rules governing the labeling and certification of the halal products.

This can lead to serious health situations when a food is labeled as halal when, in fact, it is not. Moreover, eating haram food is according the Muslims food bad for the soul of the believer. The believer thinks that following the requirements of god will result in a good relationship with god. Health seems to be the main convincing argument to the government to take responsibility for the labeling process. In this manner, an objective institute can test whether there is halal meat engaged with the certification and labeling of meat claiming to be halal. The danger is, however, that the government is blamed for not respecting freedom of religion and that the separation between Church and State is not complied with.

### **3.6 Conclusion**

In the introduction of this chapter, the following question was raised: what are the principles of equality, freedom of religion, and separation between Church and State, and to what extent can these principles be exercised?

Equality has been defined in different ways. The principle of equality is regulated in Article 1 of the Dutch constitution. This article is also called the non-discrimination article. The legislature did not make a priority classification among the different laws in the Constitution, it can be found in literature that Article 1 of the Constitution comes prior to the Constitution's other laws (Van der Burg, 1991). This point of view is understandable because, unlike freedom of religion (Article 6 of the Constitution), the article itself does not give limitations. Equality is mostly related to or compared with something or someone else. In the context of this thesis, equality will be considered to be shared by everyone. It can be connected to genetic traits or aspects fundamental to a person's identity, like religion.

Freedom of religion is regulated in Article 6 of the Dutch Constitution and also in treaties (e.g., Article 9 of the ECHR). Clashes can occur between the principle of equality and freedom of religion. When examining the case law, direct and indirect discrimination is forbidden unless there is a legal basis for that discrimination (direct discrimination is discrimination because of race, religion

etc.); indirect discrimination is a neutral measure but forms indirect a measure of discrimination because of race religion etc. Indirect discrimination is possible if there is an objective justification. This is the case when the distinction is legitimate, efficient, and necessary. These criteria were constructed to check if the execution of certain laws were not discriminatory. Still they also can be applied to certain laws themselves when they derive of certain laws also. In this case the exemption given to the Jews and the Muslims to ritual slaughter animals is according the Government a execution of the principle or regulation of the freedom of religion. To clarify the used criteria, a model has been created (Figure 1). It explains that discrimination can be direct or indirect. Generally speaking, both are prohibited. Direct discrimination is forbidden unless the law provides a possibility to discriminate. Indirect discrimination is also prohibited unless the law provides an exemption or when there is an objective justification to discriminate. If there is a justification to discriminate, the measure must be legitimate (is the aim truly necessary). It further must be efficient (the measure must be adequate to reach the goal) and proportional (the measure must be necessary). Furthermore, it was seen that the separation between Church and State is not treated the same in every country in Europe. In the Netherlands, the model pluralistic cooperation is applicable. The government does not provide rules for the labeling and certification of halal products. The government states that is does not want to involve itself in religious issues. This argument is strange because the government does give exceptions to Jews and Muslims for ritual slaughter. Furthermore, the government sets the condition how ritual slaughter must occur. This seems to be a breach of the principle of separation between Church and State. It is important that the government tries to intervene with the halal/kosher certificates and halal/kosher labeling to prevent people from buying food which they think is halal or kosher but which contains prohibited particles, according to Muslim or Jewish food regulations. According to Article 8 of the Regulation 178/2002 “the General Food Law”, the Considerance 3, and Article 8 Regulation 1169/2011 of the European Parliament and of the Counsel on Food Information, the Dutch Government can hold the food business operators responsible for providing accurate information about the product. The food business operators may not mislead the consumer. This can form the legal basis to take action against food business operators who make false claims about food that is supposedly kosher or halal. If the government discovers any fraud issues, it can take civil action or action based on the Dutch penal code.

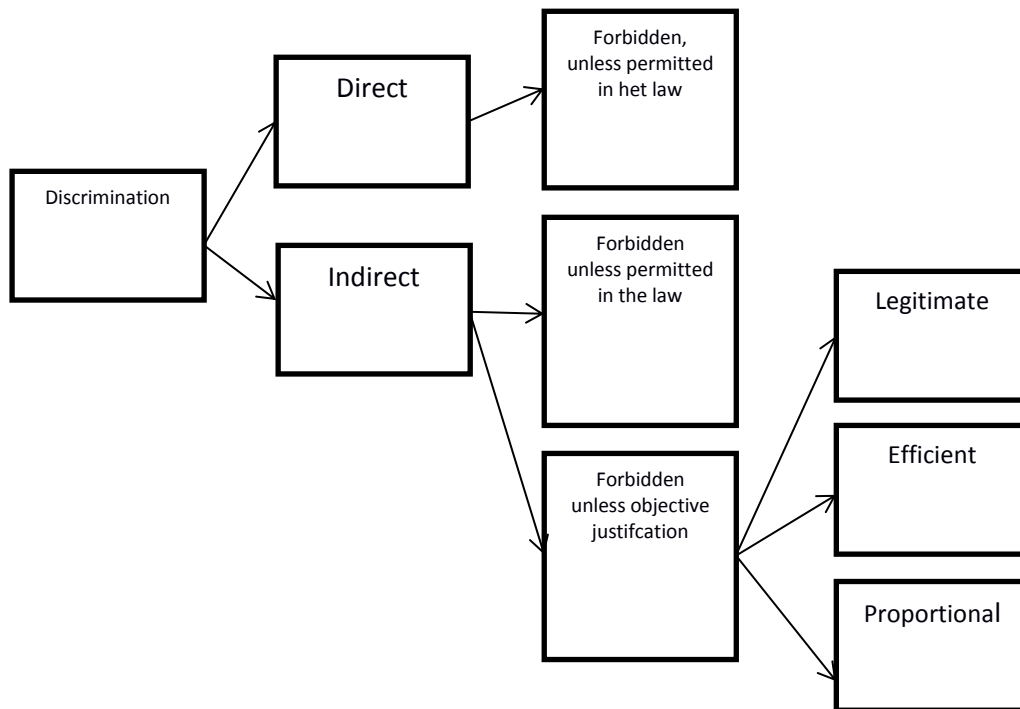


Figure 1. Model to explain when discrimination is forbidden or not



## Chapter 4: Results

### 4.1 Introduction

In Articles 6 of the Dutch Constitution and 9 of the ECHR, freedom of religion is regulated and protected. Before an appeal based on religious freedom can be achieved, it first must be established if there is a religion or a religious act. There is in the literature no consensus of the definition of religion (e.g. Berger 1967, p. 25; Dobbelaere 1982, 39; Van der Burg 2009, p. 23-24).

Van der Wal (2010) argued that by examining objective circumstances it can be understood whether there is a religion or a religious act. Objective circumstances imply that the religious belief is not only exercised by one or a limited number of people but by a substantial group of people.

Case law also seems to point to objective circumstances by which it can be concluded if there is a religion or religious practice. According to the ARRS (The Counsel of State; *Afdeling Rechtspraak van de Raad van State*, April 7, 1983, AB 1983, 430, see also HR April 13, 1960, NJ 1960, 436) objective standards means that there is a direct expression of religion or belief. Also, according to the Netherlands Institute for Human Rights (in the past Commission for Equal Treatment; *Commissie voor Gelijke Behandeling*), religion involves not a particular view but a common belief. It must be more than an individual concept (Judgment No. 2005-28, date: 23-02-2005).

Ritual slaughter can be seen as an act that gives direct expression to the religion of Jews and Muslims. Ritual slaughter is not an isolated act, but a generally accepted expression of the Jewish and Muslim faiths in the Netherlands. The Dutch government provides a statutory legal provision for Jews and Muslims to make ritual slaughter possible.

This raises the question if the Dutch government's exception to only allow ritual slaughter for Jews and Muslims discriminates against non-Jews and non-Muslims in the Netherlands. This question will be answered via the following:

- The comparison among the Netherlands, select European countries, and the US
- Case law of the European Court of Human Rights (ECtHR)
- The criteria of the Dutch Institute for Human Rights

This comparison of ritual slaughter in the Netherlands, selected European countries, and the US will clarify that ritual slaughter is not regulated in the same way in every country. The Netherlands' Government stated that ritual slaughter is necessary so that freedom of religion for Muslims and Jews is guaranteed. In other countries ritual slaughter is forbidden, for example in Switzerland, Norway, and Poland. The situation in the US in this respect is interesting because, in the US, freedom of religion is also an important principle. The case law that will be studied is the only decision of the ECtHR related to ritual slaughter: *Chaïre Schalom Ve Tsedek versus France*.

Furthermore, the criteria of the RCtHR and the NIHR will be used to determine if there is a just distinction between Muslims and Jews that are allowed to ritually slaughter and non-Jews and non-Muslims who are not allowed to ritually slaughter. The criteria that will be used are legitimacy, necessity, and proportionality.

In Section 5.2, ritual slaughter in Europe will be examined. In Section 5.3, ritual slaughter in the US will be addressed. In Section 5.4, ritual slaughter and discrimination will be discussed, and in Section 5.5, the chapter will be closed with a conclusion.

## **4.2 Europe and ritual slaughter**

This section will focus on the EU law related to ritual slaughter, mainly the Council Regulation (EC) No. 1099/2009 of 24 September 2009 regarding the protection of animals at the time of killing. Based on this law, the member States are allowed to regulate ritual slaughter. In the Netherlands, Muslims and Jews are allowed to slaughter ritually. Some countries in Europe, like Switzerland and Norway (non-EU member states) and Poland (EU member state), prohibit ritual slaughter. A study will be conducted on which arguments are used to prohibit ritual slaughter in these countries. Next, the only case related to ritual slaughter and addressed by the ECtHR shall be studied. Special attention will be given to the dissenting opinions of some members of the Court against the ECtHR's decision.

### **4.2.1 The EU law related to ritual slaughter**

According to Article 13 of the Treaty on the Functioning of the EU, animals are recognized as sentient beings whose welfare must be respected. At the same time, respect must be given to national customs and religious rites.

In the Council Directive of 1993, ritual slaughter was exempted from mandatory stunning in Article 5(20). The latest legislation of 2009 deals with the protection of animals at the time of killing. This regulation came into effect on 1 January 2013.<sup>29</sup> Article 4(4) of the regulation, stipulates that ritual slaughter is exempted from the requirement in Article 4(1) that all animals should be stunned before slaughter, provided that such slaughter occurs in a slaughterhouse.

Article 26(2) of Regulation no. 1099/2009 allows Member States to implement national rules aimed at ensuring more extensive protection of animals at the time of slaughter. Still, Member States do not have a completely free choice, as Recital 18 of the Regulation's preamble states:

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<sup>29</sup> Council Regulation (EC) no. 1099/2009 on the protection of animals at the time of killing (2009)

*“Since Community provisions applicable to religious slaughter have been transposed differently depending on national contexts and considering that national rules take into account dimensions that go beyond the purpose of the regulation, it is important that derogation from stunning animals prior to slaughter should be maintained, leaving, however, a certain level of subsidiary to each Member State. As a consequence, this regulation respects the freedom of religion and the right to manifest religion or belief in worship, teaching, practice and observance, as enshrined in Article 9 of the Charter of Fundamental Rights of the European Union.”*

According to Van Der Schyff (2013), this means that member States still have to respect fundamental rights as they exist in the EU’s constitutional order even when they choose to derogate from the religious exemption in Article 4(4) of Regulation no. 1099/2009. The total and the percentage of the total population of Jews and Muslims of the countries that are compared in Europe are provided below.

**Table 1. Total Jews and percent of Jews in the total population per country in the year 2014<sup>30</sup>**

Country	Total population	Jews	% of population
Netherlands	16.800.000	29.900	0,18
Switzerland	8.100.000	19.000	0,24
Norway	5.100.000	1.300	0,03
Poland	38.500.000	3.200	0,01

**Table 2. Total Muslims and percent of Muslims in the total population per country in the year 2014 (month July)**

Country	Total population	Muslims	% of Population
Netherlands <sup>31</sup>	16.877.351	843.867,55	5,0
Switzerland <sup>32</sup>	8.061.516	395.014,284	4,9
Norway <sup>33</sup>	5.147.792	118.399,216	2,3
Poland <sup>34</sup>	38.346.279	38.346,279	0,1

#### **4.2.2 The Netherlands and ritual slaughter**

In the Animals Act (Article 2.10), a provision was made for Jews and Muslims to ritually slaughter food.<sup>35</sup> The Animals Act describes that ritual slaughter has to occur according to the

<sup>30</sup> Retrieved on from <http://www.jewishvirtuallibrary.org/jsource/Judaism/jewpop.html>

<sup>31</sup> Retrieved on 23 November 2014 from <https://www.cia.gov/library/publications/the-world-factbook/geos/nl.html>

<sup>32</sup> Retrieved on 23 November 2014 from <https://www.cia.gov/library/publications/the-world-factbook/geos/sz.html>

<sup>33</sup> Retrieved on 23 November 2014 from <https://www.cia.gov/library/publications/the-world-factbook/geos/no.html>

<sup>34</sup> Retrieved on 23 November 2014 from <https://www.cia.gov/library/publications/the-world-factbook/geos/pl.html>

<sup>35</sup> See also Chapter 2.6.3

provisions of the government, which also are regulated in law (Article 2.10, paragraph 4 and 5; 5.4-5.9 of the Animal Keepers). Therefore, other religions or people who want to slaughter animals without stunning them are prohibited.

#### **4.2.3 Switzerland and ritual slaughter<sup>36</sup>**

The Swiss Animal Protection Association launched a popular initiative against ritual slaughter. However, the Federal Council and the Federal Assembly were against the initiative. Nevertheless, the ban on ritual slaughter was accepted on 20 August 1883. The federal constitution was amended by Article 25 bis: the slaughter of animals without prior stunning before the withdrawal of blood is prohibited without an exemption for every type of slaughter and every species of animal.

Jews in Switzerland made several attempts to gain permission to perform Shechita (ritual slaughter) on religious grounds. Their attempts to fight against the ban were in vain, except in March 1918 during the First World War. Since it was impossible to import kosher meat, the federal council granted a limited license to slaughter without stunning. The special provision was withdrawn on 15 April 1920.

In the 1950s, the special religious articles in the federal constitution were under discussion. The prohibition of Shechita was deleted from the constitution but was adopted without any alteration into the Animal Protection Act of 1978.

Under the Animal Slaughtering Regulation of 22 March 1989, the import of kosher meat became subject to regulatory control, with far-reaching regulations and control mechanisms. The Animal Protection Act of 2001 included a proposal to ease the prohibition on Shechita on religious grounds, but after much fighting with the opposition, the proposal was withdrawn. Still Jewish organisations achieved the supply of kosher meat from foreign countries to the Jewish community in Switzerland, and this was adopted into the current Animal Protection Act in 2003.

The Swiss Animal Protection Association tried, in 2002, to prohibit the import of kosher meat. In the Animal Protection Regulation, only the prohibition of Shechita was adopted (1 September 2008).

#### **4.2.4 Norway and ritual slaughter<sup>37</sup>**

From 1814 to 1851, a travel ban to immigrate into Norway was imposed on Jews. In 1852, the ban was lifted. Jews who came to Norway then came mainly from Poland and Lithuania. A large influx came in the late 1930s due to the refugees from Nazi Germany. In the media, the Norwegian

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<sup>36</sup> Retrieved on 22 February 2015 from <http://www.rk-kerkplein.org/home/themas/Kerk-zijn/andere-onderwerpen-kerk-zijn/de-strijd-om-de-sjehieta-in-zwitserland-noorwegen-en-nederland>

<sup>37</sup> Retrieved on 22 February 2015 from <http://www.rk-kerkplein.org/home/themas/Kerk-zijn/andere-onderwerpen-kerk-zijn/de-strijd-om-de-sjehieta-in-zwitserland-noorwegen-en-nederland>

people felt extremely positively or extremely negatively toward Jews. In 1930, the debate ended by an adopted bill of the Committee on Agriculture. Initially, ritual meat from Sweden was imported in 1937, but this came to an end because the Swedish Government also banned slaughter without stunning. In the Jewish community, nearly 2.000 people were affected.

A new Norwegian law regulating the slaughter of animals was adopted in 1929 by a solid majority. This has been replaced by the Animal Welfare Act and is practically identical. It states that animals that are owned, or in any way kept by people, must be stunned before being killed.

#### **4.2.5 Poland and ritual slaughter**

In Poland, the ban on ritual slaughter, enacted in 2011, has been subject to debate. Ultimately, the legislature decided that the ban on ritual slaughter should remain.

In 1997, Polish Parliament passed a law regulating the treatment of animals that included the requirement that livestock should be stunned before slaughter. This is forbidden under both Jewish kosher and Muslim halal rules. Jewish groups protested. That is why the government amended the law to allow slaughter without stunning for religious reasons. There was little Polish livestock subject to ritual slaughter at that time. In 2010, there was a large increase in ritually slaughtered meat because Turkey began to allow beef imports from the EU after a 14 year ban. The 2004 ruling meant that Polish farmers could legally provide halal beef.<sup>38</sup>

In 2011, as much as 30% of all Polish beef exports came from ritually slaughtered cattle (more than 150.000 animals). The revenue was approximately one billion Euro. A small specialist sector was grown into a large business. In 2011, the animal welfare groups asked the attorney general to submit the 2004 ruling to the country's constitutional court on the grounds that there was a conflict with the 1997 animal welfare laws.<sup>39</sup> The Court agreed to this argument and stated that it was against Polish law to allow animals to be slaughtered without first being stunned.<sup>40</sup>

#### **4.2.6 Case-law in the EU: Chaáre Schalom Ve Tsedek versus France<sup>41</sup>**

The question could be asked if ritual slaughter falls under freedom of religion regulated in Article 6 of the ECHR. This question was answered in 2000 in the ECtHR case Chaáre Schalom Ve Tsedek versus France. Currently, this is the only judgment on ritual slaughter by the European Court.

In this case, a Jewish religious association complained that a French decision to not allow the association to perform ritual slaughter and only granting approval to another Jewish association

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<sup>38</sup> Retrieved on 2 November 2014 from <http://www.independent.co.uk/voices/comment/polish-parliament-upholds-ban-on-ritual-slaughter--but-its-nothing-to-do-with-judaism-8711120.html>

<sup>39</sup> Retrieved on 3 November 2014 from <http://www.independent.co.uk/voices/comment/polish-parliament-upholds-ban-on-ritual-slaughter--but-its-nothing-to-do-with-judaism-8711120.html>

<sup>40</sup> Retrieved on 2 November 2014 from <http://www.bbc.co.uk/news/world-europe-20523809>

<sup>41</sup> App no. 27417/95(ECtHR, 27 June 2000)

(ACIP) interfered with the applicants right to freedom of religion. It was accepted that the applicants' association could claim rights from the freedom of religion right in Article 6 of the ECHR and that ritual slaughter was a manifestation of religion (paragraph 74<sup>42</sup>).

The French State believed the applicants' organisation was a not religious organisation according the French law (paragraph 41). There was no necessity for another religious organisation (paragraph 41). Ritual slaughter by the applicant was thus forbidden. The applicant's organisation was also a minority; ritual slaughter also could be performed by the Jewish organisation (ACIP) that already performed it.

The applicant stated that its ritually slaughtered meat was more pure (glatt) than that of the approved Jewish organisation's ritual slaughter. The Court stated that if that was the case the applicant also could buy the meat in Belgium where they also sold glatt. Furthermore, it appeared that the applicant also sold the meat for financial gain because it taxed the members who ate the meat.

The applicant stated that there was a breach of the right of freedom of religion because it could not legally prepare the glatt meat. This glatt meat is not provided by other religious organisations in the French State:

*“Since the ritual slaughterers of the ACIP no longer carried out a thorough inspection of the lungs of slaughtered oxen or sheep, the meat from animals slaughtered in those conditions could not be regarded in the eyes of the ultra-orthodox or in any event of the Jews who belonged to the association as perfectly pure, or glatt, from the religious point of views.”*  
(paragraph 6)

The applicant also stated that it was a religious organization; both ACIP and the applicant were liturgical associations (paragraph 62) within the meaning of Article 105 of the Act on the Separation of Church and the State.

In paragraph 73, the Court stated that Article 9 of the ECHR lists a number of forms in which manifestation of one's religion or belief can take place, for example by worship, teaching, practice, and observance.<sup>43</sup> It was not contested that ritual slaughter, as indeed its name indicates, constitutes a rite (the word in the French text of the convention corresponding to “*observance*” in English) whose purpose is to provide Jews with meat from animals slaughtered in accordance with ritual prescriptions, which is an essential aspect of the practice in the Jewish religion.

The applicant association also performed ritual slaughter and inspected if it conformed to the rites and if the meat was sold properly. It can thus be said that the applicant performed an essential part of its religion. According to the Court, on basis of Article 9 (1) of the ECHR, the refusal of the

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<sup>42</sup> If in the text is referred to a paragraph number, it refers to the paragraph number in the ruling

<sup>43</sup> See the Kalac vs. Turkey judgement of 1 July 1997, Reports 1997-IV p. 1209 paragraph 27

French authorities to allow the applicant to ritually slaughter was not conform Article 9 (1) of the ECHR. Ritual slaughter can be seen as a right guaranteed by the Convention; this is confessing one's religion in accordance with the purpose of Article 9 of the ECHR.

It is important to note that the Court found that French authorities making an exception to stunned slaughter is a correct use of exemptions for religious reasons when examining freedom of religion and the regulation. Still, the French authorities' decree of 1980 does not limit the freedom of religion by regulating and organizing ritual slaughter.

The Court found that there was no question of an unregulated ritual. By appointing a religious organization, regulation and control are possible. If another body wants to use ritually slaughtered meat, it must be examined if there is no violation of Article 9 of the ECHR.

The Court stated that there was no difference with respect to the ritual slaughter of both organizations only with regard to the use of glatt meat; therefore, there was only a small limitation of the freedom of religion related to the fact that obtaining glatt meat was more difficult. Also, the applicant's organization could obtain glatt meat in Belgium. In addition, financial reasons seemed to play a part with the applicant's organizations (paragraph 81) because the applicant's association asked a tax from its members if they wanted to eat glatt meat.

Therefore, there is no restriction on the freedom of religion. If there was a restriction, this could be tolerated because there was a legitimate aim of protecting public order and health. With regard to Article 14 of the ECHR, there was only a small difference in treatment between both organizations; there was *"a reasonable relationship of proportionality between means employed and the aim sought to be realized"*, and such difference in treatment, therefore, had an objective and reasonable justification (paragraph 87).

#### **4.2.7 The case's dissenting opinions: Chaáre Schalom Ve Tsedek versus France**

Not all the members of the Court deciding this case agreed with the outcome that there was no breach of Article 9 or 14 of the ECHR. According to these members, granting approval to one religion does not mean that the State is exempted from the obligation to carefully consider any later application made by other religious bodies professing the same religion.

There was a disagreement between the ACIP and the applicant's association. Meat made by the ACIP was seen by the applicant's association as not glatt (not pure) and, therefore, not compatible with Jewish dietary laws. If there is a difference in opinion between two religious organizations preference must be given to pluralism. The authorities must take the necessary steps to remove any cause of tension that eliminates pluralism and take all necessary measures to ensure that the competent organizations will tolerate each other. The possibility of obtaining glatt meat by

other means (via Belgium or the ACIP) was irrelevant for the purpose of the State to prevent restriction of freedom of religion.

With respect to the justification to interfere with the right to freedom of religion, the aspect of discrimination is relevant. The majority of the Court members stated that there was no discrimination in this case because the interference was of *“limited effect”* and that the difference of treatment was *“limited in scope”*:

*“Where freedom of religion is concerned, it is not for the European Court of Human Rights to substitute its assessment of the scope or seriousness of an interference for that of the persons or groups concerned, because the essential object of Article 9 of the Convention is to protect individual’s most private convictions.”*

There was also a violation of Article 14 of the ECHR in conjunction with Article 9 of the ECHR because discrimination includes cases where States treat people or groups in analogous situations differently without providing an objective and reasonable justification. According to the Convention case law, a difference of treatment is discriminatory for the purposes of Article 14 of the ECHR, if it *“has no objective and reasonable justification”*, *“when it does not pursue a legitimate aim”*, or *“if there is no reasonable relationship of proportionality between the means implemented and the aim sought to be realized”* (Thlimmemenos v Greece(GC), no. 34369/97. ECHR 2000-IV).

The application association has an analogous status to the ACIP due to the following aspects:

- The applicant association and the ACIP are both liturgical associations
- Article 10 of the Decree of 1 October 1980 does not give a definition of a religious body
- The fact that the movement is a minority in the Jewish organisation does not negate it as a religious body
- The ACIP and the association use the same practice of ritual slaughter, the only difference is in the scope of the examination of the lungs of the slaughtered animal after death (this results in glatt)

The argument that the association might have had an economic advantage was not valid because ACIP also imposes taxes on its ritually slaughtered meat. The argument that there was a legitimate aim of justifying the difference in treatment because there was protection of the public health was correct. However, there was no reason to believe that the applicant’s association did not comply with the same (hygienic) rules as the ACIP.

Furthermore, the representation of the applicant’s association was never in dispute, so the Court could not claim discrimination was necessary for a certain aim. The argument that public order was at stake is strange because Muslims who also perform ritual slaughter had more religious bodies;



for them, there was no problem. Also, the Jewish community was more organized than the Muslim community.

Additionally, the Court's statement that there was a reasonable relationship of proportionality between the means employed and the aim sought to be realized, stressing the margin of appreciation left to the States did not secure true religious pluralism, which is an inherent feature in the notion of a democratic society. Granting approval to one religious body to exclusively ritually slaughter but not to others is a breach of securing religious pluralism and ensuring a reasonable relationship of proportionality between the means employed and the aim sought to be achieved; the difference in treatment between the applicant's association and the ACIP had no objective and reasonable justification and was disproportionate. Therefore, there was a violation of Article 14 of the ECHR taken in conjunction with Article 9 of the ECHR.

#### **4.3 The US and halal/kosher regulations**

In the Northeast of the United States, almost half the products on supermarket shelves are certified kosher (Havinga, 2011, p. 273).<sup>44</sup> Kosher food is also bought by many non-Jewish people because they believe it is healthier (Havinga 2011, p. 273).

The kosher supervision agency has the task of regulating regular visits to companies that make or buy kosher food. Many states have specific laws governing kosher food, and many of those laws prohibit the advertisement or sale of food labelled kosher unless it conforms to state-defined food preparation and handling requirements. Kosher is defined as "*prepared in accordance with orthodox Hebrew religious requirements*" (Havinga, 2011. P. 274). Violating these laws can lead to fines or imprisonment.

In the New York Kosher Law Protection Act of 2004, it is stipulated that producers and distributors of kosher food have to register the name, current address, and telephone number of the person certifying the food as kosher. Also, other states have begun to implement similar laws for halal food. Halal food is defined as food "*prepared under and maintained in strict compliance with the laws and customs of the Islamic religion*" or "*in accordance with Islamic requirements*" (Havinga, 2011, p. 276).

##### **4.3.1 Ritual slaughter in US law**

Religious slaughter plays a significant role in kosher and halal requirements. The Humane Methods of Slaughter Act<sup>45</sup> (HMSA) states that the slaughter of animals should be humane. Two

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<sup>44</sup> The percentage of the supermarkets in the whole US is in 2014 around the 50%. Retrieved on 23 November 2014 from <http://www.klbdkosher.org/kosher-market-financials>

methods are found to be humane: If the animal is rendered insensible to pain by a gunshot or electrical, chemical, or other means or if the slaughter conforms to the ritual requirements of the Jewish faith or any other religion. The U.S. code also contains the following clause: *“nothing in this chapter shall be constructed to prohibit, abridge, or in any way hinder religious freedom of any other religious freedom of any person of group”*. Therefore, when animals are not stunned prior to slaughtering and when the slaughter does not occur according to the Jewish faith or any other religion, the slaughter is not seen as humane.

#### **4.3.2 Ritual slaughter in the US and freedom of religion**

The free exercise clause of the First Amendment in the United States Constitution states, *“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”*. Several court cases occurred where the extent of the free exercise clause was at stake. To better understand the extent of ritual slaughter, two court cases where the free exercise of religion was at stake will be studied.

The first case is Reynolds versus United States (98 U.S. 145 (1878)). In this case, a Mormon claimed that the free exercise clause allowed him to practice polygamy as prescribed by his religion. The courts stated that the First Amendment protects religious opinions. It does not protect religious actions which are in violation of social duties. Polygamy is seen by the Court as an offence against society (Shaddow, 1991, p. 1383). Freedom of religion is thus not an absolute right. The government cannot make laws against opinions, but a state can make laws against practices when they are a violation of social duty.

In Sherbert versus Verner (374 U.S. 398 (1963)), the question was if a Seventh-Day Adventist had to work on Saturdays, a practice that her religion prohibited, in order to be eligible for unemployment compensation. The Court stated, *“The disqualification for unemployment compensation benefits, clearly imposed a burden on the plaintiff’s free exercise rights...There is no compelling state interest which justified the infringement of the plaintiff’s first amendments right”* .

Still, there is doubt if the Sherbert test is applicable for all the laws of the government where freedom of religion is the issue. Some claim that the clause only applies to unemployment compensation (Shaddow, 1991, p. 1390). The Court stated in the health church of Lukumi Babalu Aye Inc. v. Hialeah-case<sup>46</sup> that the prevention of animal cruelty is an interest equally as compelling to concerns related to community health and safety. Animal anti-cruelty, which does not include exemptions for religious practices determined to be inhumane, appears to be a constitutional

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<sup>45</sup> Title 7 USC 1902b of the Humane Slaughter Act

<sup>46</sup> 508 U.S. 520 (1993)

exercise of government power. According to Shaddow (1991), it must be determined if a legislator who is not obliged to make an exemption is still permitted to do so.

In the US, there is a heavy debate regarding whether animals can be considered conscious beings and if their rights/welfare should be protected. Descartes stated that animals were seen as different from a machine only because they were alive. Neither was conscious (Shaddow 1991, p. 1391). However, much has changed since the days of Descartes. Nowadays, the position that certain animals have consciousness is part of the common sense view of the world. Peter Singer (1975) exposed many atrocities against animals in his book, *Animal Liberation*, and provided an ethical framework for the modern animal rights movement. He advocated that animals have interests that warrant recognition and protection. In the US, there is an increasing trend toward more legal protection for animals. Numerous laws have been made: the Animal Welfare Act, wildlife protection laws, humane slaughter laws, and animal transportation laws. Avoiding animal cruelty is also an established public policy in the US.

The Supreme Court notes, *“Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion of restriction of religious beliefs”*. The mere possession of religious convictions which contradict the relevant concern of a political society does not relieve the citizen from the discharge of political responsibilities (Shaddow, 1991, p. 1394). According to Shaddow (1991, p. 1395), if the ritual slaughter exemption had been excluded from the humane slaughter act, then an appeal to the United States Supreme Court would probably not have proven fruitful.

#### **4.4 Ritual slaughter and discrimination**

According to the European Convention case law, a difference in treatment is discriminatory if the treatment *“has no objective and reasonable justification”* or *“if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means implemented and the aim sought to be realized”* (Thlimmemenos v Greece(GC), no. 34369/97. ECHR 2000-IV). Because in the Netherlands only Jews and Muslims are allowed to ritually slaughter, this can be seen as discriminatory towards secularist or followers of an another religion that wish to perform ritual slaughter. To investigate if there is actually a difference in treatment, the criteria will be used of the ECtHR and the Netherlands Institute for Human Rights related to possible discrimination. Three questions will be asked:

- Does the purpose justify the measure?
- Is the measure adequate for the purpose?
- Is the measure proportionate and necessary?

Before addressing these questions, some religious groups living in the Netherlands and who perform ritual slaughter will be examined.

#### 4.4.1 Groups in the Netherlands that perform ritual slaughter

Worldwide Sikhism has approximately 19 million followers.<sup>47</sup> It is a religion that can be compared with Hinduism. However, it is a monotheistic and not a pluralistic religion like Hinduism. In the Netherlands, there are approximately 8.000 Sikhs. The Sikhs have striking appearances, such as turbans and beards. It is also mandatory for them to carry daggers with them.

In Sikhism, it is the general consensus that a Sikh is free to decide whether he or she eats meat. Although it appears that some movements within Sikhism only prescribe a vegetarian diet, according to other movements within the Sikhism eating meat is not prohibited. According to S. Singh<sup>48</sup>, an active member of the sikh-organisation in the Netherlands, the Sikhs who want to eat meat may choose to eat only meat that has been slaughtered without stunning. Other religious authorities like Guru Gobind Singh<sup>49</sup> permit the eating of meat but the slaughtered animal should not be pre-stunned. This form of slaughter is called Jhatka. Jhatka meat is meat from an animal that is slain quickly. The head of the animal is fastened to a pole, the hind legs are stretched out and tied to another pole on the opposite side. The head is chopped off with a single stroke of a heavy sharp blade. The animal experiences, according to the Sikhs, no pain since death is instantaneous.<sup>50</sup> Eating meat in a Muslim ritually slaughtered way is strictly prohibited for the Sikhs. This is called kuttha. S. Singh refers to the a sikh code of conduct (p. 26) that is available through internet.<sup>51</sup> According to the Wageningen report (Kijlstra & Lambooi 2008), jhatka is not performed in the Netherlands. Although not stated in this report, it is possible that the ritual is not performed in the Netherlands because it is forbidden.

Jhatka is also used by some Christians who prefer slaughtering the animal in one stroke. Many Christians prefer the use of a single strike to the animal's head to minimize pain, often together with the speaking of a Trinitarian formula. The Armenian Apostolic Church, among other Orthodox Christians, have rituals that display links with the Jewish ritual slaughter. They have approximately 25.000 members in the Netherlands (there are Churches in Amsterdam, Almelo, and Maastricht, and they have parochials in Arnhem, Assen, Eindhoven, and Dordrecht). Worldwide,

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<sup>47</sup> Retrieved on 6 November 2014 from <http://mens-en-samenleving.infonu.nl/religie/2257-sikhisme-geen-hindoe-geen-moslim.html>

<sup>48</sup> On 6 December 2014 I had an interview by phone with S. Sing, active member of the sikh organisation in the Netherlands; according to him Jhatka is not ritual slaughter because no rituals are performed during the slaughter; he stated that Jhatka is a form of unstunned slaughter

<sup>49</sup> [http://www.sikhiwiki.org/index.php/Common\\_views\\_on\\_meat\\_eating](http://www.sikhiwiki.org/index.php/Common_views_on_meat_eating)

<sup>50</sup> <http://www.indiacurry.com/faqterms/whatisjhatka.htm>

<sup>51</sup> [http://www.sikhs.nl/downloads/Nederlands/Sikh%20Rehit%20Maryada%20\(Dutch\).pdf](http://www.sikhs.nl/downloads/Nederlands/Sikh%20Rehit%20Maryada%20(Dutch).pdf)

there are approximately six million members. Animal slaughter has been a part of these religious rites since the foundation of the religion (Conybaere, 2014).

#### **4.4.2 The purpose justifies the measure**

To what extent does the objective ensure a genuine necessity? The objective of the law related to ritual slaughter is apparent from the former Explanatory Memorandum of the Decree of 6 November 1996, implementing Article 44, paragraph 9 of the Health and Welfare Act for Animals, i.e., the Ritual Slaughter Regulation. It states the following:

*“Article 44 of the Health and Welfare Law includes the principle that the slaughter of animals occurs after prior stunning. This is done because this will prevent that the animal suffers from pain or stress during the slaughtering phase. With the highest degree of certainty, but with respect for the freedom of religion guaranteed by Article 6 of the Constitution, Article 44, third paragraph of the Health and Welfare Law guarantees the right of these groups to slaughter animals in accordance with their religious views. It should also be noted that, within Islamic circles it can be observed that certain types of non-reversible stunning is acceptable”.*

Article 44 of the HWL is now no longer applicable. On 1 July 2014, Article 44 of the Health and Welfare Act for Animals was amended in Article 2.10 of the Animals Act. The exceptions relating to Jews and Muslims have been further elaborated on in Article 2.10, paragraphs 4 and 5, of the Animals Act. The Act Animal Keepers further states, in Articles 5.4 through 5.9, how ritual slaughter must be performed (the regulation on ritual slaughter as formally used was withdrawn). Also regarding the Animals Act, the explanatory memorandum states, *“The desire to regulate the killing of animals according to certain rite has its basis in the constitutional right of freedom of religion”*. Therefore, there has been a legal implementation of religious freedom; the purpose justifies the measure. Hence, freedom of religion justifies the provisions of ritual slaughter in the law. However, in the note of the previously applicable Regulation Ritual Slaughter, it was stated that within the Islamic circles it can be observed that certain types of non-reversible stunning are considered acceptable.

The government also indicates alternatives that might be applicable. Some Muslims in this context accept the methods of stunning prior to slaughter used in New Zealand and Australia. These countries use modern tools for electro-narcosis that leave the brain intact and allow a rapid recovery of consciousness of the animal. It also allows export to other Islamic countries.

#### **4.4.3 The measure is adequate for the purpose**

The objective is to achieve religious freedom for Jews and Muslims. The measure is the statutory provision in the law. The measure is adequate to achieve the objective. The ritual slaughter is in accordance with the conditions established by the legislature.

Additionally, EU law provides a margin of appreciation so that countries can regulate ritual slaughter for their citizens that conforms to their history and socio-political structure. According to EU law, it is still the aim to inflict as little pain as possible to animals that are stunned. This margin of appreciation has led Poland to prohibit ritual slaughter because of animal welfare issues. Much depends on what principles the State has formed: Is there a strict or less strict way to intervene in religious issues? In Turkey, for example, there is a strict separation between Church and State. The margin for Turkey to keep religion out of State issues is larger than in the Netherlands, where religious pluralism is one of the basic ideas of the State. This does not mean that every religious aspect is accepted. For example, judges and police officers, i.e., people with authority, are not allowed to show (signs of) their religion when they are working. They are expected to be religiously neutral toward civilians because of their functions.

#### **4.4.4 Proportional**

Is the measure proportionate and necessary? First, it is important to note that the European system is focused on animals used as livestock and in animal farming suffering as little as possible. This is based on Directive 74/577/EEC (and subsequently amended by Directive 93/11/EC). The focus of slaughtering has been on the pre-stunning of animals by appropriate techniques in order to prevent unnecessary suffering.

There was an exception made for religious rites by Directive 74/577/EEC. Two rights conflict: minimizing animal suffering and exercising religious freedom. Seeing the origins of religious ritual slaughter, the pain and suffering for the animals must be as low as possible.

It is not mandatory for Jews and Muslims to eat kosher or halal food. They can also be vegetarians. This is not forbidden by the Koran or the Torah. In addition, there are several countries (such as New Zealand and Australia) that export halal and kosher food products. Dutch Muslims and Jews can, therefore, simply import ritually slaughtered food. Furthermore, the exemption that is given only to Jews and Muslims in the Dutch law seems discriminatory because other religious groups in the Netherlands who perform a form of ritual slaughter, like Sikhs and Armenian Apostolic Church members, are not allowed to perform slaughter without stunning.

#### 4.5 Conclusion

In this section, the question whether the exception of the Dutch Government to only allow ritual slaughter for Jews and Muslims discriminates against non-Jews and non-Muslims in the Netherlands will be answered.

To answer this question, Dutch and the US ritual slaughter has been examined. Additionally, the EU and various European countries that prohibit ritual slaughter were discussed. The EU states that animals must suffer as little pain as possible and stunning prior to slaughtering is promoted. However, the EU also provides an exemption to EU members for religious reasons. The EU does not mention certain religions. The US also allows the ritual slaughter of animals. Jews are mentioned and other religions that have ritual slaughter as their rite can appeal to be allowed to ritually slaughter. In the US, slaughter without stunning is seen as humane if it is done according to the Jewish rites or the rites of other religions. Other religions thus have an opportunity to ritually slaughter. Secularist people are prohibited from performing ritual slaughter in the US. In this aspect, compared with the EU and US laws, the Dutch law is extremely strict by only providing Muslims and Jews the opportunity to ritually slaughter.

The following schema can be drawn related to the compared countries:

Country	Ritual Slaughter allowed yes or no	Ritual slaughter open to all religions
The EU	Yes	Yes
The Netherlands	Yes	No, only Jews and Muslims
Switzerland	No	No
Norway	No	No
Poland	No	No
The US	Yes	Yes

From the scheme above it can be concluded that only the Netherlands provide a special provision for the Jews and Muslims related to ritual slaughter.

When examining the dissenting opinions of the case *Cha re Schalom Ve Tsedek versus France*, the narrow exemptions for Muslims and Jews can be or could be against religious pluralism and discriminating against other religious groups who want to ritually slaughter. The fact that no religious group has come forward does not mean there are no groups who want to appeal to the provisions only granted to Jews and Muslims. Still the fact is that no other religious group came forward to also ask an exemption to ritual slaughter. It is possible that the religious group does not

want to come in the spotlight. Also changing the law by the Parliament is a long and energy consuming process.

Some attention has been given to the Sikhs, who use Jhatka as form of ritual slaughter. It is possible that Jhatka is not performed in the Netherlands because it is forbidden according to the law. In Great Britain, the Sikhs can perform Jhatka. Also, there are some orthodox Christian groups in the Netherlands (like the Armenian Apostolic Church) who have a kind of ritual slaughter.

According to the criteria of the ECtHR and the Dutch Commission of the Institute of Human Rights, discrimination is possible if the measure is legitimate, efficient, and necessary (and proportional). Therefore, with regard to legitimacy and efficiency, these conditions are fulfilled when allowing ritual slaughter for Jews and Muslims. Still, the question can be asked whether it is necessary for Jews and Muslims to eat meat.

The efficiency of the regulations connected to ritual slaughter is not in question. Jewish and Muslim ritual slaughter is guaranteed in the Dutch law. This leads to the last condition: necessity (and proportionality).

The measure is, in fact, unnecessary. Ritual food could easily come from other countries that export kosher or halal foods. Neither the Koran nor the Torah requires that meat should be consumed. These Jews and Muslims could also be vegetarians. In addition, not all Muslims share the view that an animal should not be stunned before slaughtering. In New Zealand and Australia, there is a degree of stunning accepted by Muslims.

Making strict conditions for ritual slaughter seems to be consistent with Article 6 of the Constitution and Article 9 of the ECHR. However, only granting ritual slaughter to Jews and Muslims despite the existence of other religions who perform ritual slaughter is discrimination against those religions. To solve this problem, the Dutch law should be amended similarly to the US regulations on ritual slaughtering. Ritual slaughter in the US is seen as humane when it is performed according to Jewish rites or rites of other religions. Hence, there is no discrimination toward other religions who want to perform ritual slaughter. The US law does not oblige changing the law. When a (new) religion want to perform ritual slaughter, the religion must make clear that ritual slaughter is an essential part of the religion.



## Chapter 5: Conclusion and Recommendations

This thesis attempts to answer the central question, *is there a legal justification for the exemption granted to the Dutch Jews and Muslims, regarding the slaughter of animals without prior stunning? And how is ritual slaughter regulated in countries where the Jews and Muslims are not exempted or where ritual slaughter is banned?*

In the introduction of this thesis some sub-questions were raised. In the course of the thesis these questions were answered. Next a summary of the answers to the sub-questions will be given:

- What is the difference between slaughter and ritual slaughter?

Normally animals are stunned before the slaughtering process. This is seen as a method that is less painful and stressful for the animal. Ritual slaughter is a form of slaughtering where stunning before slaughtering the animal does not take place (although some Muslims accept reversible stunning). The animal must be alive when the animal is slaughtered. In the Dutch law only Jews and Muslims are allowed to ritual slaughter (Article 2.10 (4) Animals Act).

- What does ritual slaughter, in connection to Dutch Jews, mean in the Netherlands?

According to Article 2.10 (4) Animals Act Jews are allowed to ritual slaughter animals. Still they have to comply with the slaughter regulations set in article Article 5.4 of the Act of Animal Keepers. It states, *“The killing of animals without prior stunning, referred to in Article 2.10, fourth paragraph, of the Act shall be complied with in Sections 5.5 to 5.9.”*

- What does ritual slaughter, in connection to Dutch Muslims, mean in the Netherlands?

According to Article 2.10 (4) Animals Act Muslims are allowed to ritual slaughter animals. Still they have to comply with the slaughter regulations set in article Article 5.4 of the Act of Animal Keepers. It states, *“The killing of animals without prior stunning, referred to in Article 2.10, fourth paragraph, of the Act shall be complied with in Sections 5.5 to 5.9.”*

- How is the exemption of ritual slaughter of Jews and Muslims regulated in the law? The exemption for the Jews and the Muslims is regulated in Article 2.10(4). It states, *“It is permissible to kill, according to the Israelite or the Islamic rite, animals without prior stunning.”*

- Is there a difference, with respect to the approach of the government, between Dutch Jews and Muslims in connection to ritual slaughter?

Before 1977 there was a different approach of the Government between the Muslims and the Jews. Before 1977 only the Jews were allowed to ritually slaughter food. After a couple of court cases won by the Muslims (based on the freedom of religion), the Muslims also were allowed to slaughter their animals without prior stunning.

- What do the principles of equality and freedom of religion mean?

The principle of equality can be understood best by Article one of the Dutch Constitution: *“Everyone that resides in the Netherlands will be treated equally. Discrimination on the grounds of religion, conviction, political preferences, race, gender, or any other ground is not permitted”*.

The freedom of religion is regulated in the Dutch constitution and in treaties. Article 6(1) of the Dutch Constitution states, *“Everyone has the right to his religion or belief, either individually or in community with others, to profess freely, without prejudice to his responsibility under the law”*. Furthermore, freedom of religion is regulated in Article 9 (1) of the ECHR (European Convention on Protection of Human Rights) and Article 27 of the ICCPR (International Covenant on Civil and Political Rights). Article 9 (1) of the ECHR states the following:

*“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone, or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”*

-When are the principles of equality and freedom of religion correctly infringed upon?

The principle of equality can be infringed when three objectives are achieved:

- Legitimacy: the aim must correspond with a real necessity
- Efficiency: the aim must be adequate to reach the goal
- Proportionality: the aim must be necessary

The scope of religious freedom is determined in Article 6 (1) of the Constitution by the words *“subject to exceptions in the law”*. Involvement of the State is considered possible when this is covered by the law. Also a reference can be made to Article 9(2) ECHR: *“The freedom to manifest one's religion or beliefs shall be subject to express to such limitations than those prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of the public order, health or morals or for the protection of the rights and freedoms of others”*

- Is there an infringement of the principle of equality regarding the special position that the legislature has granted to Muslims and Jews?

Yes, because the Dutch government only allows two religions to ritual slaughter. There are also other religions in the Netherlands that have a form of ritual slaughter (the Sikhs and the Armenian Apostolic Church). The distinction is not necessary.

- When is there a conflict between the principle of equality and freedom of religion?

The regulation in the Dutch law to only allow ritual slaughter to Jews and Muslims can be seen as an expression of the freedom of religion but is also a breach of the principle of equality because not all religions are allowed to ritually slaughter in the Netherlands.

- How is ritual slaughter regulated in the US and some European countries (like Switzerland, Poland and Norway)?

In the US all religions that have a kind of ritual slaughter of animals, are allowed to ritual slaughter. In Switzerland, Poland and Norway it is prohibited to ritually slaughter animals. In EU regulations it is regulated that ritual slaughter is allowed. In the Netherlands only the Jews and Muslims are allowed to ritual slaughter.

*The central question is, is there a legal justification for the exemption granted to the Dutch Jews and Muslims, regarding the slaughter of animals without prior stunning? And how is ritual slaughter regulated in countries where the Jews and Muslims are not exempted or where ritual slaughter is banned?*

To answer this question, US and Dutch laws related to ritual slaughter were compared; also some countries in Europe where ritual slaughter is forbidden were examined; next to this the criteria of the ECtHR and the Netherlands Institute for Human Rights were used to judge whether there is a justification to discriminate between Jews and Muslims, on the one side, and non-Jews and non-Muslims, on the other. The ECtHR and the Netherlands Institute for Human Rights use the following criteria: 1) Is the distinction legitimate? 2) Is the measure efficient enough to achieve the goal? 3) Is the measure proportional; is there a necessity?

This thesis has shown that for both Jews and Muslims ritual slaughter can be protected by the freedom of religion regulated in Article 6 of the Dutch Constitution and Article 9 of the ECHR; there is a religion or a religious act related to ritual slaughter. Based on this, Jews and Muslims could appeal on the grounds of freedom of religion to be allowed to ritually slaughter their food. The Dutch government was motivated by freedom of religion to give an exemption to Jews and Muslims for ritual slaughter.

As seen in the US, ritual slaughter is available to all religions that have ritual slaughter as their rites. Also, in the EU law, it is not specified which type of religion can ritually slaughter. The provision in the Dutch law to allow ritual slaughter only for Muslims and Jews seems exceptionally narrow, but is it also discriminatory against other religions, like the Sikhs living in the Netherlands, who also have a form of ritual slaughter.

When examining the criteria set by the ECtHR and the Netherlands Institute for Human Rights, the measure to provide ritual slaughter for Muslims and Jews is necessary to achieve freedom

of religion and is adequate in providing to the Jews and Muslims the ability to exercise their rituals and practice their faiths.

However, a legitimate distinction is not achieved due to the last condition: Is the distinction necessary? Jews and Muslims have several opportunities to practice their faiths. After all, they can import kosher or halal meat. In addition, not eating meat is also a possibility. Apparently, not all Muslims think the same way because, in countries like New Zealand and Australia, other forms of ritual slaughter are accepted by Muslims. Furthermore, the principle of separation between Church and State is important to consider. Therefore, the question is whether the interference of the government to exclude various groups is justified. The comment by the government in the explanatory memorandum in the Animals Act to include other religious groups still means that the Government interferes in religious issues.

Furthermore, freedom of religion is a strong right. The provision in the government law is a good way to provide the right to ritually slaughter for Jews and Muslims. The discrimination against non-believers can be justified. Discrimination toward other religions who want to ritually slaughter their food cannot be legitimized and is discriminatory.

The open way in which the US regulates ritual slaughter can be taken as an example; the US states that ritual slaughter conforming to the Jewish rites or other religions is allowed. Therefore, religions that perform ritual slaughter as a rite are allowed to ritually slaughter according the conditions of the state. This is also a way to guarantee religious pluralism in a country, which can be seen as one of the foundation principles of the EU and the Netherlands. Also the question can be asked if the ban of the Dutch government towards other religions who want to perform ritual slaughter is consistent because ritual slaughtered food that is made by non-Jews or non-Muslims in other countries and that is imported is not banned from the Dutch meat market. This is also an argument to change the law that gives Jews and Muslims the exclusive rights to ritually slaughter animals. Looking at the forgoing the suggestion is made to leave ritual slaughter open to all religions that know ritual slaughter as a part of their religion. To achieve this the Dutch Government should amend the law and make possible a constructive dialogue with potential religions that want to ritually slaughter animals also.

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