COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

CASE OF CHA'ARE SHALOM VE TSEDEK v. FRANCE

(Application no. 27417/95)

JUDGMENT

STRASBOURG

27 June 2000

In the case of Cha'are Shalom Ve Tsedek v. France,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. Wildhaber, *President*,
Mr J.-P. Costa,
Mr L. Ferrari-Bravo,
Mr L. Caflisch,
Mr W. Fuhrmann,
Mr K. Jungwiert,
Sir Nicolas Bratza,
Mr M. Fischbach,
Mr B. Zupančič,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs W. Thomassen,
Mrs M. Tsatsa-Nikolovska,
Mr T. Panțîru,
Mr A.B. Baka,
Mr E. Levits,
Mr K. Traja,

and also of Mrs M. de Boer-Buquicchio, *Deputy Registrar*,

Having deliberated in private on 8 December 1999 and 31 May 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")[1] by the European Commission of Human Rights ("the Commission") on 6 March 1999 and then by the French Government ("the Government") on 30 March 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 27417/95) against the French Republic lodged with the Commission under former Article 25 of the Convention by an association registered under French law, the Jewish liturgical association Cha'are Shalom Ve Tsedek ("the applicant association") on 23 May 1995. The applicant association alleged a violation of Article 9 of the Convention on account of the French authorities' refusal to grant it the approval necessary for access to slaughterhouses with a view

1. *Note by the Registry*. Protocol No. 11 came into force on 1 November 1998.

to performing ritual slaughter in accordance with the ultra-orthodox religious prescriptions of its members. It further alleged a violation of Article 14 of the Convention in that only the Jewish Consistorial Association of Paris (*Association consistoriale israélite de Paris* – "the *ACIP*"), to which the large majority of Jews in France belong, had received the approval in question.

3. The Commission declared the application admissible on 7 April 1997. In its report of 20 October 1998 (former Article 31 of the Convention), it expressed the opinion, by fourteen votes to three, that there had been a violation of Article 9 taken in conjunction with Article 14, and by fifteen votes to two that no separate issue arose under Article 9 taken alone[1].

4. Before the Court, the applicant association was represented by Mr J. Molinié, of the *Conseil d'Etat* and Court of Cassation Bar. The Government were represented by their Agent, Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs.

5. On 31 March 1999 a panel of the Grand Chamber decided that the case should be examined by the Grand Chamber (Rule 100 § 1 of the Rules of Court).

6. The Government filed a memorial; the applicant association did not, but stated that it referred to the Commission's report. Observations were also received on 15 October 1999 from the Chief Rabbi of France, Mr J. Sitruk, and the *ACIP*, to which the President had given leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

7. By a letter of 27 October 1999, received at the Registry on 2 November, the president of the applicant association, Rabbi David Bitton, stated that since the lodging of the application with the Commission in May 1995 he had come to realise what serious disorganisation was likely to arise for the functioning of the Jewish community and that this had led him to resign the office of president. He also said that as no president had been elected to replace him he was entitled to ask for the case to be purely and simply struck out of the Court's list and to withdraw from all pending proceedings. This letter was communicated on 5 November to the Government and the lawyer instructed by the association, and Mr Bitton was invited to produce by return of post a copy of the minutes of the meeting of the association's executive committee at which the president had been authorised, in accordance with its statute, to withdraw from the proceedings on the association's behalf.

8. On 22 November 1999 the association's lawyer sent a letter saying that Mr Bitton had resigned the office of president of the association in February 1999, with immediate effect, that another president had been

1. *Note by the Registry*. The report is obtainable from the Registry.

elected by the governing body and that the applicant association had no intention of withdrawing its application.

9. On 24 November 1999 Mr Bitton, in a fax sent from the *ACIP*'s fax machine, sent a copy of the minutes of the association's executive committee dated 15 November confirming the withdrawal.

10. On 26 November 1999 the applicant association's lawyer stated that these minutes were a forgery, that the alleged meeting of the executive committee on 15 November had never taken place and that the secretary-general and treasurer mentioned in the minutes were unknown to the association, of which they had never been members. He also produced a copy of Mr Bitton's letter of resignation, dated 26 February 1999, a copy of the minutes of the governing body's meeting on 2 March 1999 at which the new president, Mr N. Betito, had been elected and a copy of the attendance sheet initialled by those present.

11. The Government were kept regularly informed of developments and did not wish to make any comment.

12. A hearing took place in public in the Human Rights Building, Strasbourg, on 8 December 1999.

There appeared before the Court:

(a) *for the Government*
Mr J.-F. DOBELLE,
Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr D. HOUGUET, Deputy to the Assistant Director
of Litigation and Legal Affairs,
Ministry of the Interior, *Counsel*,
Mr P. LE CARPENTIER, Head of Religious Affairs,
Ministry of the Interior,
Mr P. BOUSSAROQUE, administrative court judge,
on secondment to the Directorate of Legal Affairs,
Ministry of Foreign Affairs, *Advisers*;

(b) *for the applicant association*
Mr J. MOLINIÉ, of the *Conseil d'Etat*
and Court of Cassation Bar, *Counsel*,
Mr F. MOLINIÉ, of the Paris Bar, *Adviser*.

The Court heard addresses by Mr J. Molinié for the applicant association and Mr Dobelle for the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Context of the case

1. Ritual slaughter

13. *Kashrut* is the name given to all the Jewish laws on the types of food which may be eaten and how to prepare them. The main principles applying to kosher food are to be found in the Torah, the holy scripture comprising the first five books of the Bible – the Pentateuch – namely Genesis, Exodus, Leviticus, Numbers and Deuteronomy.

14. At the Creation only food from plants could be eaten by man (Gen. i, 29). Eating meat was not authorised until after the Flood (Gen. ix, 3) and then only under very strict conditions. The Torah absolutely forbids the consumption of blood, since blood is the medium of life and life must not be absorbed with flesh but poured on the earth like water (Deut. xii, 23 and 24). In addition, certain animals are regarded as unclean and consumption of certain parts of animals is also forbidden.

15. Among quadrupeds, for example, only animals that are both cloven-hoofed and ruminants may be eaten; that excludes solidungulates like horses and camels and non-ruminating quadrupeds like pigs and rabbits (Lev. xi; Deut. xiv). Among aquatic species, only fishes with both fins and scales may be eaten, but not crustaceans or shellfish. Among flying creatures, only non-carnivorous birds, such as grain-eating, farmyard fowls and some types of game may be eaten. Insects and reptiles are totally forbidden.

16. The Torah (Lev. vii, 26 and 27; xvii, 10-14) prohibits consumption of the blood of authorised mammals and birds, and slaughter must be carried out "as the [Lord has] commanded" (Deut. xii, 21). It is forbidden to eat meat from animals that have died of natural causes or have been killed by other animals (Deut. xiv, 21). It is likewise forbidden to eat meat from an animal showing signs of disease or blemishes at the time of slaughter (Num. xi, 22). Meat and other products of permitted animals (such as milk, cream or butter) must be eaten and prepared separately, in and with separate utensils, because the Torah prohibits the cooking of a kid in its mother's milk (Exod. xxii; Deut. xiv, 21).

17. With a view to ensuring compliance with all the prohibitions laid down in the Torah, later commentators established very detailed rules concerning, in particular, the approved method of slaughter, initially by

handing down the oral tradition but later by compiling an encyclopaedic collection of commentaries – the Talmud.

18. Observance of the above rules on the eating of meat necessitates special slaughter processes. As it is forbidden for Jews to eat any blood whatsoever, animals for slaughter, after being blessed, must have their throats slit; more precisely, they must be killed with a single stroke of a very sharp knife in such a way that an immediate, clean and deep cut is made through the trachea, the oesophagus, the carotid arteries and the jugular veins, so that the greatest possible quantity of blood will flow. The meat must then be steeped in water and salted, still with the aim of removing any trace of blood. Certain organs, like the liver, must be grilled to remove blood from them. Other parts, like the sciatic nerve, blood vessels or the fat around the vital organs, must be removed.

19. In addition, immediately after slaughter, the animal must be examined for any signs of disease or anomaly; if there is the slightest doubt on that point, the meat is declared unfit for consumption. Ritual slaughter – *shechitah* – may be performed only by a *shochet*, who must be a devout man of unimpeachable moral integrity and scrupulous honesty. Lastly, until it comes to be sold, the meat must be kept under the supervision of a *kashrut* inspector. The competence and personal integrity of ritual slaughterers and *kashrut* inspectors are subject to continuous appraisal by a religious authority. In order to guarantee consumers that their meat has been slaughtered in accordance with the prescriptions of Jewish law, the religious authority certifies it as "kosher". Such certification gives rise to the levying of a tax known as slaughter tax or rabbinical tax.

20. In France, as in many other European countries, the ritual slaughter required by Jews and Muslims for religious reasons comes into conflict with the principle that an animal to be slaughtered, after being restrained, must first be stunned, that is plunged into a state of unconsciousness in which it is kept until death intervenes, in order to spare it any suffering. Ritual slaughter is nevertheless authorised under French law and by the Council of Europe Convention for the Protection of Animals for Slaughter and the European Directive of 22 December 1993 (see "Relevant law and practice" below).

21. Ritual slaughter is regulated in French law by Decree no. 80-791 of 1 October 1980, promulgated to implement Article 276 of the Countryside Code, as amended by Decree no. 81-606 of 18 May 1981. Article 10 of the decree provides:

> "It is forbidden to perform ritual slaughter save in a slaughterhouse. Subject to the provisions of the fourth paragraph of this Article, ritual slaughter may be performed only by slaughterers authorised for the purpose by religious bodies which have been approved by the Minister of Agriculture, on a proposal from the Minister of the Interior. Slaughterers must be able to show documentary proof of such authorisation.

The approved bodies mentioned in the previous paragraph must inform the Minister of Agriculture of the names of authorised persons and those from whom authorisation has been withdrawn. If no religious body has been approved, the prefect of the *département* in which the slaughterhouse used for ritual slaughter is situated may grant individual authorisations."

2. The Jewish Consistorial Association of Paris

22. On 1 July 1982 the approval necessary for power to authorise slaughterers was granted to the Joint Rabbinical Committee alone. The Joint Rabbinical Committee is part of the Jewish Consistorial Association of Paris ("the *ACIP*"), which is an offshoot of the Central Consistory, the institution set up by Napoleon I by means of the Imperial Decree of 17 March 1808 to administer Jewish worship in France. Following the separation of the Churches and the State in 1905, the Jewish congregations of France, numbering some 700,000 faithful, formed themselves into Jewish liturgical associations (see "Relevant law and practice" below) under an umbrella organisation called the Union of Jewish Congregations of France, which kept the name Central Consistory.

23. Under Article 1 of its statute, the aims of the Central Consistory are to serve the general interests of Jewish worship, to safeguard the freedom needed to take part in it, to defend the rights of the congregations and to see to the founding, survival and development of joint institutions and services for the benefit of affiliated bodies. It also seeks to preserve the independence and dignity of the rabbinate, to ensure the permanence of the office of Chief Rabbi of France, to encourage recruitment of rabbis by organising the Jewish Seminary of France and to ensure, by general rules applicable to all the affiliated bodies, the preservation of unity, discipline and orderliness in the performance of acts of worship. It represents the general interests of French Judaism and is dedicated to maintaining and preserving spiritual ties with Israel and Jewish congregations throughout the world.

24. The Consistory includes congregations representing most of the main denominations within Judaism, with the exception of the liberals, who believe that the Torah should be interpreted in the light of present-day living conditions, and the ultra-orthodox, who advocate, on the contrary, a strict interpretation of the Torah.

25. The Joint Rabbinical Committee is composed of the Chief Rabbi of Paris, from the *ACIP*, whose registered office is in the rue Saint-Georges, Paris, the rabbi of the orthodox congregation of the rue Pavée, the rabbi of the Jewish congregation of strict observance and the rabbi of the traditionalist congregation of the rue de Montevideo. It is empowered to issue the authorisations needed to obtain a card permitting access to the slaughterhouses. The rabbinical court, or Beth Din, which rules on questions of religious law (marriage, divorce and conversions), supervises observance

of the dietary laws and appoints and monitors the *kashrut* slaughterers and inspectors employed by the Consistory.

26. Since section 2 of the 1905 Act provides that the Republic may not recognise, pay stipends to or subsidise any religious denomination (except in the three *département*s of Bas-Rhin, Haut-Rhin and Moselle, where the 1801 Concordat still applies), the income of all the liturgical associations in France, of whatever denomination, is derived from the contributions and gifts of their adherents. According to the Government, approximately half of the Central Consistory's resources comes from the slaughter tax, which is levied at the rate of about 8 French francs (FRF) per kilo of beef sold.

3. The liturgical association Cha'are Shalom Ve Tsedek

27. The liturgical association Cha'are Shalom Ve Tsedek is an association declared on 16 June 1986 with its registered office in the rue Amelot, Paris. According to its statute, the applicant association's aims are "to organise, subsidise, encourage, revive, assist, promote and finance, in France, public Jewish worship and any other related or connected activities of a religious nature which might, directly or indirectly, lead towards the object it pursues". In addition, "It will seek to co-ordinate the spiritual actions of other Jewish liturgical associations, particularly those aimed at fostering observance of *kashrut*. It will assist with the promotion and creation of all social, educational, cultural and spiritual activities as far as its means permit and provide both moral and financial support to poor families belonging to the congregation or those experiencing temporary difficulties."

28. The Cha'are Shalom Ve Tsedek association now has six hundred subscribing members and approximately forty thousand adherents, some of whom run a total of twenty butcher's shops, nine restaurants and five caterers in the Paris region alone. In addition it has more than eighty outlets for the sale of deep-frozen food in the Paris region, Lyons and Marseilles.

29. The association publishes Jewish calendars, has a Kollel (study centre for young rabbis), two centres for the study of the Torah and two synagogues, in Paris and Sarcelles. It is administered by a rabbinical committee which has sole jurisdiction over religious issues and is composed of chief rabbis, rabbis, well-known members of the congregation and *kashrut* slaughterers and inspectors.

30. Originally, the applicant association came into being as a minority movement which split away from the Jewish Central Consistory of Paris. Its members are determined to practise their religion in the strictest orthodoxy. In particular, the applicant association wishes to perform ritual slaughter according to stricter rules than those followed by the slaughterers authorised by the Paris Central Consistory as regards examination of slaughtered animals for any signs of disease or anomalies.

31. The prescriptions concerning kosher meat, derived from Leviticus, were codified in a compendium called Shulchan Aruch (The Laid Table)

written by Rabbi Yosef Caro (1488-1575), which lays down very strict rules. However, some later commentators accepted less constraining rules, particularly with regard to examination of the lungs of slaughtered animals. But a number of orthodox Jews, particularly those who belong to Sephardic congregations originally from North Africa, including the members of the applicant association, wish to eat meat from animals slaughtered according to the most stringent requirements of the Shulchan Aruch. This type of meat is referred to by the Yiddish word "*glatt*", meaning "smooth".

32. For meat to qualify as "*glatt*", the slaughtered animal must not have any impurity, or in other words any trace of a previous illness, especially in the lungs. In particular, there must be no filamentary adhesions between the pleura and the lung. This requirement of purity mainly concerns adult sheep and cattle, which are more likely to have contracted disease at some point of their existence. But, according to the applicant association, the ritual slaughterers under the authority of the Beth Din, the rabbinical court of the *ACIP*, the only body to have been approved – on 1 July 1982 – by the Ministry of Agriculture, now no longer make a detailed examination of the lungs and are less exacting about purity and the presence of filaments so that, in the applicant association's submission, butchers selling meat certified as kosher by the Central Consistory are selling meat which its members consider impure and therefore unfit for consumption.

33. The applicant association submitted that it was therefore obliged, in order to be able to make "*glatt*" kosher meat available to its adherents, to slaughter illegally and to obtain supplies from Belgium.

34. The Government, for their part, produced a certificate from the Chief Rabbi of France to the effect that there were butcher's shops supervised by the Consistory where the members of the Cha'are Shalom association could obtain "*glatt*" meat. In addition, according to figures supplied by the Government, the applicant association, which has nine employees, including six ritual slaughterers, had a turnover of FRF 4,900,000 in 1993, despite refusal of authorisation to perform ritual slaughter, and more than FRF 3,800,000 of this sum came from slaughter tax. In 1994 the turnover was FRF 4,600,000, of which FRF 3,700,000 came from the slaughter tax, and in 1995 the income from the slaughter tax came to more than FRF 4,000,000. The tax levied by the applicant association for slaughter amounted to FRF 4 for each kilo of kosher meat sold.

B. The proceedings which gave rise to the application

1. The first set of proceedings

35. Between 1984 and 1985, when it was registered only as a cultural (rather than liturgical) association, the applicant association certified as being "*glatt*" kosher the meat sold in the butcher's shops of its members.

This meat was either imported from Belgium or came from animals slaughtered in France in accordance with its own religious prescriptions, and therefore without certification from the Paris Beth Din. Civil proceedings were brought against it by the *ACIP*, which alleged that it had given a misleading description of goods offered for sale, since it had fraudulently labelled the meat sold as kosher.

However, the *ACIP*'s action was dismissed by the Paris Court of Appeal in a judgment of 1 October 1987, later upheld by the Court of Cassation, on the ground that the 1905 Act on the separation of the Churches and the State did not allow the courts to rule on the question whether a liturgical association like the applicant was empowered to guarantee that meat offered for sale was kosher; on the other hand, the Court of Appeal noted that it had not been contested that the applicant association had complied with the strict rules concerning ritual slaughter and inspection.

2. The second set of proceedings

36. On 11 February 1987 the applicant association asked the Minister of the Interior to propose its approval with a view to practising ritual slaughter. This application was refused by a decision of 7 May 1987 on the grounds that the association was not sufficiently representative within the French Jewish community and was not a religious association within the meaning of Part IV of the Act of 9 December 1905 on the separation of the Churches and the State.

37. The applicant association appealed to the Paris Administrative Court, pleading an infringement of freedom of religion, guaranteed both by section 1 of the Act of 9 December 1905 on the separation of the Churches and the State and by Article 9 of the European Convention on Human Rights.

38. On 28 June 1989 the Paris Administrative Court dismissed the association's appeal, giving the following reasons:

> "...
>
> The grounds given for the impugned decision were that the association was not sufficiently representative within the Jewish community and that it was not a liturgical association within the meaning of Part IV of the Act of 9 December 1905. In making that decision the Minister of the Interior refused to accept that the association was a religious body coming within the scope of the above-mentioned provisions.
>
> Although Article 1 of the appellant's statute describes it as a liturgical association governed by the provisions of the Act of 9 December 1905, ... [the applicant association] has not established, as the evidence stands at present, that it subsidises or that it is an offshoot of an association which subsidises the continuation of and public participation in Jewish worship. The fact that it makes kosher meat available for sale in more than twenty retail butcher's and eighty outlets for the sale of deep-frozen food is not sufficient to give the association the character of a religious body which may be proposed by the Minister of the Interior for approval by the Minister of Agriculture ...

The Minister of the Interior was thus able to take the impugned decision without committing any error as to the facts or the law or any manifest error of assessment, nor did he infringe the freedom of worship, since he did no more than verify the status of the appellant organisation in the interests of public policy and pursuant to the provisions referred to above.

Lastly, it has not been established that the Minister's decision was taken on grounds that had nothing to do with public policy requirements and was prompted by a desire to reserve the benefit of approval for the only Jewish religious body which has obtained it ..."

39. The applicant association appealed against this judgment to the *Conseil d'Etat*. In a judgment of 25 November 1994 the *Conseil d'Etat* dismissed the appeal on the following grounds:

"...

... The documents in the file do not establish that the Jewish liturgical association Cha'are Shalom Ve Tsedek, which does not organise any worship or dispense any teaching, has on account of its activities the character of a 'religious body' for the purposes of Article 10 ... of the decree of 1 October 1980. Consequently, by refusing to propose it for approval by the Minister of Agriculture, the Minister of the Interior did not commit any error of law and gave sufficient grounds for his decision.

[Lastly,] in taking the impugned decision the Minister of the Interior only used the powers conferred on him by the above-mentioned provisions with a view to ensuring that ritual slaughter is performed in conditions consistent with public policy requirements, public hygiene and respect for public freedoms. Accordingly, the appellant association may not validly maintain that the Minister interfered in the functioning of a religious body or that he infringed the freedom of religion guaranteed in particular by the Declaration of the Rights of Man and the European Convention [on] Human Rights ..."

3. The third set of proceedings

40. Concurrently with its application of 11 February 1987 for approval as a religious body, the applicant association submitted on the same day to the prefect of the *département* of Deux-Sèvres an application on behalf of three ritual slaughterers who were members of the association, and were authorised by it, for specific individual authorisations to perform ritual slaughter in an establishment in that *département*.

41. On 29 April 1987 the prefect refused this application on the grounds that Article 10 § 3 of Decree no. 80-791 of 1 October 1980 empowered prefects to authorise individual slaughterers only where no religious body had been approved for the religion in question and that it was clear that the Joint Rabbinical Ritual Slaughter Committee had been given the approval concerned.

42. The applicant association appealed against this decision to the Poitiers Administrative Court.

43. In a judgment of 10 October 1990 the Poitiers Administrative Court dismissed the appeal against the prefect's decision on the following grounds:

"...

The evidence placed before the Court shows, and this has not been contested, that by a decision of 1 July 1982 the Minister of Agriculture, acting on the basis of Article 10 § 2 of the above-mentioned decree of 1 October 1980, approved the 'Joint Rabbinical Committee' as a body empowered to appoint ritual slaughterers authorised to perform ritual slaughter in the manner prescribed by the Jewish religion. That approval prevents prefects from issuing individual authorisations under Article 10 § 4 permitting persons or institutions adhering to the religion concerned to perform ritual slaughter. It is clear, particularly in the light of Article 2 of its statute, that the cultural association 'Cha'are Shalom Ve Tsedek' proclaims its adherence to the Jewish religion. Consequently, and even though the association apparently refuses for religious reasons to recognise the authority of the 'Joint Rabbinical Committee', the individual application it made for a derogation authorising it to perform ritual slaughter in a slaughterhouse in the *département* of Deux-Sèvres could only be refused. Accordingly, when the prefect of Deux-Sèvres, in refusing the application on 29 April 1987, applied these legal rules, as he was required to do, without becoming involved in the internal dissensions of the Jewish religion, he did not infringe the principle of equality in the application of administrative rules or the principle of freedom of worship set forth in the Act of 9 December 1905 on the separation of the Churches and the State or the freedom of conscience and religion enunciated ... in Article 9 of the Convention for the protection of Human Rights and Fundamental Freedoms."

44. In a judgment of 25 November 1994 the *Conseil d'Etat* upheld the above judgment on appeal, giving the following reasons:

"The provisions ... of the third paragraph of Article 10 of the decree of 1 October 1980 give prefects the power to authorise ritual slaughterers only where no religious body has been approved for the religion concerned under the first paragraph of the same Article. It is clear that the Joint Rabbinical Ritual Slaughter Committee has obtained the approval in question. Consequently, the prefect of Deux-Sèvres was required to refuse, as he did, the application made by the appellant association."

..."

II. RELEVANT LAW AND PRACTICE

A. Domestic law

45. Article 2 of the 1958 Constitution provides:

"France is a secular Republic; it shall ensure the equality before the law of all citizens, without distinction as to origin, race or religion. It shall respect all beliefs."

46. The relevant provisions of the Act of 9 December 1905 on the separation of the Churches and the State[1] are worded as follows:

1. In the version applicable at the material time.

Section 1

"The Republic shall ensure freedom of conscience. It shall guarantee free participation in religious worship, subject only to the restrictions laid down hereinafter in the interest of public order."

Section 2

"The Republic shall not recognise, pay stipends to or subsidise any religious denomination. Consequently, from 1 January in the year following promulgation of this Act all expenditure relating to participation in worship shall be removed from State, *département* and municipality budgets. However, these budgets may include appropriations for expenditure on chaplaincy services intended to ensure freedom of worship in public institutions such as senior and junior high schools, primary schools, hospices, mental hospitals and prisons ..."

Section 18

"Associations formed in order to meet the costs of a religious denomination, to ensure its continued existence or to foster participation in public acts of worship shall be constituted in accordance with sections 5 et seq. of Part 1 of the Act of 1 July 1901. They shall, in addition, be subject to the provisions of the present Act."

Section 19

"These associations must have as their sole object participation in religious worship and be composed of at least

– seven persons in municipalities with a population of less than 1,000;

– fifteen persons in municipalities with a population of between 1,000 and 20,000;

– twenty-five adults permanently or temporarily resident in the religious district concerned in municipalities with a population of more than 20,000;

...

Associations may in addition receive contributions as provided in section 6 of the Act of 1 July 1901 and the proceeds from collections held to meet the costs of worship and may levy charges for: religious ceremonies and services even in the form of an endowment; renting of benches and seats; provision of objects intended for use in funeral services in religious buildings and for the decoration of such buildings ...

Under the conditions laid down by sections 7 and 8 of the Act of 4 February 1901/8 July 1941, on administrative supervision of donations and bequests, liturgical associations may receive testamentary gifts and donations *inter vivos* intended to help them achieve their objects or subject to religious or liturgical obligations ...

They may not, in any form whatsoever, receive subsidies from the State, the *départements* or municipalities. Sums allotted for repairs to the buildings used for

public worship shall not be considered subsidies, whether or not those buildings are listed as historic monuments."

Section 20

"These associations may, in the forms laid down by section 7 of the Act of 16 August 1901, set up unions with a central administrative service or governing body ..."

47. Article 276 of the Countryside Code provides:

"It is an offence to ill-treat domestic animals or wild animals that have been tamed or are being held in captivity."

48. The relevant provisions of Decree no. 80-791 of 1 October 1980, promulgated to implement Article 276 of the Countryside Code, are worded as follows:

Article 7

"The provisions of Articles 8 and 9 below shall be applicable in establishments for the slaughter of oxen, sheep, goats, pigs, horses, poultry, domestic rabbits and game."

Article 8

"All animals must be restrained before slaughter. In the case of ritual slaughter this must be done before the throat is slit.

Restraint techniques must be designed and used in such a way as to avoid all unnecessary suffering, excitement and injury to the animals. Halters may not be tightened by means of twisting-sticks.

It is forbidden to hang animals up before they have been stunned, or, in the case of ritual slaughter, before their throats have been slit.

The provisions of the present Article shall not apply to the slaughter of poultry, domestic rabbits and small game where these are stunned after being hung up."

Article 9

"Stunning, that is the use of an authorised technique which immediately plunges animals into a state of unconsciousness, shall be compulsory before slaughter, save in the following cases:

...

4. ritual slaughter."

Article 10

"It is forbidden to perform ritual slaughter save in a slaughterhouse (Decree no. 81-606, 18 May 1989, Article 1). Subject to the provisions of the fourth paragraph of this Article, ritual slaughter may be performed only by slaughterers authorised for the purpose by religious bodies which have been approved by the Minister of Agriculture, on a proposal from the Minister of the Interior. Slaughterers must be able to show documentary proof of such authorisation.

The approved bodies mentioned in the previous paragraph must inform the Minister of Agriculture of the names of authorised persons and those from whom authorisation has been withdrawn.

If no religious body has been approved, the prefect of the *département* in which the slaughterhouse used for ritual slaughter is situated may grant individual authorisations on application from the persons concerned."

B. International law

1. The Council of Europe

49. The European Convention for the Protection of Animals for Slaughter, of 10 May 1979, provides, *inter alia*:

Article 1

"1. This Convention shall apply to the movement, lairaging, restraint, stunning and slaughter of domestic solipeds, ruminants, pigs, rabbits and poultry.

..."

Article 12

"Animals shall be restrained where necessary immediately before slaughtering and, with the exceptions set out in Article 17, shall be stunned by an appropriate method."

Article 13

"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 all avoidable pain, suffering, agitation, injury or contusions."

Article 17

"1. Each Contracting Party may authorise derogations from the provisions concerning prior stunning in the following cases:

– slaughtering in accordance with religious rituals;

..."

Article 18

"1. Each Contracting Party shall make certain of the skill of persons who are professionally engaged in the restraint, stunning and slaughter of animals.

2. Each Contracting Party shall ensure that the instruments, apparatus or installations necessary for the restraint and stunning of animals comply with the requirements of the Convention."

Article 19

"Each Contracting Party permitting slaughter in accordance with religious ritual shall ensure, when it does not itself issue the necessary authorisations, that animal sacrificers are duly authorised by the religious bodies concerned."

50. Recommendation no. R (91) 7 of the Committee of Ministers to member States on the slaughter of animals (adopted by the Committee of Ministers on 17 June 1991 at the 460th meeting of the Ministers' Deputies) includes the following provision:

"...

Recommends to the Governments of the member States:

...

vii. if they authorise slaughter in accordance with religious rites without prior stunning, to take all possible measures to protect the welfare of the animals concerned by ensuring that such slaughter is carried out in appropriate slaughterhouses by trained personnel, who observe as far as possible the provisions in the Code of Conduct.

..."

2. The European Union

51. The European Directive of 18 November 1974 on stunning of animals before slaughter provides, *inter alia*:

"Whereas ... the practice of stunning animals by appropriate recognised techniques should be generalised;

Whereas, however, it is necessary to take account of the particular requirements of certain religious rites;

..."

Article 4 of the Directive provides:

"The present Directive does not affect national provisions related to special methods of slaughter which are required for particular religious rites."

52. The European Directive of 22 December 1993 on the protection of animals at the time of slaughter or killing provides, *inter alia*:

> "Whereas at the time of slaughter or killing animals should be spared any avoidable pain or suffering;
>
> Whereas, however, it is necessary ... to take account of the particular requirements of certain religious rites;
>
> ..."

C. Case-law

53. In a judgment of 2 May 1973 (*Association cultuelle des israélites nord-africains de Paris* – Liturgical Association of North-African Jews in Paris, *Rec.* p. 312), the *Conseil d'Etat* held:

> "... In requiring ritual slaughter performed under conditions derogating from the provisions of ordinary law to be carried out only by ritual slaughterers authorised by religious bodies approved by the Minister of Agriculture on a proposal by the Minister of the Interior, the Prime Minister did not interfere in the affairs of religious bodies and did not infringe the freedom of worship but took the measures needed for exercise of that freedom in a manner consistent with public policy ..."

THE LAW

I. PRELIMINARY QUESTION

54. Under the terms of Article 37 § 1 (a) of the Convention, the Court may decide, at any time in the proceedings, to strike a case out of its list where the circumstances lead to the conclusion that the applicant does not intend to pursue his application.

55. In the present case, by a letter of 27 October 1999, the president of the applicant association, Rabbi David Bitton, told the Court that he wished purely and simply to withdraw the application. However, the lawyer of the applicant association contested the validity of this withdrawal, arguing, with supporting documentary evidence, that Mr Bitton had resigned from the office of president of the association on 26 February 1999 and that a new president had been elected by the governing body as far back as 2 March, this election being confirmed by an extraordinary general meeting on 10 March 1999 (see paragraphs 7 to 11 above).

56. At the hearing on 8 December 1999 the French Government made the preliminary observation that it was for the Court to rule on the validity

of the last-minute withdrawal by Mr Bitton and stated that they would not object, should it be adjudged valid, if the Court were to grant his request. They also produced a copy of a letter from the applicant association, dated 24 November 1999, in which it informed the Paris police authority that, following a meeting of its executive committee on 23 September 1999, the association had decided to amend its statute, with regard in particular to its registered office and the composition of the executive committee.

57. In the absence of an express request by the Government for it to strike the case out of its list, the Court does not consider it necessary to examine of its own motion the question whether, as a matter of domestic law, the new president elected in March 1999 may validly act on behalf of the applicant association, since in the light of the documentary evidence produced by the association's lawyer the Court considers that it has been established that the applicant association intends to pursue its application. There is therefore no reason to strike the case out of the list.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION, TAKEN ALONE AND CONJUNCTION WITH ARTICLE 14

58. The applicant association, whose arguments were endorsed by the Commission, submitted that by refusing it the approval necessary for it to authorise its own ritual slaughterers to perform ritual slaughter, in accordance with the religious prescriptions of its members, and by granting such approval to the *ACIP* alone, the French authorities had infringed in a discriminatory way its right to manifest its religion through observance of the rites of the Jewish religion. It relied on Article 9 of the Convention, taken alone and in conjunction with Article 14.

59. Article 9 of the Convention provides:

> "1. 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.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The relevant part of Article 14 of the Convention for the purposes of the present case provides:

> "Enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... religion ..."

60. In the submission of the applicant association, the conditions for ritual slaughter, as performed at present by the ritual slaughterers authorised by the *ACIP*, to which the French government granted in 1982 the exclusive

privilege of carrying out Jewish ritual slaughter, no longer satisfied the very strict requirements of the Jewish religion, as set forth in the Book of Leviticus and codified in the Shulchan Aruch. 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 view. However, what the Jews who belonged to the applicant association were asserting was the right not to consume meat if they could not be certain – because it was not from animals slaughtered and, above all, examined by their own ritual slaughterers – that it was perfectly pure, or "*glatt*". In the applicant association's submission, there had accordingly been a clear interference with its right to manifest its religion through observance of the religious rite of ritual slaughter.

61. The applicant association submitted that the refusal to approve it could not be justified by any of the legitimate aims set out in Article 9 § 2 of the Convention and that it was disproportionate and discriminatory for the purposes of Article 14. It emphasised that it was not contested that the ritual slaughterers it employed were just as scrupulous as those of the *ACIP* in complying with the hygiene regulations in force in slaughterhouses and that the Government could not therefore seriously maintain that the refusal to approve the association pursued the legitimate aim of "protection of public health".

62. The applicant association further submitted that it was indeed a "religious body" for the purposes of the 1980 decree regulating ritual slaughter, just like the *ACIP*, since both were liturgical associations within the meaning of the 1905 Act on the separation of the Churches and the State. The only difference lay in the relative size of these two liturgical associations, since the *ACIP* numbered among its adherents the majority of the Jews from the various branches of Judaism in France, with an annual budget of approximately 140,000,000 French francs (FRF) at its disposal, whereas the applicant association had only about 40,000 members, all ultra-orthodox, and had a budget of approximately FRF 4-5,000,000. While it might appear legitimate for a government to seek to establish especially close relations with the most representative trade unions, political parties or even religious associations, it nevertheless remained true, above all in a secular State like France, that the authorities had a duty to respect the rights of minorities. The applicant association emphasised in that connection that the French authorities had been very open-handed in granting approvals for ritual slaughter by Muslims, first to the Paris Central Mosque, and later to the mosques of Lyons and Evry, without the number of such approvals endangering public order or public health in any way whatsoever.

63. Lastly, the applicant association submitted that the fact that, in order to be able to pay its ritual slaughterers, it levied a slaughter tax of about

FRF 4 per kilo of meat certified as being "*glatt*" kosher in the butcher's shops which claimed allegiance to it had no bearing on the strictly religious problem of the ritual slaughter in respect of which it had sought approval. It further observed that the *ACIP* also levied a slaughter tax, of about FRF 8 per kilo of meat sold, and that the income from that tax represented about half of the *ACIP*'s resources.

64. The Government did not contest the fact that Jewish dietary prohibitions and prescriptions formed part of the practice of Judaism by its adherents, but argued that although the religious rules imposed a certain type of diet on Jews they did not by any means require them to take part themselves in the ritual slaughter of the animals they ate. Accordingly, a refusal of approval was capable of affecting the practice of their religion by Jews only if it was impossible for them, on account of that refusal, to find meat compatible with the religious prescriptions they wished to follow.

65. Yet that was not the position in the present case, in the Government's submission, because it was quite plain from the documents in the file that certain butcher's shops sold meat certified "*glatt*" from slaughterhouses controlled by the *ACIP*, that the shops of the applicant association, which obtained part of their supplies in Belgium, also sold such meat and that there would be nothing to prevent the applicant association from reaching an agreement with the *ACIP* in order to have animals slaughtered by its own religious slaughterers, and according to the methods it defined, under the cover of the approval granted to the *ACIP*. In that connection the Government referred to the agreements reached between the *ACIP* and other very orthodox congregations such as the Lubavitch movement or the congregation of the rue Pavée.

66. Admittedly, the applicant association denied that meat from the *ACIP* slaughterhouses was truly "*glatt*", criticising the inadequacy of the inspection of the lungs of slaughtered animals by *ACIP* slaughterers, but the Government noted that in doing so the applicant association was challenging the findings of the legitimate and independent religious authorities who personified the religion it professed. The Government emphasised that it was not for the French authorities, bound as they were to respect the principle of secularism, to interfere in a controversy over dogma, but observed that it could not be contested that the Chief Rabbi of France, whose opinion on the matter was based on the rulings of the Beth Din (the rabbinical court), was qualified to say what was or was not compatible with Jewish observance.

67. In the Government's submission, there had been, in the final analysis, no interference with the right to freedom of religion, since in the present case the only impact of the refusal to approve the applicant association lay in the fact that it was impossible for Jews, given meat of equal quality, to choose meat from animals slaughtered by the applicant association, which differed from the meat offered for sale by the *ACIP* only

in its price, since the slaughter tax levied by the applicant association was lower by half than the tax levied by the *ACIP*. In the Government's view, this freedom of choice was an economic, not religious freedom. That was evidenced by the fact that, according to the *ACIP*, the applicant association had at one time tried to obtain a kind of delegated authority from the *ACIP* allowing it to perform ritual slaughter itself, under cover of the approval granted to the *ACIP*, but that approach had come to nothing for lack of agreement on the financial terms of the contract.

68. Even supposing that there had been interference with the applicant association's right to manifest its religion, the Government maintained that such interference was prescribed by law, namely the 1980 decree regulating slaughterhouse practice, and that it pursued a legitimate aim, that of protecting order and public health. In that connection, the Government argued that ritual slaughter derogated very markedly from the principles underpinning the domestic and international legal rules applicable to the protection of animals and public hygiene. The written law in force prohibited ill-treatment of animals and required them to be stunned before slaughter to spare them any suffering. Similarly, health considerations required slaughter to be carried out in a slaughterhouse and, in the case of ritual slaughter, by slaughterers duly authorised by the religious bodies concerned in order to prevent the exercise of freedom of religion giving rise to practices contrary to the essential principles of hygiene and public health. Ritual slaughter could therefore be authorised only by way of a radical derogation.

69. With regard to the reasons which had prompted the French authorities to refuse the approval sought by the applicant association, the Government mentioned two factors, which came within the margin of appreciation the Convention left to Contracting States. In the first place, the Minister of the Interior had taken the view that the applicant association's activity was essentially commercial, and only religious in an accessory way, since it mainly sought to supply meat from animals slaughtered by its ritual slaughterers which was certified "*glatt*", and that it could therefore not be considered a "religious body" within the meaning of the 1980 decree.

Secondly, account had been taken of the limited support for the applicant association, which had approximately 40,000 adherents; this was not comparable with that for the *ACIP*, which had 700,000. In view of the exceptional nature of the practice of ritual slaughter, the refusal of approval had therefore been necessary to avoid a proliferation of approved bodies, which would undoubtedly have come about if the threshold of the guarantees required to be given by associations seeking approval had been too low.

70. Lastly, the Government maintained that there had not been discrimination for the purposes of Article 14 of the Convention either. In the first place, the applicant association and the *ACIP*, on account of their

respective activities and levels of support, were not in comparable positions; secondly, even supposing that there had been a difference in treatment, that difference was the expression of the relationship of proportionality between the aim pursued and the means employed. In that connection, the Government again emphasised that the effects of the refusal of approval were very limited for the adherents of the applicant association, and even non-existent in view of the fact that slaughter did not directly affect their freedom of religion.

71. As to the veiled criticism that a monopoly on slaughter had been given to the *ACIP* in 1982 and was not without advantages for the public authorities, the Government observed that the *ACIP*, an offshoot of the Central Consistory, which had been administering Jewish worship in France for two hundred years, was indeed a legitimate negotiating partner, since it was an umbrella organisation for nearly all the Jewish associations in France and thus guaranteed protection of the interests of the community and respect for the rules dictated by public policy, particularly where health was concerned. The *de facto* monopoly enjoyed by the *ACIP* with regard to ritual slaughter was not, however, the result of any deliberate intention on the part of the State, which would not have failed to grant the approval sought by the applicant association if it had been able to prove that it was essentially a religious body and had wider support within the Jewish community.

72. The Court considers, like the Commission, that an ecclesiastical or religious body may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention (see, *mutatis mutandis*, the Canea Catholic Church v. Greece judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2856, § 31). In the present case, a community of believers – of whatever religion – must, under French law, be constituted in the form of a liturgical association, as is the applicant association.

73. The Court next reiterates that Article 9 lists a number of forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance (see the Kalaç v. Turkey judgment of 1 July 1997, *Reports* 1997-IV, p. 1209, § 27). It is not contested that ritual slaughter, as indeed its name indicates, constitutes a rite or "*rite*" (the word in the French text of the Convention corresponding to "observance" in the English), whose purpose is to provide Jews with meat from animals slaughtered in accordance with religious prescriptions, which is an essential aspect of practice of the Jewish religion. The applicant association employs ritual slaughterers and *kashrut* inspectors who slaughter animals in accordance with its prescriptions on the question, and it is likewise the applicant association which, by certifying as "*glatt*" kosher the meat sold in its members' butcher's shops, exercises religious supervision of ritual slaughter.

74. It follows that the applicant association can rely on Article 9 of the Convention with regard to the French authorities' refusal to approve it, since ritual slaughter must be considered to be covered by a right guaranteed by the Convention, namely the right to manifest one's religion in observance, within the meaning of Article 9.

75. The Court will first consider whether, as the Government submitted, the facts of the case disclose no interference with the exercise of one of the rights and freedoms guaranteed by the Convention.

76. In the first place, the Court notes that by establishing an exception to the principle that animals must be stunned before slaughter, French law gave practical effect to a positive undertaking on the State's part intended to ensure effective respect for freedom of religion. The 1980 decree, far from restricting exercise of that freedom, is on the contrary calculated to make provision for and organise its free exercise.

77. The Court further considers that the fact that the exceptional rules designed to regulate the practice of ritual slaughter permit only ritual slaughterers authorised by approved religious bodies to engage in it does not in itself lead to the conclusion that there has been an interference with the freedom to manifest one's religion. The Court considers, like the Government, that it is in the general interest to avoid unregulated slaughter, carried out in conditions of doubtful hygiene, and that it is therefore preferable, if there is to be ritual slaughter, for it to be performed in slaughterhouses supervised by the public authorities. Accordingly, when in 1982 the State granted approval to the *ACIP*, an offshoot of the Central Consistory, which is the body most representative of the Jewish communities of France, it did not in any way infringe the freedom to manifest one's religion.

78. However, when another religious body professing the same religion later lodges an application for approval in order to be able to perform ritual slaughter, it must be ascertained whether or not the method of slaughter it seeks to employ constitutes exercise of the freedom to manifest one's religion guaranteed by Article 9 of the Convention.

79. The Court notes that the method of slaughter employed by the ritual slaughterers of the applicant association is exactly the same as that employed by the *ACIP*'s ritual slaughterers, and that the only difference lies in the thoroughness of the examination of the slaughtered animal's lungs after death. It is essential for the applicant association to be able to certify meat not only as kosher but also as "*glatt*" in order to comply with its interpretation of the dietary laws, whereas the great majority of practising Jews accept the kosher certification made under the aegis of the *ACIP*.

80. In the Court's opinion, there would be interference with the freedom to manifest one's religion only if the illegality of performing ritual slaughter made it impossible for ultra-orthodox Jews to eat meat from animals

slaughtered in accordance with the religious prescriptions they considered applicable.

81. But that is not the case. It is not contested that the applicant association can easily obtain supplies of "*glatt*" meat in Belgium. Furthermore, it is apparent from the written depositions and bailiffs' official reports produced by the interveners that a number of butcher's shops operating under the control of the *ACIP* make meat certified "*glatt*" by the Beth Din available to Jews.

82. It emerges from the case file as a whole, and from the oral submissions at the hearing, that Jews who belong to the applicant association can thus obtain "*glatt*" meat. In particular, the Government referred, without being contradicted on this point, to negotiations between the applicant association and the *ACIP* with a view to reaching an agreement whereby the applicant association could perform ritual slaughter itself under cover of the approval granted to the *ACIP*, an agreement which was not reached, for financial reasons (see paragraph 67 above). Admittedly, the applicant association argued that it did not trust the ritual slaughterers authorised by the *ACIP* as regards the thoroughness of the examination of the lungs of slaughtered animals after death. But the Court takes the view that the right to freedom of religion guaranteed by Article 9 of the Convention cannot extend to the right to take part in person in the performance of ritual slaughter and the subsequent certification process, given that, as pointed out above, the applicant association and its members are not in practice deprived of the possibility of obtaining and eating meat considered by them to be more compatible with religious prescriptions.

83. Since it has not been established that Jews belonging to the applicant association cannot obtain "*glatt*" meat, or that the applicant association could not supply them with it by reaching an agreement with the *ACIP*, in order to be able to engage in ritual slaughter under cover of the approval granted to the *ACIP*, the Court considers that the refusal of approval complained of did not constitute an interference with the applicant association's right to the freedom to manifest its religion.

84. That finding absolves the Court from the task of ruling on the compatibility of the restriction challenged by the applicant association with the requirements laid down in the second paragraph of Article 9 of the Convention. However, even supposing that this restriction could be considered an interference with the right to freedom to manifest one's religion, the Court observes that the measure complained of, which is prescribed by law, pursues a legitimate aim, namely protection of public health and public order, in so far as organisation by the State of the exercise of worship is conducive to religious harmony and tolerance. Furthermore, regard being had to the margin of appreciation left to Contracting States (see the Manoussakis and Others v. Greece judgment of 26 September 1996, *Reports* 1996-IV, p. 1364, § 44), particularly with regard to establishment of

the delicate relations between the Churches and the State, it cannot be considered excessive or disproportionate. In other words, it is compatible with Article 9 § 2 of the Convention.

85. There has accordingly been no violation of Article 9 of the Convention taken alone.

86. As regards the applicant association's allegation that it suffered discriminatory treatment on account of the fact that approval was granted to the *ACIP* alone, the Court reiterates that, according to the established case-law of the Convention institutions, Article 14 only complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to that extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.

87. The Court notes that the facts of the present case fall within the ambit of Article 9 of the Convention (see paragraph 74 above) and that therefore Article 14 is applicable. However, in the light of its findings in paragraph 83 above concerning the limited effect of the measure complained of, findings which led the Court to conclude that there had been no interference with the applicant association's freedom to manifest its religion, the Court considers that the difference of treatment which resulted from the measure was limited in scope. It further observes that, for the reasons set out in paragraph 84, in so far as there was a difference of treatment, it pursued a legitimate aim, and that there was "a reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, among other authorities, the Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, p. 16, § 33). Such difference of treatment as there was therefore had an objective and reasonable justification within the meaning of the Court's consistent case-law.

88. There has accordingly been no violation of Article 9 of the Convention taken in conjunction with Article 14.

FOR THESE REASONS, THE COURT

1. *Holds* by twelve votes to five that there has been no violation of Article 9 of the Convention taken alone;
2. *Holds* by ten votes to seven that there has been no violation of Article 9 of the Convention taken in conjunction with Article 14.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 June 2000.

Luzius WILDHABER
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Sir Nicolas Bratza, M. Fischbach, Mrs Thomassen, Mrs Tsatsa-Nikolovska, Mr Panţîru, Mr Levits and Mr Traja is annexed to this judgment.

L.W.
M.B.

JOINT DISSENTING OPINION OF JUDGES Sir Nicolas BRATZA, FISCHBACH, THOMASSEN, TSATSA-NIKOLOVSKA, PANȚÎRU, LEVITS AND TRAJA

(Translation)

To our great regret, we cannot agree with either the reasoning or the conclusion of the majority in the present case.

1. With regard to the question whether or not there was interference with the applicant association's right to freedom of religion, we can agree with paragraphs 76 and 77; it is quite correct to say that by granting approval to the *ACIP* in 1982 the State authorities, far from impairing freedom of religion, on the contrary gave practical effect to a positive commitment intended to permit the free exercise of that freedom. On the other hand, we cannot concur with the majority's assertion in paragraph 78 that it is necessary to ascertain whether or not an application for approval made subsequently by another religious body involves exercise of the right to the freedom to manifest one's religion.

The mere fact that approval has already been granted to one religious body does not absolve the State authorities from the obligation to give careful consideration to any later application made by other religious bodies professing the same religion. In the present case, the applicant association's application was prompted by the fact that, in its submission, the *ACIP*'s ritual slaughterers no longer made a sufficiently thorough examination of the lungs of slaughtered animals, so that meat certified as kosher by the *ACIP* could not be considered "*glatt*". But the Jews who belong to the applicant association consider that meat which is not "*glatt*" is impure and therefore not compatible with Jewish dietary laws. There is therefore disagreement on that point between the *ACIP* and the applicant association.

We consider that, while it is possible for tension to be created where a community, and a religious community in particular, is divided, this is one of the unavoidable consequences of the need to respect pluralism. In such a situation the role of the public authorities is not to remove any cause of tension by eliminating pluralism, but to take all necessary measures to ensure that the competing groups tolerate each other (see *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX). We therefore find it particularly inappropriate to mention, as the majority do in paragraph 82 of the judgment, that the applicant association could have reached an agreement with the *ACIP* in order to perform ritual slaughter under cover of the approval granted to the *ACIP*. That argument amounts to discharging the State, the only entity empowered to grant approval, from the obligation to respect freedom of religion. But the *ACIP* represents the majority current

in the Jewish community and as such is the least well-placed to assess the validity of minority claims and act as arbiter on the question.

We also consider that the fact that the applicant association is able to import "*glatt*" meat from Belgium does not justify in this case the conclusion that there was no interference with the right to the freedom to practise one's religion through performance of the rite of ritual slaughter; the same applies to the fact that Jews are able to obtain supplies of "*glatt*" meat, if necessary, from the few butcher's shops run by the *ACIP* which sell it under the aegis of the Beth Din.

Article 10 of the 1980 decree expressly provides that an approved religious body may authorise ritual slaughterers to perform ritual slaughter and that the necessary approval is to be given by the Minister of Agriculture on a proposal by the Minister of the Interior. By denying the applicant association the status of a "religious body" and by rejecting its application for approved status on that account, the French authorities therefore restricted its freedom to manifest its religion.

In our view, the possibility of obtaining "*glatt*" meat by other means is irrelevant for the purpose of assessing the scope of an act or omission on the part of the State aimed, as in the present case, at restricting exercise of the right to freedom of religion (see, *mutatis mutandis*, the *Observer* and *Guardian* v. the United Kingdom judgment of 26 November 1991, Series A no. 216, pp. 34-35, § 69). We cannot therefore follow the majority's finding that there was no violation of Article 9 taken alone because there had been no interference.

2. With regard to justification of the interference with the right to freedom of religion, we take the view that the main problem in the present case lies in the discrimination of which the applicant association complained.

In that connection, we consider that the reasoning of the majority, as set out in paragraph 87, is inadequate. In our opinion, in order to find that there had been no violation of Article 9 of the Convention taken in conjunction with Article 14, the majority should not have confined their reasons to the assertion that 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 individuals' most private convictions.

For our part, we consider it indispensable to examine the question whether, by granting the approval in issue to the *ACIP* while refusing it to the applicant association in 1987, the State authorities secured to the applicant association, without discrimination, in accordance with Article 14 of the Convention, enjoyment of the right to freedom of religion it was afforded under Article 9. In the present case we consider that there has been

a violation of Article 14 of the Convention taken in conjunction with Article 9, for the following reasons.

In the first place, we observe that for the purposes of Article 14 the notion of discrimination ordinarily includes cases where States treat persons or groups in analogous situations differently without providing an objective and reasonable justification. According to the case-law of the Convention institutions, a difference of treatment is discriminatory for the purposes of Article 14 if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Court reaffirmed this recently in *Thlimmenos v. Greece* ([GC], no. 34369/97, ECHR 2000-IV).

The Court should first have considered therefore whether the applicant association was in an analogous situation to that of the *ACIP*. In that connection, we observe that it is not contested that the legal status of the applicant association is that of a liturgical association, within the meaning of the 1905 Act on the separation of the Churches and the State, just like the *ACIP*. Moreover, Article 10 of the decree of 1 October 1980 gives no definition whatsoever of the term "religious body" and lays down no criterion, such as representativeness within the religion concerned, whereby the point can be assessed. Nor has it been contested that the applicant association has two synagogues where acts of worship are regularly celebrated and training establishments for rabbis or that it carries out, in practice, religious supervision over a number of butcher's shops and sales outlets for "*glatt*" kosher meat.

The fact that this movement is a minority within the Jewish community as a whole is not in itself sufficient to deprive it of the character of a religious body. We therefore consider that in the light of its statute and activities there is at first sight no reason to doubt that the applicant association is a "religious body", just like the *ACIP*. We further note that, as regards the practice of ritual slaughter, it is not contested either that the *ACIP* slaughterers and those of the applicant association use exactly the same method of slaughter by throat-slitting, the only difference residing in the scope of the examination of the lungs of the slaughtered animals after death. Here again, therefore, the applicant association is in an analogous situation to that of the *ACIP*.

The Government submitted that the difference in treatment between the *ACIP* and the applicant association was justified by the fact that the applicant association was actually engaged in a purely commercial activity, namely the slaughter, certification and sale of "*glatt*" kosher meat, as evidenced by the fact that more than half of its income came from levying a slaughter tax. The Government argued on that basis that the applicant association was not engaged in truly religious activity comparable to that of the *ACIP*. However, we would observe that the *ACIP* likewise levies a

rabbinical tax on slaughter and that it can be seen from the accounts submitted by the third-party interveners that more than half of the *ACIP*'s income also comes from this same tax. That being so, we fail to see in what way the applicant association's activity is more "commercial" than the activity carried on by the *ACIP* in this area.

With regard to the legitimate aims capable of justifying the difference in treatment, the Government relied on the need to protect public health. However, there is nothing to suggest that the ritual slaughterers employed by the applicant association do not comply just as well as those of the *ACIP* with the rules of hygiene imposed by the regulations governing slaughterhouses, a point which was also acknowledged by the domestic courts (see paragraph 35 of the judgment).

Lastly, the Government referred to the low level of support for the applicant association, which has only about 40,000 adherents, all ultra-orthodox Jews, out of 700,000 Jews living in France. Its representativeness, in their submission, could not be compared with that of the *ACIP*, which represented nearly all the Jews in France. The refusal to approve the applicant association had therefore been necessary, they argued, for the protection of public order, with a view to avoiding the proliferation of approved bodies which did not provide the same safeguards as the *ACIP*.

We certainly do not disregard the interest the authorities may have in dealing with the most representative organisations of a specific community. The fact that the State wishes to avoid dealing with an excessive number of negotiating partners so as not to dissipate its efforts and in order to reach concrete results more easily, whether in its relations with trade unions, political parties or religious denominations, is not illegitimate in itself, or disproportionate (see, *mutatis mutandis*, the Swedish Engine Drivers' Union v. Sweden judgment of 6 February 1976, Series A no. 20, p. 17, § 46).

In the present case, however, the dispute submitted to the French authorities did not concern the applicant association's representativeness within the Jewish community and the applicant association has by no means challenged the role and function of the *ACIP*, the Central Consistory or other bodies representing the interests of the Jewish communities in France as the State's preferred interlocutors. For the applicant association, it was solely a matter of obtaining approval to practise ritual slaughter, on which subject it disagrees with the *ACIP*.

We consider that the organisation of ritual slaughter is only one aspect of the relations between the various religious bodies and the State and do not see how granting the approval in question could have threatened to undermine public order. With regard to the Muslim communities living in France, which also practise ritual slaughter but are less well structured than the Jewish communities, it should be noted that the applicant association asserted, without being contradicted on this point by the Government, that approval had been granted fairly liberally by the authorities to a number of

different bodies, notably the mosques of Paris, Evry and Lyons, without it even being alleged that the number of approved bodies was such as to threaten public order or health.

In concluding, in paragraph 87 of the judgment, that there was in the present case a reasonable relationship of proportionality between the means employed and the aim sought to be realised, the majority of the Court refer to paragraph 84 and to the Manoussakis and Others v. Greece judgment (judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV), stressing the margin of appreciation left to States, "particularly with regard to establishment of the delicate relations between the Churches and the State".

While we accept that States enjoy a margin of appreciation in this area, we observe that in the same judgment the Court went on to emphasise that in delimiting the extent of the margin of appreciation concerned it had to have regard to what was at stake, namely the need to secure true religious pluralism, which is an inherent feature of the notion of a democratic society (loc. cit., p. 1364, § 44).

We consider that similar reasoning is applicable in the present case. In our view, withholding approval from the applicant association, while granting such approval to the *ACIP* and thereby conferring on the latter the exclusive right to authorise ritual slaughterers, amounted to a failure to secure religious pluralism or to ensure a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

In the light of the foregoing considerations, we consider that the difference in treatment between the applicant association and the *ACIP* – one of which received the approval that the other was denied – had no objective and reasonable justification and was disproportionate. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 9.