



ELMC Case 2019-2020

Case M-20/19

The Most Magnificent Order of the Cassowary v. Kingdom of Antares

1. The Kingdom of Antares is a small, largely flat coastal state bordering the North Sea. It was formed in 1834, when the medieval League of Antarian city states was disbanded after a popular uprising and a foreign prince was chosen as the new King. As Antares is a constitutional monarchy, the role for the King is, however, largely ceremonial and restricted to promulgating laws and decrees adopted by the parliament and government. The 8.5 million inhabitants of Antares are generally prosperous and well-educated. That was, however, not always the case. Until the Second World War, the country was largely focused on agriculture and raising poultry, including the Antarian red cock, which is deemed a delicacy and is a staple at many Michelin star restaurants. Antares is a founding member of the European Economic Community (EEC). Initially a major beneficiary of the Common Agricultural Policy, it has rapidly diversified its economy, and nowadays its main economic activities are tourism, pharmaceuticals, financial services and micro-electronics. Nevertheless, the eastern provinces are still largely rural. It is a member of the Eurozone.
2. Regretania is named after the Regretanian word “reger”, the national bird that graces the Regretanian flag, known in English as an “egret”. It has about 56 million inhabitants. It used to be a major colonial power, but never fully recovered from the erosion of its former empire in the 1950s and 1960s. It joined the European Union on 1 July 1988 but secured a waiver from the Eurozone and several opt-outs in respect of the area of freedom security and justice. In recent years it was plagued by a recession, which has fuelled a Eurosceptic movement.
3. In late 2016 Regretania organised a referendum on continued EU membership, in which a slim majority voted in favour of leaving the Union. After a breakdown of negotiations on a withdrawal agreement, Regretania ceased to be a member of the Union on 1 July 2019, at the expiry of the two-year period provided for in Article 50(3) TEU. While the remaining Member States had offered an extension, it was declined by the Regretanian Prime Minister, so a ‘hard Regrexit’ occurred. The abrupt exit has caused massive disruption to transport and trade and has resulted in major shortages in pharmaceutical products. Opinion polls tracking support for Regrexit in Regretania show that a 60% majority now regrets it.
4. Around 1520 the old League of Antarian city States briefly tried to rival the Great Nations of Europe of the 16th Century, including Regretania, in establishing colonies in the Far East. They borrowed heavily to send off a five-ship force on a mission to



bring back exotic riches to the Antarian shores. One ship was quickly lost during a storm in the Channel, while a second reversed course near the Cape of Good Hope following a mutiny. Where the great seafaring nations managed to set up trading posts and establish colonies across South-East Asia and the Americas, the three remaining ships of the Antarian expedition fleet veered off course and stranded on a few remote islands in the Pacific. Their ships heavily damaged, and with no major riches to be found on the small, but beautiful, islands, the Antarian sailors abandoned ship and settled alongside the local tribes on what they dubbed “the Cassowary Islands” after the massive birds that roamed the islands.

5. Within a few years the Antarians had fully adjusted to life on the Cassowary Islands and taken up local rites. In particular they became enthralled with the local sun cult that prescribed extensive chanting just before sunrise and at dawn, worshipped the mighty cassowary, and – in line with local custom – ate the meat only of animals they had killed personally (though the meat could be shared with dependent tribe members). In the case of mammals, which were in any event rare on the Cassowary Islands, the animal had, moreover to be killed in a single blow, using what the locals called the “killimata” technique. If performed correctly, it snaps the vertebrae of the neck, and ruptures the main arteries leading to the head of the animal. Death is usually instantaneous, unless performed poorly – as often happens with beginners. In those cases, animals would at best be stunned, or at worst be in excruciating pain.
6. In 1560 the Regretanian Navy also reached the Cassowary Islands, intent upon colonising the islands. When confronted with a large group of Antarian settlers and their offspring, they offered the westerners the chance of packing up their belongings and returning to Europe. About three quarters of the Antarians took up the offer, and so on 2 February 1562 three ships carrying 527 Antarians from the Cassowary Islands, three cassowaries (of which only one male survived – the bones of the two other specimens can still be seen at the Ethnographic Museum of King’s Landing), some ceremonial conches and their meagre belongings reached the port of King’s Landing in Regretania. Most of them travelled on to Antares, only to find the country ravaged by a severe famine and an outbreak of bubonic plague, with very few people bothered by their inglorious return. They resettled in the barren and scarcely populated Eastern Province of Betelgeuse and survived through subsistence farming.
7. For centuries, the former settlers and their descendants formed a tightly-knit community. They passed on the rites acquired in the Cassowary Islands, and which actually proved quite compatible with the life of subsistence farmers, even in the barren flatlands of Eastern Antares. As farmers they rose with first light and retired after sunset. Accordingly, it felt natural to greet the sunrise with chanting before turning to work in the fields or tending the poultry. At dusk the sun was bid farewell by blowing the ceremonial conches. As no one could afford heavy livestock, the tradition of eating only animals that one killed personally was not difficult to maintain. Only at winter and summer solstice would the village elder use the killimata technique to slaughter two sheep and a pig kept on the village commons.



8. After the Second World War modernisation stretched to the Eastern provinces, including Betelgeuse. In order to preserve traditions, the Most Magnificent Order of the Cassowary, established back in 1715 in a largely ceremonial role, was revived as a governing council for those of the Cassowary faith. The Order is composed of eight elders and organises lessons in the faith, preserves the relics of the sole cassowary that made it to Antares, and serves as the body for the external representation of the faith. Many followers of the belief are currently working in finance or the pharmaceutical industry and commute between their small farms and the capital Aldebaran. That usually poses no hindrance to their performing the sun greeting ritual before going to work or continuing to follow the dietary restrictions. While those of the Cassowary faith may not eat animals they did not themselves kill, usually they get by with eating vegetarian dishes in their office canteen or by packing their own lunches. Accordingly, though most people in Antares consider the people of Betelgeuse a bit backward and their rites quaint, most Cassowarians are actually well-integrated into modern Antarian society.
9. The Cassowary faith did not spread beyond the borders of Antares. The only other place in Europe where a notable community of followers exists is in Regretania, where the faith was preserved by the descendants of those who did not travel on from King's Landing in 1562. That community was, moreover, given a boost in the late 1960s, when – after decolonisation – a number of descendants of those who had stayed on the Cassowary Islands arrived in Regretania. Since the 1970s the Cassowary communities of Antares and Regretania cooperate closely. Currently, there are about 290 000 Cassowarians in Antares, and 250 000 in Regretania.
10. The leading political formation in Antares since the 1950s is the Moderate Centrist Party (MCP), which has been governing alone, or with a junior coalition partner almost without pause since 1952 (a left-wing minority government in 1968 collapsed after 137 days). For the past two years, opinion polling had suggested, however, that the dominant position of the MCP has grown increasingly under threat from the nascent Green Antares Party and the extreme-right Antarian Front. The former campaigns largely on issues of animal welfare and climate change, pointing to the extreme vulnerability of the low-lying Antarian plains to rising sea levels. The Antarian Front by contrast has been campaigning on the back of fear for the rising number of immigrants. In response, Mr. Ahonen, the leader of the Moderate Centrist Party has decided to rebrand the party. Henceforth, the party is to be known as the New Green Alliance (NGA). Its programme mixes classic centrist policies with strongman policies aimed at attracting the supporters of both the Green Antares Party and the Antarian Front – often both at the same time. Accordingly, its manifesto addresses climate change, but it evokes not merely melting polar icecaps, but speaks rather of grave concern for “boreal Europe”. Similarly, its manifesto often refers to stemming “alien invasions”, and not always in the context of executing Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species. The strategy paid off, and in the general election of



April 2019, the NGA obtained 47.8% of the votes, and slim majorities of 87 out of 165 seats in the *Nasjonal Azjemble*, the lower house, and 52 out of 100 seats in the *Sjenad*, the upper house.

11. One of the first measures the new government rushed through parliament was Act 2019/21 of 7 May 2019 ‘on the slaughter of animals’. Over the concerns of the *Stat Koncil* – the Council of State of Antares, i.e. the top administrative court, which also has a Legislative Section which provides an authoritative, but non-binding, opinion on the compatibility with higher norms of all draft legislation prior to its introduction in parliament or, in the case of executive acts, before they are submitted to the King for signature – that the proposed legislation could be contrary to fundamental rights of religious minorities, as it prohibits all forms of slaughter of animals without prior stunning, Act 2019/21 was notified to the Commission pursuant to Article 26(2) of Council Regulation (EC) No 1099/2009.
12. The measure affects the Cassowary community directly. Recent increases in wealth have meant that people in Antares can now easily afford to eat more than poultry and vegetables. Demand for pork, veal and beef has grown markedly over the past three decades, and Cassowarians too now long for bacon and steak. The ancient rule that they eat the meat only of mammals they themselves have killed, means, however, that increasingly people raise their own animals and slaughter them at home using the *killimata* technique. When slaughter at home was banned by the previous government (in line with Article 4(4) of Council Regulation (EC) No 1099/2009), most slaughterhouses in Antares began to organise regular events – usually on Sundays, when they would otherwise be closed – allowing people to kill farm animals using the *killimata* technique, or another religious rite. Article 7 of Council Regulation (EC) No 1099/2009 was until now rarely enforced in Antares. One slaughterhouse even decided to forego stunning of animals entirely, also in its day to day operations, in favour of the *killimata* technique, applied by well-certified professionals. While the technique is not flawless, if well-administered it results in instant death in 95% of cases, which is better than the 86.4% success rate of captive bolt stunning of bulls.
13. Accordingly, the current leader of the Most Magnificent Order of the Cassowary, Mr. Wellinger, announces that the Order would seek to challenge Act 2019/21 in court, as being contrary to religious freedom, as guaranteed by the Antarian constitution, the European Convention on Human Rights, the EU Charter of Fundamental Rights, and at odds with the religious exception in Council Regulation (EC) No 1099/2009. He further points out that other forms of killing animals without prior stunning are still lawful in Antares, such as in the context of hunting or during the annual Antarian national day celebrations when in some villages in West Antares the traditional “chickchop” game is played – a gruesome version of piñata with living Antarian Red Cocks. Therefore, he considers the prohibition of slaughter without prior stunning beyond hypocritical and actually discriminatory. On 29 May 2019 an action for annulment, accompanied with a request for interim relief – the suspension of Act 2019/21 – was introduced by the Magnificent Order before the *Kuria Konstijonal*, the



Constitutional Court of Antares in the capital Aldebaran. The government of Antares defends the prohibition of non-stunned slaughter on the basis of the protection of animal welfare. Moreover, the government points out that even if the killimata technique were to be allowed, it would still be contrary to Articles 7 and 21 of Council Regulation (EC) No 1099/2009 for non-certified persons to continue to slaughter animals.

14. Another key point in the NGA election manifesto was the promise of “eternal summer”. Evoking the love of Antarians for the outdoors, the joy of long summer nights on the terrace, preferably with a barbecue, a glass of Antarian wine – as an unexpected positive side-effect of climate change, Antares has become a prime location for planting new vines – in the company of family and friends, Mr. Ahonen promised to even improve on permanent Daylight Saving Time. Although Antares is actually only located a few degrees east of the Greenwich meridian, he proposed to set the time zone permanently at UTC+2.
15. The chance to make good on this promise came quickly. After all, the Official Journal of 19 March 2019 contained Directive 2019/88 of 14 March 2019 of the European Parliament and the Council discontinuing seasonal changes of time and repealing Directive 2000/84/EC, based on Article 114 TFEU, which reads as follows:

“Article 1

1. Member States shall not apply seasonal changes to their standard time or times.
2. Notwithstanding paragraph 1, Member States may still apply a seasonal change of their standard time or times in 2019, provided that they do so at 1.00 a.m., Coordinated Universal Time, on 27 October 2019. The Member States shall notify this decision in accordance with Article 2.

Article 2

1. Without prejudice to Article 1, if a Member State decides to change its standard time or times in any territory under its jurisdiction, it shall notify the Commission at least 6 months before the change takes effect. Where a Member State has made such a notification and has not withdrawn it at least 6 months before the date of the envisaged change, the Member State shall apply this change.
2. Within 1 month of the notification, the Commission shall inform the other Member States thereof and publish that information in the Official Journal of the European Union.

Article 3

A change of standard time may not result in a Member State not sharing a time zone with at least one of its neighbours.

Article 4

1. Member States shall bring into force, by 1 June 2019 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.
2. Member States shall communicate to the Commission by that date the text of the provisions of national law which they adopt in order to give effect to this Directive.

Article 5

Directive 2000/84/EC is repealed with effect from 1 June 2019.”

16. Directive 2019/88 in essence requires Member States to do away with the annual switch to and from daylight saving time. Member States are, however, free as to the time zone they adopt. Accordingly, by Royal Decree of 29 May 2019, not submitted to the prior advice of the *Stat Koncil* “due to the urgency of the matter”, Antares announced that the country would set its standard time zone permanently at UTC+2, and thus not return to winter time – already almost an hour ahead of actual solar time – on 27 October 2019.
17. While the royal decree has indeed the effect of ensuring that at the height of the summer daylight remains until well after 10:00 p.m., the measure comes with significant drawbacks during the rest of the year. The disconnect with actual solar time means that in late December the sun will rise only after 10:00 a.m., though on the flip side when school is out at 4:00 p.m. it will still be light for about two hours. This means that the morning commute will largely take place in darkness, with a higher risk of accidents, as will most evening commutes. Moreover, there is medical evidence that summertime’s disconnect with solar time disturbs the production of the “sleep hormone” melatonin, resulting in sleeping disorders, depression and even an increased cancer risk. The super-summertime introduced by Antares is likely to aggravate those dangers.
18. For the followers of the Cassowary faith, the disconnect with the actual sun time is particularly taxing. In winter, the daily sun greeting at dawn, before which the faithful are prohibited from doing any work, can often take place only after 10:00 a.m., at a time when present day Cassowarians should already be at their offices. In summer, they have to rise early, the evening rite can be performed only extremely late at night, leaving them chronically sleep-deprived.
19. Moreover, the health risks linked to permanent summertime have prompted all the neighbouring states of Antares, Endymion to the north, Hyperion to the south and



Pacem to the east, elect instead to establish a permanent time at UTC+1. As a result, trade relations between Antares and other EU Member States have become more complicated, or at least less convenient. That effect is particularly troubling for the stock market of Aldebaran. Whereas a number of shares are traditionally listed both on the stock exchange of Aldebaran and of Keats, capital of Hyperion, the time difference now results in unforeseen opportunities for arbitrage.

20. In response, the Most Magnificent Order announces that it will also seek an injunction to prevent the royal decree from entering into force. An action is introduced to that purpose before the administrative court of Aldebaran on 3 June 2019. The action submits that Directive 2019/88 should not be implemented, as it is invalid for lack of competence. Rather than removing obstacles to trade, Directive 2019/88 actually enables the resurrection of different time zones, and thus new obstacles to trade between the Member States. Moreover, in any event, the manner in which Antares is implementing Directive 2019/88 is contrary to Articles 10(1) and 35 of the Charter. Finally, the Order points out that the new Antarian time zone is in breach of Article 3 of Directive 2019/88. The government contests the claim, arguing that if Directive 2019/88 is invalid, so was Directive 2000/84, which it replaces. Member States have, moreover, always been free to choose their time zones, so this is not even an issue of EU law, and the Charter should not even be applicable. While Antares had voted in favour of Directive 2019/88 in the Council, the government now argues in respect of Article 3 of Directive 2019/88 that it is invalid, as it unduly impedes the free choice of time zones, and discriminates against the Union's outermost regions.
21. Regretanian secession falling on 1 July 2019, the Antarian government decides on 4 June 2019 to introduce emergency legislation to mitigate the consequences of a hard Brexit. As for taxation, the Act contains a surprisingly short provision which reads that for the application of any and all provisions of the tax code Regretania will be treated as if it is still a Member State of the European Union until 31 December 2020, provided that Regretania is willing to ensure reciprocal treatment. Despite the urgency, this time the opinion of the *Stat Koncil* was nevertheless sought. The *Stat Koncil* indicates that it understands the desire to create legal certainty and minimise disruption in existing legal relations. However, it points out that it is not for Member States of the Union unilaterally to designate third countries – as Regretania will be upon leaving the Union – as EU Member States. In particular in the taxation context, this may moreover lead to interferences with the trade in goods and services with Regretania – a matter that should fall within the exclusive competences of the Union. In this respect, the *Stat Koncil* recalls that unilateral tax measures (not the result of a double taxation treaty) do not seem to be exempted by Article XIV GATS. Nevertheless, on 17 June 2019 Act 2019/27 'on measures in the case of a hard Brexit' is adopted. It entered into force on 1 July 2019, when Regretania effectively left the Union without an agreement.



22. The Most Magnificent Order must submit its annual tax returns by 1 August 2019. In advance of doing so, the Order seeks – as is provided for under Article 473 of the Unified Antarian Tax Code – a declaration from the Director of Direct Taxation, that it will still be allowed – as it could do pursuant to Articles 211 to 213 of the Unified Antarian Tax Code (UATC) in the seven tax years before the Regrexit - to make deductions for i) charitable donations made to the Cassowary Foundation of Regretania, ii) insurance premiums paid to a Regretanian insurance company, specialised in insuring ancient objects, such as the Cassowary relics, iii) the secured loan with a Regretarian credit institution for a building owned by the Magnificent Order in King’s Landing used for joint ceremonies with the Antarian and Regretanian Cassowary communities. The Order also seeks an exemption pursuant to Article 225 of the UATC for the interest gained from a savings deposits with a Regretanian bank. In each case said Articles, which have been part of the UATC since 1992, allow these tax benefits if pertaining to situations that are purely of a domestic nature or relate to another Member State of the European Union or the European Economic Area, in order to comply with requirements of equal treatment and free movement.
23. While Act 2019/27 seems to confirm that Regretania is still to be equated with an EU Member State, the Director of Direct Taxation rejects the request. He states that under the judgment of the Court of Justice in Case 103/88 *Constanzo* not only courts, but also executive authorities must set aside national legislation that violates EU law. Taking note of the opinion of the *Stat Koncil*, he concludes that granting the deductions would violate EU law. Moreover, as it is becoming clear that Regrexit will also have quite adverse effects on the Antarian economy, it is sound fiscal policy to reconsider the tax advantages provided by Act 2019/27.
24. The Order challenges the decision in the Aldebaran Tax Court by summons of 13 August 2019. The Order argues that the refusal of the tax deductions interferes unduly with freedom of religion and violates EU law. They argue that Act 2019/27 does not breach EU law, so that the Director is mistaken in setting that Act aside. Moreover, the Order argues that the tax deductions are, in any event, protected by the free movement of capital, which in its view extends also to third states.
25. In total the Order thus has three actions pending before various courts in Antares, each raising issues of freedom of religion, minority rights and issues of EU law. Pursuant to Article 7 of the Act on the Constitutional Court of Antares (ACCA), the *Kuria Konstijonal* has jurisdiction in direct actions against legislation. Pursuant to Article 8 ACCA it also hears constitutional complaints against judgments of the highest civil, tax, and administrative courts. However, since 2018 it also has the possibility pursuant to Article 8B ACCA to accede to a request by a party to any dispute pending before a lower court to refer that case directly to the Kuria if the case raises an important constitutional issue or has a link with a case already pending before it. Pursuant to this provision the Order requested that its three actions before the Kuria Konstijonal be joined. By order of 16 August 2019 the Kuria acceded to the



request and given the urgency of the matters, a hearing was scheduled for 26 August 2019, where the requests for relief were heard.

26. The Kuria Konstijonal concluded that it could not yet decide on the requests, as the cases raise important issues of EU law, which it cannot decide alone. Accordingly, it decided to stay the national proceedings and by order of 29 August 2019 referred the following preliminary questions to the Court of Justice of the European Union pursuant to Article 267 TFEU:

1) Do Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, Article 13 TFEU, the Charter of Fundamental Rights of the EU and/or the principle of equal treatment require, allow or prohibit a Member State:

- a. to ban all forms of slaughter without prior stunning, if this has the likely effect of making it impossible for followers of certain religions to slaughter animals in accordance with their religious prescriptions, and whereas other forms of killings of animals without prior stunning (such as hunting or folkloristic games such as “chickchop”) are not prohibited by that Member State?
- b. to require that animals are only slaughtered by persons who have been certified in accordance with the Articles 7 and 21 of Council Regulation (EC) No 1099/2009, even though that has the effect of preventing most Cassowarians from personally killing the animals they eat, as prescribed by their religion?

2) Is Directive 2019/88 of 14 March 2019 of the European Parliament and the Council discontinuing seasonal changes of time and repealing Directive 2000/84/EC in whole or in part invalid? In any case, is it in circumstances such as those in the main proceedings, contrary to Articles 10(1) and 35 of the Charter for a Member State to decide to introduce permanent (super-)summer time?

3) Does EU law in circumstances such as those in the main proceedings require, allow or prohibit, a Member State temporarily to equate a state that has recently exited the European Union pursuant to Article 50 TEU without an agreement with an EU Member State for the application of its tax laws?

27. The order for reference was received by the Registrar of the Court, who assigned it case number M-20/19. In accordance with article 23 of the Statute of the Court of Justice, the Registrar notified the Most Magnificent Order of the Cassowary (as applicant), and the Kingdom of Antares (as defendant). Observations are to be received by the Court by 25th November 2019, 23:59 CET.