



News and Views



Planting Rights and Feeding Freedom: Navigating the Right to a Vegan Diet in Hospitals and Prisons

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Abstract

The legal recognition of veganism highlights the evolving landscape of dietary choices and their status under human rights law. This paper examines the legal status of vegan diets under the European Convention on Human Rights (ECHR), focusing on public institutions such as prisons and hospitals. By analyzing the first relevant cases before the European Court of Human Rights, it explores the protection of vegan diets under Articles 9 (freedom of thought, conscience, and religion) and 14 (prohibition of discrimination) of the ECHR. The paper also considers whether access to a vegan diet relates to identity, autonomy, and health through Article 8 (respect for private life) and discusses the connection between veganism, environmental sustainability, and

the emerging right to a healthy environment. It offers a critical analysis of States' legal obligations regarding the provision of vegan diets in public settings.

Keywords

autonomy – ECHR – health – human rights – personal identity – philosophical belief – private life – vegan diet

1 Introduction

The rise of veganism has become evident globally over the last decade. For instance, since the establishment of Veganuary in 2014, a non-profit organization that aims to motivate people worldwide to adopt veganism for January and beyond, millions have pledged to embrace a vegan diet for one month. More than 1610 new vegan products and menu options launched in key campaign countries in 2023 alone.¹ Moreover, it is estimated that in 2023 2.6 million people in Europe were vegan, representing 3.2% of the European population.² Another notable factor is the increase in the plant-based food market and sales.³

In contrast to this relatively recent publicization and commercialization of vegan diets, the concept and its terminology go back in time. The term “vegan diet” was invented in 1944 by Donald Watson, who founded the Vegan Society in England.⁴ The definition of veganism appeared in 1949 by Leslie J Cross as “the principle of the emancipation of animals from exploitation by man”.⁵ In 1979, the definition of veganism was consolidated as a “philosophy and way of living which seeks to exclude — as far as is possible and practicable — all

1 Veganuary, *Who we are*, available online at <https://veganuary.com/en-us/about/about-us/> (accessed 24 July 2024).

2 The Vegan Society. Statistics, *Worldwide growth of veganism*, available online at <https://www.vegansociety.com/news/media/statistics/worldwide> (accessed 24 July 2024).

3 Vegconomist, *European Plant-Based Food Sales Grow by 22%, Reaching a Record \$5.7Bn* (3 April 2023), available online at <https://vegconomist.com/studies-and-numbers/european-plant-based-food-sales-grow/> (accessed 24 July 2024); GlobeNewswire, *Europe Plant-Based Food Market Worth \$16.7 Billion by 2029 — Exclusive Report by Meticulous Research* (30 March 2022), available online at www.globenewswire.com/news-release/2022/03/30/2412865/0/en/Europe-Plant-Based-Food-Market-Worth-16-7-Billion-by-2029-Exclusive-Report-by-Meticulous-Research.html (accessed 24 July 2024).

4 N. Gheihman, ‘Veganism as a Lifestyle Movement’, *Sociology Compass* 15 (2021) e12877.

5 The Vegan Society, *Definition of veganism*, available online at <https://www.vegansociety.com/go-vegan/definition-veganism> (accessed 24 July 2024).

forms of exploitation of, and cruelty to, animals for food, clothing or any other purpose; and by extension, promotes the development and use of animal-free alternatives for the benefit of humans, animals, and the environment”.⁶ In 1986, the Oxford English Dictionary included the definition of vegan as “[a] person who on principle abstains from all food of animal origin: a strict vegetarian”.⁷

Veganism is thus a dietary and lifestyle choice characterized by the abstinence from consuming or using animal products.⁸ Ethically, it stems from a philosophy that rejects the commodity status of animals, advocating for a plant-based diet and eliminating the exploitation and suffering of animals for any purpose.⁹ Nutritionally, it encompasses a diet devoid of all animal products, including meat, dairy, eggs, and other by-products.¹⁰ It is important to emphasize that a plant-based diet is different from veganism. A plant-based diet focuses solely on dietary choices, whereas veganism encompasses a broader philosophy that includes ethical considerations.¹¹ Veganism has also been associated with health benefits such as reducing risks of heart disease, type-2 diabetes mellitus, obesity, and non-alcoholic fatty liver disease.¹² These benefits are particularly significant in an era marked by the global rise of non-communicable diseases, which constitute a major burden on public health due to their substantial impact on morbidity and mortality.¹³ Finally, from a sustainability perspective, veganism represents reduced environmental impacts, considering land and water use and greenhouse gas emissions.¹⁴

6 *Ibid.*

7 The Vegan Society, *Ripened by human determination: 70 years of The Vegan Society*, available online at <https://www.vegansociety.com/about-us/history> (accessed 24 July 2024).

8 T. McPherson, ‘The Ethical Basis for Veganism’, in A. Barnhill, M. Budolfson and T. Doggett (eds), *The Oxford Handbook of Food Ethics* (Oxford: Oxford Academic, 2018) pp. 210–211.

9 *Ibid.*

10 E. Cherry, ‘Veganism as a Cultural Movement: A Relational Approach’, *Social Movement Studies* 5(2) (2006) 155–170.

11 B. Bakota, ‘European Court of human rights and the European Green Deal’, *EU and Comparative Law Issues and Challenges Series* 7 (2023) 194–218.

12 M. Glick-Bauer and M.-C. Yeh, ‘The health advantage of a vegan diet: exploring the gut microbiota connection’, *Nutrients* 6(11) (2014) 4822–4838; W.J. Craig, ‘Health Effects of Vegan Diets’, *The American Journal of Clinical Nutrition* 89(5) (2009) 1627S–1633S.

13 World Health Organization, Regional Office for Europe, *Plant-Based Diets and Their Impact on Health, Sustainability and the Environment: A Review of the Evidence* (WHO/EURO:2021-4007-43766-61591, 4 November 2021), available at <https://www.who.int/europe/publications/i/item/WHO-EURO-2021-4007-43766-61591>.

14 B.C. Chai, J.R.van der Voort, K. Grofelnik, H.G. Eliasdottir, I. Klöss, F.J.A. Perez-Cueto, ‘Which Diet Has the Least Environmental Impact on Our Planet? A Systematic Review of Vegan, Vegetarian and Omnivorous Diets’, *Sustainability* 11(15) (2019) 4110.

In recent years, the intersection of dietary choices and human rights has garnered increasing attention within the legal sphere.¹⁵ Veganism, once considered a mere dietary preference, has evolved into a lifestyle choice and belief system, warranting a closer examination under the lens of human rights law.¹⁶ For instance, in the landmark legal case of *Jordi Casamitjana* in the UK, ethical veganism was recognized as a philosophical belief deserving legal protection under the Equality Act 2010.¹⁷

The rise of veganism as a lifestyle choice and philosophical belief poses unique challenges for public institutions bound by human rights law. The evolving recognition of veganism as more than a dietary preference but a reflection of deeply held ethical beliefs or a critical determinant of autonomy and health, in relation with access to adequate food, necessitates reevaluating institutional responsibilities and obligations.

This paper seeks to unravel these complexities by examining the legal status of veganism under the European Convention on Human Rights (ECHR). The first two cases involving claims for access to a vegan diet in public institutions such as hospitals and prisons are currently pending in front of the European Court of Human Rights (ECtHR), involving Switzerland. These cases are the starting point for our normative analysis of the intricate legal questions involved.

The paper focuses on the right to a vegan diet and the legal obligations of public institutions such as prisons and hospitals, analyzed in the light of Articles 9 (freedom of thought, conscience, and religion) and 14 (prohibition of discrimination) ECHR. While the focus is predominantly on prisons and hospitals, the implications of this discussion extend to other public institutions as

- 15 A. Kubitova, 'Detention of Vegetarians, Vegans, and Persons Eating Halal or Kosher Food: Should We Recognise the Right to Follow Special Diets', *Common Law Review* 15 (2018) 63–65; J. Temperman, 'Freedom of Religion or Belief in Prison: A Critical Analysis of the European Court of Human Rights' Jurisprudence', *Oxford Journal of Law and Religion* 6(1) (2017) 48–92; M.C. Maffei, 'The Vegetarian Diet in Prison: A Human Right? The Case of *Jakóbski v. Poland*', in: N. Boschiero, T. Scovazzi, C. Pitea, C. Ragni (eds) *International Courts and the Development of International Law: Essays in Honour of Tullio Treves* (The Hague: T.M.C Asser Press, 2013) pp. 489–496.
- 16 P. McKeown and R.A. Dunn, 'Life-Style Choice' or a Philosophical Belief?: The Argument for Veganism and Vegetarianism to be a Protected Philosophical Belief and the Position in England and Wales', *Liverpool Law Rev* 42(2) (2021) 207–241.
- 17 United Kingdom Employment Tribunal. *UKET Casamitjana v The League Against Cruel Sports*. 3331129/2018, 21 January 2020. See M. Overton, 'Veganism as a Protected Belief under United Kingdom Human Rights and Equality Law', in: J. Rowley and C. Prisco (eds) *Law and Veganism — International Perspectives on the Human Right to Freedom of Conscience* (Lanham, MD: Lexington Books, 2021) pp. 223–262.

well. Furthermore, adding an original perspective, the paper analyzes whether access to a vegan diet can be considered under the right to respect for private life (Article 8 ECHR) in relation to the elements of identity, autonomy, and health, which are essential in an individual's adherence to veganism. By critically analyzing the legal framework and case law on the right to a vegan diet under the ECHR, this paper aims to contribute to the broader discourse on individual rights and freedoms in the context of dietary choices.

The paper unfolds as follows. It starts with the context of the prison and hospital settings, which create specific challenges and obligations for States to respect, protect, and realize human rights (Section 2). The paper then examines the first two cases reaching the ECtHR involving claims demanding a right to a vegan diet in public institutions and previous case law on similar issues (Section 3). The paper culminates in a critical analysis of the scope and content of a human rights approach to vegan diets involving normative considerations related to beliefs, identity, autonomy, health, and sustainability (Section 4). The paper concludes by insisting on the necessary balance between the operational environments governing public institutions such as prisons and hospitals and human rights considerations (Section 5).

2 Prisons and Hospitals: Similar but Distinct Settings

Public institutions such as prisons and hospitals face challenges when confronted with claims to access a vegan diet. Both settings care for vulnerable individuals who are dependent on the State for their access to adequate food, while meals are provided *en masse*. The differing operational environments and the specific needs of the individuals in these settings impact how the State respects, protects, and realizes access to a vegan diet.

In prisons, access to a vegan diet intersects with the State's broader obligation to ensure inmates' health and well-being.¹⁸ The European Prison Rules, referred to by the ECtHR in various cases, establishes that "prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work".¹⁹ This statement

18 R. Lines, 'The right to health of prisoners in international human rights law', *International Journal of Prisoner Health* 4(1) (2008) 3–53; J. Mariner and R. Schleifer, 'The right to health in prison', in J.M. Zuniga, S.P. Marks and L.O. Gostin (eds), *Advancing the Human Right to Health* (Oxford: Oxford Academic, 2013) pp. 291–304; H.R. Abbing, 'Prisoners right to healthcare, a European perspective', *European Journal of Health Law* 20(1) (2013) 5–19.

19 Council of Europe. Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules (11 January 2006) Principle 22.1.

underscores the importance of addressing diverse dietary needs within the prison system to ensure inmates' health and respect for their individual differences. Prisons must consider the health implications of dietary choices and offers and ensure inmates receive nutritionally adequate meals that meet their health and nutritional needs. In addition, inmates are under State custody, which means the State has a heightened responsibility to care for and uphold their rights in the closed prison context. However, prisons are unique in that they must balance security concerns with the rights of inmates. Carceral institutions typically operate on uniformity, which is often argued for such security purposes. As such, they must address security procedures in meal preparation and distribution, which can complicate the provision of specialized diets to accommodate individual dietary requests.

While also under institutional care, hospital patients retain more personal autonomy than individuals in prison settings. Patients' dietary choices must be respected as part of their care and treatment.²⁰ Hospitals, by design, are more accustomed to individualized care plans, including nutritional requirements that cater to the specific health needs of each patient in view of their recovery. The primary challenge in hospitals is to provide meals that comply with dietary principles and support patients' specific medical and nutritional needs. This often requires the expertise of dietitians and the ability to tailor meals to individual health requirements.

Providing a vegan diet in institutional settings does not simply mean omitting animal-based products; doing so without thoughtful substitution would result in nutritionally inadequate and monotonous meals. While it is possible to consume a vegan diet that matches the nutritional requirements of a healthy, balanced diet,²¹ products such as meat substitutes might be more expensive than regular products of animal origin.²² There can be financial challenges associated with sourcing vegan products that may be more expensive than conventional alternatives, particularly when considering whole food plant-based options over processed foods. As with all public settings,

20 NEF Initiative on Religion and Democracy in Europe. *Religion and Healthcare in the European Union: Policy Issues and Trends* (Brussels: Network of European Foundations, 2009) pp. 47–48.

21 Johns Hopkins Medicine, *How to Maintain a Balanced Diet as a Vegetarian or Vegan*, available online at <https://www.hopkinsmedicine.org/health/wellness-and-prevention/how-to-maintain-a-balanced-diet-as-a-vegetarian-or-vegan> (accessed 24 July 2024).

22 A.A. Coffey, R. Lillywhite and O. Oyeboode, 'Meat versus meat Alternatives: which is better for the environment and health? A nutritional and environmental analysis of animal-based products compared with their plant-based alternatives', *Journal of Human Nutrition and Dietetics* 36(6) (2023) 2147–2156.

budgetary considerations are omnipresent in prisons and hospitals. However, recent studies have demonstrated that contrary to the belief that a vegan diet is more expensive, it can be more affordable.²³

3 The Right to a Vegan Diet

3.1 *Switzerland as the Starting Point for the First ECtHR Case*

Switzerland provides the original case study for analyzing the right to access a vegan diet in prisons and hospitals under the ECHR. Two Swiss Federal Tribunal decisions are at the origin of the pending cases in Strasbourg.

In 2020, the Swiss Federal Tribunal dismissed the appeal of an individual who claimed he was denied vegan meals during his eleven months of preventive detention at Champ-Dollon in Geneva.²⁴ The individual was detained in Geneva's Champ-Dollon prison from 30 November 2018 to 24 October 2019. On 12 August 2019, he requested a balanced and entirely vegan diet. In a letter dated 15 August 2019, the Prison Management referred to its response of 22 May 2019, saying that several measures had been implemented so that the inmate could benefit from a diet closest to his beliefs. On 20 August 2019, the individual claimed that he had health problems resulting from the unsuitable nature of the diet offered.

On 21 August 2019, the inmate filed an appeal with the Administrative Chamber of the Court of Justice of the Canton of Geneva against the "decision to refuse to provide a vegan diet", pronounced on 15 August 2019. He requested compensation for moral harm of 3000 Swiss francs. By judgment of 3 December 2019, the Court of Justice of the Canton of Geneva declared the appeal inadmissible for lack of a challengeable decision within the meaning of Article 4 of the Geneva Law on Administrative Procedure of 12 September 1985 (LPA; RS/GE E 5 10) and lack of current interest.

The inmate then appealed to the Swiss Federal Tribunal and requested the Tribunal to overturn the judgment of 3 December 2019, to note the violations of the right to an effective remedy and his freedom of belief and opinion and to grant him compensation of 3000 Swiss francs for moral harm.²⁵ The Swiss

23 M. Springmann, M.A. Clark, M. Rayner, P. Scarborough and P. Webb, 'The Global and Regional Costs of Healthy and Sustainable Dietary Patterns: A Modelling Study', *The Lancet Planetary Health* 5(11) (2021) e797–e807; D.F. Pais, A.C. Marques and J.A. Fuinhas, 'The cost of healthier and more sustainable food choices: Do plant-based consumers spend more on food?', *Agricultural and Food Economics* 10(18) (2022).

24 Swiss Federal Court, Court of Public Law, 1B_608/2019, Judgment of 11 June 2020.

25 *Ibid.*

Federal Tribunal considered the appeal inadmissible. According to the decision, the letter of 15 August 2019, did not constitute a decision subject to appeal within the meaning of Article 4 para. 1 LPA.²⁶

In a second case, a man was hospitalized in the psychiatric unit of the Vaud University Hospital Center (CHUV) from 16 February to 27 April 2021. After being served non-vegan meals, the patient sent a letter to the Directorate of the Department of Psychiatry of the CHUV. On 24 February 2021, the Directorate responded that the hospital forwarded the request to the care unit manager, who was supposed to come back to find a solution. On 2 March 2021, the individual appealed to the Court of Administrative and Public Law of the Cantonal Court of the Canton of Vaud against this letter, which was described as a “decision”. The individual criticized the CHUV for refusing to recognize his right to obtain “balanced vegan meals”, invoking his freedom of conscience. The Cantonal Court declared the appeal inadmissible.²⁷

The individual appealed the judgment in front of the Swiss Federal Tribunal. He requested that the judgment be set aside and reformed in the sense that it be found that he — as a patient — was entitled to benefit from balanced vegan menus during the hospital stay. He claimed that his right to freedom of conscience had been violated and that he was subject to discrimination concerning his freedom of conscience.²⁸

The Swiss Federal Tribunal dismissed the appeal, considering it inadmissible. The Tribunal considered that the letter of 24 February 2021 had the scope of information and did not create any binding legal relationship. It noted that the Cantonal Court could, without arbitrariness, hold that the writing of 24 February 2021, did not constitute a decision subject to appeal within the meaning of Article 3 para. 1 of the Vaud Law on Administrative Procedure of 28 October 2008 (LPA-VD; RS/VD 173.36).²⁹

On 17 October 2022, the two cases were brought to the ECtHR.³⁰ The applications concern the refusal of the authorities to grant an entirely vegan diet to the applicants, who were respectively in prison (application no. 55299/20) and in the psychiatric ward of a cantonal hospital (application no. 31515/22). The Swiss Federal Tribunal upheld the cantonal courts’ decisions to dismiss the applications for lack of a decision subject to appeal under the respective Cantonal Laws on Administrative Procedure by judgments of 11 June 2020 (application no. 55299/20) and 9 February 2022 (application no. 31515/22).

²⁶ *Ibid.*, points 3.1 and 3.2.

²⁷ Swiss Federal Court, Court of Public Law, 2C_495/2021, Judgment of 9 February 2022.

²⁸ *Ibid.*

²⁹ *Ibid.*, point 3.3.

³⁰ ECtHR 27 September 2022, 55299/20 (*G.K. v. Switzerland*) and 31515/22 (*A.S. v. Switzerland*).

Before the ECtHR, the applicants claimed violations of Articles 3, 9, and 13 (application no. 55299/20) and Articles 6, 9, 13, and 14 of the Convention (application no. 31515/22). Furthermore, the ECtHR included the question of whether there was a violation of Article 8 ECHR. The two cases are currently pending at the ECtHR.³¹

3.2 *Previous Case Law on Similar Issues*

Even though these Swiss cases are the first ones to apprehend access to a vegan diet under the ECHR, previous case law on similar issues is noteworthy.

The case of *Jakóbski v. Poland* from 2010 was brought to the ECtHR by Mr Jakóbski after prison authorities refused to provide him with a meat-free diet in accordance with his religious precepts.³² The applicant alleged that the prison authorities had infringed on his right to manifest his religion through observance of the rules of the Buddhist faith, as protected by Article 9 ECHR.

The Polish government contested that argument by asserting that Buddhism generally did not explicitly forbid meat consumption. Relying on Wikipedia, the government argued that vegetarianism was encouraged but not mandatory, even within the strict Mahayana school, to which Mr Jakóbski claimed affiliation. Therefore, the government submitted that in the specific circumstances of the present case, vegetarianism could not be considered an essential aspect of the practice of the applicant's religion.³³

Additionally, the government emphasized that the requirements laid down in the second paragraph of Article 9 ECHR were met. Citing Article 109 para. 1 of the Code of Execution of Criminal Sentences, the government argued that providing a special diet based on a prisoner's religious beliefs is not mandatory. Nevertheless, it acknowledged that custodial institutions should accommodate such dietary requests when feasible. Finally, the government argued that providing specialized dietary requirements for each detainee according to their beliefs would pose excessive technical and financial burdens on State authorities.³⁴

The ECtHR concluded that a violation of Article 9 ECHR had occurred, despite the State's margin of appreciation, due to the authorities' failure to appropriately balance the prison authorities' interests with the applicant's right to practice his religious beliefs through observance of the rules of the Buddhist

³¹ Last consultation 19 March 2025.

³² ECtHR 7 December 2010, 18429/06 (*Jakóbski v. Poland*).

³³ *Ibid.*, para. 39.

³⁴ *Ibid.*, para. 41.

religion.³⁵ The Court remained unconvinced that accommodating the applicant with a vegetarian diet would have caused any disturbances in prison management or compromised the quality of meals served to other inmates. Additionally, the Court highlighted that Recommendation (Rec 92/2006)2 of the European Prison Rules advises prisoners to be provided with food that considers their religion.³⁶

The ruling in *Jakóbski v. Poland* represents a landmark decision, mainly because it concerns inmates who are temporarily reliant on State provision for sustenance, thus unable to organize their diet freely. *Jakóbski v. Poland* confirms States' obligations to respect, protect, and realize dietary preferences, involving negative but also — and most importantly — positive State obligations towards individuals in prison settings.

The scope of this decision is limited, as access to a vegetarian diet has only been recognized in the spectrum of religious convictions. While the ECtHR resolved the specific case of vegetarian meals in a prison setting for religious reasons, it failed to establish objective criteria for determining which dietary choices merit protection under Article 9 ECHR, leaving open the question of a hierarchy of beliefs.³⁷ Furthermore, it is important to underline that the decision does not allude to Article 8 ECHR (respect for private life).

In the case *Vartic v. Romania* (no. 2) of 2013, the applicant also alleged a lack of provision of vegetarian food as required by his Buddhist convictions or with adequate medical treatment when he was in detention in the Rahova Prison.³⁸ The ECtHR, drawing from the precedent set in *Jakóbski v. Poland*, reiterated that respecting dietary restrictions can be regarded as a religiously motivated act.³⁹ In particular, Buddhism can motivate or inspire an individual's decision to adhere to a vegetarian diet.⁴⁰ Here again, Article 8 ECHR is not included in the discussion.

The case *Peter Kobida v. Slovakia* of 2011 presents a different setting. The applicant, Mr Peter Kobida, who was “handicapped” and “wheelchair-bound”, resided in a social services establishment at his request and for payment. Initially, based on an arrangement with the care home director, Mr Kobida, a vegetarian, was allowed to pay for a person to prepare vegetarian food for him instead of consuming the non-vegetarian meals provided to all residents. This

35 *Ibid.*, paras 54–55.

36 *Ibid.*, para. 53.

37 Maffei, *supra* note 15.

38 ECtHR 17 December 2013, 14150/08 (*Vartic v. Romania* no. 2).

39 ECtHR 27 June 2000, 27417/95 (*Cha'are Shalom Ve Tsedek v. France* [GC]), para. 73.

40 *Supra* note 38, para. 35.

arrangement was later invalidated, and Mr Kobida was compelled to pay for the non-vegetarian meals fully.

Mr Kobida appealed to the ECtHR, arguing that he had been discriminated against in violation of Article 14 ECHR. He contended that he was unjustifiably obliged to pay for meals he did not wish to receive.⁴¹ These non-vegetarian meals comprised food unsuitable for his health, habits, and beliefs.

The Court analyzed the vegetarian diet within the framework of Article 8 ECHR (respect for private life).⁴² Article 9 ECHR was not discussed. The government maintained that providing vegetarian meals was not medically necessary for Mr Kobida and characterized his dietary preference as a lifestyle choice.⁴³ Consequently, the preference for vegetarian meals was not deemed a matter of diet but rather a lifestyle question.

Ultimately, the ECtHR unanimously declared the application inadmissible. The Court's interpretation was that "the right to vegetarian food" is not guaranteed by Article 8 or any other provision of the Convention or its Protocols.⁴⁴ According to the Court, the primary issue was "the absence of vegetarian food in the care home", which did not violate Mr Kobida's rights under the ECHR.

It follows from this overview of existing case law from the ECtHR that a human rights approach to a vegetarian or vegan diet is at an embryonic stage. However, the ECHR, as a living instrument, must be interpreted in light of present-day conditions and societal developments. This evolutionary interpretation can accommodate new and emerging issues, such as dietary choices based on ethical, health, and environmental considerations. As societal awareness and acceptance of veganism increase, so does the imperative for the Court to consider these evolving standards in its jurisprudence. The following section presents a normative analysis of how such an approach could be framed and developed under the ECHR, considering the dynamic nature of human rights law.

4 Beyond Beliefs: A Human Rights Approach to Vegan Diets

The right to a vegan diet intersects with several human rights enshrined in the ECHR. As highlighted in the pending Swiss cases, articles 9, 14, and 8 ECHR, in particular, are considered in this context. This section examines the normative

⁴¹ ECtHR 15 November 2011, 39507/06 (*Peter Kobida v. Slovakia*), para. 20.

⁴² *Ibid.*, para. 35.

⁴³ *Ibid.*, para. 38.

⁴⁴ *Ibid.*, para. 43.

foundations and legal reasoning underpinning the relevance of these ECHR provisions to the right to a vegan diet, and considers the corresponding obligations they impose on public institutions.

4.1 *Article 9 ECHR*

The framing of a vegan diet as a human rights issue under the ECHR is predicated on the recognition of veganism as a philosophical belief that, for many individuals, holds comparable significance to religious beliefs. Article 9 ECHR protects the right to freedom of thought, conscience, and religion, including the freedom to manifest one's religion or beliefs. This article has been interpreted to encompass a wide range of beliefs, including those not linked to a traditional religion.⁴⁵

A vegan diet, for many, is an expression of their strong ethical convictions and, as such, is part of their belief system, which falls within the scope of protections offered by Article 9 ECHR. As Kubitova argues, in the case of veganism, when founded on secular ethical principles, it is safeguarded as a protected belief under Article 9 ECHR if it attains a degree of cogency, seriousness, coherence, and significance.⁴⁶ Already in 1993, The European Commission of Human Rights ruled that veganism is a protected belief under Article 9 ECHR in the case *W v The United Kingdom*.⁴⁷ Public institutions, therefore, are obligated to respect and facilitate the manifestation of this belief by providing appropriate dietary options.

Veganism as a stand-alone philosophical belief is comparable to dietary requirements as part of religious beliefs under the scope of Article 9 ECHR. The violation of Article 9 ECHR in the scenario of vegetarian diets as part of religious beliefs has already been recognized by the ECHR in the cases discussed above.⁴⁸ A comparison can also be made here with hospitals' and prisons' provision of access to specific diets based on religious obligations (such as eating halal or kosher meat for Muslims and Jews) in a domestic law context.

The case of *Erlich and Kastro v. Romania* of 2020 concerns the request of Jewish prisoners to have kosher meals accepted based on a domestic court's

45 For instance, pacifism: Commission report of 12 October 1978 (*Arrowsmith v. the United Kingdom*), para. 69; principled opposition to military service: ECtHR7 July 2011, 23459/03 (*Bayatyan v. Armenia*), *inter alia*.

46 A. Kubitova, 'Detention of Vegetarians, Vegans, and Persons Eating Halal or Kosher Food: Should We Recognise the Right to Follow Special Diets', *Common Law Review* 15 (2018) 63–65.

47 EComHR 10 February 1993, 18187/91 (*W v the United Kingdom*).

48 See Section 3.2.

judgment.⁴⁹ While confirming the principles established in the case law concerning access to vegetarian meals based on Buddhist beliefs, the ECtHR highlighted that kosher meals had to contain special ingredients obtained by following precise rules and had to be prepared separately, in separate containers and with separate utensils, in a particular manner and under the supervision of a Jewish representative.⁵⁰ Considering these special and strict conditions for meal preparation, the Court found that prison authorities had reasonably accommodated the prisoners' religious freedom.⁵¹ The Court thus found no violation of Article 9 ECHR.

In the case of *Saran v. Romania* of 2020 concerning the provision to a prisoner of meals compatible with the precepts of Islam, the ECtHR held a violation of Article 9 ECHR.⁵² The ECtHR found in particular that in refusing to provide the applicant with meals compatible with his religion of Islam during his time in prison, the national authorities had not struck a fair balance between the interests of the prison, those of the other prisoners and the individual interests of the prisoner concerned.

Respecting, protecting, and realizing dietary requirements as part of religious and philosophical beliefs under the scope of Article 9 ECHR entails positive obligations for States particularly in institutional contexts where individuals — such as inmates or patients — are not in a position to provide for themselves. In these settings, States must actively accommodate belief-based diets to ensure meaningful access to rights.⁵³ The proportionality principle ensures that the measures taken to accommodate dietary requests are appropriate and not excessive in relation to the legitimate aim pursued, thereby striking a fair balance between the rights of individuals and the operational capacities of public institutions.

This principle gains particular relevance when comparing existing accommodations. Prisons and hospitals already provide access to kosher and halal food in line with ECtHR jurisprudence, demonstrating the logistical and financial feasibility of accommodating belief-based diets. Compared to these religious diets, which may involve specific butchery techniques and stringent preparation standards, vegan diets are, in principle, simpler to implement — requiring only the exclusion and adequate substitution of animal-based ingredients. Accordingly, providing vegan meals entails a relatively minimal

49 ECtHR 9 September 2020, 23735/16 and 23740/16 (*Erllich and Kastro v. Romania*).

50 *Ibid.*, para. 37.

51 *Ibid.*, para. 43.

52 ECtHR 10 November 2020, 65993/16 (*Saran v. Romania*).

53 ECtHR 10 November 2020, 65993/16 (*Saran v. Romania*), para 43.

burden.⁵⁴ In line with the proportionality principle, this limited burden is outweighed by the significant importance of upholding individuals' philosophical beliefs and rights.

4.2 *Article 14 ECHR*

Claims based on a violation of Article 9 ECHR might be coupled with a violation of Article 14 ECHR, which prohibits discrimination on various grounds, including association with a particular group or holding specific beliefs. Article 14, combined with Article 9, creates an obligation for States to ensure that vegans are not discriminated against in the provision of food in public institutions. The provision of special diets must be non-discriminatory.⁵⁵ This necessitates a careful and respectful approach to meal planning and provision to prevent direct or indirect discrimination, even more so in the vulnerable context of prisons and hospitals, where inmates and patients entirely depend on the State for their access to meals.

A violation of Article 14 ECHR, in connection with Article 9, might occur if hospitals and prisons in a domestic law context provide access to specific diets based on religious obligations (such as eating halal or kosher meat for Muslims and Jews) but refuse to give access to a vegan diet to individuals based on their philosophical belief system.

4.3 *Article 8 ECHR*

Beyond the references to Articles 9 and 14 ECHR, the pending cases against Switzerland before the ECtHR represent the inaugural instance wherein the Court will deliberate upon the right to a vegan diet in the context of a potential infringement of Article 8 ECHR. Article 8 protects the right to respect for private life. In what follows, the paper analyzes the normative dimensions of this right in relation to veganism, focusing on identity, personal autonomy, access to adequate food as a health-related issue, and the broader connection between plant-based diets, environmental protection, and sustainability.

Dietary choices are closely connected to an individual's identity and, as such, are part of an individual's private life. Veganism, in particular, is an essential part of a person's identity. While the ECtHR refused to consider vegetarianism under Article 8 ECHR, declaring it a lifestyle choice, veganism is more closely and strongly connected to identity, as it implies renouncing the consumption

54 J. Temperman, 'Freedom of Religion or Belief in Prison: A Critical Analysis of the European Court of Human Rights' Jurisprudence', *Oxford Journal of Law and Religion* 6(1) (2017) 48–92.

55 *Ibid.*

of all foodstuffs of animal origin.⁵⁶ The failure to provide a vegan diet in public institutions could thus be perceived as interfering with an essential element of an individual's identity and thus violating Article 8 ECHR.

Beyond identity, autonomy-related arguments can also be brought forward under Article 8 ECHR. Under the scope of Article 8 ECHR, the ECtHR has recognized "that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees".⁵⁷ Autonomy pertains to the principle that individuals should possess the authority to make decisions regarding their personal affairs, enabling them to live following their preferences.⁵⁸ In addition, the notion includes the right to establish details of someone's identity as an individual human being, protecting the personal sphere of each individual, and respecting human dignity.⁵⁹ Veganism might thus be considered an element of individual autonomy under Article 8 ECHR. Autonomy concerning access to food is restricted in the hospital and even more so in the prison setting. Incarcerated individuals and hospital patients are in a vulnerable position,⁶⁰ as they entirely depend on food provision by the State.⁶¹

Adding an additional layer of normative arguments, access to vegan food may also be considered a matter of health. The ECHR does not contain a specific provision on the right to health. However, the ECtHR has addressed numerous health-related concerns through the right to respect for private life under Article 8 ECHR.⁶² This provision has become central in the Court's jurisprudence concerning health, as it encompasses the protection of an individual's physical, moral, and psychological integrity, as well as the right to make

56 J. Simons, C. Vierboom, J. Klink-Lehmann, I. Härten and M. Hartmann, 'Vegetarianism/Veganism: A Way to Feel Good', *Sustainability* 13(7) (2021) 3618.

57 ECtHR 29 April 2002, 2346/02 (*Pretty v. the United Kingdom*), para. 61.

58 B. Toebes, *Health and Human Rights in Europe* (Cambridge: Intersentia, 2012) p. 120.

59 ECtHR 11 July 2002, 28957/95 (*Christine Goodwin v. The United Kingdom*), para. 90.

60 ECtHR 1 April 2014, 10662/06 (*Enache v. Romania*), para. 49; ECtHR 13 September 2016, 58271/10 (*A.Ş. v. Turkey*) para. 66; ECtHR 4 May 2017, 47095/09 (*Mustafayev v Azerbaijan*), para. 53.

61 The case of *Ebedin Abi v. Turkey* of 2018 is noteworthy here, although only indirectly relevant, as related to Article 3 ECHR (prohibition of torture). This case concerns the right to access a special diet prescribed by doctors due to a prisoner's health issues. Considering the domestic authorities' failure to take the requisite action to protect the applicant's health and well-being, the Court found a violation of Article 3 ECHR. ECtHR 13 March 2018, 10839/09 (*Ebedin Abi v. Turkey*).

62 European Court of Human Rights, Factsheet — Health, September 2024.

personal choices and exercise personal autonomy.⁶³ Moreover, the Court has recognized that Article 8 may give rise to positive obligations, requiring States to adopt measures that safeguard an individual's health in order to fully ensure respect for private life.⁶⁴

The right to health is a human right classified as a socio-economic right. On an international level, it is grounded in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶⁵ The right to health is intrinsically linked to the right to adequate food, guaranteed by Article 11 ICESCR. A vegan diet can also be included under the notion of the right to nutritionally adequate and safe food. Regarding State obligations, "Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food, which is sufficient, nutritionally adequate, and safe, to ensure their freedom from hunger".⁶⁶ This normative framework provided by international law has been recognized to enrich the Court's jurisprudence, in particular related to assessing whether there is an emerging European trend or consensus on a specific topic.⁶⁷ Furthermore, the European Social Charter recognizes the "right to protection of health".⁶⁸

Detainees and patients must be provided with food that is not only sufficient in quantity but also of adequate nutritional quality to meet their specific dietary needs.⁶⁹ From a health and human rights perspective, individuals adhering to a vegan diet should not be subjected to adverse consequences,

63 Council of Europe, 'Health-related Issues in the Case-law of the European Court of Human Rights' (Brussels: Council of Europe Publishing, 2015).

64 Council of Europe, 'Health-related Issues in the Case-law of the European Court of Human Rights' (Brussels: Council of Europe Publishing, 2015).

65 United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, December 1966, United Nations Treaty Series, Vol. 993.

66 See CESCR, General Comment No. 12: The Right to Adequate Food (Article 11 of the Covenant), 12 May 1999. Para. 14. We acknowledge that these elements regarding the right to adequate food have not been developed so far by the ECtHR under the ECHR.

67 Council of Europe, 'Health-related Issues in the Case-law of the European Court of Human Rights' (Council of Europe Publishing, 2015).

68 Council of Europe, European Social Charter (Revised), 3 May 1996, ETS No. 163. ARTICLE 11. THE RIGHT TO PROTECTION OF HEALTH: With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia: 1. to remove as far as possible the causes of ill-health; 2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; 3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

69 O. Peter, 'Alimentation et droits des personnes détenues : analyse dans la perspective du droit européen', *Revue Trimestrielle des Droits de l'Homme* 93 (2013) 97–122.

neglect, or inferior treatment due to their dietary convictions. Denial of nutritionally adequate vegan alternatives may lead to dietary deficiencies and pose significant risks to physical health. For example, if a vegan prisoner were offered only minimal staples such as bread and rice — resulting in a diet deficient in essential nutrients such as protein, iron, vitamin B12, and omega-3 fatty acids — this would constitute a failure to meet the basic standards of adequate nutrition and could engage State responsibility under health-related obligations.

Based on the health-related aspects of the right to respect for private life under Article 8 ECHR, providing a vegan diet in institutional settings does not simply mean omitting animal-based products; doing so without thoughtful substitution would result in nutritionally inadequate and monotonous meals. Ensuring access to a vegan diet requires deliberate planning and the provision of appropriate plant-based alternatives, reflecting the State's positive obligation to offer nutritionally sufficient and culturally acceptable food options rather than mere exclusion.

A relevant normative analogy for the health-related aspects of access to adequate food can be drawn from Article 3 ECHR, which prohibits inhuman or degrading treatment — a provision frequently invoked in the context of detention. The ECtHR has consistently emphasized that States bear heightened obligations toward individuals in custody, particularly in relation to their basic material conditions. The case of *Ebedin Abi v. Turkey*, for example, illustrates how inadequate dietary provisions in detention can have an impact on health and violate human rights. The ECtHR found a violation of Article 3 ECHR where the applicant, who was not provided with meals compatible with his medically prescribed diet, suffered health deterioration.⁷⁰ Similarly, in other cases, the Court has considered that when a prisoner was not given a “normal lunch but limited to a slice of bread, an onion and a piece of grilled fish or a meatball”, this meal was “clearly insufficient to meet the body's functional needs”.⁷¹ Although these judgments fall under Article 3 rather than Article 8, they reinforce a broader normative principle: that the State must ensure access to adequate nutrition as a fundamental component of humane treatment and as a prerequisite for the effective enjoyment of health-related rights. These cases also highlight the State's negative obligation to refrain from causing harm, especially within the context of institutional dependency and the special protective relationship that exists between the State and individuals deprived of their liberty or placed in its care.

70 ECtHR 13 March 2018, 10839/09 (*Ebedin Abi v. Turkey*).

71 ECtHR 15 June 2006, 64846/01 (*Moisejevs v. Latvia*).

The ECtHR has long recognized that the Convention is a “living instrument” that must be interpreted according to present-day conditions.⁷² This evolving interpretation can facilitate recognizing veganism under the elements of personal identity and autonomy as well as the health-related aspects of access to adequate food through Article 8 ECHR. As veganism gains increasing adherence and significance in contemporary society, acknowledging it within the normative framework of Article 8 ECHR is timely and relevant. Such recognition would underscore the ECtHR’s commitment to adapt its interpretations to reflect societal shifts.

An illustration that the normative framework of the ECHR is constantly evolving can be observed in environmental litigation. The ECtHR has interpreted Article 8 ECHR as a legal foundation concerning environmental pollution and degradation and its effects on individuals’ health and well-being.⁷³ Cases like *López Ostra v. Spain*, where environmental harm compromised the applicant’s ability to enjoy her home, private, and family life, highlight the link between health and environmental protection under Article 8 ECHR.⁷⁴ In recent climate litigation, the ECtHR has dealt with the health consequences of climate change and States’ obligations regarding a healthy environment under Article 8 ECHR.⁷⁵ The Court’s recognition of positive obligations upon States to address environmental hazards underscores the broader connection between health, sustainability, and individual well-being.

In the context of veganism, this interplay becomes even more pronounced, as dietary choices are often motivated not only by ethical and health considerations. Veganism encompasses environmental concerns, aiming to enhance sustainability by reducing the environmental impacts of animal-based food production. Access to vegan food might thus be linked not only to identity, autonomy, and health but also to States’ obligations in the context of environmental sustainability. Ensuring access to a vegan diet in public institutions can be seen as part of a comprehensive and reinforcing approach to

72 ECtHR 25 April 1978, 5856/72 (*Tyrer v. The United Kingdom*), para. 31.

73 See for example ECtHR 7 April 2009, 6586/03 (*Brândușe v Romania*); ECtHR 10 January 2012, 30765/08, (*Di Sarno and Others v Italy*); ECtHR 11 October 2022, 6142/18, 51015/18, et al, (*Kotov and Others v Russia*); ECtHR 20 March 200815339/02, 11673/02, 15343/02, 20058/02, 21166/02 (*Budayeva and Others v Russia*). In detail: ECtHR, ‘Fact Sheet — Environment and the European Convention on Human Rights’ available online at: https://www.echr.coe.int/documents/d/echr/fs_environment_eng.

74 ECtHR 09 December 1994, 16798/90 (*López Ostra v. Spain*).

75 ECtHR 9 April 2024, 53600/20 (*Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [GC]); ECtHR 9 April 2024, 7189/21 (*Carême v France* (dec.)); ECtHR 9 April 2024, 39371/20 (*Duarte Agostinho and Others v Portugal and Others* (dec.)).

respecting personal identity and autonomy, safeguarding health, and promoting sustainability.

4.4 *Looming Obstacles*

Despite the rise of veganism and its established connections to identity, autonomy, health, and sustainability, uncertainty remains regarding the immediate outcome of the pending Swiss cases, which will be pivotal in shaping the future of dietary rights under human rights law in Europe.

In its case law on addressing emerging issues under the scope of Article 8 ECHR, the ECtHR relies heavily on the concept of “European consensus”.⁷⁶ The existence or absence of such a consensus significantly impacts the Court’s normative appreciation and the extent to which it is willing to interpret and expand the rights under the Convention.

The concept of European consensus refers to a common standard or practice among the Member States of the Council of Europe.⁷⁷ If most States recognize and accommodate vegan diets in public institutions, this could be seen as an emerging consensus, guiding the Court towards a more progressive interpretation of the ECHR. However, it is currently unclear whether access to vegan diets in public institutions has reached this level of recognition in domestic legal frameworks across Europe.⁷⁸

If such a European consensus is absent, the ECtHR is likely to afford States a wide margin of appreciation.⁷⁹ This doctrine allows States a degree of discretion in how they fulfil their obligations under the Convention, particularly when balancing competing rights and interests within their public institutions. The margin of appreciation recognizes the diversity of cultural, social, and legal conditions among Member States and permits domestic authorities to make decisions within certain bounds.

However, the specific contexts of hospitals and prisons — where patients and prisoners are entirely dependent on State-provided food — must be a critical factor in the Court’s assessment of whether a fair balance has been struck between individual rights and institutional constraints. These individuals’ vulnerability and complete dependency elevate the State’s responsibility to

76 K. Dzehtsiarou, ‘European Consensus and the Evolutive Interpretation of the European Convention on Human Rights’, 12(10) *German Law Journal* (2011) 1730–1745.

77 K. Dzehtsiarou, ‘The Concept of European Consensus’, in *European Consensus and the Legitimacy of the European Court of Human Rights* (Cambridge: Cambridge University Press, 2015).

78 J. Rowley and C. Prisco (eds) *Law and Veganism — International Perspectives on the Human Right to Freedom of Conscience* (Lanham, MD: Lexington Books, 2021).

79 ECtHR 10 April 2007, 6339/05 (*Evans v. the United Kingdom*) para. 77.

ensure their dietary needs are met in a manner that respects their beliefs and health requirements.

Moreover, the proportionality principle, integral to the ECtHR's analysis, requires restrictions on individual rights to be necessary and proportionate to the legitimate aim pursued.⁸⁰ In this case, the provision of vegan diets in public institutions, given its logistical feasibility and the minimal burden it imposes, could be deemed a proportionate measure to uphold the rights of individuals adhering to veganism.

Finally, the question arises about States' implementation of their human rights obligations regarding access to a vegan diet, considering the specific characteristics of prison and hospital settings. Providing access to a vegan diet implies that public institutions must take positive measures to ensure that vegan diets are available, including designing and implementing menus catering to vegan individuals, training staff on the importance of such provisions, and ensuring that these options are genuinely accessible and not unduly burdensome to obtain. Resource allocation and cost considerations in the already strained prison and hospital settings in many States will constitute a significant challenge in this context.

5 Conclusion

Veganism has become firmly anchored in our societies, evolving beyond a mere dietary choice to encompass significant ethical, health, and environmental considerations. As a belief, it is deeply intertwined with personal conscience and ethical principles, aligning closely with the protections offered under the ECHR. Additionally, as a health and adequate food issue, veganism highlights the need for institutions to adapt to diverse dietary requirements to ensure individual well-being. This paper has demonstrated the importance of recognizing veganism within the legal framework, advocating for protecting and accommodating vegan diets in public institutions under human rights law.

Legal precedents emphasizing health and sustainability further support the global normative momentum for veganism. For instance, in 2017, Portugal approved a law mandating that all public canteens, including schools, universities, prisons, and hospitals, should have a vegan menu option.⁸¹ Similarly, in

80 Y. Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR* (Antwerp: Intersentia, 2002).

81 Portugal, Assembleia da República, Law nº 11/2017, Republic Diary No. 75/2017, Series 1 of 2017-04-17, 17 April 2017.

2018, California passed legislation requiring public hospitals, healthcare facilities, and prisons to offer at least one healthy vegan option at every meal.⁸² The medical community strongly endorsed this move due to the health benefits of a vegan diet.⁸³ Moreover, Sen. Nancy Skinner, the bill's author, highlighted that access to nutritious food is a human right.⁸⁴

Providing vegan diets in prisons and hospitals requires a nuanced understanding of the specific operational environments and legal frameworks governing these institutions. Prisons must navigate the complex interplay between security, uniformity, and inmate rights, while hospitals must balance patient autonomy with medical necessity. Effective implementation of access to vegan diets in these settings demands careful management to ensure that institutions meet their legal obligations while addressing the logistics and inherent challenges of each environment.

The pending Swiss cases before the ECtHR will reveal the Court's stance on a human rights approach to vegan diets in public institutions. Legal recognition of veganism as a protected belief (Article 9) or an element of private life (Article 8) under the ECHR would compel institutions to respect and accommodate access to vegan diets, illustrating the State's positive obligations. As legal systems evolve, the categorization and treatment of veganism as a protected belief or an element of private life will likely become more pronounced. Public institutions will be required to adapt, ensuring that the rights of individuals adhering to veganism are upheld.

Conflicts of Interest

We have no financial, personal, academic, or other conflicts of interest in the subject matter discussed in this paper.

82 California Legislative Information. SB-1138 Food Options: Plant-Based Meals, Senate Bill No. 1138, Chapter 512. 18 September 2018.

83 Livekindly, *California Law Requires Hospitals and Prisons to Offer Vegan Meals*, available online at <https://www.livekindly.com/california-law-hospitals-prisons-vegan-meals/#:~:text=Home%20%26%20Living%3ELifestyle-,California%20Law%20Requires%20Hospitals%20and%20Prisons%20to%20Offer%20Vegan%20Meals,to%20patients%20at%20every%20meal> (accessed 25 July 2024).

84 M. Gottfried, *New California Law Guarantees Plant-Based Meal Options in Public Hospitals and Prisons, Forks Over Knives* (25 September 2018), available online at <https://www.forksoverknives.com/wellness/new-california-law-guarantees-plant-based-meal-options-in-public-hospitals-and-prisons/> (accessed 25 July 2024).