

# The Right to Vegan Food in Prison in Europe

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## Abstract

The European Court of Human Rights has decided in favour of prisoners who request diets that allow them to express their 'compassion for all living beings'. In doing so, it has stated that 'diet is a direct expression of beliefs in practice'. These cases were decided under the Article 9 right to freedom of conscience in an era of efficiency protocols that give power to judges to throw out 'trivial' cases. Also in these cases, the Court has insisted that States observe the non-binding European Prison Rules. In this context, I examine the right to vegan food in prison. I conclude that on the jurisprudence developed, vegan applicants who bring a claim under Article 9 because they have been denied vegan food should be successful.

## 1. Introduction

The theme of this presentation, the right to vegan food in prison, relates to the objective of the conference which is to bring together animal rights activists from Eastern Europe. The European Court of Human Rights has heard cases from prisoners in Eastern European countries that allege violations of the right to live according to ethical convictions. The jurisprudence developed will undoubtedly apply to any future applications made by ethical vegans to the court,<sup>1</sup> therefore, understanding the legal framework for the protection of the right to live according to ethical principles while incarcerated will be beneficial to animal rights activists anywhere in Europe.

I will firstly explain the background to the right to freedom and manifestation of conscience. I will then explain how the European Prison Rules refer to the right to freedom of conscience and what they say about the provision of food, before pointing out the trend at the Court and applying this trend to the claims of vegans.

## 2. The right to live according to conscience

The right to live according to freedom of conscience and to manifest ethical convictions is a primary value in human rights. It is grounded by Article 18 of the Universal Declaration of Human Rights

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<sup>1</sup> I use this term to distinguish veganism as an ethical orientation from those who adopt only the dietary aspect of veganism for health benefits or enhanced sports performance. This distinction is important for the application of current law.

(UDHR) which explains that '[e]veryone 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 teaching, practice, worship and observance.'<sup>2</sup> This universally acknowledged value is given international legal effect through the International Covenant on Civil and Political Rights at Article 18, which also expresses the very limited grounds for lawful interference<sup>3</sup>:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

This value is entrenched in the European System of Human Rights through its inclusion as Article 9 of the European Convention on Human Rights (the ECHR; the Convention).<sup>4</sup> It is expressed as the right to 'Freedom of thought, conscience and religion' and is written in two parts, indicating the right itself and the strict limitations on state interference:<sup>5</sup>

#### **Article 9 – Freedom of thought, conscience and religion**

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.

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<sup>2</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A) (III) (UDHR).

<sup>3</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>4</sup> Article 9 originates directly from the UDHR but the Convention itself will be interpreted in line with international developments in matters of the same. Arts 31-3 of the Vienna Convention on the Law of Treaties (adopted 23 May 1969) 1155 UNTS 331. See *Golder v UK* (1975) Series A no 18 at 14.

<sup>5</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Article 9.

### 3. The grounds for protection and the legal status of veganism

The Convention is overseen by the European Court of Human Rights (the Court). Applicants who allege violations should seek redress in their own countries and, if unsuccessful, can then appeal to the Court to have their case heard.

The Court will first establish that the beliefs or convictions in question fall within the scope of the protection of Article 9(1) of the Convention. Complaints about interference with the practical manifestation of traditional and well-known religions will require little or no evaluation of whether or not they fall within the scope of Article 9(1). Christians, Muslims, Sikhs etc. need to manifest practically, their well-known religious beliefs. In these kinds of cases, the Court will assess whether the interference complained about by the applicant was lawful on the grounds specified in Article 9(2). An example of lawful interference could be an officer of the State asking a Sikh to wear a motorcycle helmet. Such a request would require the Sikh to remove his turban but this kind of interference could be deemed lawful under Article 9(2) because there are laws that are required in the interests of safety.

Not all beliefs will be deemed to be within the scope of the protection of the Convention. Non-religious 'philosophical' beliefs will come under scrutiny to identify whether or not they deserve to be protected by a system of human rights. For this purpose, the European Court of Human Rights has developed a set of criteria to help determine whether the non-religious belief qualifies for protection. It now has well-developed jurisprudence: non-religious beliefs must be important, cogent and cohesive. They should reflect the integrity of the person, not be incompatible with human dignity and they must represent a weighty and substantial aspect of human life and behaviour.<sup>6</sup>

An application for protection for a non-religious belief in hunting with hounds was once presented to the Court.<sup>7</sup> The case was brought under various Articles of the Convention but was rejected. In fact, not only did the court reject the idea that hunting with hounds could qualify for protection under an Article 9 right to freedom of conscience, but also noted the view of a lower Court that interference by prohibition could be entirely consistent with the protection of morality. After all, how could hunting with hounds be deemed serious, cogent, important, reflect the integrity of the person or constitute a weighty and serious aspect of human life and behaviour?

In a case against the United Kingdom in the early 1990s, however, the former Commission of the Court found that vegan convictions regarding nonhuman animals do come within the scope of Article 9. This finding was not contested by the UK.<sup>8</sup> For the purposes of protection under the European Convention of Human Rights then, veganism is arguably deemed to be serious, cogent and cohesive. It reflects the integrity of the person, is not incompatible with human dignity and is an ethical orientation that concerns a substantial aspect of human life and behaviour. A person's

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<sup>6</sup> Discussed in *Campbell and Cossans v UK* (1982) Series A no 48.

<sup>7</sup> *Friend, The Countryside Alliance And Others v UK* App no 16072/06 and 27809/08 (ECtHR, 4 November 2009)

<sup>8</sup> *H v UK* (1993) 16 EHRR (Commission Decision). This case concerned a vegan prisoner who objected to working in the prison print unit in case the dyes he would be working with had been tested on nonhuman animals. Though the Commission found that vegan convictions fall within the scope of Article 9, the case was lost under Article 9(2) on the grounds that the prison rules were required in a democracy in the interest of order in the prison.

manifestation of vegan convictions should not be unlawfully interfered with by State authorities. This is an important finding for vegans, including vegan prisoners.

#### **4. Relevant parts of the European Prison Rules**

The European Prison Rules<sup>9</sup> are based on the United Nations basic standards for the treatment of prisoners. They clearly state that depriving prisoners of their liberty has no bearing on their human rights. This is the first and most important principle.<sup>10</sup>

Regarding a prisoner's right to freedom of conscience, Point 29.1 states that 'Prisoners' freedom of thought, conscience and religion shall be respected.'

Concerning the provision of food, the Prison Rules state, in Point 22.1 and 22.2 respectively, that '[p]risoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work' and '[t]he requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.' At Point 13, emphasis is given to fairness in the scope and application of the Prison Rules: 'These rules shall be applied impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Given the primacy of freedom of conscience in human rights, the limited grounds for interference, the fact that veganism comes within the scope of protection and the statements made in the European Prison Rules, it would be safe to assume that prisoners' requests for specific food that supports their ethical orientation would be met. There are, however, two issues that cause problems for prisoners requesting food on ethical grounds. These are the State's own interpretation of Article 9 and the fact that the Prison Rules are non-binding.

#### **5. Issues: Interpretation of Article 9 and non-binding Prison Rules**

The first problematic issue is interpretation of Article 9. Article 9(1) grants an absolute right to freedom of belief and a qualified right to practically manifest those beliefs free from interference. In the interests of democracy, Part 2 states the grounds for lawful interference. Interference must be backed up by an existing law that is required (in a democracy) for an important reason, such as public order, health and safety, public morals or to protect the rights and freedoms of others. In assessing lawful interference, States are granted what is known as a 'margin of appreciation' to determine what is required and necessary in their own country. The margin of appreciation permits the application of the rights contained in the Convention to be implemented within a margin of tolerance according to what is required within each State.<sup>11</sup> The Court, however, has a supervisory role regarding the margin of appreciation and the cases it hears will confirm whether or not the State's view is acceptable. This is particularly important because protected 'beliefs' are not written into the Convention but depend on the legal reasoning of respective countries. For example, veganism is not considered to be within the scope of protection in some European countries. When

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<sup>9</sup> Council of Europe Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (*Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies*).

<sup>10</sup> See Part 1 of the above Recommendation, Principle 1.

<sup>11</sup> See *Handyside v UK* (1976) Series A no 24 for an explanation and example of how this works in practice.

prisoners bring cases under the right to freedom of conscience, the Court will ask the State to respond to the allegation and explain its interpretation of Article 9 and its reasoning.

The second problematic issue is that though the Council of Europe (CoE) Prison Rules reflect international minimum standards for the treatment of prisoners, they are not legally binding on member States. The Rules are written with regard to the European Convention on Human Rights. The 2006 revision of 1970s and 1980s provisions and the case law of the Court reflect the CoE's commitment to develop and update prison policy and promote the need for a Europe-wide common policy regarding the treatment of prisoners. Though all member States aim to implement the current Rules, interpretation is inconsistent, as highlighted in cases concerning the right to food as a manifestation of Article 9 rights.

These two issues exist at a national level and can cause significant problems for prisoners who request food on compassionate grounds in accordance with their Article 9 rights. When these cases are presented to the Court, however, it has made it very clear that it will not accept a reduction of responsibility to honour a prisoner's right to freedom of conscience and manifest their Article 9 rights through their chosen diet. In cases presented, the Court has emphasised the importance of Article 9 right to freedom of conscience, the importance of the non-binding Prison Rules as if, in this regard, they are compulsory, made it very clear that 'diet is a direct expression of beliefs in practice' and has decided consistently in favour of the applicant. The following two cases illustrate the Court's view regarding requests for food in relation to Article 9 rights. The two cases discussed are *Jakóbski v Poland* and *Vartic v Romania*.<sup>12</sup>

### **Jakóbski**

Jakóbski was a Polish prisoner serving 8 years. He made repeated requests for meat-free meals on the ground that he wanted to be compassionate to all living beings. He had no choice but to accept the meals he was given because if he didn't, he would be deemed to be on hunger strike and there would be unpleasant consequences. He accepted, but threw the meals away and depended on food parcels from his family. Jakóbski argued that his Article 9 rights were violated because he was a practising Buddhist and was entitled to the protection of the Convention.

### **Polish authorities' response**

The Polish authorities informed the Court that they had checked on Wikipedia to find out if Buddhism prohibited meat eating and found that it was merely a suggestion rather than an essential aspect of practice. They argued that a compromised diet would be sufficient and they served Mr Jakóbski the same diet that they gave to Muslims.

Regarding Article 9 rights, the authorities claimed that there was no violation because interference is lawful if it is based on an existing law that is required. They informed the Court that the law in Poland stated that it was not obligatory to provide prisoners with specific food on religious grounds. It would be too rigorous because it would entail too many difficulties of a technical and financial nature. They argued that they had 1200 prisoners and providing suitable food in this case would impose an excessive burden.

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<sup>12</sup> *Jakóbski v Poland* App No 18429/06 (ECtHR 7th December 2010); *Vartic v Romania* App no 14150/08 (ECtHR 17th March 2014).

## **Decision of the Court**

First of all, the Court made the point that the State has no power to determine the tenets of the prisoner's subjective conscience. The right to freedom of conscience concerns the individual and the State has no right to determine how an individual should manifest their beliefs. The Court stated that the case comes within the scope of Article 9 and that the applicant was not asking for anything special. It stated that providing meat-free food would not have been disruptive. In this case, the Court made two additional important statements. Firstly, it reiterated prior observance that 'dietary practice is a direct expression of beliefs' and secondly, though the State has margin of appreciation, the Court insisted that the Prison Rules should be observed. The Court held that Poland did not strike a fair balance between the interests of the authorities and the prisoner. Consequently, the Court decided in favour of the applicant, declaring that there had been a violation of Article 9.

This case was also heard in the context of a new efficiency Protocol which gave judges the power to disregard applications to the court that were 'trivial'.

## **Vartic**

At the 'communication' stage, when the Court requested responses to the allegations made, the case of Vartic referred to a request for 'vegan' food. Following this stage, the word 'vegan' seems to have disappeared and the case report only refers to the request for food on the grounds of Buddhist convictions.

The Court heard that Vartic is a prisoner serving 25 years and had made repeated requests for vegetarian food. The Court heard that Vartic also had a health condition that required him to eat meals of a specific calorific value. All requests for a diet that corresponded to his ethical convictions were rejected by the prison authorities, who, instead, gave him a diet containing 'pork', which was served to sick detainees. What made things worse for Vartic at the time was that prisoners were not allowed to receive food parcel from relatives.

The Court heard that the prison in question has 17 different types of diet; one of which, the Christian Orthodox meal, would have been suitable for Vartic but the calorific value was insufficient.

Vartic alleged that his Article 9 rights were violated by the Romanian prison authorities because they did not provide him with food appropriate to his ethical orientation.

## **Romanian authorities' response**

As in the case of Jakóbski, Romania questioned the ethical convictions of the applicant and also argued that Article 9 did not cover dietary needs. They asked the Court to declare that Vartic had not suffered a 'significant disadvantage' and that the case be rejected. Romania were hopeful that they could use the 'significant disadvantage' Protocol because the judges had raised it in favour of Romania in one of the first cases heard under new efficiency rules implemented in 2010.<sup>13</sup>

Despite efficiency protocols that give power to the judges to throw out trivial cases, this case illustrates that the Court takes its responsibility to honour the primacy of the Article 9 right to freedom of conscience very seriously. First of all, applications to the Court total over 150,000 per

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<sup>13</sup> *Ionescu v. Romania* App. No(s). 36659/04.

year and only a tiny fraction of cases - possibly less than one thousand - are heard annually. Secondly, States have a margin of appreciation and Romania was not certain that Vartic held sincere convictions, the prison already offered 17 different dietary options and after all, Vartic was a prisoner who should expect a deprivation of liberty. Instead, the Court processes Vartic's application on the grounds that the subject matter and the nature of the issues raised concern an important matter of principle. This principle is the right to live according to personal ethical convictions without interference. In this regard, subjective perceptions are valid and critical and prisoners are protected by the Prison Rules.

### **Decision of the Court**

First of all, the Court made the point, again, that the State must not question prisoners' convictions. Also, in this case, the State could not rely on the significant disadvantage protocol because there is an important matter of principle at stake and respect for human rights requires that the Court rejects this justification for interference. The Court cites the precedent created in *Jakóbski*, and reiterates the importance of observing the provisions for prisoners in the (non-binding) Prison Rules. The Court declares that Romania violated the Article 9 rights of the prisoner.

### **6. The right of vegans to receive vegan food in prison**

Veganism has already been held to be within the scope of Article 9 of the ECHR.<sup>14</sup> The European Court has made it very clear that diet is the direct expression of beliefs, that the Prison Rules must be observed in this regard, and that cases concerning denied requests for food and allegations of violations under the right to freedom of conscience will not be thrown out as trivial under new efficiency protocols. In fact, they raise an important matter of principle and respect for human rights means that the Court will hear these important cases.

In 2011, Robert Woch<sup>15</sup> made an application to the European Court of Human Rights, alleging that the Polish prison authorities violated his Article 9 rights by failing to provide a vegan diet on the grounds that 'his personal beliefs and spiritual life do not allow [him] to consume any living creatures or anything that must have died to feed humans'. The authorities stated that they were not under an absolute duty to provide detainees and prisoners with a diet which was in conformity with their cultural and religious beliefs. In particular, they were released from such an obligation if the detention facility in question could not cope with having to make special arrangements for individual detainees. The authorities also refused to give permission for the prisoner to receive food from relatives.

Despite the extremely heavy workload and the power to throw out trivial cases, the Court processes the application, showing again that respect for human rights requires it to consider this case because this issue is a serious matter of principle. The Court asked Poland to respond to the allegation. They asked '[d]o the applicant's vegan convictions attain the level of cogency, seriousness, cohesion and importance which is required by Article 9 of the Convention....Has there been an interference with the applicant's freedom of conscience within the meaning of Article 9(1) of the Convention? [D]oes the State's alleged continued failure to provide the applicant with vegan food constitute an

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<sup>14</sup> *H v UK* (1993) 16 EHRR (Commission Decision).

<sup>15</sup> Application no. 19732/11.

“interference” with the applicant’s freedom of conscience within the meaning of Article 9? Alternatively, do the facts of the case disclose a breach of the State’s positive obligations under this provision? If so, was that interference prescribed by law and necessary in terms of Article 9(2)? (see *Jakóbski v. Poland*, no. 18429/06, 7 December 2010)?’

Unfortunately, Woch did not progress his application. Had he done so, this would undoubtedly have been a very interesting case to follow. As things stand, however, it is highly unlikely that any European State could successfully argue, at the Court, that denying a vegan prisoner appropriate food is acceptable and lawful interference under Article 9 of the Convention. This would be contrary to current jurisprudence that also asserts the provisions of (non-binding) European Prison Rules and the accepted and acknowledged importance of human rights principles these cases present. It is clear, however, that State authorities will interpret the Article 9 right to freedom of conscience narrowly (even if the Court has ruled against them previously) and that applications from prisoners will continue to be made to the Court. It is vital, therefore, that vegans understand the legal framework that grounds a claim for appropriate food in prison, and that they are able to effectively articulate, from the outset, their right to manifest ethical responsibility to nonhuman animals while incarcerated. Understanding the Court’s jurisprudence in this regard will be invaluable.