

Legal protection of Veganism in Portugal:
framework, issues and possible solutions

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ABSTRACT:

Portugal is a southwestern European country with a population of a little over ten million people. According to the latest statistical study from 2017, there are at least 120.000 vegetarians living in Portugal, 60.000 of which are vegan. Whilst the number of vegans living in Portugal has been increasing, there is still not much effective protection against discrimination afforded to them by the Portuguese government or equality bodies, despite Portugal's advanced legal framework. Recently, that has changed in a slight degree with the approval of the internationally acclaimed Law nr. 9 11/2017, which establishes a mandatory vegan meal provision in all Portuguese public facilities. In this paper, this law's strengths and shortcomings are analyzed, as well as its implementation during the first year since its approval. This is followed by a discussion of several solutions for its shortcomings.

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INTRODUCTION

Portugal is a small southwestern European country with a population of just over ten million people. In recent years veganism has become an increasingly popular lifestyle, following a similar pattern of many other countries across Europe. According to the latest statistical study from 2017, there are at least 120.000 vegetarian individuals living in Portugal, of which at least 60.000 follow a vegan lifestyle. By comparing this data with the previous study results from 2007, which reported the existence of 30.000 vegetarians, it is currently estimated that the number of vegetarians has grown 400% in just a decade (2007-2017), whilst there are no estimates for the growth of the vegan demography. We also know from the previous 2007 study that at least 5% of the population excludes meat, fish, eggs or dairy from their daily diet and 2% never consumes any kind of meat.¹ Other available data also points towards the conclusion of a fast growth of veganism in Portugal, namely the fact that the number of vegetarian or vegan shops and restaurants has increased about 513% in the last decade².

As a lifestyle, veganism could be defined as a practice of abstaining from the use of animal products or commodities that implicate the exploitation of animals. Vegans have been afforded little effective protection by Portugal's government policies or even by equality laws that stem from international covenants, even though the country has a very advanced legal framework and has pioneered several socially progressive movements. Vegans themselves frequently report being the victims of discrimination on the basis of their ethical convictions, being subjected to several forms of psychological abuse and social discrimination³.

More recently, in 2017, the status quo has changed considerably with the approval of a new government bill that mandates the provision of strict vegetarian meals in all public facilities, which has been the object of international attention and acclaim. This will be the main topic of discussion of this paper.

This work is divided in several sections. Firstly, the existent Portuguese legal framework and how veganism fits into it will be examined, as well as the role that equality bodies have played in protecting vegetarians or vegans from discrimination. Secondly, the aforementioned bill will be presented, and its strengths and shortcomings will be

¹ <https://www.centrovegetariano.org/Article-620-Numero-vegetarianos-quadruplica-10-anos-Portugal.html>

² <https://www.avp.org.pt/noticias/mercado-de-alimentacao-vegetariana-em-portugal-aumentou-514-nos-ultimos-dez-anos/>

³ <https://link.springer.com/article/10.1007/s11158-017-9356-3>

analyzed, considering the one year's interval since its approval. Finally, there will be a discussion of possible solutions for overcoming the current shortcomings of the law's implementation.

1. FRAMING VEGANISM IN PORTUGAL'S LEGAL FRAMEWORK

The Portuguese law is worldwide renowned for its progressive stance on human rights and several social issues (for example, drug policy). The country's legislator has abided by several international legal directives such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Convention of Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (CFREU), integrating critical dispositions concerning the freedom of thought, conscience and religion in the country's constitution and other legislation.

In fact, the Constitution of the Portuguese Republic,⁴ which is the most important and fundamental legislation text, clearly states under article 13^o that "*all citizens are equal before the law and deserving of same dignity*", and it goes on to clarify that "*no one shall be privileged, favored, prejudiced, deprived on any rights or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation*". On the specific topic of cultural rights, Portugal was one the state parties to adopt the International Covenant on Civil and Political Rights (ICCPR)⁵ from 1966, which provides assurance that the freedom of consciousness, religion and cult shall be inviolable and that no one must be deprived of rights due to their personal convictions. This is also known as the equality and non-discrimination principle, which is enshrined in article 18 of the ICCPR. The Portuguese Constitution goes further, by asserting that all citizens have the right to resist to any kind of attempt to subvert or offend their fundamental liberties and rights, that is, to object to something that violates their interests (article 21^o).

Veganism, which is based on the principle of boycott of any products or activities that implicate animal exploitation, with an underlying ethical belief, ought to be considered in light of these dispositions. In fact, veganism comes within the scope of the article 9^o of the European Convention of Human Rights, from which we may draw that it is a human right not to be imposed upon a costume or practice which violates one's freedom of conscience

⁴ <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

⁵ <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

and belief. If a state does not predict the possibility of several individuals objecting to a conventional dietary choice on the grounds of ethics and acts accordingly by assuring a provision of alternative goods and services in government institutions, then its incurring in a violation of this disposition. However, as we will see, Portugal might not be able yet to recognize this adequately.

Portugal also claims to have fully transposed the Equality Directive of 2000/78/EC⁶ to its national legislation, encased into Work Code and the law 99/2003. In this law document, its stated that no worker should suffer discrimination on the basis of political or ideological convictions⁷. However, there is no available information on the application of these directives to the kind of ideological discrimination which vegans are subjected to.

On the other hand, The *Portugal's 2015 Human Rights Report* of the US Department makes no reference to discrimination based on ideological grounds and the violation of fundamental cultural rights through the submission to a conventionally imposed dietary option and dominant lifestyle. Discrimination of vegan individuals, whom are a part of a growing demography group, by either denying them the option of living according to their ethical convictions or neglecting to predict their needs, seems to configure a clear case of human rights violation, which gains substantial expression when its systematic and routine perpetuation is considered, however, there is no specific mention of this phenomena in the above mentioned report.

Hence, we may ask whether these constitutional assurances, reflective of international directives, are effectively protecting individuals belonging to some cultural minorities such as is the case of vegetarians, or even more so vegans? Based on data collected by the Portuguese Vegetarian Association⁸, vegans and vegetarians alike, both representing a growing demographic in Portugal, appear to be subject to multiple forms of discrimination in a systematic way, which go largely unreported, such as: refusal to cater vegan alternatives, forceful imposition of a single dietary regime in public institutions, bullying and psychological abuse related to their personal beliefs, exclusion and stigmatization at work and schools, etc.

One may argue that these kinds of situations clearly undermine the Portuguese Constitution, in the least measure, as well as other legislative texts that guarantee social and cultural rights. However, despite the existence of this discrimination, not much has

⁶ <http://www.fenacerci.pt/web/LF/docs/4.pdf>

⁷ http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=441&tabela=lei_velhas&nversao=6

⁸ <https://www.avp.org.pt/>

been done by equality bodies in terms of recognizing the social issue and addressing it. Furthermore, the Portuguese government has also been mostly negligent of that discrimination, despite having recently approved a bill that addresses the issue partially.

1.1. THE POSITION OF EQUALITY BODIES REGARDING VEGANISM

According to the EQUINET⁹ – European Network of Equality Bodies, the Portuguese national equality bodies that assure the enforcement of equality policies are:

- The Commission for the equality at workplace;
- The Commission for gender equality;
- High Commission for Migration

Equality bodies are public institutions set up across Europe to promote equality and tackle discrimination on the grounds of gender, race, age, sexual orientation, religion and belief, disability or other grounds. They play a fundamental role in the non-discrimination architecture of the European Union (EU). Their role is defined in accordance with EU equal treatment legislation requiring Member States to set up equality bodies to combat discrimination based on race and ethnic origin, as well as gender.

However, many Member States have gone beyond these requirements and ensure that equality bodies can also deal with discrimination based on the other grounds mentioned above. Equality bodies are authoritative voices in matters of discrimination at national level. Equality bodies should also work towards the better implementation of EU legislation by monitoring and taking an active part in the implementation of the EU Directives.

From an analysis of the work and investigation performed by these equality bodies, it was concluded there was no information concerning the discrimination which vegetarians and vegans are subject to on a daily basis, not only at school, university or the workplace, but on a wide variety of public institutions. The only exception is the High Commission for Migration, which has developed some documents¹⁰ intended to prepare social workers to integrate immigrant families and predicts the existence of diet restrictions on religious grounds, specifically mentioning vegetarianism as one of the considerations when providing food support.

⁹ <http://www.equineteurope.org/>

¹⁰ <https://www.acm.gov.pt/-/familia-do-lado>

2. A NEW LAW AND A SHIFT IN PARADIGM

Following a popular petition started by the Portuguese Vegetarian Association (PVA), in February 2015, which collected over 15.000 signatures of Portuguese citizens, asking for an alternative meal in public facilities, the law nr. ^o 11/2017 was approved by the Portuguese Parliament in April 2017, establishing the mandatory provision of a strict vegetarian option in the menus of all public canteens and refectories. ¹¹ This law applies to the canteens of all public administration entities and services, namely:

- Health care units;
- Nursing homes;
- Primary and secondary schools;
- Universities;
- Prison facilities and guardianship facilities;
- Social services.

Under article 3^o, the law states that all public canteens must have at least one vegetarian option in their daily menus. It goes on to define a 'vegetarian option' as a meal that does not contain any animal products whatsoever (article 3^o), which in effect means that the provided meal should be strictly vegetarian, otherwise known as a vegan meal.

The law came into effect within 6 months of its approval, in 1st June, and it predicted a full six months period of adaptation.

2.1. ANALYSING THE LAW'S STRENGTHS

This law has been the subject of much international attention and acclaim, and in part, rightfully so, as it represents an unprecedented piece of legislation, on a worldwide level, and an important breakthrough in terms of fulfilling the protection of human rights, by targeting a very specific population group – vegetarians or vegans – that has been much neglected, as we've previously seen.

One of the critical strengths of this law is that it asserts that the alternative meal to be provided should be strictly vegetarian (article 3^o, number 2), other than merely ovo-lacto-vegetarian, or any other variant. This is clearly a positive aspect, as this guarantees a more inclusive approach that takes under consideration the vegan demography, as well as any

¹¹ <https://dre.pt/web/guest/pesquisa/-/search/106886578/details/normal?l=1>

other people that may not consume eggs or milk due to allergies or other health reasons. A strict vegetarian menu is the only effective way of providing an alternative that is inclusive and can be accessed by any person.

Perhaps the most fundamental importance of this bill is that it provides the common citizen with a legal instrument which he or she may use to protect him or herself against discrimination, in this case, the refusal by public institutions to provide a vegan meal in their respective canteens. Effectively, article 5^o states that the fulfillment of the law should be guaranteed by the National Authority on Food and Economical Safety (ASAE), which has the responsibility to inspect public canteen facilities and enforce the application of the law. Therefore, any citizen may present a formal complaint to this authority and denounce a violation of the law, which the entity is obliged to investigate. This proves to be extraordinarily important because, prior to this law, there were no legal arguments that could be used in favor of a citizen claiming the right to a meal in alternative to the conventionally imposed dietary regime, that includes meat, eggs and dairy.

2.2. ANALYSING THE LAW'S SHORTCOMINGS

It's become known that the law may also be fraught with some limitations and produce several shortcomings, which will be examined here in more detail.

Consider article 3^o of the present law, which states, in number three, that public institutions may be exempted from offering a vegetarian option in their menus if there is no demand for it, which solely applies to health care units as well as primary and secondary school institutions. This is justified as a measure that is part of food waste prevention policy, and at first glance, it may appear to make sense. However, it entails a relevant limitation to the application of this law, namely, the fact that there may be institutions that will never provide any vegan meal because they've not properly surveyed the needs of their users, be it students or patients. And if an alternative meal is not openly provided, one may never become acquainted with the possibility of that alternative provision. We are aware that many people that choose to have a vegetarian or vegan meal are not necessary vegetarians or vegan themselves and are likely to have done so due to curiosity or because they associate that alternative meal with a healthier choice; exempting a school or hospital from providing in the absence of any apparent demand not only robs the user of that choice but may also lead to situations of endured discrimination.

One other segment of this legislation may also be perceived as a significant limitation and has in fact been proved to produce several constraints in the implementation of the law is number 4 of article 3º, where it's stated that public facilities' canteens may establish a prior subscription system when there is reduced demand of the vegetarian meal. As the law does not clarify what "reduced demands" objectively means, that is, it does not provide a numerical and objective measure of "reduced", both public institutions and the enforcement authorities are left to speculate on what it actually means and may apply discretionary criteria in assessing demand and acting accordingly.

In practice, it's been reported that a great number of public institutions, particularly schools, have adopted a prior subscription system as a way of circumventing the application of the law, by asking students to opt between a conventional dietary regime or a vegan regime in the beginning of the school's year, while forcing them to maintain that choice throughout the whole school's year. Once again, we could argue this not only constitutes a violation of the Portuguese law, but it also represents a breach of the International Bill of Human Rights, in specific, of article 18 of the ICCPR, considering that students are being subjected to a form of disguised coercion, as institutions create impairments that difficult the access to vegan options.

2.3. ANALYSING THE LAW'S IMPLEMENTATION

As previously mentioned, the law came into effect in June 1st, 2017, and it predicted a six months period of adaptation, during which all public facilities' canteens had to take the initiative of preparing themselves to provide strict vegetarian meals when there was demand. With that in mind, the Portuguese Vegetarian Association has been committed to assist the public institutions in carrying the implementation, by providing training and consultancy services to canteen staff.

While it does not provide us with an exact measure of the implementation of this law, there is some available data which may be used to gather to what extent vegan meals are being served. According to an article by the newspaper Público, from February, 2018¹²:

- A total 10% of the total of served meals in Universities are vegetarian. All public universities adhered to the law. Some don't yet serve strictly vegan;

¹² <https://www.publico.pt/2018/02/13/sociedade/noticia/quase-10-das-refeicoes-servidas-nas-universidades-sao-vegetarianas-1802926>

- A total of 1% of the total of 270.000 meals served in schools are vegetarian. That's 3 vegetarian meals per school;
- About 14% of the total of meals served in public hospitals and health care units are vegetarian;
- Around 10% of the total of meals (600.000) served in in social services facilities are vegetarian.

As we can see, the percentage of vegan meals served in public facilities in Portugal varies considerably across different types of institutions. While it is more popular in public hospitals or health care units, it is much less commonly served in schools, which in itself spells a resistance to implementation on those type of public facilities.

The Portuguese Vegetarian Association has also produced a report in June 2018, one year since the law came into effect, reporting on the some of the main challenges and difficulties found since its implementation, based on evidence collected through a survey which collected 97 answers from students, parents, patients and other citizens. Among others, the main challenges to be identified were:

- a. By choosing the vegan option in the beginning of a school's year, when there is a subscription system in place, many students report that they become bound to follow it throughout the year and do not have the option to change their initial choice until the next year's new enquiry, which can be argued to constitute a violation of article 18 of the ICCPR, as discussed above;
- b. It's common for parents to report that schools' officials indicate that they must present a medical report that justifies the adoption of a vegetarian regime, although the law does not predict this;
- c. Somewhat frequently, the meal that is provided is not strictly vegetarian, but rather ovo-lacto-vegetarian, which is an infringement of the law;
- d. Very often the vegetarian meal is not properly balanced, demonstrating a lack of proper training for preparing these meals;
- e. Some institutions deny the provision and justify it by stating that the demand is very low, which is clearly an infringement of the law;
- f. Several institutions deny the provision due to the alleged existence of a sub-contract with a meal provision company that is not qualified to prepare vegan meals; this may not be fully in contradiction with the law.

2.4. DISCUSSION OF POSSIBLE SOLUTIONS

Overall, the law's implementation has suffered from many deficiencies and has met with some resistance. Partially, the difficulties in fully implementing the law are caused by its own limitations that were previously discussed, namely, the fact that is somewhat ambiguous in defining what reduced demand consists of, and when does that justify the exemption of providing a vegan meal or the implementation of a prior subscription system. Several institutions schools, have shown signs of high resistance to this new legislation, often adopting a method to circumvent its application.

Possible early modifications to the law have been recommended by the Portuguese Vegetarian Association to some of proponent political parties concerning its ambiguity and the lack of an objective definition of reduced demand, however, it is generally felt that the law requires more time in order to properly assess its full-scale implementation. Some have even voiced concerns that an open call for a modification may lead to a setback in detriment of an improvement, as the law would have to be discussed and voted once again by all parliamentary parties, across the left and right of the political spectrum.

Indeed, although one year has passed since the law's implementation, it is hard to evaluate its wide application throughout institutions, as that would require more time and a more extensive and comprehensive study, which has not been conducted so far, although it is being currently planned.

Multiple challenges to its implementation have been already preliminarily identified by a survey conducted by the Portuguese Vegetarian Association, which may help to later diagnose and improve the law's application. Some possible solutions are being discussed and possibly advanced.

One of the main identified issues has been the recurrent and abusive use of the prior subscription system as means of circumventing the law's application, as seen before. Very often, students are pressured to follow a conventional dietary regime during the whole school's year because the alternative would be being served vegan meals throughout the year, every day, which they lack the motivation to do so; obviously, this is deeply discouraging students from having a vegetarian or vegan meal, which otherwise they could choose occasionally, switching between different types of meals to vary their dietary choices. We feel that this could be possibly resolved by more frequent subscription enquires, such as daily or weekly subscription, that is, giving the students the choice to choose a vegetarian meal beforehand, some days or weeks in advance. Furthermore,

preparing a slightly larger quantity of the vegan meal, in relation to the logistics calculation, and having the meal openly available to any interested student would also encourage them to choose an alternative meal which otherwise they might not be actively searching for. Finally, and of no less importance, human rights committees should be aware of these situations and strive to prevent forceful assimilation practices in which individuals appear to be forced into a dominant dietary regime.

As previously noted, there are other serious issues reported by surveyed participants, some of which do not have an objective solution for, such as clear infringements of the law, other than communicating it to the enforcement authority and demanding that the situation is investigated and corrected.

Nonetheless, it is clearly noticeable that there is still widespread ignorance of the law; many users of public institutions, along with their staff, are not aware that such a law exists, or of the full extent of its application and scope, making it increasingly important for the government and non-government organizations to cooperate in bringing that information to them. Bearing that in mind, the Portuguese Vegetarian Association is currently running a campaign that is meant to bring awareness to this law, to provide training services to staff, in order to qualify them to adequately prepare vegetarian meals, and to provide a regular citizen with the information and necessary tools to make use of this law, thus improving its application and the effective protection of all their rights.

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