Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

"Tell Me Who You Harm and I Will Tell You What You Are": Ethical Veganism as a Philosophical Belief Protected Under the British Equality Act 2010

Question(s) at stake:

Whether ethical veganism can amount to a philosophical belief and whether it can be considered a protected characteristic under British equality law.

Outcome of the ruling:

Ethical veganism is a philosophical belief which qualifies as a protected belief within the meaning of Section 10 of the Equality Act 2010.

Topic(s):

- Employment
- State recognition of Groups and Their Practices

Keywords:

- Animal rights
- Disciplinary measures
- Dismissal
- Freedom of thought, conscience and religion
- Non-discrimination
- Religion and belief

Tag(s):

- Ethical veganism
- Philosophical belief
- Ahimsa
- Vegan diet

- Animal products

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Preliminary Hearing Judgement of the Norwich Employment Tribunal, Case no. 3331129/2018, Mr J. Casamitjana Costa v. The League Against Cruel Sports

Link to the decision:

https://www.gov.uk/employment-tribunal-decisions/mr-j-casamitjana-costa-v-the-league-against-cruel-sports-3331129-2018

ECLI:

No ECLI number / ECLI number unknown

Date:

21 January 2020

Jurisdiction / Court / Chamber:

Employment Tribunal of England and Wales

Remedy / Procedural stage:

Preliminary Hearing Judgement

Previous stages:

- None

Subsequent stages:

- Watford Employment Tribunal, Merits Hearing

Branches / Areas of law:

Human rights law; Labour law

Facts:

The claimant is an ethical vegan and qualified zoologist who dedicated his life to animal protection. He adheres to a strict vegan diet and avoids using clothing, shoes, and products made from or tested on animals. The respondent is his former employer, an animal welfare charity that works to stop animals from being persecuted, abused, or killed for sport.

The claimant discovered that his pension funds had been invested in companies that conduct animal testing. When the respondent failed to carry out a promise not to invest his contributions in such pension funds, the claimant shared his concerns with his colleagues. The respondent terminated the claimant's employment due to gross misconduct. The claimant brought to the Employment Tribunal a claim for unlawful dismissal, arguing that he had been discriminated against because of his belief in ethical veganism.

Ruling:

In this preliminary hearing judgment, the Norwich Employment Tribunal (hereinafter "the Tribunal") held that ethical veganism amounts to a philosophical belief and can therefore be a protected characteristic under the Equality Act 2010.

Based on previous case law and the Employment Statutory Code of Practice 2011, Judge Postle established at the outset that a philosophical belief can be protected under British equality law only if it fulfils certain cumulative requirements. For instance, the belief must be genuinely held, pertain to a weighty and substantial aspect of human life, attain a certain level of cogency and seriousness, and be worthy of respect in a democratic society.

Furthermore, Judge Postle observed that Section 10 of the British Equality Act 2010 mirrors Article 9 of the European Convention on Human Rights (hereinafter ECHR), which safeguards the right to freedom of thought, conscience, and religion. He reiterated that the freedom to hold and manifest one's belief is to be enjoyed without discrimination pursuant to Article 14 of the ECHR. Concerning the interpretation and application of Article 9 of the ECHR, Judge Postle relied on the judgment in *R (Williamson) and Others v. Secretary of State for Education and Employment* [2005] UKHL 15, stating that a domestic court is to ensure that an assertion of belief was made in good faith while also considering that the freedom of religion protects an individual's subjective belief, which can vary and be open to interpretation.

Referring to settled case law, Judge Postle noted that a belief must satisfy certain requirements implicit in Article 9 of the ECHR. Accordingly, the belief must not be contrary to basic benchmarks of human dignity and integrity. Furthermore, it must pertain to non-trivial matters and display an adequate degree of seriousness, importance, and intelligibility. Additionally, because beliefs can change and may not always be clearly and accurately expressed, the above-mentioned requirements should not be set at a level which would deprive beliefs of the protection they are intended to have under the ECHR. In *R (Williamson) and Others v. Secretary of State for Education and Employment,* it was also ruled that a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs.

Having had due regard to the settled case law as well as the definition and characteristics of ethical veganism (i.e., a philosophy and way of life that aims to eliminate exploitation and cruelty to animals for any purpose, including food, clothing, and other uses, as much as possible and practical), Judge Postle addressed the cumulative requirements that ethical veganism must fulfil. Considering the evidence as to how the claimant applied ethical veganism in his life, the Judge ascertained that his belief in ethical veganism was genuine. Furthermore, given how ethical veganism is a longstanding moral tradition that recognizes the sentience of non-human animals, it is more than a mere

perspective, and can be considered a genuine and real belief. Ethical veganism, at its core, concerns the relationship and interaction between human and non-human animal life. It is therefore concerned with a weighty and substantial aspect of human life and behaviour. As it regards diet, clothing, consumption, travel, services, and many other facets of daily life, ethical veganism easily attains a certain level of cogency, cohesion, and importance. Lastly, Judge Postle determined that ethical veganism was worthy of respect in a democratic society and compatible with human dignity given its societal acceptance, its increased national recognition, and the environmental benefits it entails.

Based on the evidence before it, the Tribunal found that ethical veganism qualified as a philosophical belief and therefore a protected characteristic under the Equality Act 2010.

Main quotations on cultural or religious diversity:

- “Ethical vegans could be said to be moralistically orientated and opposed to all forms of exploitation of all animals and to embody genuine philosophical concern for all sentient life.” (para. 14)
- “[O]n occasions it is unavoidable to use animal by-products where there simply is no other alternative. What is clear is the Claimant will exhaust all reasonable steps to ensure that his consumption contributes as little as possible to the suffering and/or exploitation of sentient beings no matter how remote that is.” (para. 17)
- “It is clear, there is no conflict between veganism and human dignity as humans are also sentient beings which need to be equally respected and protected. Ethical veganism is not in conflict with the rights of others, it does not require non-vegans to behave in a particular way.” (para. 19)
- “The effect of ethical veganism on the Claimant’s day to day life is apparent in the following: […] Ethical veganism dictates the Claimant’s choices from the products and services that he consumes; […] The Claimant has 100% vegan diet and if he is unsure of the content of food products, he avoids

them; […] The Claimant would not allow non-vegan food to be brought into his home by another person; […]The Claimant will not consume food he believes that in its production in any way harms animals, e.g. figs are grown with a symbiotic relationship to a microscopic wasp. In those circumstances, apparently you cannot be sure whether any of the wasp lava is still inside the ripened fig, therefore the consumption of figs is inconsistent with veganism; […] The Claimant tries to avoid sitting on leather seats or holding onto leather straps; […] Since becoming a vegan, he has not dated anyone who was not a vegan and he would not share a property with anyone who was not also a vegan." (para. 20)

- "It is clear to me that ethical veganism carries with it an important moral essential. […] It is clear it is founded upon a longstanding tradition recognising the moral consequences of non-human animal sentience which has been upheld by both religious and atheists alike. Furthermore, there is no doubt that the Claimant personally holds ethical veganism as a belief. […] It clearly is not simply a viewpoint, but a real and genuine belief and not just some irrational opinion." (para. 34)
- "The belief is at its heart between the interaction of human and non-human animal life. The relationship between humans and other fellow creatures is plainly a substantial aspect of human life, it has sweeping consequences on human behaviour and clearly it is capable of constituting a belief which seeks to avoid the exploitation of fellow species. It is therefore a weighty and substantial aspect of human life and behaviour." (para. 35)

Main legal texts quoted in the decision:

Domestic law

- Section 10 of the Equality Act 2010
- Section 3 of the Human Rights Act 1998

International law

- Articles 9 and 14 of the European - Convention on Human Rights
- Article 2 of Protocol No. 1 to the European Convention of Human Rights

Cases cited in the decision:

Relevant UK case law

- *Ghaidan v. Godin–Mendoza* [2004] UKHL 30
- *Grainger Plc v. Nicholson* [2010] ICR 360 EAT
- *R (Williamson) and Others v. The Secretary of State for Education and Employment* [2005] UKHL 15

Commentary

"Tell Me Who You Harm and I Will Tell You What You Are": Ethical Veganism as a Philosophical Belief Protected Under the British Equality Act 2010

Ethical veganism is based on the ancient concept of *Ahimsa* (meaning "do no harm"), which is the central tenet of Jainism and an important ethical principle in Buddhism and Hinduism. The Vegan Society defines ethical veganism as "[a] philosophy and way of living which seeks to exclude – as far as is possible and practicable – all 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. In dietary terms it denotes the practice of dispensing with all products derived wholly or partly from animals." (Casamitjana 2020). In 1993, the European Commission found that "the Vegan convictions with regard to animal products" fall within the scope of Article 9(1) of the ECHR (see *W. v. the United Kingdom*, App no 18187/91, 10 February 1993). In a British court case nearly 30 years later, a decision was made on whether ethical veganism, a belief in avoiding all forms of animal exploitation and cruelty, qualified as a philosophical belief and was therefore protected by British equality law.

In rendering its decision, the Norwich Employment Tribunal (hereafter the Tribunal) considered several domestic and European cases, as well as the relevant provisions of the British Equality Act 2010 and the ECHR. Judge Postle

pointed out that “[w]here the inclusionary language of Section 10 [of the Equality Act 2010] mirrors that in Article 9 [ECHR], it would be both bizarre and […] unlawful if a belief were recognised under the Conventions [sic] but not under the Equality Act 2010” (para. 26). Interestingly, the respondent did not contest the claimant’s assertion that ethical veganism was a philosophical belief. Nevertheless, Judge Postle decided to review the evidence presented before the Tribunal – i.e., more than 1200 pages on how philosophical veganism is defined, its history, its major impact on the claimant’s daily life, and witness statements – to determine (i) whether ethical veganism can amount to a philosophical belief, and (ii) whether the claimant adhered to that belief.

Judge Postle acknowledged that ethical veganism went beyond a diet. He noted that ethical vegans are living their lives in accordance with the belief that exploitation and killing of all living beings are wrong. This “moral conviction is cogent, serious and important”, he stated (para. 15). Judge Postle was persuaded that the claimant adhered to ethical veganism. His conclusion was based on a detailed and lengthy account of the manifestations of this belief in the claimant’s day to day life, e.g., choosing only products and services that did not harm or exploit animals, avoiding food that is not 100% vegan, dating or sharing a property only with vegans.

Finally, to determine whether ethical veganism falls within the protection of the Equality Act 2010, Judge Postle applied the five-part test set out in *Grainger Plc v Nicholson* [2010] ICR 360 EAT. In this case, the Employment Appeal Tribunal held that belief in man-made climate change can be a philosophical belief. To satisfy the *Grainger* test, ethical veganism must,

- be genuinely held;
- be a belief and not an opinion or viewpoint based on the present state of information available;
- be a belief concerning a weighty and substantial aspect of human life and behaviour;

- attain a certain level of cogency, seriousness, cohesion, and importance;
- be worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others.

These cumulative criteria represent a significant threshold but Judge Postle found it easy to conclude that “there is overwhelming evidence” (para. 39) that ethical veganism is a philosophical belief and thus a protected characteristic under the Equality Act 2010. The case proceeded to the full merits hearing, during which the claimant was required to prove that he was unlawfully dismissed due to discrimination based on his ethical veganism beliefs. However, in March 2020 the case was resolved through a settlement reached by the parties. It must be remembered that the *Casamitjana* judgment is not binding on other Employment Tribunals. This decision has been made on the particular facts of the case. When assessing whether a belief meets the *Grainger* test, a Tribunal must assess the particular facts of the respective case and the claimant’s evidence of their belief (Williams and Hammond 2020).

In this regard, it is worth noting that in September 2019, the Tribunal in the *Casamitjana* case decided that being vegetarian was not a protected belief (see *Conisbee v Crossley Farms Ltd and Others* [2019] ET 3335357/2018). While Judge Postle accepted that the claimant’s belief was genuine and strong, the concept of vegetarianism was considered more of a lifestyle choice. Judge Postle distinguished between vegetarianism and veganism, stating that a belief in veganism is more cogent and stronger than a belief in vegetarianism (*Conisbee v Crossley Farms Ltd and Others,* para. 41).

McKeown and Dunn (2021) suggest that this reasoning is misconceived. They point out that whilst the claimant’s vegetarianism in *Conisbee* did not impact his life as much as veganism impacted the life of the claimant in *Casamitjana Costa*, they both believed it was morally wrong to kill or exploit animals. Moreover, it must be noted that there are different forms of veganism and vegetarianism, and some may satisfy the criteria to qualify as philosophical whilst others may not. Therefore, judges would “need to consider the underlying rationale as to why an

individual practices veganism or vegetarianism to determine whether it is a philosophical belief, not merely looking at the manifestation of their veganism or vegetarianism" (McKeown and Dunn 2021: 33).

In another September 2020 example, the London South Employment Tribunal held, in a preliminary hearing, that Stoicism is capable of being a philosophical belief for the purpose of the Equality Act 2010 (see *Jackson v Lidl* [2020] ET 2302259/2019/V). The claimant in the said case was sacked by Lidl for offending colleagues. He argued that he adhered to his philosophical belief in Stoicism in his daily life and described himself as not being a "consequentialist", by which he meant that the realization that what he says or does was offensive would not deter him from saying or doing that thing (paras. 9-11). Judge Cheetham was mostly concerned with the fifth part of the *Grainger* test, i.e., the belief being worthy of respect, but concluded that "[t]he fact that [the claimant] is driven in what he says and does by consideration of whether the action is right or wrong, rather than by what may be the consequence, may indeed cause offence, but that does not make the Claimant's Stoicism unworthy of respect in a democratic society, incompatible with human dignity or in conflict with the fundamental rights of others" (para. 22).

All in all, it seems that courts are applying increasingly diverse approaches to the *Grainger* test (Sandberg 2020). This trend highlights the challenges judges face in deciding which beliefs deserve protection under the Equality Act 2010 (Smartt 2019). It remains to be seen what impact the growing body of UK case law will have in the future.

Literature related to the main issue(s) at stake:

Specific legal publications/comments addressing the case

- McKeown, Paul and Rachel Ann Dunn. 2021. "A "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 Review* 42 (2): 207–241.

- Williams, Audrey and Beth Hammond. 2020. “Veganism as a Protected Belief: The Upshot for Employers”, *PLC Magazine*, January/February 2020, available at <https://uk.practicallaw.thomsonreuters.com/Browse/Home/Resources/PLCMagazineJa accessed 28 December 2020.

General legal literature on the topic that may not be directly connected with the case

- Cranmer, Frank. 2020. “A Critique of the Decision in *Conisbee* that Vegetarianism is not ‘A Belief’”, *Ecclesiastical Law Journal* 22(1), 36–48.
- Hambler, Andrew. 2020. “Beliefs Unworthy of Respect in a Democratic Society: A View from the Employment Tribunal”. *Ecclesiastical Law Journal* 22(2), 234–241.
- Rowley, Jeanette. 2016. “Human Rights Are Animal Rights: The Implications of Ethical Veganism for Human Rights”. In Jodey Castricano and Rasmus R. Simonsen (eds), *Critical Perspectives on Veganism*, 67–92. Cham: Palgrave Macmillan.
- Sandberg, Russell. 2020. “Stoicism Protected as a Belief Under the Equality Act: Jackson v Lidl”. *Law & Religion UK*, available at <https://lawandreligionuk.com/2020/09/25/stoicism-protected-as-a-belief-under-the-equality-act-jackson-v-lidl/> accessed 28 December 2020.
- Smartt, Fudia. 2019. “Religion or Belief: Shifting Sands – What Is a Philosophical Belief?”. *Employment Law Journal* (205).

General literature on the topic from other disciplines in humanities and social sciences

- Alvaro, Carlo. 2019. *Ethical Veganism, Virtue Ethics, and the Great Soul*. Lanham, MD: Lexington Books.
- Casamitjana, Jordi. 2020. *Ethical Vegan: A Personal and Political Journey to Change the World.* Tewkesbury: September Publishing.

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