EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr J Casamitjana Costa	**v**	The League Against Cruel Sports

RECORD of a PUBLIC PRELIMINARY HEARING

Heard at: Norwich **On**: 2 January 2020 (Reading Day)
3 January 2020 (Oral Evidence)

Before: Employment Judge Postle

Appearances
For the Claimant: Mr C Milsom, Counsel
For the Respondent: Mr P Keith, Counsel

PRELIMINARY HEARING JUDGMENT

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

REASONS

1. This is a preliminary hearing to determine whether ethical veganism can amount to a philosophical belief and thus a protected characteristic under the Equality Act 2010. Unusually in this preliminary hearing, the Respondents concede the issue, namely that ethical veganism can amount to a philosophical belief.

2. However, notwithstanding that concession by the Respondents, the Tribunal must be satisfied from the evidence before them, upon which the Respondent has made that concession, has done so on a sound basis in accordance with the principles set out in the case of Granger Plc v Nicholson [2010] ICR 360 EAT and the Equality and Human Rights Commission Code of Practice on Employment 2011, particularly paragraphs 2.55 – 2.61; particularly 2.59 where it sets out for a philosophical belief to be protected under the Act:

    - It must be genuinely held;
    - It must be a belief and not an opinion or view point based on the present state of information available;
    - It must be a belief as to a weighty and substantial aspect of human life and behaviour;
    - It must attain a certain level of cogency, seriousness, cohesion and importance; and finally
    - It must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.

3. Therefore, in this Tribunal we will need to understand how ethical veganism is defined and be satisfied that it is capable of constituting a philosophical belief before the Claimant is allowed to proceed with claims under the Equality Act 2010.

4. Furthermore, if the Tribunal is so satisfied that ethical veganism is capable of constituting a philosophical belief, the Tribunal then needs to consider whether the Claimant actually adheres to that belief and that that adherence forms something more than merely the assertion of opinion or viewpoint. It is a question of fact and a limited enquiry. Therefore, the Tribunal is simply concerned to ensure that the assertion of the philosophical belief is made in good faith. That will, of course, require the Tribunal to hear evidence on oath from the Claimant.

5. On 2 January 2020, I have had the benefit of reading some 1,239 pages contained in a bundle of documents which provides some details as to how philosophical veganism is defined, the history of it and how that has a major impact on the Claimant's daily life.

6. I also had the benefit of reading a lengthy witness statement from the Claimant, a further witness statement on behalf of the Claimant from Dr Jeanette Rowley from the Vegan Society, who also gave evidence before the Tribunal. There was a further statement from Professor Geoff McMahon.

7. Given the Respondent's position, neither the Claimant or Dr Rowley were cross examined.

8. I have also had the benefit of very helpful written submissions on behalf of the Claimant. As they are in writing and consist of some 24 pages, no disrespect to Counsel for the Claimant, I need not rehearse them in full as they are in writing.

9. The Tribunal has been directed to the following authorities:

   a. R (Williamson) and Others v The Secretary of State for Education and Employment [2005] UK HL15;

   b. Granger Plc v Nicholson [2010] ICR 360 ET;

   c. Hashman v Milton Park (Dorset) Ltd. (t/a Orchard Park) ET-3105555/2009

   d. Maistry v British Broadcasting Corporation [2014] EWCA Civ 1116;

   e. General Municipal and Boilers Makers Union v Henderson [2015] IRLR 451;

   f. Harron v Chief Constable of Dorset Police [2016] IRLR 482;

   g. Conisbee v Crosley Farms Ltd. and Others [2019] UK ET 3335357/18;

   h. CW v United Kingdom (18187-91) [1993] 16 EHRR CD 44 [1993];

   i. Jakobski v Poland (18429-06) [2010] ECHR 1974;

   j. Hermann v Germany ECHR 26 June 2012; and

   k. Eweida v United Kingdom [2013] IRLR 231 [2013] ECHR 37

The Facts

10. The Claimant is a qualified zoologist and dedicates his life to helping animals in need and has worked in animal protection most of his working life. It is clear that the Claimant became a vegan in 2000, his transition was 100% to a vegan diet which happened instantly. The Claimant having previously been a meat and cheese eater and did not make the transition via being a vegetarian. The Claimant therefore stopped consuming any animal products including fish, no milk, eggs or honey etc. The Claimant also got rid of clothes that contained animal products. The Claimant accepts the process of getting rid of all animal products in his house took longer than the transition to a vegan diet. However, within a couple of months the only remaining objects he possessed (animal products) were some woolly clothes, leather belts and some shoes which apparently, he had intended to use until they were worn out, but in the event, he decided

to throw them away or give them to charities if they were still in good condition.

11. Philosophically, the concept of veganism is rooted in the ancient concept of Ahimsa, which is one of the main premises of the ancient Indian religion of Jainism. Ahimsa means *"not to injure"*, compassion being the key feature of many Indian religions. The word appears to be derived from the Sanskrit *"to strike"*. Himsa is *"to injure or harm"* and Ahimsa is the opposite of this, ie. *"to cause no injury and to do no harm".* Ahimsa is one of the cardinal virtues and an important tenent of Jainism, Hinduism and Buddhism and is a multi-dimensional concept inspired by the premise that all living beings have the spark of the divine spiritual energy and therefore to hurt another being is to hurt oneself. The Claimant is a firm believer that one should live following the principles of Ahimsa.

12. Ethical veganism is not just about choices of diet, but about choices relating to what a person wears, what personal care products he or she uses, their hobbies and the jobs he or she does. They are in fact people who have chosen to live, as far as possible, without the use of animal products.

13. The definition contained or provided by the Vegan Society is helpful in that it defines vegans as follows:

> *"A philosophy and way of life which seeks to exclude, as far as possible and practical, all forms of exploitation 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."*

14. 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.

15. It is clear veganism is living according to a belief or conviction that it is wrong to exploit and kill living beings unnecessarily and that moral conviction is cogent, serious and important.

16. The philosophy defined by the Vegan Society is clearly one that the Claimant adheres to and does constitute the basis of his philosophical belief acting as a moral framework.

17. As part of the Claimant's belief, he ensures that he takes all reasonable steps to ascertain whether a product or service that he consumes complies with ethical veganism. If the Claimant is unable to ascertain the animal involvement in an essential product or service, or if he has been misled regarding such involvement, or if there are no alternatives for the products or service, then the Claimant would not consider that he has

transgressed his morals. It is clear, on 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.

18. The Claimant goes as far, when the ingredients on food labels are not clear, to contact the food manufacturers to check whether their food is genuinely vegan. There is evidence of this in the bundle as there is of contacting suppliers and manufacturers of clothing and the like.

19. 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.

20. The effect of ethical veganism on the Claimant's day to day life is apparent in the following:

    20.1 Ethical veganism dictates the Claimant's choices from the products and services that he consumes;

    20.2 The Claimant has 100% vegan diet and if he is unsure of the content of food products, he avoids them;

    20.3 The Claimant does not eat animal flesh, including fish or sea food;

    20.4 The Claimant does not consume any product that contains any animal product, including additives and further does not keep any such products in his home;

    20.5 The Claimant would not allow non-vegan food to be brought into his home by another person;

    20.6 It is clear, when the Claimant stays at hotels or is attending an event where food will be provided, he contacts them in advance to advise them he is a vegan;

    20.7 If the Claimant is travelling for extended periods, he will take an additional dietary supplement;

    20.8 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;

20.9 The Claimant does not generally drink alcohol, although not a firm ethical or philosophical belief he may consume alcohol in the future but will not consume an alcoholic drink which has been produced using animal products;

20.10 Where it can be ascertained there are feasible alternatives to animal products, the Claimant will not buy any product that has been tested on animals and will endeavour to ensure that he is acquainted with which products have been tested on animals, although it is accepted it may not always be possible to avoid medical procedures;

20.11 The Claimant does not wear any clothes, shoes, hats or fashion accessories that contain animal products, which includes products containing wool, silk, fur, leather, teeth, horns or tortoiseshell, furthermore he does not keep any such products in his home. He has in the past contacted high street stores to find vegan suits;

20.12 The Claimant will take reasonable steps to ensure that any financial products that invest in pharmaceutical companies are avoided if tested on animals;

20.13 The Claimant would not visit or attend zoos, circuses, animal fights, animal races or any form of spectacle with live animals;

20.14 Since the Claimant became a vegan, he has only worked in the field of animal protection which is clear from his CV found in the bundle;

20.15 Since the Claimant has become a vegan, he does not live with any companion animal;

20.16 The Claimant, when travelling to remote places, still adheres to his ethical vegan lifestyle and would rather go hungry than consume an animal product;

20.17 The Claimant tries to avoid sitting on leather seats or holding onto leather straps;

20.18 The Claimant participates in animal protection marches, demonstrations and protests and gives speeches at these events and will be vocal about his support for the ethical vegan lifestyle;

20.19 Where possible, the Claimant will avoid social gatherings if the food served is non-vegan; and

20.20 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.

21. Many of the above examples are supported by documentary evidence in the bundle.

22. A day in the life of the Claimant demonstrates:

    22.1 He showers with vegan friendly shampoos and soap;

    22.2 Shaves with only an electric shaver and trimmer which is powered by electricity which is bought from Ecotricity, a power supplier which has been certified by the vegan society to produce vegan friendly electricity as it does not use bio fuels from the animal agricultural industry;

    22.3 His clothes are made of sympathetic fibres; cotton, linen, hemp and other plants. His shoes are vegan and his jackets contain no animal products;

    22.4 Before breakfast the Claimant takes a B12 supplement, Selenium, Vitamin D and Lodine in the form of a chewable pill produced by the Vegan Society;

    22.5 His breakfast will consist of all organic porridge, walnuts, dried berries and ground flax seeds, with tea served with oat milk;

    22.6 If the Claimant's destination is within an hour walking distance he would normally walk there to avoid accidental crashes with insects or birds when taking a bus or public transport; and

    22.7 When paying for purchases, they will be done with credit card or coins and will avoid as far as possible notes, particularly the new versions that have been manufactured using animal products.

The Law

23. The starting point is of course Section 10 of the Equality Act 2010 – Religion or belief - this Section provides:

    …

    (2) Belief means any religious or philosophical belief and a reference to the belief includes a reference to the lack of a belief.

    (3) In relation to the protected characteristic of religion or belief –

        (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

        (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

24. It would appear, Section 10 of the Equality Act 2010, consciously mirrors that in the European Convention on Human Rights, particularly Article 9 which provides:

> 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 in private to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or belief 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 freedom of others.

25. Pursuant to the convention, the freedom to hold and manifest belief is to be enjoyed without discrimination as defined by Article 14 of the ECHR:

> The enjoyment of the rights and freedom set forth in the Convention shall be secured without discrimination on any ground such as religion, political or other opinion.

26. Pursuant to Section 3 of the Human Rights Act 1998, domestic legislation must be read insofar as possible to give effect to Convention rights save where a construction would run counter to a fundamental feature of the legislation: Ghaidan v Godin–Mendoza [2004] 2 AC 557. Where the inclusionary language of Section 10 mirrors that in Article 9, it would be both bizarre and by reason of Section 3 of the Human Rights Act 1998 unlawful if a belief were recognised under the Conventions but not under the Equality Act 2010.

27. Freedom of thought conscience and religion as one of the foundations of a democratic society within the meaning of the Convention. In its religious dimension, it is one of the most vital elements that goes to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned.

28. It follows that beyond an evidential enquiry into whether a belief is genuinely held, an individual is free to believe as he or she wishes. Per Lord Nicholls at (22) in R (Williamson) v Secretary of State for Education and Employment [2005] 2 AC 246,
Paragraph 22 of that Judgment provides:

> "It is necessary first to clarify the court's role in identifying a religious belief calling for protection under Article 9. When the genuineness of a Claimant's professed belief is an issue in the proceedings the court will inquire into and decide this issue as a question of fact. This is a limited inquiry. The court is concerned to ensure an assertion of religious belief is

made in good faith: 'neither fictitious, nor capricious, and that it is not an artifice'… But, emphatically, it is not for the court to embark on an inquiry into the asserted belief and judge its 'validity' by some objective standard such as the source material upon which the claimant founds his belief or the orthodox teaching of the religion in question or the extent to which the claimant's belief conforms to or differs from the views of others professing the same religion. Freedom of religion protects the subjective belief of an individual… religious belief is intensely personal and can easily vary from one individual to another. Each individual is at liberty to hold his own religious beliefs, however irrational or inconsistent they may seem to some, however surprising…"

29. Article 9 is not, however, confined to the freedom to hold a belief.

> "It includes the right to express and practice one's belief without this (the freedom) would be emasculated"

Per Lord Nicholls at (16).

30. In the context of expression or manifestation an evaluative filter is necessary. Per Lord Nicholls at (23 – 24):

> **Paragraph 23** – "Everyone therefore is entitled to hold whatever belief he wishes. But when questions of 'manifestation' arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in Article 9 of the European Convention and comparable guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention."
>
> **Paragraph 24** – "This leaves on one side the difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious. This question will seldom, if ever, arise under the European Convention. It does not arise in the present case. In the present case it

> does not matter whether the claimant's beliefs regarding the corporal punishment of children are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under Article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by Article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. Article 9 is apt, therefore, to include a belief such as pacifism: Arrowsmith v United Kingdom [1978] 3 EHRR 218. The position is much the same with regard to the respect guaranteed to a parent's 'religious and philosophical convictions' under Article 2 of the First Protocol: see Campbell and Cosans v United Kingdom 4 EHRR 293."

31. Therefore, since Granger Plc v Nicholson it is clear that the criteria identified in Williamson are to be transposed to the application of Section 10 of the Equality Act 2010.

32. I repeat, the statutory Code of Practice at paragraph 2.59 come within the auspices of Section 10 protection, a belief must, therefore:

    i. Be generally held;
    ii. Be held as a belief and not as an opinion or viewpoint based on the present state of information available;
    iii. Be a belief as to weighty and substantial aspect of human life and behaviour;
    iv. Attain a certain level of cogency, seriousness, cohesion and importance;
    v. Be worthy of respect in a democratic society;
    vi. Be compatible with human dignity; and
    vii. Not conflict with the rights of others.

Conclusions

A genuinely held belief

33. In this case, the Respondents concede that the belief was genuinely held. Having read vast amounts of evidence as to how the Claimant conducts his life and the basis of his philosophy, I have no doubt whatsoever the Claimant genuinely and sincerely holds his beliefs in ethical veganism.

A belief and not a viewpoint

34. It is clear to me that ethical veganism carries with it an important moral essential. That is so even if the Claimant may transgress on occasions. 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. He has clearly dedicated himself to that belief throughout what he eats, where he works, what he wears, the products he uses, where he shops and with whom he associates. It clearly is not simply a viewpoint, but a real and genuine belief and not just some irrational opinion.

A weighty and substantial aspect of human life and behaviour

35. 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.

Attain a certain level of cogency, cohesion and importance

36. Ethical veganism is without doubt a belief which obtains a high level of cogency, cohesion and importance. It is true that it is capable and the definition of the Vegan Society, namely a philosophy and a way of life which seeks to exclude as far as possible and practical all forms of exploitation 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.

37. There clearly does exist a community within businesses and restaurants which adheres to this ethical principal. The belief concerns the relationship between individuals and other living things in diet, clothing, consumption, travel and relationships and indeed many other aspects of daily life / living. It is clear this threshold is easily achieved, i.e. attaining a certain level of cogency, cohesion and importance.

Worthy of respect in a democratic society and compatible with human dignity

38. Given modern day thinking, it is clear ethical veganism does not in any way offend society, it is increasingly recognised nationally, particularly by the environmental benefits of vegan observance.

39. I am therefore satisfied and find it easy to conclude that there is overwhelming evidence before me that ethical veganism is capable of being a philosophical belief and thus a protected characteristic under the Equality Act 2010.

40. The Full Merits Hearing therefore proceeds which is listed at Watford Employment Tribunal commencing on 24 February 2020 and concluding on 6 March 2020.

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Employment Judge Postle

Date: ……21-01-2020…….

Sent to the parties on: ..27-01-2020..

.....Ms.J A Moossavi.....
For the Tribunal Office