

A Forgotten Element Of The Right To Adequate Food: Redressing The Normative Gap Regarding Consumer Acceptability

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ABSTRACT

The acceptability of food to the individual consumer has been recognised by the Committee on Economic, Social and Cultural Rights as a core component of the right to adequate food under Article 11 of the International Covenant on Economic, Social and Cultural Rights. Consumer acceptability is critical for those who are vulnerable on account of their total dependence on the state for food provision, including prisoners, hospital patients and school children. Yet, despite its significance, consumer acceptability is, at present, a largely forgotten element of the right to adequate food. This article seeks to redress the current normative gap by examining how consumer acceptability should be understood and realised. The article concludes by offering practical measures to be taken at the international and domestic levels to solidify consumer acceptability as a core component of the right to adequate food, respecting the individual as a rights-holder with distinctive values.

KEYWORDS: cultural acceptability, ECHR, ICESCR, right to food, vegan, vegetarian

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1. INTRODUCTION

To date, discussions on the right to adequate food under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) have largely centred on the availability and accessibility of food.¹ Whilst this emphasis is understandable in light of states' finite resources, it risks overlooking other critical aspects of the right's core content recognised by the Committee on Economic, Social and Cultural Rights (CESCR). In addition to accessibility and availability, food must, among other things,² be acceptable within a given culture (hereafter cultural acceptability) and to the individual consumer (consumer acceptability).³ Out of the two, cultural acceptability has received significantly more attention; there is increasing recognition that an individual who has access to foods necessary for a healthy diet but not those which adhere to their cultural or religious beliefs cannot be said to enjoy the right to adequate food.⁴ More contentious are situations where an individual demands access to certain foods based on secular beliefs and, further still, where these choices are driven purely by personal taste or preference. The CESCR offers limited guidance on these issues beyond instructing states 'take into account, as far as is possible, perceived non-nutrient-based values attached to food consumption and informed consumer concerns regarding the nature of accessible food supplies'.⁵ More than 25 years have passed since this instruction, yet there has been no further clarification of the scope of the consumer acceptability component by the CESCR, nor have these concerns been explored extensively by scholars. Meanwhile, consumer values are playing an increasingly prominent role

¹ 1966, 993 UNTS 3 (ICESCR).

² To be of sufficient quality, food must also satisfy dietary needs and be free from adverse substances. See: Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food, UN Doc. E/C.12/1999/5, 12 May 1999 at paras 8-10.

³ CESCR, *supra* n 2 above at para 11.

⁴ See, for example, Damman, Eide and Kuhnlein, 'Indigenous peoples' nutrition transition in a right to food perspective' (2008) 33 *Food Policy* 135; Maffei, 'Food as a Cultural Choice: A Human Right to Be Protected?' in Borelli and Lenzerini (eds), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, (2012) 83.

⁵ CESCR, *supra* n 2 above at para 11.

in attitudes to food, as evidenced by the rapid growth in the number of those opting for a vegan diet.⁶

More significantly, as this article will demonstrate, consumer acceptability becomes a critical issue when one extends the definition of ‘consumer’ to those who do not operate in market-based conditions but are wholly dependent on the state for food provision, i.e. one who consumes food. In the absence of a clear definition by the CESCR, ‘consumer’ must be understood in relation to access to food via distribution, processing and market systems, as well as in relation to the act of feeding oneself via productive land or other natural resources, in keeping with the definition of availability of food within General Comment No. 12 of the CESCR.⁷ Thus, the discussion of consumers within this article will not be limited to *customers*; it will also include state provision of subsistence to those under its control or whom it bears responsibility for, such as prisoners, hospital patients and school children. It is such situations of vulnerability which render the development of the consumer acceptability component an essential task, not merely one for the sake of doctrinal completeness, given the material consequences for those who find themselves entirely dependent upon the state for food provision.

In light of the criticality of consumer acceptability within this context, this article will undertake an in-depth examination of this frequently forgotten aspect of the right to adequate food, offering suggestions as to how the normative content of this component can be augmented and realised in practice. The article will begin by locating the origins of consumer acceptability within General Comment No. 12. It will take as its starting point the requirement for states to consider ‘non-nutrient-based values attached to food consumption’ - encompassing religious, ethno-cultural, ethical and personal values (of which there may be overlap) – and ‘informed

⁶ The Vegan Society, ‘Worldwide growth of veganism’, *The Vegan Society*, 2024, available at: www.vegansociety.com/news/media/statistics/worldwide [last accessed 18 March 2025].

⁷ CESCR, *supra* n 2 at para 12.

consumer concerns regarding the nature of accessible food supplies.’⁸ Whilst the latter could encompass the health implications of food, these concerns will not be explored in light of the rich literature on the right to food from a health perspective.⁹ The article will highlight the rather minimal guidance pertaining to consumer acceptability within materials produced under the auspices of the United Nations (UN) in comparison to the growing substance of the cultural acceptability requirement.

Given the sizeable gaps which remain regarding the contents of consumer acceptability at the international level, the article will then analyse the protection the European Court of Human Rights (ECtHR) has granted those who follow a vegetarian diet under Article 9 of the European Convention on Human Rights (ECHR) for religious reasons to illustrate how non-nutrient-based values associated with food have been advanced at the regional level. The European regional jurisprudence will further indicate how consumer acceptability can be afforded indirect protection where there is resistance to economic and social rights and, relatedly, how courts can balance an individual’s values against other concerns to place reasonable demands on the state. The article will then argue that the ECtHR should extend protection to those adopting a vegan diet for wholly secular beliefs, as is sought in the recently communicated case of *G.K. and A.S. v Switzerland*,¹⁰ which may be perceived as an example of consumer acceptability. In doing so, it will highlight the contrasting outcomes of two Article 9 claims brought before the Danish municipal courts concerning the failure to provide sufficient vegan foods in a hospital and

⁸ CESCR, *supra* n 2 at para 11.

⁹ See, for example, Oshaung, Eide and Eide, ‘Human rights: a normative basis for food and nutrition-relevant policies’, (1994) 19 *Food Policy* 491; Ayala and Meier, ‘A human rights approach to the health implications of food and nutrition insecurity’ (2017) 38 *Public Health Reviews* 1, available at: <https://link.springer.com/article/10.1186/s40985-017-0056-5> [last accessed 18 March 2025]; Cardenas, Bermudez and Echeverri, ‘Is nutritional care a human right?’ (2019) 26 *Clinical Nutrition Experimental* 1, available at: www.sciencedirect.com/science/article/pii/S2352939319300351 [last accessed 18 March 2025].

¹⁰ Application Nos 55299/20 31515/22, Communicated Case, 27 September 2022.

kindergarten, respectively, to illustrate when the state would be expected to ensure individuals have access to food which adheres to their consumer values.

Whilst the article will focus on veganism and vegetarianism due to the explicit engagement with these dietary practices by the ECtHR and domestic courts, it will highlight that the broad concept of consumer acceptability proposed could extend to a range of food practices. That being said, it will be argued that the right to adequate food must be interpreted in light of the right to a healthy environment, meaning that claims for the protection of vegan and vegetarian diets carry particular weight.¹¹

Having displayed dissatisfaction with the cursory attention the international human rights regime has paid to non-nutrient-based values associated with food, the article will present the development of the consumer acceptability component as a means of ensuring a multitude of voices play an active role in shaping the substantive content of the right to adequate food and its realisation. It will note how the approach to consumer acceptability under Article 11 of the ICESCR will need to extend beyond the treatment of non-nutrient-based values under Article 9 of the ECHR, given the distinct normative and doctrinal frameworks of the two systems. The article will lastly offer practical measures which ought to be taken at the international and domestic levels to solidify consumer acceptability as a core component of the right to adequate food and effectuate its realisation. It concludes with suggestions as to the policy implications for states, stressing the importance of monitoring mechanisms to ensure that consumer acceptability is no longer a forgotten aspect of the right to adequate food.

2. CULTURAL AND CONSUMER ACCEPTABILITY

¹¹ Human Rights Council, 'Resolution adopted by the Human Rights Council on 8 October 2021: 48/13. The human right to a clean, healthy and sustainable environment', UN Doc A/HRC/RES/48/13, 18 October 2021.

The right to food is protected within international law via Article 11 ICESCR as a component of the right to an adequate standard of living. The right to food consists of two separate rights: the fundamental right to be free from hunger and the right to adequate food.¹² Whilst the former is an absolute right to be enjoyed by all at all times, the latter is subject to progressive realisation in accordance with the state's resources.¹³ Interpretations of the minimum core contents of obligations imposed by socioeconomic rights and the notion of progressive realisation vary, with some human rights proponents rejecting a strict division of the two by locating the core within a continuum of obligations imposed on states.¹⁴

Though the ICESCR itself offers little detail as to the normative content of the right to adequate food, supplementary guidance issued by the CESCR has attempted to resolve such ambiguities. Within General Comment No. 12, the CESCR clarified that 'adequate' food refers to not only the 'availability' and 'accessibility' of nutritious foods but also requires the state to 'take into account, as far as is possible, perceived non-nutrient-based values attached to food consumption and informed consumer concerns regarding the nature of accessible food supplies'.¹⁵ Food must be 'acceptable', both within a given culture and to the individual consumer - that is, one who consumes food.¹⁶ As recognised by the former Special Rapporteur on the right to food, Jean Ziegler, the culture in which the consumer belongs may shape the values they attach to food.¹⁷ However, cultural and consumer acceptability must not be viewed as synonymous. Treating cultural acceptability and consumer acceptability as two sides of the same coin risks

¹² Articles 11(1) and (2), ICESCR.

¹³ CESCR, supra n 2 at para 6.

¹⁴ See, for example, Leckie, 'Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights', (1998) 20 *Human Rights Quarterly* 81 at 102; Scott and Alston, 'Adjudicating Constitutional Priorities in a Transnational Context: A Comment on Soobramoney's Legacy and Grootboom's Promise', (2000) 16 *South African Journal on Human Rights* 206 at 250; Byrne, 'Reclaiming Progressive Realisation: A Children's Rights Analysis', (2020) 28(4) *The International Journal of Children's Rights* 748 at 754.

¹⁵ CESCR, supra n 2 at para 11.

¹⁶ CESCR, supra n 2 at para 11.

¹⁷ Human Rights Council, Report of the Special Rapporteur on the right to food, Jean Ziegler, UN Doc. A/HRC/7/5, 10 December 2008, at para 17.

overlooking the consumer's non-nutrient-based concerns which would not be considered a cultural/religious value or practice deemed worthy of protection under international law, for example, the avoidance of meat on account of one's secular beliefs. If these beliefs are not protected, there is the risk of imposing food choices on individuals which might undermine their autonomy and dignity as rights-holders.¹⁸

A. Cultural Acceptability

The CESCR has addressed the importance of cultural acceptability in relation to socioeconomic rights within General Comment No. 21 regarding the right to take part in cultural life, as per Article 15(1)(a) ICESCR.¹⁹ The CESCR understands culture as 'customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives',²⁰ including values attached to food and food consumption.²¹ The CESCR uses the term cultural acceptability interchangeably with cultural appropriateness,²² both of which recognise that '[c]ulture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities'.²³

As Fieldhouse underscores, 'culture is a major determinant of what we eat';²⁴ certain foodstuffs carry strong cultural significance, for instance, within a particular religious context.

¹⁸ Universal Declaration of Human Rights (adopted 10 December 1948) United Nations General Assembly (UNGA) Res 218 A (III) (UDHR) preamble; CESCR, *supra* n 2 at para 4; San-Epifanio, 'The Right to Food and the Essential Promotion of Personal Autonomy: The 'How' Matters' in San-Epifanio and Rebato Ochoa (eds), *Ethics of Charitable Food: Dilemmas for Policy and Practice* (2022) 61 at 61-74.

¹⁹ CESCR, General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/GC/21, 21 December 2009.

²⁰ *Ibid.* at para 13.

²¹ CESCR, *supra* n 19 at para 13(a).

²² CESCR, *supra* n 19 at para 16(e).

²³ CESCR, *supra* n 19 at para 13(a).

²⁴ Fieldhouse, *Food and Nutrition: Customs and Culture*, 2nd ed (1995) at 1.

Religious food practices - including sacrifices, fasting and prescriptive rules governing what must be eaten, when and how – serve a number of purposes, from the demonstration of faith to heightening a sense of belonging.²⁵ As an illustration, in Judaism, a body of dietary laws (*kashrut*) dictates the foods that Jewish people are permitted to eat and how they must be prepared. For example, the mixture of meat and dairy products is forbidden, deriving from the second and fifth books of the Torah.²⁶

Foods can similarly strengthen cultural identity in non-religious contexts, with the meaning of foods varying from one community to the next.²⁷ Several cultural food practices have been incorporated into UNESCO's Representative Lists of the Intangible Cultural Heritage of Humanity as part of the Convention for the Safeguarding of the Intangible Cultural Heritage,²⁸ including the preparation of the favourite foods of the departed placed on *ofrendas* (home alters) during *Día de los Muertos*, an Indigenous Mexican festivity which celebrates the dead.²⁹ The Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage has also recognised a Japanese practice whereby the children of Shimo-Koshiki Island are gifted *toshimoshi*, a rice cake, by local men dressed as deities called the Toshidon on New Year's Eve to allow the children to grow a year older in peace.³⁰ Yet, other culinary behaviours recognised by the Intergovernmental Committee as cultural practices are more questionable; a striking example is the inclusion of the Mediterranean diet on the 2010 and 2013 Representative Lists,³¹ which, as

²⁵ Ibid. at 120.

²⁶ *The Torah: The Five Books of Moses*, (Jewish Publication Society tr. 2001) at 223, 260 and 554.

²⁷ Damman, Eide and Kuhnlein, supra n 4 above at 141.

²⁸ Article 16 Convention for the Safeguarding of the Intangible Cultural Heritage 2003, 2368 UNTS 3.

²⁹ Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Third Session: Decisions, 8 November 2008, Decision 3.COM 1.

³⁰ Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Fourth Session: Decisions, 2 October 2009, Decision 4.COM 13.53.

³¹ Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Fifth Session: Decisions, 6 October 2010, Decision 5.COM 6.41; Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Eighth Session: Decisions, 4 December 2013, Decision 8.COM 8.10.

Maffei highlights, is arguably 'shared by too vast a community for reasons too different to be traced back to cultural unity'.³²

The UN fact sheet on the right to adequate food appreciates the value of food and food preparation practices within different communities, stipulating that food must not be 'religious or cultural taboo for the recipients'.³³ Ziegler has equally highlighted the importance of 'sufficient food corresponding to the cultural traditions of the people...which ensures...[an] individual and collective, fulfilling and dignified life'.³⁴ Oshaung, Eide and Eide have examined the cultural element of the right to adequate food through the tripartite typology of obligations – to respect, protect and fulfil – which offers some indication of the actions required by the state.³⁵ In sum, states must first, 'respect habitual food patterns' and 'recognise the significance of "food culture" as part of a wider cultural identity'.³⁶ They must also protect populations from threats to their food cultures and means of obtaining food.³⁷ Lastly, states must fulfil the cultural acceptability component by incorporating traditional food patterns into development activities - such as those relating to agriculture, health and education - and by monitoring changes in these patterns.³⁸ States are required to provide information regarding the measures taken to ensure the availability of culturally acceptable food within their reports to the CESCR.³⁹ At present, engagement with the

³² Maffei, 'Culinary Traditions as Cultural Intangible Heritage and Expressions of Cultural Diversity' in Borelli and Lenzerini (eds), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, (2012) 223 at 240.

³³ Office of the UN High Commissioner for Human Rights, *The Right to Adequate Food* (Fact Sheet No 34, 2010) at 3.

³⁴ Human Rights Council, *supra* n 17.

³⁵ Oshaung, Eide and Eide, *supra* n 9.

³⁶ *Ibid.* at 506.

³⁷ *Ibid.* at 507.

³⁸ *Ibid.* at 508.

³⁹ UN Secretary General, *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Right Treaties*, UN Doc. HRI/GEN/2/Rev.6, 3 June 2009, at para 44.

cultural acceptability of food in state reports is largely superficial,⁴⁰ if not completely absent,⁴¹ indicating a lack of genuine commitment from states to effectively uphold these obligations.

The notion of culturally acceptable food has also received consideration within regional human rights systems.⁴² For example, the Inter-American Commission and Inter-American Court's engagement with the right to land of Indigenous Peoples typically involves protection of the latter's right to natural resources - including resources which constitute their food.⁴³

Further, definitions of food security increasingly display awareness of the need to be sensitive to cultural concerns, albeit with less attention given to the practical implications which follow.⁴⁴ As an illustration, it is unclear how the international human rights regime would seek to resolve conflicts between different cultural values ascribed to food and food practices, such as where one's ability to eat a specific cultural food or food prepared in accordance with one's culture is threatened by a different, prevailing culture.⁴⁵ It is hoped that any such uncertainties are clarified through the burgeoning scholarship addressing cultural acceptability in a general sense and the specific context of the right to adequate food.

⁴⁰ See, for example, the following recent state reports: CESCR, Seventh periodic report submitted by Cyprus under articles 16 and 17 of the Covenant, due in 2021, UN Doc C.12/CYP/7, 10 January 2022 at para 148; CESCR, Seventh periodic report submitted by Colombia under articles 16 and 17 of the Covenant, due in 2022, UN Doc. E/C.12/COL/7, 16 December 2022 at para 188; CESCR, Seventh periodic report submitted by Mexico under articles 16 and 17 of the Covenant, due in 2023, UN Doc. E/C.12/MEX/7, 17 October 2023 at para 179.

⁴¹ See, for example, the following recent state reports: CESCR, Second periodic report submitted by Indonesia under articles 16 and 17 of the Covenant, due in 2019, UN Doc C.12/IDN/2, 3 November 2021 at paras 196-206; CESCR, Seventh periodic report submitted by the Philippines under articles 16 and 17 of the Covenant, due in 2021, UN Doc E/C.12/PHL/7, 21 March 2022 at paras 169-176; CESCR, Sixth periodic report submitted by Mauritius under articles 16 and 17 of the Covenant, due in 2024, UN Doc E/C.12/MUS/6, 25 June 2024 at paras 160-164.

⁴² The European Court of Human Rights' engagement with non-nutrient-based values attached to food will be explored in the following section.

⁴³ Maffei, *supra* n 4 at 100-3.

⁴⁴ Hammelman and Hayes-Conroy, 'Understanding Cultural Acceptability for Urban Food Policy', (2015) 3 *Journal of Planning Literature* 37 at 38-9.

⁴⁵ Maffei, *supra* n 32 at 225 and 233-4.

B. Consumer Acceptability

In addition to cultural norms, each of us holds unique values and preferences attached to food as individual consumers of food. However, in contrast to cultural acceptability, consumer acceptability has, for the most part, been sidelined by the CESCR. The UN fact sheet suggests that food must not be ‘inconsistent with eating habits’, yet provides no further explanation as to the meaning of consumer acceptability.⁴⁶ The fact sheet also emphasises the ties between the right to food and the right to information, noting that the latter ‘strengthens people’s participation and free consumer choice...[which] facilitates the enjoyment of the right to food’.⁴⁷ Nevertheless, it does not detail the processes necessary for consumer acceptability to be achieved. Such perfunctory remarks fail to offer sufficient clarity in regard to the obligations imposed by the consumer acceptability component, which must be determined for these obligations to be enforced.

The CESCR reporting guidelines require states to ‘[p]rovide information on the measures taken to ensure the availability of affordable food in quantity and quality sufficient to satisfy the *dietary needs of everyone*’,⁴⁸ referring to the ‘whole mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation’.⁴⁹ Yet, there is no reference to the *non-nutrient-based* consumer values individuals attach to food. Consequently, it is unsurprising that the term ‘consumer’ has been understood narrowly within state reports in the context of Article 11, exemplified by Croatia’s discussion of the EU Regulation on the provision of food information to consumers in its 2022 report to the

⁴⁶ Office of the UN High Commissioner for Human Rights, *supra* n 33.

⁴⁷ Office of the UN High Commissioner for Human Rights, *supra* n 33.

⁴⁸ UN Secretary General, *supra* n 39 (emphasis added).

⁴⁹ CESCR, *supra* n 2 at para 9.

CESCR.⁵⁰ Whilst this is one layer of consumer acceptability, approaching the term from a purely market-oriented perspective obscures other contexts in which non-nutrient-based values individuals attach to food require consideration. Indeed, as the article shall demonstrate, consumer acceptability becomes most critical in cases where the rights-holder is entirely dependent on the state for food. Examples include prisons, childcare and aged-care facilities, refugee housing/detention and other instances of enforced quarantine, such as those imposed during the COVID-19 pandemic.⁵¹

Whilst the right to adequate food incorporates commonly agreed criteria regarding nutritional intake,⁵² the requirement for food to be acceptable to the consumer suggests that the precise meaning of the right's contents will differ from one person to the next. Currently, there is a normative gap in how consumer acceptability is to be defined and applied. For this component to have meaning, states must have regard to individual values which inform their food consumption and culinary behaviours. Addressing the normative gap surrounding consumer acceptability thus presents the chance to tailor the contents of the right to the rights-holder to an even greater level of specificity than cultural acceptability alone requires. Evidently, the scale of this operation means it will be a complex endeavour. Yet, it also presents an exciting opportunity to involve a multitude of voices in the establishment of human rights standards.

⁵⁰ Regulation (EU) No 1169/2011 on the provision of food information to consumers [2011] OJ L 304; Committee on Economic, Social and Cultural Rights, Second periodic report submitted by Croatia under articles 16 and 17 of the Covenant, due in 2016, UN Doc E/C.12/HRV/2, 21 April 2022 at para 177.

⁵¹ For insights into the consumer acceptability of food provided in quarantine hotels, see: Chia and Xiong, 'Once upon a time in quarantine: Exploring the memory quarantine hotel experiences of Chinese student returnees during the COVID-19 pandemic' (2022) 23 *Tourism and Hospitality Research* 72 at 79-83; Gray et al., 'The lived experience of hotel isolation and quarantine at the Aotearoa New Zealand border for COVID-19: A qualitative descriptive study' (2022) 60 *International Journal of Disaster Risk Reduction* 1 at 6, available at: <https://doi.org/10.1016/j.ijdrr.2021.102779> [last accessed 12 March 2025]; Leutwiler-Lee et al., 'Dimensionality in the service quality perceptions of quarantine hotel guests' (2023) 47 *Tourism Management Perspectives* 1 at 2-12, available at: <https://doi.org/10.1016/j.tmp.2023.101124> [last accessed 12 March 2025].

⁵² Office of the UN High Commissioner for Human Rights, *supra* n 33.

3. INSIGHTS FROM EUROPE

In light of the normative gaps surrounding the consumer acceptability component of the right to adequate food at the international level, the article will now examine the protection non-nutrient-based values have been granted at the regional level through a study of the ECtHR's jurisprudence. Whilst courts with an explicit mandate to realise socioeconomic rights will be able to play a more transformative role in advancing non-nutrient-based values associated with food,⁵³ the ECtHR's approach nevertheless offers important lessons which can inform the development of consumer acceptability under Article 11 ICESCR. In particular, the regional case study will demonstrate how courts can deliver a realistic response which achieves a balance between non-nutrient-based values concerns and the state's finite resources.

To date, the ECtHR's engagement with non-nutrient-based values attached to food has been limited to the accommodation of the vegetarian diet of individuals within state-run institutions, arising under the right to manifest one's religion or belief via Article 9 ECHR. Those practising a vegetarian diet object to the consumption of certain animal products, which serves as an indication of the subjectivity of the acceptability of food.⁵⁴ Most notable are the cases of *Jakóbski v Poland*⁵⁵ and *Vartic v Romania (No. 2)*,⁵⁶ both of which concern the failure to supply a vegetarian diet to a prisoner.⁵⁷ O'Sullivan García asserts that the ECtHR's decisions in these cases

⁵³ Neither the UK nor Denmark – the two states cited in this section in reference to national courts' engagement with secular dietary practices – recognise the right to food with domestic law, though both are state parties to the ICESCR. Direct judicial engagement with consumer acceptability of food will likely be more feasible in States where a justiciable right to food has been incorporated into the national jurisdiction, see Golay, *The Right to Food and Access to Justice: Examples at the national, regional and international levels* (2009).

⁵⁴ Wills, 'Animal Agriculture, the Right to Food and Vegan Dietary Solutions', in Rowley and Prisco (eds), *Law and Veganism: International Perspectives on the Human Right to Freedom of Conscience* (2022) 121 at 127.

⁵⁵ Application No 18429/06, Merits and Just Satisfaction, 7 December 2010.

⁵⁶ Application No 14150/08, Merits and Just Satisfaction, 17 February 2010.

⁵⁷ See also *D. and E.S. v United Kingdom* Application No. 13669, Admissibility, 7 March 1990 in which the EComHR highlighted that the reference to food within Rule 21(1) of the Prison Rules 1964 (as amended) applying to prisons in England and Wales was to be interpreted 'as a reference to food which prisoners are able to consume having regard to the existence of any impediment on religious or other grounds'. This claim was brought by two Orthodox Jews who complained of the Secretary of State's refusal to provide them with

'leave in no doubt that vegetarianism is a protected belief under Article 9'.⁵⁸ Whilst it was recognised in *Jakóbski* that the right to manifest one's belief is not absolute,⁵⁹ the ECtHR held that the preparation of meat-free meals would not have been too expensive for the state, nor would it have placed an excessive burden on the prison kitchen staff.⁶⁰ Similarly, in *Vartic*, the ECtHR rejected the state's argument that the provision of vegetarian meals to the applicant would have disrupted prison management or caused a decline in the quality of the meals provided to other prisoners.⁶¹ Thus, in both cases, a violation of Article 9 was found despite the margin of appreciation granted to Member States.⁶²

The importance of the prison setting as the backdrop of *Jakóbski* and *Vartic* must be stressed; it is extremely unlikely that the same duty would apply under the ECHR where the applicant was not fully reliant on state support. Whilst the ECtHR has rejected the notion of a 'water-tight division' between civil and political and socioeconomic rights,⁶³ the ECtHR is tasked with principally protecting the former and equally recognises the danger of adjudicating upon complex polycentric matters.⁶⁴ The ECtHR has thus refrained from presenting itself as a socioeconomic rights litigator, with states only required to fulfil an individual's essential nutritional needs via the prohibition of ill-treatment under Article 3 where the individual is

Kosher foods whilst in prison. The application was declared inadmissible on account of a failure to exhaust domestic remedies.

⁵⁸ O'Sullivan García, 'Vegetarian and vegan rights in Europe: chickening out or egging them on?', (2020) 11(4) *dA Derehco Animal* 71 at 75.

⁵⁹ Article 9(2), ECHR.

⁶⁰ *Jakóbski*, supra n 55 at paras 48-55.

⁶¹ *Vartic*, supra n 56 at para 49.

⁶² *Jakóbski* and *Vartic* can be contrasted with the recent case of *Executief van de Moslims van België and Others v Belgium* Application Nos 16760/22, 16849/22, 16850/22, 16857/22, 16860/22, 16864/22, 16869/22, 16877/22 and 16881/22, Merits, 13 February 2024, in which the ECtHR held that the ban on ritual slaughter of animals without prior stunning in the Flemish and Walloon Regions was within the margin of appreciation afforded to the national authorities under paragraph 2 of Article 9 ECHR. The ECtHR considered the legitimate aim of protection of public morals to include animal welfare.

⁶³ *Airey v Ireland* Application No 6289/73, Merits, 9 October 1979 at para 26.

⁶⁴ Leijten, *Core Socio-Economic Rights and the European Court of Human Rights* (2017) at 9.

deemed by the ECtHR to be vulnerable.⁶⁵ Vulnerability, here, establishes a sense of priority in regard to the allocation of the state's resources on account of the applicant's additional requirements.⁶⁶ In this context, a finding of vulnerability is generally confined to those wholly within the state's control,⁶⁷ hence the outcomes in *Jakóbski* and *Vartic*. Accordingly, the ECtHR is only able to advance non-nutrient-based food values in exceptional circumstances. Yet, it is in such circumstances that the acceptability of food is most crucial, as the rights-holder is completely dependent on the state for sustenance.

Whilst in *Jakóbski* and *Vartic* the cost of accommodating the prisoners' vegetarian diets was not considered to impose an excessive burden on the states, one can imagine a plethora of other scenarios in which the state's lack of resources may be accepted by the ECtHR as a legitimate reason for the failure to provide access to food adhering to the applicant's belief. Notably, both cases concerned making special arrangements for a single prisoner, which therefore raises questions as to the number of restrictive diets states might be expected to accommodate within their institutions and the point at which the obligations become too burdensome for a given state. Furthermore, recent jurisprudence of the ECtHR illustrates that access to food which adheres to one's beliefs may be subject to restrictions beyond those expressly articulated within Article 9(2), namely the prohibition of ritual slaughter in the interests of animal welfare.⁶⁸ Other

⁶⁵ *Stepuleac v Moldova* Application No 8207/06, Merits, 6 February 2008; *Modârcă v. Moldova* Application No 37829/08, Merits, 10 May 2007; *M.S.S. v Belgium and Greece* Application No 30696/09, Merits, 21 January 2011; *Kadiķis v Latvia (no 2)* Application No 19619/03, Merits, 4 December 2012; *Dudchenko v Russia* Application No 37717/05, Merits, 7 November 2017; *R.R v Hungary* Application No 36037/17, Merits, 2 March 2021.

⁶⁶ Peroni and Timmer, 'Vulnerable groups: The promise of an emerging concept in the European Human Rights Convention law', (2013) 11 *International Journal of Constitutional Law* 1056 at 1084; Kagiarios, 'Austerity Measures at the European Court of Human Rights: Can the Court Establish a Minimum of Welfare Protection?', (2019) 25 *European Public Law* 535 at 551; Heri, *Responsive Human Rights: Vulnerability, Ill-Treatment and the ECtHR* (2021) at 40-81. Vulnerability has many functions within the jurisprudence of the ECtHR beyond the Article 3 context, see: Boutier, 'Understanding Vulnerability through the Eyes of the European Court of Human Rights' Jurisprudence: Challenges and Responses' (2024), 8 *Peace Human Rights Governance* 27 at 39-46.

⁶⁷ *Ibid.*

⁶⁸ *Executief van de Moslims van België and others v Belgium*, *supra* n 62.

possible restrictions on the right could include a prohibition on the consumption of endangered species on ecological grounds,⁶⁹ for example, or a ban on wet markets trading wild or exotic animals due to their links to zoonotic diseases.⁷⁰

More significantly, whilst Article 9 encompasses both religious and secular beliefs, in both *Jakóbski* and *Vartic*, the adoption of a vegetarian diet was required by the applicants' Buddhist faith. It could be considered that the religious dietary practices in *Jakóbski* and *Vartic* resemble cultural values – as opposed to those of the individual consumer of food – on account of the collective identity both organised religion and culture create.⁷¹ It is questionable whether the outcomes in these cases would be the same if the applicants had adopted a vegetarian diet owing to their secular beliefs, which would more likely be perceived as an individual consumer concern rather than a cultural practice. As Edwards remarks, the avoidance of meat on religious grounds is often deemed a 'concrete reason', whereas the decision to do so as a matter of personal choice may be dismissed by others as a more flexible belief that does not have to be adhered to at all times.⁷² As has been highlighted by Liu, one could imagine a scenario in which prisoners may proclaim to hold certain religious beliefs to receive food which adheres to their secular beliefs or preferences; 'ethical vegetarians may pretend to be Buddhists, and those who perceive kosher

⁶⁹ Maffei, *supra* n 4 at 98.

⁷⁰ Lin et al., 'A better classification of wet markets is key to safeguarding human health and biodiversity' (2021) 5 *The Lancet: Planetary Health* 386.

⁷¹ On the relationship between culture and religion, see Beyers, 'Religion and culture: Revisiting a close relative' (2017) 73 *Theological Studies* 1, available at: <https://doi.org/10.4102/hts.v73i1.3864> [last accessed 18 March 2025]. C.f. Hamilton, 'Eating Ethically: 'Spiritual and 'Quasi-religious' Aspects of Vegetarianism' (2000) 15 *Journal of Contemporary Religion* 65, which examines the religious/spiritual undertones of ethical vegetarianism, and hence could be used to advance the argument that such dietary practices amount to culture as opposed to merely a consumer concern.

⁷² Edwards, 'Living in a Minority Food Culture: A Phenomenological Investigation of Being Vegetarian/Vegan', (2013) 7 *Phenomenology & Practice* 111 at 119.

food as better than the regular fare may assert a counterfeit belief in Judaism.’⁷³ Thus, protection of dietary practices as a manifestation of religious beliefs could be open to abuse.⁷⁴

A recent communication regarding Switzerland’s refusal to accommodate the vegan diets of a prisoner and a hospital patient in a psychiatric unit, *G.K. and A.S. v Switzerland*, invites the ECtHR to extend protection to dietary practices underpinned by secular beliefs, which could catalyse progress in relation to consumer acceptability.⁷⁵ Whereas those practising vegetarian diets refrain from eating meat or fish, vegans are typically opposed to ‘all forms of exploitation of, and cruelty to, animals for *food*, clothing or any other purpose’.⁷⁶ Shortly after being incarcerated, the prisoner complained of the lack of adequate food adhering to his vegan convictions, resorting to a diet of salads, rice and burger buns.⁷⁷ The prisoner was offered a supplementary treatment of vitamin B12 – which those adopting a vegan or vegetarian diet are encouraged to take to prevent anaemia –⁷⁸ yet refused this in preference for a supplement of non-animal origin.⁷⁹ In the meantime, the prisoner was diagnosed with suffering from constipation, haemorrhoids and iron deficiency.⁸⁰ Whilst the case was communicated under several grounds, of greatest interest for

⁷³ Benjamin Pi-wei Liu, ‘A Prisoner’s Right to Religious Diet Beyond The Free Exercise Clause’, (2004) 51 *UCLA Law Review* 1151 at 1192.

⁷⁴ Cf *Kosteski v The Former Yugoslav Republic of Macedonia*, Application No. 55170/00, Merits, 13 April 2006, where the ECtHR found no violation of Article 9 where the applicant was unable to produce any evidence supporting his claim of being a Muslim and, therefore, his entitlement to time off work. See, also: Wolff, ‘True Believers? Sincerity and Article 9 of the European Convention on European Convention on Human Rights’ (2021) 17 *European Constitutional Law Review* 259.

⁷⁵ *G.K. and A.S. v Switzerland*, supra n 10.

⁷⁶ The Vegan Society, ‘Definition of veganism’, *The Vegan Society*, 2024, available at: www.vegansociety.com/go-vegan/definition-veganism [last accessed 20 November 2024] (emphasis added).

⁷⁷ Oltermann, ‘Vegan activist takes Switzerland to human rights court over prison diet’, *Guardian*, 28 October 2022, available at: www.theguardian.com/world/2022/oct/28/vegan-activist-takes-switzerland-to-human-rights-court-over-prison-diet#:~:text=Switzerland%20has%20been%20challenged%20at,of%20freedom%20of%20conscience%20across [last accessed 18 March 2025].

⁷⁸ Ali Niklewicz et al., ‘The importance of vitamin B12 for individuals choosing plant-based diets’ (2023) 62 *European Journal of Nutrition* 1551 at 1552.

⁷⁹ Oltermann, supra n 77.

⁸⁰ Oltermann, supra n 77.

the present discussion are the arguments made under Article 9 - alone and in conjunction with Article 13 (both applications) and Article 14 (the second application only).⁸¹

For a view to be considered a belief worthy of protection under Article 9 ECHR, it must 'attain a certain level of cogency, seriousness, cohesion and importance'.⁸² Limiting protection to convictions which reach this threshold illustrates how the line can be drawn between consumer values which states must respect and those which are a matter of personal taste alone. To stress, in the context of the ECHR, the state is only under a duty to ensure minimal subsistence where the individual is deemed to be vulnerable, most commonly where they are under the exclusive control of the state. The requirement for a belief to be cogent, serious, cohesive and important serves as an additional safeguard, ensuring that the state's obligations vis-à-vis the consideration of non-nutrient-based values associated with food are not overly expansive.

It is noteworthy that the European Commission on Human Rights (EComHR) considered 'vegan convictions with regard to animal products' to fall within the scope of Article 9(1) ECHR within the case of *C.W. v United Kingdom*.⁸³ The case concerned a prisoner's refusal to work in the institution's print shop, as his vegan beliefs prevented him from handling animal-tested dyes. That being said, the EComHR ultimately found that whilst the applicant's refusal was at least in part motivated by his vegan beliefs, the interference was 'prescribed by law' as per Article 9(2) in that the requirement to work was outlined in the Prison Rules and pursued the aim of maintaining good order within the prison.⁸⁴ Although the applicant's claim in *C.W. v United Kingdom* was unsuccessful, it offers hope for the applicants in *G.K. and A.S. v Switzerland* regarding the potential protection of ethical veganism as a qualifying belief under Article 9. Indeed, the

⁸¹ *G.K. and A.S. v Switzerland*, supra n 10.

⁸² *Campbell and Cosans v UK* Application Nos 7511/76 and 7743/76, Merits, 25 February 1982 at para 36.

⁸³ Application No. 18187/91, Admissibility, 10 February 1993 at para 1.

⁸⁴ *Ibid.*

following application of the criteria of cogency, seriousness, cohesion and importance to ethical veganism will underscore that this secular belief ought to be protected by the ECtHR in its future jurisprudence.

First, the premise underpinning veganism is comprehensible; those practising a vegan diet seek to omit, as far as possible, all foodstuffs derived from animals. Whilst the reasons for adopting a vegan diet vary, the most prominent being ethical, health and environmental,⁸⁵ there is nevertheless a strong sense of community amongst vegans.⁸⁶ Research by Rosenfeld suggests that vegans often perceive their dietary patterns to be intertwined with their identity and have positive attitudes towards others practising the same diet.⁸⁷ For many, veganism is not only a diet but rather a lifestyle and, hence, is far from trivial.⁸⁸ This is reaffirmed by a recent study of dietary adherence across five restrictive dietary patterns (vegan, vegetarian, paleo, gluten-free and weight loss), in which the vegan group scored the highest regarding both subjective and measured adherence.⁸⁹ These findings are invoked to cast doubt on claims that secular beliefs cannot attain the same profundity as religious beliefs.⁹⁰

A brief comparison can be made with secular pacifism, referring to the rejection of violence and war on ethical grounds independent from religious beliefs, to illustrate how secular

⁸⁵ Whitley, Gunderson and Charters, 'Public receptiveness to policies promoting plant-based effects and social psychological and structural influences' (2018) 20 *Journal of Environmental Policy & Planning* 45; North et al., 'A qualitative examination of the motivations behind vegan, vegetarian and omnivore diets in an Australian population' (2021) 167 *Appetite*, available at: <https://doi.org/10.1016/j.appet.2021.105614> [last accessed 18 March 2025].

⁸⁶ Siriex et al., 'The role of communities in vegetarian and vegan identity construction' (2023) 75 *Journal of Retailing and Consumer Services*, available at: <https://doi.org/10.1016/j.jretconser.2023.103470> [last accessed 18 March 2025].

⁸⁷ Rosenfeld, 'A comparison of dietarian identity profiles between vegetarians and vegans', (2019) 72 *Food Quality and Preference* 40 at 43.

⁸⁸ Greenebaum, 'Veganism, Identity and the Quest for Authenticity', (2012) 15(1) *Food, Culture & Society* 134 at 135.

⁸⁹ Cruwys et al., '"An Important Part of Who I am": The Predictors of Dietary Adherence among Weight-Loss, Vegetarian, Vegan, Paleo, and Gluten-Free Dietary Groups' (2020) 12 *Nutrients* 970 at 981.

⁹⁰ See also Hamilton, *supra* n 71.

beliefs can be protected under human rights law. In *Arrowsmith v United Kingdom*, the EComHR recognised '[t]he attitude of pacifism' as a qualifying belief under Article 9(1) ECHR.⁹¹ In its decision, the Commission relied upon the following definition of pacifism:

The commitment, in both theory and practice, to the philosophy of securing one's political or other objectives without resort to the threat or use of force against another human being under any circumstance, even in response to the threat of or use of force.⁹²

The EComHR made no distinction between religious and secular pacifism in its assessment; the applicant was not required to demonstrate that her pacifist belief was based on religious doctrine.⁹³ Relatedly, the ECtHR has held that conscientious objection 'motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious *or other beliefs*' can qualify for protection under Article 9.⁹⁴ These examples offer guidance as to how to determine which values are eligible for protection. Ethical veganism has similarly been recognised to be 'without doubt a belief which obtains a high level of cogency, cohesion and importance' in an employment tribunal decision in the United Kingdom - ⁹⁵ an approach which the ECtHR is encouraged to follow in the communicated case of *G.K. and A.S. v Switzerland* if the opportunity presents itself.

⁹¹ Application No 7050/75, Merits, 5 December 1978 at para 69.

⁹² Ibid. at para 68.

⁹³ The EComHR ultimately considered the applicant's actions in *Arrowsmith* – distributing anti-military leaflets to British soldiers – did not manifest her belief in the sense of Art 9(1) ECHR. Instead, it was a form of expression engaging Art 10. The EComHR found that the restriction on the applicant's freedom of expression was justified under Art 10(2).

⁹⁴ *Bayatan v Armenia* Application No 23459/03, Merits and Just Satisfaction, 7 July 2011 at para 110. This has recently been reiterated by the ECtHR in the case of *Kanatlı v. Türkiye* Application No 18382/15, Merits and Just Satisfaction, 12 March 2024 at para 42.

⁹⁵ *Casamitjana Costa v The League Against Cruel Sports* [2020] UKET 3331129/2018 at para 36. The tribunal held that ethical veganism qualifies as a protected belief within the meaning of section 10 of the Equality Act 2010.

Moreover, vegans, and to a lesser extent vegetarians, have been recognised as unique ‘targets of bias’,⁹⁶ in that their marginalisation arises from a personal choice they have made rather than on account of their biological trait.⁹⁷ Their ‘abnormal’ relationship with food and alienation from the ‘dominant food culture’ can give rise to feelings of isolation and anger.⁹⁸ Notably, Rosenfeld’s study suggests that compared to vegetarians, vegans are more likely to consider themselves as having lower public regard due to their dietary patterns.⁹⁹ This is consistent with the findings of earlier research regarding the more frequent social challenges vegans experience on account of their food choices in comparison to vegetarians.¹⁰⁰ Hence, there is a strong argument to be made for legal recognition of ethical veganism as a protected belief - at least in comparison to ethical vegetarianism - to prevent existing prejudice and discrimination from escalating to what has been termed the ‘hate’ stage.¹⁰¹

Crucially, a positive result for the applicants in *G.K. and A.S. v Switzerland* would require the ECtHR to afford value to dietary practices underpinned by secular beliefs, advancing beyond the cases of *Jakóbski* and *Vartic*. Such a finding would greatly augment the obligations the state currently bears under the ECHR concerning the fulfilment of essential nutritional needs for individuals within its exclusive control. Whilst the duty would still be reserved to those it considers most vulnerable for the reasons articulated above, states would nevertheless be required to respect – and, where appropriate, provide access to – diets founded upon secular

⁹⁶ MacInnis and Hodson, ‘It Ain’t Easy Eating Greens: Evidence of Bias Toward Vegetarians and Vegans from Both Source and Target’, (2017) 20 *Group Processes and Intergroup Relations* 721 at 722.

⁹⁷ Edwards, *supra* n 72 at 114.

⁹⁸ Edwards, *supra* n 72 at 112. See also Rowley, ‘Human Rights are Animal Rights: The Implications of Ethical Veganism for Human Rights’ in Castricano and Simonsen (eds), *Critical Perspectives on Veganism* (2016) 67 at 79-80.

⁹⁹ Rosenfeld, *supra* n 87.

¹⁰⁰ MacInnis and Hodson, *supra* n 96; Fiestas-Flores and Pyhälä, ‘Dietary Motivations and Challenges among Animal Rights Advocates in Spain’ (2018) 26 *Society & Animals* 402; Judge and Wilson, ‘A dual-process motivational model of attitudes towards vegetarians and vegans’ (2018) 49 *European Journal of Social Psychology* 169.

¹⁰¹ Casamitjana, ‘The Confirmation of Ethical Veganism as a Protected Philosophical Belief in Great Britain’ in Rowley and Prisco (eds), *Law and Veganism: International Perspectives on the Human Right to Freedom of Conscience* (2022) 245 at 252.

beliefs. In doing so, the ECtHR would be indirectly championing a broader notion of acceptability in the context of food, which includes consumer values.

That being said, even if the ECtHR were to recognise the applicants' veganism in *G.K. and A.S.* to be a protected belief under Article 9, it would still have to determine whether the cost of accommodating the applicants' diets imposed an excessive burden on the states, as was considered in *Jakóbski* and *Vartic*. Domestic jurisprudence provides a further illustration of how consumer views can be navigated by the courts; as an example, whilst veganism has been recognised as a protected belief under Article 9 ECHR in Denmark,¹⁰² a Danish district court recently rejected a claim brought by the Vegetarian Society of Denmark (the Society) against the administrative unit overseeing hospitals in Copenhagen on behalf of a pregnant woman who alleged she had not received sufficient vegan meals during her two hospitalisations.¹⁰³ The Danish Court of Hillerød held that the patient was not subject to discrimination as whilst the hospital only provided her side dishes - such as plain rice, baked carrots and celery - she could have brought in food, asked relatives to bring in food or visited the convenience store on hospital grounds to purchase foods.¹⁰⁴ The short duration of the patient's hospitalisations was further highlighted by the Court, the implication being that longer stays may mandate greater provision by the institution in accordance with the patient's dietary preferences.¹⁰⁵ This can be contrasted

¹⁰² Schiphorst, 'Veganism determined a protected belief by Danish court', *European Vegetarian Union*, 21 February 2024, available at: www.euroveg.eu/veganism-determined-a-protected-belief-by-danish-court/ [last accessed 18 March 2025].

¹⁰³ Associated Press, 'Danish court throws out claim that a patient's rights were violated when she wasn't given vegan food', *AP News*, 23 May 2024, available at: <https://apnews.com/article/denmark-vegan-food-woman-hospital-13fda4ca2d839367bfb756d7533236e4> [last accessed 18 March 2025]; Vegconomist, 'Danish Court Rules Against Woman Denied Sufficient Vegan Meals in Hospital While Pregnant', *Vegconomist*, The Vegan Business Magazine, 24 May 2024, available at: <https://vegconomist.com/politics-law/danish-court-rules-against-woman-denied-vegan-meals-hospital-pregnant/> [last accessed 18 March 2025].

¹⁰⁴ Ibid.

¹⁰⁵ Rowley, 'Denmark Rules That Preventing Vegans from Practising Their Ethical Convictions Breaches Fundamental Human Rights Law', *The Vegan Society*, 3 April 2024, available at: www.vegansociety.com/news/blog/denmark-rules-preventing-vegans-practising-their-ethical-convictions [last accessed 18 March 2025]; Vegconomist, *supra* n 103. See also the appendix to the Council of Europe, Resolution ResAP(2003)3 on food and nutritional care in hospitals, 12 November 2003, which

against the outcome of an earlier case brought by the Society, where the municipal court in Hjørring ruled that a kindergarten's refusal to provide plant-based meals to a small child or allow her to bring in a packed lunch constituted discrimination against the child and her parents' beliefs.¹⁰⁶ A clear distinction can be drawn between the two cases, with the kindergartener deprived of alternate means of access to plant-based food in comparison to the solutions available to the patient highlighted by the Hillerød District Court. These cases highlight that the outcome hinges upon what can be reasonably expected of public institutions in relation to the protection of dietary practices underpinned by secular beliefs, mitigating concerns of individual consumer values imposing onerous duties upon states. They equally reaffirm the particular significance of consumer acceptability in situations where the rights-holder is vulnerable on account of their dependency on the state for access to food, hence the need to clarify and implement this component of the right to adequate food.

4. AUGMENTING CONSUMER ACCEPTABILITY

Whilst the jurisprudence studied above offers valuable insights as to how non-nutrient-based values can be protected, the consumer acceptability component of the right to adequate food under Article 11 ICESCR must extend beyond this. The ECtHR's approach is narrow, focusing only on whether a restriction on food practices underpinned by a protected belief violates Article 9. In contrast, the ICESCR's approach to food as a socioeconomic right imposes a broader obligation upon states to consider, where possible, non-nutrient-based values attached to food and consumer concerns regarding the nature of available food supplies. For consumer acceptability to fulfil its intended purpose under Article 11 ICESCR, its normative content must be further developed to ensure that states address the full range of concerns consumers attach to food.

at para 4.4(viii) states that 'patients should be able to receive a menu, which is in accordance with their age, religious, ethnic or cultural background' with secular ethical values omitted. However, para 4.4(vii) states that 'patients should be involved in planning their meals and have some control over food selection', which could be interpreted as requiring consideration of such values.

¹⁰⁶ Vegconomist, *supra* n 103.

There are several secular food practices which could, at least in theory, receive protection via the consumer acceptability component under Article 11 beyond those raised in the European case law studied above; for example, flexitarianism, a diet which is ‘primarily vegetarian with the occasional inclusion of meat or fish’,¹⁰⁷ or the ethical omnivore diet, referring to the consumption of locally sourced, organic and free range animal products.¹⁰⁸ That being said, the right to adequate food must be interpreted in light of the right to a healthy environment, as environmental sustainability is crucial for ensuring access to adequate food for both current and future generations.¹⁰⁹ As such, vegan, vegetarian and other (predominantly) plant-based diets are particularly deserving of protection under the consumer acceptability component, for they typically require fewer natural resources and generate less greenhouse gases than meat and dairy-based diets.¹¹⁰ Whilst an individual may seek to rely on this component to protect their enjoyment of a meat-centric regimen - for example, the carnivore diet - such a claim is likely to fail on account of the growing recognition within international human rights law of the need to improve the sustainability of global food production and consumption.¹¹¹

¹⁰⁷ Derbyshire, ‘Flexitarian Diets and Health: A Review of the Evidence-Based Literature’, (2017) 3 *Frontiers in Nutrition* 1, 1 available at: www.frontiersin.org/articles/10.3389/fnut.2016.00055/full?ref=splendidspoon.com [last accessed 18 March 2025].

¹⁰⁸ Noll, *Ethical Omnivores: Better Eating for Everyone* (2025).

¹⁰⁹ Human Rights Council, supra n 11. See also CESCR, ‘Draft General comment on economic, social and cultural rights and the environmental dimension of sustainable development’, 10 January 2025, available at: <https://www.ohchr.org/en/calls-for-input/2025/cescr-calls-written-contributions-draft-general-comment-economic-social-and> [last accessed 24 March 2025].

¹¹⁰ Takacs et al., ‘Comparison of environmental impacts of individual meals – Does it really make a difference to choose plant-based meals instead of meat-based ones? (2022) 379 *Journal of Cleaner Production* 1, available at <https://doi.org/10.1016/j.jclepro.2022.134782> [last accessed 18 March 2025]; Coffey, Lillywhite and Oyeboode, ‘Meat versus meat alternatives: which is better for the environment and health? A nutritional and environmental analysis of animal-based products compared with their plant-based alternatives’ (2023) 36 *Journal of Human Nutrition and Dietetics* 2147.

¹¹¹ CESCR, supra n 2 at paras 7 and 25; Human Rights Council, supra n 11; United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme, *What is the Right to a Healthy Environment?*, 23 January 2023 at 9, available at <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> [last accessed 18 March 2025].

However, consumer acceptability must not be conflated with the availability of foodstuffs valued by an individual and/or their philosophy.¹¹² Whilst this may be one aspect of the term, more significant is the investigation into the production of the values individuals attach to food via relationships with people, animals, the environment and food systems.¹¹³ Notably, the CESCR's definition of acceptability refers not only to values attached to food but also those pertaining to food consumption, which, if understood expansively, could encompass the sourcing of food, food preparation and individual or communal experiences of eating.¹¹⁴ A holistic interpretation of this kind uncovers how attitudes to food shape, and are shaped by, an individual's identity and hence is favoured over more simplistic readings of the term.¹¹⁵ As such, it is more helpful to view consumer acceptability as a process as opposed to a quality which can be measured.¹¹⁶ Viewing consumer acceptability as a process unveils how states and private actors constrain human rights through various stages of the global food system, which impedes the enjoyment of acceptable food. It further offers an indication of the tripartite typology of state obligations stemming from this aspect of the right to adequate food.

As an example, the livestock industry strongly influences agricultural policy, often securing subsidies that enhance the economic viability of meat production.¹¹⁷ Such subsidies typically render meat products more affordable and accessible than plant-based alternatives, acting as a barrier for consumers of food who wish to follow sustainable diets.¹¹⁸ The duty to

¹¹² Hammelman and Hayes-Conroy, *supra* n 44 at 39-40.

¹¹³ Hammelman and Hayes-Conroy, *supra* n 44 at 39-40.

¹¹⁴ CESCR, *supra* n 2 at para 11.

¹¹⁵ See, for example, Van Esterik, 'Right to Food; Right to Feed; Right to be Fed. The Intersection of Women's Rights and the Right to Food', (1999) 16 *Agriculture and Human Values* 225; Slocum, 'Race in the study of food' (2010) 35 *Progress in Human Geography* 303 at 305; Cembalo et al., 'Determinants of Individual Attitudes Toward Animal Welfare-Friendly Products', (2016) *Journal of Agricultural Ethics* 237 at 250-1.

¹¹⁶ See Hammelman and Hayes-Conroy, *supra* n 44 at 40, who advocate for cultural acceptability to be construed as a 'dynamic process'.

¹¹⁷ Vallone and Lambin, 'Public policies and vested interests preserve the animal farming status quo at the expense of animal product analogs', (2023) 6 *One Earth* 1213 at 1220-1.

¹¹⁸ Bryant et al., 'A review of policy levers to reduce meat production and consumption', (2024) 203, *Appetite* 1 at 9-11.

respect consumer acceptability in this context would require the state to refrain from acts that impede the existing enjoyment of sustainable diets, such as an outright ban on vegan/vegetarian products. The duty to protect would require the state to, for example, prevent the animal agriculture industry from lobbying against the production of plant-based products. The duty to fulfil the consumer acceptability component would ordinarily require states to facilitate access to sustainable diets, for instance, by improving the affordability of plant-based alternatives in comparison to meat products. Where consumers (that is, those who consume food) cannot 'for reasons beyond their control' access sustainable diets 'by the means at their disposal', ¹¹⁹ the state would bear the obligation to provide this directly. Whereas the state is only under a duty to ensure access to food which adheres to non-nutrient-based values under Article 9 ECHR in instances where the rights-holder is wholly in the state's control, the obligation to provide under Article 11 ICESCR extends to a broader set of circumstances. This includes, at a minimum, those who cannot feed themselves due to armed conflict, natural disasters or other crises.¹²⁰

The full realisation of the consumer acceptability component may not be immediately achievable due to various constraints such as resources, infrastructure, or social and political factors. As per Article 2(1) ICESCR, states are obligated to take continuous and deliberate steps over time to ensure that their food systems take into account individuals' non-nutrient-based values. Thus, it is recommended that states start by ensuring that the provision of food by state-run institutions and services adheres to consumer values on account of the dependency of the rights-holders in such contexts. Over time, states should aim to progressively realise the consumer acceptability component by incorporating secular beliefs into broader policy decisions related to food systems, promoting access to food in a way which respects the rights-holder's autonomy.

¹¹⁹ CESCR, supra n 2 at para 15.

¹²⁰ Ibid; Office of the UN High Commissioner for Human Rights, supra n 33 at 3-4.

Whilst the above application of the tripartite typology indicates some of the state's obligations pertaining to consumer acceptability, considerable work is still needed to develop this component into a fully fleshed aspect of the right to adequate food. For consumer acceptability to have meaning, its normative content must be shaped by the experiences of those who have encountered difficulties obtaining foods which adhere to their values. This project constitutes an exciting opportunity to formulate human rights standards from the bottom up, recognising that individuals will invariably have a greater awareness of their own needs in comparison to states or international actors.¹²¹ Such an exercise could help restore faith in human rights as an instrument of change, illustrating the malleability of the right to adequate food in response to emerging non-nutrient-based concerns.

The importance of involving those with lived experience of hardships accessing food which adheres to their non-nutrient-based values is underscored by Hammelman and Hayes-Conroy's systemic analysis of cultural acceptability within scholarship.¹²² Whilst Hammelman and Hayes-Conroy's research concerns cultural acceptability, their findings are nevertheless worth considering in relation to the identification of individual consumer concerns. The appreciation of multiple sources of knowledge regarding nourishment and human relationships with the land and the promotion of non-hierarchical decision-making concerning what food is grown, where, how and by whom emerge as salient features of cultural acceptability within their literature review.¹²³ Cultural acceptability requires a valuing of alternative sources of knowledge vis-à-vis food practices, which are frequently eclipsed by prevailing scientific views.¹²⁴ As an example, within a given culture, certain foods may be considered beneficial for reproduction; Chinese dietary philosophy maintains that the consumption of yin foods – including cucumber

¹²¹ See, for example, Pinillos Urrea, *The bottom-up approach to human rights: Giving voice to the oppressed and the marginalized*, Office for the Promotion of Peace and Human Rights, (2008), available at www.gencat.cat/drep/ipau/sumaris/bottom.pdf [last accessed 18 March 2025].

¹²² Hammelman and Hayes-Conroy, *supra* n 44.

¹²³ Hammelman and Hayes-Conroy, *supra* n 44 at 41.

¹²⁴ Hammelman and Hayes-Conroy, *supra* n 44 at 42-3.

and green beans - ¹²⁵ during pregnancy reduces the chances of delivery complications for those with petite body frames. ¹²⁶ Instead of dismissing such knowledge in favour of Western narratives, cultural acceptability calls for the former to also be recognised as shaping powerful attitudes to foodstuffs to be respected within any policymaking which bears an impact on food access. Decision-making concerning the contents of consumer acceptability and its implementation must similarly be the product of genuine consultation with individuals to give meaning to this component of the right to adequate food. Such consultation aligns with the principles of General Comment No. 12, namely the importance of participatory processes in policy development affecting food security.¹²⁷ In particular, states must engage with individuals who are vulnerable and/or marginalised when developing policies affecting access to food.¹²⁸

5. EFFECTIVE IMPLEMENTATION

As the lack of progress concerning this component thus far illustrates, the insufficient attention given to the duty imposed on states to ensure, so far as possible, the availability of food which is acceptable to the consumer at the international level has permitted national governments to largely ignore individual non-nutrient concerns associated with food. As it stands, such considerations are unlikely to be factored into policy decisions unless there is a manifest political or economic benefit in doing so.¹²⁹ Where the right to food or food access concerns are integrated into national government agendas, the focus is often limited to the targeting of hunger, food insecurity and poor nutrition.¹³⁰ Freedom from hunger should certainly be prioritised on account

¹²⁵ Li, Yin and Saito, 'Function of Traditional Foods and Food Culture in China', (2004) 38 *Japan Agricultural Research Quarterly* 213 at 214.

¹²⁶ Fieldhouse, *supra* n 24 at 45.

¹²⁷ CESCR, *supra* n 2 at paras 15 and 22.

¹²⁸ CESCR, *supra* n 2 at para 15.

¹²⁹ Alston, 'International Law and the Human Right to Food', in Alston and Tomaševski (eds), *The Right to Food* (1984) 9 at 13.

¹³⁰ See, for example, The Government of the Republic of South Africa, *National Food and Nutrition and Security Plan for South Africa*, 7 November 2017, available at: <https://faolex.fao.org/docs/pdf/saf211944.pdf> [last accessed 18 March 2025]; Dimpleby et al., *National Food Strategy Independent Review: The Plan* (2021), available at: www.nationalfoodstrategy.org/ [last accessed 18 March 2025] which was commissioned by the UK Government. C.f. Scottish Government,

of its absolute nature, yet the CESCR has made clear that the progressive realisation qualification under Article 2(1) is not intended to be abused by economically developed states.¹³¹ As a core - albeit overlooked - component of the right to adequate food, states that have ratified the ICESCR must consider consumer values attached to food in addition to ensuring food is economically and physically accessible.¹³² These two elements are inextricably linked; an individual's capacity to acquire food may be rendered meaningless if they are unable to eat such foods on account of their consumer values. Accordingly, it is critical that states do not view each aspect of the right in isolation but rather pursue them concurrently through a comprehensive national right to food strategy.

Ensuring individuals have access to food which is acceptable, affordable and nutritionally adequate is challenging. The affordability of basic foodstuffs such as lentils, beans and carrots is routinely invoked as evidence that nutritious diets do not have to be expensive and thus can be accessible to low-income households.¹³³ Frequently ignored, however, is how food choices construct religious,¹³⁴ ethno-cultural,¹³⁵ secular belief¹³⁶ and preference-based identities.¹³⁷ Moreover, as the study by Maillot, Darmon and Drewnoski suggests, dietary plans which aim to ensure the consumption of healthy foods at a low cost can result in repetitive meals

National Good Food Nation Plan (2024) at 54, available at <https://www.gov.scot/publications/national-good-food-nation-plan/pages/4/> [last accessed 18 March 2025] which highlights the importance of '[h]igh standards of animal welfare' as an 'essential part of the Good Food Nation'.

¹³¹ CESCR, General Comment No. 3: The Nature of States Parties' Obligations, UN Doc. E/1991/23, 14 December 1990, at paras 9-12.

¹³² CESCR, *supra* n 2 at paras 6, 8 and 11.

¹³³ Maillot, Darmon and Drewnowski, 'Are the lowest-cost healthful food plans culturally and socially acceptable?', (2010) 13 *Public Health Nutrition* 1178 at 1184.

¹³⁴ Ali, 'Muslims and Meat-Eating: Vegetarianism, Gender, and Identity' (2015) 43 *Journal of Religious Ethics* 268.

¹³⁵ D'Sylva and Beagan, 'Food is culture, but it's also power': the role of food in ethnic and gender identity construction among Goan Canadian women' (2011) 20 *Journal of Gender Studies* 279; Parasecoli, 'Food, Identity, and Cultural Reproduction in Immigrant Communities' (2014) 81 *Social Research* 415.

¹³⁶ Greenebaum, *supra* n 88 above.

¹³⁷ Bisogni et al., 'Who We Are and How We Eat: A Qualitative Study of Identities in Food Choice' (2002) 34 *Journal of Nutrition Education and Behavior* 128; Cappellini, Parsons and Harman, 'Right-Taste, Wrong Place': Local Food Cultures, (Dis)identification and the Formation of Classed Identity' (2016) 50 *Sociology* 1089.

which depart from social norms.¹³⁸ Respecting individuals as right-holders requires an appreciation of the multiple functions food serves beyond survival alone.

For consumer acceptability to be transformed from a forgotten feature of the right to adequate food to a fully-fledged component, the CESCR must produce more detailed guidance to states elucidating the duties they owe concerning individuals' secular non-nutrient-based values. Of course, further clarification will not necessarily lead to progress in relation to this element, exemplified by national governments' enduring disregard for comparatively clear-cut components such as accessibility.¹³⁹ As already noted, there is a likelihood that some states may cite their limited resources as a justification for their lack of progress in this area, invoking Article 2(1) of the ICESCR.¹⁴⁰ Greater engagement with this component is recommended to cement consumer acceptability as indispensable to the enjoyment of the right. A more forceful approach is required of the CESCR, which signifies less tolerance of state inaction in comparison to the weak instruction that states 'take into account' non-nutrient-based values found in its General Comment.¹⁴¹ This can be facilitated through reference to consumer acceptability within the CESCR's reporting guidelines, requiring states to report the measures taken to ensure the availability of foods acceptable to the consumer. This would create symmetry with the state's duties pertaining to cultural acceptability and increase the burden borne by the state when justifying non-compliance with its obligations in an attempt to reduce the current enforcement gap in relation to this aspect of the right. Engagement with consumer acceptability by the Special Rapporteur on the right to food within his thematic reports and country visits would serve a similar purpose, examining the State's actions taken in furtherance of this component and, where unsatisfactory, reminding governments of their duties.

¹³⁸ Maillot, Darmon and Drewnowski, *supra* n 133 at 1182-4.

¹³⁹ See, for example, Pollard and Booth, 'Food Insecurity and Hunger in Rich Countries – It Is Time for Action Against Inequality' (2019) 16(1) *International Journal of Environmental Research and Public Health* 1804.

¹⁴⁰ Leckie, *supra* n 14 at 94.

¹⁴¹ CESCR, *supra* n 2 at para 11; Maffei, *supra* n 4 at 87.

Within states, discussions are needed as to the meaning of consumer acceptability, taking into account that its contents will differ from one individual to the next. It is essential to have appropriate forums in place which facilitate the inclusion of a multitude of voices within such dialogues. On the national level, states could, for example, collect data regarding the prevalence of vegetarian or vegan diets within their population. With this knowledge, states would be expected to, first and foremost, review the material or foreseen impact of existing and future policies on access to acceptable food in state-run institutions.

The broader policy implications arising from strict adherence to consumer acceptability could be wide-reaching, offering more extensive protection of non-nutrient-based values in comparison to the European system. As an illustration, it has been suggested by Wills that state support for animal products - such as animal agriculture subsidies - is 'potentially, although not inevitably' at odds with this component of the right to adequate food.¹⁴² The subsidisation of plant-based products, in comparison, is seemingly wholly compatible with the state's duties pertaining to consumer acceptability under Article 11 ICESCR.¹⁴³ In light of the brevity of the CESCR's guidance, it is perhaps an exaggeration to argue that government funding of the animal agricultural industry inherently contravenes the consumer acceptability component. One could argue that consumer acceptability restricts state institutions from providing a solely plant-based menu in the interests of those who consume meat and dairy products, though this claim similarly loses force where the right to adequate food is read alongside the right to a healthy environment.

Ultimately, there is a need for states to reflect on the suitability of their policies as a means of realising the right to adequate food in its entirety. Less interventionist, yet still

¹⁴² Wills, *supra* n 54.

¹⁴³ Wills, *supra* n 54.

transformative, actions flowing from the consumer acceptability could include a review of the treatment of non-nutrient-based values attached to food in state-owned educational institutions, encompassing not only the provision of meals which adhere to secular beliefs but also the use of animal products in practical classes such as food technology.¹⁴⁴ Such steps could bridge the gap to more radical measures, namely those of economic policy, in pursuit of consumer acceptability beyond this limited context.

In states where domestic courts are empowered to adjudicate upon the right to food, judicial engagement with consumer acceptability offers the opportunity to augment its normative contents within a given context, whilst further acting as a means of assessing implementation. Whilst the discussion of procedural requirements falls outside the scope of this article, it is proposed that domestic courts principally address challenges to state actions which have a widespread impact on the accessibility of food which is acceptable to consumers to keep the volume of cases under control. The provision of food in state-run institutions should be the initial focus, in recognition of the heightened importance of consumer acceptability within this context on account of the rights-holder's dependency. Existing independent bodies tasked with monitoring the protection of rights, such as national human rights institutions (NHRIs), are also encouraged to alert governments as to any obstacles to consumer acceptability currently encountered and the specific groups affected. Where the state fails to effectively resolve these issues, it would then fall upon the CESCR to restate the requirement for non-nutrient-based values associated with food to be respected wherever possible. As with other components of the right to adequate food, such as economic accessibility, consumer values are subject to change over time.¹⁴⁵

¹⁴⁴ Rowley and Bowles, 'Veganism, Law and Education in the United Kingdom' in Rowley and Prisco (eds), *Law and Veganism: International Perspectives on the Human Right to Freedom of Conscience* (2022) 197 at 198.

¹⁴⁵ Fieldhouse, *supra* n 24 at 2. Traditional understandings of culture as fixed have also been challenged, see Engle Merry, 'Changing rights, changing culture' in Cowan, Dembour and Wilson (eds), *Culture and Rights: Anthropological Perspectives*, (2001) 31 at 41-7. Hence, cultural culinary values also need to be kept under review.

Thus, consumer acceptability must be kept under constant review to determine whether the policies in place are in any way impeding this aspect of the right.

6. CONCLUSION

Though hunger and food insecurity are deserving of their prioritisation within the international human rights regime, a focus on availability and affordability within the context of the right to adequate food has downplayed the importance of the acceptability of food. Our choices around the consumption of food make us who we are, not only physically but also psychologically, in the sense that food expresses religious beliefs, membership in ethno-cultural groups, ethical values and preferences. The neglect of non-nutrient-based values is at least partially attributed to the CESCR's weak instruction to states to 'take into account' such considerations,¹⁴⁶ suggesting a half-hearted commitment to cultural and consumer acceptability will be tolerated. Out of the two, considerably greater attention has been afforded to cultural concerns, with consumer acceptability becoming an oft-forgotten element of the right to adequate food. However, consumer acceptability is crucial, particularly in instances where the rights-holder is wholly dependent on the state for food provision and therefore vulnerable. Consequently, it is high time that the normative gap in relation to the consumer acceptability component is addressed.

This article utilised the ECtHR's treatment of religious vegetarianism as a protected belief under Article 9 ECHR to demonstrate how non-nutrient-based values associated with food have been advanced at the regional level. It urged the ECtHR to extend its protection to ethical veganism - a secular dietary practice - should the opportunity arise in *G.K. and A.S. v Switzerland* to redress the comparative lack of legal protection individual consumer concerns vis-à-vis food have historically received compared to those tied to a culture/religion. Recent case law emerging

¹⁴⁶ CESCR, supra n 2 at para 9.

from Danish municipal courts was invoked to illustrate how individual consumer concerns can be balanced against the state's finite resources.

Whilst the European jurisprudence offered valuable insights, the article has stressed that the consumer acceptability component of the right to adequate food involves more extensive protection of non-nutrient-based values in comparison to the narrow approach of the ECtHR. Moving forward, consumer acceptability must be understood as a process requiring ongoing consultation with individuals to determine whether their non-nutrient-based food concerns are being recognised and respected by the state as far as possible. It was suggested that consumer acceptability ought to be governed by universal standards yet shaped by contextual factors, recognising that its substantive content, by definition, will differ from one individual to the next. Whilst consumer acceptability could extend to a range of food practices, reading the right to adequate food in conjunction with the right to a healthy environment gives particular weight to vegan and vegetarian diets. The adoption of a more assertive approach by the CECSR in relation to consumer acceptability was proposed to catalyse progress within nation-states, supplemented by judicial adjudication and monitoring by NHRIs. It is hoped that, over time, the potential impact of access to food which adheres to consumer concerns would be taken into account during policymaking, rendering this element of the right to adequate food no longer forgotten.

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