R (TTT) v Michaela Community Schools Trust

High Court (King's Bench Division): Linden J, 16 April 2024 [2024] EWHC 843 (Admin)

School ban – Muslim prayers – Equality Act 2010 – Article 9 ECHR

Frank Cranmer[1,2]

[1]Fellow, St Chad's College, Durham, UK and [2]Honorary Research Fellow, Centre for Law and Religion, Cardiff University, Cardiff, UK

Michaela School is avowedly secular and operates under a very disciplined regime. It has a high proportion of Muslim pupils, and in 2023 the school's governing body decided to prohibit pupils from performing prayer rituals on its premises – regardless of religion – after the Headteacher had banned prayer rituals as an interim measure. Muslims are required to pray five times a day; and while TTT, a Muslim, accepted that the requirements of the school day meant that she could not always pray during the appropriate period, she wanted to perform the midday prayer (*Duhr*) in autumn and winter during the school lunch break – which, she argued, was 'free time'. It was argued for TTT that the school's refusal violated her rights under Article 9 ECHR (Ground 1); that the policy discriminated indirectly against Muslims, contrary to section 85(2)(d) and/or (f) of the Equality Act 2010 read with section 19 (Ground 2); and that in introducing the policy the school had failed to have 'due regard' to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations between Muslims and non-Muslims, contrary to the public sector equality duty in section 149 of the 2010 Act (Ground 3). She also claimed to have been subject to two procedurally unfair 'fixed terms of exclusion' because she had not been allowed to respond to the allegations against her before her exclusions (Ground 4).

The school argued that the policy did not interfere with TTT's freedom to manifest her faith or subject her to a detriment for the purposes of section 85(2)(f) of the 2010 Act because the Islamic faith allowed her to make up for the missing prayers by performing other prayers later in the day. Furthermore, she had chosen a secular school knowing that it had a strict behavioural regime, and she could transfer to another school that would let her pray if she so wished. Any interference with her religious freedom or indirect discrimination was justified to uphold the school's ethos and discipline and it was impractical for the school to accommodate ritual prayers. It also asserted that it had, in fact, given 'due regard' to section 149 of the 2010 Act.

Linden J noted that in *Williamson* [2005] UKHL 15 Lord Nicholls had drawn a distinction between the two elements of Article 9: there was 'a difference between freedom to hold a belief and freedom to express or "manifest" a belief. The former right, freedom of belief, is absolute. The latter right, freedom to manifest belief, is qualified'. Furthermore, in *Begum* [2006] UKHL 15 the House

https://doi.org/10.1017/S0956618X24000450 Published online by Cambridge University Press

of Lords had held that a school uniform policy that did not allow a female Muslim pupil to wear a *jilbab* coat had not limited her freedom to manifest her religious beliefs. The essence of the principle was 'that if the individual has a genuine choice … to manifest their beliefs elsewhere there will be no interference with their Article 9 rights'. He also cited with approval Lord Bingham's statement at in *Begum*, that:

> 'The court there recognises the high importance of the rights protected by Article 9; the need in some situations to restrict freedom to manifest religious belief; the value of religious harmony and tolerance between opposing or competing groups and of pluralism and broadmindedness; the need for compromise and balance; the role of the state in deciding what is necessary to protect the rights and freedoms of others; the variation of practice and tradition among member states …'

Linden J held that TTT's Article 9 ECHR rights had not been interfered with.

As to proportionality, there was a rational connection between the impugned policy and the school's aim of promoting its 'Team' ethos, inclusivity and social cohesion, and there would have been logistical problems in facilitating prayer for Muslim pupils. Furthermore, the school's policies were legitimate aims to which the policy at issue was rationally connected and there were no less-intrusive measures that it could have introduced to achieve those aims. It was also relevant that TTT's parents knew about the school's regime and had chosen to keep her at the school notwithstanding the prayer policy. Any adverse effects on the rights of Muslim pupils were outweighed by the aims of the policy and the extent to which it was likely to achieve them; it was therefore proportionate and Ground 1 failed.

As to Ground 2, while TTT had been subject to a detriment, the policy was a proportionate means of achieving the legitimate aim of promoting the interests of the whole school community, including those of Muslim pupils and Ground 2 also failed.

As to Ground 3, he accepted that the Governing Body had, in fact, had due regard to the matters required by section 149(1) of the Equality Act 2010 – and even if he had concluded that Ground 3 was well founded, he would still have refused relief.

On Ground 4 – the two exclusions – he dismissed the appeal against the first one but upheld the appeal against the second.

doi:10.1017/S0956618X24000450