JUDGMENT NO. 254 YEAR 2019

In this case, the Court considered a referral order questioning the constitutionality of certain provisions of a Lombardy regional land management law pertaining to religious facilities. A Lombardy administrative court questioned the provisions on the grounds that they made religious freedom subordinate to unlimitedly discretionary decisions by the public authorities in the area of city planning and that they placed overly restrictive and arbitrary limits on the right of access to places of worship, discriminating against the exercise of religion. After dismissing one constitutional question as irrelevant due to the facts of the pending proceedings, the Court agreed that two of the provisions were unconstitutional. The provisions required only religious facilities (a definition covering a very broad range of structures, from small, private prayer rooms, to cultural centers, to worship spaces) to submit specific plans within eighteen months of the passage of the regional land management law, or else to await approval in conjunction with the unscheduled, discretionary adoption of new city planning documents at the local level, or a major amendment thereof. The Court reiterated previous case law holding that religious freedom is an inviolable right with the utmost level of constitutional protection, and that the principle of separation of church and State does not amount to State indifference toward religion, but rather a positive duty to protect pluralism and foster the impartial and maximum expansion of religious freedom. It also reiterated that the right to worship is an essential element of freedom of religion and that this translates into the right to access suitable spaces for worship. This, it said, imposes a duty on public authorities to make spaces available, and prohibits them from discriminating against religious denominations in gaining access to public spaces and from creating obstacles to such access. While public authorities could impose conditions and limits that were strictly necessary to land management purposes, and were not required to apportion public resources equally between all denominations, they could not deny or excessively restrict the right to built or obtain religious facilities. Land use laws could provide special plans for religious structures provided that they met two requirements: pursuing the purpose of proper installation of religious facilities that will impact city planning, and giving due consideration to the public authorities' duty to support the establishment of places of worship for the various religious communities. The Court held that one of the regional provisions, which required a specific kind of plan for religious facilities, failed to meet these two requirements, and resulted in preventing the establishment of new places of worship by targeting religious facilities in an absolute sense and without any consideration for their impact on city planning (their size, function, etc.). The Court held that the second provision, requiring new plans to be approved in conjunction with the approval of new plans for the entire municipality, was unreasonable and unjustified, since the matter of if and when to approve new plans was entirely discretionary and uncertain, and other public interest facilities were not subjected to the same or even similarly stringent requirements for approval.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 72(1), (2), and (5), second sentence, of Lombardy Regional Law No. 12 of 11 March 2005 (Land management law), as modified by Article 1(1)(c) of Lombardy Regional Law No. 2 of 3 February 2015, containing "Modifications to Regional Law No. 12 of 11 March 2005 (Land management law) – Principles for planning facilities for religious services," initiated by the Regional Administrative Court [TAR] for Lombardy with its decisions of 3 August and 8 October 2018, registered, respectively, as numbers 159 and 172 of the 2018 Register of Referral Orders and published in the *Official Journal* of the Republic, No. 45 and 48, first special series of 2018.

Having regard to the entries of appearance filed by the *Associazione Culturale Islamica Ticinese* [the Islamic Cultural Association of Ticino] (formerly the *Associazione Comunità Islamica Ticinese*), as well as the statement in intervention filed by the Lombardy Region and the untimely statement in intervention filed by the *Associazione Culturale Assalam di Cantù* [Assalam Cultural Association of Cantù];
after hearing Judge Rapporteur Daria de Pretis at the public hearing of 22 October 2019;
after hearing Counsel Piera Pujatti on behalf of the Lombardy Region and Aldo Travi on behalf of the *Associazione Culturale Islamica Ticinese* (formerly the *Associazione Comunità Islamica Ticinese*).

[omitted]

Conclusions on points of law

1.– In its decision registered as No. 159 of the 2018 Register of Referral Orders, the TAR for Lombardy raises doubts as to the constitutionality of Article 72(1) and (2) of Lombardy Regional Law No. 12 of 11 March 2005 (Land management law), in the text resulting from the modifications effected by Article 1(1)(c) of Lombardy Regional Law No. 2 of 3 February 2015, containing "Modifications to Regional Law No. 12 of 11 March 2005 (Land management law) – Principles for planning facilities for religious services," alleging that they conflict with Articles 2, 3, and 19 of the Constitution.

Article 72(1) establishes that, "[t]he areas where religious facilities will be built or that are intended for the facilities themselves shall be specifically identified in the religious facilities plan, a separate document included in the services plan, in which they shall be sized and organized on the basis of local needs, taking into account the requests submitted by organizations affiliated with the religious denominations found in Article 70." Paragraph 2 provides that, "[t]he installation of new religious facilities requires the plan described in paragraph 1; without said plan, no new religious facilities shall be installed by the religious denominations listed in Article 70." Religious facilities are defined in Article 71 of the same Lombardy Regional Law, No. 12 of 2005.

The TAR alleges that the above-referenced paragraphs 1 and 2 of Article 72, by stipulating that in the absence of or, in any case, outside of the provisions of the religious facilities plan ([*piano delle attrezzature religiose*], hereinafter PAR), the *comuni* may not allow for the establishment of spaces intended for worship, regardless of the context and the impact on city planning generated by the specific work, therefore violate: a) Article 19 of the Constitution, in that the possibility to collectively and publically carry out religious rites not contrary to public morality would be made subordinate to discretionary urban planning and, therefore, to control by the public authorities; b) Article 3 of the Constitution, in that the contested provisions go beyond the scope of ensuring the proper installation of religious facilities on local lands and subject them to discriminatory treatment with respect to that afforded other kinds of facilities that are also intended for public use, resulting in the violation "of the fundamental canons of reasonableness, proportionality and non-discrimination;" and c) Article 2 of the Constitution, "due to the centrality of religious belief as an expression of the human personality, protected in its individual and collective expressions."

2.– In its decision registered as No. 172 of the 2018 Register of Referral Orders, the TAR for Lombardy challenges the constitutionality of the second sentence of Article 72(5) of Lombardy Regional Law No. 12 of 2005, as modified by Article 1(1)(c) of Lombardy Regional Law No. 2 of 2015, alleging that it conflicts with Articles 2, 3, 5, 19, 97, 114(2), 117(2)(m) and 117(6), and 118(1) of the Constitution.

The contested provision establishes that "[t]he municipalities that wish to plan new religious facilities are required to adopt and approve the plan for the religious facilities within eighteen months of the entry into force of the regional law […]. After that time, the plan shall be approved in conjunction with the new PGT."

According to the TAR, Article 72(5)(2), on the basis of which, after eighteen months from the date of the entry into force of Lombardy Regional Law No. 2 of 2015 have elapsed, the PAR is to be approved in conjunction with the new land management plan (hereinafter PGT), without "any limits

on the municipality's discretion to decide when […] to make a decision concerning a request to identify buildings or areas to be dedicated to religious worship," violates: a) Articles 2, 3, and 19 of the Constitution, for unreasonably restricting the religious freedom of believers relating to their right to find designated spaces for the exercise of that freedom, in that, following the fruitless expiry of eighteen months for the adoption of the PAR, the provision fails to provide "any substitutive measure," and grants the municipal administrative bodies the ability to introduce the plan as part of the revision or adoption of the PGT "with no further time limits" and without "any 'penalty' provision;" b) Article 97 of the Constitution, in that the failure to provide a definite timeframe for responding to religious practitioners' request, on the one hand, goes against the principle of sound management of the administrative function and, on the other, expresses "opposition by the Administration toward religion," in violation of the principle of impartiality of administrative action; c) Article 117(2)(m) of the Constitution, in that predetermining the maximum length of the procedure concerns essential services involving civil rights, on the basis of Article 29 of Law No. 241 of 7 August 1990 (New provisions on administrative procedure and the right to access administrative records); d) Articles 5, 114(2), 117(6), and 118(1) of the Constitution, in that, once the eighteen months from the entry into force of Lombardy Regional Law No. 2 of 2015 have elapsed, "the regional provision makes the adoption of the Plan for religious facilities conditional upon the overall revision of the land management plan," causing an unjustified restriction of the autonomy of the municipalities.

3.– The two decisions, which involve provisions that are linked in many ways and raise questions that are partly overlapping, must be joined in order to be decided with a single ruling.

4.– The intervention of the *Associazione Assalam di Cantù* was filed in both cases after the deadline established by Article 4(4) of the Supplementary Rules for Proceedings before the Constitutional Court. The intervention was filed on 25 September 2019, well past the twenty days after the filing instituting the proceedings appeared in the Official Journal, which took place on 14 November 2018 in the case of Referral Order No. 159 of 2018 and on 5 December 2018 in the case of Referral Order No. 172 of 2018. The intervention is, therefore, inadmissible, in that, as this Court has consistently held, the deadline for interventions in proceedings before it is binding (see, among many, Judgments No. 106, 90, and 78 of 2019).

5.– Coming now to the examination of the questions raised in the first case (R.O. No. 159 of 2018), it is necessary first of all to identify the *thema decidendum* submitted to this Court and to address the procedural matters.

The TAR for Lombardy challenges the first two paragraphs of Article 72 of Lombardy Regional Law No. 12 of 2005: paragraph 2 because it makes the establishment of places of worship contingent, in an absolute way, upon the prior adoption of the PAR; paragraph 1 because, "even after approval of the Plan, no facilities may be built outside of the areas specifically designated for them."

The referring court provides a single line of reasoning in support of its challenges to the two legal provisions, laid out in reference to the three constitutional provisions cited. In reality, the two challenged provisions differ in content and are, in effect, the object of distinct complaints by the TAR, which takes issue, first, with the subordination of places of worship to prior approval of the PAR (stipulated at paragraph 2) and, second, with the need to adhere to the zoning effected in the PAR itself (stipulated at paragraph 1). The challenges must, therefore, be distinguished from one another in terms of their objects, and not merely in terms of the allegedly violated constitutional provision.

5.1.– Having said this, the questions concerning Article 72(1) are inadmissible as they are irrelevant. Indeed, the TAR challenges the binding nature of the provisions of the PAR that identify the location for the construction of any and all new religious facilities. However, in the case before the referring court, the PAR had not been adopted, meaning that the requirement to conform to the plan's zoning (which is logically, as well as factually, dependent upon the prior existence of the PAR) falls outside the scope of the pending case itself. Therefore, the question as to the constitutionality of the provision stipulating it (Article 72(1)) does not having a bearing on it.

5.2.– Moving on to the questions raised in reference to Article 72(2), it is first necessary to examine the Region's objection that they lack relevance. The Region objects that, while the TAR challenges the lack of proportion between the general duty stipulated by the provision, which requires the existence of a PAR as a precondition for the installation of any religious facilities, and the scenarios in which this amounts, for example, to a small prayer room, the underlying proceedings actually involve a place of worship that could potentially be attended by an unspecified number of believers and is destined to have a significant and permanent impact on the urban fabric.

The objection is not well founded.

Even without addressing the merits of the factual assumption underlying the objection (that is, the alleged importance of the relative dimensions of the structure at issue in the pending proceedings), it bears pointing out that the TAR is not challenging Article 72(2) in a way limited to the part which applies to places of worship of modest dimensions, but rather asks for a ruling striking down the entire provision. Its reference to the provision's application even to "modest prayer rooms" is intended to highlight the unreasonable effects of the provision itself, not to limit the scope of its request. The effective size of the structure at issue in the underlying proceedings is not, therefore, significant for purposes of determining the issues' relevance.

Taken as a whole, the TAR provides sufficient reasoning concerning relevance. The referring court challenges Article 72(2), that is, the precise provision underlying the ex officio order of annulment subject to challenge in the pending proceedings. It also explicitly mentions the effects of the supervening Lombardy Regional Law No. 5 of 25 January 2018 (Consolidated law of the regional legal system. Repeal of legal provisions), which repealed Regional Law No. 2 of 2015, providing a plausible argument on the ongoing relevance of the issues.

Finally, it bears noting that the part of the referral order in which the questions as to constitutionality are raised is autonomous and clearly outlines the questions themselves, demonstrating the relevance of the fifth ground for the appeal for purposes of the decision (the only ground not decided by the referring court). Thus, possible areas of inconsistency between the part of the referral that raises the questions and other sections of the ruling, in which the other grounds for appeal are rejected, sometimes applying the provisions that the TAR later referred for review by this Court, are not significant in this context.

6.– On the merits, the question of the constitutionality of Article 72(2), raised in relation to Articles 2, 3(1), and 19 of the Constitution, is well founded.

It bears recalling, first of all, the constitutional framework surrounding the object of the present judgments.

The religious freedom guaranteed by Article 19 of the Constitution is an inviolable right (Judgments No. 334 of 1996, 195 of 1993, and 203 of 1989), with the "utmost level of protection" (Judgment No. 52 of 2016) from the Constitution. The constitutional guarantee also has a "positive" implication, since the principle of separation of church and State [*principio di laicità*] that characterizes the legal system of the Republic "is to be understood, as it has been defined in constitutional case law (Judgments No. 63 of 2016, 508 of 2000, 329 of 1997, 440 of 1995, and 203 of 1989), not as State indifference to religious experience, but rather as a protection of pluralism, to foster the maximum expansion of the freedom of all, according to impartial criteria" (Judgment No. 67 of 2017).

Freedom to worship is an essential element of freedom of religion, and it is specifically guaranteed by Article 19 of the Constitution, which provides that, "[e]veryone has the right to profess freely their religious faith in any form, individually or in association, to disseminate it and to worship in private or public, provided that the religious rites are not contrary to public morality." Public and collective worship, as this Court has stated many times, must, therefore, be protected, and must be ensured on equal terms for all religious denominations, regardless of whether or not they have formalized an agreement with the State and irrespective of their potentially minority status (Judgments No. 63 of 2016, 195 of 1993, and 59 of 1958).

Freedom of religion also translates into the right to have spaces suitable for concretely exercising the right (Judgment No. 67 of 2017) and, thus, more precisely implies a twofold duty for the public authorities tasked with regulating and managing land use (in essence, the regions and the municipalities): it implies a positive duty (in application of the aforementioned principle of the separation of church and State) for the competent administrative bodies to provide for and make available public spaces for religious activities; in the negative sense, it prohibits them from placing unjustified obstacles on the exercise of religion in private spaces and from discriminating against religious denominations in gaining access to public spaces (Judgments No. 63 of 2016, 346 of 2002, and 195 of 1993).

Naturally, in assigning public spaces to the worship spaces of the various confessions, the regions and municipalities must consider their presence in the relevant area, given that, in this context, the prohibition of discrimination "does not mean […] that all denominations must be assured an equal portion of public funds or available space: naturally, when limited resources are distributed, like public subsidies or concessions for land use, all the relevant public interests must be weighed, and appropriate weight must be given to the extent of the presence of one or another denomination in the area, to its prevalence and social relevance, and to the religious needs of the population" (Judgment No. 63 of 2016).

6.1.– The constitutional framework described has been implemented in law, both at the national level and in many regions, which guarantee the provision of suitable spaces for places of worship for the exercise of religious freedom.

As far as state-level regulation is concerned, it suffices to recall that, on the basis of Article 3 of Ministry of Public Works Decree No. 1444 of 2 April 1968 (Mandatory limits on residential density, height, space between buildings, and maximum ratio between spaces dedicated to residential and manufacturing areas and public spaces or those dedicated to group activities, public parks, or parking lots, which must be observed for purposes of forming new city planning tools or the revision of existent ones, under Article 17 of Law No. 765 of 6 August 1967), places of worship are among the "facilities of local interest" that urban planning tools must provide for in order to meet the standards established by the decree. Furthermore, Article 16(8) of Decree of the President of the Republic No. 380 of 6 June 2001 (Consolidated text of legislative and regulatory building provisions), confirmed that, among the duties of secondary urbanization, are "churches and other religious buildings."

At the regional level, in the 1980s and 1990s, many regions established rules intended to reserve a different form of treatment for religious facilities with respect to other secondary urbanization projects, for purposes of facilitating their construction. In particular, these provided for financial contributions (regional or local) and for raising the minimum allotment required under the national rules (see, among others: Liguria Regional Law No. 4 of 24 January 1985, containing "Urban development regulation of religious services;" Piedmont Regional Law No. 15 of 7 March 1989, containing "Identification of designated areas for religious facilities within the general urban development tools. Use by the Municipalities of funds coming from urbanization-related taxes;" Campania Regional Law No. 9 of 5 March 1990, containing "Reservation to the legislature of city planning standards for religious facilities").

6.2.– Lombardy Regional Law No. 20 of 9 May 1992 (Rules for the construction of religious buildings and of facilities designated for religious services) falls into this same line. It reserved 25 percent of the overall allotment of public interest facilities for religious facilities and provided, among other things, that in each municipality at least 8 percent of funds collected from secondary urbanization taxes should be designated for their construction and maintenance. Since, however, these funds were reserved for the Catholic Church and the other religious denominations having an agreement with the State, this Court ruled that the provision establishing them was unconstitutional, in the part in which it stipulated that such an agreement was required (Judgment No. 346 of 2002).

The following Lombardy Regional Law No. 12 of 11 March 2005 (Land management law), regulated the building of religious facilities with Articles 70 to 73, establishing that they would be governed, together with the other public interest facilities, by the services plan. Starting in 2006, this

regulatory scheme became the object of various changes, which progressively rendered the establishment of places of worship subject to increasingly incisive limits and oversight.

The first modification was effected by Lombardy Regional Law No. 12 of 14 July 2006 (Modifications and supplementary provisions for Regional Law No. 12 of 11 March 2005, "Land management law"), which added a building permit requirement for changes in the intended use of real property, even in the absence of construction, if they were "intended to create places of worship or places for use as community centers" (Article 52(3-*bis*), added to Regional Law No. 12 of 2005).

A new restriction was introduced by Regional Law No. 4 of 14 March 2008, containing "Additional modifications and supplementary provisions for Regional Law No. 12 of 11 March 2005 (Land management law)," which, by adding paragraph 4-*bis* to Article 72 of Lombardy Regional Law No. 12 of 2005, limited the zones in which religious facilities could be built prior to approval of the services plan.

The following Regional Law No. 3 of 21 February 2011 (Regulatory measures for the implementation of regional planning and modifying and supplementing legislative provisions – *Budget package provisions* 2011), then expanded the notion of religious facilities to include "real property designated for offices of associations, societies, or communities of persons of any kind, the statutory or associational purposes of which can be traced back to religion, the exercise of worship, or to religious profession, such as prayer rooms, religious schools, or cultural centers" (Article 71(1)(c-*bis*), added to Lombardy Regional Law No. 12 of 2005).

Finally, Lombardy Regional Law No. 2 of 2015, the object of the present proceedings, was brought to bear. It established an elaborate regulatory scheme concerning religious facilities, and modified Article 70 and replaced Article 72 of Lombardy Regional Law No. 12 of 2005.

Some parts of the 2015 regulatory scheme were challenged by the Government, and this Court ruled on its questions with Judgment No. 63 of 2016, holding, among other things, that Article 70, paragraphs 2-*bis* (in the part in which it established certain requirements only for non-Catholic denominations not having an agreement with the State) and 2-*quater* (establishing the regional council), as well Article 72, paragraph 4, sentence 1 (which provided for opinions concerning public safety, during the course of proceedings for the formation of the PAR), and paragraph 7, letter e) (which required the installation of video surveillance systems at places of worship) of Lombardy Regional Law No. 12 of 2005, were unconstitutional.

Judgment No. 63 of 2016 did not rule on the merits of the provisions under review in the present case, since paragraphs 1 and 2 of Article 72 were not challenged by the Government, and Article 72(5) was the object of a ruling of manifest inadmissibility.

6.3.– Having provided the relevant background context, the Court may now turn to an examination of the questions raised by the referring court.

The challenged provision (Article 72(2) of Lombardy Regional Law No. 12 of 2005, introduced by Lombardy Regional Law No. 2 of 2015) makes the installation of all new religious facilities subordinate to the PAR (a separate document that is a part of the services plan), which is, in turn, a new element also introduced by Lombardy Regional Law No. 2 of 2015.

Concerning regional legislative authority over construction of religious facilities, this Court has already defined its purpose and limits, holding that, "regional legislation concerning religious facilities 'finds its purpose and justification in the need – inherent to city planning – to ensure the balanced and harmonious development of inhabited areas and in providing services of public interest in their broadest meaning, which, therefore, also include religious services' (Judgment No. 195 of 1993)." In this context, "the Region, in regulating the coexistence of the various vested interests within their territory, is entitled to dedicate specific provisions for the planning and construction of places of worship and, in the exercise of this competence, it may impose such conditions and such limitations as are strictly necessary to fulfill the land management purposes that are entrusted to its care" (Judgment No. 67 of 2017). In the exercise of its competences, however, the regional legislature "can never pursue ends that exceed the competences of the Region," it not being permitted, in

particular, to introduce provisions that impede or compromise freedom of religion "within a law for administering the region" (Judgment No. 63 of 2016).

In short, therefore, in regulating places of worship, as part of the law on land management, the regions are permitted to pursue ends that are exclusively related to urban planning, as a part of which they must also give the required, specific consideration to the allocation needs of religious facilities. Moreover, due to the special constitutional status of freedom of worship, these urban planning/building regulatory schemes must also, when it comes to religious facilities, consider the further requirement of the need to provide spaces for their establishment. Consequently, they cannot entail the denial or excessive restriction of the possibility to build structures of this kind.

In this framework, for regional legislation on land use governance to provide a special plan dedicated to religious structures, linked to the urban planning model in that area, is not unconstitutional *per se*. It avoids unconstitutionality, however, on the twofold condition that it pursues the purpose of the proper installation on local land of religious facilities that will have an impact on city planning and that, in this context, it gives appropriate consideration to the requirement that it support the establishment of places of worship for the different religious communities (thus also in correspondence with city planning standards, that is to the minimum allotment of public spaces).

Article 72(2) of Lombardy Regional Law No. 12 of 2005, which makes the installation of any religious facility contingent upon the existence of the PAR, fails to meet these conditions. Indeed, this Court may not avoid pointing out that a legislative solution of this kind, on the one hand, does not permit the balanced and harmonious development of local lands, and, at the same time, ends up preventing the establishment of new places of worship.

Relevant in this regard is, first of all, the absolute character of the provision, which indiscriminately (and exclusively) concerns all new religious facilities, irrespective of whether they are public or private in nature, of their size, of the specific function to which they are assigned, of their predisposition to host a more or less significant number of believers, and, therefore, of their city planning impact, which may vary greatly and even be negligible. The effect of this absoluteness is that even facilities altogether lacking in city-planning relevance, for the mere fact of having a religious purpose (consider for example the small, private prayer room of a religious community), must be placed in advance in the PAR, and that, for example, the members of an association with a religious purpose cannot meet for worship activities in the private offices of the association, unless specifically stipulated in the PAR. By contrast, any other form of associational activity, provided that it is not religious, may certainly be carried out in the association's own offices, which may be freely located on municipal lands in compliance only with general city planning provisions. In light of this, the potential insignificance for city planning of at least a portion of the structures falling under the challenged provision makes it clear that there is an objective obstacle to the establishment of new religious structures.

It also bears underscoring that this distinct set of rules, despite the Constitution's specific recognition – recalled above – of the right of access to a place of worship, applies only to religious facilities and not to other works of secondary city planning, such as schools, hospitals, gyms, and cultural centers. All of these cases deal with facilities of general interest for residential areas, which, in a way not unlike religious facilities, may be of greater or lesser impact on city planning on the basis of their size, function and potential users. The fact that the regional legislator imposes the requirement of having a specific and prior plan only upon religious facilities indicates that the intended purpose only appears to be city planning and development-related, and that the true objective of the rules is, rather, to limit and control the establishment of (new) places of worship. And this applies regardless of their relative size, from simple prayer rooms for a few worshipers to large-scale temples, churches, synagogues and mosques.

In conclusion, the restriction of the freedom of worship effected by the challenged provision, in the absence of any reasonable justification relating to the pursuit of the city planning purposes proper to it, results in the violation of Articles 2, 3(1), and 19 of the Constitution.

7.– Moving on to scrutinize the question of constitutionality of Article 72(5), second sentence, of Lombardy Regional Law No. 12 of 2005, the Court must first consider the objection of inadmissibility raised by the Region of Lombardy.

7.1.– According to the Region of Lombardy, the question is irrelevant, first of all, because the challenged measure at issue before the referring court allegedly does not refer to the challenged provision (Article 72(5)), which, therefore, would not apply in the pending proceedings.

While it is true that the challenged measure makes no mention of Article 72(5), and that it makes a determination on a remark presented during the PGT approval process, the objection of irrelevance is unfounded. Indeed, the TAR does not stop at contesting the discretion of the city planning decisions entrusted to the municipalities in relation to when to deliberate on requests to designate a place of worship, but expressly clarifies that, in the case before it, the second sentence of Article 72(5) applies, together with the requirement provided therein that the PAR be approved "in conjunction with the new PGT," with the result that the timeline for responding to the interested parties' request would be uncertain and indeterminate, given that, according to the TAR, "the Administration has no obligation to commence the process of revising the PGT, to identify the areas designated for places of worship." At the heart of the questions raised is, in actual fact, precisely this requirement that the PAR be approved in conjunction with the new PGT.

Having said this, the reasoning offered by the referring court concerning the relevance of the questions concerns two distinct grounds.

First of all, weight must be given to the fact that, in the first of the reasons provided, the referring court complains that the denial is unlawful because the challenged decision states, in its final part, that, "any and all determinations of this kind will be the object of later and further assessment during future updating of the PGT," as stipulated precisely by Article 72(5), second sentence. Second, after having stated that Article 72(5), which has been in force since 2015, applies to the proceedings at issue in the pending case (initiated with an observation about the PGT presented in 2011), the TAR observes that, on the basis of Article 72(5), second sentence, "in the absence of launching the new Land Management Law, the Association's position is left unprotected: in this sense, the relevance of the question for the present case is, thus, indisputable."

The referring TAR also argues that, for one thing, the legality of Article 72(5), second sentence, affects the legality of the challenged measure's postponement until some future update of the PGT, and, for another, the question is relevant in any case because the Municipality could not accept the request without initiating the procedure to form a new PGT, due to the obligation coming from Article 72(5), second sentence.

The argument concerning relevance is, therefore, both sufficient and plausible.

7.2.– The Lombardy Region laid out its second objection of inadmissibility in its brief filed on 30 September 2019, in which it alleges that, "by not providing reasons for the other grounds for its referral, despite their logical and legal precedence, the referring court *de facto* detaches its allegations of unconstitutionality from the required link with the pending proceedings."

In reality the referring TAR expressly states, following the order of the grounds established in its referral, that the second challenge may only be examined after a ruling has been made concerning the first. It then provides reasoning (as just described) concerning the relevance of the questions of constitutionality concerning Article 72(5), for purposes of deciding on the first of the grounds.

In any case, it bears recalling that, according to the case law of this Court, the order of examination of the questions followed by the referring court is not subject to review, as long as it was carried out in a not implausible way (see, for example, Judgments No. 120 of 2019 and 125 of 2018).

Therefore, this objection is, likewise, unfounded.

8.– On the merits, the question of constitutionality concerning Article 72(5), second sentence, of Lombardy Regional Law No. 12 of 2005, raised in reference to Articles 2, 3, and 19 of the Constitution, is also well-founded.

As described above, the challenged provision establishes that, after the period of eighteen months from the entry into force of Lombardy Regional Law No. 2 of 2015 has elapsed, the PAR "shall be

approved in conjunction with the new PGT," which means that (as we may find explained, moreover, in reference to the provision under review, in Circular No. 3 of 20 February 2017, which contains the guidelines for applying the aforementioned regional law) the PAR may not be approved "separate and apart from a new urban planning tool (the PGT or a general variation thereof)."

Following a model that is widespread in recent regional urban planning legislation, the Lombardy regional legislator provided a city development plan for municipalities, called PGT, which is divided into three documents: a planning document, a services plan, and a rules plan (Article 7 of Lombardy Regional Law No. 12 of 2005). The planning document has descriptive/informative content and establishes the objectives and policies for land development. It is valid for a period of five years and may be modified at any time (Article 8 of the cited regional law). The services plan serves to ensure an overall allocation of areas designated for facilities that are public or of public or general interest. Its validity does not expire, and it may be modified at any time (Article 9 of the same regional law). Finally, the rules plan has the various contents indicated in Article 10 of the regional law in question. It, too, does not expire and is always modifiable (Article 10(6)). The complex approval procedure for the documents that make up the PGT is provided by Article 13 of Lombardy Regional Law No. 12 of 2005, and the same scheme applies "to the variations of the documents that make up the PGT" (Article 13(13)).

The requirement that the PAR and the new PGT (or a general variation thereof) be approved at the same time, imposed by Article 72(5), second sentence, means that requests to build religious facilities will be considered following a timeline that is entirely uncertain and indeterminate, considering the fact that a municipality's power to proceed with the formation of a PGT or a general variation thereof, a necessary condition for being able to adopt the PAR (which is, in turn, a condition for authorizing the structure), is, by nature, absolutely discretionary as to if and when it will take place.

The challenged provision, by preventing the planning of religious facilities by the municipalities (which are, in turn, limited in the exercise of their administrative autonomy in the area of city planning, concerning which see, most recently, Judgment No. 179 of 2019), effects a sharp restriction of religious freedom (which may even go so far as to deny freedom of worship), without corresponding to any real interest related to good land management. Indeed, according to the general rules, building a facility of public interest that requires the modification of the plan provisions can translate into a simple partial amendment. And, in any case, even when planning the new facility may require reconsideration of the entire relevant area, carrying out a concrete evaluation of the impact of the new structure on the surrounding context would fall exclusively to the municipality. The regional law's provision that the PAR be necessarily and mandatorily approved in conjunction with the approval of the plan for the entire municipality (the PGT or a general variation of the same) is, therefore, unjustified and unreasonable, and all the more so when it comes to the construction of religious facilities, which, by dint of how instrumental they are for guaranteeing a constitutionally protected right, ought rather to be afforded special consideration.

It is significant that, for other facilities of public interest, Lombardy Regional Law No. 12 of 2005 not only does not require a general amendment of the PGT, but does not even always require the partial amendment procedure, given that "[t]he construction of public facilities and facilities of public or general interest, different from those specifically provided for by the services plan, does not entail application of the amendment procedure for the plan itself and shall be authorized following a reasoned resolution by the municipal council" (Article 9(15) of the cited regional law).

In the case of Article 72(5), second sentence, as well, the conclusion must be reached that the challenged provision effects a restriction on the construction of new religious facilities that is not justified by true needs of good land management and that it, therefore, by unreasonably undermining freedom of worship, violates Articles 2, 3, and 19 of the Constitution.

9.– Following the acceptance of the challenges reviewed, the questions raised in reference to Article 97, Article 117(2)(m), and Articles 5, 114(2), 117(6), and 118(1) of the Constitution are absorbed.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the proceedings,

1) *declares* that the interventions filed by the *Associazione culturale Assalam di Cantù* in the cases indicated in the Headnote are inadmissible;

2) *declares* that Article 72(2) of Lombardy Regional Law No. 12 of 11 March 2005 (Land management law), as modified by Article 1(1)(c) of Lombardy Regional Law No. 2 of 3 February 2015, containing "Modifications to Regional Law No. 12 of 11 March 2005 (Land management law) – Principles for planning facilities for religious services," is unconstitutional;

3) *declares* that Article 72(5), second sentence, of Lombardy Regional Law No. 12 of 2005, as modified by Article 1(1)(c) of Lombardy Regional Law No. 2 of 2015 is unconstitutional;

4) *declares* the questions as to the constitutionality of Article 72(1) of Lombardy Regional Law No 12 of 2005, as modified by Article 1(1)(c) of Lombardy Regional Law No. 2 of 2015, raised by the Regional Administrative Court for Lombardy, in reference to Articles 2, 3, and 19 of the Constitution, with the referral order registered as No 159 of 2018 of the Register of Referral Orders, to be inadmissible.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 22 October 2019.

Signed:
Giorgio LATTANZI, President
Daria de PRETIS, Author of the Judgment