JUDGMENT NO. 63 YEAR 2016

[omitted]

In this case the Court considered a direct application from the President of the Council of Ministers questioning the constitutionality of portions of a Lombardy regional law modifying regional principles for planning facilities for religious services. The claimant alleged that the legislation violated the equal religious freedom of all religious creeds and exceeded the legislative competences of the Region. The Court found that the regulation of religious facilities falls within regional competences only to the extent justified by the city-planning-related interest in ensuring the balanced and harmonious development of inhabited areas and realizing services of public interest. In light of the principle that all religious denominations are entitled to equal freedom to exercise their religion, and that opening places of worship is essential to such exercise, the Court stated that neither the relative size of the denomination nor the presence or absence of a formalized pact with the State may be a source of discrimination between them, and that placing different conditions upon different classes of denominations to gain access to space for religious facilities would exceed regional competences. On these grounds, the Court struck down those portions of the contested provisions that made such distinctions. The Court also struck down provisions requiring newly-constructed places of worship to install video surveillance systems as exceeding regional competences, since the pursuit of safety, public order, and peaceful coexistence is allocated exclusively to the State under the Constitution. The Court found other challenges to be unfounded, holding, first, that the regional government's ability to dissolve or revoke an agreement between a particular religious denomination and the government in cases of breach passed the test of proportionality and amounted to a legitimate use of regional competence; second, that the clause providing for the region's ability to institute a referendum did not in any way modify the preexisting local and national regulations on referenda; and, third, that the requirement that new places of worship have architectural and dimensional congruity with the existing landscape of Lombardy was not arbitrary, but referred to preexisting legislative standards in a separate, unchallenged law. The Court held the allegations that the legislation violated international and supranational law inadmissible, for failure to clearly and specifically state the alleged violation in legal terms, as required of direct applications, and for failure to support the alleged violation with adequate reasoning. An additional allegation was found to be manifestly inadmissible for failure to state why and how the Constitution applied to the questioned provision.

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 70, paragraphs 2, 2-*bis*, 2-*ter*, and 2-*quater*, and Article 72, paragraphs 4, 5 and 7, letters e) and g) of Lombardy regional law no. 12 of 11 March 2005 (Law for the administration of the territory), as modified by Article 1, paragraph 1, letters b) and c) of Lombardy regional law no. 2 of 3 February 2015, containing "Modifications to regional law no. 12 of 11 March 2005 (Law for the administration of the territory) – Principles for planning facilities for religious services," brought by the President of the Council of Ministers with an application served on 3-7 April 2015, filed with the Court Registrar on 9 April 2015, and registered as no. 47 in the Register of Applications 2015.

Considering the entry of appearance of the Region of Lombardy, as well as the intervention of *Associazione VOX –Osservatorio italiano sui Diritti*;

having heard from Judge rapporteur Marta Cartabia during the public hearing on 23 February 2016;

having heard from State Counsel [*Avvocato dello Stato*] Massimo Giannuzzi for the President of the Council of Ministers and Counsel Pio Dario Vivone for the Region of Lombardy.

[omitted]

Conclusions on points of law

1.– With an application served on 3-7 April 2015 and filed on 9 April 2015 (Register of Applications no. 47 of 2015), the President of the Council of Ministers, represented by the State Counsel's Office, questions the constitutionality of Article 70, paragraphs 2, 2-*bis*, 2-*ter*, and 2-*quater*, and Article 72, paragraphs 4, 5, and 7, letters e) and g) of Lombardy regional law no. 12 of 11 March 2005 (Law for the administration of the territory), as modified by Article 1, paragraph 1, letters b) and c) of Lombardy regional law no. 2 of 3 February 2015, containing "Modifications to regional law no. 12 of 11 March 2005 (Law for the administration of the territory) – Principles for planning facilities for religious services."

2.– The intervention by *Associazione VOX – Osservatorio italiano sui Diritti* is inadmissible.

Proceedings concerning the constitutionality of legislation initiated by a direct application, according to Article 127 of the Constitution and Articles 31 *et seq*. of Law no. 87 of 11 March 1953 (Provisions on the establishment and functioning of the Constitutional Court), are conducted exclusively between subjects vested with legislative power. Other forms of judicial relief are available to parties lacking such power where certain requirements are met. Therefore, intervention by subjects lacking legislative power is not admissible in proceedings to determine the constitutionality of legislation initiated by direct application (see, *inter alia*, Judgments no. 118 and 31 of 2015, 210 of 2014, and 285, 220, and 118 of 2013).

3.– The questioned regional provisions make certain modifications to regional law no. 12 of 2005 for administrating the territory, which deals with principles concerning the planning of facilities for religious services. The President of the Council's application makes numerous complaints alleging that the regulations violate the equal

religious freedom of all religious creeds, guaranteed by constitutional principles and by international and supranational law, inasmuch as they exceed the legislative competences of the Region.

4.– A review of the individual complaints must start with due consideration of the constitutional principles of religious freedom and the status of religious denominations with and without a formal relationship with the State.

4.1– The republic is characterized by the principle of separation of church and State (*principio di laicità*), as it has been defined in constitutional case law (Judgments no. 508 of 2000, 329 of 1997, 440 of 1995, and 203 of 1989), not as indifference to religious experience, but as the guardian of religious freedom in a system grounded on religious and cultural pluralism. The Republic's role is to "guarantee conditions that favor the expansion of the freedom of all and of the freedom of religion within this sphere," the freedom of religion being "one aspect of the dignity of the human person, recognized and declared inalienable by Article 2" of the Constitution (Judgment no. 334 of 1996).

The free exercise of religion is an essential aspect of the freedom of religion (Article 19) and is, moreover, recognized equally for all people and every religious denomination (Article 8, first and second paragraphs), with or without any formal relationship with the State. As this Court has recently reiterated, religious freedom, which is guaranteed to all without distinction is one thing, while agreed-upon stipulations (Articles 7 and 8, third paragraph, of the Constitution) are another. The latter are based on the "common will" of the Government and the religious denominations to regulate specific aspects of the relationship between the denomination and the State legal system (Judgment no. 52 of 2016). In light of the Government's broad political discretion in this area, the agreement or pact cannot be a *sine qua non* condition for the exercise of religious freedom. Rather, these bilateral agreements are intended to meet "specific needs of each of the religious denominations (Judgment no. 235 of 1997), or else to grant them particular advantages or, if necessary, impose particular limitations (Judgment no. 59 of 1958), or else to give relevance, within the system, to specific actions by a religious denomination" (Judgment no. 52 of 2016).

For this reason, in the area of religious freedom, this Court's case law has consistently affirmed that, "the Legislator cannot enact discrimination among religious denominations merely on the basis of the fact that they have or have not regularized their relationship with the State by means of agreements or pacts (Judgment no. 346 of 2002 and 195 of 1993)" (Judgment no. 52 of 2016). As a result, where religious freedom and its exercise are concerned, legal protection must embrace every religious experience in the same way, in its collective and individual dimensions, irrespective of the different religious creeds. Similarly, how widespread a certain denomination is has no importance, since a given denomination's being in the minority cannot justify a lesser degree of protection of its practitioners' religious freedom compared with that of more widespread denominations (Judgment no. 329 of 1997).

4.2.– Opening places of worship, as an essential form and condition for the public exercise of religion, falls within the protection guaranteed by Article 19 of the Constitution, which recognizes that anyone has the right to profess their religious belief, in any form, individually or with others, and to promote it, and celebrate its rites in public or in private, with the only exception being rites that are offensive to public morality. Moreover, exercise of the freedom to open places of worship cannot be conditioned up a preexisting agreement, as described in Articles 7 and 8, third

paragraph, of the Constitution: a regulation that can be considered necessary only if and to the extent that certain religious acts are connected to specific civil effects (Judgment no. 59 of 1958).

Specifically, in reviewing issues that are partly similar to those at bar, this Court has elsewhere affirmed that, concerning religious facilities, "all religious denominations are entitled to represent the religious interests of their members," and the prior stipulation of a pact cannot be "an element of discrimination in applying a regulation, established by ordinary legislation, that is designed to facilitate the exercise of a right to freedom of the citizens," at the risk of violating the principle stated in the first paragraph of Article 8 of the Constitution, as well as Article 19 of the Constitution (Judgment no. 195 of 1993). To this end, the prohibition of discrimination, enshrined generally in Article 3 of the Constitution and reiterated, for present purposes, by Articles 8, first paragraph, 19, and 20 of the Constitution, is key. It is also intended to ensure "the equality of individuals in their effective enjoyment of the freedom of religion, of which the equal freedom of the denominations to organize themselves and function represents the necessary projection on the communal plane" (Judgment no. 346 of 2002).

This does not mean, as the cases cited above explain and as will be repeated again below, 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 consumption, 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.

5.– In light of these principles, consistently upheld by the case law of this Court, the questions alleging that paragraphs 2, 2-*bis*, letters a) and b), and 2-*quater*, of Article 70 of regional law no. 12 of 2005 violate Articles 3, 8, 19, and 117, second paragraph, letter c) of the Constitution, are well founded.

5.1.– By virtue of the modifications enacted by regional law no. 2 of 2015, regional law no. 12 of 2005 on the administration of the territory, in the section dedicated to the construction of buildings for worship and of facilities dedicated to religious services (Articles 70-73), outlines three classes of subjects: entities that are part of the Catholic Church (Article 70, paragraph 1); entities belonging to other religious denominations with whom the State has already approved an agreement by law (Article 70, paragraph 2); and entities belonging to all the other religious denominations (Article 70, paragraph 2-*bis*). Articles 70-73 only apply to this third category, entities belonging to denominations "without agreement," on the condition that they meet the following requirements: "a) widespread, organized, and consistent presence on the ground, and a significant presence in the municipality where the actions governed by this section are carried out;" and, "b) their statutes express the religious character of their institutional purposes and respect for the principles and values of the Constitution." By virtue of Article 70, paragraph 2-*quater*, the evaluation of these requirements is mandatorily subject to the prior scrutiny, albeit non-binding, of a regional authority, to be established and appointed by provision of the regional Government of Lombardy. However, as counsel for the Region stated during the hearing, this authority has not yet been established, despite the fact that more than a year has passed since the questioned regional law no. 2 of 2015 came into effect.

5.2.– The regional legislation, to the extent it governs the city planning of places of worship, indisputably deals with "administration of the territory;" therefore, considering

the subject matter, it falls within the concurrent competences under Article 117, third paragraph, of the Constitution (see, *inter alia*, Judgments no. 272, 102, and 6 of 2013). In addition, an evaluation of the division of competences between the State and the Regions requires taking stock not only of the object, but also of the purpose of the questioned regulation, and calls for correctly and fully identifying the protected interests, as well as the intended purposes (see, *inter alia*, Judgments no. 140 of 2015, and 167 and 119 of 2014). The regional legislature, in the exercise of its powers in the area of "administration of the territory," can never pursue ends that exceed the competences of the Region.

Considering this, it is necessary to reiterate 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 the realization of services of public interest in its broadest meaning, which, therefore, also include religious services" (Judgment no. 195 of 1993). The regulation of religious facilities comes under the regional competences only within these limits. The regional legislator does not have power to introduce provisions that impede or compromise freedom of religion within a law for administrating the region, by providing, for example, different conditions for having access to the assignment of places of worship. Since the availability of dedicated spaces is an essential condition for the effective exercise of freedom of religion, regulatory action of this kind would exceed regional powers, because it would interfere with the implementation of freedom of religion guaranteed by Articles 8, first paragraph, and 19 of the Constitution, placing conditions upon the effective exercise thereof.

A uniform reading of the constitutional principles invoked by the claimant and described above leads to the conclusion that the Region is authorized, in governing the composition of the various interests in the region, to dedicate specific provisions for the planning and construction of places of worship. However, the Region exceeds its powers, overstepping into an area that involves powerful and well-established needs for equality, if, for purposes of applying said provisions, it imposes different requirements, and stricter ones, only upon those denominations which are not party to an agreed-upon pact approved by law under Article 8, third paragraph, of the Constitution.

For these reasons, Article 70, paragraph 2-*bis*, letters a) and b), as well as that part of the paragraph that introduces those letters (the words "that present the following requirements:"), as well as 2-*quarter* of the Lombardy regional law no. 12 of 2005 must be declared unconstitutional.

On the contrary, Article 72, paragraph one, of regional law no. 12 of 2005, which subjects the city planning of religious facilities to the weighing of "local needs," taking into consideration the various specific denominational needs, and Article 73, paragraph 3, which refers to the "prevalence and social relevance" of the various denominations within the territory of a Municipality, for purposes of distribution by the city of public funds under Article 73, are not the subject of this judgment..

6.– The claimant also questions Article 70, paragraph 2-*ter* (likewise introduced by Article 1, paragraph 1, letter b) of regional law no. 2 of 2015), which provides that denominations other than the Catholic Church, under paragraphs 2 and 2-*bis*, "must stipulate an agreement for city planning purposes with the relevant municipality," and that these agreements must expressly provide for "the possibility of dissolution or revocation, in the event the municipality ascertains the occurrence of activities not provided for in the agreement."

The claimant alleges that the questioned provision violates Article 19 of the Constitution because it applies too general a formula for identifying the conditions under which an agreement may be dissolved or revoked, interfering, moreover, with the freedom of a religious entity to carry out activities other than those strictly pertaining to the religion (for example, cultural or athletic activities). The claimant only questions the second sentence of paragraph 2-*ter*.

The question is unfounded, for the reasons given below.

The agreements described in the provision under review, required when a Municipality implements the rule in question, must be grounded on the typical city-planning purpose of ensuring the balanced and harmonious development of inhabited areas. Naturally, the agreement may establish the consequences that may follow in the case that the entity party to the agreement fails to respect its stipulations, with graduated effects based on the extent of the breach. The questioned provision allows for these consequences to include, in the case of abnormal actions, the possibility to dissolve or revoke the agreement. This is clearly an extreme remedy, available only in the absence of less harsh alternatives. To apply the provisions of the agreement in practice, the Municipality must, in any case, specifically consider whether there are other city planning tools available that would be equally suitable to safeguard the pertinent public interests, but less prejudicial to the freedom of religion, an essential condition of which is, as stated above, the availability of dedicated spaces. A failure to weigh all the relevant interests can be challenged in the appropriate forums with the level of scrutiny required by the constitutional import of the interests of religious freedom.

The provision in question, interpreted in this way, satisfies the principle and test of proportionality, which require an evaluation of whether the rule under scrutiny, which is potentially limiting of a fundamental right such as freedom of religion, is necessary and appropriate for the achievement of objectives that are legitimate to pursue, in that it calls for the application of the available measure that is least restrictive of individual rights and imposes sacrifices that do not exceed what is necessary to ensure the pursuit of the interests contrasting with the right.

7.– On separate grounds, paragraphs 2-*bis*, 2-*ter*, and 2-*quater* of Article 70 of regional law no. 12 of 2005 (all introduced by Article 1, paragraph 1, letter b), of regional law no. 2 of 2015) are questioned jointly as violating Article 117, first paragraph and second paragraph, letter a), of the Constitution, concerning "European and international principles in the area of freedom of religion and belief." In particular, Articles 10, 17, and 19 of the Treaty on the Functioning of the European Union (TFEU), Articles 10, 21, and 22 of the Charter of Fundamental Rights of the European Union (proclaimed in Nice on 7 December 2000 and modified in Strasbourg on 12 December 2007); and, finally, Article 18 of the International Covenant on Civil and Political Rights (adopted in New York on 16 December 1966, ratified and executed in Italy with Law no. 881 of 25 October 1977).

The question is inadmissible.

As this Court has consistently held, direct applications must precisely identify the question in legal terms, indicating the ordinary and constitutional rules (and any other applicable standards), of which the definition of compatibility or incompatibility is the object of the question and, moreover, must contain an argument on the merits in support of the requested declaration of unconstitutionality (Judgment no. 251, 233, 218, 153, and 142 of 2015).

The application, however, after mentioning the supranational and regional provisions it claims are reciprocally incompatible, briefly sketches the contents of the former, but overlooks the latter entirely. As a result, neither the specific parts of the regional regulation are considered incompatible with supranational principles, nor the precise terms that create the incompatibility are clear. This defect in the argument cannot be cured through a holistic reading of the text of the application; on the contrary, such a reading only renders the meaning of the grounds under examination less clear. Specifically, it is not clear if the President of the Council of Ministers simply intended to highlight the supranational importance of the principles of equality and religious freedom, which are discussed in other sections of the application, or to allege that specific parts of the questioned paragraphs, different from the ones that allegedly conflict with the Italian Constitution, conflict with the aforementioned supranational principles.

With reference to the provisions of the Charter of Fundamental Rights of the European Union, there is an additional reason why the claim is inadmissible. According to Article 51 of the Charter (as well as Article 6, paragraph 1, first section, of the Treaty on European Union and Declaration no. 1 attached to the Lisbon Treaty) and the consolidated case law of the European Court of Justice, the Charter's provisions apply to Member States only when they act within the sphere of the application of European law: "The provisions of this Charter are addressed to […] the Member States only when they are implementing Union law" (Article 51 of the Charter). As this Court has already stated, in order for the Charter of Fundamental Rights of the European Union to be invoked in a judgment concerning constitutionality, it is necessary for the matter that is the object of the domestic legislation to be "governed by European law – insofar as it concerns acts of the Union and national acts and conduct implementing Union law or justifications adopted by a Member State for a national measure which would otherwise be incompatible with Union law – and not simply national legislation with no link with Union law" (Judgment no. 80 of 2011).

The absence of any reasoning concerning the requirements for applying European Union rules to the law under review renders the reference to them non-specific (Judgments no. 199 of 2012 and 185 of 2011), particularly in a case in which there are no clear points of contact between the area in which those rules apply and that in which the questioned provisions apply (for a contrary example, see Judgment no. 114 of 2012).

This is even more true for Articles 10, 17, and 19 of the TFEU, which deal explicitly with the Union and the bodies thereof, and do not impose additional obligations on the Member States.

Yet another defect in the statement of reasoning, which renders this ground for application inadmissible, is the irrelevance of the reference to Article 117, paragraph 2, letter a) of the Constitution, which cannot be considered a separate and further bastion, in addition to Articles 11 and 117, first paragraph, of the Constitution, of respect for conformity with European norms (Judgment no. 185 of 2011).

8.– The claimant also questions paragraphs 4 and 7, letter e) of Article 72 of regional law no. 12 of 2005 (entirely amended by Article 1, paragraph 1, letter c, of regional law no. 2 of 2015). Paragraph 4, only the first section of which is considered here, requires that, during the procedure for elaborating a plan for religious facilities under the same Article 72 (entitled "Plan for religious facilities" in the article heading),

"the opinions of organizations, citizens committees, agents and representatives of the civil services, in addition to the provincial offices of the police and prefecture, be obtained for purposes of weighing potential frameworks for public safety, leaving intact the autonomy of organs of the State." The second questioned provision requires that the plan include, for every religious building (not built prior to the enactment of regional law no. 2 of 2015, according to Article 72, paragraph 8), "the installation of a video surveillance system outside the building, at claimant's cost, which monitors all entrances and is connected to the local police office or law enforcement office. By requiring that applicants obtain opinions pertaining to matters of public safety and install video surveillance systems, the questioned provisions cross into the realm of "public order and safety," part of the State's exclusive legislative competence, including any potential cooperation with the Regions (Articles 117, second paragraph, letter h, and 118, third paragraph, of the Constitution).

The question is well-founded.

In the Italian Constitution, each fundamental right, including the freedom of religion, is expressed together with its limitation; therefore, there is no doubt that the practice of religion, where it contrasts with "public morality," falls outside the constitutional protection of Article 19 of the Constitution; and it is equally clear that, if the members of a denomination organize themselves in a way that is incompatible "with the Italian legal order," they cannot invoke the protection of Article 8, second paragraph, of the Constitution. All constitutionally protected rights are subject to the necessary balancing to ensure a unified and not fragmentary protection of the constitutional interests at stake, in such a way that no one of them enjoys absolute and unlimited protection enabling it to become a "tyrant," (Judgment 85 of 2013). Among the constitutional interests that must be adequately considered in shaping the protection of the freedom of religion – rigorously respecting the canons of strict proportionality for the reasons explained above – are certainly those concerning safety, public order, and peaceful coexistence. However, the pursuit of these interests is given exclusively to the State by the Constitution, under Article 117, second paragraph, letter h), while the Regions may only cooperate through measures that fall under their competences (see, *inter alia*, Judgment 35 of 2012). In the case at hand, on the contrary, the questioned provisions, considered in their purpose and in their essential contents (Judgment no. 118, 35, and 34 of 2012), aim to achieve clear public order and safety purposes. These purposes are to be evaluated in advance, during the planning phase (Article 72, paragraph 4: "during procedure of elaborating the plan […] the opinions of […] representatives of the civil services in addition to the provincial offices of the police and prefecture must be acquired, for purposes of assessing possible issues of public safety"), and to be managed afterwards, in each new place of worship, through the implementation of extensive video surveillance systems, connected with law enforcement offices (Article 72, paragraph 7, letter e). Therefore, the questioned provisions are held unconstitutional, because they overstep the limits of the competences given to the Regions.

9.– Claimant also questions Article 72, paragraph 4, second sentence, of regional law no. 12 of 2005, which provides, with regard to the plan for religious facilities, "the ability of the municipalities to institute a referendum in accordance with the statutory rules and those of the State legal system." The application alleges that this violates Article 19 of the Constitution in that claiming that the Municipalities may institute such a referendum would allow the ability to dedicate certain areas to religious construction

to be "subordinated to decisions that are the expression of political, cultural, or other majorities."

The question is unfounded.

As is evident from the plain text of the provision, it does not in any way modify the procedure for approving the plan, nor does it affect the regulation of municipal referenda, since it is limited to referring to whatever rules are already prescribed by the applicable local and national regulations. The provision, therefore, is purely referential, without any "autonomous regulatory force or, if you will, the innovative character typical of lawmaking acts" (Judgment no. 346 of 2010). For this reason, the claimant's interest in denouncing it must be considered lacking (Judgment no. 230 of 2013 and 401 of 2007).

10.– Current Article 72, paragraph 7, letter g) of regional law no. 12 of 2005 provides that the plan for religious facilities guarantee "the architectural and dimensional congruity of the religious buildings with the general and particular characteristics of the Lombard landscape, as listed in the PTR (Regional Territorial Plan)." Letter g) is questioned for violating Articles 3, 8, and 19 of the Constitution, because, by referring to the characteristics of the Lombard landscape with an ambiguous formula, it allegedly gives the administration overly broad discretion, easily leading to discriminatory application.

The question is unfounded, for the reasons laid out below.

Contrary to what the claimant suggests, the questioned provision does not require, as a general matter, that religious buildings conform to characteristics identified only as the "Lombard landscape." In reality, it specifies that the characteristics to which all buildings, including religious facilities, must conform are the ones "listed in the PTR," the regional territorial plan, under Articles 19 et seq. of the regional law no. 12 of 2005. Considered in its entirety, including the reference to the regional territorial plan, the provision requires that an evaluation of the conformity of religious buildings must refer not to subjective, random, or extemporaneous aesthetic considerations, susceptible as such to arbitrary and discriminatory application, but rather to the indications predetermined by the relevant provisions of the regional territorial plan. Therefore, even with regard to the specific area considered here, the provision is a guideline for the entire local territorial organization and planning of Lombardy, as well as a frame of reference for evaluating the compatibility of government acts within the territory, including those of the municipalities, and prevails over any contrasting provisions. Under this view, the questioned provision does no more than stipulate what is already generally provided by Articles 19 and 20 of regional law no. 12 of 2005. Any abusive use of planning discretion, used to surreptitiously penalize the establishment of religious facilities, may be challenged in the appropriate forum.

11.– Under current Article 72, paragraph 5, of regional law no. 12 of 2005, "[t]he municipalities intending to provide for new religious facilities must adopt and approve the plan for the religious facilities within eighteen months of the date [regional law no. 2 of 2015] comes into effect" (first sentence); "[o]nce said deadline has passed, the plan is approved together with the new PGT (Plan for Administration of the Territory)" (second sentence). Counsel for the State alleges that paragraph 5 is at odds with Article 117, second paragraph, letter 1) of the Constitution, in that it allegedly establishes the mere ability, for those Municipalities that so intend, to provide for the installation of new religious facilities by means of the specified plan. Thus, the provision would conflict with the 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). In particular, it allegedly conflicts with Article 3, under which all residential areas must comply with a minimum of eighteen square meters per inhabitant dedicated to public space or group activities, in the form of public park or parking lots, ordinarily in such a way that two square meters of each eighteen are dedicated to common interest facilities, pertaining to "religious" interests in addition to those that are "cultural, social, administrative, sanitary, for assistance, for public services," and others. The claimant recalls that Constitutional case law has already attached certain provisions of D.M. no. 1444 of 1968 to the competence found under Article 117, second paragraph, letter 1), and cites this Court's Judgment no. 232 of 2005 and 120 of 1996.

The question is manifestly inadmissible.

Leaving aside any considerations concerning the correctness of the claimant's interpretation of questioned Article 72, paragraph 5, the constitutional parameter, as presented, is entirely irrelevant (Judgments no. 269 and 121 of 2014). The claimant does not explain in any way why Article 117, second paragraph, letter 1) of the Constitution should apply to the regulation of city planning found at Article 3 of D.M. no. 1444 of 1968. Moreover, the application is not sufficiently and appropriately supported. In any case, the abusive or absent exercise of power on the part of the city planning authority may be challenged in the appropriate forum.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* the intervention of *Associazione VOX D.G.G. – Osservatorio italiano sui Diritti* in the present judgment of constitutionality brought by the President of the Council of Ministers with the application indicated in the headnote to be inadmissible;

2) *declares* Article 70, paragraph 2-*bis*, limited exclusively to the words "which present the following requirements," as well as letters a) and b), and 2-*quater*, of Lombardy regional law no. 12 of 11 March 2005 (Law for administrating the territory), introduced by Article 1, paragraph 1, letter b) of Lombardy regional law no. 2 of 3 February 2915, containing "Modifications to regional law no. 12 of 11 March 2005 (Law for the administration of the territory) – Principles for planning facilities for religious services," to be unconstitutional;

3) *declares* Article 72, paragraphs 4 and 7, letter e) of Lombardy regional law no. 12 of 2005, introduced by Article 1, paragraph 1, letter c) of Lombardy regional law no. 2 of 2015 to be unconstitutional;

4) *declares* the question of the constitutionality of Article 70, paragraph 2-*ter*, last sentence, of Lombardy regional law no. 12 of 2005, introduced by Article 1, paragraph 1, letter b) of Lombardy regional law no. 2 of 2015, brought by the President of the Council of Ministers with reference to Article 10 of the Constitution with the application indicated in the headnote, to be unfounded for the reasons explained above;

5) *declares* the question of the constitutionality of Article 70, paragraphs 2-*bis*, 2-*ter*, and 2-*quater*, of Lombardy regional law no. 12 of 2005, introduced by Article 1, paragraph 1, letter b) of Lombardy regional law no. 2 of 2015, brought by the President of the Council of Ministers in reference to Article 117, first paragraph and second paragraph, letter a) of the Constitution, in relation to Articles 10, 17, and 19 of the Treaty on the Functioning of the European Union, to Articles 10, 21, and 22 of the Charter of Fundamental Rights of the European Union (proclaimed in Nice on 7 December 2000 and modified in Strasbourg on 12 December 2007) and Article 18 of the International Covenant on Civil and Political Rights (adopted in New York on 16 December 1966, ratified and executed in Italy with Law no. 881 of 25 October 1977) with the application indicated in the headnote, to be inadmissible;

6) *declares* the question of the constitutionality of Article 72, paragraph 4, last sentence, of Lombardy regional law no. 12 of 2005, introduced by Article 1, paragraph 1, letter c) of Lombardy regional law no. 2 of 2015, brought by the President of the Council of Ministers in reference to Article 19 of the Constitution with the application indicated in the headnote, to be inadmissible;

7) *declares* that the question of the constitutionality of Article 72, paragraph 7, letter g), of Lombardy regional law no. 12 of 2005, introduced by Article 2, paragraph 1, letter c) of Lombardy regional law no. 2 of 2015, brought by the President of the Council of Ministers in reference to Articles 3, 8, and 19 of the Constitution with the application indicated in the headnote, is unfounded;

8) *declares* the question of the constitutionality of Article 72, paragraph 5, of Lombardy regional law no. 12 of 2005, introduced by Article 1, paragraph 1, letter c) of Lombardy regional law no. 2 of 2015, brought by the President of the Council of Ministers in reference to Article 117, second paragraph, letter 1) of the Constitution with the application indicated in the headnote, to be manifestly inadmissible.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 23 February 2016.