

Between administrative silence and religious freedom: the end of Ramadan in front of the Lombardy Regional Administrative Court

In these days, the Islamic community is living the last days of the lunar month of the holy fast, Ramadan, in memory of the delivery of the Qur'anic Revelation to the Prophet Mohammed¹.

At the end of this period, Muslims are celebrating *'Īd al-fiṭr*, the festival of breaking the fast, which this year falls between 9 and 10 April. As the second most important holiday in the Muslim calendar (the first is *'Īd al-adha*, the feast of sacrifice that Abraham was about to perform), it is obvious that preparations are in full swing to solemnize the event. Among the characteristics of *'Īd al-fiṭr* are the gathering of families, the sharing of a rich and elaborate meal, and the exchange of gifts.

The controversy arises in Turbigo, in the Milanese hinterland: on February 26, the *Essa Mosque Religious Association* asked the Municipality to identify a place suitable for the celebration.

The request remained a dead letter, despite its reiteration, since the offices did not initiate any proceedings, nor did they get in touch with the religious leaders. The silence of the local authority was followed by the appeal of the Association to the Regional Administrative Court of Lombardy² governed by art. 31 of Code of Administrative Procedure

The solution proposed by the administrative judge was the issuance of a presidential decree, pursuant to article 56 of the Code of Administrative Procedure, by which the Municipality was ordered to give a written response to the Association by 2 p.m. today, April 5. Not only that, even in the event of a negative answer on the availability of spaces, the Municipality would have had the obligation to justify the reason for the impossibility of putting them at the service of the religious community³.

Although the measure is concise, as was to be expected given the nature of the precautionary procedure, some reflections can be made: first of all, it confirms a direction within the administrative justice that binds the Public Administration to implement a series of positive measures aimed at

¹ Cf. I. SPINA, *The Five Pillars of Islam*, in *Law and Religions*, III, 7, n. 1, 2009, pp. 297-299.

² Although in the text of the precautionary presidential decree there is no mention of article 31 Code of Administrative Process, media referred to the action against the silence of the PUBLIC ADMINISTRATION See, for all, *In Turbigo Ramadan ends in Court. The judges "a response by April 5,"* in *AGI*, April 2, 2024, <https://www.agi.it/cronaca/news/2024-04-02/comune-turbigo-tar-intima-risposta-comunita-musulmana-25893810/>.

³ Cf. LOMBARDY REGIONAL ADMINISTRATIVE COURT, Section V, *Presidential Decree No. 320/2004 Reg. Prov. Cau.*, published on 31/03/2024 on https://portali.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza/?nodeRef=&schema=tar_mi&nrg=202400671&nomeFile=202400320_06.html&subDir=Provvedimenti.

guaranteeing and promoting the exercise of religious freedom⁴, according to a paradigm of inclusive secularism, in the footsteps of the well-known sentence no. 203/1989 of the Constitutional Court; secondly, a central role is recognized to the local authority closest to the citizen, i.e. the Municipality, in the provision of services that are connected to the fundamental right provided for by art. 19 of the Constitution; thirdly, it reinforces a vision of subsidiarity, which requires a rethinking of bureaucratic structures, called upon to raise standards of protection and promotion of rights.

For now, the end of the controversy is far away: the mayor's latest measure, in compliance with the presidential decree, states that the shortage of personnel does not allow to guarantee public order and safety during the course of the festival and that, in any case, the absence of a precise number of participants makes it impossible to identify a suitable place for the celebration. Hence the invitation to look for private spaces. The mayor denies any political or ideological motivation behind the decision. The *Essa Mosque* Association, through its lawyer, announces further steps and the controversy will continue to animate the debate in Italy on the Muslim confession, still subject to the restrictive and increasingly inadequate discipline of the law on admitted cults.

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⁴ In this sense, again in the context of the discipline on places of worship, cf. M. CROCE, *Double stop for the "anti-mosque" political direction of the Municipality of Monfalcone by the administrative judge*, in *Diritto e Religioni, News*, <https://www.rivistadirittoereligioni.com/newsitalia-doppio-stop-per-lindirizzopolitico-anti-moschea-del-comune-di-monfalcone-da-parte-del-giudice-amministrativo-marco-croce/>.