

*Still on the place of Ramadan celebration: in Cantù a first outcome of the dispute
between the Municipality and the Assalam Association*

The dispute between the *Assalam Association* and the Municipality of Cantù comes to a provisional end with the order of the Milan Regional Administrative Court of 12th April¹, which declares the inadmissibility of the precautionary application due to the subsequent lack of the applicant's needs for immediate protection, without prejudice to the assessment of the procedure and merits.

"Rewinding the tape", the story between the Muslim community represented by *Assalam* and the municipal administration of Cantù is convoluted in Administrative Courts, called upon to settle a plurality of disputes variously connected with the exercise of worship and the protection of public safety and urban decorum².

In fact, since 2014 the municipal offices have opposed the transformation of the building into a 'mosque', based on Lombardy Regional Law no. 12/2005. This law is the subject of multiple interventions by the Constitutional Court, which ascertained the illegitimate compression of freedom referred to art. 19 of the Constitution by the regional legislature, as well as violations of the division of competences between the State and the territorial authority³.

Now, *casus belli* is the alleged unsuitability of the Islamic Association's building to accommodate a number of people less than or equal to ninety-nine for the celebration of the month of fasting. Due to the

¹ Lombardy Regional Administrative Court, section V, *Ordinance no. 00369/2024 Reg. Prov. Cau.*, published on 12/04/2024 on https://portali.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza/?nodeRef=&schema=tar_mi&nrg=202400448&nomeFile=202400369_05.html&subDir=Provvedimenti.

² The portal of Administrative Justice lists twenty-seven measures, attributable to at least five appeals promoted by the Muslim entity *Assalam* against the Municipality of Cantù. I would like to point out, in particular, TAR Lombardia, sec. II, *Ordinance no. 01350/2017 Reg. Prov. Cau.*; Id., *Ordinance No. 01518/2017 Reg. Prov. Cau.*; Council of State, Section VI, *Ordinance No. 00759/2018 Reg. Prov. Cau.*; Lombardy Regional Administrative Court, section II, *Sentence no. 01506/2018 Reg. Prov. Coll.*; Id., *Judgment No. 02018/2018 Reg. Prov. Coll.*; Council of State, Section VI, *Judgment no. 05437/2021 Reg. Prov. Coll.*; Lombardy Regional Administrative Court, Section II, *Ordinance no. 00162/2023 Reg. Prov. Coll.*; Council of State, *Ordinance no. 00492/2023 Reg. Prov. Cau.*; Lombardy Regional Administrative Court, Section V, *Presidential Decree No. 00228/2024 Reg. Prov. Cau.*; Lombardy Regional Administrative Court, section IV, *Sentence no. 00483/2024 Reg. Prov. Coll.* (the latter commented by L. DECIMO, *Islamic Cultural Associations and Places of Worship: the Lombardy Regional Administrative Court returns to the application of regional legislation on religious equipment*, in *Law and Religions, News*, <https://www.rivistadirittoereligioni.com/newsitalia-associazioni-culturali-islamiche-e-edifici-di-culto-il-tar-lombardia-torna-sullapplicazione-della-legislazione-regionale-sulle-attrezzature-religiose-ludovica-decimo/>).

³ See, on this subject, Constitutional Court, judgments 63/2016 and 254/2019; for a comment, see G. CAROBENE, *The so-called "anti-mosque" legislation between governance policies and protection of freedom of worship*, in *the State, Churches and confessional pluralism*. Rivista telematica (Rivista telematica (<https://www.statocchiese.it>), issue no. 4 of 2020), pp. 22-39, and F. OLIOSSI, *Libertà religiosa e "modello lombardo": il paradigma di un'instopabile involuzione nella disciplina sui luoghi di culto*, in *Diritto e Religioni*, anno XVI, vol. 31, n. 1, 2021, pp. 235-262.

state of the site – an industrial warehouse on the suburb – the Municipality issued a decision rejecting the application aimed at allowing the temporary change of use to a place of worship.

The appeal brought for the annulment of the refusal decision provided an application for presidential precautionary measures pursuant to art. 56 Code of Administrative Procedure, which was resolved in Decree No. 228/2024.

The President of the Chamber ascertained, first of all, the *periculum in mora*, deriving from the fact that Ramadan would begin on March 8 and would last until April 8; therefore, any delay would have entailed an irreparable damage to the exercise of the fundamental right of religious freedom by the faithful. Subsequently, on the level of the *prima facie case*, the judge made a balance between the opposing interests at stake – on the one hand, the exercise of worship, on the other, urban compatibility – deeming the former to prevail over the latter. Finally, the decree states that, for the entire course of the celebrations, the Municipality would be burdened with the duty of vigilance to protect public safety, so that the inhibiting and sanctioning powers would derive from violations of safety regulations, including the prohibition of access to more than ninety-nine people to the building.

With the order published on 12 April, the circle is provisionally closed with the observation that the interest claimed by the applicant has already been satisfied in the presidential phase, and that, since Ramadan has ended, there are no further urgent measures to be taken.

The ruling is followed by the decision about costs, which are to be borne in full by the local authority, by virtue of the principle of virtual failure⁴. In other words, the Regional Administrative Court agreed with the presidential provisional decision and recognized that, although a fact had arisen – the conclusion of Ramadan – which determined the lack of interest in the precautionary collegiate ruling, the applicant's prospect was well-founded.

The profiles of the final decision remain to be evaluated: net of the political clamor, the question will be that of the sustainability and appropriateness of the procedural strategy carried out by the Municipality of Cantù in the defense of its rigorist line on public order and urban planning.

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⁴ Cf. S. GARDINI, *Reflections on the cessation of the matter of contention in the administrative process*, in *Nuove Autonomie*, n. 3, 2021, pp. 801-903.