

Decision Number: 2399/2014

THE COUNCIL OF STATE

PLENARY SESSION

The Council of State met in public addressing its audience on April 5, 2013

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In the case in question, the contested decision was adopted on the basis of the provision referred to in the preamble of article 3 (5) of Law 3512/2006 (as it applies following its amendment by article 29 (5) (ii) of Law 4014/2011) and it is not based on urban regulations of paragraphs 1, 2, and 3 of this article, whereas its subject consists of a different matter which is the funding to cover the expenditure for constructing the Mosque. Additionally, this decision is not associated either with obtaining the construction permit for the Mosque and the buildings for support functions provided for in paragraph 3, or with issuing other permits or authorization decisions that may be required to carry out the work in question for operating a Mosque. Consequently, the aforementioned pleas for annulment by which the constitutionality of provisions of Law 3512/2006 and Law 4014/2011 is contested relating to the location of the Mosque, are put forward inadmissibly against the contested decision and are therefore rejected.

Counselors who voted against: ...(names listed)... supported the following opinion: (...)Therefore, the aforementioned pleas for annulment -which are discounted to the legality of it in a broad sense- referred to in paragraph 2 of the aforementioned article, of the location of the Mosque (legal condition for the contested State funding for its construction) were put forward admissibly and are to be examined in regard to their validity; moreover it does not matter whether such pleas for annulment can be put forward in addition to a plea for annulment which may be applied against the construction permit provided for in paragraph 3 of the same article.

(12)(Because) It is put forward that the provisions of article 3 of Law 3512/2006, as they have been amended by the provisions of article 29 (5) (ii) of Law 4014/2011, are contrary to the principle of separation of powers and the principle of equality (articles 26 and 4 of the Constitution), in so far as individual regulations are drawn up through them – not only regarding the location of the Mosque or general environmental issues – without specific justification of the choice of the legislative route neither as such nor in relation to failure to respect the procedures provided for by the legislation, in accordance with the Constitution, on establishing and operating places of worship (article 1, Law 1363/1938, as amended by article 1 of Law 1672/1939 A' 123).

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As shown in the Explanatory Memorandum in particular, the reasons for which the legislative authority considered necessary the regulation introduced by the aforementioned provisions are associated to the large number of Muslims living in Attica, to the absence of a single Muslim community and to the need of worship space for all religious communities which, according to the Explanatory Memorandum, is one of the main aspects of social life. Within this context, the provisions of the aforementioned laws, in so far as they represent the foundation or prerequisite for the issuing of the contested decision and therefore, in view of what has been admitted with the previous argument (11) - can be examined in this trial- are not contrary to the constitutional principles of separation of powers and of equality in the respect of the plea for annulment, since in all circumstances, the reasons for which the legislative authority – in principal the correctness of its assessment is not subject to judicial review- considered necessary to incorporate those provisions into the aforementioned legislation. Moreover, for the enforcement of this legislation as a whole there is no provision of authority for executive function bodies and no relevant administrative procedure is adopted. In fact, the aim of this legislation which is also referred to in the Constitution, is to remove persistent difficulties in Muslims who live in Attica practicing their religion. In any case, it is of no importance whether the majority of the Muslim population is Greek citizens or not. (...)

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(Because) The responsibility of the State to ensure for all residents of Greece belonging in any religious community the unhindered practicing of their religion arises from the aforementioned provision of Article 13 (2) of the Constitution. Precondition for this is that their religious beliefs constitute a known – as defined by this constitutional provision – religion and the only restriction being that on one hand this is not against public policy or morality and on the other hand that proselytizing is not performed. In addition, when laying down rules regarding religious practice, no preferential arrangements may be introduced for a particular religion without, however, precluding diversifying those rules on the basis of the existing conditions and particularities; this diversification becomes necessary in order to ensure the unhindered religious practice by people of that religion, provided that those rules do not cause adverse consequences for the other religions or for people not adhering to any religion.

In this case, (...) the provisions in dispute not only regulate the subject of building a place of worship for the Muslim community – the establishment and operation of this place of worship may be approved by applying the relevant provisions for the foundation of churches and meetinghouses of any religion in which the aforementioned provisions invoked by the applicants are included- but, in addition, they introduce a broader framework assessed by the legislative authority as appropriate and necessary in order to ensure that Muslims living in Attica may practice their religion in a manner that is consistent with the general public interest. Additionally, as shown from the preparatory documents of this law, the legislative authority considered necessary the establishment of this legislative framework after taking into account particular conditions related to the needs of the Muslim community of Attica which influence the practicing of their religion. Those conditions include the large number of Muslims living in this region of the country, the absence of a single Muslim community and

the fact that approximately 120 mosques operate illegally for religious practice. Those elements constitute the criteria for the legislative option in dispute which are not contrary but are instead in accordance to the constitutional principles of freedom to manifest religious beliefs and of equality. Moreover, it is beyond the power of this court to examine the assessment of these elements on behalf of the legislative authority and the correctness of this legislation based on the aforementioned criteria. In view of all the above, the aforementioned pleas for annulment are rejected.

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Translated by Callis MITRAKA