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C O U R T O F A P P E A L O F T R I E S T E

Civil Section

WRIT OF SUMMON FOR APPEAL

with requests of referral

to the Court of Justice of the European Union

ex arts. 267 TFEU, art. 11 Italian Const.

and requesting the case documentation be forwarded to the Public Prosecution

ex arts. 70 last paragraph and 71 second paragraph of the Italian Code of Civil Procedure

[SG/2023/LC/WS-I-F-en]

For:

1) International Provisional Representative of the Free Territory of Trieste – I.P.R. F.T.T. [*Rappresentanza Internazionale Provvisoria del Territorio Libero di Trieste – Začasno Mednarodno Predstavništvo Svobodnega Tržaškega Ozemlja – Provisorische Internationale Vertretung des Freien Territoriums Triest*] with *c.f.* (*codice fiscale* - Italian Fiscal Code) 90157930323, acting as legal subject delegated to represent and to defend, in all international and diplomatic forums or judicial proceedings, the rights and interests of the citizens *de jure*, residents, enterprises, and organizations of the Free Territory of Trieste and of other States (*document 1*: Instrument of Constitution, in the authentic English and Italian versions; Italian Fiscal Code), appearing before Court represented by its General Secretary and legal representative Paolo G. Parovel, (Italian Fiscal Code: PRVPLA44H19L424C), born in Trieste on June 19th, 1944, represented, pursuant to the mandate at the end of the Writ of Summon in first instance, by lawyer Walter Zidarich with Italian Fiscal Code (*codice fiscale*) ZDRWTR50P22L424, whose office, chosen as address for service, is in Trieste, in via San Francesco 11, where all legal acts and communications regarding this proceeding shall be sent or notified, also via fax, at No. 040/2410914 or via the Italian certified email system (p.e.c.) at walter.zidarich@pectriesteavvocati.it

2) Paolo G. Parovel, born in Trieste on 19 June 1944, with *c.f.* (*codice fiscale* - Italian Fiscal Code) PRVPLA44H19L424C, entering an appearance also for himself, bearing an interest as citizen *ex lege* of the present-day Free Territory of Trieste also recipient of Italian citizenship and for his roles of journalist and entrepreneur (*documents sub 2*), represented, pursuant to the mandate at the end of the Writ of Summon in first instance, by lawyer Walter Zidarich with *c.f.* (*codice fiscale* - Italian Fiscal Code) ZDRWTR50P22L424, whose office, chosen as address for service, is in Trieste, in via San Francesco 11, where all legal acts and communications regarding this proceeding shall be sent or notified, also via fax, at No. 040/2410914 or via the Italian certified email system (p.e.c.) at walter.zidarich@pectriesteavvocati.it

As well as for the following 238 natural and legal persons who delegated the I.P.R. F.T.T. and joined this proceeding, all of whom are identified, represented, and defended pursuant to the special mandates lodged in first instance by lawyer Walter Zidarich with *c.f.* (*codice fiscale* - Italian Fiscal Code) ZDRWTR50P22L424, whose office, chosen as address for service, is in Trieste, in via San Francesco 11, where all legal acts and communications regarding this proceeding shall be sent or notified, also via fax, at No. 040/2410914 or via the Italian certified email system (p.e.c.) at walter.zidarich@pectriesteavvocati.it

[*Omissis: list of the names of 238 appellants*]

-claimants-

Versus:

1) the Italian Government, *c.f.* 80188230587, represented by the President of the Council of Ministers *pro tempore*, with registered office in piazza Colonna 370, Palazzo Chigi - 00187 Rome - presidente@pec.governo.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service), in piazza Dalmazia 3, in the role of Government of the Italian Republic and for the authority and obligations at art. 120, second paragraph of the Italian Constitution, as well as for all powers and obligations deriving from its role of provisional administering Government sub-entrusted with the temporary civil administration of the Free Territory of Trieste;

2) The Commissariato del Governo nella Regione Friuli Venezia Giulia // Office of the Commissioner of the Government in Region Friuli Venezia Giulia, *c.f.* 80016870323, represented by the Commissioner *pro tempore*, with registered office in piazza dell'Unità 8 - 34121 Trieste - commissariato.fvg@mailbox.governo.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service), in piazza Dalmazia 3, for the authority and obligations laid down in DPR // Decree of the President of the Italian Republic of 27 October 1954 (without number) and in art. 70 of Italian Constitutional Law No. 1/1963;

3) Prefettura di Trieste – Ufficio territoriale del Governo // Trieste Prefect Office - Territorial Office of the Government, *c.f.* 80017390321, represented by the Italian *Prefetto* (Prefect) *pro tempore*, with registered office in piazza dell'Unità 8 - 34121 Trieste - protocollo.prefts@pec.interno.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service), in piazza Dalmazia 3, for the authority and obligations laid down in DPR // Decree of the President of the Italian Republic of 27 October 1954 (without number) and in art. 70 of Italian Constitutional Law No. 1/1963;

4) Ministero delle Infrastrutture e dei Trasporti // Italian Ministry of Infrastructures and Transport, *c.f.* 97532760580, represented by the Italian Minister *pro tempore*, with registered office in piazzale Porta Pia 1 – 00198 Rome - m_inf@pec.mit.gov.it, - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, for its authority and obligations regarding the appointment of the President of the Trieste Port Authority and also the power to advise,

supervise, and control the management of the same Port Authority, including its accounting and finances, as laid down in Italian Law No. 84/1994 and its amendments;

5) Autorità Portuale di Trieste, ora “Autorità Portuale di Sistema del Mare Adriatico Orientale” // Trieste Port Authority, now “Port System Authority of the Eastern Adriatic Sea”, c.f. 00050540327, represented by its President or Commissioner *pro tempore*, with registered office in via Karl Ludwig von Bruck – 34143 Trieste - pec@cert.porto.trieste.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, (which remained *in absentia* in the first instance of judgment despite being correctly notified about the proceeding) for the authority and obligations as laid down in Italian Law No. 84/1994, and its amendments, as well as in art. 1 of paragraph 619 of Italian Law No. 190/2014, and its amendments;

6) Ministero dell'Economia e delle Finanze // Italian Ministry of Economy and Finance, c.f. 80415740580 represented by the Italian Minister *pro tempore*, with registered office in via XX Settembre 97 - 00187 Rome - mef@pec.mef.gov.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, for its authority and obligations deriving from the power to advise, supervision, and control the management of the Trieste Port Authority as laid down in Italian Law No. 84/1994 and its amendments, as well as the management of the *Agenzia del Demanio* // Italian State Property Agency;

7) Agenzia del Demanio // Italian State Property Agency, c.f. 0634098100, economic public body of the Italian Ministry of Economy and Finance, represented by the Director *pro tempore*, with registered office in via Barberini 38 - 00187 Roma - agenziademanio@pce.agenziademanio.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, for its role in the management of the *Demanio // State Property*, including the maritime State Property, of the present-day Free Territory of Trieste, sub-entrusted to the temporary civil administration of the Italian Government;

8) Regione Friuli Venezia Giulia // Region Friuli Venezia Giulia, c.f. 80014930327, represented by the President *pro tempore*, with registered office in piazza dell'Unità 1 - 34121 Trieste - regione.friuliveneziagiulia@certregione.fvg.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, for the authority and obligations as laid down in art. 70 of Italian Constitutional Law No. 1/1963;

9) Comune di Trieste // Municipality of Trieste, c.f. 00210240321, represented by the Mayor or Commissioner *pro tempore*, with registered office in piazza dell'Unità 4 - 34121 Trieste - comune.trieste@certgov.fvg.it - for the authority and obligations laid down Italian Law No. 190/2014, art. 1, paragraph 619, in its amendments, as well as in other legal instruments.

10) Banca di Cividale S.p.a., c.f./P.IVA 00249360306, with registered office in Cividale del Friuli (UD) 33043, via sen. Guglielmo Pelizzo 8-1 - segreteria@cert.civibank.it, in represented by its legal representative Michela Del Piero, c.f. DLPMHL67B61E098S, represented and defended by lawyer Elena Predonzani, c.f. PRDLNE64E58L424P,

p.e.c. elena.predonzani@pectriesteavvocati.it, and by lawyer Fabrizia Balestra, c.f. BLSFRZ64D60L781A, p.e.c. fabrizia.balestra@pectriesteavvocati.it, with address for service at the two lawyer's Trieste office, in Galleria Protti n. 2, which joined the lawsuit of first instance under art. 105, second paragraph of the Italian Code of Civil Procedure, with a Writ of Appearance dated June 20th, 2020.

- Summoneo -

**FOR THE FULL REVERSAL,
UPON SUSPENSION OF THE ENFORCEABILITY,**

of judgment No. 267/2023 issued *inter partes* on May 12th, 2023 by the Court of Trieste, in person of sole judge Sabrina Cicero, in civil proceeding No. RG 5209/19, published on May 17th, 2023 and notified on June 7th, 2023 by the Municipality of Trieste, with which the Court, in her final decision about the questions of the current appellants, decided as follows:

«The Court, with ultimate decision, having rejected any different petition, exception, and deduction, orders as follows:

1) declares the absolute lack of jurisdiction of the body addressed, deferring the proceeding brought before it;

2) condemns the compliant and the intervening parties to bear litigations costs, which sets: in EUR 14.648,40 in lawyers remuneration, as well as flat-rate reimbursement of general expenses with a 15%, VAT rate and CPA - cost per action as set by the law in favor of the PRESIDENCY of the COUNCIL OF MINISTERS, of the OFFICE of the COMMISSIONER of the GOVERNMENT in REGION FRIULI VENEZIA GIULIA, of the PREFECT OFFICE of TRIESTE, of the MINISTRY of ECONOMY and FINANCE, of the MINISTRY of INFRASTRUCTURES and TRANSPORTATION, of the AGENCY of STATE PROPERTY; in EUR 11.268,00 in lawyers remuneration, as well as flat-rate reimbursement of general expenses with a 15%, VAT rate and CPA - cost per action as set by the law in favor of REGION FRIULI VENEZIA GIULIA; in euro 11.268,00 in lawyers remuneration, as well as flat-rate reimbursement of general expenses with a 15%, VAT rate and CPA - cost per action as set by the law in favor of the MUNICIPALITY of TRIESTE; in euro 9.992,00 in lawyers remuneration, as well as flat-rate reimbursement of general expenses with a 15%, VAT rate and CPA - cost per action as set by the law in favor of the BANCA di CIVIDALE S.P.A.»

and for the consequent satisfaction of all conclusions brought before the Court of first instance that were rejected, which are here rewritten:

IN THE MERIT,

to preliminarily assess:

a) that, to this date as on the date of the judgment, the following legal instruments of the Italian legal order, which implement and enforce, without reserves, the Treaty of Peace between the Allied and Associated Powers and Italy, signed in Paris on 10 February 1947, as well as the obligations of the additional Memorandum of Understanding signed in London on 5 October 1954 regarding the special trusteeship mandate (temporary civil

administration) of the present-day Free Territory of Trieste, sub-entrusted to the responsibility of Italian Government by the Governments of the United States and of the United Kingdom in their role of primary Governments on behalf of the UN Security Council, are in force: Legislative Decree of the Provisional Head of State No. 1430/1947; Law No. 3054/1952; Decree of the President of the Republic of 27 October 1954 (without number), Italian Constitutional Law No. 1/1963, arts. 1, 2, 4, 70, and Italian Law No.1203/1957;

b) that within the Italian legal order in force those legal instruments have the highest rank in the hierarchy of the sources of Italian law, both under pre-Constitutional, autonomous legislation (art. 2 of the Legislative Decree of the Provisional Head of State No. 1430/1947, ratified with Italian Law No. 3054/1954) and under the Constitutional principles and legislation established after their enforcement (art. 10, first paragraph, art. 117, first paragraph, and art. 120, second paragraph of the Constitution of the Italian Republic);

c) the effectiveness of the obligations implemented under those legal instruments, as reconfirmed, in particular, in the enforcement of the temporary civil administration of the present-day Free Territory of Trieste and of its international Free Port:

– by the inter-ministerial Decree on the *Organizzazione amministrativa per la gestione dei punti franchi compresi nella zona del porto franco di Trieste* // Administrative organization for the management of the free zones included within the area of the Free Port of Trieste, issued on 13 July 2017 by the Italian Ministry of Infrastructures and Transport together with the Italian Ministry of Economy and Finance, in compliance with the obligations established at art. 6, paragraph 12 of Italian Law No. 84/1994 and with the sub-mandate of temporary civil administration of the Free Territory of Trieste that enforces the 1947 Treaty of Peace;

– by paragraph 66 letter b) of art. 1 of the Budget Law of the Italian State No. 205/2017, in force since 1 January 2018, which does directly prevent the enforcement of paragraphs 618, 619, and 620 of Italian Law 190/2014 by expressly subordinating the envisioned transfer of the international free port regime to the upper-ranking provisions of the 1947 Treaty of Peace, implemented in the Italian legal order with the Decree of the Provisional Head of State No. 1430/1947, ratified with Italian Law 3054/1952, that prevent such measures.

– by the other legislative and administrative acts listed at section N (pages 58-65) of the review of laws attached to this writ of summon as document 3.

to ascertain and declare:

the unenforceability, thus inapplicability, within the Italian legal order in force, either *ab origine* or supervening, due to conflicting with the provisions of upper-ranking laws in force within the same Italian legal order:

1) of paragraphs 618, 619, and 120 of article 1 of Italian La 190/2014 and their amendments, including also the Decree of the Commissioner of the Government registered as No. 19/8-5/2016 of 26 January 2016;

- 2) of the provisions at art. 3, paragraph 2 of the Decree of the President of the Italian Republic No. 107/2009;
- 3) of the establishment and collection of excise duties of the Italian State on fuels, combustibles (including gas) and electricity imported, exported, used, or produced within the present-day Free Territory of Trieste or within its international Free Port;
- 4) of the extension of the Municipal taxes on real estates to the international Free Port of Trieste;
- 5) of the provisions of the inter-ministerial Decree of 13 July 2017 (Official Gazette of the Italian Republic No. 177 of 31 July 2017) that assign the administrative management of the areas of the Free Port of Trieste to the President of the Italian Port System Authority of the Eastern Adriatic Sea;
- 6) of any normative or administrative act, including contracts, that enforces the «*Accordo di cooperazione fra Autorità di Sistema Portuale del Mare Adriatico Orientale – porti di Trieste e Monfalcone e China Communications Construction Company*» // «Cooperation agreement between the Port System Authority of the Eastern Adriatic Sea - Ports of Trieste and Monfalcone and China Communications Construction Company» signed in Rome on 23 March 2019 by the President of the Trieste Port System Authority of the Eastern Adriatic Sea, regarding either areas and assets of the port or controlled by the Port Authority, including railways, or extensions and transfers of the regime of international free port;

and, consequently, to rule

as for the assessments and declarations sub a), to cancel from the Land Registry Book the Land Registry Decree registered *sub* GN 12394/16 issued on 22 December 2016, in force since 31 December 2016, that registers in the name of the Municipality of Trieste the assets included within the following Land Registry Particles: **Land Registry Particles No. 90645 in Trieste, 1st land registry body, No. 7538 in Gretta, 1st land registry body, and No. 4670 in Barcola, 1st land registry body**, and also eventual, new Land Registry Particles deriving from these.

AS A PRELIMINARY AND PRECAUTIONARY MEASURE,

in case the addressed authorities have not already taken care of that in self-defense, in view of the civil, criminal, administrative liabilities, and in view of the extraordinary entity of the damages to the revenues of the State and to third parties manifestly connected to or deriving from the evident breaches of law addressed in this writ of summon, the determination and remediation of which is requested to the Court,

to suspend, whilst the proceedings are pending

a. the efficacy of the Land Registry Decree registered *sub* GN 12394/16 issued on 22 December 2016 and in force since 31 December 2016, regarding the registration in the name of the Municipality of Trieste of the immovable properties included within the following, Land Registry Particles: **Land Registry Particles No. 90645 in Trieste, 1st land registry body, No. 7538 in Gretta, 1st land registry body, and No. 4670 in**

Barcola, 1st land registry body, and also eventual, new Land Registry Particles deriving from these;

b. all acts and expenditures issued or planned by the summoned parties, especially by the Municipality of Trieste, both on its own behalf or that of third parties, regarding the public properties registered for the first time within the Land Registry Book with the Land Registry Decree registered *sub* GN 12394/16 issued on 22 December 2016 and in force since 31 December 2016, registering in the name of the Municipality of Trieste the immovable properties included within the following Land Registry Particles: **Land Registry Particles No. 90645 in Trieste, 1st land registry body, No. 7538 in Gretta, 1st land registry body, and No. 4670 in Barcola, 1st land registry body**, and also eventual, new Land Registry Particles deriving from these;

except for acts and expenditures regarding the maintenance necessary to keep those assets in the same conditions as they were when the Municipality received them from the Port Authority for the purposes established at paragraph 619 of art. 1 of Italian Law 190/2014 and its amendments,

and except for acts and expenditures aimed at the prevention or remediation of damages to those assets, of risks for public safety, of breaches of the law, or of any other disturbance of law and order.

Finally, we require that this Court of Appeal takes care of forwarding to the Public Prosecution the case documentation pursuant to arts. 70 last paragraph and 71 second paragraph of the Italian Code of Civil Procedure.

Attorney and other legal fees to be refund under the law.

REASONS

A. PRELIMINARILY:

1. As for Italian Court of cassation - Joint Section judgment No. 8600/22 and the following ordinance No. 213/23, for the reasons hereafter, we contest the absolute unenforceability and inapplicability to this legal action of the provisions at art. 59, No. 1 second paragraph of Italian law No. 69/2009 according to which «*La pronuncia sulla giurisdizione resa dalle sezioni unite della Corte di cassazione è vincolante per ogni giudice e per le parti anche in altro processo*» // «*Decisions regarding jurisdiction issued by the Joint Section of the Court of cassation is binding for all judges and also for the parties even in other lawsuits*».

1.1. absolute unenforceability of the provision for manifest breach of the fundamental principles of the rule of law as recognized by the Constitution of the Italian Republic, by European Community treaties, and by the international legal order within the framework of the United Nations.

Indeed, that provision's enforcement would deprive all parties of their right to bring again action on the same subject seeking a different decision, as well as preventing any other Court from examining their reasons.

This dual impediment constitutes a violation of both the principle of the independence of the judiciary (be it a sole judge or a formation of the Court) and the right of anyone to seek justice before an independent Court, which are protected:

- by arts. 101 and 24 of the Constitution of the Italian Republic;
- by art. 3 of the Treaty on the European Union (TEU) since they are two fundamental principles of the rule of law;
- by art. 6 of the European Convention on Human Rights (ECHR) and by art. 47 of the EU Charter of Fundamental Rights, which have the nature of bonding Treaties under art. 6 TUE;
- by art. 10 of the Universal Declaration of Human Rights, binding within the framework of the United Nations and within the European Community legal framework on the matter.

All the aforementioned instruments of European Community Law recalled above are ratified and enforced within the Italian legal order in force (TEU: Italian Law No. 848/1955, ECHR: Italian Law No. 130/2008) in which they rank above Italian domestic laws under arts. 10 first paragraph, 11, 117 first and fifth paragraph, and 120 second paragraph of the Italian Constitution; therefore, if the violation of those instruments of European Community Law is committed by bodies and officers of the Italian State, it does also constitute a breach of the Italian Constitution.

Within the Italian civil law system, any judge is subject only to the law (art. 101 Italian Const.), and since the law cannot be substituted or amended with previous decisions issued by other Courts, because lawmaking authority is vested only on the legislative branch, while decisions regarding the Constitutional legitimacy of laws is vested exclusively on the Constitutional Court, and the interpretation of Treaties falls within the jurisdiction to give preliminary rulings of the Court of Justice of the European Union pursuant to art. 267 letter a) of the Treaty on the Functioning of the European Union – TFEU.

Furthermore, the Italian justice system order vests on the Constitutional Court (Royal Decree No. 12 of 1941, art. 65) the duty to «*garantire l'esatta osservanza e l'uniforme interpretazione della legge, l'unità del diritto oggettivo nazionale*» // «*ensure the law's correct observance and uniform interpretation, as well as unity within national objective law*» within each lawsuit and with interpretative standards that, by their own nature, can differ from one another and change through time, showing differences that are often relevant, and do therefore require the specific adjustment procedures (art. 374 Italian Code of Civil Procedure).

For those reasons, the Italian Court of Cassation's decisions can serve as guidance (nomophylactic function), but cannot create the law (nomopoietic function), and, even if they can effectively define the terms of the lawsuit in question itself, they cannot be used to prevent *a priori* any other lawsuit that may result in different decisions on the same subject.

Such a pretense would be also against art. 404 of the Italian Code of Procedure, which subjects to annulment or amendment any civil decision by the intervention of a third party, which applies also to the judgments of the Italian Cassation, even after they become final.

The enforcement of the provision disputed here as unenforceable would also illegitimately prevent *a priori* both the exercise of the Italian Constitutional Court's own prejudicial competences under art. 134 Const. and the Court of Justice of the European Union's own under art 267 TFEU.

Finally, the case of Joint Section judgment No. 8600/22 and of ordinance No. 213/23 does perfectly show how and why the anti-legal pretense of vesting them with infallibility and absolute definitiveness as described above may appear subversive of the rule of law, and with which consequences.

Application of suspension for preliminary ruling.

For the reasons described above, the provisions of art. 59, No. 1 second paragraph of Italian Law No. 69/2009 constitute a breach of articles 101 and 24 of the Italian Constitution, of articles 3 TEU, 6 ECHR, and 6 TEU, of art. 10 of the Universal Declaration of Human Rights, as well as of art. 134 of the Italian Constitution and of art. 267 TFEU.

We do therefore make it evident that the enforceability of those provisions in this as in any other legal action is both a question on legitimacy and one regarding the interpretation of European Community Treaties, which as such cannot be settled without being referred, for preliminary rulings, to the competent Italian Constitutional Court (art. 134 Const; art. 1, Constitutional L. 1/1948, art. 23, Italian Law No. 87/1953) and to the superior competences of the Court of Justice of the European Union (art. 267 of the Treaty on the Functioning of the European Union - TFUE, as ratified and enforced within the Italian legal order with Law No. 130/2008).

For those reasons, we require this Court of Appeal to suspend the proceeding and to forward the question to the competent Italian Constitutional Court, and to exercise its faculty of referral to the upper-ranking competences of the Court of Justice of the European Union under art. 267 letter a) of the TFEU, keeping in mind that both the Constitutional Court and the Court of Cassation, as Courts of last instance, would be subject not with the faculty, but with the obligation referral to the European Court of Justice for preliminary rulings.

1.2. furthermore, we contest that the provision is inapplicable to this proceeding when it comes to the judgment and ordinance of the Joint Section:

a) because the lawsuit has a different subject, since the questions brought before Court have none of the characteristics already, wrongfully, assumed in the judgment of the Joint Section for it to claim absolute lack of jurisdiction of any Italian Court.

Indeed, it doesn't address the Court for it to question the borders of the Italian State, rather, it seeks their duly recognition within the framework established by the Italian Constitution and by laws of the Italian Republic in compliance with the Treaty of Peace with Italy of 10 February 1947, in force, and as confirmed once again enforcing European Community treaties, as detailed hereafter.

b) for breaching a primary decisional competence, because the Joint Section founded the aforementioned erroneous representation of the subject of the lawsuit on deceptive and omissive interpretations of international Treaties and of European Community Treaties, proposed without verification, and in breach of the preliminary competences of the Italian Constitutional Court and of the upper-ranking obligation of referral to the Court of Justice of the European Union, as required to Courts of last instance with art. 267 of the TFUE (committing a violation for which the Court of Justice of the European Union can sanction the Member State and order the damaged party be compensated).

B. FACT AND LAW

1. Full recalling of acts and documents, numeration criteria, and reserve to lodge new acts and documents.

We fully recall and confirm all questions, evidences, arguments, and documents that the current appellants have lodged in the first instance of judgment. To facilitate their consultation, in this action of second instance we are maintaining a progressive numeration of the documents, in continuity with the first instance of judgement. We reserve the right to lodge new acts and documents suitable or otherwise necessary to the correct and prompt settlement of the dispute.

2. Synthesis of the main reasons of appeal.

The lawsuit is perfectly admissible because of the absolute and relative inapplicability of art. 59, No. 1 second paragraph of Italian Law No. 69/2009, are detailed in the preliminary exception above with the proper, grounded instances of referral to the preliminary competences of the Italian Constitutional Court and to the upper-ranking competence of the Court of Justice of the European Union in view of their right and legitimate interest to do so as parties that have already appeared before the domestic Court that can refer the case.

This legal action for demonstration is about:

a) the full force of the laws of the Italian legal order that establish, with an upper-ranking pre-constitutional and Constitutional rank over other domestic laws in force the international obligations of the Italian State and of the Italian Government towards the present-day Free Territory of Trieste under special trusteeship, and their consequent obligations towards the other States;

b) the consequent unenforceability of provisions of law that are lower-ranking within the hierarchy of the sources of Italian law that result to be taken in breach of the

aforementioned, upper-ranking international obligations regarding the management of the international Free Port of Trieste, which is established as a State corporation of the Free Territory of Trieste as well as being subject to the general rights of all States and to special rights of a part of them.

Seeking the judicial verification of this subject is made necessary by the fact that the enforcement of those unenforceable provisions of law is justified recalling, in spite of the law, political theses that falsely claim the original or supervening lack of legal existence of the Free Territory of Trieste, that therefore it is a part of the Italian State, but are all disproved by a direct verification of the international Treaties on the subject and by the domestic laws that enforce them.

In the first instance of judgment, since 2019, alternated three different judges, who constantly refused to adopt the urgent precautionary measures necessary to interrupt severe and notorious abuses that are systematically committed by local public administrators at the expenses of the public assets of the Free Port, in manifest breach of the law and of public fate, with damages amounting to dozens million Euro.

In the judgment we are impugning, the last judge did also refuse to fulfill the required assessment and declared, in spite of the truth, the absolute lack of jurisdiction of any Italian Court on this subject and claimed, essentially, that breaches of law committed by the executive branch fall outside the control on legality that is vested on the judicial branch.

In order to justify the claim of absolute lack of jurisdiction, the judge did add to it - contradictory - a decision in the merit in which she adheres, without verification, to the political theses claiming that the Free Territory of Trieste does not exist, that therefore it is part of the Italian State, in other words, she has authored to that very thesis that would have been proved to be false if she had carried out the demonstration that was requested to her.

Furthermore, the judge proved to be aware to this, because she did not derive those false theses from the law, because she took them from previous political judgment that support them.

And, by doing so, she violated the fundamental principles of the Italian civil law system, in which judges are subject only to the law (art. 101 Const.) and, unlike in the common law system, precedent judgments don't have legislative value.

The judge did also breach her own, personal obligation to refrain from the lawsuit, as well as the obligation to forward the documentation of the proceeding to the Public Prosecutor, which is grounded on the reasons detailed hereafter.

The result is an arbitrary judgement that opposes the request to demonstrate and enforce the law with an absolute denial of justice in breach of rights, for political reasons that are evident from the judgment itself as well as reconfirmed by the fact that this decision

does precisely draw upon previous political judgments issued by the same judge or by other Italian judges about the same subject or others ranting to it.

This behavior of the judiciary does therefore a true, real, and inadmissible violation of the basic requirements of justice within the rule of law, which provides the foundation of the Constitutional order of the Italian Republic, of other EU and European Council Member States, and of the administered Free Territory of Trieste itself, as well as of the international legal order within the United Nations principles.

When it comes to the framework of European Community Law, this is, in particular, a manifest breach of the prohibition of arbitrariness of the executive powers and of the guarantees regarding the effective judicial review by independent courts, especially from the executive branch's interferences, which are all principles consolidated in European Union Treaties and explained within the Court of Justice of the European Union's own decisions.

By falsely declaring the sovereignty of the Italian State over the Free Territory of Trieste and over its international Free Port, the judgment of first instance does also violate and deny the Constitutional, international, and European Community obligations of both the Republic of Italy and the Italian Government on the subject.

As for the supra-national European legal order, the judgment of first instance does also violate the European Community obligations relating to the limited enforceability of European Treaties to the administered Free Territory, including to its customs port, and to its international Free Port.

This means that also in this regard it is necessary referring the lawsuit to the competences of the Italian Constitutional Court for preliminary rulings and to the upper-ranking competences of the Court of Justice of the European Union.

3. Violation of the judge's obligation to abstain under art. 51 of the Italian Code of Civil Procedure.

On a preliminary basis, in her decision the judge claims that she is not under the obligation to abstain at art. 51 No. 4 of the Italian Code of Civil Procedure for having already expressed herself on the subject as part of a court formation with decision 3514/19, rejecting Land Registry Dispute No. *R.G.V.G.* 2370/18, because, in her opinion, that is not "another instance" of the same lawsuit, and because the complainants did not lodge an official brief challenging her, but only an invitation to assess her obligations and suitability.

In truth, the decision to refrain from officially challenging her with a brief, limiting to the aforementioned invitation, was a simple act of courtesy of the complainants towards the judge, who was still subject to the obligation to abstain from the proceeding under art. 51, with and las paragraph of the Italian Code of Civil Procedure in view of her own personal interest, enmity, inopportuneness, and also with her involvement in the serious facts discovered and denounced on the matter with the Land Registry Request registered

on the public Land Registry Book of Trieste sub GN 3880/2023 on 4 April 2023 and lodged in the proceeding as document 37 with the brief of 7 April 2023.

Indeed, it is evident from a simple reading of this public document that its content, legitimate and perfectly documented, are enough to give rise to the personal interest and enmity of the judges it mentions by name, including judge Cicero.

We observe that the aforementioned circumstances were further worsened by the successive events described within the pending Land Registry Dispute that since 8 June 2023 is pending on the public Land Registry Book of Trieste sub GN 6550/2023 and is lodged here as document 45.

The confirmation of the grounds of the invitation to assess her obligation to abstain is now provided by the judgment impugned here, because it draws upon the grounds of the judge's own obligation to abstain.

4. Violation of the obligation to forward the documentation of the proceeding to the Public Prosecutor.

The judge did also claim, preliminarily, that in this case *«non ricorre alcuna delle ipotesi che giustificano un intervento in causa o una comunicazione degli atti al Pubblico Ministero ex artt. 70 e dall'art. 71 c.p.c.»* // *«None of the lawsuit's reasons qualified for an intervention in the proceeding or the forwarding of documentation to the Public Prosecutor under arts. 70 and 71 of the Italian Code of Civil Procedure»*.

The appellants consider that this was a due act under art. 70, third and last paragraph of the Italian Code of Civil Procedure, because the lawsuit does also require the finding of criminally prosecutable action relating to the severe abuses of those public assets, which the judge and her predecessors omitted or refused to stop, despite such abuses being effectively addressed in the documentation of the lawsuit (in particular, see the synthesis within the Land Registry Request lodged as document 37).

5. Groundlessness of the reasons of the judgment.

Before examining the reasons of the judgment, we observe that their exposition has not complied with the legal-logical canon of linear argument and precision of the language, because it tangles the arguments with such expressive vagueness and imprecise expressions that in order to clearly prove their groundlessness it is necessary no less than reorganizing them logically and deciphering their semantic structure.

The heart of the decision consists in the judge's declarations, against the truth, that *«Sussiste un difetto assoluto di giurisdizione dell'intestato Tribunale con riferimento all'azione proposta»* // *«There is an absolute lack of jurisdiction of the aforementioned Court when it comes to the action brought before it»* since no Italian Court could decide on this subject. A claim against the truth, which the judge justified with the arguments examined and refuted hereafter.

First of all, the judge claimed that according to the Italian Court of Cassation's consolidated decision guidance the concept of absolute lack of jurisdiction regards *«all'impossibilità di esercitare la potestà giurisdizionale con invasione della sfera attributiva di altri poteri dello Stato o di altri ordinamenti dotati di autonomia, in controversie direttamente involgenti attribuzioni pubbliche di questo tipo, come tali neppure astrattamente suscettibili di dar luogo a un intervento del giudice.»* // *«to the impossibility of exercising jurisdictional power invading the sphere of other powers vested on the State or of other, autonomous authorities, in disputes that directly relate to public powers alike, which as such are not even theoretically suitable to obtain a Court's intervention».*

This said, the judge engages in lexical and argumentative stunts to unduly enforce that obvious principles to the subject of this lawsuit by claiming, against the truth, that *«viene posta in discussione l'attribuzione di atti all'esercizio stesso di potestà sovrana, chiedendosi al giudice di sindacarne il modus operandi, con invasione dei meccanismi di responsabilità politica.»* // *«in question is the attribution of actions to the very exercise of the sovereign power, being the judge requested to decide about the modus operandi, invading the mechanisms of political responsibility.»*

In truth, the aforementioned principle has nothing to do with the subject of this lawsuit, it does in no way address the Court seeking an interference against its competences in the legitimate exercise of other either State powers as is sovereign authority, or its bodies powers.

On the very contrary, the subject of the lawsuit is a request for the Court to demonstrate and duly ascertain and prevent breaches of laws and rights that are punctually identified, documented, and denounced, which are committed by exercising the aforementioned powers.

The judge is not required to invade *“the mechanisms of political responsibility”* (?) Either, because breaches of laws and rights committed by arbitrarily exercising public authority are not legitimate political choices, they are ordinary offenses that give rise to civil and criminal liabilities (which is the ground for seeking the referral of the documentation of the proceeding to the Public Prosecutor) including that for the compensation of damages.

The meaning of the aforementioned argumentative and lexical stunts, confirmed by the operative part of the judgment, is the declaration of the abhorrent thesis that no Italian judge has the authority to oppose breaches of law committed by the executive branch for political reasons.

Indeed, it is on such a thesis that the judge grounds her declaration of absolute lack of jurisdiction of any Court on this subject.

The declaration of that thesis, and its effective enforcement in the judgment, constitute a radical violation of the principles of the judiciary's independence and of the separation of powers between the legislative, executive, and judicial branch, which the Italian

Constitution, the European Community Treaties, and the international legal order all recognize and protect as a fundamental principle of the rule of law.

The judgment however does not limit to implement this thesis that is subversive of the rule of law in order to refuse the examination of the lawsuit in the merit, because the absolute lack of jurisdiction bars, as such, any decision in the merit, and this does also result in the costs of the proceeding to be shared.

However, doing the exact opposite, the judge does surreptitiously add to the non-existent lack of jurisdiction to decide in the merit a decision in the merit to enforce the justification of her own refusal to examine the lawsuit, and to “punish” the complainants by ordering them to bear the costs of the proceeding.

Indeed, to do so, the judge adopts and repeats in her judgment the notorious, false theses regarding the lack of legal existence of the Free Territory of Trieste that are invoked to justify the breaches of law that should be demonstrated, and includes those false theses as quotes without prior verification, drawing them from other previous decisions that share the same political inspiration.

It is a coordinated, clearly organized, series of deceptive judgment of various instance and type that are used as a circular system of evidence, which therefore is logically and legally inadmissible, to support those false theses to either refuse or avoid enforcing the law on the matter in question.

Which does also result in a violation of the fundamental principles of the Italian legal order’s civil law system, which subjects judges to the law and, unlike common law systems, do not assign normative value to judgments.

This coordinated series of deceptive judgments culminated in the recent, abnormal political judgment No. 8600/22 of the Joint Section of the Court of Cassation and in the successive ordinance No. 213/23 with which the same Joint Section declared its annulment for factual errors inadmissible claiming, against truth, that those were errors in law and of assessment (*errores in iudicando*).

This means that the judge has directly recalled in her decisions parts of that deceptive judgment of the Cassation treating said quotes as evidences without prior verification of their truthfulness of lack thereof, for the evident purpose of exploiting the absolutely final nature that art. 59, No. 1 second paragraph of Italian law No. 69/2009 would assign to it, as described in the preliminary exception of said law’s unenforceability for breach of the Italian Constitution and of European Community treaties.

However, the quotes that the judge has so included as evidences in her decision, now impugned, make it possible proving also to this Court how the abnormal judgment of the Joint Section not only cannot prevent other judges from complying with their obligation to demonstrate and enforce the law themselves, but is itself grounded on false political interpretations of both the questions of law brought before Court and of the international Treaties regarding the Free Territory of Trieste and its international Free

Port, of European Community Laws that allow for the limited enforcement of European Treaties to them, and of the consequent international and European obligations.

It is interpretations that fall outside the competences of civil judges, no matter the instance of judgment, instead, they fall under the competences of the Italian Constitutional Court and, for its competence to give preliminary rulings, under the upper-ranking competences of the Court of Justice of the European Union.

Also, in this second instance of judgment it is irrelevant if those false interpretations, adopted by the judge of first instance, are factual errors, errors in law, or errors of assessment (*errores in iudicando*).

6. Falsity of the evidences proposed.

The judge included the quotes of the aforementioned judgment of the Joint Section repeating the radical misrepresentation of the questions of law within the proceeding in surreptitious terms, as if they were *«volte a negare la sovranità stessa dello Stato italiano su una porzione del proprio territorio, come tale governata, chiedendo al giudice ordinario di riconoscere l'esistenza di altra entità statale (o comunque di soggetto dotato di sovranità su quel territorio) e, al contempo, di inibire allo Stato italiano di esercitare l'imposizione fiscale e le funzioni amministrative correlate, nonché quelle rivolte a qualsiasi riscossione di carattere patrimoniale o ad incidere sulla titolarità privata di beni mobili ed immobili, così da disconoscere, nel medesimo ambito territoriale, anche l'esercizio effettivo della funzione giurisdizionale; quella stessa funzione giurisdizionale che però gli attori hanno attivato con il presente procedimento.»* // *«aimed at denying the Italian State's very sovereignty over a part of its territory, governed as such, asking an ordinary judge to recognize the existence of another state-like body (or of a subject with sovereignty over that territory anyways) and, at the same time, to prevent the Italian State from levying taxes and exercising the related administrative roles, as well as those aiming At any property-related collection or to affect private ownership of movable and immovable assets, in a way that denies, over the same territory, even the effective exercise of jurisdiction; that same jurisdictional power that, however, the complainants are addressing in this very proceeding»*.

It is claims that the judge expresses as her own despite them being disproved, as already pointed out, by the very letter of the questions of law brought before Court, recognizing fully and unconditionally the jurisdiction of Italian Courts on matters of demonstration and enforcement of domestic laws that implement international obligations of both the Republic of Italy and the Italian Government as for the recognition and temporary civil administration of the present-day Free Territory of Trieste and the consequent management of its international Free Port.

The judge continues by falsely reiterating that *«l'azione proposta, come si diceva complessivamente volta ad accertare e far dichiarare la non spettanza allo Stato italiano di poteri ed attributi della sua sovranità su una porzione di territorio sulla quale la medesima sovranità è esercitata»* // *«the action brought before Court, as*

mentioned, for the overall purpose of demonstrating and declaring the non-pertaining to the Italian State of powers and characters of its own sovereignty over a portion of territory over which the same sovereignty is exercised» and adds to it, as a direct quote of the abnormal Joint Section judgment, that «quand’anche “in via di mera ed astratta ipotesi, fosse sorretta dal diritto positivo e, segnatamente, da trattati internazionali (ratificati o meno), veicola domande non proponibili dinanzi a qualsiasi giudice, poiché comporta non già la delibazione di una posizione di diritto o di interesse legittimo, ma un sindacato sulla configurazione costituzionale dello Stato italiano, mettendone in discussione, a monte, la stessa ridefinizione dei confini territoriali o, comunque, il loro assetto”». // «even as a “mere and abstract hypothesis, positive law supported it, namely international treaties (ratified or not), raises questions that cannot be brought before this Court, because it results not in a decision based on rights or legitimate interests, but a decision regarding the Constitutional framework of the Italian State, putting into question, upstream, the very redrawing of its territorial borders or, anyways, their asset”».

It is claims that are clearly subversive and false in fact and law, because:

- they impliedly deny *a priori* that the Constitutional configuration of the Italian State and of its borders is the one established and recognized for all legal purposes by the 1947 Treaty of Peace in force, which is enforced and implemented in the Italian legal order with the Decree of the Provisional Head of State No. 1430/1947, ratified with Law No. 3053/1952;
- they support this subversive thesis by recklessly denying the efficacy, on this subject, of the obligations established under positive law and “specifically” of ratified international Treaties; in other words, of obligations the efficacy and primacy within the hierarchy of the sources of law is established and recognizes by the Italian Constitution itself, by European Community Treaties, and by the international legal order established within the framework of the United Nations, pursuant to the criteria detailed and consolidated within the Vienna Convention on the Law of Treaties.
- this subversive thesis is expressed and repeated by the different Court systems and in different instances of the Republic of Italy to support with false interpretations of laws and Treaties, with political actions of complete denial and of outright violation of the sovereignty and borders of a State established and recognized since 1947 and under the direct protection of the United Nations Security Council, as well as of the general and specific rights of other States (including Italy), of their freight, and of their enterprises over its international Free Port.

The detailed analyses of the nature, seriousness, and effects of this absolutely abnormal, absolute denial of legality and justice is developed hereafter, and it does also cover the consequent extension of this lawsuit from the unfulfilling Italian Courts to the procedures of European Community and of international justice.

Further within the decision in question clearly confirms this in the three following quotes of the Joint Section judgment, which the judge has made her own to support the aforementioned pseudo-legal construction that she shares.

Indeed, it is the following quotes, the contents of which have already been refuted preliminarily and with documental evidences within the Writ of Summon in first instance and in the briefs lodging during the proceeding, which the judge, by supporting the absolute lack of jurisdiction, seems to have not analyzed.

«[...]che del territorio dello Stato italiano si tratti e non già di altro e diverso organismo sovrano (ossia, nella specie, del c.d. Territorio Libero di Trieste o Free Territory of Trieste), emerge in modo evidente (...) dal dato - di per sé coerente con il c.d. principio di effettività di diritto internazionale - costituito dalla emanazione, da parte dello Stato italiano, della Legge Costituzionale 31 gennaio 1963, n. 1, che, nel costituire il Friuli-Venezia Giulia in Regione autonoma, ‘entro l’unità della Repubblica italiana, una e indivisibile’ (art. 1), ha stabilito che nel territorio regionale fosse ricompreso anche il Comune di Trieste, eligendo la città a capoluogo della Regione stessa (art. 2; poi modificato con la legge costituzionale n. 1 del 2016, che ha previsto la provincia di Trieste)» // «[...]that it is territory of the Italian State and not another, different sovereign body (meaning, in this case, the so-called Territorio Libero di Trieste o Free Territory of Trieste), is evident from (...) the fact - in itself coherent with the so-called international law principle of effectiveness - consisting in the issuing, from the Italian State, of Constitutional Law No. 1 of 31 January 1963 which, in establishing Friuli-Venezia Giulia as an autonomous Region ‘within the unity of the Italian Republic, one and indivisible’ (art. 1), established that within the Regional territory there is also the Municipality of Trieste, appointing the city as capital of the Region itself (art. 2; later amended with Constitutional Law No. 1 of 2016, which establishes the province of Trieste)».

In truth, this is a notorious, gross false interpretation of Italian Constitutional Law No. 1 of 1963, as already demonstrated in the proceeding.

«Del resto, [...], l’esistenza (quantomeno) al momento della entrata in vigore della legge costituzionale n. 1 del 1963 della sovranità dello Stato italiano sul territorio di Trieste è stata chiaramente affermata con la sentenza n. 53 del 1964 della Corte costituzionale, la quale ha ritenuto non necessario puntualizzare se, in forza del Trattato di Pace di Parigi del 10 febbraio 1947, fosse cessata l’anzidetta sovranità per poi essere ‘ripristinata in conseguenza del Memorandum d’intesa’ sottoscritto a Londra il 5 ottobre 1954 ovvero (tesi ritenuta preferibile dalla stessa Corte costituzionale) detta sovranità non fosse mai cessata, non dubitando il Giudice delle leggi della sua esistenza ed effettività secondo l’assetto conformato dalla Legge Costituzionale n. 1 del 1963» // «After all, [...], the existence (at least) from the time of the coming into force of Constitutional Law No. 1 of 1963 of the Italian State’s sovereignty over the territory of Trieste has been clearly confirmed with judgment No. 53 of 1964 by the Constitutional Court, which considered it unnecessary explaining if, under the Treaty of Peace of Paris of 10 February 1947, the aforementioned sovereignty had ended to be ‘restored because of the Memorandum of understanding’ signed in London on 5 October 1954 or (a theses favored by the Constitutional Court itself) is that sovereignty had never ended, since the Judge of the laws never doubted its existence and effectiveness under the asset established by Constitutional Law No. 1 of 1963.»

This is a notorious, tendentious and arbitrary interpretation of that judgment's *obiter dicta* because the Constitutional Court did not express itself in the merits of that lawsuit, on the contrary, it declared that it:

«non ritiene necessario, ai fini del presente giudizio, esaminare e risolvere puntualmente le questioni di diritto internazionale che l'interpretazione dell'art. 21 del Trattato di pace ha fatto sorgere e segnatamente se, con l'entrata in vigore di questo, sia venuta a cessare la sovranità italiana sul Territorio libero di Trieste e, nell'ipotesi che codesta cessazione abbia avuto luogo, come la sovranità dello Stato sia stata ripristinata o come si sia verificata la "riannessione" della zona A di quel Territorio allo Stato italiano» // «does not deem it necessary, for the purposes of this lawsuit, examining and punctually answering the questions of international law raised by the interpretation of art. 21 of the Treaty of peace, if, with the coming into force of that, Italian sovereignty over the free Territory of Trieste ceased and, in case this ceasing has occurred, how the State's sovereignty was restored or how that Territory's zone A was "re-annexed" to the Italian State».

Finally, the judge included in her judgment this third quote from the decision of the Joint Section:

«Né, peraltro, dell'esistenza della piena sovranità dello Stato italiano sul territorio triestino ha dubitato questa Corte, con la sentenza della Terza Sezione penale n. 15666 dell'8 aprile 2014, condividendo la sentenza del T.A.R. Friuli Venezia Giulia del 28 ottobre 2013, n. 148, là dove, rigettando un'eccezione di difetto della giurisdizione italiana, ha affermato che il 'cosiddetto territorio libero di Trieste giuridicamente non è mai esistito e non esiste', atteso che la sua astratta previsione ad opera del Trattato di pace di Parigi del 1947, mai attuata, è stata espressamente e legittimamente abrogata da altri Trattati internazionali, in particolare dal Memorandum di Londra del 1954, dal Trattato di Helsinki del 1975 e dal Trattato di Osimo sempre del 1975, con disposizioni confermate da numerosi altri accordi internazionali» // «Furthermore, the existence of full sovereignty of the Italian State over the Triestine territory has never been questioned by this Court, with the judgment of the Third Criminal Section No. 15666 of 8 April 2014, agreeing with the judgment of the Regional Administrative Court for Friuli Venezia Giulia No. 148 of 28 October 2013, n. 148, which, rejecting an exception of Italian jurisdiction, declared that the 'so-called free territory of Trieste legally has never existed and does not exist', given that the 1947 Paris Treaty of Peace, never enforced, has been expressively and legitimately abolished by other international Treaties, in particular, the 1954 Memorandum of London, the 1975 Treaty of Helsinki, and by the Treaty of Osimo itself of 1975, with provisions confirmed by several other international agreements».

In truth, this is judgment No. 530/13 of that Regional Administrative Court, which, as administrative judgment rejecting the appeal is not final in the merits or about matters of jurisdiction; that decision is itself drawn upon a previous judgment rejecting an appeal, No. 400/13 of the same Regional Administrative Court, which results a mechanical construction of all false political thesis, even in contradiction with one

another, claiming the alleged nonexistence of the Free Territory of Trieste, in order to allow the same illegal operations at the expenses of the Northern Free Port of its international Free Port which this lawsuit is addressing the Court seeking the demonstration of their illegitimacy and their suspension, which so far were both denied.

It is also surprising that the Joint Section decided to quote and support judgment No. 530/13 TAR FVG, especially the falsifications most evident and gross, like the claim that the Free Territory of Trieste was envisioned, but never established, and that its envisioning was abrogated by international Treaties and agreements that are either unspecified or have completely different contents and meanings.

7. Absolute arbitrariness of the conclusions.

The judge ends her exposition of those decisional reasons by making her own a full quote of the judgment of the the Joint Section claiming that: *«L'impostazione che precede, dalla quale emerge l'assoluto difetto di giurisdizione dell'organo adito, rende ultroneo l'esame di tutte le ulteriori questioni proposte» // «The previous framework, from which emerges the absolute lack of jurisdiction of the Court addressed, makes it superfluous any further examination of the questions raised.»*

However, the framework taken from the judgment of the the Joint Section bases the alleged lack of jurisdiction on the declared premise, embraced by the judge in her judgment of first instance that is here impugned, that *«il 'cosiddetto territorio libero di Trieste giuridicamente non è mai esistito e non esiste'» // «the 'so-called free territory of Trieste legally has never existed and does not exist'»*.

Essentially, the judge of first instance is therefore claiming, as does the Joint Section of the Court of Cassation, that the alleged, absolute nonexistence of the Free Territory of Trieste does *ipso facto* result in the simultaneous nonexistence of all rights and obligations deriving from it, including those regarding its international Free Port, as well as of all the violations of those rights and obligations, because what does not exist cannot be violated.

By doing so, the judge endorses them all, including the Trieste municipal administration's illegitimate acts of disposal and of expenditure over the assets of the so-called "Old Port" that amount to millions of Euro, and the Port Authority's illegitimate agreements with State enterprises of the People's Republic of China.

Because of this, absolute arbitrariness of those conclusions, based on false political interpretations of laws and Treaties is evident, however, its consequences on the lawsuit that those judgments aimed at closing with the arbitrary exercise of domestic justice are even more relevant, since they are about to obtain the opposite result.

8. The consequent extension of the lawsuit to European and international Courts.

Indeed, it seems that the Italian Courts of first and second instance, and the Court of Cassation, by opposing this kind of judgments to the civil lawsuits for demonstration initiated on this subject by the I.P.R. F.T.T. with the support of citizens and enterprises

of Trieste and other States fail to realize that this is not an internal affair of the Italian State.

The initial choice of the I.P.R. F.T.T. to limit as much as possible, as in this lawsuit, the legal dispute to the conflict arising, within the Italian legal order, between the laws in force on the matter and their violations committed by bodies and officers of the Italian administration was a practical simplification based on the Constitutionally protected independence of the Italian judiciary when it comes to enforcing the law.

However, this practical choice does not change the effective fact that those violations are committed by Italian bodies and officers, but the subject regards compliance with general and particular obligations and rights that are established for the advantage of numerous States, of their citizens, of their freight, and of their enterprises by instrument of international law that are also recognized by European Community Treaties.

For this reason, the I.P.R. F.T.T. initiated all of its lawsuits on the subject, including this one, before Italian Courts and fully reserving the right to invoke, at any moment, the international Courts and procedures of law foreseen within the Treaty of Peace with Italy of 10 February 1947, or the pertinent international and European conventions for the disputed violations of rights or others related to them, in case the time, the conduction, or the outcomes of the lawsuit or eventual negotiations the subject proved unsuitable to protect the rights and interests represented.

The judgments under examination have now provided the ultimate, indisputable evidence that, for political reasons, all Italian Courts in charge of this dispute, from the first instance of judgment to the Supreme Court of Cassation, react by refusing to demonstrate and enforce the Italian laws in force on this subject, falsely declaring that the Free Territory of Trieste “*non esiste e non è mai esistito*” // “*does not exist and never existed*”, and therefore denying also the existence of all the pertinent international obligations and rights established with the Treaty of Peace with Italy of 10 February 1947 and with the Memorandum of Understanding signed in London on 5 October 1954, fully recognized within European Community Law.

There is no way to find out if and how much this identical behavior of the Court is an autonomous choice of each of the judge charged, or borne of an illegal system of political pressing, even indirectly, as penetrating and pervasive that it can obtain similar results.

However, the absolute denial of justice that derives from it is a new abnormal and consolidated fact regardless, which makes it necessary invoking immediately, in defense of the aforementioned reserve to address the appropriate Courts and procedures of law foreseen within international and European law both with direct appeals and invoking, within the pending lawsuits, the highest competences on preliminary matters.

This is why in this lawsuit of second instance we have already taken care to express a preliminary motivated instance of referral for a preliminary ruling under art. 267 letter a) of the TFEU to the upper-ranking competence of the Court of Justice of the European Union on the interpretation of European Union Treaties regarding the grounds of unenforceability of art. 59, No. 1 second paragraph of Italian Law No.69/2009 in view

of the provisions at arts. 3 TEU, 6 ECHR and 6 TEU, of art. 10 of the Universal Declaration of Human Rights, as well as of art. 134 of the Italian Constitution and of art. 267 of the TFUE.

9. Violation of European provisions that allow and limit the enforceability of European Union Treaties to the present-day Free Territory of Trieste and to its international Free Port.

This lawsuit regards violations of the legal *status* of the present-day Free Territory of Trieste – FTT (*Territorio Libero di Trieste – TLT*, herein also shortened to “Territory of Trieste”) and of its international Free Port, which are established by the 1947 Treaty of Peace with Italy, in force, pursuant to Resolution S/RES/16 (1947) of the United Nations Security Council.

The international Free Port of Trieste is a State corporation of the Free Territory of Trieste established with Annex VI, art. 34, Annex VII art. 2 fourth paragraph (clauses enforcement), and Annex VIII, pursuant to Resolution S/RES/16 (1947) of the United Nations Security Council.

In compliance with art. 21 and with Annex VII of that Peace Treaty, after 15 September 1947 the Provisional Regime of government of the present-day FTT is entrusted to the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland as a special trusteeship mandate of the United Nations on behalf of the Security Council.

With a Memorandum of Understanding signed in London on 5 October 1954 the two primary administering Governments have sub-entrusted the FTT’s temporary civil administration to the responsibility of the Italian Government, which by accepting it did also take it upon itself all pertinent obligations regarding the maintaining of the international Free Port as well as the representation of the administered Territory in foreign relationships (at the same time, the military defense of the FTT and of its international Free Port was sub-entrusted to NATO).

The violations now under evaluation are unjustly causing severe breaches of the rights as well as and economic damages to the administered Territory, to its people, to its enterprises, and to the citizens and enterprises of all States that are engaged in economic activities within the same Territory or relating to it and to its international Free Port.

Those violations are committed by bodies and officers of the Italian administration with illegal acts and behaviors that simulate that the Territory of Trieste and its international Free Port belong to the Italian State, hence to the European Union as parts of a Member State’s sovereign territory.

This is why those violations to also give rise to direct and effective violations of the upper-ranking provisions of European Community Law that, since 1951, provide for as well as limiting the application of European Treaties to the present-day Free Territory of Trieste and to its international Free Port.

Indeed, clause regarding the applicability of the provisions of European Community Treaties to territories for which a Member State exercises representation in foreign relations is constantly included, since 1951, within the general framework of European Union Treaties with arts. 79 TECSC, 198 TEAEC, 229 TEC, 227 No. 4 TEEC, 355 No. 3 TFEU, with the limitations at arts. 307 (ex art. 234) TEEC, 307 TEC, 351 TFEU.

The legal dispute, therefore, cannot be settled without an interpretation of the pertinent European Community Treaties, as explained in detail hereafter.

9.1. Jurisdiction to give preliminary rulings of the Court of Justice of the European Union.

Within the European legal order, to which the Republic of Italy is subject for its status of Member State, since 1952 the interpretation of Treaties falls within the preliminary competences of the European Court of Justice by virtue of art. 31 TECSC, of arts. 234 TEC and 177 TEEC and of the current art. 267 of the Treaty on the Functioning of the European Union (TFEU).

The parties that have already appeared before the domestic Court in charge of the referral have the right to actively participate, by lodging further documents, briefs, and requests to the consequent decisional action of the Court of Justice of the European Union.

Within the Italian legal order in force, the TFEU and the TEC are ratified and enforced with Law No. 130 of 2 August 2008 and Law No. 1203 of 14 October 1957 respectively, for all the intended effects at art. 11 of the Italian Constitution, which does also place the competences of the Court of Justice of the European Union to issue a preliminary ruling above that of the Italian Constitutional Court on the same subject.

This is why, for the facts hereafter, we are going to formally request a preliminary ruling of the Court of Justice of the European Union, as well as a request to suspend the proceeding.

9.2. The application of European Community Treaties to the Territory of Trieste.

The Treaty of Peace of 10 February 1947 is fully implemented within the Italian legal order with the Legislative Decree of the Provisional Head of State 1430/1947, in force and ratified with Law No. 3054/1952, which establish its pre-Constitutional and Constitutional primacy over any other law in force, and its enforcement with decrees of the Head of State.

The Memorandum of Understanding with which the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland have sub-entrusted to the responsibility of the Italian Government (not of the Italian State) the temporary civil administration of the present-day Free Territory of Trieste and the obligation to maintain its international Free Port on behalf of the United Nations Security Council is enforced in the legal order in force of the Italian Republic with the

Decree of the President of the Italian Republic without number issued on 27 October 1954, which is lodged here as document 46.

Ever since, the European legal order applies to Trieste as a territory of which a Member State exercises representation in foreign relations, as it administers it but has no sovereignty over it (arts. 79 TECSC, 198 TEAEC, 229 TEC, 227 No. 4 TEEC, 355 No. 3 TFUE).

For this reason, even the Italian laws ratifying and implementing European Community Treaties before and after 1954, including the Protocol on the Statute of the Court of Justice of the European Communities, were extended to the Territory of Trieste under special trusteeship with the legislative powers that the Decree of the President of the Italian Republic of 27 October 1954 vests on a “*Commissario Generale del Governo italiano per il Territorio di Trieste*” // *Commissioner General of the Italian Government for the Territory of Trieste*.

See the copies of the measures in question, dated 12 December 1954 and of 21 January 1958, published on the “*Bollettino Ufficiale del Commissariato Generale del Governo italiano per il Territorio di Trieste*” // “*Official Bulletin of the Office of the Commissioner General of the Italian Government for the Territory of Trieste*” that are lodged in this proceeding as documents 47 and 48.

Under international and European law, the legal status of Trieste as a Territory for which a Member State is responsible in foreign relations because it has administration over it, but not sovereignty, is perfectly clarified *ab origine* in documents of the European Commission itself, with Dossier CEAB 1-149, documents 001 - 007 e 009, that are lodged in this proceeding as document 49.

Within the framework of European Community Law, the legal status of Trieste as a territory for which a Member State is responsible in foreign relations has never changed, because ever since 1954 the administering Italian Government did not take initiatives with European Community bodies to enforce eventual amendment procedures envisioned under European Union Treaties.

9.3. Obligation to respect the borders of the present-day Free Territory of Trieste with Italy and with Slovenia.

As already explained in first instance, the land and maritime borders of the present-day Free Territory of Trieste with Italy are those established at art. 4 of the 1947 Treaty of Peace, and those with Slovenia are established for the effects (art. 30.3 of the Vienna Convention on the Law of Treaties) of UN Resolutions S/RES/753(1992), A/RES/46/238, S/RES/754(1992), A/RES/46/236, S/RES 777(1992), A/RES/47/1, which have recognized, after plebiscites, the independent Republics of Slovenia and of Croatia within their current borders.

These borders, established under international law, are consolidated *ab origine* within the European Union’s legal order, because they represent the Constitutional territorial

asset of the Republic of Italy ever since its entrance, as a founding State, in European community bodies, and of the borders of Slovenia and of Croatia since their accessions, in 2004 and 2013 respectively.

This means that the principle of respect for the fundamental structures and territorial integrity of Member States, as established at art. 4.2 of the TUE, does also apply to the terrestrial and maritime borders of Italy and of Slovenia with the present-day Free Territory of Trieste.

Respecting the borders of all States is a fundamental principle of the UN Charter, which is transposed in European Union Treaties, as constantly confirmed by the EU, by the Atlantic Alliance, and by the US Department of State, and made dramatically urgent by the Russian-Ukrainian war that is taking place since February 24th, 2022.

In particular, the US Department of State regards “sovereignty, territorial integrity, and independence” as core principles of the Charter of the United Nations, which apply to and bound all States. Therefore, they do also apply to and are binding also when it comes to the borders of the present-day Free Territory of Trieste, which is established under the Security Council’s own special responsibility.

9.4. Free Territory of Trieste and international Free Port.

The present-day Free Territory of Trieste includes the international Free Port of Trieste, established as its State corporation by the Treaty of Peace with Italy itself, through Annex VI, art. 34, Annex VII art. 2 fourth paragraph (clauses enforcement), and Annex VIII, in compliance with Resolution S/RES/16 (1947) of the United Nations Security Council.

The Free Port of Trieste is an international Free Port because it is subject to rights of all States and, as State corporation of the FTT, it cannot legally exist separated from the Free Territory of Trieste as independent State under the direct protection of the United Nations Security Council.

As extensively documented in this lawsuit already, the enforcement of European Treaties to the Territory of Trieste entrusted to the Italian Government’s temporary civil administration does therefore extend to its international Free Port.

In particular, see the unequivocal Note verbale with which, during the approval of Directive 69/75/EEC of the Council of European Communities of 4 March 1969 regarding the harmonisation of provisions laid down by law, regulation or administrative action relating to free zones, the Council and the Commission recognize «Following communication from the Italian delegation and in regard to Art. 234 of this Treaty, that: 1. the Free Port of Trieste has been established under Annex VIII of the Treaty of Peace between Italy and the Allied and Associated Powers signed in Paris on 10 February 1947, and it has been among the subjects of the Memorandum of Understanding of London of 5 October, 1954» // «*su comunicazione della delegazione italiana e in relazione con l'art. 234 del Trattato che: 1. il porto franco di Trieste è stato*

istituito dallo Allegato VIII del Trattato di pace fra l'Italia e le Potenze alleate e associate firmato a Parigi il 10 febbraio 1947, ed ha formato oggetto del Memorandum di Londra del 5 ottobre 1954».

9.5. Limits to the enforceability of European Union Treaties.

However, art. 234 of the Treaty establishing the European Economic Community (TEEC) recognized as limitation to the enforcement of European Community Law to member or State or adhering States their compliance with domestic legal laws or international obligations deriving «from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other». The provision is repeated in later European treaties with art. 307 TEC and art. 351 TFEU.

This means that European Community measures that are incompatible with that group of international obligations of a Member State can be applied to that State, or to territories it administers, only with the adjustments needed to overcome the grounds of incompatibility, provided that those are not irremediable.

Furthermore, eventual adjustments cannot be unilateral, because the suggested amendment must be proposed and enforced with the proper procedures under European Community Law.

9.6. The limited application of European Community Treaties to the Territory of Trieste.

The limits to the application of European Community Treaties to the Territory of Trieste are established with UN Security Council Resolution 16/1947 and by the provisions of the 1947 Treaty of Peace with Italy that establish and provide for the Free Territory of Trieste as a sovereign State and for its international Free Port as its State corporation.

In particular, it is arts. 4, 5, 21, 22, 48.5, 78.7, 79.6.g, 85, and Annexes I D (Maps), VI (Permanent Statute of the Free Territory of Trieste), VII (Instrument for the Provisional Regime of the Free Territory of Trieste), VIII (Instrument for the Free Port of Trieste), IX (Technical dispositions regarding the Free Territory of Trieste), X (Economic and financial provisions relating to the Free Territory of Trieste), here recalled in full.

This means that to the FTT under the Italian Government's provisional administration are applicable only the provisions of European Community Treaties and measures that do not conflict with the provisions of the Treaty of Peace, in particular:

- with the roles of the United Nations Security Council as guarantor of the integrity and independence of the FTT, as well as of its permanent neutrality and demilitarization;
- with the territorial, fiscal, and financial sovereignty of the FTT within its present borders, with the consequent civil and political rights of its citizens and with the consequent economic rights of the enterprises that are active there;

- with the exercise of the Provisional Regime of government of the FTT and with the enforcement of the applicable provisions of its Permanent Statute;
- with the prohibition for the FTT to enter in an economic union or associations with other States (which bars its adhesions to the European Union);
- with the exemption *ad originem* of the FTT from the payment of the Italian public debt;
- with the provisions that establish the international Free Port of Trieste and provide for its management;
- with the consequent legal status of the international Free Port of Trieste as State Corporation, with own juridical personality, of the FTT entrusted to the Italian Government's temporary civil administration.
- with the general and particular rights of other States, of their enterprises, and their freight over the international Free Port of Trieste;
- with the right to a maritime register in the Free Territory of Trieste for ships and vessels flying the flag of Switzerland, Czechia, Slovakia, Austria, and Hungary.

9.7. The obligations and rights of European Union Member States towards the Territory of Trieste.

The international obligations of Member States of the European Union towards the present-day Free Territory of Trieste are borne of UN Security Council Resolution 16/1947 and are consolidated in the Treaty of Peace between the Allied and Associated Powers with Italy, done at Paris on 10 February 1947 and in force ever since 15 September 1947.

Resolutions adopted by the Security Council establish effective and binding obligations for all UN Member States, as established at arts. 24 and 25 of the Charter of the United Nations.

In particular, Resolution 16/1947 vests the Security Council with the authority to directly protect the integrity and independence of the Free Territory of Trieste within the framework of Security Council's responsibility for international peace and security.

The current European Union Member States that are directly bound to respect the 1947 Treaty of Peace with Italy are 15: those among the signatories of the Treaty (Italy, Belgium, France, Greece, the Netherlands, Poland) or successor of Signatory States (Czechia, Slovakia, Slovenia, Croatia), as well as the Signatories of Treaties that bound them to respect it (1947: Bulgaria, Finland, Hungary, Romania, 1955: Austria). The same obligations are vested on States that are to join the EU, for instance, Albania, Bosnia-Herzegovina, Montenegro, Northern Macedonia, Serbia, Turkey, and Ukraine.

In addition to the international obligations towards the Free Territory of Trieste, UN Security Council Resolution 16/1947 and the Treaty of Peace with Italy establish general rights over the international Free Port of Trieste for the advantage of all States, including current and future EU Member States, and special rights for some of them (Italy, the successor States of Yugoslavia, Austria, Hungary, Czechia, Slovakia).

Respecting the obligations regarding the present-day Free Territory of Trieste and its international Free Port is, therefore, a right and legitimate interest of all States, including European Union Member States, and of the European Union itself, pursuant to the principle of solidarity recognized by European Community Law.

9.8. The international obligations of the Italian Government.

As recalled above, the Treaty of Peace of 10 February 1947 is fully enforced within the Italian legal order in force with pre-Constitutional and Constitutional primacy over any other law in force, while the mandate of temporary civil administration entrusted to the responsibility of the Italian Government with the 1954 Memorandum of Understanding done in London is enforced in the Italian legal order in force with the Decree of the President of the Italian Republic without number of 27 October 1954.

This means that the Italian Government must comply with two different kinds of international obligations regarding the Free Territory of Trieste, respectively arising from the 1947 Treaty of Peace and from the 1954 Memorandum of Understanding, because:

– as Government of the Italian Republic, it must comply with the international obligations that the Italian State has undertaken respect to the Free Territory of Trieste and all other Signatory States of the 1947 Treaty of Peace, with the addition of all pertinent principles and obligations under European Community Law.

– as temporary civil administering Government of the present-day Free Territory of Trieste, it must comply with all obligations arising from the role of temporary civil administering Government of the State placed under its special trusteeship, which include compliance with its legal order and with the general and special rights of other States over the international Free Port of Trieste.

All bodies and officers of the Italian Republic with which the Italian Government exercises the temporary civil administration of the present-day Free Territory, which includes the exercise of jurisdiction, are therefore bound to respect and obtain respect for both kinds of international obligations, as well as European Community Law.

Those obligations of the Italian bodies and officers in charge of the temporary civil administration of the Territory of Trieste are consolidated since 1955 also in a specific Circular Letter of the Ministry of Internal Affairs that is already lodged as document 15.

Violations committed in this regard by arrivers and bodies of the Italian Government and of the Italian State do therefore simultaneously constitute breaches of the Italian legal order, of the international legal order, and of the legal order of the European Community.

9.9. International obligations and obligations under European Community Law.

Indeed, all of those international obligations regarding the Free Territory of Trieste and its international Free Port do also fall within the obligations that the legal order of the European Union imposes to both the Community, now Union, as supranational entity (hence also to its bodies), and to its Member States, pursuant to the 1957 Treaty Establishing the European Community (TEC), 2002 consolidated Nice version: «*The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations*».

The provision was confirmed and included within art. 208 point 2 of the 2012 TFEU - Treaty on the Functioning of the European Union: «*The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations*».

Consequently, any violation – regardless of perpetrator – of the obligations of the rights regarding the Free Territory of Trieste and its international Free Port as established with UN Security Council Resolution 16/1947, by the 1947 Treaty of Peace with Italy, and with the 1954 Memorandum of Understanding of London does simultaneously constitute a breach of the international legal order and of the legal order of the European Community.

Furthermore, if those violations are committed by Italian bodies and officers, they constitute also breaches of the legal order of the Italian Republic. If their acts limit, deny, or otherwise damage the rights of other EU Member States over the international Free Port of Trieste, they do also constitute economic violation of the principle of solidarity among Member States, which is part of European Community Treaties.

9.10. Jurisdictional competence.

The Republic of Italy and the present-day Free Territory of Trieste, entrusted to the temporary civil administration of the Italian Government, have very similar legal order, and for the major part are “parallel” because the Free Territory of Trieste’s legal order consists of Italian laws inherited since 15 September 1947 by succession of States, or later extended to it with or without amendments by legislative acts within its Provisional Regime of government, which did also add to it own legal measure (see point M of the review of laws lodged in the proceeding as *document 3*).

The exercise of jurisdiction over the present-day Free Territory of Trieste was undertaken by its first provisional Government with Proclamation No. 1 of the British-United States A.M.G. F.T.T. (*document 27*) and delegated to the Italian Government with the temporary civil administration mandate of 5 October 1954.

Since that date, the Italian Government exercises its jurisdiction over the Free Territory of Trieste through local and national Courts of the Italian Republic which, therefore, are bound to respect and fulfill, in this role, all the obligations established by the Peace Treaty and by the 1954 Memorandum of Understanding not only towards the Free Territory of Trieste, its people, and its enterprises, but also in relations with European Community Law.

Even the competence of the Italian Court of Cassation over judgement issued within the Territory of Trieste, for instance, is established by virtue of a decree of the Commissioner General of the Italian Government for the Territory of Trieste, which is lodged in this lawsuit as *document 50*.

As for the subject of this lawsuit, as already emphasized in the Writ of Summon of first instance, is confirmed by the general principale declaring that *«Sono devolute alla giurisdizione ordinaria [...] tutte le materie nelle quali si faccia questione d'un diritto civile o politico, comunque vi possa essere interessata la pubblica amministrazione, e ancorché siano emanati provvedimenti del potere esecutivo o dell'autorità amministrativa»* // *«Are vested on ordinary Courts [...] all questions revolving on a civil or political right, regardless to how it concerns public administration, and whenever the executive or administrative authorities issue measures about it»*, established at art. 2, Annex E, of Law No. 2248/1865, confirmed again in force by art. 1 paragraph 1, of Legislative Decree No. 179 of December 1st, 2009.

This is why Annex E of the same law, at art. 6, referring to matters of taxation, explains that: *«Nelle controversie relative alle imposte così dirette come indirette la giurisdizione ordinaria sarà sempre esercitata in prima istanza dai Tribunali di circondario, ed in seconda stanza dalle Corti d'appello»* // *«In disputes regarding direct and indirect taxes, ordinary jurisdiction shall always be exercised by the District's Courts in first instance, and by the Courts of Appeal in second instance»*.

Regardless, the competence of Italian Courts on matters of the validity and interpretation of the State's international Treaties and of European Community Treaties ranks below the competence to issue preliminary rulings of both the Italian Constitutional Court and the Court of Justice of the European Union.

The 1947 Treaty of Peace with Italy does also limit to specific arbitration procedures the settlement of disputes among States, including the Free Territory of Trieste, regarding the interpretation or the execution of the provisions of the same Treaty, including those regarding the Free Territory itself.

9.11. Petition for referral seeking a preliminary ruling of the Court of Justice of the European Union.

For the reasons considered, explained, and documented above, we ask that the proceeding be referred for a preliminary judgment to the Court of Justice of the European Union under art. 267 TFUE letter a, that the processing be suspended, seeking the interpretation of European Community treaties on matter:

a) of the applicability of European Community Treaties to the present-day Free Territory of Trieste as territory of which a Member State became responsible in foreign relations, as established at arts. 79 TECSC, 198 TEAEC 355, 229 TEC, 227 No. 4 TEEC, 355 No. 3 TFEU, and to the international Free Port that is established as its State corporation.

b) of limits to the applicability of European Community Treaties to the present-day Free Territory of Trieste and to its international Free Port, as established at arts. 307 (ex 234) TEEC, 307 TEC, 351 TFEU, by the international obligations and rights established:

– by the Treaty of Peace between the Allied and Associated Powers with Italy signed at Paris on 10 February 1947 (UNTS 49, No. 747) which is in force since 15 September 1947 and enforced within the Italian legal order with the Legislative Decree of the Provisional Head of State No. 1430/1947, in force and ratified with Law No. 3054/1952;

– by the consequent international sub-mandate of temporary civil administration regarding the present-day Free Territory of Trieste, sub-entrusted to the Italian Government (not to the Italian State) with the Memorandum of Understanding signed in London on 5 October 1954 (UNTS 235, No. 3297: *Memorandum of Understanding regarding the Free Territory of Trieste*), enforced within the Italian legal order with the Decree of the President of the Italian Republic without number of 27 October 1954, in force, published on the Official Gazette of the Italian Republic No. 249 of 28 October 1954.

The appellants express their will to actively participate to the consequent action before the Court of Justice of the European Union, having the right and legitimate interest to do so as parties that have already appeared before the domestic Court that forwards the decision.

We do therefore require this Court of Appeal to exercise, also on those subjects, its power of referral to the European Court of Justice for a preliminary ruling, also in consideration of the fact that the Court of Cassation, being the Court of last instance, bears an obligation to do so anyways.

In view of all that is been explained, addressed, and premised above, recalling all other arguments, theses, exception, and instance, including preliminary ones, that were deduced in the minutes and/or in the writs of defense lodged in the first instance of judgment, which are all to be regarded as fully reported and rewritten in this, second instance of judgment, the appellants, legitimized, represented and defended *ut supra*,

summon:

1) the Italian Government, *c.f.* 80188230587, represented by the President of the Council of Ministers *pro tempore*, with registered office in piazza Colonna 370, Palazzo Chigi - 00187 Rome - presidente@pec.governo.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service), in piazza Dalmazia 3, in the role of Government of the Italian Republic and for the authority and obligations at art. 120, second paragraph of the Italian Constitution, as well as for all powers and obligations deriving from its role of provisional administering Government sub-entrusted with the temporary civil administration of the Free Territory of Trieste;

2) The Commissariato del Governo nella Regione Friuli Venezia Giulia // Office of the Commissioner of the Government in Region Friuli Venezia Giulia, *c.f.* 80016870323, represented by the Commissioner *pro tempore*, with registered office in piazza dell'Unità 8 - 34121 Trieste - commissariato.fvg@mailbox.governo.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service), in piazza Dalmazia 3, for the authority and obligations laid down in DPR // Decree of the President of the Italian Republic of 27 October 1954 (without number) and in art. 70 of Italian Constitutional Law No. 1/1963;

3) Prefettura di Trieste – Ufficio territoriale del Governo // Trieste Prefect Office - Territorial Office of the Government, *c.f.* 80017390321, represented by the Italian *Prefetto* (Prefect) *pro tempore*, with registered office in piazza dell'Unità 8 - 34121 Trieste - protocollo.prefts@pec.interno.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service), in piazza Dalmazia 3, for the authority and obligations laid down in DPR // Decree of the President of the Italian Republic of 27 October 1954 (without number) and in art. 70 of Italian Constitutional Law No. 1/1963;

4) Ministero delle Infrastrutture e dei Trasporti // Italian Ministry of Infrastructures and Transport, *c.f.* 97532760580, represented by the Italian Minister *pro tempore*, with registered office in piazzale Porta Pia 1 – 00198 Rome - m_inf@pec.mit.gov.it, - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, for its authority and obligations regarding the appointment of the President of the Trieste Port Authority and also the power to advise, supervise, and control the management of the same Port Authority, including its accounting and finances, as laid down in Italian Law No. 84/1994 and its amendments;

5) Autorità Portuale di Trieste, ora “Autorità Portuale di Sistema del Mare Adriatico Orientale” // Trieste Port Authority, now “Port System Authority of the Eastern Adriatic Sea”, *c.f.* 00050540327, represented by its President or Commissioner *pro tempore*, with registered office in via Karl Ludwig von Bruck – 34143 Trieste - pec@cert.porto.trieste.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, (which remained *in absentia* in the first instance of judgment despite being correctly notified about the proceeding) for the authority and obligations as laid down in Italian Law No. 84/1994, and its amendments, as well as in art. 1 of paragraph 619 of Italian Law No. 190/2014, and its amendments;

6) Ministero dell'Economia e delle Finanze // Italian Ministry of Economy and Finance, c.f. 80415740580 represented by the Italian Minister *pro tempore*, with registered office in via XX Settembre 97 - 00187 Rome - mef@pec.mef.gov.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, for its authority and obligations deriving from the power to advise, supervision, and control the management of the Trieste Port Authority as laid down in Italian Law No. 84/1994 and its amendments, as well as the management of the *Agenzia del Demanio* // Italian State Property Agency;

7) Agenzia del Demanio // Italian State Property Agency, c.f. 0634098100, economic public body of the Italian Ministry of Economy and Finance, represented by the Director *pro tempore*, with registered office in via Barberini 38 - 00187 Roma - agenziademanio@pce.agenziademanio.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, for its role in the management of the *Demanio // State Property*, including the maritime State Property, of the present-day Free Territory of Trieste, sub-entrusted to the temporary civil administration of the Italian Government;

8) Regione Friuli Venezia Giulia // Region Friuli Venezia Giulia, c.f. 80014930327, represented by the President *pro tempore*, with registered office in piazza dell'Unità 1 - 34121 Trieste - regione.friuliveneziagiulia@certregione.fvg.it - with address for service at the Trieste district of the *Avvocatura dello Stato* (State legal service) in piazza Dalmazia 3, for the authority and obligations as laid down in art. 70 of Italian Constitutional Law No. 1/1963;

9) Comune di Trieste // Municipality of Trieste, c.f. 00210240321, represented by the Mayor or Commissioner *pro tempore*, with registered office in piazza dell'Unità 4 - 34121 Trieste - comune.trieste@certgov.fvg.it - for the authority and obligations laid down Italian Law No. 190/2014, art. 1, paragraph 619, in its amendments, as well as in other legal instruments.

10) Banca di Cividale S.p.a., c.f./P.IVA 00249360306, with registered office in Cividale del Friuli (UD) 33043, via sen. Guglielmo Pelizzo 8-1 - segreteria@cert.civibank.it, in represented by its legal representative Michela Del Piero, c.f. DLPMHL67B61E098S, represented and defended by lawyer Elena Predonzani, c.f. PRDLNE64E58L424P, p.e.c. elena.predonzani@pectriesteavvocati.it, and by lawyer Fabrizia Balestra, c.f. BLSFRZ64D60L781A, p.e.c. fabrizia.balestra@pectriesteavvocati.it, with address for service at the two lawyer's Trieste office, in Galleria Protti n. 2, which joined the lawsuit of first instance under art. 105, second paragraph of the Italian Code of Civil Procedure, with a Writ of Appearance dated June 20th, 2020.

to appear

before the Court of Trieste, at its site in *Palazzo di Giustizia*, Foro Ulpiano 1, at the hearing to be held on **23 November 2023**, at the given hour, before the Judge to be nominated, under and in the manners prescribed by articles 347 and 166 of the Italian Code of Civil Procedure, within 20 (twenty) days before the first hearing set with this act, and minding that failure to appear within that term gives rise to the disqualifications

at arts. 38 and 167 of the Italian Code of Civil Procedure, including that at art. 345 regarding appeals, as well as reminding them that professional defense through a lawyer is mandatory in all instances of judgment, from the first one to the appeal, up to the final one, except for the cases envisioned at art. 86 of the Italian Code of Civil Procedure or other special laws, that summoned parties, in cases provided by the law, can request legal aid, and that, in case of failure to appear, the Court is to proceed *in absentia*, for the Court itself to uphold the following

CONCLUSIONS:

the Court of Appeal of Trieste should, *contrariis reiectis*, as a precautionary measure, suspend or annul the provisional enforceability of the impugned judgment and, referring it for a preliminary ruling, suspend the trial for the reasons detailed above in the relating instances, to the Italian Constitutional Court and to the Court of Justice of the European Union for the questions arising from the absolute unenforceability of art. 59 number 1 second paragraph of Italian Law 69/2009 and to the Court of Justice of the European Union for the matters arising from the interpretation of European Community Treaties that are fundamental to settle this legal dispute, decide as follows:

IN THE MERIT:

to preliminarily assess:

a) that, to this date as on the date of the judgment, the following legal instruments of the Italian legal order, which implement and enforce, without reserves, the Treaty of Peace between the Allied and Associated Powers and Italy, signed in Paris on 10 February 1947, as well as the obligations of the additional Memorandum of Understanding signed in London on 5 October 1954 regarding the special trusteeship mandate (temporary civil administration) of the present-day Free Territory of Trieste, sub-entrusted to the responsibility of Italian Government by the Governments of the United States and of the United Kingdom in their role of primary Governments on behalf of the UN Security Council, are in force: Legislative Decree of the Provisional Head of State No. 1430/1947; Law No. 3054/1952; Decree of the President of the Republic of 27 October 1954 (without number), Italian Constitutional Law No. 1/1963, arts. 1, 2, 4, 70, and Italian Law No.1203/1957;

b) that within the Italian legal order in force those legal instruments have the highest rank in the hierarchy of the sources of Italian law, both under pre-Constitutional, autonomous legislation (art. 2 of the Legislative Decree of the Provisional Head of State No. 1430/1947, ratified with Italian Law No. 3054/1954) and under the Constitutional principles and legislation established after their enforcement (art. 10, first paragraph, art. 117, first paragraph, and art. 120, second paragraph of the Constitution of the Italian Republic);

c) the effectiveness of the obligations implemented under those legal instruments, as reconfirmed, in particular, in the enforcement of the temporary civil administration of the present-day Free Territory of Trieste and of its international Free Port:

– by the inter-ministerial Decree on the *Organizzazione amministrativa per la gestione dei punti franchi compresi nella zona del porto franco di Trieste* // Administrative organization for the management of the free zones included within the area of the Free Port of Trieste, issued on 13 July 2017 by the Italian Ministry of Infrastructures and Transport together with the Italian Ministry of Economy and Finance, in compliance with the obligations established at art. 6, paragraph 12 of Italian Law No. 84/1994 and with the sub-mandate of temporary civil administration of the Free Territory of Trieste that enforces the 1947 Treaty of Peace;

– by paragraph 66 letter b) of art. 1 of the Budget Law of the Italian State No. 205/2017, in force since 1 January 2018, which does directly prevent the enforcement of paragraphs 618, 619, and 620 of Italian Law 190/2014 by expressly subordinating the envisioned transfer of the international free port regime to the upper-ranking provisions of the 1947 Treaty of Peace, implemented in the Italian legal order with the Decree of the Provisional Head of State No. 1430/1947, ratified with Italian Law 3054/1952, that prevent such measures.

– by the other legislative and administrative acts listed at section N (pages 58-65) of the review of laws attached to this writ of summon as document 3.

to ascertain and declare:

the unenforceability, thus inapplicability, within the Italian legal order in force, either *ab origine* or supervening, due to conflicting with the provisions of upper-ranking laws in force within the same Italian legal order:

1) of paragraphs 618, 619, and 120 of article 1 of Italian La 190/2014 and their amendments, including also the Decree of the Commissioner of the Government registered as No. 19/8-5/2016 of 26 January 2016;

2) of the provisions at art. 3, paragraph 2 of the Decree of the President of the Italian Republic No. 107/2009;

3) of the establishment and collection of excise duties of the Italian State on fuels, combustibles (including gas) and electricity imported, exported, used, or produced within the present-day Free Territory of Trieste or within its international Free Port;

4) of the extension of the Municipal taxes on real estates to the international Free Port of Trieste;

5) of the provisions of the inter-ministerial Decree of 13 July 2017 (Official Gazette of the Italian Republic No. 177 of 31 July 2017) that assign the administrative management of the areas of the Free Port of Trieste to the President of the Italian Port System Authority of the Eastern Adriatic Sea;

6) of any normative or administrative act, including contracts, that enforces the «*Accordo di cooperazione fra Autorità di Sistema Portuale del Mare Adriatico Orientale – porti di Trieste e Monfalcone e China Communications Construction Company*» // «Cooperation agreement between the Port System Authority of the Eastern Adriatic Sea - Ports of Trieste and Monfalcone and China Communications Construction Company» signed in Rome on 23 March 2019 by the President of the

Trieste Port System Authority of the Eastern Adriatic Sea, regarding either areas and assets of the port or controlled by the Port Authority, including railways, or extensions and transfers of the regime of international free port;

and, consequently, to rule

as for the assessments and declarations sub a), to cancel from the Land Registry Book the Land Registry Decree registered *sub* GN 12394/16 issued on 22 December 2016, in force since 31 December 2016, that registers in the name of the Municipality of Trieste the assets included within the following Land Registry Particles: **Land Registry Particles No. 90645 in Trieste, 1st land registry body, No. 7538 in Greta, 1st land registry body, and No. 4670 in Barcola, 1st land registry body**, and also eventual, new Land Registry Particles deriving from these.

AS A PRELIMINARY AND PRECAUTIONARY MEASURE,

in case the addressed authorities have not already taken care of that in self-defense, in view of the civil, criminal, administrative liabilities, and in view of the extraordinary entity of the damages to the revenues of the State and to third parties manifestly connected to or deriving from the evident breaches of law addressed in this writ of summon, the determination and remediation of which is requested to the Court,

to suspend, whilst the proceedings are pending

a. the efficacy of the Land Registry Decree registered *sub* GN 12394/16 issued on 22 December 2016 and in force since 31 December 2016, regarding the registration in the name of the Municipality of Trieste of the immovable properties included within the following, Land Registry Particles: **Land Registry Particles No. 90645 in Trieste, 1st land registry body, No. 7538 in Greta, 1st land registry body, and No. 4670 in Barcola, 1st land registry body**, and also eventual, new Land Registry Particles deriving from these;

b. all acts and expenditures issued or planned by the summoned parties, especially by the Municipality of Trieste, both on its own behalf or that of third parties, regarding the public properties registered for the first time within the Land Registry Book with the Land Registry Decree registered *sub* GN 12394/16 issued on 22 December 2016 and in force since 31 December 2016, registering in the name of the Municipality of Trieste the immovable properties included within the following Land Registry Particles: **Land Registry Particles No. 90645 in Trieste, 1st land registry body, No. 7538 in Greta, 1st land registry body, and No. 4670 in Barcola, 1st land registry body**, and also eventual, new Land Registry Particles deriving from these;

except for acts and expenditures regarding the maintenance necessary to keep those assets in the same conditions as they were when the Municipality received them from the Port Authority for the purposes established at paragraph 619 of art. 1 of Italian Law 190/2014 and its amendments,

and except for acts and expenditures aimed at the prevention or remediation of damages to those assets, of risks for public safety, of breaches of the law, or of any other disturbance of law and order.

Attorney and other legal fees to be refund under the law.

The International Provisional Representative of the Free Territory of Trieste – I.P.R. F.T.T. and all other international subjects concerned reserve the full right to address the authorities and to recall the procedures of international law identified and established under the Treaty of Peace with Italy of 10 February 1947 or with other international conventions, to impugn and to dispute the same alleged violations, or other connected, at any moment in case the time, development, or outcomes of the present legal action or of the possible negotiations on the matter prove to be inefficacious to protect the legitimate interests represented.

Under art. 14 of the Decree of the President of the Italian Republic No. 115 of 30 May 2002, we declare that the value of this claim cannot be defined; therefore, the court fee is a unique contribution, plus 50% due to this being an appeal, and amounts to EUR 777.00.

Lodging the following documentation (*in Italian, unless otherwise specified*):

- a) Authentic copy, for the purpose of appeal, of judgment No. 267/2023 of the Court of Trieste.
- b) The party's case file regarding the previous instance of judgment, as digitally assembled and forwarded by the Office of the Court of Trieste.
- c) Receipt of the payment of the court fees required to register the appeal.
- d) New documental evidences, numbered 45 to 50, as recalled within this document.

Trieste, 6 July 2023,

Lawyer Walter Zidarich

[signatures: omissis]

MANDATES:

[omitted in this English translation]

ACKNOWLEDGEMENTS OF RECEIPT:

[omitted in this English translation]