



I.P.R. F.T.T. Member State *de jure*
of the United Nations

International Provisional Representative of the
FREE TERRITORY OF TRIESTE

Rappresentanza Internazionale Provvisoria del Territorio Libero di Trieste
Začasno Mednarodno Predstavništvo Svobodnega Tržaškega Ozemlja
Provisorische Internationale Vertretung des Freien Territoriums Triest

SG/2018/05/01-en

29 May 2018

To the Mayor *pro tempore* of the Municipality of Trieste

To the President of the Port System Authority in Trieste
identified as Port System Authority of the Eastern Adriatic Sea
or “*Autorità di Sistema Portuale del Mare Adriatico Orientale*”

To the President of Region Friuli Venezia Giulia

To the President of the Council of Ministers of the Italian Government
for the exercise of the powers of temporary civil administration of the
present-day Free Territory of Trieste and of the powers of substitution
established at art. 120, second paragraph of the Italian Constitution
regarding its authority to act on behalf of local authorities that fail to
comply with international treaties and provisions.

and, for the actions falling under their competences:

to the Prosecutor of the Republic in Trieste
to the Regional Prosecutor of the Court of Accounts in Trieste

document lodged at the protocol office or notified via certified email

Subject: breaches of art. 1, paragraph 619 of Italian Law 190/2014, committed by the Administration of the Municipality of Trieste with acts transferring immovable property and ruling illegitimate expenditures in regard to the so-called “Porto Vecchio” currently registered as property of the Municipality of Trieste sub GN 12394/16 in breach of higher-ranking provisions of international and of Italian law, in force.

This Representative, acting in the name and on behalf of its delegators, notifies You this document, either directly or via certified email, providing You full legal knowledge of the legal facts it describes for all consequences and effects prescribed by the law, as well as presenting the appropriate requests and reserving all future rights, and legal actions on the subject:

1. The Municipal administration of Trieste requested and obtained, starting from 31 December 2016, the registration on the *Libro Fondiario* (Land Registry Book) of a wide sector (60 hectares) of the Northern Free Port, namely said “*porto vecchio*” (the “old port”) in compliance with art. 1, paragraph 619 of Italian law No. 190/2014; this means those public assets are currently [May 2018] registered on the *Libro Fondiario* (Land

Registry Book) sub GN 12394/16 in *Partite Tavolari* (Land Registry parcels) No. 90645 of the *Comune Censuario - census district* of Trieste, No. 7538 of the *Comune Censuario - census district* of Greta, and No. 4670 of the *Comune Censuario - census district* of Barcola.

2. Art. 1, paragraph 619 of Italian Law 190/2014 establishes that those port assets «removed from State Property and assigned to the available assets of the Municipality of Trieste to be destined to the uses envisioned by town planning instruments. In compliance with national and European legislation on the matter, the Municipality of Trieste sells the areas and the assets removed from State Property, and the revenues earned are transferred to the Trieste Port Authority [...]» to provide new infrastructures for other areas of the Free Port.

3. Therefore, the registration title claimed by the Municipality of Trieste did not grant it unrestricted ownership of those public assets, rather, it granted it a provisional power, limited to the task and obligation of establishing the new urban designation of the same assets and to sell them to third parties under the open public procedures established by both domestic and European law in case of dismissal of immovable public properties owned by the State or by other Public Bodies.

4. Those constraints limit the availability of those public port assets to the Municipality itself, thus prevent it from keeping and using those assets directly or in favor of third parties, from renting or tendering them, from selling them with a negotiated contract, and also from carrying out works, tenders, or expenditures for purposes other than to preserve those public port assets in the conditions they were at the time the same Municipality received them to arrange their sale.

5. The *Giudice Tavolare* (Land Registry Judge) confirmed that all constraints established respect to the Municipality at art. 1, paragraph 619 of Italian Law 190/2016 were self-evident, known to the public, and effective in his Decree of date 30.3.2017, with which he did therefore reject the request presented by this Representative on 24.1.2017 sub GN 846/17 [*document 1* annexed to this document].

6. Said *domanda tavolare* (Land Registry Request) [*document 2*] was based on the necessity to protect public faith from the fact that, having been warned against it notwithstanding, the Municipal Administration, led by mayor Roberto Dipiazza, simulates to have received unconditional ownership of those public assets and therefore the possibility to freely dispose of them directly or in favor of third parties, resulting in acts and expenditures that are thus illegitimate, and give raise to losses of revenue due to both the amount of money spent and the assignation of employees of the Municipality to duties outside of their legitimate offices.

7. The registration in the Land Registry Book of the Request and of the Decree that confirms the constraints established by law notwithstanding, the Municipal Administration of Trieste continued to simulate the enjoyment of full availability of those public assets with an escalation of official statements, meetings, agreements, projects, resolutions, tenders, and expenditures, involving also enterprises and

organizations from other Countries, as well as announcing the intention to sell other properties of the Municipality itself to sponsor those operations.

8. This abnormal behaviour of the Municipal Administration of Trieste is therefore a clear source of current and future loss of revenues, especially considering the expectable legal actions for compensation brought forward by third parties that were involved in good faith, but it does also subtract significant resources to the ordinary institutional duties of the Municipality, including taking care of social assistance.

9. The civil, criminal, administrative liabilities, as well as those for loss of revenue deriving from said illegitimate acts and expenditures fall on the Mayor and the Secretary Director General of the Municipality, but also on the other administering officers of the Municipality or of other public bodies that take part in the approval and enforcement of such measures despite having the authority to prevent them (Art. 40 of the Italian Criminal Code and art. 28 of the Italian Constitution).

10. Also, the Municipal Administration of Trieste should be considered aware of the impossibility to sell the assets of the Northern Free Port due to the pending, well-known issues regarding the legitimacy of the provisions at art. 1, paragraphs 618 and 619 of Law 190/2014 issued by the Italian Parliament, which envision the removal of the international Free Port regime, the removal of its assets from State Property, and their assignation to the Municipality for it to see them.

11. For instance, it is the questions of legitimacy that this Representative has already expressed in the procedure of completion of the Land Registry Book 4/COMP/16, to which the Court of Appeal referred in pertinent decree No. 155/16 VG [*document 3*] expressing the reserve that *«all possible questions concerning the ownership of those assets can - if necessary - be raised before the competent Courts;»*, thus with different, successive legal actions.

12. The reserve regards the exception of the unenforceability of the provisions at art. 1, paragraphs 618 and 619 of Italian Law No. 190/2014 due to a Constitutional conflict with the higher-ranking Italian and international legal provisions which, since 1947, establish on those assets permanent titles of ownership, jurisdiction, destinations of use, and administration, as well as rights of other States, none of which can be amended by laws of the Italian Parliament.

13. For instance, those legal instruments are the multilateral Treaty of Peace with Italy of 10 February 1947 and the Legislative Decree of the Provisional Head of State No. 1430/1947 ratified with Italian Law 3054/1952, which enforces that Treaty of Peace fully and completely within the legal order of the Italian Republic since 16 September 1947, and with a pre-Constitutional and Constitutional rank higher than that of any other Italian law in force.

14. Therefore, the highest-ranking provisions that establish the permanent legal status of the Northern Free Port and of the assets within its boundaries in the Italian legal order are:

a) as for permanent ownership and jurisdiction, art. 21 of the Treaty of Peace, which establishes and recognises the Free Territory of Trieste as sovereign State, the ceasing of the previous Italian sovereignty, as well as art. 34 of its Annex VI and art. 2 paragraphs 1 and 2 of its Annex VIII, which establish the International Free Port as State corporation of the Free Territory of Trieste and, referring to art. 1 of Annex X, transfer to this new body ownership of all State-owned assets included with its boundaries;

b) as for the destinations of use of the same assets, art. 3 of Annex VIII, which establishes the boundaries of the permanent Free Zones (which include the Northern Free Port), allows to extend them, but not to remove them, as well as prohibiting to subject areas of the Free Port to the exclusive jurisdiction of any State;

c) as for the permanent rules for its administration, art. 18 paragraphs 1 and 2, of Annex VIII, which establish the administration be exercised by a Director of the Free Port, who cannot be an Italian citizen, or a citizen of any successor State of Yugoslavia;

d) as for the general and special rights of other States and their enterprises, arts. 1, 3, 5.1, 21, 22, 23 of the same Annex VIII regarding the rights to use and to manage the whole International Free Port.

15. Since the Italian Republic, the Italian Government, and all of their bodies have the legal obligation to comply with and to enforce those higher-ranking norms and have no authority to amend them, any act they issue ordering the transfer of a permanent free zone, the assignation of ownership of assets that belong to the Free Port to any other subject, the sale of those assets, the assignation of the administration of the international Free Port to an Italian *Autorità Portuale* (Port Authority), or omits the rights of the other States and their enterprises is null and void.

16. With art. 1 paragraph 66 of Italian Law No. 205 of 27 December 2017 the irremediable conflict in legislation that makes the provisions at art. 1 paragraphs 618 and 619 of Italian Law No. 190/2014 unenforceable was included within the letter of paragraph 618 directly, by specifying that the provisions of the norm are still subject to those of the *«Treaty of Peace between Italy and the Allied and Associated Powers signed in Paris on 10 February 1947, enforced with Decree of the provisional Head of State No. 1430 of 28 November 1947, ratified under Law No. 305 of 25 November 1952»*.

17. This amendment follows the inter-ministerial Decree issued on 13 July 2017 regarding the administrative structure for the management of the free zones of the international Free Port of Trieste, issued by the Italian Ministry of Infrastructures and Transport together with the Italian Ministry of Economy and Finance, with which the Italian Government, entrusted with temporary administration, confirmed the legal force of the obligations established under the *«Memorandum of Understanding of London of 5 October 1954 between the Governments of Italy, of the United Kingdom, of the United States, and of the Socialist Federal Republic of Yugoslavia regarding the regime of temporary administration of the Free Territory of Trieste, envisioned at Annex VII of the Treaty of Peace between Italy and the Allied and Associated Powers, signed in Paris on 10 January 1947»*.

18. The inclusion of this legal explanation within the aforementioned legal measures of the administering Italian Government and of the Italian Parliament became necessary due to the fact that the International Free Port of Trieste cannot have legal existence outside of said legal framework.

19. Those legal facts are confirmed once again within the whole Italian *corpus juris* that ratifies and enforces the international legal obligations of the Italian Republic and of the Italian Government respect to the present-day Free Territory of Trieste and the consequent obligations respect to other States and the United Nations, as reviewed by this Representative's own Law Commission with expertise SG/2017/LC/M-V-en [document 4].

20. This Representative has therefore notified for purposes of legal knowledge expertise SG/2017/LC/M-V-en to all local bodies that exercise Italian provisional administration in Trieste starting on 5.3.2018; those bodies including the Mayor of Trieste and the President of the Port Authority, and they are all invited to comply with the law also when it comes to the Northern Free Port.

21. For instance, the unenforceable provisions of art. 1 paragraphs 618 and 619 of Italian Law No. 190/2014 do not derive from the real legal status of the Northern Free Port, but from false information spread by politicians and by speculators in order to simulate the area be unsuitable for port uses, and thus the necessity and the possibility to move its special regime away establishing new free zones, and also that the Italian Parliament had power to rule so.

22. The operation organized on those false premises consists in the illegal subtraction to the Northern Free Port the greater part (60 hectares) of its areas and functional infrastructures, including the railway yard and the space destined to a new logistics platform, downgrading it to a narrow coastal strip, the dock, and the Adriaterminal area.

23. The fact that said areas and assets are necessary for the development of the international Free Port is proved by technical projects with which the port users took part in the call for tender held in 2008, The public procurement procedures was obstructed by Mayor Roberto Dipiazza himself who, with a public threat (5.10.2008), declared that had the port users won, he would have prevented trucks from entering the international Free Port, and he would have also opened a political crisis.

24. Therefore, it is evident that:

a) the enforcement of the illegitimate provisions at art. 1 paragraphs 618 and 619 of Italian Law No. 190/2014 are causing serious and increasing damages to the functional assets as well as to the future activities of the International Free Port, harming also the rights and legitimate interests of the of the Free Territory of Trieste and of all other States and their enterprises.

b) the breaches of art. 1 paragraphs 618 and 619 of Italian Law No. 190/2014 committed by the Municipal Administration of Trieste, together with third parties,

through their acts ordering illicit expenditures that involve those assets, entrusted to it only to be sold, are worsening the already serious damages described above, as well as harming the citizens by illegally subtracting financial resources to the budgets and official duties of the Municipality itself, which is as well a body in charge of the local administration of the Free Territory of Trieste.

25. The International Provisional Representative of the Free Territory of Trieste - I.P.R. F.T.T. is an international subject, entitled and delegated to represent in all instances the legitimate interests of the present-day Free Territory of Trieste, of its citizens and residents, of its enterprises and public bodies, also when it comes to compliance with provisions establishing its International Free Port and the consequent rights of other States and their enterprise over it.

26. On the date this act is presented, this Representative has already taken care to present a proper *Reclamo Tavolare* (Land Registry Dispute) seeking the declaration that the Decree assigning those assets to the Municipality of Trieste be declared null and void, for them to be registered in the Land Registry Book in accordance with the law [*document 5*: copy of the Land Registry Dispute].

For those reasons

this Representative, reserving all further actions, before any authority, including actions for compensation versus the officers and bodies responsible of economic damages, in order to protect the above mentioned legitimate rights and interests,

invites

the Mayor and all other members and officers of the Municipal Administration of Trieste;

- to promptly interrupt and/or revoke, to protect themselves, all acts or resolutions of the Municipality regarding uses or expenditures of the Municipality that go against the provisions of the title under which it received the assets registered sub GN 12394/16, which is established under art. 1 paragraph 619 of Italian Law No. 190/2014;

- to include in any act regarding eventual procedures for the sale of those assets the warning that those may be subject to eviction under the opposing provisions at Annexes VI and VIII of the Treaty of Peace with Italy of 10 February 1947, implemented in the Italian legal system in force by Legislative Decree of the Provisional Head of State 1430/1947, ratified with Italian Law No. 3054/1952;

the President of the Trieste Port Authority identified as “Autorità di Sistema Portuale del Mare Adriatico Orientale”, and the President of Region Friuli Venezia Giulia to exercise their respective legal obligations to prevent the breaches of the law reported in this act;

the President of the Council of Ministers of the Italian Government, in its role of temporary civil administering Government of the present-day Free Territory of Trieste

under mandate of the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland as primary administering Governments on behalf of the United Nations:

- to oversee the fulfillment of the aforementioned legal obligations of the Municipal Administration of Trieste, of the Port Authority, of the Region, and of all other administering Bodies involved;

- in case the breaches persist, to exercise the powers of substitution established at art. 120, second paragraph of the Italian Constitution, therefore the Government's authority to act on behalf of local authorities that fail to comply with international rules and treaties, and, in case it proves necessary due to serious and persistent breaches of the law, to start the procedure for the dissolution of the Municipal Council of Trieste and the appointing of a Prefectural Commissioner.

the the Prosecutor of the Republic in Trieste and the Regional Prosecutor of the Court of Accounts in Trieste to fund and to verify, under their respective competences, the liabilities and the facts reported in this act.



Paolo G. Parovel
I.P.R. F.T.T. Secretary General

Annexes in Italian:

- 1) Land Registry decree No. GN 846/17 of 30.3.2017.
- 2) Land Registry request No. GN 846/17 of 24.1.2017.
- 3) Decree No. 155/16 VG issued by the Trieste Court of Appeal.
- 5) Land Registry Dispute of 21 May 2018 lodged on 29.5.2018 sub GN 5481/2018.

Annex in English:

- 4) I.P.R. F.T.T. Law Commission - Expertise SG/2017/LC/M-V-en.