

Avv. Walter Zidarich

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**TO THE SUPREME COURT OF CASSATION
CIVIL SECTION**

APPEAL EX ART. 360, CODE OF CIVIL PROCEDURE

versus judgment No. 278/2020

of the Trieste Court of Appeal

[SG/2020/LC/WS-IV-Cass-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*] as legal subject delegated to represent and to defend, in all international and diplomatic forums or judicial proceedings, the rights and legitimate interests of the citizens *de jure*, of the residents, of the enterprises, and of the organizations of the Free Territory of Trieste and of other States (Italian Fiscal Code C.F. 90157930323), 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 and defended, pursuant to the special mandate at the end of this act, by lawyer Walter Zidarich with office in Trieste, via San Francesco 11, Italian Fiscal ZDRWTR50P22L424, office that is also chosen as address for service to receive all legal acts and communications regarding this proceeding, wither by mail or by fax and phone, at No. 040/2410914 or by Italian certified emails (p.e.c.): walter.zidarich@pectriesteavvocati.it

2) Paolo G. Parovel, born in Trieste on 19 June 1944, who appears in this proceeding also for himself, his heirs, and for other persons entitled, as bearer of the right and legitimate interest of a citizen *de jure* of the present-day Free Territory of Trieste, to whom Italian citizen was assigned *ex officio* and due to being subject to the tax obligations of the Italian Republic, with Italian Fiscal Code PRVPLA44H19L424C, also for his businesses registered since 1972 at the Trieste Chamber of Commerce, Industry and Agriculture as well as for his activity as journalist, which he exercises as member of the Italian Press Association since 1979, represented and defended, pursuant to the special mandate at the end of this act, by lawyer Walter Zidarich with office in Trieste, via San Francesco 11, Italian Fiscal ZDRWTR50P22L424, office that is also chosen as address for service to receive all legal acts and communications regarding this proceeding, wither by mail or by fax and phone, at No. 040/2410914 or by Italian certified emails (p.e.c.): walter.zidarich@pectriesteavvocati.it

3) Movimento Trieste Libera (C.F. 90132610321) with office in piazza della Borsa 7, Trieste represented by its President and legal representative *pro tempore* Roberto Giurastante, born in Trieste on 24.03.1965 (Italian Fiscal Code GRSRRT65C24L424Z), represented and defended, pursuant to the special mandate at the end of this act, by lawyer Walter Zidarich with office in Trieste, via San Francesco 11, Italian Fiscal

ZDRWTR50P22L424, office that is also chosen as address for service to receive all legal acts and communications regarding this proceeding, wither by mail of by fax and phone, at No. 040/2410914 or by Italian certified emails (p.e.c.): walter.zidarich@pectriesteavvocati.it

As well as for the following 495 claimants, natural and legal persons, appearing through the I.P.R. F.T.T. upon their legally certified delegations, which are included in the documentation of the proceeding, all of whom are represented and defended, pursuant to the special mandate at the end of this act, by lawyer Walter Zidarich with office in Trieste, via San Francesco 11, Italian Fiscal Code ZDRWTR50P22L424, office that is also chosen as address for service to receive all legal acts and communications regarding this proceeding, either by mail, by fax or by phone, at No. 040/2410914 or by Italian certified emails (p.e.c.) at: walter.zidarich@pectriesteavvocati.it

[omissis: the names of 495 claimants]

- Claimants -

Versus:

1) **Italian Government**, represented by the President of the Council of Ministers *pro tempore*, in the role of Government of the Italian Republic and by virtue of the powers at art. 120, second paragraph of the Italian Constitution, based in Piazza Colonna 370, Palazzo Chigi - 00187 Rome - presidente@pec.governo.it at the *Avvocatura dello Stato* (State legal service).

2) **Italian Government**, represented by the President of the Council of Ministers *pro tempore*, in the role of provisional administering Government of the Free Territory of Trieste based in Piazza Colonna 370, Palazzo Chigi - 00187 Rome - presidente@pec.governo.it at the *Avvocatura dello Stato* (State legal service).

3) **Ministry of Economy and Finance**, represented by the Minister *pro tempore*, in the role of Ministry of the Government of the Italian Republic, based in Via XX Settembre 97 - 00187 Rome - mef@pec.mef.gov.it, at the *Avvocatura dello Stato* (State legal service).

4) **Ministry of Economy and Finance**, represented by the Minister *pro tempore*, in the role of Ministry of the Government of the Italian Republic provisional administering Government of the present-day Free Territory of Trieste based in Via XX Settembre 97 - 00187 Rome - mef@pec.mef.gov.it, at the *Avvocatura dello Stato* (State legal service).

5) **Tax Revenue Office**, represented by the Director *pro tempore*, Fiscal Code 06363391001 with *siège social* in via Cristoforo Colombo 426 C/D C/D 00145 Rome - agenziaentratepec@pce.agenziaentrate.it - at the *Avvocatura dello Stato* (State legal service).

6) **State Property Agency**, represented by the Director *pro tempore*, Fiscal Code 06340981007 with registered office in Via Barberini 38 - 00187 Rome - agenziademanio@pce.agenziademanio.it, at the *Avvocatura dello Stato* (State legal service).

7) **Customs and Monopolies Agency**, represented by the Director *pro tempore*, Tax Code 97210890584, with registered office in Via Mario Carucci, 71, 00143 Rome - dogane@pce.agenziadogane.it, at the *Avvocatura dello Stato* (State legal service).

8) **INPS (Italian National Institute of Social Insurance)**, represented by its President *pro tempore*, defendant only as for the verification of the impose tax burdens of the Italian Republic in the present-day Free Territory of Trieste on pensions provided, on Pension Funds, on Italian severance indemnities (*trattamenti di fine rapporto*), and on other economic performances entrusted to the INPS. Fiscal Code 02121151001, with registered office in Via Ciro il Grande 21, 00144 Rome - ufficiosegreteria.presidenza@postacert.inps.gov.it, at the *Avvocatura dello Stato* (State legal service).

- Summoneo -

Decision impugned: judgment No. 278/2020 of the Court of Appeal of Trieste, pronounced on 28.05.2020 in proceeding RG No. 139/2019 and lodged on 19.06.2020, not yet notified to the parties.

Subject: demonstration of the upper-ranking laws in force that recognize, within the Italian legal order in force, the legal status of Trieste, of its Territory and of its international Free Port, as well as providing for their provisional administration in compliance with specific international obligations of the Italian Republic and of the Italian Government.

Deadline to impugn the decision: 18 January 2021.

Value of the claim: undefinable.

I.

SYNTHESIS

This lawsuit arises from very serious and harmful violations of upper-ranking laws in force within the Italian legal order that recognize the legal status of the Territory of Trieste and of its international Free Port, as well as providing for their special administration in compliance with multilateral international obligations of the Italian Republic and of the Italian Government.

It is the obligations deriving from the establishment of the Free Territory of Trieste – *Territorio Libero di Trieste* and of its provisional regime of Government, which are both protected under clauses of international arbitration, as well as being implemented in the Italian legal order since 1947 with pre-constitutional and constitutional primacy respect to all other laws in force.

This is why, in the Italian legal order, the laws that enforce the aforementioned international obligations constitute a coherent and univocal *corpus juris* an updated, analytic review of which has been lodged in the proceeding by the claimants themselves, as Annex A6 to the Writ of Summoneo of first instance.

However, the breaches of law that give rise to this lawsuit are being justified with a contradictory collection of pseudo-legal theses created for political purposes on the grounds of false descriptions and interpretations of the provisions of law on the subject.

The enforcement of the aforementioned theses does, therefore, constitute a subversive breach of the Italian legal order and of international obligations of both the Italian Republic and of the Italian Government, as well as causing a serious and unfair damage to all those entitled with general and particular rights and interest on the subject.

Consequently, the re-establishment of the rule of law on this subject is not only a right and interest of the aforementioned persons, but also of the Italian Republic and of the Italian Government, which are also vested with the duty and authority to grant it exercising, directly, the jurisdiction that is entrusted to them.

The appellants summon before the competent Italian civil Court the Italian Government and its bodies seeking, through a legal demonstration of the legal force and primacy of the laws on the subject, the ceasing of the violations and of the damages they cause.

Indeed, this lawsuit regards very serious social and economic damages caused by the breaches of law under examination, which regard the general taxation and budget norms enforceable in Trieste, in its Territory, and in its international Free Port.

The duly enforcement of said laws in force does indeed result into a system of taxation and budget separate from that of the Italian State, and also less burdensome, because it does not include Italy's huge public debt.

Even if within the Italian civil law system the demonstration requested to the Court is as duly as it is simple, the local defenses of the summoned authorities oppose to it advocating the aforementioned political theses that subvert the rule of law, invite the Court to adhere to them, and also to "punish" with economic retaliations the claimants for pursuing a demonstration of the laws in force.

This behavior caused such an atmosphere that when it comes to trials on the subjects, the Court of Trieste has rejected the demonstration of the laws in force without examining it in first and also in second instance: the sole judge and the Court of Appeal both argued that the request brought before them lacks a different premise for it to be taken into examination.

Precisely, in first instance the sole judge argued that the claimants lack interest to act, while in second instance the Court of Appeal alleged that the Free Territory of Trieste does not have legal existence, and ultimately declared its absolute lack of jurisdiction.

The judgment of the Court of Appeal subject to this impugnation based those claims by adopting the aforementioned political theses, going as far as drawing full statements from the narrative part of a debated administrative judgment that rejected an action on a completely different topic, as well as misrepresenting the very subject of the action that was brought before it.

This falls within the scope of art. 360 paragraph 1 Nr. 1, 3 and 5 of the Italian Code of Civil Procedure, which provides the framework and the grounds to impugn a judgment, as explained in detail at section IV – Grounds of Appeal.

II.

SUMMARY OF FACTS

The Treaty of Peace between the Allied and Associated Powers with Italy, signed in Paris on 10 February 1947, provides that at its coming into force (15 September 1947), the Free Territory of Trieste - *Territorio Libero di Trieste* is established as a new, independent Sovereign State provided with an international Free Port, under the direct protection of the UN Security Council, and placed under a specific provisional regime of Government that, as for the present-day Free Territory of Trieste, is entrusted to the Government of the United States of America and to the Government of the United Kingdom of Great Britain and Northern Ireland.

The present-day Free Territory of Trieste, following the territorial changes determined by United Nations 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, consists of its original main area.

The Treaty of Peace is fully enforced and implemented in the legal order of the Italian Republic under Legislative Decree of the Provisional Head of State No. 1430/1947, ratified with Italian Law No. 3054/1952, which has pre-constitutional (art. 2 of the instrument) and Constitutional (arts. 10 first paragraph, 117 first paragraph, and 120 second paragraph of the Italian Constitution) primacy on all other laws in force.

With a Memorandum of Understanding, signed in London on 5 October 1954, the primary administering British and US Governments of the present-day Free Territory of Trieste have sub-entrusted its temporary civil administration to the responsibility of the Italian Government, which exercises it to date and under the same title through bodies and official of the Italian State.

At the same time, the primary administering Governments have sub-entrusted the military defense of the present-day Free Territory to the responsibility of NATO as part of the framework of defense of the Italian Republic, therefore, it is under this title that the Italian armed forces have substituted the British-US ones in Trieste.

The special trusteeship mandate sub-entrusted to the responsibility of the Italian Government is enforced in the legal order of the Italian Republic with the Decree of the President of the Italian Republic of 27 October 1954 (without number) and with arts. 1, 2, 4 and 70 of Italian Constitutional Law No. 1/1963, both of which provide the Italian Government with the bodies and State officials it needs to exercise it.

Indeed, ever since 1947 the Italian lawmakers recognize and enforce, through the aforementioned coherent and univocal *corpus juris*, all the international obligations of the Italian Republic and of the Italian Government respect to the Free Territory of Trieste, as well as all the consequent obligations respect to other States: the systematic review of these laws is part of the documentation of the proceeding and it constitutes a fundamental part of the Writ of Summon of first instance (as its Annex A6), and it is recalled in full for the sake of brevity.

This *corpus juris* includes also two very recent measures with which the Italian Government and the Italian Parliament have confirmed to recognize the legal status of the present-day Free Territory of Trieste: the interministerial Decree of 13 July 2017

(without number) regarding the administrative organization for the management of the free zones included within the Free Port of Trieste, and art. 1 paragraph 66 letter b) of Italian Law No. 205/2017.

This consolidated will and work of the Italian lawmakers is opposed by political circles that cause to serious breaches of the laws on the subject, and especially of the laws regarding the taxation and budgets of the Free Territory of Trieste and the management of its international Free Port.

This lawsuit requests the Italian Court to re-establish the rule of law through a legal demonstration of the legal force and primacy of the laws of the Italian legal order that regard this subject.

The Courts of first and of second instance have refused to examine and to decide in the merit of the lawsuit with reasons that have led to further actions first before the Court of Appeal and now also this action before the Court of Cassation.

III.

THE DECISION IMPUGNED

With the Writ of Summon dated 22 May 2017 the claimants summoned before the Court of Trieste the aforementioned parties for the Court to uphold the following conclusions:

“IN THE MERIT

To preliminarily verify:

a) that, to this date and on the date of the judgment, the following legal instruments of the Italian Legal System are in force: Law No. 811/1947; Legislative Decree of the Provisional Head of State No. 1430/1947; Constitution of the Italian Republic, arts. 10 first paragraph, 117 first paragraph, 120, second paragraph; Law No. 3054/1952; Decree of the President of the Republic October 27th, 1954, Constitutional Law No. 1/1963, arts. 1, 2, 4, 70.

b) the fact that those legal instruments in force in the Italian legal system establish and regulate also the implementation of international obligations of the Italian Republic and of the Italian Government towards the present-day Free Territory of Trieste, the temporary civil administration of which is entrusted, since October 5th, 1954, to the Italian Government, that exercises it to date, as well as the related obligations towards other States and the United Nations;

c) the fact that in the Italian legal system, those legal instruments in force are also the highest-ranking within the hierarchy of sources of law by virtue of an autonomous, pre-constitutional norm (art. 2 of Legislative Decree of the Provisional Head of State No. 1430/1947 ratified with Law No. 3054/1952) and by virtue of successive Constitutional principles and provisions (arts. 10 first paragraph, 117 first paragraph and 120, second paragraph of the Italian Constitution; art. 4 of Italian Constitutional Law 1/1963);

To declare:

1) the consequent, absolute lack of any title of the Italian Government, of its bodies, or of any other subject delegated by it, to establish, collect, and keep taxes and other fiscal revenues in the present-day Free Territory of Trieste, the administration of which is entrusted to the responsibility of the Italian Government, and in the international Free Port of the Free Territory of Trieste, on behalf, in the name, and in the budget of the State or of territorial public bodies or other administrative authorities (including Province and Municipalities) and concessionaires of public services of the Italian Republic.

2) the full title of the Italian Government, and of its bodies or other legal subjects it has delegated, to establish, collect, and keep, in the name, on behalf, and in the separate budget of the temporary civil administration of the present-day Free Territory of Trieste and of its international Free Port, as long as that is entrusted to their responsibility, only the taxes and other fiscal revenues envisioned or compatible with the laws in force in the Italian legal system that establish the international obligations of the Italian Republic and of its Government towards the present-day Free Territory of Trieste and their related obligations towards other States and the United Nations.

Legal expenses recast pursuant to the law.

The International Provisional Representative of the Free Territory of Trieste – I.P.R. F.T.T. and all other international subjects concerned fully reserve the right to address the authorities and recall the procedures of international law identified and established under the Treaty of Peace with Italy of February 10th, 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 possible negotiations on the matter prove to be inefficacious to protect the legitimate interests represented.

AS A PRELIMINARY AND PRECAUTIONARY MEASURE, AND POSSIBLY AS ADDITIONAL ARGUMENT IN THE MERIT

Whilst the proceedings are pending and in case the addressed authorities of the Italian Republic have not already taken care of that in self-defense, to order all procedures of enforced recovery related to this proceeding or connected with it be suspended, precisely:

a) the procedures for the enforced recovery of taxes and other revenues in the name, on behalf, and in the budget of the Italian State and of other territorial or institutional public bodies, of public authorities, and of concessionaires of public services of the Italian Republic in the present-day Free Territory of Trieste, the temporary civil administration of which is entrusted to the responsibility of the Italian Government, and in the international Free Port of the Free Territory of Trieste;

b) the procedures of the State Property Agency, or of any other public or private body, to assign, to sell, or to transfer ownership to third parties the public assets that article 1 of Annex X of the 1947 Treaty of Peace or article 2.2. of its Annex VIII, both ratified

and implemented in the Italian legal system with Legislative Decree of the Provisional Head of State 1430/1947 and with Law. 3054/1952, assign without payment to the Free Territory of Trieste and to its international Free Port, respectively;

c) the enforcement of judgments and of other legal decisions with the same rank that result to be issued by declaring those consist in the exercise of the sovereignty of the Italian Republic over the *Territorio Libero di Trieste* - Free Territory of Trieste requesting the payment of certain amounts of money, acts of seizure, or other capital requirement, that cannot be pronounced by authorities that are not legally entitled with coercive powers on the matter of assets, as established by the legal apparatus mentioned in the premises.

– Legal expenses recast pursuant to the law.”

With judgment No. 587/2018 published on 29/09/2018 the monocratic judge of first instance recognized, among other things, that *«a Court is not bound to enforce only Italian law [...] but, by virtue of the same Constitution, must also adhere to international norms and obligations to the point at times it can (and must) disapply domestic laws of the State. [...]»*, but she did also avoid to examine and to decide the lawsuit in the merit by rejecting it as inadmissible *«due to admissibility criterion, this being, the lack of an interest protectable before this Court»*, and she also ordered the claimants and the intervening parties to refund, jointly, the costs of the proceeding to the defendants.

The claimants and the intervening parties have thus impugned the judgment of first instance before the Court of Appeal of Trieste with the Writ of Summon notified on 07.03.2019, based on the following reasons:

1. The right to judicial protection granted at arts. 24 and 113 of the Italian Constitution and in the Decree of the Commissioner General of the Territory of Trieste No. 100/1955.
2. Violation of the Legislative Decree No. 1430/1947 ratified with Italian Law 3054/1952, of the Decree of the President of the Italian Republic of 27 October 1954, of Italian Constitutional Law 1/1963, arts. 1, 2, 4, 70, as well as of arts. 10 first paragraph, 117 first paragraph, and 120 second paragraph of the Italian Constitution; irremediable logical and legal contradiction.
3. Illogicality, vagueness, disregard, and radical misrepresentations of the subject of the lawsuit and of the laws the verification and enforcement of which is requested by the appellants; failure to comply with art. 23 of the Italian Constitution.
4. Violation of the pertinent, fundamental guarantees of law.

On 28 May 2020 the Formation of the Court of Second instance issued judgment No. 278/2020 published on 19.06.2020 and not yet notified, rejecting the lawsuit with this decision:

«[...] the grounds of the appeal – which, being connected, can be examined in connection – are unfounded and the impugned judgment is to be confirmed for the following reasons.

In truth, the Court considers that in this case, in view of the nature of the litigation, it is applicable an absolute lack of jurisdiction on the action brought forward, for there is no Court with the power to issue a judgment on it: indeed, it is not for the Judiciary to question how the State exercises its sovereign powers, among which there are the adherence to international treaties and matters of taxation.

The subject of the lawsuit is, indeed, the right of the Italian State to exercise its power to tax on a part of the territory that - under laws in force - belongs to the sovereignty of the Italian Republic.

Given that the justiciability of the request before the bodies that exercise the jurisdiction of the State - thus the existence of a situation legally relevant and defensible of the lack thereof - is question that requires to discuss in the merit, it is to notice that the request of the claimants assumes the existence of an international body named "Free Territory of Trieste", existence that, for many reasons, instead, is to be excluded.

As for this matter, we recall that already with judgment No. 53/1964 the Italian Constitutional Court declared the nonexistence of a sovereign State defined as Free Territory of Trieste, taking note of the two theses then envisaged, the first - favored by the Constitutional Court - according to which "Italian sovereignty over the territory of Trieste has never ended" and the second according to which "that sovereignty had been restored following the Memorandum of Understanding, immediately or gradually, through an appropriate conduct of the Italian State".

The question was then examined in deep – with a scrupulous implementation of the general principles applicable to international treaties – by judgment No. 530/2013 of the Regional Administrative Court for Region Friuli Venezia Giulia, decision favorably recalled in judgment No. 15666/2014 of the Court of Cassation, Third criminal section.

It is known that, after World War II, the territory of Trieste became a source of contention for Italy and for what then was Yugoslavia, both of which claimed sovereignty over the area.

The Treaty of Peace of Paris of 10 February 1947, in order to settle the question, envisioned at articles 21 and 22 and at annexes VI, VII, VIII, IX and X, the establishment of the Free Territory of Trieste, an independent buffer State, under guarantee of the United Nations Security Council, demilitarized and neutral, with its own Government, legislative authority, and judiciary.

As declared in the aforementioned judgment of the Regional Administrative Court for Region Friuli Venezia Giulia "an authentic interpretation of the Treaty of Peace and in particular of art. 21, as for the... principle of effectiveness, leads to conclude that the establishment of the Free Territory and the consequent transfer of sovereignty to it were conditioned, to at least the first establishing act of this Free Territory, which means, by the appointment of its Governor by the Security Council. This for evident practical reasons, since only the appointment of a Governor would make possible enforcing first the Provisional Statute and then the Permanent Statute, but also for the decisive reason that the appointment of the Governor by the Security Council would have manifested the concurrence of wills between the major Powers to enforce that part of the Treaty of Peace that established the Free Territory. However, as it is known, the appointment of the Governor did never take place, therefore the Free Territory never came into existence and there was no transfer of sovereignty to it."

After the Treaty of Peace, with a Memorandum of Understanding signed in London on 5 October 1954, the Governments of Italy, United States, and

Yugoslavia, having considered that it “proved impossible to put into effect the provisions of the Italian Peace Treaty relating to the Free Territory of Trieste”, terminated Military Government in zones “A” and “B” of the territory and defined the frontier between then Yugoslavia and Italy for the part not envisioned by the Treaty of Peace, establishing the borders between the two States as deriving from the partition of the free territory.

Italy confirmed the borders established in 1954 with many domestic and international acts, and in particular with Constitutional Law No. 1 of 1963, which established the Special Statute Region Friuli Venezia Giulia, with capital city Trieste, borders that were then confirmed with the 1957 Treaty establishing the European Community and with the Treaty of Helsinki of 1 August 1975.

Finally, with the Treaty of Osimo of 10 November 1975, concluded between Italy and Yugoslavia, the border established in 1954 was confirmed, (with some adjustments regarding the maritime border), it was decided that the Memorandum of Understanding of London and its annexes ceased to have effect, and Italy and Yugoslavia officially incorporated the zones (zone “A” and zone “B” respectively) previously under provisional administration; this is how it was ultimately ruled the non-existence of a State named “Free Territory of Trieste”, so much so that, following the request of the Permanent Delegates of Italy and of Yugoslavia, in June 1977 the UN Security Council removed from the items on its agenda the related question, and also the appointment of the Governor.

No violation of the right to judicial protection granted by arts. 23 and 113 of the Italian Constitution has taken place in this proceeding.

As for the corpus juris that the appellants consider to be violated, in this instance it is enough adding that, as for Legislative Decree No. 1430/1947 (ratified with law No.3054/1953), the Treaty of Paris was overridden by successive international Treaties, and, as for the Decree of the President of the Italian Republic of 27 October 1954, with which was appointed a Commissioner General for the F.T.T., that such body was an emanation of the Italian State, and not the Governor of a different, autonomous political entity; furthermore, the authentic interpretation of art. 70 of Constitutional Law No. 1/1963 has been offered by the Constitutional Court in the aforementioned judgment No. 53/1964; also, the deductions of the appellant regarding – once again based on the premise of the existence of the F.T.T. as an autonomous sovereign State – the alleged violation, by the Italian State, of art. 23 of the Italian Constitution, which envisions the principle of reservation of law on tax matters are equally ungrounded.

Finally, also to provide a better understanding of the event to the many subjects who decided to join this lawsuit, the Court considers that it is appropriate repeating here, once again, that in international law there is a general principle, named principle of effectiveness, in accordance with which the international subjectivity of a State depends on the effective exercise of government powers by its own State bodies, which leads to acquire territorial sovereignty, with exclusive exercise of Government power.

The principle applies also to the matter of extinction and amendment of international treaties, given that, as affirmed in the aforementioned judgment by the Regional Administrative Court for Friuli Venezia Giulia, “...the abstract prevision of a treaty must meet reflection in the real world, otherwise as time goes it loses its efficacy, allowing for both to disregard of the Treaty itself or to amend it”.

The same principle meets need for the state of the law to adapt to the state of things as time goes by; this is how this very litigation - 45 years after the Treaty of Osimo, in view of a solid organization of the State, and of a pacific exercise of sovereignty by the Italian State within its own borders - has no reason to exist, other than lacking any grounds.

All remaining question are to be excluded.

[...]

For these reasons

The Court of Appeal of Trieste, First Civil Section, ultimately ruling for the appeal brought forward against judgment No. 587/2018 of the Court of Trieste, disregarding any opposite or different question, exception, and deduction:

- 1 – rejects the appeal brought before it and thus confirms the judgment impugned;
- 2 – condemns the appellants to refund, jointly, the expenditures of the proceeding of second instance to the defendants, amounting to a total of € 21.816,00 for the parties defended by the State's Legal Service and to a total of € 13.635,00 for the National Institute of Social Insurance;
- 3 - recognized to the appellants the premises at art. 13, 1 quater of the Decree of the President of the Republic No. 115/2002.».

IV.

GROUNDS OF APPEAL

1. Synthesis.

The grounds of appeal provided at art. 360 of the Italian Code of Civil Procedure, explained in detail in the following paragraphs, do mainly consists of a sequence of errors of law, in particular, breaches and inappropriate enforcement of upper-ranking laws in force within the Italian legal order that establish the relations of the Italian Republic and of the Italian Government with the administered present-day Free Territory of Trieste.

Since the Court of Appeal has adopted those mistakes from a debated administrative judgment without a preliminary verification of the letter of the laws concerned, they may be also regarded as factual errors, and are disputed as such in a parallel instance for annulment brought ex art. 395 No. 4 of the Italian Code of Civil Procedure.

2. Explanation of the reasons.

The following review of the reason of appeal follows as closely as possible the exposition order of the judgment impugned.

a. prejudicial refusal of the Court to express itself on a subject on which it has full decisional authority (art. 360, paragraph 1, No. 1 of the Italian Code of Civil Procedure).

In the impugned judgment, the Court anticipates, even before listing its reasons to avoid examining the lawsuit in the merit, the prejudicial claim that said examination would end with a declaration of absolute lack of jurisdiction anyways.

For this purpose, the judgment claims that «there is no Court with the power to issue a judgment on it: indeed, it is not for the Judiciary to question how the State exercises its sovereign powers, among which there are the adherence to international treaties and matters of taxation» and that the subject of the lawsuit puts into question «the right of the Italian State to exercise its power to tax on a part of the territory that - under laws in force - belongs to the sovereignty of the Italian Republic».

It is claims that constitute a surreptitious misrepresentation of the subject of the lawsuit, which requests that the Italian Court demonstrates and enforces upper-ranking laws in force within the Italian legal order, laws that establish in themselves the enforcement of treaties about sovereignty, rights, and obligations of the State.

The subject of the lawsuit does in no way request the Court to substitute or to dispute the will of lawmakers, rather, it requests it to demonstrate it and to enforce it by virtue of the ordinary decisional competences that are vested upon it.

b. failure to examine facts that were discussed by the parties, despite their decisive nature as for the outcome of the lawsuit (art. 360, paragraph 1, No. 5 of the Italian Code of Civil Procedure).

The motivation of the impugned judgment claims, against the truth, that with its judgment No. 53/1964 the Italian Constitutional Court «declared the nonexistence of a sovereign State defined as Free Territory of Trieste, taking note of the two theses then envisaged [...]».

This statement suggest that, at the moment of the decision, the Formation of the Court avoided to examine the letter of the judgment invoked, because the Italian Constitutional Court does not claim that the Free Territory of Trieste does not exist, rather, it declares that it won't express itself about it: «The Court does not consider it necessary, for the purposes of this legal action, analyzing and punctually solving the questions of international law opened by the interpretation of art. 21 of the Treaty of Peace [...]».

c. failure to examine facts that were discussed by the parties, despite their decisive nature as for the outcome of the lawsuit (art. 360, paragraph 1, No. 5 of the Italian Code of Civil Procedure).

The reasons of the impugned judgment claim that «The Treaty of Peace of Paris of 10 February 1947 [...] envisioned at articles 21 and 22 and at annexes VI, VII, VII (sic), IX and X, the establishment of the Free Territory of Trieste», and by doing so, for the purposes of the decision, it avoids to examine all other articles and annexes of the Treaty of Peace that establish and provide for the present-day Free Territory of Trieste.

This suggest that the Formation of the Court avoided to examine, for the purposes of its decision, not only the letter of that multilateral Treaty, which is an upper-ranking law in force within the Italian legal order, but also the documentation of the proceeding that clearly invokes all pertinent provisions on the matter as evidences that support the request of the claimants. The decisive norms that the Court avoided to examine are, in particular:

- art. 4 which establishes the border between Italy and the Free Territory of Trieste;

- art. 5, which establishes the procedures to fix the new borders;
- art. 48.5, regarding the existing and the new Italian military naval installations, which shall not stretch in the coastal area within 15 miles from the new maritime borders;
- art. 78.7, regarding Italy's responsibility for loss or damage sustained during the war by property in ceded territory or in the Free Territory of Trieste belonging to United Nations nationals;
- art. 79.6.g), regarding compensations for damages to properties of either natural person or of corporations or associations having *siege social* in the Free Territory of Trieste;
- arts. 86 and 87, which subtract to the jurisdiction of domestic Courts all questions arising from the interpretation of the Treaty;
- Annex I D, which contains the maps regarding the border of the Free Territory of Trieste with Italy (Articles 4 and 22 of the Treaty itself);
- Annex VIII, which establishes and regulates the international Free Port of Trieste as State corporation of the Free Territory of Trieste.

d. error of law (art. 360, paragraph 1, No. 3 of the Italian Code of Civil Procedure); failure to examine facts that were discussed by the parties, despite their decisive nature as for the outcome of the lawsuit (art. 360, paragraph 1, No. 5 of the Italian Code of Civil Procedure).

The reasons of the impugned judgment claim, against the truth, that *«the establishment of the Free Territory and the consequent transfer of sovereignty to it were conditioned, to at least the first establishing act of this Free Territory, which means, by the appointment of its Governor [...] since only the appointment of a Governor would make possible enforcing first the Provisional Statute and then the Permanent Statute [...] therefore the Free Territory never came into existence and there was no transfer of sovereignty to it.»*

The Treaty of Peace, which is an upper-ranking law in force within the Italian legal order, does in no way subject the establishment of the Free Territory of Trieste to the appointment of its Governor, and its provisional Regime (not Statute) enforces also all compatible norms of the Permanent Statute.

Indeed, at its art. 21 the Treaty rules the immediate and unconditioned establishment of the Free Territory of Trieste - recognized by the Allied and Associated Powers as well as by Italy - and the end of Italian sovereignty over it at the coming into force of the Treaty itself, as well as ruling the application of the Provisional Regime of Government provided at its Annex VII, entrusting it to the Allied Commands until the appointment of the Governor, for which there are no time limits (art. 1), as well as allowing (art. 2, fourth paragraph) that all compatible norms of the Permanent Statute, provided art Annex VI, be enforced as well.

Furthermore, this implies that, for the purposes of its decision, the Formation of the Court avoided also the examination of the main instruments of law, invoked and detailed in the documentation of the proceeding, because they support the requests of the complainants by confirming the effectiveness and the legal efficacy of the

aforementioned provisions of the Treaty due to them being implemented since its very coming into force. These provisions are, in particular:

- Proclamation No. 1 of 15.9.1947 with which the Allied Military Government declares the establishment of the Free Territory of Trieste in compliance with art. 21 of the Treaty of Peace and takes office as its first Government of State with «*all powers of Government and administration in that Zone [...] as well as jurisdiction over its inhabitants*» in order «*to implement the provisions of the Treaty of Peace*», and, in particular, art. 21, art. 2 of Annex VI, and art. 1 of Annex VII (despite being crystal clear, the Proclamation was lodged in the proceeding also by the lawyers that defend the resisting INPS).
- Decree of the President of the Italian Republic 13 December 1948 No. 1630 – Approval of the State agreements concluded «*between the British-United States Military Command with functions of Government in the relevant Zone of the Free Territory of Trieste*» to «*put into execution the clauses of the Treaty of Peace signed in Paris on 10 February 1947*», whereas «*said Treaty came into force on 15 September 1947*» and that «*within the meanings of art. 21, the Free Territory of Trieste is constituted from that date and the instrument for the provisional regime, as in annex VII of the Treaty has come in force*» and that «*in the sense of art. 1 of that Annex, pending assumption of office by the Governor, the Free Territory shall continue to be administered by the Allied Military Commands, within their respective zones*».
- the Memorandum of Understanding of London of 5 October 1954 – *Memorandum of Understanding (with annexes and exchange of notes) regarding the Free Territory of Trieste*, as approved by the Italian Parliament and as published in the Official Bulletin of the Ministry of Foreign Affairs No. 1/1955.
- Decree of the President of the Italian Republic 27 October 1954 (without number) which, in compliance and enforcement of the Memorandum of Understanding of London, appoints a «*Commissioner General of the Government for the territory of Trieste, under the direct authority of the President of the Council of Italian Ministers, entrusted with the same powers assigned to the Government for the purposes of the administration of the same territory, and also its the powers previously exercised by the former Allied Military Government*».
- the consequent, official communication dated 17.1.1955 addressed to the United Nations, with which the Italian Observer and the Representatives of the United Kingdom, of the United States, and of Yugoslavia inform the Security Council of the transition to civil administration occurred on 26 October 1954 in compliance with the Memorandum of Understanding, as well as of the fact that on the same day, the Italian Government established a specific «*civilian government under a Commissioner General (Commissario generale)*» and that the Yugoslav party had «*similarly replaced military by civilian administration in the area which it administers*».
- Italian Constitutional Law No. 1/1963 which, at art. 70 splits the exercise of the powers of the Commissioner General between the newly established Commissioner in Region Friuli Venezia Giulia, Prefect, and the Region itself.
- with the interministerial Decree of 13 July 2017 - Administrative organization for the management of the free zones of the Free Port of Trieste (Official Gazette of 31 July 2017, No.177), issued by the Italian Ministry of Infrastructures and Transport together

with The Italian Ministry of Economy and Finance in compliance with of article 6, paragraph 12, of the Italian Law No. 84 of 28 January 1994 (see above at point L.4.) and of 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*».

– art.1. paragraph 66, letter b. of Law No. 205/2017, which amends paragraph 618 of art. 1 of Law 190/2014 subordinating it to the enforcement and application «*of the Treaty of Peace between Italy and the Allied and Associated Powers signed at Paris on 10 February 1947, enforced with Legislative Decree of the Provisional Head of State No. 1430 of 28 November 1947, ratified with Italian Law No. 3054 of 25 November 1952*».

e. error of law (art. 360, paragraph 1, No. 3 of the Italian Code of Civil Procedure).

The reasons of the impugned judgment claim, against the truth, that «*After the Treaty of Peace, with a Memorandum of Understanding signed in London on 5 October 1954, the Governments of Italy, United States, and Yugoslavia [...] defined the frontier between then Yugoslavia and Italy for the part not envisioned by the Treaty of Peace, establishing the borders between the two States as deriving from the partition of the free territory.*».

Instead, the 1954 Memorandum of Understanding serves for the establishment of sub-mandates of temporary civil administration of the Free Territory of Trieste by the primary Governments established with the Treaty of Peace, and it does not define borders between Italy and Yugoslavia.

In that claim, the judgment mixes up the provisions of the quadrilateral 1954 Memorandum of Understanding with the different provisions of the 1975 bilateral Italian-Yugoslav Treaty “of Osimo” (see following point “i”).

f. error of law (art. 360, paragraph 1, No. 3 of the Italian Code of Civil Procedure); failure to examine facts that were discussed by the parties despite their decisive nature as for the outcome of the lawsuit (art. 360, paragraph 1, No. 5 of the Italian Code of Civil Procedure).

The reasons of the impugned judgment claim, against the truth, that the «Commissioner General for the F.T.T.» appointed with the Decree of the President of the Italian Republic of 27 October 1954 due to being «an emanation of the Italian State» was not «the Governor of a different, autonomous political entity».

This is an error of law, which suggests that the Formation of the Court avoided to examine the clear documental references lodged in the proceeding and the main acts that prove the opposite of that and support the requests of the claimants, and in particular:

– the Decree of the President of the Italian Republic of 27 October 1954 (without number) that, in compliance with the Memorandum of Understanding of London, appoints a «*Commissioner General of the Government for the territory of Trieste, under the direct authority of the President of the Council of Italian Ministers, entrusted with*

the same powers assigned to the Government for the purposes of the administration of the same territory, and also its the powers previously exercised by the former Allied Military Government».

– the consequent, official communication dated 17.1.1955 submit to the United Nations, with which the Italian Observer and the Representatives of the United Kingdom, of the United States, and of Yugoslavia inform the Security Council of the transition to civil administration occurred on 26 October 1954 in compliance with the Memorandum of Understanding, as well as of the fact that same day, the Italian Government established a specific «*civilian government under a Commissioner General (Commissario generale)*» and that the Yugoslav party had «*similarly replaced military by civilian administration in the area which it administers*».

This does once again suggest that the Formation of the Court avoided to examine the very judgment No. 53/1964 of the Constitutional Court it has recalled, although erroneously, to justify its own decision (see above at point “b”).

Indeed, in that judgment the Constitutional Court expresses itself on the fact that, following the Memorandum of Understanding of London, «*[...] the powers exercised through a Commissioner General of the Government in the zone that came under Italian administration are connected (or constituted a continuation) to those exercised by the Allied Military Commands [...] in accordance with art. 1 of the “Instrument for the Provisional Regime of the Free Territory of Trieste”, annexed to the Treaty itself, which does indeed establish that “pending assumption of office by the Governor, the Free Territory shall continue to be administered by the Allied military commands within their respective zones.”. These are the framework conditions under which considering the particular nature and extension of the powers of the Commissioner General of the Government and in particular the legislative powers: continuation of the powers previously exercised by the Allied Commands.*».

g. errors of law (art. 360, paragraph 1, No. 3 of the Italian Code of Civil Procedure).

The reasons of the impugned judgment claim, against the truth, that «Italy confirmed the borders established in 1954 with many domestic and international acts, and in particular with Constitutional Law No. 1 of 1963, which established the Special Statute Region Friuli Venezia Giulia, with capital city Trieste, borders that were then confirmed with the 1957 Treaty establishing the European Community and with the Treaty of Helsinki of 1 August 1975.».

This is four different, mutually connected and related errors of law:

- with the first claim, the Formation of the Court repeats the error of law about the non-existing 1954 establishment of borders (see above at point “e”);
- Italian Constitutional Law No. 1/1963, published on the Italian Official Gazette No.29 of 1 February 1963, does not contain (and could not contain) confirmation of those alleged borders, what it contains is an explicit mention (arts. 1 and 4) of the legal, international, and Constitutional obligations of the State, as well as to the clear distinction between the Constitutional territory of the Italian Republic (art. 1) and the Municipalities of the administered Free Territory (art. 2), to which, therefore, it was necessary extending the Italian Constitutional Law by publishing it on the Official

Bulletin of the Commissioner General of the Italian Government for the Territory of Trieste No.7 of 11 March 1963;

– the 1957 “Treaty establishing the European Community”, which, in truth, is the Treaty establishing the European Economic Community (EEC Treaty), ratified and enforced within the Italian legal order with Italian Law 1203/1957, not only that doesn’t mention these alleged borders, but art. 234 it recognizes the primacy of the obligations of the Signatory States arising from agreements concluded before 1 January 1958, as is the Treaty of Peace in question; the provision is repeated and confirmed within Community law and within the Italian legal order in force by articles 307 TEC and 351 TFEU;

– the “Treaty of Helsinki of 1 August 1975”, which in truth is the Final Act of the Conference on Security and Co-operation in Europe, does not confirm the aforementioned alleged 1954 borders, rather, it confirms the fulfillment in good faith of international obligations, and also the respect of sovereignty and borders: when it comes to Trieste, this refers to the obligations and the borders established with the 1947 Treaty of Peace (and cannot, not even chronologically, be confused with the successive provisions of the 1975 Treaty called “of Osimo”, which came into force in 1977: see following point “i”).

h. failure to examine facts that were discussed by the parties, despite their decisive nature as for the outcome of the lawsuit (art. 360, paragraph 1, No. 5 of the Italian Code of Civil Procedure).

The reasons of the impugned judgment claim, in an apparent argument supporting the aforementioned error of law regarding Italian Constitutional Law No. 1/1963, that «the authentic interpretation of art. 70 of Constitutional Law No. 1/1963 has been offered by the Constitutional Court in the aforementioned judgment No. 53/1964.»

This once again suggests that the Formation of the Court avoided to examine the very judgment of the Constitutional Court it invokes, because, in truth, what that decision declares on the matter is that:

«The provisions of that articles must be interpreted, as obvious, within the system of the Statute, and they lead to the transfer of the administrative powers of the Commissioner General of the Government to the Commissioner of the Government for the Region, to the Prefect, and to the Region according to the competences vested on each of them, as established by the regional and by the State’s legal order. [...]. With this, the peculiarity of the situation of Trieste’s territory is recognized also by the special Statute. [...] The interpretation to be given [...] to art. 70 leads to the view – regardless to the absence of an explicit confirmation thereof –, that the extra ordinem nature of the regime of the Territory of Trieste is recognized and, to the extent necessary, confirmed by the Constitutional lawmaker; that, rather, under the profile of a particular administration, it is indeed confirmed as well.»

i. errors of law (art. 360, paragraph 1, No. 3 of the Italian Code of Civil Procedure).

The reasons of the impugned judgment claim, against the truth, that «with the Treaty of Osimo of 10 November 1975, concluded between Italy and Yugoslavia, the border established in 1954», that «it was decided that the Memorandum of Understanding of London and its annexes ceased to have effect, and Italy and Yugoslavia officially

incorporated the zones (zone “A” and zone “B” respectively) previously under provisional administration» and that «this is how it was ultimately ruled the non-existence of a State named “Free Territory of Trieste”, so much so that, following the request of the Permanent Delegates of Italy and of Yugoslavia, in June 1977 the UN Security Council removed from the items on its agenda the related question, and also the appointment of the Governor.».

These are the following errors of law, related and derived from one another:

- with the first claim, the Formation of the Court repeats, for the third time, the error of law regarding the non-existing 1954 establishment of borders (see above at point “e”);
- in truth, the 1975 Treaty “of Osimo” between Italy and Yugoslavia did not cause (and could not cause) the inefficacy of the 1954 Memorandum of Understanding, as it could not cause the non-existence of the Free Territory of Trieste, or the annexation of its two administration zones - in breach of the multilateral 1947 Treaty of Peace - to the two States that signed it.

The instrument is the “*Traité pour la délimitation de la frontière pour la partie non indiquée comme telle dans le Traité de paix du 10 février 1947 (avec annexes, échanges de lettres et acte final)*”, made in Osimo (Ancona) on 10 November 1975, but ratified with Italian Law No. 73/1977, as a bilateral political convention that, by its own nature, does only give rise to obligations for the two signatory States.

Indeed, it conforms to the generally recognized provisions of international law (art. 10 of the Italian Constitution), as consolidated with the Vienna Convention on the Law of Treaties, undersigned by Italy on 22 April 1970, which is also ratified and implemented in the Italian legal order as Law of the State with law No. 112/1974 and does clearly prevent the possibility to invoke as an amendment or annulment of a treaty a successive agreement among parties that are not all the parties of the earlier treaty (art. 30).

It follows that the bilateral Italian-Yugoslav convention does not (and could not) have legal effects on the multilateral 1947 Treaty of Peace, on the consequent obligations of the two States respect to the other parties, or on the consequent rights and obligations of other States - including the Free Territory of Trieste - and this is why none of them is mentioned in that convention.

Its aforementioned limits of efficacy are as well explained at its art. 7: «*A la date de l'entrée en vigueur du présent Traité, le Memorandum d'Accord de Londres du 5 octobre 1954 et ses annexes cessent d'avoir effet dans les relations entre la République Italienne et la République Socialiste Federative de Jugoslavie.*».

This means that the efficacy of the proposed establishment of borders is a mere convention in the acts that regard the relations between the two States, and it does not have effects in international law or in their own domestic law, since it cannot dismantle or abolish their multilateral obligations established by the Treaty of Peace and by the Memorandum of Understanding of London.

It follows that this partial invocation of the law, as proposed in the impugned judgment, is simultaneously constituting the subject and the source of an evident error of law.

– the assumption that the removal of the appointment of the Governor from the list of matters of which the UN Security Council is seized can abolish the provisions that establish the Free Territory of Trieste, namely UNSC Resolution S/RES/16 (1947), the 1947 Treaty of Peace, constitutes a double mistake.

In particular, the appointment of the Governor is irrelevant for the legal existence of the Free Territory of Trieste (see above at point “d”), and the UNSC agenda is only a political list of urgent matters of discussion, and as such it has no legal effects. The fact that the appointment of the Government can be re-included in it is also confirmed, once again, by the UN Security Council and Political Committees Division with its note PO 210 PI issued on 20 May 1983, six years after the coming into force of the bilateral Italian-Yugoslav Treaty.

j. error of law (art. 360, paragraph 1, No. 3 of the Italian Code of Civil Procedure); lack of jurisdiction (art. 360, paragraph 1, No. 1 of the Italian Code of Civil Procedure).

At this point, the reasons of the impugned judgment claim, against the truth, that this situation does not give rise to a breach of the *corpus juris* that enforces the Treaty of Peace in the Italian Legal Order, where that is implemented under Legislative Decree of the Provisional Head of State No. 1430/1947, ratified with Law No. 3054/1952, because «the Treaty of Paris was overridden by successive international Treaties.»

This claim represents an error of law that sums up all other errors and omissions already examined at points “b” to “i” for the reasons already described above, as well as being vitiated by lack of jurisdiction.

Indeed, as claimed in the impugned judgment itself at point “a”, although for the different purposes analyzed above, the powers of jurisdiction of the State do not go as far as to proclaiming the expiring of international treaties signed by the State itself.

k. error of law (art. 360, paragraph 1, No. 3 of the Italian Code of Civil Procedure); failure to examine facts that were discussed by the parties, despite their decisive nature as for the outcome of the lawsuit (art. 360, paragraph 1, No. 5 of the Italian Code of Civil Procedure).

Finally, the reasons of the judgment claim, against truth, that this legal dispute «has no reason to exist, other than lacking any grounds» due to the principle of effectiveness, because the Italian State has allegedly obtained territorial sovereignty over Trieste by plainly and uninterruptedly exercising it with its bodies, while the Treaty of Peace was never enforced, thus rendering it a mere «abstract prevision» that is not met in the real world.

Essentially, the judgment claims that the Italian administration of Trieste is instead some kind of occupation with no legal title, and as such it constitutes a breach of both the Treaty of Peace and the Memorandum of Understanding of London, yet, that as such it is a change in circumstances that has determined legal effects on the subject of sovereignty and consequently also on national borders.

This constitutes an error of law under two perspectives.

First and foremost, it is an error under the generally recognized provisions of law (art. 10 of the Italian Constitution), as consolidated with the Vienna Convention on the Law of Treaties, undersigned by Italy on 22 April 1970 and then ratified and enforced within the Italian legal order as Law of the State with law No.112/1974.

The Convention openly prohibits to invoke, as ground for the amendment of expiring of a Treaty, the facts that is violated (*pacta sunt servanda*) or any instrument of domestic law (art. 27), and it does also prohibit (art. 62.2) that one of the parties invokes a fundamental change in circumstances as ground for terminating or withdrawing from a treaty that establishes a border, including if that fundamental change derives from a breach committed by the invoking party - either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Secondly, it is an error in view of the whole *corpus juris* that, ever since 1947, enforces the provisions of law that establish the Free Territory of Trieste within the Italian legal order, which is lodged and invoked in full within the documentation of the proceeding, as well as being confirmed, once again, by successive legal measures (2017) issued by two of the summoned parties - the Italian Government and the Ministry of the Economy and Finances -as well as by the Italian Parliament, of which the impugned judgment avoids any examination.

In particular, said measures are:

– the interministerial Decree of 13 July 2017 - Administrative organization for the management of the free zones of the Free Port of Trieste (Italian Official Gazette No. 177 of 31 July 2017), issued by the Italian Ministry of Infrastructures and Transport together with The Italian Ministry of Economy and Finance in compliance with of article 6, paragraph 12, of the Italian Law No. 84 of 28 January 1994 (see above at point L.4.) and of 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*».

– art. 1. paragraph 66, letter b, of Italian Law No. 205/2017, art.1. paragraph 66, letter b. of Law No. 205/2017, which amends paragraph 618 of art. 1 of Law 190/2014 subordinating it to the enforcement and application «*of the Treaty of Peace between Italy and the Allied and Associated Powers signed at Paris on 10 February 1947, enforced with Legislative Decree of the Provisional Head of State No. 1430 of 28 November 1947, ratified with Italian Law No. 3054 of 25 November 1952*».

And this is the ultimate proof of the fact that the Italian Government does effectively administer Trieste since 1954 – through bodies and officials of the Italian State available for this purpose – but it does not do so *de facto*, or with no legal title, rather, it does so *de jure*, as it does it under specific instruments of international law that are implemented in the Italian legal order in force, the full effectiveness, to date, is demonstrated by the very Italian administration.

For the reasons expressed above, the appellants

REQUEST

that the honorable Court of Cassation sets aside judgment No. 278/2020 of the Court of Appeal of Trieste, issued on 28 May 2020 and published on 19 June 2020 in proceeding RG No. 139/2019, reinstating the proceeding before the same Court of Appeal, ordering the resisting parties to pay the costs of the proceedings and the fees of the lawyer in all instances of judgment.

DOCUMENTATION ATTACHED:

When this appeal is lodged, the following documentation is attached to it:

1. Authentic copy of the appeal notified digitally (together with the mandates) in both forms **(a)** scan of the act upon manual signature, and **(b)** direct copy of the original pdf document, digitally signed by the Lawyer with the CADES system, together with the acknowledgments of receipt, copy of the PEC (certified email) with which it was sent, a copy of the receipts of acknowledgement and receipt, all of this certified as identical to the digital copies;
2. Original appeal, signed manually, as submit via email, with all certificates;
3. Original mandates, as signed on 18 January 2021 and notified with the appeal;
4. Authentic copy of the judgment impugned: No. 278/2020 of the Trieste Court of Appeal;
5. Seven copies of the impugned judgment.
6. Seven copies of the scan of the appeal as digitally notified.
7. The party's files with the documentation of the proceedings in first and second instance.
8. Request to submit the Court's own case file.

Acts and documents on which the appeal is grounded (art. 369 No. 4 of the Italian Code of Civil Procedure):

Files with the documentation of the proceedings in first and second instance (all parties).

Trieste, 18 January 2021

[signatures: omissis]

MANDATES:

[omitted in this English translation]

ACKNOWLEDGEMENTS OF RECEIPT:

[omitted in this English translation]