Avv. Walter Zidarich
Via San Francesco 11, 34133 - Trieste; tel. e fax: 0402410914
e-mail: zidarich@tiscali.it - p.e.c. walter.zidarich@pectriesteavvocati.it

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

WRIT OF SUMMON FOR ANNULMENT
ex art. 395, No. 4, and following, Code of Civil Procedure
of judgment No. 278/2020 published on 19/06/2020
in proceeding RG No. 139/2019
with requests to suspend its effects
and the terms to impugn it before the Italian Court of Cassation

[SG/2020/LC/WS-IV-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 of 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* Mr. 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 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

[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 n. 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, n. 21, 00144 Rome - ufficiosegreteria.presidenza@postacert.inps.gov.it, at the *Avvocatura dello Stato* (State legal service).

- Summoned -

All of them being parties involved in judgment No. 278/2020, published on 19.06.2020 by the Court of Appeal of Trieste as part of proceeding RG No. 139/2019 and the subject of this application for annulment.

F A C T

With their Writ of Summon of 22 May 2017 the claimants summoned the defendant before the Court of Trieste for them to accept 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 decide to hear and 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 articles 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 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 adhesion 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, VII, 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.»

L A W

Grounds for annulment
ex art. 395, No. 4, and following, Code of Civil Procedure

1. Synthesis.

In short, both the Court of First Instance and the Formation of the Court of Second Instance have rejected the request without examining or expressing themselves in the merit of the lawsuit claiming a lack of decisive elements, but each on different grounds.

The Judge of First Instance avoided to examine and to express herself in the merit claiming the appellants lack interest in bringing proceedings.

The three Judges of Second Instance did not share the view of the Judge of First Instance, but they did as well avoid to examine and to express themselves in the merit of the lawsuit by declaring the lack of the premise consisting in the legal existence of the *Territorio Libero di Trieste* – Free Territory of Trieste as source of the claimed rights. Secondarily, they declared to lack jurisdiction on the case referred.

Therefore, the main foundation of the decision of the Formation of the Court results to be the necessary logical and legal premise of the truthfulness of the facts that allegedly provide the evidence of the professed legal non-existence of the Free Territory of Trieste, as well as the alleged lack of jurisdiction.

However, those decisive facts, stated to be true and regarding both questions, result to be disproven by evidences that are to be found immediately within the documentation of the case, hence proving a manifest lack of preliminary reviews of the acts as for the truthfulness of the facts used to form the judgment of second instance.

It follows that the judgment of second instance is based on factual errors that are its necessary legal and logical premises, and, as such, constitute ground to seek the

annulment of the judgment under art. 395, No. 4 of the Italian Code of Civil Procedure, prescinding from the grounds for impugnation in third instance before the Italian Court of Cassation.

In addition, it results that the factual errors revolving on the legal existence of the Free Territory of Trieste are mainly extrapolated – and clearly without prior verification of their truthfulness or lack thereof – from those committed in a deceptive administrative judgment of the TAR FVG - Regional Administrative Court for Friuli Venezia Giulia (No. 530/2013) which, inexplicably, the Formation of the Court decided to apply instead of the law.

Consequently, it is also evident that this choice, an improper imitation of the Anglo-Saxon common law systems, subverts the fundamental principles of the Italian civil law system, which binds ordinary Courts to review and apply the law directly, and does not allow for the application of precedent cases (even less so when they are regard Administrative Courts).

This radical fault caused to the legal system is, however, a contextual and additional fault of the judgment of second instance and, for its nature, it is among those to be discussed upon ordinary impugnation before the Italia Court of Cassation (Third instance of judgment), not so to enter an application for annulment under Art. 395, No. 4. of the Italian Code of Civil Procedure as this one.

2. Configuration of a factual error suitable for an application for annulment.

Civil lawsuits have, by their nature, the purpose of defending rights and interests (art. 24, 1st paragraph of the Italian Constitution, art. 2907, 1st paragraph of the Italian civil code, art. 99 of the Italian Code of Civil Procedure) that are based on facts.

Consequently, the correct, preliminary assessment of the truthfulness of the facts is the necessary and preliminary condition for the Court to decide, having given the correct interpretation and application of the substantial law that is to be enforced in the case.

It follows that a Judge’s error in the dutiful, preliminary assessment of the truthfulness of the facts involved justifies, in itself, the application for annulment envisioned at art. 395, No. 4, Italian Code of Civil Procedure, also prescinding from other, different errors in the enforcement of substantial law, which is reserved to ordinary impugnation procedures.

By virtue of this very unicity, however, the extraordinary procedure of the annulment for a factual error (which does also apply to the judgments of the Court of Cassation under art. 391 bis of the Italian Code of Civil Procedure) does not admit broad interpretations.

Art. 395, n. 4, of the Italian Code of Civil Procedure does therefore limit the relevance and decisiveness of a factual error that justifies an application for annulment of a

judgment to the case in which the decision of the Court is based on the assumption of the truthfulness of a fact the truthfulness of which, instead, is indisputably excluded, meaning or on the non-existence of a fact the truthfulness of which is positively established, unless the fact itself constituted a point of contention to be settled in the judgment itself;

Consequently, the solution offered by the application for annulment does not apply to errors regarding the criteria adopted to evaluate a fact, but only to factual errors as they are defined, meaning, when the Court, in issuing its decision, did not examine the elements constituting the fact, and, therefore, failed to express itself on its truthfulness or lack thereof.

In other words, the factual errors as envisioned at art. 395, n. 4 of the Italian Code of Civil Procedure constitutes in a false perception of reality, and must consist in the affirming, positively or negatively, of a fact, whereas such claim conflicts with the evidences presented in the proceeding, thus with what results directly from the documents brought before the Court itself, and can therefore be factually identified by a mere, simple, and dutiful preliminary review of the acts about the truthfulness of that same fact.

Therefore, a factual error that justifies this application for annulment couldn't regard – by its own definition – evaluations of the conceptual content of the theses of the parties as they are represented in the documentation of the case, since legal arguments do not constitute "facts" under art. 395, No. 4, and their evaluation cannot give raise to errors of perception, but to legal errors as part of the actions of evaluation and interpretation of the Court.

So, in view of how a factual error defined at art. 395, n. 4 of the Italian Code of Civil Procedure, meaning, as an error of perception committed by a Judge or by a Formation of the Court, resulting from the content of the acts or of the document in the case file, it is equally impossible identifying as such with respect to acts or document that were not part of the legal action, and applications seeking the annulment of a judgment do not allow for the submission of new document to demonstrate the existence of a factual error that justifies this application for annulment.

In order to constitute ground for the annulment of a judgment, a factual error, as defined by the law, must as well prove to be decisive, for it must constitute an essential, fundamental ground of the judgment subject to the application for annulment. It follows that there must be a necessary causal link between the wrong assumption of the Judge of the Formation and the decision issued by the Court.

Furthermore, said causal link between the factual error and the decision of the Court – in the verification of which consists the evaluation of the fundamentality and decisiveness of the factual error that justifies this application for annulment– is not a causal relationship between historical facts, because it is of logical and legal nature, and this is another element that differentiates factual error, as a ground for an application for

annulment, from an error of judgment that, instead, would require the ordinary impugnation of the Court's decision.

Indeed, this means that the application for annulment does not revolve on establishing if, factually, the Court in charge of the decision would have issued a different judgment had they not committed the factual errors, rather, it revolves on deciding if the judgment should have been different, had that error not been committed, for mere logical and legal reasons.

So is the case of the judgment subject to this application, since the decision against the appellants is completely based on a sequence of manifest factual errors, immediately and perfectly defined as such under art. 395, n. 4, Italian Code of Civil Procedure by the very nature of the subject of the lawsuit.

Because the subject of the lawsuit consists in the demonstration of the laws that recognize, within the Italian legal order in force, the legal existence of the present-day *Territorio Libero di Trieste* - Free Territory of Trieste, sub-entrusted to the temporary civil administration of the Italian Government, and the protection of the consequent rights.

It follows that the facts that are to be reviewed to prove the rights the protection of which is requested by the appellants do not consist in events or documentation presented by the parties, both of which could be sources of uncertainties or discussions.

Instead, those facts consist exclusively in the objective content of certain Italian laws in force – which are manifest for their own nature – thus the sole evidence of them is the published letter of the same laws, which judges, as such, are bound to know and to enforce. Also, the laws recalled for the purpose are all punctually recalled and explained by the appellants in the documentation of the case, thus are recalled in full in this application.

Consequently, in this lawsuit, the preliminary review of the truthfulness of the facts relevant to form the decision does mainly consist in the necessary and dutiful verification, on the part of the Court, of the adhesion of the evidences of law as presented in the documentation of the case to the immediately verifiable truthfulness of the content and of the letter of the laws recalled in that documentation, the nature of those evidences of law being that of facts objectively demonstrated *a priori*, which as such precede and influence also a successive, possible debate about their interpretation.

Furthermore, the appellants took care to facilitate the preliminary review of the objective content of the laws they recall by including in the case file, as early as during the first instance of judgment, a systematic review of the whole Italian *corpus juris* on the matter, updated, and complete with publication references and data about each law's legal force, as Annex 6 to the Writ of Summon (document SG/2017/LC/M-V).

This *corpus juris* of Italian law is, therefore, a full part of the documentation of the case, supporting since the preliminary phase the lawsuit, and therefore a full part of the request brought before Court.

For the same purpose, the appellants have also included in the lawsuit of first instance, as annexes A and B to their first statement of defense (documents SG/2016/LC/M-IV.1-en and SG/2016/LC/M-IV.Add) a complete, documented, and detailed critical analysis of the radical factual errors already committed in discussing this question within the aforementioned administrative judgment of the Regional Administrative Court for Friuli Venezia Giulia No. 530/2013, on which the Formation of the Court of second instance, however, decided to base its own decision, which is the subject of this application for annulment.

As for this matter, the appeal lodged before the Court of Second instance did openly (pages 35-36 of the Italian version) point out the divergence between the doing of the Italian law-makers who, since 1947, have punctually enforced within the Italian legal order the international obligations regarding Trieste on one side and, on the other side, the behavior of political circles who attempt to deny those obligations with pseudo-legal deceptive theses, which were also endorsed in certain abnormal judgment or used, surreptitiously, as a system of circular evidence to prevent the enforcement of the law.

Also, the appellants had already recalled and explained in the documentation of the case the real content of the very judgment of the Italian Constitutional Court No. 53/1964 which the formation of the Court of second instance did later, erroneously use as a further element to support its decision that is subject to this application for annulment.

So, when it comes to the alleged, preliminary question of the lack of legal existence of the Free Territory of Trieste, the decision of the Formation of the Court results to be based on factual errors in the perception of the objective content of both Italian laws in force and of a judgment of the Italian Constitutional Court, despite the fact that those documents, by their own nature, were easily verified by the Court and also recalled and explained in the documentation of the case.

Also, when it comes to the alleged exception of the lack of jurisdiction on the subject of the legal action, the decision of the Formation of the Court results based on factual errors in the perception of the evident contents of the request of the appellants, which are punctually expressed within the Writ of Summon.

It follows that, in both cases, the Formation of the Court committed factual errors that support this application for annulment, which it could have recognized as such by a mere reading of the documentation of the case, and through the dutiful, preliminary review of the letter of the laws and of the judgments therein recalled, and also from the clearly contradictory nature of the opposite claims submitted on the same fact (there is one truth only), just as the appellants themselves have identified said factual errors by a mere reading of the judgement, and have listed them below.

3. Factual errors that justify this application for annulment.

Therefore, individually, in mutual correlation, and as a whole, the following factual errors constitute ground to seek the annulment of a judgment ex art. 395, n. 4. Italian Code of Civil Procedure the following decisive claims that go against the

truth, with which the Formation of the Court supported its decision that is thus subject to the present application:

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

The factual error that justifies this application for annulment was and is immediately verifiable from the evidences within the documentation of the case, where that judgment is quoted *verbatim*, and also from the dutiful, but clearly omitted, preliminary verification of the letter of the legal decision itself.

Because, instead, with that judgment the Italian Constitutional Court did not claim the non-existence of the Free Territory of Trieste, rather, it declares that it won't express itself on the matter: «*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* […].»

3.2. The decisive claim against the truth 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,»

The factual error that justifies this application for annulment is the omission to consider, for the purpose of the Court's decision, the other articles and the annexes of the Treaty of Peace that establish and regulate the present-day Free Territory of Trieste. Furthermore, this error is not a merely formal one, it is substantial, because the provisions avoided by it for the purpose of the decision are, precisely:

– 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 existing or 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.

This factual error was and is immediately verifiable from the evidences within the documentation of the case, in which the Treaty of Peace is recalled openly and in detail (in particular in the review of laws SG/2017/LC/M-V), and also from the dutiful, but clearly omitted, preliminary verification of the letter of the Treaty itself as an upper-ranking law in force within the Italian legal order by virtue of Legislative Decree of the Provisional Head of State No. 1430/1947 ratified with Italian Law No. 3054/1952.

3.3. The decisive 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 by the Security Council […] 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.»

This is a radical, multiple factual error, because the 1947 Treaty of Peace, which is also an upper-ranking law in force of the Italian State, does in no way condition to the appointment of the Governor the establishment of the Free Territory of Trieste, which has indeed been effectively, effectively and factually been established in compliance with the Treaty on 15 September 1947 and ever since by virtue of its coming into force within the very Italian legal order.

This factual error was and is immediately verifiable from the evidences within the documentation of the case, in which the Treaty of Peace is recalled openly and in detail (in particular in the review of laws SG/2017/LC/M-V), and also from the dutiful, but clearly omitted, preliminary verification of the letter of the Treaty itself as an upper-ranking law in force within the Italian legal order by virtue of Legislative Decree of the Provisional Head of State No. 1430/1947 ratified with Italian Law No. 3054/1952.

The Treaty, indeed, does rule without question, at its art. 21, the immediate and unconditioned establishment of the Free Territory of Trieste, recognized by the Allied and Associated Powers and by Italy, the ending of Italian sovereignty since the date of the coming into force of the Treaty and with application of the Provisional Regime of Government established with Annex VII, which entrusts it to the Allied Commands until the appointment of the Governor (art. 1), while simultaneously enforcing (art. 2 fourth paragraph) of the compatible norms of the Permanent Statute established at Annex VI.

The effectiveness and legal force of those provisions, which became effective at the coming into force of the Treaty itself (so since 15 September 1947), and it is itself a fact detectable from the evidences within the documentation of the case, which specifically quotes and recalls (in particular in the review of laws SG/2017/LC/M-V) the following, main acts and instruments:

– 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, its 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 *«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 on the Official Bulletin of the Ministry of Foreign Affairs No. 1/1955.

– Decree of the President of the Italian Republic 27 October 1954 (s.n.) 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 submit to the United Nations, with which the Italian Observer and the Representative 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 administer*s».

– 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 (G.U. 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. art. 1 of Law 190/2014 subordinating them 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*».

Additionally, the existence and the content of each of the acts and instruments of law recalled do all constitute evidences were already included in the case file, and could have been easily verified with its dutiful, preliminary review, that was clearly avoided instead.

3.4. The decisive 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.»

In this annulment the factual error that justify this application for annulment are two and clamorous, because the 1954 Memorandum of Understanding does in no way define a frontier between Italy and Yugoslavia, even less so «for the part not envisioned by the Treaty of Peace» and it is signed also by the Government of the United Kingdom of Great Britain and Northern Ireland.

This means that not only the Formation of the Court has not assessed which Governments signed the 1954 Memorandum of Understanding (that regards a sub-mandate of temporary civil administration) but confuses its contents with those of the 1975 bilateral Italian-Yugoslav Treaty called “of Osimo” (see following point 3.8).

It follows that both factual errors were and are immediately verifiable from the evidences within the documentation of the case, in which both instruments of law are recalled clearly and in detail (in particular in the review of laws SG/2017/LC/M-V), as well as from the dutiful, but clearly omitted, preliminary verification of the letter of both legal instruments, despite them being enforced within the Italian legal order with the aforementioned Decree of the President of the Italian Republic of 27 October 1954 (without number) upon approval of the Italian Parliament, and with Italian Law No. 73/1977 respectively.

3.5. The decisive 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 a factual error that justifies this application for annulment, and it could have been prevented by a mere review of the letter of the acts lodged in the proceeding,

which quote and refer openly and in detail (in particular in the review of laws SG/2017/LC/M-V) the main instruments and acts that oppose such interpretation, 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 Representative 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 administer*s».

This factual error was and is immediately verifiable from the evidences within the documentation of the case, and also from the dutiful, but clearly omitted, preliminary verification of the letter of the letter of the Decree of the President of the Italian Republic of 27 October 1954 that established the General Commissioner.

Furthermore, the error was and is easily identifiable as such by a mere reading of the Judgment of the Italian Constitutional Court No. 53/1964, which the Formation of the Court no less decided to recall, although erroneously, as a foundation of its decision (see above at point 3.1), and that, therefore, should have been known to the thee judges involved.

Instead, what the Italian Constitutional Court notes in the judgment is that, as for this matter, 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*.»

3.6. The decisive claims 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.».

With those claims, the Formation of the Court repeats the factual error regarding the alleged, non-existent 1954 fixing of the Italian-Yugoslav borders (see above at point 3.4) and adds to it more factual errors that support this application for annulment, in particular when it comes to:

– Italian Constitutional Law No. 1/1963, published on the Italian Official Gazette No.29 of 1 February 1963, the letter of which does not contain (and could not contain) confirmation of those alleged borders, rather, it contains an explicit mention (arts. 1 and 4) of 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 system with Italian Law 1203/1957, and not only that doesn't mention those alleged borders, but art. 234 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, and it 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, which, when it comes to Trieste, are the obligations and borders established with the 1947 Treaty of Peace (which cannot, not even chronologically, be confused with the successive previsions of the 1975 Treaty called "of Osimo", which came into force in 1977: see following point 3.8).

Consequently, also those factual errors were and are immediately verifiable from the evidences within the documentation of the case, in which the Italian Constitutional Law No. 1/1963, the EEC Treaty, and the Helsinki Final Act are recalled clearly and in detail (in particular in the review of laws SG/2017/LC/M-V), as well as from the dutiful, but clearly omitted, preliminary verification of the letter of the Italian Constitutional Law No. 1/1963, the EEC Treaty, and the Helsinki Final Act, all of which have become laws of the Italian Republic by virtue of the respective instruments of ratification and enforcement.

3.7. The decisive claim against the truth, because it is used to apparently support the factual error regarding Italian Constitutional Law No. 1/1963, already identified above at point 3.6., 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 claims implies that with that judgment the Italian Constitutional Court confirmed the aforementioned disputed, decisive erroneous claim of the Formation of the Court as for the content of the Italian Constitutional Law No. 1/1963, and, by doing so, it constitute a further factual error that justifies this application for annulment which, once again, should have been recognized as such immediately and clearly following a dutiful, preliminary review of the letter of that judgment itself.

And this is because, on this point, that judgment rules instead 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.*»

3.8. The decisive claims 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.»

It is claims that not only repeat once again the factual error regarding the alleged, non-existent 1954 fixing of Italian-Yugoslav borders, rather (see above at points 3.4 and 3.6), but adds to it a whole, decisive sequence of new, explicit and implicit factual errors.

Once again, both factual errors were and are immediately verifiable from the evidences within the documentation of the case, in which the Treaty called "of Osimo" is recalled and quoted clearly and in detail (in particular in the review of laws SG/2017/LC/M-V), as well as from the dutiful, but clearly omitted, preliminary verification of the letter of that Treaty, and this despite its status being that of a law of the Italian Republic.

First and foremost, that 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), signed in Osimo (Ancona) on 10 November 1975, but ratified and enforced with Italian Law No. 73/1977.

This particular instrument is a (political) bilateral convention which, therefore, gives raise to obligations only for its two Signatory States, and does not give raise to legal effects a for the previous 1947 multilateral Treaty of Peace and the consequent rights and obligations of third States, including the Free Territory of Trieste.

The Treaty itself does therefore set the natural limitation of its own legal efficacy, establishing at its art. 7 that «*A la date de l'entrée en viguer du present Traité, le Memorandum d'Accord de Londres du 5 octobre 1954 et ses annexes cessent d'avoir effet dans les relations entre la Republique Italienne et la Republique Socialiste Federative de Jugoslavie.».*

This means that the complete letter of the provision confirms, with crystal clearness, the limitation of the effects of the Italian-Yugoslav bilateral convention to the legal framework of their own, bilateral relations only and thus excluding any other effect of it not only when it comes to international law, but also with respect to the domestic legislation of its two Signatory States, because that would give raise to a conflict with the laws of ratification and enforcement of the multilateral Treaty of Peace in force.

Also, for the same reason, the letter of that Treaty does not even mention the Free Territory of Trieste, and describes the border discussed in the bilateral convention addressing only its own Annexes I to IV, which define its outline *ex novo*, without the slightest mention of the demarcation line between the two zones subject to provisional administration established with the 1947 Treaty of Peace and then with the 1954 Memorandum.

Furthermore, the Formation of the Court has surreptitiously funded its erroneous, decisive claim about the contents of art. 7 on avoiding to quote the part of the norms that, instead, confirms the efficacy of the Memorandum (so the efficacy of the title of temporary civil sub-administration that derives from the Treaty of Peace) outside of Italian-Yugoslav bilateral relations.

This means that there is no doubt also the decisive claims of the Formation of the Court that the Treaty of Osimo terminated all effects of the Memorandum of Understanding, and this established the formal incorporation to the signatory States of the zones they previously administered thus confirming the legal nonexistence of the Free Territory of Trieste all constitute mutually dependent factual errors that justify this application for annulment that were and are immediately identifiable as such not only from the documentation of the case, but also from the dutiful, but clearly omitted, preliminary verification of the truthfulness of the facts.

A further evidence of said omission by the Formation of the Court is constituted by the evident contradictions between its very errors, in particular, between the often repeated erroneous claim (see above at points 3.4, 3.6 and 3.8) that the 1954 Memorandum had

established borders between Italy and Yugoslavia, and the admission, in this instance, that it was indeed about provisional administration.

The same applies to the claim, erroneous under three different respects, that the alleged lack of legal existence of the Free Territory of Trieste was confirmed, following the Treaty of Osimo, by the removal of the appointment of the Governor of the Free Territory of Trieste from the list of matters of which the UN Security Council is seized.

As for the irrelevance of the appointment of the Governor for the legal existence of the Free Territory, see the arguments already expressed above at point 3.3.

As for the claim currently under examination, it does only confirm the lack of dutiful preliminary verification of two notorious facts, both of which are profusely delineated in the documentation of the proceeding, namely, that the list of matters of which the UN Security Council is seized is a mere list of argument in need of urgent discussion, and thus it carries no legal implication, and also that, for the same reasons, the faculty to resumption of consideration of the appointment of the Governor of the Free Territory was confirmed once again by the United Nations Security Council and Political Committees Division with letter prot. PO 210 PI of 20.5.1983 (and thus dating 6 years after the coming into force of the Treaty defined “of Osimo”).

3.9. The decisive claims against the 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 and without the Treaty of Peace being ever enforced, thus rendering it a mere «abstract prevision» that is not met in the real world.

All those claims are radically disproved by the whole *corpus juris* that, since 1947, implements and enforces the Treaty of Pace in the Italian legal order in force, which was fully recalled and lodged within the documentation of the case, with the effectiveness, efficacy and evidence that, in 2017, after the opening of this very lawsuit before the Court of First Instance, was also confirmed by the very Italian Government, defendant, and by the Italian Parliament with two absolutely clear legal measures, namely:

– with 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*».

– with 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. art. 1 of Law 190/2014 subordinating them 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.».

Those claims of the Formation of the Court do therefore constitute another factual error that justifies this application for annulment, identifiable as such both from the documentation of the proceeding itself and also from the dutiful, but clearly omitted, preliminary verification of the letter of the act itself.

3.10. The decisive claim against the truth that there is no violation of the Italian *corpus juris* that implements and enforces the Treaty of Peace in the Italian legal order, in which it is enforced with the Legislative Decree of the Provisional Head of State No. 1430/1947 ratified with Italian Law No. 3054/1952, because «the Treaty of Paris was overridden by successive international Treaties.»

Other than being completely and manifestly erroneous for all the reasons expressed above, this claim is a conclusive – and even more reckless – summa of the other factual errors that justify this application for annulment that are collected here by virtue of their own nature.

On the other side, the use of such a claim, despite it being seriously and factually erroneous, to support what ultimately is a completely arbitrary denial of the enforcement of laws in force recalled in the proceeding remains subject to ordinary impugnation before the Court of Third instance.

3.11. The decisive claims against the truth with which, consequently, the Formation of the Court supports its own, alleged «absolute lack of jurisdiction» claiming that «[...] it is not for the Judiciary to question how the State exercises its sovereign powers, among which there are the adhesion to international treaties and matters of taxation» since the subject of the lawsuit would put 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.»

In this case, the nature of those claims as factual errors that support this application for annulment prevails also on their aspects that would be reserved to the ordinary impugnation of the judgment (for example, the anticipation of the decision with a circular reasoning, and the contradiction between claiming an absolute lack of jurisdiction on the matter of international treaties on one side, and at the same time disregarding as “overridden” a multilateral Treaty of Peace ratified and enforced within the legislation in force: see above at point 3.11).

This factual error, indeed clamorous, in evident by the mere reading of the subject of the legal action, which textually requests the review and confirmation of laws in force within the Italian legal order and their correct enforcement in defense of the rights and interests that they recognize themselves, and thus the very principle of legality and of the rule of law, otherwise violated, which does also constitute a fundamental principle of the Constitution of the Italian Republic.

Indeed, the judges serving their duties within the jurisdiction of the Free Territory of Trieste - sub-entrusted to the temporary civil administration of the Italian Government by 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 Security Council - are not being asked to commit a subversive act against the Italian State (which is not even one of the subjects summoned in the proceeding), rather, they are called to grant, pursuant to their competences, the plain and dutiful re-establishment of the rule of law as for the unlawful behaviors of certain of its local and national administrative bodies.

And it is equally evident that, in Trieste as anywhere else, a judge's decision to abdicate their Constitutional independence and obligation to defend citizens and enterprises from breaches of law and of rights, no matter the subject, that are committed by bodies or by authorities of the State would mean subverting the basic principles of the rule of law in that State, because such decision would grant *de facto* arbitrary dominion over the law and over civil society to those responsible of said violations.

4. About suspending the effects of the judgment and the terms for its ordinary impugnation.

At this point it is clearly evident that the enforcement of the judgment that, with reason, is subject to this application for annulment under art. 395 No. 4 of the Italian Code of Civil Procedure would constitute a relevant and manifestly unfair damage to the claimants, while the parallel ordinary impugnation before the Court of Cassation could give raise to superfluous expenditures for both the Supreme Court and the appellants themselves,

---

In view of the above premises, considerations, and explanations, recalling all arguments, theses, exceptions, and requests brought in this proceeding so far, including the preliminary ones, and having reproduced and recalled all documents of the proceeding for the purpose of annulment, the complainants-appellants, as legitimized and defended *ut supra*,

SUMMON:

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 n. 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, n. 21, 00144 Rome - ufficiosegreteria.presidenza@postacert.inps.gov.it, at the *Avvocatura dello Stato* (State legal service);

as identified and hosted at the addresses given above, are invited to appear before the Court of Trieste, at its site in *Palazzo di Giustizia*, Foro Ulpiano 1 (ZIP Code: 34133), at the hearing to be held on 14 December 2020, at the given hour, before the Judge to be nominated, under and in the manners prescribed by arts. 347 and 166 Italian Code of Civil Procedure of the Italian Code of Civil Procedure, within 20 days before the first hearing set with this act, and minding that failure to appear within that term gives raise to the disqualifications at arts. 38 and 167 of the Italian Code of Civil Procedure, as well as being warned them that, in case of failure to appear, the Court is to proceed in default of appearance, for the Court itself to uphold the following

CONCLUSIONS

The Most Excellent Court of Appeal of Trieste should, *contrariis reiectis*,

1) upon declaring legitimate, admissible, and not manifestly unfounded the application for annulment brought before it:

— **to suspend, whilst the proceedings are pending** under arts. 401 and 373 if the Italian Code of Civil Procedure, the enforcement of the impugned judgment of this Court of Appeal No. 278/2020 in proceeding RG No. 139/2019, published on 19.06.2020;

— **to suspend, whilst the proceedings are pending** under arts. 398, last paragraph of the Italian Code of Civil Procedure the terms for the impugnation before the Italian Court of Cassation of the same judgment of this Court of Appeal No. 278/2020 in proceeding RG No. 139/2019, published on 19.06.2020;

2) annul, for factual errors under art. 395, n. 4 of the Italian Code of Civil Procedure, the impugned judgment No. 278/2020 of this Court of Appeal, regarding proceeding RG n. 139/2019, published on 19.06.2020 and, consequently, order the defendants to recast the costs and expenditures of this proceeding and also of the previous instances of judgment,

Under art. 14 of the Decree of the President of the Italian Republic No. 115 of 30 May 2002 the value of this claim cannot be defined; therefore, the unique contribution, plus 50% due to this application being part of the appeal, is set in EUR 777,00.

The appellants annex to this application and lodge, under art 299 of the Italian Code of Civil Procedure, an authentic copy of the judgment subject to this application for annulment.

The appellants also lodge the file regarding the first and second instance of judgment.

Trieste, 30 July 2020

[signatures: omissis]

MANDATES:

[omitted in this English translation]

ACKNOWLEDGEMENTS OF RECEIPT:

[omitted in this English translation]