TO THE SUPREME COURT OF CASSATION
CIVIL SECTION
APPEAL *EX* ART. 360, CODE OF CIVIL PROCEDURE
versus judgment No. 328/2024
of the Trieste Court of Appeal

[SG/2024/LC/WS-I-Cass-en]

[Omissis: data of the appellants and of the summoned parties]

Decision impugned: judgment No. 328/2024 of the Court of Appeal of Trieste, issued on 9 July 2024 in proceeding RG No. 242/2023 and lodged on 19 July 2024, notified to the parties on 23 July 2024.

Subject: nullity and illegitimacy of the impugned judgment for breach of Art. 112 of the Italian Code of Civil Procedure and breach of provisions of Italian, European, and international law, respectively; request for the referral of the proceeding to the European Court of Justice of the European Union (CJEU) pursuant to Art. 267 letter a) of the TFEU for a preliminary ruling.

Deadline to impugn the decision: 24 October 2024.

Value of the claim: undefinable.

I.
S I N T H E S I S

This litigation concerns the determination of upper-raking laws in force within the Italian legal order that establish the legal obligations of the Italian Republic and of the Italian Government to maintain the international Free Port of Trieste, and the consequent unenforceability, or lack of legal effects, of acts and measures found to be in irremediable conflict with these obligations and have therefore become sources of unlawful actions committed against public good, public order, and the legitimate interests represented by the claimants.

In both the first instance and the appeal, all judges addressed declared the absolute lack of jurisdiction on the matter for any Italian Court, thereby depriving the claimants of all judicial protection against the violations of law and rights they documented and denounced during the proceeding.

The impugned judgment of second instance also failed to address a significant portion of the grounds of appeal raised by the claimants.

This failure to rule constitutes grounds for the nullity and voidness of the judgment under Art. 112 of the Italian Code of Civil Procedure, while the absolute denial of jurisdiction gives rise to breaches of Italian, European, and international law, rendering the judgment both null and voidable (Arts. 360 nn. 3 and 4 of the Italian Code of Civil Procedure; Art. 263 of the TFEU).

II.
SUMMARY OF FACTS

The lawsuit under consideration revolves on the appellants' grounded request for the determination and enforcing of higher-ranking laws within the Italian legal system, specifically identified for the purpose, and the consequent unenforceability or inefficacy of acts and measures, also precisely identified, that are in irremediable violation of these legal obligations and have therefore given rise to illegal conducts, escalating into significant harm to State-owned assets, public order, and to the appellants' legitimate interests.

Indeed, the laws whose determination and enforcement are being requested are those that establish and regulate, within the Italian legal order, the legal obligations of the Italian Republic and of the Italian Government to maintain the international Free Port of Trieste, which is a state corporation subject to the rights of all States and their enterprises.

The most severe damages, in part irreversible, that the appellants have documented and denounced are the result of an escalatory series of acts of disposal and expenditure carried out with impunity, despite constituting multiple breaches of law, by the Municipal administration of Trieste, led by Mayor Roberto Dipiazza in collusion with third parties in impose a fait accompli over the law by occupying with illegal works and contracts areas that consist of one of the two permanent free zones of the international Free Port of Trieste, the Northern Free Port, also called "old port", in order to promote a large-scale, unlawful real estate speculation in the area.

The competence of Italian Courts to rule also on this matter, by applying and enforcing the law independently from political powers, is firmly and peacefully recognized not only within the legal system of the Italian Republic, but also under EU law, and it is fully confirmed by extensive case law.

The appellants have therefore requested the competent Italian civil Court to determine and enforce the applicable laws on the matter, with the precautionary suspension of the illegitimate acts of disposal and expenditure carried out by the Dipiazza municipal Administration in the area of the Northern Free Port, also known as the "old port".

To obtain this, the appellants detailed in fact and law the aforementioned situation and its conflict with the applicable legal provisions, specifically in the points 7 to 28 of the Writ of Summons in the first instance of judgment, which, for the sake of brevity, is fully recalled and referred here.

From a logical and legal perspective, it was and remains evident that the Court addressed must ground its decision to grant or deny the appellants's requests on the outcome of the requested, standard, preliminary review of the identified provisions of law and of their legal force, efficacy, and position in the hierarchy of sources of law, to be carried out directly, accurately, and independently.

Instead, the sole judge of first instance, after systematically rejecting the precautionary measures requested by the appellants to stop the documented and denounced damages, refused to conduct the requested determination of the applicable laws in force, claiming an absolute lack of jurisdiction of any Italian Court on the matter; the Court panel charged with the second instance of judgment confirmed these decisions with the judgment now being impugned.

III.
THE JUDGMENT IMPUGNED

With a Writs of summon dated 5 December 2019, the current appellants brought the current defendants before the Court of Trieste, seeking the following conclusions to be upheld:

"IN THE MERIT:

to preliminarily assess:

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

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

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

– by the inter-ministerial Decree on the *Organizzazione amministrativa per la gestione dei punti franchi compresi nella zona del porto franco di Trieste* // Administrative organization for the management of the free zones included within

the area of the Free Port of Trieste, issued on 13 July 2017 by the Italian Ministry of Infrastructures and Transport together with the Italian Ministry of Economy and Finance, in compliance with the obligations established at Art. 6, paragraph 12 of Italian Law No. 84/1994 and with the sub-mandate of temporary civil administration of the Free Territory of Trieste that enforces the 1947 Treaty of Peace;

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

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

to ascertain and declare:

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

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

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

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

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

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

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

Communications Construction Company» signed in Rome on 23 March 2019 by the President of the Trieste Port System Authority of the Eastern Adriatic Sea, regarding either areas and assets of the port or controlled by the Port Authority, including railways, or extensions and transfers of the regime of international free port;

and, consequently, to rule

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

AS A PRELIMINARY AND PRECAUTIONARY MEASURE,

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

to suspend, whilst the proceedings are pending

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

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

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

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

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

With judgment No. 267/2023, published on 17 May 2023 and notified on 7 June 2023 the Court of first instance held, among other things, that:

«The Court, definitively ruling and rejecting all other claims, objections, and arguments, decides as follows:

***1) declares** the lack of jurisdiction of the addressed Court regarding the action brought before it;*
***2) orders** the complainants and the interveners to bear the costs of the proceedings, determined as follows: EUR 14,648.40 for legal fees, plus a flat-rate reimburse of general expenses at 15%, VAT and pension contributions as required by law, in favor of the PRESIDENCY OF THE COUNCIL OF MINISTERS, of the COMMISSIONER of the GOVERNMENT in REGION FRIULI VENEZIA GIULIA, of the TRIESTE PREFECT OFFICE, of the MINISTRY of the ECONOMY, of the MINISTRY of INFRASTRUCTURES and TRANSPORTATION, of the STATE PROPERTY AGENCY; EUR 11,268.00 for legal fees, plus a flat-rate reimbursement of general expenses at 15%, VAT, and pension contributions as required by law, in favor of the REGION FRIULI VENEZIA GIULIA; EUR 11,268.00, for legal fees, plus a flat-rate reimbursement of general expenses at 15%, VAT, and pension contributions as required by law, in favor of the MUNICIPALITY of TRIESTE; EUR 9,992.00, for legal fees, plus a flat-rate reimbursement of general expenses at 15%, VAT, and pension contributions as required by law, in favor of BANCA di CIVIDALE S.P.A.*».

With a Writ of summons notified on 6 July 2023, the complainants and intervenors challenged the judgment of first instance before the Court of Appeal of Trieste on the following grounds:

***1.** Full reference to acts and documents, numerating criteria, and reservation to submit new acts and documents.*
***2.** Summary of the main grounds of appeal.*
***3.** Violation of the judge's obligation to abstain under Art. 51 of the Italian Code of Civil Procedure.*
***4.** Breach of the obligation to forward the case documentation to the Public Prosecutor.*
***5.** Lack of foundation of the grounds of the judgment.*
***6.** Falsity of the evidence derived in the Court's reasoning.*
***7.** Absolute arbitrariness of the conclusions.*
***8.** The resulting extension of the lawsuit to European and international courts.*

9. *Violation of European provisions providing for and limiting the enforceability of European Union Treaties to the present-day Free Territory of Trieste and its international Free Port.*
9.1. *Jurisdiction for preliminary rulings of the Court of Justice of the European Union.*
9.2. *Applicability of European Community Treaties to the Territory of Trieste.*
9.3. *Obligation to respect the borders of the present-day Free Territory of Trieste with Italy and with Slovenia.*
9.4. *The Free Territory of Trieste and its international Free Port.*
9.5. *Limits to the applicability of European Union Treaties.*
9.6. *Limited applicability of European Community Treaties to the Territory of Trieste.*
9.7. *Obligations and rights of European Union Member States toward the Territory of Trieste.*
9.8. *The international obligations of the Italian Government.*
9.9. *International obligations and obligations under European Community Law.*
9.10. *Jurisdictional competence.*
9.11. *Petition for a preliminary ruling from the Court of Justice of the European Union.*

On 9 July 2024, the Court of Appeal of Trieste issued judgment No. 328/2024 published on 10 July 2024 and notified on 23 July 2024, rejecting the appeal and ruling as follows:

"The Court of Appeal of Trieste, with the aforementioned Court panel, definitively ruling in the proceeding registered under No. 242/2023 R.G., rejecting all contrary instances, exceptions, and deductions, hereby decides:

- rejects the appeal against judgment No. 267/2023 of the Court of Trieste, which is therefore confirmed;

- condemns all appellants, jointly, to bear the costs of the proceedings, quantified as follows:

EUR 12,156.00 for legal fees, plus a flat-rate reimbursement of general expenses, as well as CPA and VAT, if applicable, pursuant to the law, in favor of the Presidency of the Council of Ministers, the Office of the Commissioner of the Government in Region Friuli Venezia Giulia, the Trieste Prefect Office, the Ministry of the Economy and Finances, the Ministry of Infrastructures and Transportation, and of the State Property Agency; EUR 12,156.00 for lawyer fees, and reimburse of general expenses as detailed in the invoice, in favor of Autonomous Region Friuli Venezia Giulia;

Euro 12,156.00 for legal fees, plus a flat-rate reimbursement of general expenses, as well as CPA and VAT, if applicable, pursuant to the law, in favor of the Municipality of Trieste;

EUR 12,156.00 for legal fees, plus a flat-rate reimbursement of general expenses, as well as CPA and VAT, if applicable, pursuant to the law, in favor of Civibank – Banca di Cividale S.p.a.;

- pursuant to Art. 13, paragraph 1 *quater* of the Decree of the President of the Italian Republic No. 115 of 2002, confirms that, jointly, the appellants must also pay the additional *contributo unificato* // statutory fee in the amount required for appeals pursuant to paragraph 1-bis of the same article 13."

IV.
GROUNDS OF APPEAL

1. Preliminary exceptions.

Before this Court of final instance, we reiterate our preliminary objections regarding the unenforceability and inapplicability, in general and in the specific case in point, of the provisions at Art. 59, No. 1 second paragraph of Italian Law No. 69/2009, and also the request for the referral of the proceeding to the European Court of Justice (CJEU), as presented at pages 29 and 30 of the Writ of summons before the Court of second instance (point 9.11), which are hereby fully incorporated by reference for the sake of brevity.

With regard to the inapplicability of the provisions of Article 360-*bis* of the Italian Code of Civil Procedure to the specific case, it is evident that the grounds of this appeal provide elements to fundamentally challenge the orientation established by the Joint Sections in their judgment No. 8600/22 and successive ordinance No. 213/23, especially in consideration of the differing opinions previously expressed by the Supreme Court in the referenced judgments Nos. 320/1965, 323/1965, 324/1965, and 1579/1971.

2. Omission to Rule – Breach of Article 112 of the Italian Code of Civil Procedure.

In the disputed appeal of second instance, the claim is based on reasons that are clearly organized in a series of primary points, which are logically interconnected and sequentially structured, and therefore all require examination for the purposes of the judgment.

However, the judgment of second instance addresses only the first five points, omitting to examine and rule on the remaining ones, numbered 6 to 9.11, as listed on pages 16 to 30 of the appeal, which are fully recalled here and include a motivated request for referral of the case to the CJEU for a preliminary ruling.

Specifically, the omitted points are:

6. *Falsity of the evidence derived in the Court's reasoning.*
7. *Absolute arbitrariness of the conclusions.*
8. *The resulting extension of the lawsuit to European and international courts.*
9. *Violation of European provisions providing for and limiting the enforceability of European Union Treaties to the present-day Free Territory of Trieste and its international Free Port.*
9.1. *Jurisdiction for preliminary rulings of the Court of Justice of the European Union.*
9.2. *Applicability of European Community Treaties to the Territory of Trieste.*
9.3. *Obligation to respect the borders of the present-day Free Territory of Trieste with Italy and with Slovenia.*
9.4. *The Free Territory of Trieste and its international Free Port.*
9.5. *Limits to the applicability of European Union Treaties.*

9.6. *Limited applicability of European Community Treaties to the Territory of Trieste.*
9.7. *Obligations and rights of European Union Member States toward the Territory of Trieste.*
9.8. *The international obligations of the Italian Government.*
9.9. *International obligations and obligations under European Community Law.*
9.10. *Jurisdictional competence.*
9.11. *Petition for a preliminary ruling from the Court of Justice of the European Union.*

The motivated request for referral to the CJEU, duly introduced and reiterated in the Conclusions of the Appeal at page 32, was also disregarded.

The omission of the mandatory decision on the above-listed essential parts of the appellants' grounds of appeal renders the judgment null and void for violation of Art. 112 of the Italian Code of Civil Procedure, and constitutes a ground for appeal under Art. 161 of the Italian Code of Civil Procedure, in connection with Art. 360, paragraph 4 of the Italian Code of Civil Procedure.

3. <u>Violation of European Treaties and consequent petition for the referral of the lawsuit to the EUCJ with suspension of the proceedings.</u>

The omission of the mandatory decision on the aforementioned essential parts of the request in the appellant's action before the Court of second instance, which include reasoned challenges alleging violations of EU Treaties, also constitutes a breach of the right of every individual to an effective examination of their case as guaranteed by Article 47, paragraphs 1 and 2, of the Charter of Fundamental Rights of the European Union (ECHR), both instruments have the rank of Treaties, and are binding pursuant to Art. 6 of the TEU; their interpretation is therefore subject to the EU's jurisdiction to give preliminary rulings under Art. 267 lettera a) of the Treaty on the Functioning of the European Union – TFEU, especially in view of the contextual grounds for the violation of Art. 10 of the Universal Declaration of Human Rights, which is binding within the UN framework and in the relevant European legal context.

The appellants, therefore, renew their request for the referral of this case to the jurisdiction of the EUCJ for a preliminary ruling under Art. 267 lettera a) of the TFEU, and request the consequent suspension of the proceeding, because such an assessment is necessary for the resolution of this dispute.

4. <u>Multiple violations of provisions of Italian and EU law, resulting in the nullity and voidness of the judgment (art. 360, Nos. 3 and 4 of the Italian Code of Civil Procedure; art 263 TFEU).</u>

The core reasoning of the impugned judgment lies in the claim of the judge of first instance, as upheld by the Court of Appeal, that «*Sussiste un difetto assoluto di giurisdizione dell'intestato Tribunale con riferimento all'azione proposta*» // «*There is an absolute lack of jurisdiction of the addressed Court with regard to the action*

brought», on the grounds that no Italian Court could rule on the matter, and on the claim that this renders the examination of the questions brought before the Court redundant.

Indeed, it is on this premise that the sole judge and panel of judges in the Court of Appeal based their absolute refusal to undertake the requested examination and enforcement of the laws invoked by the appellants, as well as their refusal to assess the related and consequential claims presented by the appellants.

The judge of first instance supported this decision by recalling a consolidated orientation of the Court of Cassation, which associates the absolute lack of jurisdiction *«all'impossibilità di esercitare la potestà giurisdizionale con invasione della sfera attributiva di altri poteri dello Stato o di altri ordinamenti dotati di autonomia, in controversie direttamente involgenti attribuzioni pubbliche di questo tipo, come tali neppure astrattamente suscettibili di dar luogo a un intervento del giudice» //* «to the impossibility of exercising jurisdictional authority crossing into the competences of other State powers or of other autonomous bodies, in disputes directly involving public powers of this kind, which as such are not even remotely suitable to give rise to judicial intervention».

However, the appellants do in no way ask the court to cross into the competences of other State authorities or those of autonomous bodies, rather, they request the Court to assess and to declare the unenforceability, meaning the legal ineffectiveness, of decisions that other courts have issued in conflict (even unknowingly) with higher-ranking laws in force within the Italian State's legal order, and those decisions are either causing or facilitating damages to public good, public order, and legitimate rights and interests that the appellants are representing.

Furthermore, the sole judge considered it appropriate connecting the aforementioned principle to the subject of this lawsuit, claiming that it *«viene posta in discussione l'attribuzione di atti all'esercizio stesso di potestà sovrana, chiedendosi al giudice di sindacarne il modus operandi, con invasione dei meccanismi di responsabilità politica»* // «calls into question the legitimacy of acts pertaining the very exercise of sovereign authority, requesting the Court to assess its modus operandi, thereby crossing into the mechanisms of political responsibility».

However, the legal order of the Italian Republic is founded on the separation of powers, ensuring that judges are subject only to the law, and Courts are tasked with interpreting and applying the law impartially, enjoying full independence from any political responsibility, which does not pertain to them and cannot influence their function.

If not, the Constitutionally-mandated independence of the judiciary would be undermined; in a State governed by the rule of law, this independence guarantees the impartial enforcement of the law, respecting the hierarchy of legal sources, and protects the rights and legitimate interests of individuals and entities, even against arbitrary acts, measures, or conduct by other public authorities.

Indeed, to further justify her refusal to comply with the requested assessment and enforcement of the law, the judge of first instance could not directly invoke any provision of law that would authorize her to disregard, in the case in question, to derogare from the principle and Constitutionally enshrined obligation for the judiciary to remain independent from other powers, because such an action could never have a legal foundation; rather, it would merely reflect a political choice.

This is particularly evident because, in practice, the entire *corpus juris* invoked and accurately identified by the appellants (including a systematic review of laws, attached as document no. 3 in this proceeding, which is fully referenced here) has been consistently and unequivocally confirmed by Italian legislators from 1947 to 2017, and remains in full force to this day, thus confirming that this lawsuit has full merit and legal ground.

Indeed, the judge of first instance relied solely on an indirect choice of precedent decisions, and in doing so she adopted claims from judgment No. 8600/2022 with which the United Chambers of the Supreme Court of Cassation have declared an identical, absolute lack of jurisdiction, in a similar case, but on a different subject (general taxation authority over Trieste), however, that decision was subsequntlilly acknowledged to be flawed by the same United Chambers of the Supreme Court of Cassation in Ordinance No. 213/23, which found it vitiated by errors of law.

Furthermore, neither the judge of first instance of the appellate panel identified the evident and irremediable logical and legal contradiction in the aforementioned judgment of the United Chambers of the Supreme Court of Cassation; in particular, the contradiction of decision that, in declaring the absolute lack of jurisdiction of any Italian Court over a specific matter, relies on prior rulings in which Italian Courts of various types and levels, including the Supreme Court of Cassation itself, have instead constantly and unambiguously exercised full jurisdiction over the same subject matter.

In turn, at point 12 of the impugned appellate judgment, the Court panel recalled the aforementioned sentences of the judge in first instance to challenge the appellants' objections that the first claim bears no relevance for the case in point, while the second claim is factually untrue.

To this end, the Court panel stated that the appellants' claims «*sono propriamente volte, come correttamente evidenziato nella sentenza appellata (pag. 12), "a negare la sovranità stessa dello Stato italiano su una porzione del proprio territorio* […]» // «are indeed aimed, as correctly highlighted by the impugned judgment (at page 12) to "denying the very sovereignty of the Italian State over a portion of its own territory [...]».

However, the argument adopted by the Court's panel (as the judge of first instance did before it) to justify its refusal to ascertain and enforce the law has no basis in law, and is of merely political nature.

Indeed, if the outcome of the requested action to ascertain the Italian law in force confirms the lack of Italian sovereignty over Trieste, this does in no way exempt Italian Courts from their legal obligation to know and enforce those laws faithfully and impartially. For this purpose, it is irrelevant whether or not the judged or others like the provisions of those laws.

The Court panel did not base its decision on any provision of law, instead, it quotes selected previous judgments, generically asserting that the reconstruction of the legal relations between the Italian State and Trieste, as presented by the appellants, was *«sconfessata dalla giurisprudenza civile, penale e amministrativa» //* «refuted by civil, criminal and administrative case law» and citing *«quale autorevolissimo precedente» // «as a highly authoritative precedent»* the aforementioned decision No. 8600/2022 of the United Chambers of the Supreme Court of Cassation.

For this purpose, the Court panel extracts from that decision the claim that examining the merits of that lawsuit would involve *«non già la delibazione di una posizione di diritto o di interesse legittimo, ma un sindacato sulla configurazione costituzionale dello Stato italiano, mettendone in discussione, a monte, la stessa ridefinizione dei confini territoriali o, comunque, il loro assetto» //* «not a consideration of a legal position or a legitimate interest, but rather, a decision on the constitutional asset of the Italian State, thereby calling into question, from the very premise, the reassessment of territorial borders or, at the least, their asset» a decision that, the Court of Appeal emphasizes, would be *«pacificamente precluso a qualunque giudice» //* «clearly precluded to any Court».

However, the request in that lawsuit, as in the present case, simply seek the Court's duly assessment and enforcement Italian laws in force, which as such are not "calling into question" but rather defining themselves the constitutional and territorial configuration of the Italian State, leaving no room for the judges' opinion, because under the law their are bound solely to know and enforce these laws, irrespective of any politically motivated considerations.

Consequently, this argument by the Court panel lacks legal validity regarding the obligations of the judiciary, making it evident that it is merely political in nature.

Furthermore, the phrasing of this argument implicitly acknowledges the Court's awareness that a direct assessment of the laws in force would confirm the validity of the appellants' requests.

This awareness is further confirmed by the Court's choice to base its decision not on legal provisions, but on a surreptitious, selective sampling of judicial precedents, however, in the Italian civil law system, previous judgments do not constitute sources of law. they may serve as guidances, but are not binding, unlike in the Anglo-Saxon common law system, where judicial decisions hold binding authority.

It is on this basis alone that the appellate Court panel refused not only to adopt the requested precautionary measures, but also to carry out the ordinary action of assessing

and enforcing the laws as requested by the appellants, and ultimately declined to rule on any other question raised by both the appellants and the summoned parties, claiming that all such matters were absorbed in the declaration of absolute lack of jurisdiction.

The panel's claim that the appellants' reconstruction of the legal relations between the Italian State and Trieste would be *«sconfessata dalla giurisprudenza civile, penale e amministrativa» // «refuted by civil, criminal and administrative case law»* also conceals a politically motivated and surreptitious selection of previous decisions, which are far from unanimous.

Indeed, case law regarding the legal relations between the Italian Republic and Trieste can be categorized into three main frameworks, which we may define as *legalitarian*, *negationist*, and *compromising*, all of which consist of judgments in which various Italian Courts, of differing kind and level, have consistently and peacefully affirmed and exercised their jurisdiction on the matter, and this stands in clear, manifest contrast to the isolated decision No. 8600/2022 of the United Chambers of the Supreme Court of Cassation.

The faction that we may call 'legalitarian' acknowledges that the obligations established with the 1947 Treaty of Peace of Paris and with the 1954 Memorandum of Understanding of London are in force ever since, as are all the related provisions of the legislative authority.

This approach is well represented in the higher-ranking case law of the Court of Cassation regarding sovereignty in taxation matters, which is not embodied by judgment No. 8600/2022 of the United Chambers of the Supreme Court of Cassation, but rather by four decisions issued between 1965 and 1971, in which the Supreme Court of Cassation recognized the right of Italian citizens residing in the Free Territory of Trieste the right to a reimbursement, with interest, for taxes charged and collected on their assets by Italian tax authorities:

> ***Sezione I civile, sentenza 26 febbraio 1965, n. 320;*** — *Pres. Rossano — Est. Alliney — P.M. Raja (conf.) — Serra Carafa D'Andria (avv.ti Romeno, Asquini e Giannini) c. Ministero Finanze (avv. Stato Soprano).* // **First Section of the Italian Court of Cassation, Judgment of 26 February 1965, No. 320; —** Presiding judge Rossano — Judge Rapporteur Alliney — Public Prosecutor Raja (same conclusions) — Serra Carafa D'Andria (with lawyers Romano, Asquini and Giannini) vs. Italian Ministry of Finances (for the State's legal service, lawyer Soprano).
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> *Imposta straordinaria sul patrimonio — È imposta personale — Cittadini italiani residenti a Trieste — Non vi sono soggetti. (d.l. 29 marzo 1947, n. 143).* // Extraordinary wealth tax — it is a personal income tax — Italian citizens residing in Trieste — They are not subject to it. (Legislative Decree No. 143 of 29 March 1947, No. 143).

L'imposta straordinaria progressiva sul patrimonio è una tipica imposta personale diretta a colpire non i beni per se stessi e in quanto situati in un determinato territorio, bensì il complesso unitario di beni siccome spettanti ad una data persona; non sono quindi soggetti all'imposta, nemmeno per i beni situati nel restante territorio dello Stato, i cittadini italiani residenti a Trieste alla data del 28 marzo 1947, perché la legge istitutiva (d.l. 29 marzo 1947, n. 143) non fu estesa al Territorio Libero di Trieste, al tempo soggetto al Governo Militare Alleato. // The extraordinary progressive wealth tax is a typical income tax that doesn't aim at taxing assets merely because they are located in a specific territory, but targets the totality of assets belonging to an individual; therefore, Italian citizens residing in Trieste as of 28 March 1947 are not subject to it, even in relation to assets located in the rest of the Italian State's territory, because the law establishing the tax (Legislative Decree No. 143 of 29 March 1947, No. 143) was not extended to the Free Territory of Trieste, which was then subject to the Allied Military Government.

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Sezione I civile; sentenza 26 febbraio 1965, n. 323*; Pres. Rossano P., Est. Alliney, P. M. Raja (**concl.** conf.); Brunner (Avv. G. Asquini, Urbani, Marinangeli, Visentini) c. Finanze (Avv. dello Stato Soprano). (Cassa C. centrale 25 gennaio 1962, n. 53574). //* **First Section of the Italian Court of Cassation; Judgment of 26 February 1965, No. 323**; Presiding judge Rossano P., Judge Rapporteur Alliney, Public Prosecutor Raja (same conclusions); Brunner (lawyers G. Asquini, Urbani, Marinangeli, Visentini) vs. Italian Ministry of Finances (for the State's legal service, lawyer Soprano). (Set aside decision of the Central Court No. 53574 of 25 January 1962).

Tassa sul patrimonio straordinaria — Cittadini italiani residenti a Trieste — Assoggettabilità —Inammissibilità (D.1. 29 marzo 1947 n. 143, istituzione di una imposta straordinaria progressiva sul patrimonio; Costituzione, Art. 23). // Extraordinary wealth tax — Italian citizens residing in Trieste — Tax liability — Inadmissibility (Legislative Decree No. 143 of 29 March 1947, No. 143, establishing a new extraordinary, progressive wealth tax; Constitution, art. 23).

Poiché il decreto legisl. 29 marzo 1947 n. 143, istitutivo della imposta straordinaria progressiva sul patrimonio, non è mai stato esteso al territorio libero di Trieste, i cittadini italiani ivi residenti al 28 marzo 1947 non possono essere assoggettati a tale imposta, indipendentemente dalla circostanza che i loro beni siano situati in tutto o in parte fuori dal territorio libero di Trieste. // Since Legislative Decree No. 143 of 29 March 1947, which establishied the extraordinary progressive wealth tax, was never extended to the free territory of Trieste, Italian citizens residing there as of 28 March 1947 cannot be subject to this tax, regardless of whether their assets are wholly or partially located outside the free territory of Trieste.

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Sezione I civile; sentenza 26 febbraio 1965, n. 324; — *(Asquini c. Finanze; est. Alliney) — Imposta Straord. Progres. sul patrimonio — Cittadino italiano residente in Trieste nel 1947 — Non assoggettabilità — Dichiarazione presentata all'ufficio nella cui giurisdizione erano situati i beni — Irrilevanza. (Artt. 6, 7, 9, D.L.L. 29 agosto 1945, n. 585; 16 19, T.U. 5 luglio 1951, n. 573; 1, 2, 5, 32, T.U. 9 maggio 1950, n. 203).* // **First Section of the Italian Court of Cassation; Judgment of 26 February 1965, No. 324;** — (Asquini vs. Ministry of Finances; Rapporteur: Alliney) — Extraordinary, progressive wealth tax — Italian citizen residing in Trieste as of 1947 — No tax liability — Declaration submitted at the office in the jurisdiction in which the assets are located — Irrelevance. (Legislative Decree of the King's Lieutenants No. 585, Consolidated Law No. 573 of 5 July 1951, arts. 6, 7, 9, 16, 19; Consolidated Law No. 203, of 9 May 1950, arts. 1, 2, 5, 32).

L'imposta straordinaria progressiva sul patrimonio del 1947 non riguarda i beni per sé stessi ed in quanto situati in un determinato territorio, ma nella loro complessiva ed inscindibile appartenenza ad un dato soggetto. // The extraordinary progressive wealth tax of 1947 does not apply to assets in and of themselves because they are located within a particular territory, but rat*her applies to their total and indivisible ownership by a specific individual.*

Stante che la suddetta imposta non fu mai estesa al Territorio Libero di Trieste (né ad opera del Governo Militare Alleato, né ad opera del Commissario Generale di Governo), ne consegue che non è assoggettabile a tale tributo straordinario, neppure per i beni situati in altra parte del territorio italiano, il cittadino italiano residente in Trieste alla data del 28 marzo 1947, anche se il medesimo abbia provveduto a presentare la relativa denunzia all'Ufficio delle imposte nella cui circoscrizione erano situati i beni. // Since the aforementioned tax was never extended to the Free Territory of Trieste (neither by the Allied Military Government nor by the Commissioner General of the Government), it follows that this extraordinary tax does not apply to Italian citizens residing in Trieste as of 28 March 1947, even for assets located in other parts of the Italian territory, and this holds true even if such individuals submitted the relevant declarations to the Tax Office in the jurisdiction where those assets are located.

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Sezione I civile; sentenza 27 maggio 1971, n. 1579; *Pres. Caporaso P., Est. Carnevale, P.M. Minetti (concl. diff.); Brunner (Avv. Urbani, G. Asquini) c. Min. finanze (Avv. dello Stato Freni). (Cassa App. Trieste 17 giugno 1968).* // **First Section of the Italian Court of Cassation; Judgment of 27 May 1971, No. 1579;** Presiding judge Caporaso P., Judge Rapporteur Carnevale, Public Prosecutor Minetti (reaching different conclusions); Brunner (with lawyers Urbani, G. Asquini) vs. the Italian Ministry of Finances (for the State's legal service: lawyer Freni). (Sets aside a decision of the Court of Appeal of Trieste, issued 17 June 1968).

> *Tributi in genere — Ruolo — Iscrizione provvisoria — Sgravio — Indennità per ritardo — Fattispecie (Legge 25 ottobre 1960 n. 1316, disciplina della riscossione dei carichi arretrati di imposte dirette; d. pres. 29 gennaio 1958 n. 645, t. u. delle imposte dirette, Art. 199 bis). //* General taxation — Registry — Provisional recording — Relief — Compensation for delays — Case (Law No. 1316 of 25 October 1960, regarding the collection of financial arrears related to direct taxation; Presidential Decree No. 645 of 29 January 1958, Consolidated Law on direct taxation, art 199 bis).
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> *L'indennità per ritardato sgravio, prevista dall'art. 199 bis d. pres. 29 gennaio 1958 n. 645, è applicabile anche nella ipotesi in cui sia stata iscritta a ruolo a titolo provvisorio un'imposta neppure in parte dovuta, e, qualora l'iscrizione ed il pagamento siano stati eseguiti anteriormente all'entrata in vigore della legge 25 ottobre 1960 n. 1316, è dovuta a decorrere dal 1° gennaio 1961. //* The compensation for delayed relief, established at art. 199 bis of Presidential Decree No. 645 of 29 January 1958, also applies in cases where a tax provisionally was not even partially due and, if the provisional recording and payment occurred before the entry into force of Law No. 1316 of 25 October 1960, the compensation is owed starting from since January 1st, 1961.

On the contrary, the negationist faction has been attempting, since 1947, to impose the mutually exclusive political doctrines of two post-war ultranationalist leaders, M.Udina, ed A.E. Cammarata, along with those of their followers according to whom the Free Territory of Trieste either ceased to exist or never had any legal existence.

These are dogmatic theories that are legally and historically paradoxical, constructed surreptitiously on gross political misrepresentations of the relevant instruments of international, EU, and Italian law. The groundlessness of these theories becomes immediately evident through a direct and accurate assessment of the textual content of these legal instruments.

In other words, doing precisely what the appellants, in the present case, are seeking to obtain from the ordinary civil Court, which instead has arbitrarily refused to carry out such an assessment in two instances of judgment, making it necessary an appeal to the Supreme Court as judge of legitimacy.

The negationist faction is perfectly framed in judgments No. 400/2013 and No. 530/2013 of the Regional Administrative Court for Friuli Venezia Giulia, which are modeled upon each other and consist of a gross collections of of the political theories of Udina and Cammarata.

The first judgment support speculative construction projects within the Northern Free Port by denying the binding nature of the relevant obligations under the 1947 Treaty of Peace and the 1954 Memorandum of Understanding of London, while the second judgment attempts to charge with subversion the legitimate defense of the rights of the present-day Free Territory of Trieste and its international Free Port.

These judgments were both credited as reliable sources of law in decision No. 8600/2022 of the United Chambers of the Supreme Court of Cassation, which in turn in the present case was regarded as the ultimate source of case law by the judge of first instance, and as *«most authoritative precedent case»* by the appellate Court panel.

Any judicial or political use of the aforementioned negationist doctrines would create serious embarrassment and complications in the international relations of the Italian State and its Government, because denying the existence of the Free Territory of Trieste, either from the start or at the present time, also implies the lack of legal existence of the rights and obligations regarding the international Free Port of Trieste, which the 1947 Treaty of Peace with Italy establishes as a State corporation of the Free Territory (Annex VIII, Art. 2.1) and subjects it to the rights of all States and their enterprises.

The faction of judges that we may call compromising thus attempts to resolve such international embarrassment by asserting that Italian sovereignty over Trieste was restored, all while confirming the binding nature of the international obligations regarding the international Free Port of Trieste for the Italian State, regarding it as the successor to the Free Territory of Trieste.

For reference, see decision No. 2677/09 of the Regional Administrative Court for Lazio, and decision No. 2780/12 of the *Consiglio di Stato* (Council of State, Administrative Court of second instance):

> *"[...] si è già posto in evidenza come, con la successione dello Stato Italiano al TLT, lo Stato stesso sia subentrato nella titolarità delle funzioni e dei compiti sul Porto Franco a suo tempo riconosciuti, dall'Allegato VIII del Trattato di pace del 1947 e dal Memorandum di Londra del 1954, al Territorio libero stesso"*. // "[...] it has already been emphasized that, with the succession of the Italian State to the FTT, the State itself assumed the roles and duties over the Free Port that has previously been assigned, by Annex VIII of the 1947 Treaty of peace and the 1954 Memorandum of London, to the Free territory itself".

In view of all of this, also the following decisions of both the sole judge and the appellate Court panel, advise the appellants, acquire political significance in this case:

- the refusal of the judge of first instance (doctor Sabrina Cicero) and a member of the Court panel (doctor Sergio Carnimeo) to abstain from the proceeding, despite having endorsed the aforementioned negationist political doctrines in previous judgments on similar matters;

- the decision to disregard the precautionary request to suspend the illegitimate occupation of the so-called 'old port' by the Municipal administration of Mayor Dipiazza in collaboration with third parties, thereby allowing those activities to continue undisturbed since 2019;

- the decision not to forward the case files to the Public Prosecutor, justified with the baseless claim that the appellants' attached document lacked sufficient detail about the

alleged criminal acts, and that the local Prosecutor's Office had already dismissed similar complaints; this reasoning is flawed both intrinsically and because, when it comes to the second instance of justice, the competent authority is no longer the Prosecutor's Office, it's the General Prosecutor's Office;

- the decision of grant the explicit request of the convened parties to "punish" the appellants with exorbitant court fees, rather than offsetting them in view of the declaration of an absolute lack of jurisdiction, and the Court panel's refusal to suspend the collection of those fees whilst the appeal was pending.

In conclusion, it is considered proven that, with the impugned judgement of second instance the Court panel, by upholding the decision of the judge of first instance, which declared the absolute lack of jurisdiction of any Italian Court over the subject matter of this lawsuit, and thus deemed any further examination of the appellants' claims as 'absorbed' or redundant constitutes a politically-motivated violation of the fundamental rights to a fair trial guaranteed to all under Italian, EU, and international law, and as such it is severely detrimental to the appellants.

The declaration of absolute lack of jurisdiction, as pronounced and as described above, has both the effect and the purpose or arbitrarily depriving the appellants of any and all judicial protection against the violations of rights that they have documented and denounced in the case proceedings.

In light of what has been presented, documented, and considered above, the appellants deem it both legitimate and necessary to contest the impugned judgment for the following principal violations of Italian, EU, and international law, which also render the judgment null and voidable (art. 360, Nrs. 3 and 4 of the Italian Code of Civil Procedure; Art. 263 TFEU), and in particular:

a) violation of Art. 101 of the Italian Constitution concerning the fundamental principles of the independence of the judiciary and the sources of law within the codified civil law system of the Italian legal order;

b) violation of Art. 111 of the Italian Constitution concerning the impartiality and neutrality of the judiciary;

c) violation of Art. 47 of the Charter of Fundamental Rights of the European Union, and of Arts. 6 and 13 of the European Convention on Human Rights, having the status of binding treaties under Art. 6 of the TEU, with regard to the right of every person whose rights and freedoms granted under EU law have been violated to an effective remedy before an independent and impartial tribunal, as well as the obligation of judges to fairly examine their cases and adjudicate their civil rights and obligations independently and impartially;

d) violation of Art. 3 (ex Article 2 TEU) of the Treaty on the European Union (TEU), since both the principle of judicial independence (whether by sole judges or court panels) and the right of every individual to bring proceedings before an independent and impartial judge, obtaining a fair and effective decision, are fundamental principles of the Rule of Law;

e) violation of Arts. 8 and 10 of the Universal Declaration on Human Rights, which are binding within the Italian legal order under both the UN framework and the EU framework, regarding the right of every individual to an effective remedy before competent national tribunals for acts violating their fundamental rights as recognized by the Constitution or by law, and to have their rights and obligations determined by an independent and impartial tribunal.

With regard to the violations of EU law provisions outlined in points **c**) and **d**), and in relation to point **e**), the appellants request the referral of the case to the European Court of Justice for a preliminary ruling under **Art. 267, letter a)** of the TFEU, as their interpretation is necessary to settle the dispute.

For the reasons expressed above, the appellants

REQUEST

as a preliminary matter, that the Most Excellent Court of Cassation refers the present proceedings to the Court of Justice of the European Union (CJEU) for the appropriate measures pursuant to Art. 267 letter a) of the TFEU;

preliminary and in the merits, that the Most Excellent Court of Cassation allows this appeal, and reinstates judgment No. 328/2024 issued on 9 September 2024 in proceeding RG No. 242/2023 and published on 19 July 2024 by the Court of Appeal of Trieste before that same Court of Appeal, ordering the opposing parties to pay the costs of the proceedings and the legal fees incurred at all instances of judgment.

DOCUMENTATION ATTACHED:

When this appeal is lodged, the following documentation is attached to it:
1. Authentic copy of the impugned judgment, No. 328/2024 of the Trieste Court of Appeal.

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.