



REPUBLIC OF ITALY

IN THE NAME OF THE ITALIAN PEOPLE

The Regional Administrative Court of Lazio, Rome,

Division III,

composed of:

Mr Domenico Lundini	Presiding Judge and Judge Rapporteur - drafter
Mr Giuseppe Sapone	Judge (<i>Consigliere</i>)
Ms Cecilia Altavista	Judge (<i>Primo referendario</i>)

has pronounced the following

JUDGEMENT

on the appeal n. 10362 of 2007, lodged by the Trieste International Free Port Association, in the person of its President Prof. Francesco Alessandro Querci (Attorney), by Nordspedizionieri Due s.r.l., Logistica Portuale s.r.l, Alberti s.r.l., Vecchietti and Revini s.r.l. Trasporti e Spedizioni Internazionali, Quadrante s.r.l, Adriatic Finance & Trade s.r.l., in the person of their respective acting legal representatives. The applicants are represented and defended by Prof. Ernesto Stajano, Prof. Luigi De Stefano, Ms. Elena Orsetta Querci, Prof. Francesco Alessandro Querci, attorneys at law, and their address for service is at the office of the former of the above mentioned attorneys, via Crescenzo n. 91, Rome.

AGAINST

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- the Italian Ministry of Infrastructure and Public Works, in the person of its acting Minister, represented and defended by “Avvocatura Generale dello Stato” (Italian Government Legal Service);
- the Italian Ministry of Transport, in the person of its acting Minister;
- the “Consiglio Superiore dei Lavori Pubblici” (High Council of Public Works, an Italian Authority responsible for overseeing public works), in the person of its acting President;
- the autonomous region of Friuli Venezia Giulia, in the person of its acting President, represented and defended by Mr Enzo Bevilacqua, Attorney for the Region, and by Ms Gianna de Danieli, attorney at law, with address for service at the Region Representative Office in Rome, Piazza Colonna n. 33;

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- the Municipality of Trieste, in the person of its acting Mayor, represented and defended by Mr Oreste Danese, Ms Maria Serena Giralì and Mr Domenico Vicini, attorneys at law, whose address for service is at the office of the latter, Via Emilio de' Cavalieri n. 11, Rome;
- the Trieste Port Authority in the person of its acting President, represented and defended by the “Avvocatura Generale dello Stato”;
- the Italian Ministry of Environment in the person of its acting Minister;
- Società Porto Vecchio s.,r.l., in the person of its acting legal representative, with address at Trieste Port Authority;

for the annulment

- of the implicit measure / act, which is to say the meaningful absence of any pronouncement with negative outcome, which may be considered as a conduct implying an intent and a legitimizing legal fact (failure to exercise the power of monitoring and supervision),

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of non injunctive nature with respect to the process in question; this implicit measure / act, concerning the Modification (“Variante generale”) of the Port Development Plan (PRP) concerning the old port of Trieste (“Porto Vecchio”), has developed after the Trieste International Free Port Association sent to the Italian Ministry of Transport, the Italian Ministry of Infrastructure and Public Works and the President of the Italian Republic, on August 6th 2007, by registered letter with return receipt, the warning preliminary letter containing the request for an urgent injunctive intervention with respect to the issuing and formalization of the zoning Modification of the Port Development Plan for “Porto Vecchio”;

-of the Decree n. 0280/Pres. of the President of the Autonomous Region of Friuli Venezia Giulia, L.R (Region Law) n. 52/1991, paragraph 6 - Law 84/1994, Approval of the zoning modification of the Port Development Plan for “Porto Vecchio”, published on the Official Gazette of the autonomous region of Friuli Venezia Giulia on August 8th 2007;

-of the opinion dated 27/03/2006 expressed by the “Consiglio Superiore dei Lavori Pubblici”, Joint Divisions III and VI, during the meeting of 16/11/2005, Vote 169;

-of the D.D. Opinion expressed by Mr Dario Danese, with object: L. 84/1994, L.R. 52/1991, Art. 3 and Art. 51, Trieste Port Authority, Modification of

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the Port Development Plan for “Porto Vecchio”, Declaration of Conformity adopted by the Port Committee D. 14 dated 21.6.2005;

-of the Deliberation D. 14/2005 dated 21/06/2005 of the Port Committee concerning the

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adoption, in conformity with article 9, paragraph 3, of Law n. 84/1994 and its amendments and additions “Reorganization of port legislation”, of the general Modification of the Port Development Plan for “Porto Vecchio”, as set forth by Art. 5 of the same law;

- of the Deliberation n. 74 dated 03.10.2005 adopted by the Trieste Municipal Council;
- of the favourable opinion expressed by the Mayor acting representative during the Port Committee meeting on 21/06/2005, on the occasion of the adoption of the Modification of the Port Development Plan for “Porto Vecchio”;
- of the council Deliberation n. 86 dated 28.11.2005 and issued by the Municipality concerning the approval of the modification n. 93, the General Local Regulatory Plan (PRGC) for “Porto Vecchio”, pursuant to Art. 32 of the L.R. n. 52/1991”;
- of the Note n. 8664 dated 27/11/2006, issued by the Ministry of Cultural Heritage and Environmental Conservation – Directorate General for cultural and scenic heritage. Through this note the above mentioned Ministry notified the Management Decree concerning the amendment and integration of the Management Decree dated 23/08/2001; prescribing indirect protection in favour of the area called “Porto

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Franco Vecchio” (Old Free Port), adopted in conformity with the Legislative Decree n.490 dated 29/10/1999;

- of any and all assumed, related and subsequent acts;

Having seen the appeal and its enclosures;

Having seen the appeal additional grounds filed on 08/11/2008:

Having seen the appearance before the Court and the related defence brief of the Ministry of Infrastructure, of the Trieste Port Authority, of the Autonomous Region of Friuli Venezia Giulia, of the Trieste Municipality;

Judge rapporteur designated for the public hearing dated 26/11/2008, Mr D. Lundini;

Considering in fact and law the following:

FACT AND LAW

1.The appeal under consideration essentially concerns the general and special urban - functional plan related to the area of Trieste Porto Vecchio. In particular, the applicants contest the “implicit measure/act, which is to say the meaningful absence of any pronouncement with negative outcome”, which has developed following the warning letter sent on 06/08/2007 by the Trieste International Free Port Association to the Ministry of Transport, the Ministry of Infrastructure and the President of the Italian Republic and containing the request for “an

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urgent injunctive intervention” with respect to the “issuing-formalization” of the general modification of Port Development Plan for Trieste Porto Vecchio. Furthermore, the applicants contest, in the same

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appeal, the Decree n. 0280 issued by the President of the Autonomous Region of Friuli Venezia Giulia and concerning the approval of the above mentioned general Modification of the Port Development Plan for Porto Vecchio, the deliberation D. 14/2005 issued by the Port Committee and relating to the adoption of the said modification, the council deliberation n.86 dated 28/11/2005 approved by the Trieste Municipality and concerning the adoption of the modification n. 93 of the General Local Regulatory Plan (PRGC) for Porto Vecchio. The applicants also contest the opinions and assumed acts hereinbefore described.

2. In consideration of the content of the appeal, the Panel must firstly deal with matters relating to the inadmissibility of the appeal, which matters are also due to some relevant objections raised by the respondents.

First of all, as pointed out by the Autonomous Region of Friuli Venezia Giulia, the appeal, brought by six of the seven applicants, and namely by Nordspedizionieri Due s.r.l., Logistica Portuale s.r.l., Alberti s.r.l., Vecchiotti e Revini s.r.l. Trasporti and Spedizioni Internazionali, Quadrante s.r.l., Adriatic Finance & Trade s.r.l., is inadmissible.

In the appeal, but also in the subsequent additional grounds, the names of the individuals who brought the appeal for and on behalf of the above mentioned applicants are not specified; their names are not

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even provided in the special power of attorney conferred upon the defence attorneys, which document has been undersigned by unreadable signatures unaccompanied by the titles hold by the signatories. The illegible signatures and the impossibility of identifying the subscribers across the whole appeal do not fulfil the essential requirements for the validity and legitimacy of the power of attorney, which requirements are requested by administrative and ordinary case law (see, among others, CdS, IV_J 30.6.2006, n. 2240, V, 19.3.2001, n. 1640; Cass. Civ., SS. UU., 7.3.2005, n. 4810; III, 10.10.2003, n. 15184).

The Consiglio di Stato (Council of State) has recently dealt with such issue by means of the decision issued by Division V n. 370 dated 06/02/2008, in which the following was unanimously pointed out:

-the Supreme Court of Cassation has specified that the certification by the defence attorney in the warrant of attorney appended below or in the margin of any procedural document only concerns the autograph signature of the person who, by conferring the power of attorney, takes legal action or of the person who in the document declares to be the representative of the individual or legal entity taking legal action; as a consequence, the power of attorney is valid only when this power of attorney, or the procedural document to which it accedes, contains the name of the person who released the power of attorney, acting in its own or someone's else name. In this way the other parties and the judge





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can verify its legitimation and the legitimation of the “ius postulandi” of the defence lawyer. If these details are not specified, the power of attorney, in which the appended signature is illegible, shall be considered illegitimate each and every time such formal defect prevents from identifying its origin, and therefore from verifying the full authority of the conferred powers. In consideration of the aforementioned, the Supreme Court of Cassation came to the conclusion that when the illegible signature, in case of a power conferred by a company, is appended below the indication of the title, in a power of attorney unaccompanied by the name of the individual or entity releasing it, and this name cannot be identified in the document to which the power is accessing, “even if the individual, holder of the said representative power, could be indirectly identified by consulting the Business Register or by other means, the effective origin of the signing of such individual remains in any case unchecked, in that the certification of the autograph signature, by the defence attorney, does not imply – as herein specified – the legitimation and shall not allow the indirect identification of the individual who signed declaring to be in possession of the representative power but without specifying its name, which leads to the invalidity of the procedural act to which the said power of attorney accedes” (Cass. Civ. Sez. III, n. 31018, 31/05/2006; Joint Divisions in conformity with judgments

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n. 714 of 1993; n.1167 of 1994, n. 5398 of 1995 e n. 4810 of 2005).

As the aforementioned matter is similar to the circumstance in question, and as the Division has no reason to depart from the adopted orientation, the powers of attorney conferred by the abovementioned applicants shall be declared invalid and the appeal is therefore inadmissible.

3. As to the appeal filed by the Trieste International Free Port Association, the respondents strongly assert its inadmissibility with respect to the lack of interest and legitimation (they claim that the association does not hold a concession of public real estate relating to the Old Free Port and that it does not hold any enforceable diffuse interest or any other personal interest which have been directly and actually damaged). Notwithstanding, according to the Panel the above mentioned matters, inferred by the counterparts, may be deferred, in that the appeal concerns a different aspect, as hereunder specified.

The port development plan is regulated by Art. 5 of L. n. 84/1994 (“Reorganization of port legislation”) and it is a special planning instrument falling within the responsibility of the Port Authority, a state body.

In particular after setting out (paragraph 1) that the overall scope and structure of ports (like the port of Trieste), including the areas designed for industrial production, shipbuilding, road and railway infrastructures,

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are respectively delimited and designed by the port development plan, which plan also identifies the features and use of the concerned areas, such disposition specifies under paragraph 2 that the provisions set out by the port development plan shall not be in contrast with the current town planning instruments.

Furthermore, pursuant to paragraph 3 of the said Article, in ports which are characterized by a





port authority, as those described in paragraph 1, the development plan shall be adopted by the port committee, upon prior agreement with the involved municipality or municipalities.

As to the regional town planning legislation (applicable *ratione temporis* to the case in question) Art. 29 of the L.R. Friuli Venezia Giulia n. 52/1991 provides a General Regulatory Plan (PRG) concerning the regulations of the whole municipal territory. In the specific case, for the zones included in the areas of Porto Vecchio, the Trieste Municipality approved, by deliberation C.C (Municipal Council) no. 86 dated 28/11/2005, the PRG modification containing the regulations on the admissible uses and zoning plan for such area. The zoning modification, partly amended and upon prior agreement with the Port Authority (pursuant to Art. 32 and Art. 51 of the L.R. n. 32/91), was subsequently approved by the Municipality (C.C n.50 dated 11/06/2007) and its exclusivity was then set by the Regional Executive Council deliberation dated 20/07/2007. The regulations set in the partial modification of the General Regulatory Plan are substantially identical to those relating to the modification of the Port Development Plan (object of the appeal).

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Moreover, the deliberation concerning the approval of the special modification of the General Local Regulatory Plan (PRGC) for Porto Vecchio was too late contested by the Trieste International Free Port Association; the preliminary appeal was notified in November 2007. Such deliberation was approved on 28/11/2005 and the applicant became fully acquainted with it at least on 07/06/2006, as on that date it filed specific Observations on the on-going modification of General Local Regulatory Plan (PRGC) of Trieste and in such Observations it raised against the municipal zoning plan for Porto Vecchio substantially the same objections contained in the appeal under consideration (Municipal Authority's lack of jurisdiction to plan an "international territory" as the Free Port of Trieste should be considered). The appeal against the deliberation regarding the approval of the said modification is therefore inadmissible due to its belated nature (it was filed well beyond the 60 days deadline starting from the moment the party became aware of the act), whereas the above mentioned deliberations concerning the approval and enforcement of the same modification (issued in 2007) are not contested in the appeal.

The result is the inadmissibility for lack of legal interest of the appeal proposed by the said Association, against the modification of the Port Development Plan for "Porto Vecchio", because of the existence of zoning planning regulations identical to those proposed by such Plan (and which would remain in force even in case of annulment of the Plan itself), and contained in the special modification of the General Regulatory Plan (approved prior agreement with the

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Port Authority itself), which regulations are now conclusive and final and valid for the same territorial field.

4. The appeal is however to be rejected even in its substance. The applicants essentially claim that the area around the old port of Trieste is an international territory and its qualification as state-owned territory, based on the asserted and illegitimate opinion expressed by the "Consiglio Superiore dei Lavori Pubblici" on 27.03.2006, would therefore be subreptitious and





inappropriate; that the final act of the port planning formation process, concerning the Free Port of Trieste (a transoceanic international structure) and particularly its urban reuse, which would imply an expropriation of its commercial functions, is null and void, and even non-existent, on grounds of complete lack of jurisdiction; that Italy, in full compliance with International Treaties, shall “maintain” the Free Port and shall not perform any renovation works aimed at changing its use nor shall Italy terminate the Free Port status; that, in its turn, the law D. n. 84/94, in the article 12, safeguards the current regulations on the Free Zones of the Free Port of Trieste; that the establishment of special zones in the Free Port under the exclusive jurisdiction of any State is not allowed (art.3, paragraph 2, Annex VIII of the Paris Treaty of Peace with Italy of 1947); that the Free Port is an autonomous legal system and an international zone, and this involves a limitation of the Italian sovereignty over the Free Port Territory, reduced responsibilities of Ministers, Port Authority, Trieste

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Municipality and Region, a conflict of jurisdiction, invalidity of acts, saving clause with the exception of the application field of the 1994 Italian Law concerning the organization and prerogatives of the Free Port, which is regulated by international customary rules and by the above mentioned Annex VIII, in other words by a framework of constitutional regulations (articles 10, 11, 117 of the Italian Constitution); that according to the said Annex, the Free Port of Trieste shall have port and maritime functions, aimed at promoting the freedom of maritime trade and the free movement of goods, which are contrasted (as an international illicit act) by the demolition of Porto Vecchio, a project which has been carried out with a view of property speculation and is the consequence of the lack of power in an international territory.

5. According to the applicant a “meaningful silence with negative outcome” has developed, as a consequence of the failure to exercise the power of monitoring and supervision, on the Free Port Association’s request for a ministerial intervention of injunctive nature with respect to the modification of the Port Development Plan for Porto Vecchio. According to the applicant, such silence “has taken the form of a measure/ fact justifying the process in question, which the applicant wants to be null and void” is an integral part of the said process and it is therefore contested together with such process for the same reason; the applicant thus proves that it is not interested in a judgment on the mere illegitimacy of such silence / refusal, but solely in

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a decision on the validity of the request for the annulment of the specific planning decisions (issued by the Municipality, the Region and the Port Authority) which are object of the appeal.

6. Moreover, the Panel does not share the assumption upon which the applicants’ objections to the said provisions are based, which is to say that the area around the old port of Trieste is an autonomous legal system and an international territory, with subsequent complete lack of power and jurisdiction of the Italian Authorities, and namely those involved in this case.

Article 34 of Annex VI (Permanent Statute of the Free Territory of Trieste) contained in the Paris Treaty of Peace of 1947, implemented on 28/11/1947, no. 1430, ratified by Law no. 3054/1952, provides for the establishment, in the Free Territory of Trieste, of a Free Port administered in accordance with the provisions contained in the international Instrument which





constitutes Annex VIII of the present Treaty.

The same article specified that “the Government of the Free Territory shall enact all necessary legislation and take all necessary steps to give effect to the provisions of such instrument”. Article 35 set forth “freedom of transit” for goods transported between the Free Port and “the States which it serves”, in accordance with customary international rules, without any discrimination and without customs duties or charges.

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Owing to the impossibility of giving effect to the provisions concerning the Free Territory of Trieste set forth in the Peace Treaty with Italy, on October 5th 1954 the Governments of Italy, United Kingdom, United States and Yugoslavia signed in London the Memorandum of Understanding. After the signing of such Memorandum, the United Kingdom and the United States terminated their military government in Zone A of the Free Territory of Trieste, which passed under the civil administration of Italy, and, similarly, Yugoslavia terminated its military government in Zone B of the Free Territory of Trieste and the civil administration of Yugoslavia itself started.

By the said Memorandum (paragraph 5) the Italian Government undertook to “maintain the Free Port at Trieste” in general accordance with the provisions set forth by Articles 1-20 of the 1947 Peace Treaty.

Following the Memorandum of London, the whole territorial field of ex Zone A of Trieste, including Porto Franco Vecchio (Old Free Port), is now under the jurisdiction and sovereignty of the Italian government, with the sole exception of those limits arising from the compliance with the 1947 Peace Treaty and the 1954 Memorandum of London and relating to the Free Port. In 1975 the Osimo Treaty definitely divided the former Free Territory of Trieste.

Moreover, it shall be taken into account that Article 1 of Annex VIII provides for the establishment of a “Customs Free Port” for the purposes of ensuring the freedom of transit and trade without any discrimination and with customary and tax privileges and exemptions.

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According to the opinion of the Panel, the nature of the Free Port of Trieste and its international importance shall be interpreted only within the aforementioned limits. The Free Port, for *factio iuris*, is outside the customs line but within the Italian political boundaries.

In other words the Free Port of Trieste is not an autonomous institution / system, independent from the Italian state, but it is rather an entity characterized by an international duty free treatment, which now necessarily falls within (or it is at least coordinated with) the general jurisdiction of the sovereign State.

Moreover:

-Annex VIII of the 1947 Peace Treaty expressly confers on the Free Territory of Trieste (now on Italy, which replaced it following the Memorandum of London of 1954) the power of intervening and applying its laws and regulations in the Free Port of Trieste (Art. 4)

According to Art. 2 of the above mentioned Annex, the Free Port shall be established and administered as a State corporation of the Free Territory of Trieste, in consideration of this it is not clear what kind of extraterritoriality may concern the Port;

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-as to the “International regime” of the Free Port, which Art.1 of Annex VIII (paragraph 2) referred to the provisions of the same Instrument, it shall be interpreted, also by virtue of international customary rules (which are also referred to in the said Annex), only within the first above specified limits of trade and customs freedom, also considering that the Memorandum of London of 1954 only referred to

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articles 1-20 of Annex VIII (and not to provisions 21-26 relating to the international institutions having specific responsibilities over the Free Port). Another aspect should be taken into account: the Italian Government has been bound, by the said Memorandum, to preserve the Free Port only in general, not full, accordance with articles 1-20 of Annex VIII, ;

- the Additional Protocol enclosed to the said Memorandum, contains, as regards the Free Port, the letter sent from the Italian Ambassador to the Yugoslav Ambassador, in which reference is made, among other things, to the impossibility of giving effect to the dispositions of Annex VIII of the Peace Treaty with Italy related to the international regime of the Free Port of Trieste; moreover, the letter announces that, in the international consultations related to the application of articles 1-20 of the Annex, the Italian Government will issue preliminary norms for regulating the administration of the Free Port, in order to make the fullest use of the Free Port in accordance with the international trade needs.

In consideration of the historical events first above recalled and in accordance with the above mentioned regulations, the Old Free Port shall not be considered as an autonomous area, independent from the territory in which it is located, it shall rather be considered as a special zone where important tax and customary

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privileges are acknowledged, which privileges are set by the 1947 Treaty and expressly confirmed by Italian legislation (see Art. 169 of Testo Unico doganale no. 43/1973). Except for most favourable regulations and rules set forth in Annex VIII, in the Free Port general Italian regulations apply.

There is no doubt that the Free Port is object of Treaties which shall be respected and subsequently it constitutes an international commitment for Italy, but the terms of such commitment shall be related only to exemptions and customary privileges as well as the freedom of trade without any discrimination; any recognition of the constitution (which never took place) of an autonomous and extraterritorial system exempt from the jurisdictions and regulations on urban matters of the Italian state and local Authorities, shall be avoided and rejected.

The Panel shall also reject the objection concerning the violation of Art. 3 paragraph 2 of Annex VIII of the Paris Treaty, according to which “the establishment of special zones in the Free Port under the exclusive jurisdiction of any State is incompatible with the status of the Free Territory and of the Free Port”.

From this article the applicants infer the Italian State lack of jurisdiction over Porto Vecchio, with subsequent conflict of jurisdiction, and in particular the violation of international obligations caused by the approval of the claimed acts,

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which for this reason would be even null, void and non - existent.

The above described position cannot be accepted, as the application of the above mentioned article was subject to the establishment of the Free Territory of Trieste. With the impossibility of establishing the Free Territory of Trieste and the reestablishment of the Italian State sovereignty over zone A, which included Trieste and the Free Port, the latter passed under the jurisdiction of the Italian State. The validity of this interpretation is also confirmed by the content of Article 3 paragraph 2 of Annex VIII, where the incompatibility of any exclusive state jurisdiction in the Free Port is related not only to the establishment of the Port itself, but also to the establishment of the Free Territory of Trieste.

In addition, nothing prevents the Free Territory of Trieste (whose position has now been taken by the Italian State) from exercising power of jurisdiction over the said Free Port.

As regards Law n. 84/1994, in the opinion of the Panel, it certainly applies to the Port of Trieste and the related free zones (which constitute a territorial extension of major importance). Nonetheless, Art. 6 paragraph 12 of the same law, referred to by the applicants in support of their arguments, sets that the regulations in force on free zones, which are included in the area around the Trieste free port, are safeguarded. However, it must be also pointed out that the second line of the same disposition sets that “the Ministry of Transport and

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Navigation, after hearing the Trieste Port Authority, establishes, by means of its own decree, the administrative organization for the management of the said free zones”.

Therefore, the extraterritorial nature of the free port of Trieste cannot be argued on the basis of such regulations, as stated by the applicants.

Should this be the situation, one could not explain in which way the definition of the administrative organization of the said free zones can be deferred to the Ministry of Transport on the basis of the opinion of Trieste Port Authority (and not on the basis of the opinion of the 25 Treaty signatory states).

Basically, such disposition may not be interpreted as preventing Italian Authorities from exercising planning powers over Porto Vecchio; reference made in the said paragraph 12 shall be interpreted as regarding, also in this case, the special customary regime and the international nature concerning the freedom of trade, without prejudice to the Italian sovereignty and the responsibility of the Trieste Port Authority (established in accordance with the law of 1994) to administer the Free Zones, included in its jurisdiction area, which area was defined by the decree dated 6/04/1994 issued by the Ministry of Transport and Navigation and included Porto Vecchio.

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As to the planning powers over the said area, the Region of Friuli Venezia Giulia shall have full and exclusive legislative competence in urban issues and, as first above written, R.L. n. 52/91, which was in force at that time, set the necessary planning of the whole territory, on the basis of special regional, local and intraregional plans (like those of the Port Authority). The Local Regulatory Plan shall cover the whole of the municipal territory, as it is generally set forth by national regulations, starting from law n. 1150/1942. Provisions set forth by law no. 84/1994,





concerning the Port Development Plan, shall be applied in turn to the area of the Free Port of Trieste, as no relevant exception to Art. 5 of such law has been authorized.

As above pointed out, with the replacement of the Free Territory of Trieste by the Italian State, the latter became holder of functions and powers over the Free Port which once were granted to the Free Territory of Trieste by Annex VIII of the 1947 Peace Treaty and by the 1954 Memorandum of London .

Tasks once carried out by the Director of the Port, whose place has now been taken by the Port Authority, also fall within the aforementioned functions and powers. Some of such tasks consist in “maintaining” the Free Port, in its administration and development, as an efficient port adequate for the prompt handling of all its traffic, in the responsibility for the execution of all kinds of port works and in the operation of port installations (see Par. 5 of the said Memorandum and Art. 19 of Annex VIII).

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These regulations and rules are in full compliance with the assignment (also for the Free Port of Trieste) of the planning power to the Port Authority ex L.84/1994.

Concerning this, the applicants also infer that the contested port plan has jeopardized, altered and even expropriated the original structure and nature of Porto Vecchio and it is in contrast with international obligations aimed at ensuring a commercial and trade use of the port pursuant to Annex VIII of the Paris Treaty as well as to Italy commitment to maintain the Free port. Furthermore, according to the applicants the contested port development plan has led to a demolition of Porto Vecchio, due to an urban reuse project with a view of property speculation, which project subsequently constitutes an obstacle to the international maritime trade.

However, in the opinion of the Panel, the grounds of the appeal lodged by the applicants are generic and not evidenced, in that they have not specified (except for some generic reference to programs of urban reuse with a view of speculation property) which zoning choices and plans would lead to a demolition and change of the use of Porto Vecchio set by international treaties, and why the zoning modification would be an obstacle to the free maritime trade in the Free Port of Trieste. Furthermore, even though the regulations concerning the contested Zoning Plan extend the range of the possible functions of the Porto Vecchio, at the same time they set that its main function shall remain the port trade function. In other words, according to the said contested regulations new functions

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(characterizing or admitted) may be implemented provided that they are similar and related to the port trade function and contribute to its development and functioning.

The references to international customary rules in force “in other free ports of the world”, which are made in Article 1 of the Annex VIII and which, according to the applicants, have been violated, confirm, on the basis of the claimed acts, the consistency and coherence (at least on the basis of the applicants’ generic objections) of the planning decisions set by the Administration

Even in the opinion expressed by the Consiglio Superiore dei Lavori Pubblici during the Meeting dated 16.11.2005, which opinion is also contested, “the new configuration of activities in the Free Port of Trieste is in line both with the state legislative regime and with the regime of the international free port pursuant to Annex VIII, in that it assumes the customary rules in





force in other free ports and free zones of the world and respect the above mentioned trend, characterizing traditional free zones, towards the development of logistics and services”.

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A detailed and compared analysis on the development of the functions and features of the major Free Ports of the world is then provided in support of discretionary planning decisions and choices taken by the Port Authority. Concerning this, the applicants do not infer anything specific, and the objection to the zoning choices and other possible uses of the Old Free Port, is, only from the urban point view, generic and therefore inadmissible.

Moreover, the Italian commitment to “maintain” the Free Port of Trieste does not imply that such entity shall necessarily remain unchanged with respect to its original features dating back to 1947 and that it may not be updated so as to satisfy the new widespread requirements deriving from the international customary rules, which are now in force in other Free Ports of the world.

The applicants also contest the Administration reference, contained in the above mentioned opinion expressed by the Consiglio Superiore dei Lavori Pubblici, to the state regime of the Free Port areas, which, according to the applicants, would have been seized from such regime by virtue of the international intended use of such areas.

Not even the scenario of such claim can be accepted. The following shall be considered:

- a) pursuant to Art. 822 and Art. 28 of the Cod. Della Navigazione (Navigation code) ports are owned by the state maritime property. The Free Port of Trieste is also owned by the state and this does not represent an obstacle to the international obligation related to the free movement of goods and to the uses of the Free Port. Besides this,

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the administration of the marine state property, also in conformity with Art. 2 of Annex VIII, shall be entrusted to a single management, as set forth by law n. 84/1994 and it should be also taken into account the judgment pronounced by the Constitutional Court D. 378/2005, referring to the principles that shall inspire the regulations on international and national ports, which principles shall be standard across the whole national territory;

- b) under L. 567 dated 09/07/1967, DPR (Presidential Decree) dated 02/10/1978 n. 714 and law n. 85/1994 specific responsibilities (also for the Port of Trieste) are assigned to Port Authorities with respect to the administration and management of the state maritime property in the port context;
- c) the applicants, as specified during the hearing of the respondent administrations, hold a concession for port state property and the case law concerning the configurability of state property related to the Port of Trieste (partly Free Port) is unanimous (see CdS (Council of State), IV, no. 1538 dated 04/03/2006; VI, no. 1142 dated 18/12/1992);
- d) the DM (Ministerial Decree) dated 06/04/1994 defines the area of the Trieste Port Authority with reference to the “maritime property areas” affected by Port Development





Plan;

6. Finally, with respect to the additional grounds notified in November 2008, which are used for contesting the validity of the modification of the Port Development Plan for lack of environmental evaluation, as well as the validity of the modifications object of the appeal

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for lack of a reclamation plan of an area seriously polluted, which falls within the modifications, the Panel notices that the said objections are late for two main reasons. First of all the questions (at least the first of them) were already known when the preliminary appeal was lodged (and they could be easily inferred from the documents enclosed to the appeal itself, or from the opinion expressed by the General Director of the land planning dated 19/07/2007, in which reference is made to the question and terms of the EIA procedure; secondly such modifications were published on BUR (Official Gazette of the Region) on 10/10/2007 (approval and enforceability of the modification of the Port Development Plan) and on 08/08/2007 (enforceability of modification n. 93 of the General Local Regulatory Plan), with the result that additional grounds notified on November 6th 2008 are certainly late.

As to the pollution of the area of the Terrapieno di Barcola (an embankment), it must be add, ad abundantiam, that the Municipality represented, in the defence brief filed on 14/11/2008, that at present there is only an on-going procedure aimed at verifying the pollution situation, without incidence on urban aspects (which will emerge only during the possible subsequent step towards the authorization of the reclamation of the polluted area).

7. On the basis of the above written considerations, the aforementioned appeal and the related additional grounds shall be declared inadmissible and they are in any case rejected in their substance.

Comitato Porto Libero di Trieste

[Http://www.portoliberotrieste.org](http://www.portoliberotrieste.org)
[Http://www.prostalukatrst.org](http://www.prostalukatrst.org)
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