

# TREATY OF PEACE WITH ITALY

## Annex VI

### Permanent Statute of the Free Territory of Trieste

#### Article 7. Official languages

#### **The official languages of the Free Territory shall be Italian and Slovene**

##### I.

The 4<sup>th</sup> March 1849 the Austrian Empire Constitution takes inspiration from the principle *Liberté Egalité Fraternité* to define various nations and nationalities of the Empire's positions. The § 5 of the Constitution has established that: "*Alle Volksstämme sind gleichberechtigt, und jeder Volksstamm hat ein unverletzliches Recht auf Wahrung und Pflege seiner Nationalität.*", (Every race has equal rights and every race has the inviolable right to preserve and nurture its own nationality). The fundamental law on the general rights of the kingdom's citizens and countries represented in the 21<sup>st</sup> December 1867 Empire council, has specified the content of the equality of rights in the 2<sup>nd</sup> clause of article 19 with the following words: "Every language of the country has equal rights recognized by the State in schools, offices and in the public life".

This equality of rights has been denied by the Italian Kingdom since 1918 forbidding Croatian, Slovenian and German toponyms, abolishing Croatian, Slovenian and German cultural, economic and sport association, abolishing the Croatian, Slovenian and German press and denying even the private use of those three languages.

##### II.

The allied military Government in charge of Venezia Giulia's zone A has restored the right to use the Slovenian language also using it in official acts (identity cards, official gazette, tax forms etc.). But while in zone B the Istrian district people committee has implemented the disposition of article 7 of the VI attachment to the Peace Treaty releasing a decree on 14<sup>th</sup> September 1947 which declared Italian, Slovenian and Croatian official languages, in Zone A the allied administration has had serious pressures to not recognize the Slovenian language role. Already in the first months of 1948 the quadrilingual identity cards (English, Italian, Slovenian, and Croatian) were substituted with monolingual identity cards in Italian. Only in four districts the use of bilingual identity cards was granted. According to the British political counselor's report the allied military Government, of the middle of 1948, the Italian "democrats" treated Slovenians as the American Southerners treated black people. After the first communal elections of 19<sup>th</sup> June 1949 the facultative use of Slovenian language was granted to the four districts with the Slovenian absolute majority with the order n. 183 of 2<sup>nd</sup> September 1949.

##### III.

When the idea of granting the administration of the Free Territory of Trieste's zone A to the Italian Republic was born, the Federative People's Republic of Yugoslavia has requested the solution of three more problems beside the territorial one: a) the equality of rights and treatment of the population with the other citizens of the zone given to the Italian Republic, b) the usability of the free port as expected by the Peace Treaty, c) the non-incrimination due to political activities

conducted for the solution of the Trieste question. A bilateral document was dedicated to the rights and treatment equality question where there is a reference to point 4 of the understanding Memorandum (*The Italian and Yugoslav Governments agree to enforce the Special Statute contained in Annex II*). The free port question was resolved thanks to the Italian Republic's commitment registered at point 5 of the understanding Memorandum (*The Italian Government undertakes to maintain the Free Port of Trieste in general accordance with the provisions of Articles 1-20 of Annex VIII of the Italian Peace Treaty*). The question of the penal and administrative non-incrimination was guaranteed at point 6 of the Memorandum (*The Italian and Yugoslav Governments agree that they will not undertake any legal or administrative action to persecute or discriminate against the persons or property of any resident in the areas coming under their civil administration in accordance with this Memorandum of Understanding for past political activities in connection with the solution of the problem of the Free Territory of Trieste*).

It clearly appears that the Yugoslavian part wanted to grant the "Yugoslavian ethnic group" members of the territory administered by the Italian government the same level of legal protection granted to the "Italian ethnic group" members in the territory administered by the Yugoslavian government with the 14<sup>th</sup> September 1947 decree. But instead of using the term "official language" in article 2 of the Special Statute, it uses the phrase "rights and treatment equality", that could also be used outside the linguistic features. Thus article 2 of the special Statute reads: "*The members of the Yugoslav ethnic group in the area administered by Italy and the members of the Italian ethnic group in the area administered by Yugoslavia shall enjoy equality of rights and treatment with the other inhabitants of the two areas.*" The second paragraph instead, after the announcement "*This equality implies that they shall enjoy*", lists from letter (a) to letter (f) six different rights and treatment equality areas. At letter (e) it is made clear that "*equality of treatment in the use of languages as defined in Article 5 above*".

Article 5 of the special Statute debates the various aspects of the use of language in three different paragraphs that read as follow:

1.

*Members of the Yugoslav ethnic group in the area administered by Italy and members of the Italian ethnic group in the area administered by Yugoslavia shall be free to use their language in their personal and official relations with the administrative and judicial authorities of the two areas. They shall have the right to receive from the authorities a reply in the same language; in verbal replies, either directly or through an interpreter; in correspondence, a translation of the replies at least is to be provided by the authorities.*

2.

*Public documents concerning members of these ethnic groups, including court sentences, shall be accompanied by a translation in the appropriate language. The same shall apply to official announcements, public proclamations and publications.*

3.

*In the area under Italian administration inscriptions on public institutions and the names of localities and streets shall be in the language of the Yugoslav ethnic group as well as in the*

*language of administering authority in those electoral districts of the Commune of Trieste and in those other communes where the members of that ethnic group constitute a significant element (at least one quarter) of the population; in those communes in the area under Yugoslav administration where the members of the Italian ethnic group are significant element (at least a quarter) of the population such inscriptions and names shall be in Italian as well as in the language of the administering authority.*

#### IV.

While the Yugoslavian Federative People Republic has ratified the understanding Memorandum between the Italian, Great Britain, United States of America and Yugoslavian governments regarding the Free Territory of Trieste with the attachment to the special Statute of 25<sup>th</sup> October 1954 and has published them on the official gazette on 27<sup>th</sup> October 1954, the Italian Republic has never published nor the understanding Memorandum or the special Statute either in the Italian Republic's official Gazette or the general Commission's official bulletin for the Free Territory of Trieste, the office accounted to said territory. Thus the ground was set for the all-Italian theory that the Memorandum of understanding and the special statute have no value at all for the Italian internal jurisprudence which was promptly received by the Italian judiciary and kept until the Constitutional Court's sentence n. 15 of 1996.

With the decree n.29 of 19<sup>th</sup> January 1955, the general Committee has accepted point n. 5 of the Memorandum of understanding without quoting the international act. With decree n. 190 of 7<sup>th</sup> June 1956 it has accepted point 6 of the Memorandum of understanding only mentioning it (*Application of point 6 of the London Memorandum of understanding*). This was the document the Italian delegation of the Italian-Yugoslavian mixed Committee referred to, expected by article 8 of the special Statute to control its own application, so, when the Yugoslavian delegation was asking for the statute official publication: decree n. 190 of 1956 should have represented the "renvoi" with which the statute would have become an integral part of the Italian judicial system. However, the judiciary has not taken into consideration this deferral for decades. When the Yugoslavian delegation asked for the special Statute's article 5's 3<sup>rd</sup> paragraph disposition application, the Italian delegation replied that the Italian judicial system was not considering the "electoral districts", even though the decree n. 83 of 24<sup>th</sup> March 1956 well established 16 single-members constituencies for the Trieste's provincial committee. On 28<sup>th</sup> February 1959 the general Committee had released a confidential newsletter (n. 97/59 Gab.), addressed to the State's offices, concerning the application of the first two paragraphs of the statute's article 5 . This newsletter's text, which did not mention the special Statute, but "known dispositions", became effectively acknowledged only in 1989.

#### V.

The right to use the Slovenian language should have been granted also due to article 6 of the Italian Republic's Constitution and this with immediate effect after its proclamation. However, violating the X. transitory disposition, which is stating that the deferral of the autonomous region Friuli-Venezia Giulia's institution's deferral had established that this would have happened "*leaving untouched the minorities protection accordingly with article 6*", nothing at all was done to protect the Slovenian community in the Gorizia and Udine provinces.

Only with the constitutional law 31<sup>st</sup> January 1963, n.1, the autonomous region Friuli-Venezia Giulia was established, which special Statute's article 3 reads as follows: "*In the Region equality of rights and treatment is granted to all citizens, whatever their linguistic group is, with the protection of the ethnic and cultural characteristics*". Although the phrase "equality of rights and treatment" semantically corresponds to the phrase "**equality of rights and treatment**" in article 2 of the 1954 special Statute, to this article was attributed the meaning formulated in 1964 by University professor Livio Paladin: "it is established in the individual right not to be discriminated due to the private use of a language different from the national one". Thus the autonomous region Friuli-Venezia Giulia has never released a rule of implementation of this article in compliance with what is owed to both of following the Italian Constitution and to respect the commitments taken with the 1954 special Statute.

When the special negotiation between the Italian Republic and the federative socialist Republic of Yugoslavia for the conclusion of the treaty that will substitute the 1954 Memorandum of understanding, Italy requested that the new treaty will not mention the minorities and Yugoslavia accepted article 7 (*A la date de l'entrée en vigueur de présent Traité, le Mémorandum d'Accord de Londres du 5 octobre 1954 et ses annexes cessent d'avoir effet dans les relations entre la République Italienne et la République Socialiste Fédérative de Yougoslavie*), but article 8 compelled the two contracting States to guarantee "*qu'elle maintiendra en vigueur le mesures internes déjà arrêtées en application du Statut susmentionné et qu'elle assurera dans le cadre de son droit interne le maintien du niveau de protection des membres des groupes ethniques respectifs (des minorités respectives), prévu par les normes du Statut Spécial échu.*"The Italian Republic has immediately abolished some internal measures already in use and at present day hasn't yet guaranteed the level of protection expected from the expired special Statute with its own internal rules.

## VI.

Due to the initiative of a single member of the Slovenian ethnic group, the constitutional Court with sentence n. 28 of 1982 has expressed itself on the constitutional legality of article 137 (Use of the Italian language) of the criminal proceedings Code (paragraph 2: *People who can express themselves in Italian are compelled to use it when they have to report their declarations or depositions*, paragraph 3: *The refusal to express oneself in Italian of a person who knows it and the false declaration of ignoring it are punished with a 20.000 to 80.000 fine except when greater fines when the fact constitutes a greater crime*). This sentence belongs to the admonishing sentence category which ascertain the constitutional illegality of the rule in question, but do not declare it, indicating in the motivation what the legislator has to do to guarantee the constitutional legality. This sentence's motivation points out that if there are recognized linguistic minorities, article 6 of the constitution and article 3 of the special statute of the autonomous region Friuli-Venezia Giulia have immediate efficiency and, because of that, the members of these minorities are free to address to their mother-tongue authorities. It has to be considered significant that the constitutional Court has used words from the 5<sup>th</sup> October 1954 article 5 paragraph 1 to define the "**minimum protection**" of the recognized linguistic minorities.

The same member of the Slovenian ethnic group has notified the constitutional legality of the civil proceedings Code's article 122 (*In the whole project the Italian language use is*

prescribed). In sentence n.62 of 1992 the constitutional Court has defined the importance of the “**minimum protection**” with the following words: “**Based on the constitutional principles and on the international rights now described, there cannot be doubts that the protection of a recognized linguistic minority is fully realized, under the profile of the mother tongue’s use by every member of this minority, when it is permitted to these people in the setting of their minority’s settlement territory, not to be compelled to use a different language from their mother tongue in the relationship with public authorities**”.

According to the continuous violation of the protection deriving from article 6 of the Constitution, from articles 2 and 5 of the 5<sup>th</sup> October 1954 special Statute, from article 3 of the 10<sup>th</sup> November 1975 Italia-Yugoslavian treaty, the member of the Slovenian ethnic group has asked for the third time the constitutional Court intervention. Sentence n. 15 of 1996 has explained: “*It is possible to discuss, as in fact it was discussed in the doctrine and jurisprudence, on the Memorandum of understanding’ and special Statute’s internal public law’s value attached to it, but without becoming approved in view of their ratification and execution in the internal system. However, the deferment that the Osimo’s Treaty does –which has surely become an internal law -, to grant the respect to the “niveau de protection des membres des groupes ethniques respectifs ..., prévu per les normes du Statut Special echu” entails that –from the internal point of view, the only one that is observed in the present judgment – that “level of protection” is now part of the applicable national system*”.

Also this constitutional Court’s sentence, as well as the 1982 and 1992 ones, reproaches to the national and regional legislators of not having released the rules of implementation of article 6 of the constitution and respectively of article 3 of the autonomous region Friuli-Venezia Giulia’s special statute after decades. These three constitutional Court’s sentences belong to the admonishing sentence category which compel the legislator to respect their motivations, but the Italian Parliament has misinterpreted every rule on which the constitutional Court based itself in the three mentioned sentences and has produced a law called “Rules of protection of Friuli-Venezia Giulia’s Slovenian linguistic minority”, which distinguishes itself for the limitations to the linguistic rights recognized to the Slovenian population of the Trieste Territory from the Austrian constitution of 4<sup>th</sup> March 1849 to the permanent Statute of the Free Territory of Trieste of 10<sup>th</sup> February 1947, as well as from the internal and international rules above mentioned.

## VII.

The first bill for the Slovenian linguistic minority protection was presented at the Republic’s Senate on 29<sup>th</sup> April 1970 (n.1180: Dispositions for the recognition of the national rights of Slovenian-speaking Italian citizens of Friuli-Venezia Giulia). Article 7, 8 and 9 were respectful both of article 6 of the constitution and of article 3 of the regional statute: the first one implied that “*the Italian language is the official language of the Friuli-Venezia Giulia region and the Slovenian language is recognized as equivalent to the Italian*”; the second implied that “*the republic’s government officials in the region are required to make public also in the Slovenian language every official act of the State, Region and local institution in the areas inhabited by Slovenian-speaking Italian citizens*”; the third implied that “*Slovenian-speaking Italian citizens residing in the provinces of Trieste, Gorizia and Udine have the right to use their mother tongue in their oral and written relationships with: every public administration office; judicial offices; authorities of public*

*interest offices*” and moreover “*authorities, authority offices in the above-mentioned cases in which they are mentioned are required to use the applicant’s language in the oral relationships and in the correspondence with the people interested*”. Neither this bill, nor dozens other bills and laws have been taken into account in the following decades. Only subsequently the three constitutional Court’s above-mentioned verdicts, bill n.229 presented on 9<sup>th</sup> May 1996 (Rules on the Slovenian linguistic minority protection in Friuli-Venezia Giulia) the legal procedure had started, not as such to guarantee the equality of rights and treatments, but just to limit or deny the “**minimum protection**” as described in the 1992 constitutional Court’s verdict. 62. Law n.38 of 23<sup>rd</sup> February 2001 was a genuine judicial absurdity because, after the Vienna Convention on the treaty’s rights of 23<sup>rd</sup> May 1969 becoming a law (ratified by the Italian Republic with the 12<sup>th</sup> February 1974 law and entered into force on 27<sup>th</sup> January 1980), it is simply absurd to produce a law which is contrary to an international treaty’s dispositions already ratified with law n.73 of 14<sup>th</sup> March 1977.

But there is something even worse! Article 2 of this law enunciates the adherence to the principles of the European Paper on regional and minority languages of 5<sup>th</sup> November 1992 (STCE n. 148, signed on 27<sup>th</sup> June 2000, but after fifteen years is still not ratified), particularly at point b of the first paragraph of article 7 which reads: *the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question*” (the law quotes the convention text with the following words: “*the respect in the territorial setting of every language*”, without the indication of this principle’s aim). Paragraph 4 of article 8, instead, introduces a new administrative division, prescribing a new protection regime “*in the central areas of the cities of Trieste, Gorizia and Cividale del Friuli*”. This rule of law n. 38 of 23<sup>rd</sup> February 2001 is manifestly illogic in a law that declares the adherence to the principles of the European Paper on regional and minority languages. Also Article 10 introduces new administrative divisions, which prescribes the approval for the public insignias and toponymy of the “concerned authorities” conditioned by the Slovenian language’s secular marginalization corrupted by the “**hate speech**” campaign against the use of the Slovenian language which dates back to 1954 (the “*No bilingualism*” and substantially a “*no minimum protection*” considered “*integral bilingualism*”). According to the minister’s declaration in Italian to the triestine newspaper about the relationship with the parliament of 16<sup>th</sup> January 2004, the introduction of the “*integral bilingualism*” in the central areas of the cities of Trieste and Gorizia are not possible because this introduction would have had the effect of “*a match in an armory*”. That is a violent physical reaction with the intensity of an explosion in an armory. This means that the Italian State and the Parliament in particular has surrendered to the threats of violent racists (see the article’s reproduction “**‘Bilingual’ super-district. The right wing on the barricades...No to the leveling between the Italian and Slovenian languages**” published from the triestine Italian newspaper on 26<sup>th</sup> August 2015 at page 18).

As almost all authorities have their headquarters “*in the central areas of the cities of Trieste and Gorizia*”, the use of the Slovenian language is prohibited also to the other inhabitants of the Territory of Trieste in the relationship with public authorities, despite the constitutional Court’s clear pronouncement in sentence n.62 of 1992. The disposition of paragraph 2 of article 8 is even more seriously contrary to the international judicial order and it reads: “*The Armed Forces and Police Forces in the completion of their institutional tasks are left out from the implementation of paragraph 1*” which is in full contrast not only with paragraph 1 of the 1954 special Statute’s

article 5, but also with the definition of “**minimum protection**” as defined by the constitutional Court by sentence n.62 of 1992 above mentioned. The fact that, despite the expressed provision of the verdicts in paragraph 2 of the 1954 special Statute’s article 5 and despite the repeated constitutional Court’s statement the members of the Slovenian linguistic minority have the right to use the Slovenian language regardless of their knowledge of the Italian language, is particularly serious because the magistrates deny the verdict’s translation in Slovenian to the members of the Slovenian minority who speak Italian.

#### VIII.

The constitutional Court has reprimanded also the Friuli-Venezia Giulia region in the three verdicts because it has still not enacted the implementation rules for article 3 of the statute (constitutional law of 31<sup>st</sup> January 1963), which recognizes “equality of rights and treatment to all citizens, whatever their linguistic group they belong to, with the protection of their respective ethnical and cultural characteristics”. It could seem that the regional law n.26 of 16<sup>th</sup> November 2007 (Regional rules for the protection of the Slovenian linguistic protection) has fulfilled the duty descending from the special statute’s quoted article because point III concerns the use of Slovenian language. But paragraph 1 of article 11 concerns the use of Slovenian language in the relationship with the regional Administration and only in the setting of law n.38/2001’s article 8, but not in the relationship with local authorities for which the region has the legislative jurisdiction according to point 1 B of the special statute’s article 4. This article’s paragraph 6 recognizes as settlement territory the one specified by article 2, paragraph 2, which recalls the *apartheid* system. There is no trace of the protection level recalled by article 8 of the Osimo’s Treaty and of the “**minimum protection**” defined by the constitutional Court in sentence n. 62 of 1992.

#### IX.

The Framework Convention for the national minorities’ protection of 1<sup>st</sup> February 1995 (ST-CE 157), ratified by the Italian Republic with law 302 of 28<sup>th</sup> august 1997, with article 1 has established that: *The protection of National minorities and the rights and freedoms of persons belonging to those minorities forms an integral part of international protection of human rights, and as such falls within the purpose of international co-operation*”. Therefore the denial and the limitations to the right of use of the Slovenian language here examined perfectly correspond to the definition of the racial discrimination formulated by the international Convention on the elimination of every form of racial discrimination of 21<sup>st</sup> December 1965 (article 1, paragraph 1): “**In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life**”.

Samo Pahor

Trst, 8. november 2015