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**IN THE NAME OF THE ITALIAN PEOPLE**

The Court of Appeal in the district of Palermo, First Criminal Section, sitting on 11/07/2007, consisting of:

1. Judge President SALVATORE SCADUTI
2. Judge GIOACCHINO MITRA
3. Judge MONICA BONI

with the assistance of the Public Prosecutor, represented by Assistant Public Prosecutor ETTORE COSTANZO, assisted by level B3 Registrar A. Patti, handed down and issued the following

**JUDGMENT**

In the criminal proceedings against:

VITO ROBERTO PALAZZOLO (alias ROBERT VON PALACE KOLBATSCHENKO),  
born in TERRASINI on 31/07/1941, and resident in CAPE TOWN (SOUTH AFRICA)

FUGITIVE FROM JUSTICE – IN ABSENTIA

Duly assisted and defended by ROBERTO FABIO TRICOLI and Attorney GIANFRANCO VIOLA, both registered in the Court district of Palermo.

**IN THE MOTION OF APPEAL**

against the judgment handed down by the Court of PALERMO on 05/07/2006, where the accused was found guilty of aggravated complicity in the crime of Mafia type association, which is punishable under articles 110 and 416 bis, sections 1, 4 and 6 of the Italian Criminal Code, thus confirming the original facts that were ascribed to him, and sentencing him to nine years imprisonment, and the payment of the costs of the

proceedings. The Court further banned him in perpetuity from public office, with release under surveillance for two years subsequent to his sentence being served.

### **CHARGED WITH**

The crime provided for and punishable under articles 110 and 416 bis, sections 1, 4 and 6 of the Italian Criminal Code (PARTICIPATION AND AGGRAVATED ASSOCIATION IN A MAFIA TYPE ORGANISATION);

Committed in PALERMO and other places in Italy and abroad up until the 10/07/2001.

Having heard the report made by Judge Goiacchino Mitra,

As well as a reading of the documents on file in the proceedings.

Having heard the Public Prosecutor and the Defence, who closed as follows:

- Prosecution, calling for the confirmation of the appealed judgment, and qualifying the crime being contested as participation in a Mafia association;
- Defence counsel, Attorney Tricoli, insisting on the motion for the appeal
- Defence Counsel, Attorney Viola, insisting on the motion for the appeal.

The Court duly considered:

<b>IN FACT AND IN LAW</b>
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With judgment handed down on 5 July 2006, the Court of Palermo declared Vito Roberto Palazzolo guilty of the crime of complicity in a Mafia type association under article 110 and 416 bis, sections 1, 4 and 6 of the Italian Criminal Code, thus confirming the fact, which had originally stood as participation in a Mafia type association.

Palazzolo was charged with having being part of a Mafia association called “Cosa Nostra”, together with several associates, among them: Salvatore Riina, Giovanni Bonomo and Giuseppe Gelardi, and therefore using intimidation arising from his connection to the association, and the circumstances of subjugation and the conspiracy of silence that derive from this, so as to commit crimes against people’s lives and personal safety, and against their personal freedom and property, crimes with the purpose of trafficking narcotics and tobacco products, as well as arms and foreign currency dealings, and at any rate for the purposes of realising unjust gains and advantage; as well as having abetted the Mafia associates Bonomo and Gelardi’s status

as fugitives from justice, even in a foreign country, with the aggravated circumstances referred to under sections four and six of article 416 bis of the Italian Criminal Code, in having being part of an armed association, and for having financed activities with the profits originating from criminal activities (crime committed in Palermo and other places in Italy and abroad from 29 March 1992 onwards).

For this reason, the Court sentenced Palazzolo to nine years imprisonment, and declared that he be banned in perpetuity from public office and legally interdicted during the serving of his sentence, and that he be subjected to surveillance measures on his release for a period of at least two years.

In support of its decision, the Court noted that:

- Palazzolo was called to answer for the crime as from the 29 March 1992 onwards under article 416 bis of the Criminal Code, given that he had already been acquitted (or released) on this charge with judgment handed down by the Court in Rome on 28/3/1992, which had become irrevocable;
- It had also taken into account the legal principles confirmed by the Supreme Court of Appeal in the judgment handed on down on 9 January 2004, in the proceedings on the subject of precautionary measures;
- The critical review of probatory elements of proof therefore had to concentrate on the elements that had emerged subsequently to March 1992, which nonetheless could not be correctly evaluated without taking into account the frame of reference represented by previous information “*from a viewpoint of context and synchronicity*”;
- It also had to be considered that the statements made by several state witnesses had never been examined previously by any judicial authorities;
- Furthermore, the Court in Rome had applied a sentence against Palazzolo in terms of article 444 of the Criminal Procedure Code, with regard to the crime under article 75 of Law 685/1985, a crime typical of Mafia association;
- The Court also needed to take into consideration that the charge made against the accused in that judgment related to a blatant episode of international drug trafficking, committed in complicity with several high-ranking members of the Sicilian “Cosa Nostra” organisation, among them Salvatore Riina (in the historic proceedings dubbed the “Pizza Connection”);
- General Pitino of the Financial Police [“Guardia di Finanza”] reported on the relevant events;

- The Court also had to take into consideration the statements made by several state witnesses, examined during the course of the proceedings, and specifically those made by Francesco Di Carlo, Giuseppe Marchese, Calogero Ganci, Francesco Anzelmo, Giovanni Mazzola, Vincenzo Sinacori, Salvatore Cancemi, Giovanni Brusca, Tullio Cannella, Salvatore Facella and Antonino Giuffrè;
- At least seven state witnesses indicated Palazzolo was a “man of honour” who formally belonged to the association, while almost all the witnesses made reference to the role of financier and able businessman played by Palazzolo abroad (something that was essentially recorded by the entire compendium of court documents), specifying that he had been involved with significant amounts of money originating from the trafficking of narcotics and cigarettes;
- A number of state witnesses referred that Palazzolo had operated together with several high-ranking members in the organisation (among them Madonia, Geraci and Provenzano), conducting a series of business dealings abroad, which certainly included the international trade in precious stones;
- Palazzolo continued with these businesses even after he moved to South Africa, right up until recent times, as confirmed by several state witnesses;
- Also counting against the accused were the credible statements made by the witness Franco Oliveri, a friend and companion of Palazzolo while he was in detention (in prison in Lugano), who over an extended period of time, had been receiving the accused’s confidences and outpourings;
- The compendium of evidence resulting from the international rogatory proceedings and the documents acquired on that occasion, following an application made by the Defence with the consent of the Prosecution, were completely admissible for the purposes of the judgment;
- Special probatory significance was assumed by the statement signed by the witness Smith (and repeated by the witness during the hearing), and a series of official documents;
- On the basis of the records of the proceedings, the accused’s entry into South Africa could be reconstructed, together with the context of Palazzolo’s relationships, as well as the episode of hospitality provided by the above to Bonomo and Gelardi;
- Palazzolo was arrested on 20/4/194 in Switzerland, on an international warrant for his arrest issued by the Italian Judicial Authorities;

- During his detention in Switzerland, Palazzolo escaped on 24 December 1986, taking advantage of a leave permit that had been issued;
- After his escape, Palazzolo arrived in South Africa on 26/12/1986, entering on a false passport in the name of Stelio Domenico Frappoli, a friend of his and fellow prisoner, as well as a professional forger;
- After a series of events, the accused entered the small state falling within the borders of South Africa, which was called the independent Republic of Ciskei, and succeeded in securing permanent residence in that country with a donation of Rand 20.000;
- By 1987, Palazzolo had acquired a number of properties in various areas of South Africa, investing several million Rand;
- It was shown that Palazzolo enjoyed powerful political protection in South Africa, and had over the years, become one of the most influential businessmen in the country, with significant financial and property assets;
- According to the Court, in a context that was characterised by wide-spread undue influence and subjection, if not outright manipulation on the part of the accused, the only statements made by South Africans, apart from the witness Hans Klink, which appeared logical, credible and the result of investigations put in place in a spirit of seriousness and service to duty with regard to the institutions of law in South Africa, were those made by Smith and Viljoen, who were however subjected to various threats and actions directed at interfering with their work;
- The statements made by the witness Peter Hans Viljoen appeared clear, logical and coherent. The above witness referred having prepared an investigation report that would have constituted the basis for an in-depth investigation into Palazzolo's activities in South Africa, and added that even though the above report was strictly confidential, it was immediately made available to Palazzolo, and that this made it very difficult to proceed with developing the report any further;
- Viljoen (who had served in the South African Police for over 23 years), reported that he had not personally established the existence of any relations with people operating in Sicily, but that he knew only of continuous telephone contact with them, some of which had also been intercepted by the Italian Police;
- The witness Abraham Smith (ex South African Police officer, who resigned after twenty years of service, due to the undermining and marginalising circumstances

that he was forced to work in), also appeared to the Court to be very lucid, coherent and free of any prejudiced ideas;

- The subject of the evidence given by Smith referred to both the circumstances in which the investigations had been conducted, and the episode regarding the hospitality provided by Palazzolo to the fugitives from justice Bonomo and Gelardi;
- The police officer Smith had obtained a local search warrant from the South African judicial authorities, which led him to discover the presence of the above fugitives from justice at Palazzolo's home;
- In the opinion of the Court, it was proven that Palazzolo had provided hospitality to the two fugitives from justice during 1996;
- This involved conduct subsequent to the judgment dated 28/3/1992, and constituted a specific point in the charge formulated by the Prosecution;
- From the statements made by the state witnesses Giovanni Brusca and Giovanni Mazzola, it appeared that at the time of the episode, Bonomo was the head of the Mafia in the Partinico district, which was the same district that Palazzolo belonged to according to the state witnesses that were examined;
- Bonomo was identified by Brusca as the go-between who was set on re-establishing contact with Palazzolo so they could resume business dealings together, during 1996 (before the arrest of the state witness);
- Gelardi was not only Bonomo's son-in-law, but he was also a nephew of Nino Madonia, who in turn was referred to by almost all the state witnesses examined, as a friend, partner and accomplice of Palazzolo's;
- On 29 May 1996, a precautionary warrant of arrest was issued against Gelardi and Bonomo;
- From the border control records, it appeared that Bonomo and Gelardi finally left South Africa on 21 May 1996, through a border post with Namibia, crossing in a Mercedes that was registered to Palazzolo;
- On 15 June 1996, Inspector Smith personally supervised the search conducted by the South African Police at Palazzolo's property "La Terre de Luc";
- The results of the search showed that Palazzolo's small guest cottages had recently been occupied by an elderly Italian man called "Giovanni", and a couple with a young child who still wore nappies (exactly like the Gelardi family);
- Further elements of proof against the accused were obtained from the statement made by Hans Klink, who at the time had been the manager of the above property;

- Specifically, Klink confirmed that the Italian guests had left Palazzolo's farm the day before the operation conducted by the South African Police, namely on the 14 June 1996, after having stayed there for a period of two weeks;
- In the face of Klink's testimony (credible, objective and certain), Bonomo and Gelardi's official exit date from South Africa on 21 May 1996 lost its probative value;
- Furthermore, the witnesses Viljoen and Smith both confirmed that at the time, the border between South Africa and Namibia could be easily crossed, without having to pass through a border control post;
- This fact appeared to have been further validated by the content of a telephone conversation intercepted on 28/12/2004 (between the accused and his sister Sara), during which reference was made to the possibility of "crossing the river" at the Namibian border;
- Besides this call, there were several other telephone conversations intercepted during the same period, of definite value to the investigation;
- Palazzolo not only was in daily telephone contact with his sister Sara, but he also had close relationships with several figures in the Italian business and political environment;
- This important role as a point of reference was also carried out by the accused on behalf of certain important members of the "Cosa Nostra" organisation;
- Statements made by certain state witnesses (such as Brusca, Mazzola, Ganci and Cannella) converged in confirming that Palazzolo continued to maintain business relations and friendships with certain members of the "Cosa Nostra" organisation (specifically with Nenè Geraci and Bernardo Provenzano), even after he left for South Africa;
- Fitting into this context then are the statements made by the state witness Antonino Giuffrè, who had been head of the Caccamo district, and personal friend and alter ego of Bernardo Provenzano, until the time of his arrest;
- Once he had reconstructed his relationship with Provenzano, Giuffrè referred that the latter had remained tight-lipped about the business that he personally managed on behalf of the "Cosa Nostra" organisation;
- Giuffrè referred that Provenzano had made investments through certain "men of honour" from Bagheria, as well as through Oliviero Tognoli, a businessman in the steel industry, who was also involved in organising large-scale trafficking of narcotics and complex money laundering transactions;

- While underlining the importance of Tognoli (who was sentenced together with Palazzolo in the so-called “Pizza Connection” trial) in the money laundering of illegal funds, he added that Palazzolo held a more important position, given that Tognoli was “someone who managed things on the outside”, the accused “*was a Sicilian, and was connected to the Corleone family, and was connected to Provenzano, I don’t know if I’ve made myself clear*”;
- After this premise, Giuffrè referred that he had never personally met Palazzolo, but that he had heard Provenzano directly speak about him on a number of occasions;
- According to the statements made by Giuffrè, Palazzolo’s importance increased while the Corleone family “*proceeded to become involved in various businesses*”, so much so that the accused had taken on a “role of primary” importance, given that he was someone trusted by Riina and Provenzano;
- These statements made by Giuffrè corresponded with Palazzolo’s conviction for trafficking in narcotics;
- Apart from the facts relating to the eighties, Giuffrè also referred on a series of events that he had learnt directly from Provenzano, which related to subsequent years, right up until the time of his arrest (which occurred in 2002);
- Giuffrè volunteered information regarding the accused’s move to South Africa, stating that: “*during the last while he was, as far as... in a country... it could be in South Africa..*”;
- In reply to a question put by the Defence, Giuffrè replied that Palazzolo had initially lived and worked in Sicily, then he moved to Switzerland and Germany, and finally after certain problems with the judicial authorities, had moved permanently to South Africa;
- Even while Palazzolo lived in South Africa, Giuffrè had occasion to discuss the accused’s role with Provenzano, who Provenzano considered to be a “shrewd person”, and “one of the most competent people to get certain things done”;
- According to Giuffrè, during the nineties, Palazzolo had sounded Provenzano out regarding certain business ventures that could be set up overseas, like the purchase of extensive farms in Latin America, or the international trading of meat products, again from South America (specifically from Argentina);
- Relations between Palazzolo and Provenzano were conducted through various intermediaries, among them almost certainly Provenzano’s brother who lived in Germany;

- The business venture relating to the purchasing of farms in South America came to fruition, thanks to Palazzolo acting as intermediary, while Provenzano was reluctant to commit to the meat marketing venture;
- Palazzolo's proposals to Provenzano were based on the reinvestment of illicitly sourced funds from the "Cosa Nostra's" illegal activities, through companies that appeared to be legitimate;
- According to Giuffrè, Palazzolo was an expert both in international transactions, as well as in selling meat products, having had experience in ostrich farming (this fact corresponded with the results of the international rogatory proceedings);
- According to Giuffrè, these business ventures had been planned "*during the second half of the nineties*";
- According to Giuffrè, around the year 200, Palazzolo had sounded Provenzano out about acquiring a shareholding in a German insurance company;
- Significant verification of this specific business venture emerged from certain telephone interceptions;
- Giuffrè also referred that Palazzolo's involvement in drug trafficking continued during the nineties;
- With regard to more recent times, Giuffrè had also learnt from Provenzano that while in South Africa, the accused was involved in dealing in diamonds and precious stones, prompting Provenzano to remark to Giuffrè that everything that Palazzolo did "turned to gold";
- Other state witnesses also made independent corresponding references, regarding the precious stones business put in place by the accused, together with some other "men of honour", like Geraci and Madonia;
- Specifically the statements made by the state witness Tullio Cannella appeared to correspond exactly with those of Giuffrè, on the specific point of diamond mines that Palazzolo had available, in partnership with Provenzano;
- The statements made by Giuffrè appeared intrinsically credible and were verified;
- Specifically, certain significant passages in Giuffrè's statements corresponded precisely with certain conversations that had been intercepted, and transcribed in the context of these proceedings;
- Verification emerged regarding the existence of business ventures put in place by Palazzolo together with Provenzano, and on his behalf;

- Of significance was the audio surveillance carried out on 17 November 2001 (at 12:38), conducted on a Fiat Punto motor vehicle used by Pietro Landolina, on a conversation between Landolina himself and his uncle Raffaele Spina (well-known boss of “Cosa Nostra”, who passed away recently);
- A certain Antonino Di Maria (who managed a business in Piazza Noce, and was a brother of Vincenzo Di Maria, a “man of honour” belonging to the Porta Nuova district family) also joined in the conversation;
- Thanks to the interest shown by Raffaele Spina, Di Maria wanted to increase his turnover by going into business with the Sgroi family, who managed the chain of SISA supermarkets in the Palermo area, and were business partners of some people called “Giac” (identified by the judicial authorities as the Giacalone brothers, sons of Pinuzzu Giacalone, who was a “man of honour” belonging to the San Lorenzo family);
- Di Maria continued by saying that even though the Sgroi and “Giac” had made three-four billion Lire through various business ventures, this was nothing compared to those who were placed above them, alluding to the silent partners that held prominent positions;
- From the tone of the conversation, it appeared that the two silent partners could be identified as a certain “African” who had gold mines, and someone who the Police were after, and who was in fact on the Police’s most wanted list;
- In the Court’s opinion, the Prosecution’s theory was correct, where it stated that the two silent partners could be identified as the accused and as Bernardo Provenzano, taking into account also the statement made by the witness Vito Calvino;
- The intercepted conversation referred to above constituted external verification for the statements made by Antonino Giuffrè;
- Specifically, the audio surveillance indicated above confirmed the circumstances referred to by Giuffrè, regarding the fact that Palazzolo and Provenzano were in business together in various sectors, both in Italy and abroad;
- The meaning and content of another series of interceptions regarding Bernardo Provenzano’s son Angelo, needed to be evaluated in this regard: in a conversation recorded on the 23 September 1998, while speaking to his mother, Angelo complained about his financial problems, and alluded to a company that would have allowed him to earn a lot of money (“five hundred million a month”);

- From checks conducted by the judicial authorities, it emerged that the activity he was referring to were insurance policies to be signed up for Bayerische in the Palermo province;
- Further proof is constituted by conversations intercepted during 2003 between the accused and his sister Sara, and with other people (cfr. pages 132-147 of the sentence under appeal), from which further efforts emerged, aimed at manipulating the press so as to support Palazzolo's cause, and discrediting the workings of the Judicial Authorities in Palermo;
- In the Court's opinion, it was clearly shown that every time that the "Cosa Nostra" organisation needed Palazzolo, they could always count on his total support and availability (cfr. page 152 of judgment);
- Specifically, over the years, Palazzolo had been asked to provide hospitality to the two fugitives from justice Bonomo and Gelardi, as well as guarantee a secure channel for Bernardo Provenzano abroad to launder the criminal organisation's dirty money;
- In both circumstances, Palazzolo made himself immediately available, and provided the "Cosa Nostra" organisation with whatever the criminal organisation required of him in that specific context;
- The accused's conduct therefore needed to be defined as external complicity in a Mafia association, given that Palazzolo had readily provided specific contributions that were asked of him in the interests of the Mafia organisation, which had had a significant effect and had made a contribution, albeit partial, to the objectives of the Mafia association.

## **THE APPEAL**

The accused lodged an appeal against the above judgment, through his Defence Counsel, petitioning the Court to amend the sentence.

Under the first reason in the appeal, the contested judgment was purported to be null and void in terms of articles 521 and 522 of the Italian Criminal Procedure Code, due to the lack of contention.

Under the second reason, the accused contested the usability of the deposition made by the state witness Antonino Giuffrè during the hearing (given on 25/5/2005), and the illegal nature of the order to admit this as proof.

Under the third reason, the appellant alleged that the Court should acquit him from the charge because the fact did not exist.

In a secondary petition, the appellant asked the Court to grant general extenuating circumstances and reduce the sentence imposed on the basis of Palazzolo's absence from Italy for over twenty years, which would certainly have created a break with certain members of the Mafia association the appellant had had contact with, in the Court's opinion.

The appellant also petitioned the Court to make provision to partially reopen the hearings so as to examine the witness Gioacchino Garbo, who was the owner of the Palermo branch of BAYERISCHE Insurance, (at no. 19 Via Michele Miraglia), so that he could testify on any business interests that Palazzolo might have had in the above insurance company.

A further request was made by the Appellant for the reopening of the hearing in order to obtain the following documentation (indicated on pages 14 and 15 of the charge sheet):

- Fax sent by the Legal Department of the Ministry of Foreign affairs to Mrs Sara Palazzolo on 28/05/2002, together with the relative request that had been previously formulated by Mrs Palazzolo herself;
- Fax sent to Mrs Palazzolo from the Federal Office of Justice in Bernes on the 13/06/2002, together with the relative request dated 10/06/2002.

In support of the appeal, it was shown that:

- The judgment under appeal was null and void in terms of article 521 and 522 of the Italian Criminal Procedure Code, due to the lack of contention;
- In the motivation of the contested judgment, the Court had held that an alleged relationship existed in the mutual interests of the accused and Bernardo Provenzano, in the business sectors relating to the mass distribution of food products and insurance;
- The Court had violated the principle of correlation between the charge contested and the judgment with the consequent violation of the Appellant's rights to a defence, because by substantially changing the fact under contention, the Court had arrived at a decision based on criminal responsibility for external complicity, compared to the original charge of participation in a Mafia organisation;
- The accused's responsibility for the crime had been determined by a new fact compared to those indicated in the charge sheet, namely his alleged "*conduct relating to the laundering of Provenzano's dirty money*".

- In the charge sheet however, the only specific fact brought against Palazzolo related to his alleged conduct in aiding and abetting Bonomo and Gelardi, while no reference whatsoever had been made to Provenzano or to money laundering conduct on his behalf;
- The Defence held that the examination of the witness Antonino Giuffrè during the hearing (conducted on 25/2/2005) was not usable, due to the lateness of the statements made by Giuffrè, who had never mentioned Palazzolo before the 25/02/2005;
- The Court had to acquit Palazzolo of the charge ascribed to him because the fact did not exist;
- In judgment handed down on 9 January 2004, in the “*de libertate*” proceedings, the Supreme Court of Appeal had established that any conduct of participation in a Mafia association on the part of Palazzolo had to be linked to facts or conduct subsequent to the 28 March 1992, and that no reference whatsoever could be made to elements and circumstances prior to the above date, in that they were irrevocably covered by the acquittal judgment , specifically handed down in Palazzolo’ favour (and which had become irrevocable) by the Court in Rome on 28 March 1992;
- In the same judgement, the Supreme Court of Appeal had stated that the facts preceding the 28/03/1992 could only be afforded any value as a simple and generalised point of reference relating to conduct, events and situations that had taken place in a subsequent period, and that due to their weight and bearing, could be taken as serious evidence indicating guilt;
- In the light of the legal principles referred to, and even though the Supreme Court of Appeal had referred to these in the context of precautionary arrest measures, it was necessary to ascertain the existence of facts subsequent to the 28 March 1992, which were such that they could represent Palazzolo’s alleged conduct of Mafia participation;
- The application of these principles should have found for the acquittal of the accused, while the motivation of the First Instance judgment seemed to have been an intellectualised leap of ideas that attempted to justify a prejudice;
- In the judgment under contention, reference was made to alleged “contacts mediated” between Palazzolo and Doctor Marcello Dell’Utri, which were considered to have no relevance;

- With regard to these contacts, the Defence asked for the reopening of the hearing to produce the documentation mentioned on pages 14 and 15 of the appeal document;
- The events regarding Palazzolo's move to South Africa referred to in the judgment under contention were also considered to have no relevance;
- The remaining proceedings referring to events subsequent to 28/3/1992 appeared to be in direct contradiction of the Prosecution's motion;
- The Prosecution's contention had found an insurmountable obstacle in terms of Palazzolo's physical distance from Sicily, which dated back to the beginning of the eighties;
- The sporadic and intermittent contacts in relation to the subsequent period were all completely legitimate and had taken place between Palazzolo and people of Sicilian origin;
- It was to be excluded that the accused had abetted the fugitives from justice Bonomo and Gelardi, given that the precautionary warrant of arrest had been issued against them on 29 May 1996, while it could be proven that the abovementioned had left South Africa finally on the 21 May 1996 to enter Namibia;
- In the period subsequent to 29 May 1996, investigators had assumed that Bonomo and Gelardi had been present on a farm in South Africa belonging to Palazzolo, but this assumption was without any concrete proof;
- The content of the telephone interception on the 28/12/2004 was said to correspond perfectly with the Defence's argument. During this conversation, the accused had told his sister Maria Rosaria that he had received a telephone call from Gelardi;
- It clearly emerged that Palazzolo (conceded on this) had only had occasional contact with the Gelardi and Bonomo, before the precautionary arrest warrant was issued against them;
- The presence of Bonomo and Gelardi at Palazzolo's farm after 29/5/1996 had not been proven;
- The state witness Giovanni Mazzola referred that he did not know where Bonomo and Gelardi had taken refuge after Monticciolo's confession;
- Similar statements had been made by the state witness Giovanni Brusca, who never stated that Bonomo had taken refuge with Palazzolo;

- The judgment under contention had distorted the statements made by Brusca on this point;
- All the same, providing hospitality to someone considered to be Mafia (like Bonomo and Gelardi), whether they were fugitives from justice or not, could not be considered conduct that could uphold the charge of criminal association in its entirety, given that the hospitality had been provided in far-off South Africa;
- Apart from the contested usability of the statements made by the state witness Antonino Giuffrè, these statements could not be considered credible given their unjustified progression;
- Giuffrè limited himself to referring to completely generalised and hypothetical circumstances, in such a way that they could not be directly challenged;
- Giuffrè had positioned the facts he reported on as having taken place in the second half of the nineties, but he was never able to provide exact places, dates, meetings or reference companies, or any other specific element that could be considered as verification of what he stated;
- The statements made by the above state witness were progressive, without any consistency or coherence, vague, inaccurate and never checked;
- The court records that the Court considered as verification of Giuffrè's statements, did not have any probatory value in relation to Palazzolo.
- The accused was not even mentioned in the Attorney General's Note dated 08/07/2005; with reference only to contact between the telephones used by Angelo Provenzano and the insurer Gioacchino Garbo;
- Nor could concrete elements of verification be deduced from Giuffrè's statement in relation to the audio surveillance intercepted on 17/11/2001, from the inside of a "Punto" vehicle being used by Pietro Landolina;
- Furthermore, Giuffrè never suggested that Palazzolo and Provenzano had mutual interests in the wholesale distribution of food products, so the conversation on 17/11/2001 could therefore not be used as verification of Giuffrè's statement;
- In any case, even if certain statements made by state's evidence stating that Palazzolo had been "involved" in the Mafia organisation had been taken into account, even though these were provided without any specific facts, these same court records also showed the accused distancing himself from a specific Sicilian environment as early as the mid eighties;

- Specifically, the state witness Giovanni Brusca had reported how due to both judicial problems and disagreements with certain high-ranking members of “Cosa Nostra” (“so much so that he feared for his life”), Palazzolo had physically broken off contact with Mafia members and the environment itself;
- The existence of external complicity in a Mafia organisation recognised by the Court should therefore have been excluded;
- The Court should have granted general extenuating circumstances in respect of the accused;
- The sentence imposed by the Court was excessive, given that Palazzolo’s absence from Italy for over twenty years would certainly have created a break with certain members of the Mafia association, with whom according to the Court, the appellant would have maintained contact.

## **SECOND INSTANCE PROCEEDINGS**

Palazzolo was therefore brought to justice before this Court, and at the hearing held on the 22 May 2007, after the charges were read, the Defence asked that the documents indicated on pages 14 and 15 of the charge sheet be admitted; the Court reserved its right to decide on the merits of this request; the Prosecution therefore concluded their presentation, and Defence Attorney Tricoli began his presentation.

Attorney Tricoli closed his arguments at the hearing on 11 July 2005, as did Attorney Viola, who with the permission of the Prosecution, filed the order of the precautionary measures section at the Court in Palermo, whereby the application to subject Maria Rosaria Palazzolo (sister of the accused) to special surveillance measures had been denied. The Court then withdrew to Chambers and decided the matter as per the record.

## **THE CONTENTION THAT THE JUDGMENT IS NULL AND VOID**

The contention brought by the Defence that the judgment is null and void in terms of articles 521 and 522 of the Criminal Procedure Code due to the lack of contention, is unfounded.

This is premised by the approach taken by the Supreme Court of Appeal’s shared by this Court, where it stated that: *“One can find for a lack of correlation between the fact being contested and the sentence – or for the sentence to be rendered null and void due to a default in the charge – when there has been a change to such an extent that it causes a “distortion” to the original charge: when the fact being considered in the judgment is*

*dissimilar or incompatible ontologically in relation to the fact being contested, in the sense that an actual transformation, substitution or variation of the basic content in the charge against the accused has occurred, who now finds himself faced with a “new” fact, against which he has no possibility whatsoever of mounting an effective defence; a change to the charges under article 516 of the Criminal Procedure Code on the other hand presupposes that a fact has emerged during the course of the hearing making it necessary only to clarify the composition of the basic elements in the charge or its spatial/temporal references; the concept of a “different” fact provided for in the abovementioned regulation must be understood in its material and organic sense, with reference not only to the historic fact that remains unchanged even though it has been integrated into a different charge, but also to the fact having a slightly different material meaning to the one described in the order relating to the judgment; while the wording “new fact not set out in the order relating to the judgment” referred to under the subsequent article 518, relates to an event that is totally different and independent due to the basic make up of the action or the event, compared to the one that was originally being contested; it therefore follows that on the subject of association in a Mafia type criminal organisation, a “different” fact rather than a “new” fact (whereby the change to the charge is admissible together with the legitimate contention put forward by the Prosecution in terms of article 516 of the Criminal Procedure Code) is constituted by: the simple quantitative extension of the subjective make-up of the organisation, the crimes that form the subject of the criminal programme and the spatial-temporal context that the organisation itself operates in: where we are in effect dealing more with an embellishment, clarification and detailing of the material reconstruction of the fact described in the original charge” (Supreme Court of Appeal, section 1, 27/10/1997, Carelli).*

Therefore in the case in hand, the recognition given to the contribution provided by Palazzolo to the money laundering activities put in place by Bernardo Provenzano, historic head of the “Cosa Nostra” Mafia organisation, can also not be considered as a different fact from the one contested under the charges against the accused, as it involves an activity that can certainly be traced back to the charge ascribed to him in the charge sheet of having been part of the “Cosa Nostra” Mafia organisation, therefore using intimidation arising from his connection to the association, and the circumstances of subjugation and the conspiracy of silence that derive from this, so as to commit crimes inter alia, against other people’s property, in the laundering of money.

The Prosecution's decision not to proceed with a supplementary charge therefore cannot be reproached.

From another viewpoint, it should be noted that: "*There is no violation of the principle of correlation between the charge and the sentence (article 521 of Criminal Procedure Code) in a decision where the accused has been called to answer for participation in a Mafia association, when he is sentenced for external complicity in the above association, since the material fact has been adequately set out in the charge sheet and in the judgment the accused has been judged responsible for this material fact, seeing that participation in a Mafia association and external complicity do not represent two different cases of a crime, but rather two distinct methods of criminal participation*" (Supreme Court of Appeal, section V, 25/3/2004, Sciacca).

It should be noted from now, that the Court (as will be discussed in more detail hereunder) does not share the opinion expressed by the First Instance Judges on the judicial qualification of the fact, since the Court considers that Palazzolo's conduct includes the crime of participation in a Mafia type association that was originally contested against him: this essentially excludes the basis for the contentions made by the Defence on the judgment being null and void due to the lack of contention.

**THE CONTENTION THAT THE STATEMENTS MADE BY ANTONINO GIUFFRÈ ARE NOT USABLE.**

In the second contention, the Appellant objects to the use of the testimony of the state witness Antonino Giuffrè gathered during the hearing (on the 25/5/2005).

This contention is found to be without any basis.

The Appellant has again brought up a question at the Second Instance hearing that the Court has already considered, regarding the correct interpretation of the regulations introduced in terms of Law no.45 dated 13 February 2001, with specific reference to the probatory usability of statements made by state witnesses after the six month period has lapsed from the onset of their collaboration.

The Court notes that the Defence's arguments do not effectively contradict the arguments put forward by the First Instance Judges in the order dated 4 May 2005.

In this regard, it must be noted that article 16(4), section 1 of Law 82/91 (which was amended by Law no. 45/1001, indicated above) made specific provision to cover the first objective that inspired the legislature to introduce the time frame of six months for the state witness to render the information that he had in his possession. This was done to make it possible to conduct an initial evaluation on his contribution so as to ascertain whether special protection measures needed to be imposed, and whether a case existed for extenuating circumstances and the relevant leniency in sentencing.

This initial objective is strengthened by the sanctions that apply (no granting of benefits or cancellation of benefits) in the case of a state witness not preparing the statements stipulated for under article 16 (4), and these not being documented in the mandatory report outline: the state witness is therefore obliged to make a concerted effort within a short period of time set down by law, to recall the significant criminal details that he is aware of and to formalise these in a report that illustrates the main subject matter constituting his collaboration.

The report outline that is drawn up at this stage is performed in a summarised format (this is more than obvious in the case of criminals with a long and complex criminal background – like Giuffrè), and is to be considered an outline that sets out and anticipates the statements that must be formalised subsequently by the state witness.

No preclusion can be found to not elaborate these statements further with regard to the subjects and arguments that were indicated by the state witness in the initial report, (albeit in summarised format), especially in the forum of a hearing (in cross examination of the parties)

Furthermore, in the case in question, a literal reading of the above regulation is especially significant to ensure a correct interpretation: in order to confront the phenomenon of progressive statements, the legislature introduced a rule of non usability in the case of statements made beyond the six month period by the state witness to “*the Prosecution and Judicial Police authorities*”.

Apart from cases where these statements could not be repeatable (where they are admissible against anybody), and keeping to the proviso that self-incriminating statements could be used, the legislature basically established that later statements made in respect of third parties by the state witness to “*the Prosecution and Judicial Police authorities*” in the absence of the guarantees constituted by the presence of a Judge and cross-examination, were to be considered “suspicious” and could not be evaluated for the purposes of proving facts that were contained in the statements against other people than the deponent himself.

So then, the abovementioned article 16(4), section 9 introduces an exceptional rule of probatory exclusion that cannot be extended by analogy: this rule is specifically limited to the statements made by state witnesses to the Prosecution and the Judicial Police Authorities, and cannot be extended to an absolute and indiscriminate rule relating to the non usability of later statements made to subjects who differ from the ones specifically set down in the regulation (in a similar vein, reference is made to the decisions in this regard handed down by the Supreme Court of Appeal in Palermo –judgment dated 23 January 2003, and by the Court of Palermo –judgment dated 20 January 2003 – both published on the “Italian Forum” in 2003).

Sharing this interpretation of the regulation, the Supreme Court of Appeal confronted the general subject of interpreting the regulation in question, even though it was dealing with a case of inter-temporal law, by stating that: “*The regulations referred to provide for the non usability of statements that were made to the Prosecution or the Judicial Police subsequently to the term set down: in other words, during the investigation stage, where the collaboration is physically directed, and not during the procedural stage. The regulations therefore find application in the case of statements made outside of cross-examination, and not during the course of the trial. In the case of the latter in fact, the evaluation can only function according to the usual criteria, as long as the statements are connected to the content and timeframes found in the initial summarised report*”. (cfr. Supreme Court of Appeal, Section V, judgment no.18061 of 2002, page 14).

Nor can a different conclusion be reached based on the principles set down in another judgment by the Supreme Court of Appeal, which states that: “*The basis for serious elements of proof in proving guilt necessary for the application of precautionary arrest measures cannot be recognised in the so-called later statements made by state witnesses to the Prosecution or Judicial Police, since the probatory exclusion rule provided for under article 16(4), section 9 of Law 82 dated 15 March 1991 sets out a specific provision that statements made against others are not usable, making them fundamentally and functionally unsuitable from a probatory viewpoint, not only for the purposes of establishing the guilt of the accused at the end of the hearing or the special proceedings, but also in the context of the preliminary investigations, and especially in the context of precautionary arrest proceedings*”.(cfr. Supreme Court of Appeal, Section 1, 15 October 2003, Abruzzese).

And in fact, this judgment relating specifically to the question of non usability in the context of proceedings for deciding precautionary arrest measures (and quoted incorrectly by the Court, as pointed out by the Appellant), sets the limitation to “*the so-called later statements made by state witnesses to the Prosecution or Judicial Police*”, thus implicitly excluding that the provision of non usability could be extended to later statements made by state witnesses during cross-examinations conducted during hearings.

The above considerations have directed the Court to exclude the non usability of the statements made by the state witness Antonino Giuffrè at the hearing on the 25/5/2005, and to reject the objection raised by the Appellant.

**THE REQUEST FORMULATED BY THE APPELLANT FOR AN ACQUITTAL,  
BECAUSE THE FACT DOES NOT EXIST**

Under the third motion, the Appellant claimed that the Court should acquit the Appellant from the charge ascribed to him, because the fact does not exist.

It should firstly be pointed out that Palazzolo has been called to answer in these proceedings to the crime of participation in a Mafia association called "Cosa Nostra" (qualified by the First Instance Judges in terms of articles 110 and 416 of the Italian Criminal Code) as from the 29 March 1992, as specified by the Prosecution during the course of the hearing on the 13/11/2002: Palazzolo had in fact already been acquitted on this charge with a judgment handed down by the Court in Rome on 28/3/1992 and which had become irrevocable (filed in the proceedings).

In actual fact, this did not involve an acquittal judgment, but rather a release judgment in terms of article 129 of the Italian Criminal Procedure Code, as it appears in the wording for the motivation: "considering that the assumption under article 129 of the Criminal Procedure Code applies, given that there are no elements of proof whatsoever that emerge in relation to the crime under article 416 bis of the Italian Criminal Code".

The findings of the Court must be restated, according to which an examination of this judgment does not allow for a critical verification of the probatory material that forms the subject of the evaluation, nor of the criteria followed by that Court to arrive at an acquittal judgment, seeing that it involved an Order that was completely lacking in motivation and was based on a single sentence filled in by hand on a form provided by the Ministry of Justice as a format for the application of sanctions under article 444 of the Italian Criminal Procedure Code: the entire motivation is limited to this laconic and pitiless formula inserted on a single dotted line on the form relating to the application of sanctions under the judgment.

The "motivation" referred to ("there are no elements of proof whatsoever that emerge in relation to the crime under article 416 bis of the Italian Criminal Code") also appears to be contradictory, considering that in terms of the same judgment, Palazzolo was also sentenced to two years imprisonment and a fine of 40 million Lire for the crime under article 75 of Law 685/75, which he had committed together with a number of people belonging to the Mafia association called the "Cosa Nostra".

However, faced with this lack of motivation, there are no useful elements available to understand whether this involved a plea-bargain for a crime (article 75 of Law 685/75)

with release for the crime of participation (article 416 bis of the Italian Criminal Code), as the use of the formula, the quote from article 129 of the Criminal Procedure Code and the lack of any reference to any activity during the proceedings would seem to suggest, or an actual acquittal judgment in terms of article 530 of the Criminal Procedure Code, which could have been deduced from the section in the judgment stating the decision (“*acquit*”).

Despite the strangeness of this judgment – marked by the complete lack of a motivation regarding the reasons for an acquittal in relation to such a serious charge – the Court is duty-bound to take note of the final judgment and to respect its outcome, including the repercussions that it has for today’s judgment.

The existence of a previous acquittal judgment (or rather release) in respect of Palazzolo relating to the same charge that the Court is examining today, compels the Court to adopt a series of principles that have been identified by legitimate case-law on the subject of the preclusion of judgment and the prohibition of the so-called *ne bis in idem*.

The Court also took the *de libertate* judgment handed down by the First Criminal Section of the Supreme Court of Appeal on 9 January 2004 (on file) into account in the context of these proceedings.

Taking direction from the principles established by the Supreme Court of Appeal, both in general terms as well as with reference to today’s proceedings, the Court confirmed that “*the ne bis in idem principle means that a second judgement is forbidden for the same fact in relation to the same accused. Since the fact is established according to the conduct, event and causative connection, the violation of the above principle is excluded when faced with a repeat of the same conduct on different occasions, as in the case of material complicity or even formal complicity in crimes. In terms of crimes under article 416 bis of the Criminal Code, therefore the duplication of proceedings is excluded when the subject of the dispute is conduct committed subsequently to the one already ruled on under an irrevocable judgement*”.(Appeal Court Section I, 21.10.92 no. 11633 and others).

Specifically, the Court held that he could be tried for a separate crime relating to the portion of his conduct subsequent to the date of the judgment handed down by the First Instance Court (which subsequently became irrevocable), leaving aside the fact that this involved a conviction with the fact having been confirmed, or an acquittal of the accused, stating that these proceedings were not a violation of the so-called *ne bis in idem*

principle, given the permanent nature of the crime, and the fact that the conduct that had been taken under review fell into a time period subsequent to the judgment.

On the point in question, albeit in the context of precautionary proceedings, the Supreme Court of Appeal had already ruled in the very context of these proceedings, in the judgment that it handed down on 9/1/2004, stating that: *“As was correctly pointed out by the Defence, we need to start from the uncontested and undisputed fact that Palazzolo was acquitted on the charge of participation in a Mafia association, which he allegedly was part of until the 28/3/1992, the date on which the acquittal judgment was handed down by the Court of Rome. From this we must inevitably conclude that the formulation of any possible continued participation in a Mafia organisation can only be linked to facts or conduct subsequent to the above date, as we can no longer refer to events and circumstances prior to this date, since they have been conclusively covered by the acquittal judgement, and excluded because they did not give substantial proof of the accused’s participation in a criminal association during the period under consideration by the above judgement”* (pages 5 and 6).

The Supreme Court basically took its cue from the detail in the acquittal (or release) judgment to establish that any conduct of continual participation in the “Cosa Nostra” organisation must be linked to facts and/or conduct subsequent to the 28/3/92.

The Supreme Court of Appeal had not however limited its examination of today’s case to fixing this principle, but immediately clarified that: *“It is true however, as was duly observed by the Court of Review, that in order to formulate a framework of proof, it is possible to make reference to prior elements of proof should they be indicative of the accused’s participation in a Mafia association in a subsequent period”*.

But the Supreme Court of Appeal admitted the possibility that even “prior elements of proof” could have some meaning and significance, going on to explain to what extent: *“But, apart from the consideration that the elements of proof must relate to events that have occurred, this picture would be uncontested if the judgment from which the continued permanence of the crime were to exist, was a judgment that carried a conviction. We are dealing here instead, with an acquittal judgement based furthermore on the non existence of the facts, where any aspect or element of proof arising from a previous period and that has already formed the basis of previous evaluation, cannot be used again as the basis for a contention relating to the alleged conduct of participation subsequent to the acquittal judgement, which had already excluded Palazzolo’s participation during the previous period and in terms of which these*

*elements have lost any probatory value. **The only value that can be afforded these elements of proof is that of a simple and generalised point of reference relating to conduct, events and situations that took place in a previous period, and that could, needless to say, be such that they carry the weight and bearing of serious evidence indicating guilt** in accordance with, and in terms of provisions 1 and 1-bis of article 273 of the Criminal Procedure Code.”*

The Supreme Court of Appeal also clarified the probatory significance that could be afforded to these “prior elements of proof” that “had already formed the basis of previous evaluation”, limiting their value to a “**frame of reference**” relating to conduct and events that had occurred subsequently to the acquittal judgment.

This Court basically adhered to these principles, while stressing at least two extremely important aspects.

The First Instance Court Judges showed how the Supreme Court of Appeal had made specific reference to prior elements of proof “**that have already formed the basis of previous evaluation**” and consequently seemed to exclude any elements of proof that were categorically not taken under review by the Court in Rome and that had not formed the basis for the first judgment.

In other words, in this respect we note that while the Court of Rome did not make any perfunctory reference to the facts and sources that it did take under review in the much cited judgment of 28.3.92, it had no way of evaluating the statements made by the many state witnesses listed in these proceedings, for the very reason that these witnesses only began their cooperation with the relevant authorities much later than the 28.3.92.

In the strictest application of the principles established by the Court, it follows that these new sources of evidence that relate to “facts” regarding a time period prior to the judgment, but which were definitely not evaluated by the Court of Rome, can today be taken into consideration – for the first time – but always with reference to events and conduct that took place subsequent to 1992.

But again based on the Supreme Court’s ruling, these facts centred on new sources of evidence that had never been previously examined, can represent a “frame of reference” for subsequent behaviour and conduct.

A great number of significant elements of proof have been acquired in these proceedings, which are most certainly based on new sources of evidence in respect of the first judgment, as for example, the statements made by the state witnesses.

According to the principles established by the Supreme Court of Appeal in its judgment of 9/1/04, these elements can still be examined, because even though they relate to a period of time prior to the judgment, they have never “*formed the basis of previous evaluation*”.

All the same, while maintaining its position as a protector of civil rights, the Court decided to use these elements not as direct sources of proof against the accused, but to rather follow the lead of the Supreme Court of Appeal, and use them as a frame of reference in which facts subsequent to the 1992 judgment could be contextualised and evaluated.

On the premise of the above, the Court notes that the Supreme Court of Appeal judgment in the precautionary proceedings on the 9 January 2004 does not bind the merits of this judgment: the legal principles outlined in the above judgment had bound the Judges of the Review Court in Palermo in the remanded judgment, but not this Court.

At this point, it is worthwhile copying in the text of article 649 of the Italian Criminal Procedure Code: “*the accused that has been acquitted or convicted with a judgement or criminal decree that has become irrevocable, cannot be subjected to criminal proceedings for the same fact, even if this is considered to be different because of its designation, level or the circumstances..*”.

Consequently, the above regulations establish a typical preclusion in respect of the proceedings, but do not impose any specific limitations to the principle of the Judge’s freedom to decide.

In a similar statement, the Supreme Court of Appeal established that: “*The ne bis in idem principle under article 649 of the Italian Criminal Code prevents the Judge from proceeding against the same person for the same fact that the judgment was based on, but not from examining the same historic fact and evaluating it with reference to a different crime; this involves a preclusion that therefore cannot apply when the fact in relation to which an irrevocable judgment has been given was the consequence of conduct that has at the same time caused the violation of more provisions of the Law, where the criminal event can and must be evaluated in the light of all its criminal implications, with a possible review regarding the criminal actions that were not included in the previous judgment*” (cfr. Supreme Court of Appeal, Section 1, 08/03/1994, Targhetta);

*“it is legitimate to assume as an independent element of evaluation, factual circumstances gathered during the course of other criminal proceedings, even when these concluded in an irrevocable acquittal judgment, because the preclusion of judgment only prevents instituting a criminal action for the fact-crime that formed the subject of that judgment, but has nothing to do with the possibility of a renewed evaluation of the probatory elements acquired during the proceedings that have been concluded, once it has been established that these probatory elements could be relevant in verifying different crimes from the one already judged; and in fact the inadmissibility of a second judgment for the same crime does not prevent the same historic fact or particular aspects of this being taken into consideration, and being evaluated freely for the purposes of proving a different crime from the one that has been judged, given that what becomes irrevocable is the legal truth of the fact-crime, and not the factual truth of the historic fact”.* (cfr. Supreme Court of Appeal, Section 1, 23/11/1995, Facchini).

*“For the purposes of preclusion from judgment, a different fact is constituted by one that even though it violates the same regulation and includes details of the same crime, is a further manifestation of the person’s activities that differs and is distinct in terms of space and time from the ones previously established and assessed in the irrevocable judgment; the identity of the fact therefore materialises only when this has occurred under the same conditions of time, place and people”.*(cfr. Supreme Court of Appeal, Section II, 15/4/1994).

In a recent ruling, the Supreme Court of Appeal also stated that: *“On the subject of an associative crime, the ruling not to proceed in a criminal action in relation to one part of the period in which one belonged to an association, interrupts the permanence of the crime for the corresponding period, thus precluding the possibility that a conviction can be handed down against the accused in relation to associative conduct carried out in that space of time, but it does not have the effect of preventing the factual elements relating to that period to be evaluated as proof in order to establish the existence of an associative crime with reference to the remaining time period of permanence”.* (cfr. Supreme Court of Appeal, section IV, 20 March 2006, no. 14589).

The Court shares this last judgment quoted above, which also seems to refer to the case in point.

And in actual fact, the acquittal (or release) judgment issued in relation to Palazzolo on 28/3/1992 does not preclude this Court from independently examining and evaluating historic facts referring to the period covered by the acquittal judgment: this would involve

a limitation on the Judge's freedom to decide, which finds no justification in the content of article 649 of the Criminal Procedure Code.

This conclusion is all the more convincing in the case in point, where as it has been shown previously that even though the Court in Rome did not indicate the facts and sources of proof that it had taken into consideration in deciding the abovementioned judgment of 28/3/1992, it certainly had not examined the statements made by the various state witnesses who gave evidence in these proceedings.

These deliberations led the Court to believe that for the purposes of reconstructing the facts being argued in these proceedings (facts subsequent to 29/3/1992), it is possible to also take into consideration events that occurred in a previous time period, such as those for example that constitute the subject of the statements made by the state witnesses, without the limitation indicated by the Supreme Court of Appeal in its judgment dated 9/1/1994.

The Court does not mean that it is possible to recognise Palazzolo's responsibility in the facts covered by the judgment, but only admits that it is possible to evaluate specific historic facts (referred to by the state witnesses) in order to assess and evaluate the conduct ascribed to the accused (conduct subsequent to 29 March 1992), and this only to create a frame of reference that can be taken into account in the evaluation of subsequent findings from the proceedings.

On the other hand, the findings of the judgment handed down by the Court of Rome on 28/3/1992 must still be taken into account.

In its judgment on 9/1/2004 the Supreme Court of Appeal while correctly making reference to the acquittal judgment in relation to the crime under article 416 bis of the Criminal Code, did not stress how the Court of Rome had applied sanctions against Palazzolo under the same judgment for the crime under article 75 of Law 678/75: as in the case of the acquittal judgment, this fact must also be taken into account in examining the position of today's accused, seeing that this was a judgment that has also become irrevocable.

The argument against Palazzolo in that judgment referred to a blatant episode of international narcotics trafficking, committed in complicity with a number of high-ranking members of the Sicilian "Cosa Nostra", among them Pasquale Cuntrera, Pasquale Caruana, Alfonso Caruana, Francesco Di Carlo, Antonino Madonia, Antonino Rotolo, Leonardo Greco, Salvatore Catalano, the Bono brothers, Nenè Geraci and Salvatore Riina.

This referred to the famous proceedings dubbed the “Pizza Connection”, which probably constitutes the largest trial to be held in Italy regarding the international trafficking of enormous amounts of narcotics.

The witness General Pitino confirmed that the traffic was administered directly by high ranking members of the “Cosa Nostra” who bought in significant quantities of the morphine base from Turkey over several deliveries, and then processed this in Sicilian laboratories to form heroin; the heroin was then transported into the USA and distributed through a network of pizzerias and restaurants largely managed by people of Sicilian origin.

The substantial income emanating from this trafficking (equal to tens of millions of dollars at the time) was in turn laundered through Switzerland, and through the significant contribution made by Palazzolo.

Palazzolo was not only resident between Switzerland and Germany, but was involved in financing, and thanks to his knowledge and connections, was able to launder these illegal funds through a series of banking transactions and investments fronts.

The income then found its way back to Sicily, and finished up in the hands of high ranking members of “Cosa Nostra” (among them, Riina and Provenzano), who in turn were able to fund the illegal activities typical of this organisation.

The existence of deep-rooted structural relations between today’s accused and the heads of the “Cosa Nostra” can be found in the proceedings and the irrevocable judgment handed down in relation to Palazzolo, dating back to the eighties.

These relations were confirmed by the numerous converging statements made by the state witnesses heard for the first time in the First Instance hearing.

There can be no doubt in fact that Palazzolo’s specific skills in the field of international finance had made him an extremely valuable asset for the heads of the “Cosa Nostra” from the eighties onwards.

There are very few people in the “Cosa Nostra” organisation who at that time (and still today), are able to operate in the international financing sector, and launder dirty money through banks and companies operating on a trans-national level.

Palazzolo, on the other hand, both because of his experience in living abroad, and the specific skills developed over the years in the financial and business world represented a secure and almost irreplaceable point of reference for the entire “Cosa Nostra” organisation.

The complex proceedings relating to drug trafficking in the so-called “Pizza Connection” had also resulted in a further conviction against Palazzolo in Switzerland on related matters.

In fact, the existence of this conviction emanating from the Swiss Courts had further repercussions in Italy: Palazzolo was convicted to 12 years imprisonment for trafficking in narcotics, on the associative crime stipulated under article 75 of Law 685/75 (see judgement of Court of Palermo, Criminal Section IV dated 12.10.2000), which was then set aside on appeal due to the application of the international *ne bis in idem* principle, precisely because of the above Swiss judgement.

However, the most useful and significant element of proof in reconstructing the accused’s conduct is the states evidence heard during these proceedings, therefore subsequently to the acquittal judgement of 1992.

These are witnesses, who at different times and following independent routes, began a process of cooperation with the state authorities, and through numerous hearings; this process made it possible to reconstruct the internal workings of the Mafia organisation called “Cosa Nostra”, arrest various members of the organisation, and contributed in a significant way to their conviction, with most judgments becoming irrevocable.

On the basis of these irrevocable judgements, these state witnesses are to be considered completely credible, in that their statements were deemed appropriate in supporting various convictions for very serious offences connected to “Cosa Nostra” operations.

Several of these witnesses originated from the same area in Sicily as Palazzolo (Cinisi, Terrasini and Partinico), or had operated on an international level (Di Carlo and Ciulla), or worked closely with the executives of “Cosa Nostra” (Brusca, Ganci, Cancemi).

Antonino Giuffrè was added to this list, with his assistance rendered recently, and certainly referred to events subsequent to 1992.

At this point, it appears worthwhile copying in the section of the judgment under contention regarding the state witnesses’ statements, taking into account that these statements were correctly summarised by the First Instance Judges, and that the Appellant raised no specific objections regarding these statements, with the exception of those made by Giovanni Brusca and Mazzola (which will be discussed more specifically hereunder).

With regard to the statements made by the state witnesses (and the witness Franco Oliveri), the Court noted the following:

“Starting with a review of the various statements made by the state witnesses examined during the court hearing, the first witness to start with is Francesco Di Carlo, a historic “man of honour” in Cosa Nostra, who belonged to the organisation from the sixties until 1982, when he was forced to move to London due to internal dissension. He continued operating in illegal international affairs there, remaining in constant contact with members of the Sicilian “Cosa Nostra” organisation. In 1978, Di Carlo was directly tasked by Salvatore Riina to provide logistical assistance and refuge to Antonino Marchese, a man within the organisation who required surgical treatment in Switzerland.

Marchese had recently committed an important murder, and for this reason Riina took a personal interest in ensuring he received the necessary medical assistance abroad.

Obviously funds would be required for the medical fees and private clinics in Switzerland, and Riina himself gave instructions to Di Carlo to approach Palazzolo, who effectively supplied the funds necessary for anything that Marchese required (Marchese was in fact related to Riina).

Di Carlo went to Bernes, where he met with Palazzolo who was working in that city as a financial consultant (running an office with a local partner). Palazzolo indicated that he was already aware of the reason for the meeting.

Palazzolo then gave him cash corresponding to 50 million Lire of the time, which were used largely to finance Marchese’s stay in hospital and surgical fees.

During the same summer (1978), Di Carlo met with Palazzolo again, this time in a restaurant “Il Castello” that he managed.

Palazzolo was very expansive during this second meeting, describing his close relationship with “uncle Totuccio” Riina and other “men of honour”.

A third meeting followed between the two, again in Switzerland, when Di Carlo was again sent by Riina to deposit the remainder of the money Palazzolo had given him (corresponding to about 20 million lire) into one of his current accounts.

On this occasion, Di Carlo returned the money to Palazzolo, who then deposited it into a Swiss bank account, held by Riina himself.

Palazzolo, indicated as Riina’s trustee, knew Riina’s current account number in Switzerland, and arranged for the money that Di Carlo had brought him to be deposited.

During their meetings, Riina had confided in Di Carlo that Palazzolo was “at his disposal”, and that he was involved in laundering funds from the trafficking of cigarettes and drugs through various transactions and investments in Switzerland (for example, the trade in precious stones).

Again on Riina’s hearsay, Palazzolo was the partner and godfather of one of Nino Madonia’s children (“compare”), who through Palazzolo, was laundering money derived from cigarette trafficking operations he ran with the Nuvoletta clan in Marano.

Riina finally suggested that Di Carlo go into business with him, and work with Palazzolo in laundering dirty money through Switzerland. For obvious reasons, to ensure continuity in the

argument, it is worth examining the content of the statements made by state witness Giuseppe Marchese.

He was a “man of honour” in the Marchese Mafia family from Corse dei Mille from the end of the eighties, traditionally one of the most qualified within this region, and was the brother of Antonino Marchese, who was mentioned previously.

Marchese fully confirmed what had been said by Di Carlo, that his brother had had to undergo delicate throat surgery at a Swiss clinic some years previously.

Francesco Di Carlo personally saw to all the arrangements for the operation, and gave his uncle Filippo Marchese, the head of the Corso dei Mille Mafia family of the time, a place to stay while he was in Switzerland accompanying his nephew.

It is hardly necessary to underline the convergence of the two statements, both with regard to the surgery and Di Carlo's involvement.

Through other statements made by state witnesses, there is further confirmation of the money laundering role that Palazzolo played and his close relations with the heads of the “Cosa Nostra” organisation (Riina and Madonia), on whose behalf he was operating.

Specifically, Calogero Ganci, a “man of honour” in the Noce family from 1980, and son of the head of the family Raffaele, who also became head of the entire district, stated that he had met Palazzolo in 1981.

Palazzolo was formally introduced to him on this occasion by his father Raffaele Ganci, as a “man of honour” (“corporal in the Terrasini family”).

Palazzolo worked on behalf of Riina and other heads of “Cosa Nostra” in Palermo, laundering vast amounts of money originating from the traffic of drugs and cigarettes run by the organisation. On one specific occasion to their knowledge, Palazzolo had brought a high cylinder motor car from Switzerland to Palermo, which had a hidden base where enormous quantities of American dollars were hidden.

Ganci was tasked by his father to take the money and pack it into some bags that his father and Giacomo Giuseppe Gambino (another important Mafia figure of the time) then delivered directly to Riina.

According to what he was told by his father and other members of the organisation, this was money that had come from drug and cigarette trafficking, which Palazzolo had reinvested in diamonds overseas and then brought back to Sicily to deliver directly to Salvatore Riina.

In the same context, Ganci learnt that Palazzolo had a privileged relationship with Nino Madonia, a “man of honour” in the Resuttana family (who had committed various murders with this witness), and who often went to Switzerland to look after his business interests with Palazzolo.

The day after the delivery of the dollars, Ganci also attended a lunch together with all the men of honour indicated above and Palazzolo. The meal was held at the “Da Calogero” restaurant in

Terrasini, after an initial meeting held at the house of Palazzolo's friend, a Mr Torregrossa, a businessman from Terrasini.

With reference to more recent events, Ganci stated that he had learnt from his father Raffaele in about 1993 that Palazzolo had moved to South Africa, and that Palazzolo had perhaps taken with him funds belonging to Riina, who did not appreciate this gesture and was angry with Palazzolo.

The episode referred by Ganci regarding the first meeting with Palazzolo is fully corroborated in statements made in an entirely different context by state witness Francesco Paolo Anzelmo.

He was a "man of honour" in the Noce Mafia family from the beginning of the eighties, and had committed several sensational murders, some together with Nino Madonia (murder of General Dalla Chiesa, Magistrate Rocco Chinnici and Commissioner Ninni Cassarà).

Anzelmo, in particular independently made reference to the circumstances relating to Palazzolo's return to Sicily in a motor car filled with American dollars: an event that was so sensational and striking at the time, that it had made an impression on Anzelmo.

He remembers perfectly that the car was "cleaned out" by Calogero Ganci and Franco Spina in the countryside near the Agip Motel, and that the dollars were delivered to Riina in the presence of various "men of honour", including Nino Madonia.

On this occasion, he learnt from Raffaele Ganci, Pippo Gambino and his uncle Saro Anzelmo, that Palazzolo was a "man of honour" from the Terrasini family, and that he was in partnership with Nino Madonia, who at the time often travelled to Switzerland and Germany to meet with him.

Their company was involved in various illegal activities on an international level, including the illegal sale of precious stones (diamonds in particular).

With regard to more recent events compared to the 1992 judgment; Anzelmo stated that he knew from the same sources that Palazzolo had also continued with the illegal trafficking of diamonds after he moved to South Africa.

Another state witness also made reference and corroborated the fact of international trading in diamonds, set up by Palazzolo together with other members of the Sicilian "Cosa Nostra". This witness, Giovanni Mazzola, was a "man of honour" from the Montelepre Mafia family from 1980, and therefore belonged to the same geographical region as Palazzolo.

It should in fact be noted that the Montelepre family fell under the Partinico district, which for many years was headed up by Nenè Geraci, an historic boss of the area, and who will be seen, had close relations with Palazzolo.

Mazzola, who had turned state witness from May 1996, had not met Palazzolo personally, but had heard a lot about him from the younger Nenè Geraci, the counsellor of the Partinico family, and another personality who appears to have had close relations with the accused, and whose name often comes up in statements made by various state witnesses.

Geraci was particularly close with Mazzola and had confided in him about the business that he had with Palazzolo from the eighties, and specifically that he had been involved with him in the international trafficking of diamonds.

According to what he had been told by Geraci, this business relationship also related to more recent times than 1996, given that Palazzolo had continued in the diamond business after he moved to South Africa (following his arrest in Switzerland).

Mazzola also made reference to another detail that as will be seen, becomes significant regarding the specific episode (subsequent to the 1992 judgment) of hospitality provided to Giovanni Bonomo and Giuseppe Gelardi.

During the first few months of 1996, shortly before he turned state witness, Mazzola learnt from Ciccio Di Piazza (a counsellor of the Partinico family) that immediately after the arrest of Monticciolo, all the “men of honour” in the region were extremely nervous because they feared that he would turn state witness.

For this reason, a general “hiding-hiding” took place where many men left their homes and went into hiding.

Among these men were Bonomo – who at the time was head of the Partinico family (the same family that Di Piazza belonged to) – and his son-in-law, Gelardi, who together fled to South Africa. This last event obviously relates to a time period after 1992, and corroborates what will be discussed regarding this particular event which took place in 1996.

The existence of a strong friendship and business ties between Palazzolo and Nino Madonia and the younger Nenè Geraci, is confirmed by another state witness of “Cosa Nostra”, Vincenzo Sinacori.

Sinacori was a “man on honour” in the Mazara del Vallo Mafia family from the eighties, and from 1990 had taken over as head of the family. As with all the other state evidence, his cooperation with the authorities began well after 1992, in fact in 1996.

Sinacorsi personally met Palazzolo on several occasions, while he was visiting Mazara del Vallo to meet with other “men of honour” in the area.

He was never introduced as a “man of honour” on these occasions, but Sinacori later learnt from Francesco Messina (or Mastro Ciccio, deputy boss and then boss of the Mazara family and historic boss of the area), that Palazzolo was involved in the organisation.

Again from Mastro Ciccio and Salvatore Tamburello, a counsellor in the family, he learnt that Palazzolo had been involved in two murders that were interconnected.

The murders in question were those of Agostino Badalamenti, which had taken place in Germany and Antonio Ventimiglia, a personal friend of Palazzolo, who had disappeared so that he would not pass on information to investigators, given that he had been identified and his gun had been found at the scene of the first murder.

In this regard, it is worth noting that Palazzolo had been investigated for the murder of Agostino Badalamenti, which had been committed in Solingen, Germany by hired assassins from Sicily, but there was no further outcome to these proceedings.

The same can be said for the murder and disappearance of Antonio Ventimiglia, who appears to have been Palazzolo's factotum in Germany, and whose gun was found at the scene of Badalamenti's murder.

These facts emerged from documentation on file and will be confirmed by the important deposition made by the witness Franco Oliveri, who received Palazzolo's confidences while they shared a period of imprisonment together in Switzerland.

Obviously, these do not allow for specific criminal charges to be brought against Palazzolo in these serious matters of life and death (and for which he was exonerated), but they do serve to corroborate Sinacori's statements, and show that they are not circumstances without foundation.

Another significant fact that Messina learnt from Tamburello (who knew Palazzolo personally, as they went to his house together), relates to business relations in Switzerland with Nino Madonia and the young Nenè Geraci. This fact is obviously significant because it confirms and shows convergence with what was repeatedly stated by various witnesses.

According to what he learnt, Palazzolo did not only have business relations with Geraci and Madonia (who was also his "compare"), but also with Riina and other "men of honour" who sent their proceeds from cigarette and drug trafficking to Switzerland to be laundered.

Again what is striking is how these facts from a number of witnesses' statements all converge, even though they were made by different state witnesses, all quite distinct as far as their regional affiliations went, their roles within the organisation, and the different time periods and contexts under which they testified.

A final very important point of information from Sinacori relates to the existence of close friendship and business ties between Palazzolo and Andrea Mangiaracina, one of the top leaders of the Mafia from the Trapani clan.

This element takes on special significance because Sinacori heard this directly from Mangiaracina himself and for the number of counter checks found in this witness' information.

Firstly, in fact, it is worth recalling what General Pitino stated regarding a telephone conversation between Palazzolo and Mangiaracina that was intercepted during the investigations conducted at the time.

Another startling and irrefutable convergence emerges from further examination of the documentation on file: from the E-6 form containing the affidavit made by the South African Commissioner of Police, Jacob Venter on the 24.3.97 it appears that Andrea Mangiaracina came to South Africa twice to meet with Palazzolo for business.

Specifically, *"the first visit related to negotiations between Mangiaracina and the Silvermann company for importing fish. This agreement did not come to fruition. During his second visit,*

*Mangiaracina was negotiating for the importing of crayfish. But this did not come through either, due to quota restrictions*" (see document on file).

Especially significant, is what follows in the same document: "*Vito Roberto Palazzolo introduced Mr Mangiaracina to the above companies*".

From the same documents, it emerges that both Mangiaracina's air tickets for his trips to South Africa were paid by Stelio Frappoli, the same person, who as will be seen, provided Palazzolo with a false passport, and remained in Switzerland to look after his affairs.

Notwithstanding that the business negotiations fell through due to external factors, there is full confirmation from official documentation of the fact that Palazzolo had friendship and business ties with Mangiaracina, and had in fact invited him to South Africa at his own expense, and introduced him to South African companies to begin trading with Italy.

At this point, it is worth stopping to examine the statements made by the state witness Salvatore Cancemi, and important "man of honour" and later head of the Porta Nuova family (who turned state evidence in July 1993).

Cancemi referred that he met Palazzolo in Switzerland during 1983/84, through Nino Rotolo an important figure in the Palermo "Cosa Nostra" at the time, and still regarded today as one of the key heads of the Palermo "Cosa Nostra" organisation.

The reason for the visit was connected to drug trafficking that Cancemi and Rotolo had put in place at the time, where the proceeds were being laundered in Switzerland.

Rotolo formally introduced Palazzolo to Cancemi, using the typical phrase: "*the same thing*" to make the two understand that they were both "men of honour" within the organisation. After introducing them, he then went on to explain in Palazzolo's presence, that they were involved together in drug trafficking and had various business interests together.

Rotolo and Palazzolo then spoke together confidentially about certain large amounts of money coming in from drug trafficking in USA, which Rotolo had gone to bring over for Palazzolo.

Cancemi learnt more about Palazzolo from Rotolo, but also from Salvatore Riina. He specifically learnt that Palazzolo had business interests overseas with Nino Madonia, and that at some point he moved to South Africa, a country where he was "*very well connected*", that is to say well placed and protected.

Despite this, Palazzolo's business relations with Rotolo and the illegal trafficking continued even after he moved to South Africa.

This fact was learnt from Rotolo, and certainly appears relevant in terms of the time frame and the continued relations into more recent times with Sicilian "men of honour" after Palazzolo's move to South Africa.

Further confirmation of the relations that Palazzolo had with members of the "Cosa Nostra" comes from the statements made by state witness, Salvatore Ciulla, a "man of honour" within the Resuttana family, who for some time had lived and operated out of Milan.

He again stated how he had heard in Mafia circles that Palazzolo was a “man of honour” and had close friendship and business ties with Nino Madonia (also in the Resuttana family), and the young Nenè Geraci of the Partinico family, who Palazzolo was also tied to as godson.

Another state witness, Giovanni Brusca also made significant statements with regard to Palazzolo. Brusca’s role as a “man of honour” from 1976 and the head of the San Giuseppe Jato family, self confessed perpetrator of high-profile Mafia murder cases and crimes, and then just before his arrest in 1996, head of the entire “Cosa Nostra” organisation with Bernardo Provenzano - lends a special relevance to his testimony and the level of knowledge he has of the organisation.

Brusca met Palazzolo around 1981 through Nino Madonia, a “man of honour” within the Resuttana family, personal friend and accomplice in many murders and crimes (eg. the Chinnici murder, the ring-road massacre, etc.).

Madonia had told him that he had a series of businesses abroad (particularly in Germany), and that he relied on Vito Roberto Palazzolo of the Terrasini family, and a major drug trafficker.

After Madonia’s description, Salvatore Riina “formally introduced” Palazzolo to Brusca, and between 1981 and 1984, the two met several times both in Cinisi and San Giuseppe Jato.

Palazzolo’s role in Switzerland in those years was to launder the money coming in from drug trafficking in the USA, and then return it to Sicily to the organisation that he was a part of.

Around 1985, Palazzolo had some misunderstanding with Nino Rotolo regarding sums of money that had disappeared. Baldassare Di Maggio, a “man of honour” at the time, and state witness today, sent an amount of one billion lire to Palazzolo through the older Nenè Geraci, to try and calm the waters. The money in fact came directly from Salvatore Riina, who wanted to keep Palazzolo on their side and avoid the risk where the organisation feared that Palazzolo might feel isolated and decide to cooperate with the Swiss authorities.

Giovanni Brusca never met Palazzolo again personally after 1986, but heard a lot about him, and was personally involved again with him in 1995. This is obviously an event subsequent to the 1992 judgment, and as such relevant in order to establish the probatory context.

During that year, Brusca was hiding out near the Partinico district, and taking advantage of this situation, tried to restore direct relations with Palazzolo, who had by then been in South Africa for a number of years. Brusca was especially interested in re-establishing the channels for international trafficking that Palazzolo could guarantee him, as an important businessman in that country.

To sound out the possibilities, Brusca spoke in this regard with Giovanni Bonomo, who at the time was the head of the Partinico family. Brusca followed the correct channels, respecting the hierarchy of the organisation, and consulted Brusca as the highest member of the Partinico family, and as such “boss” to Vito Palazzolo, a “man of honour” in the same family.

Bonomo immediately assisted Brusca acting as go-between with Palazzolo, with whom he was in contact, and assured Brusca that they were dealing with a “man of honour” within the family, and that he would be available because he had never been expelled or left the organisation. The discussions were however interrupted, because Brusca was being hounded by the police, and was eventually arrested in May 1996.

Giovanni Brusca certainly does add another point of interest with regard to Bonomo.

Immediately after the arrest of Monticciolo – a member of the San Giuseppe Jato family and close colleague of Brusca, there was increased concern in the Partinico and San Giuseppe Jato areas that Monticciolo would cooperate with the police (as in fact it later transpired). A number of men, who feared they would be fingered by Monticciolo’s admissions, fled to avoid arrest. Among them, Bonomo and his son-in-law Giuseppe Gelardi fled first to Greece, and then on to South Africa where they knew that Palazzolo was living.

With regard to events subsequent to the March 1992 judgment, another state witness Tullio Cannella also made significant statements, especially in view of other evidence that emerged during proceedings (Antonio Giuffrè’s statement and audio surveillance interception) that will be examined hereunder.

Even though Cannella was never identified as a “man of honour” within the organisation, he had lived in close contact with other high level members of “Cosa Nostra” until his arrest in July 1995. Among them were the Graviano brothers from Brancaccio, and especially Leoluca Bagarella, Salvatore Riina’s brother-in-law, one of the most active and respected members within the Mafia organisation.

Tullio Cannella referred specifically to having heard Vito Roberto Palazzolo being spoken about on two different occasions.

During 1985, Pino Greco, (also called “Scapuzzedda”), one of the most dangerous and active killers in the second Mafia wars of the eighties, had confided in Cannella that Palazzolo was a reliable man within the organisation, involved in the laundering of dirty money overseas on behalf of “Cosa Nostra”, and various other illegal business such as diamond trading.

Years later, and specifically in 1993, Leoluca Bagarella – a “man of honour” in the Corleone family and perpetrator of several brutal crimes, and holding high rank at the time of his arrest - confirmed Palazzolo’s role in much the same terms.

He also added however, that Bernardo Provenzano himself (the undisputed head of “Cosa Nostra” at the time after Riina’s arrest) had a diamond mine in South Africa, through and in partnership with Palazzolo.

This is especially relevant, not only because it happened in 1993 (and therefore subsequent to the March 1992 judgment), but also because it fully confirms the statements made by state witness Antonino Giuffrè regarding recent business affairs that were established between Palazzolo and Provenzano while they were both fugitives from justice.

Another state witness that made statements during these proceedings was Salvatore Facella, a “man of honour” in the Lercara Friddi family since 1983.

He stated that he was involved in an initiative of Giovanni Bastone and Mariano Agate (respectively “man of honour” and head of the Mazara del Vallo family), with Salvatore Riina heading up the association. Before this venture (about 1976/1977), Facella had lived in Turin, where he was at Bastone’s “disposal”. He most notably came to the forefront when he took revenge for an attempt on Bastone by a clan from Puglia that he had eliminated through reprisals. Immediately after this association (from September 1983 to October 1990), he was arrested on various charges (murder, drugs, 416 bis) and remained in detention for some time.

He finally returned to Sicily in 1993 and made contact with Antonino Giuffrè, who in the meantime had become the leader of the Caccamo district that the Lercara Friddi family fell under. Giuffrè received him, and tasked him with reorganising the Lercara family that had been abandoned due to a lack of “men of honour”. Facella was rearrested in 1995, and decided to turn state witness in 2002.

During the time he was active in “Cosa Nostra”, Facella was especially close to Giovanni Bastone, who was also detained with in prison in Turin between 1986 and 1988. From Bastone, he learnt of Vito Palazzolo, who lived and worked in Switzerland as a “man of honour”, and who Bastone often went to see with money from cigarette trafficking that needed to be laundered.

Palazzolo worked on behalf of both Bastone and Nino Madonia (of the Resuttana family and son of the head of the family, Francesco Madonia), in laundering money through banking and financial transactions.

Bastone also confided in Facella that he had discussed another business with Palazzolo that he intended setting up with him in the eastern bloc countries. They were looking at buying some laid up fishing vessels together, and bringing these through to Italy. Bastone had received permission from Riina to approach Palazzolo on this venture. Giovanni Bastone told him that Palazzolo was “our friend” and a person in Riina’s and Provenzano’s trust, and that Provenzano was his “godfather” within the organisation. Provenzano had in fact acted as godfather to Palazzolo on his coming into the organisation, since he came from the same district of Cinisi as Provenzano’s wife (called Saveria Palazzolo).

The final state witness that we will examine regarding his statements on the accused is Antonino Giuffrè, whose cooperation started in 2003. However, given the nature and time reference of statements, this review will be postponed, because these involved not only events that reconstruct the frame of reference that has been referred to, but also constitute actual evidence against Palazzolo.

What will be dealt with at this point are the statements made by witness Franco Oliveri, which as will be seen, are especially important in these proceedings. The significance of his deposition is

that he is not a state witness or an accused in another related crime, but an actual witness, and as such obliged to tell the truth and his testimony attains a different level of credibility.

The testimony given by Oliveri is further significant in that he was a friend and detained in prison with Palazzolo in Switzerland, where he heard his confidences and frustrations over a long period of time.

It appears evident therefore that the information referred by Oliveri (who today is totally indifferent to the accused and fully credible with regard to the information he imparts) – becomes especially important since it comes directly from Palazzolo himself in a unique environment (friendship born from being detained together abroad, and the Sicilian origins of both men), where there are few possibilities for lying or boastful pretences.

There is a convincing line of sincerity, cohesion and line of argument in the vast testimony given by Oliveri, even though he initially attempted to downplay the importance of what he had learnt from Palazzolo (and also given that it was some time ago), he ended up fully confirming his previous statements.

It must be emphasised therefore that this is not indirect or *de relato* testimony, in that the testimony was learnt directly from Palazzolo himself, and is therefore not subject to any evaluation validity, but becomes significant probatory material.

On the basis of Oliveri's specific profile in these proceedings, the format of his deposition, and even his initial attempt to downplay what he had learnt from the accused (in the spirit of an old friendship), there can be no doubt that the deponent had any intention of framing the accused, nor that he had any interest in rendering false testimony to the Attorney General.

In fact, it should be noted that Oliveri, despite the time that had passed, was a serious, logical and coherent witness, and did his duty as witness without showing any resentment, if only to show a certain embarrassment with regard to his previous friendship with Palazzolo.

Oliveri stated that he met Palazzolo inside the Lugano prison during 1984, and that he had spent some months sharing a cell with him. Palazzolo recognising their common origins from the province of Palermo, and Oliveri's open and willing attitude, almost immediately established a rapport with him that over time, became a true friendship as often happens in such cases between fellow inmates sharing a long prison sentence together.

By Palazzolo's own admission, the fact that Oliveri was from Palermo made him more agreeable and inspired his trust, so much so that after some months of imprisonment, Palazzolo suggested that he join the "Cosa Nostra" on his recommendation. Oliveri, who had been arrested on minor charges and had no intention of having any to do with the Mafia, refused Palazzolo's generous offer, which certainly demonstrates the level of trust that Palazzolo had in his regard.

It was based on this relationship of trust, and as their relationship strengthened during the course of their long imprisonment that Palazzolo began confiding in him, and essentially telling him about his life and relations within the "Cosa Nostra". Oliveri chose to point out that the accused's

attitude did not seem typical of a braggart, but rather that of a friend who passed the days in isolation telling of his previous experiences in a sincere and open manner.

As proof of this, Oliveri today is still sincerely of the opinion that although Palazzolo was definitely a “man of honour” and launderer of dirty money through a myriad of activities overseas (as Palazzolo himself told him), he was never a murderer or (in his opinion) a common criminal. Putting aside Oliveri’s subjective consideration regarding the gravity of any crime, this Court believes that it is important to underline that while giving testimony, Oliveri still maintained a certain consideration for Palazzolo, and that his testimony showed a sincerity totally free of any malicious intent or reprisals.

Palazzolo told the witness that he had lived between Germany and Switzerland for a number of years, working as a financier and businessman in various sectors.

He was formally a member of the Sicilian “Cosa Nostra” as a “man of honour” falling under the Partinico family, while the head of the family at the time was Nenè Geraci, even though he was directly affiliated to Salvatore Riina.

Again by his own admission, Palazzolo told him that he had had dealings with several “men of honour” within the “Cosa Nostra” who were also high ranking members of the organisation, such as Nino Rotolo, Nino Madonia and Salvatore Riina, who treated him with particular respect and affection because of his family ties with the old “boss” Pietro Palazzolo.

This regular interaction with these “men of honour” within the organisation led him to take certain action abroad and in Italy, as for example, giving refuge to Sicilian fugitives from the law who had escaped to Germany (especially to Costanza, where he managed a restaurant).

In this respect it is worthwhile noting the significance of this information, especially in the light of the hospitality Palazzolo provided to the fugitives Bonomo and Gelardi in South Africa, which shows that this type of conduct was nothing new for the accused, as he had already given this type of assistance before to the Mafia organisation.

Another criminal activity that Palazzolo confessed to was the laundering of vast amounts of money belonging to “Cosa Nostra”, originating from the crimes of drug trafficking and contraband cigarettes. He was especially involved in the trafficking of cigarettes from the Naples area (with the involvement of the Zaza and Nuvoletta Mafia clans), and the drug trafficking covered under the so-called Pizza Connection.

Palazzolo confessed to his friend Oliveri that he had laundered million of US dollars in Switzerland, which were delivered in cash inside plastic bags. The traffic was managed by the heads of “Cosa Nostra” who organised the purchase of morphine from Turkey (from one Mussullulu), the subsequent processing and sale through pizzerias and restaurants in the United States.

The enormous profits were entrusted to Palazzolo to be reinvested in apparently legal transactions, or were channelled through Swiss banks before returning to Sicily.

Palazzolo also went on to describe some of the internal quarrelling within the organisation, such as for example, the dispute that arose between Nino Rotolo and Pippo Calò against Riina, over a shortfall in monies that Riina complained about. This deals with extremely significant information in that it is not generalised, but rather very accurate and comes directly from inside the organisation. This information was then also confirmed by the state witness Salvatore Cancemi, who had reported on this dispute between Riina and Rotolo, which arose because of missing funds (see above).

The perfect convergence of the two statements gives further confirmation to the sincerity and truth of Oliver's statements.

Palazzolo also described other episodes from his past life to his cell companion, such as for example, his strong friendship with Nino Madonia, described by the accused as "*a basic pawn... resident in Germany for some time .... An extremely dangerous killer, more dangerous than Scarpuzzedda (alias Pino Greco, renowned killer and murderer)*"

Another significant episode described by Palazzolo related to the murder of Agostino Badalamenti, which happened in Solingen Germany, where the accused was questioned and then released. Palazzolo described how the murder was part of a strategy to physically eliminate any friends or family of Gaetano Badalamenti by the Corleone family, and was played out as the so-called second Mafia war at the beginning of the eighties.

A gun that was registered to Palazzolo's factotum in Germany, Antonio Ventimiglia was used for committing the murder. The gun was abandoned by the killers at the scene of the crime and found by investigators, which made the Sicilians worry that Ventimiglia might confess.

For this reason, "Cosa Nostra" decided to eliminate Ventimiglia, by means of a "disappearance" (so-called "white sawn-off shotgun"), a fact that Palazzolo was not told about beforehand, and according to him, was very annoyed and sorry about.

Even though Palazzolo maintained that he had nothing to do with the murder of his colleague, he did admit to personally asking Ventimiglia to go to Naples to collect some money for "Cosa Nostra" that had to be brought to Switzerland. This trip was in fact a ruse to accost Ventimiglia while he was in Naples, and to avoid him talking.

As indicated above, Palazzolo considered Oliveri to be a man of trust, and had asked him to join "Cosa Nostra", demonstrating his availability as go-between so that Oliveri could become part of the family that was based in his area of residence in Palermo.

It is the opinion of the Court that the events that Oliveri referred to and had learnt directly from the accused, unquestionably relate to the time period covered by the 1992 judgment. But at the same time, they cannot be totally discarded, as they are extremely significant in demarcating and reconstructing the much talked about frame of reference.

The fact that it was Palazzolo himself who told a reliable witness, someone as sincere and uninvolved as Oliveri that he was a "man of honour"; that he had regular interaction and the

extreme trust of high ranking members within “Cosa Nostra” (Riina, Madonia, Rotolo, Geraci, etc.); that he laundered vast amounts of money from the international trafficking of drugs (Pizza Connection) and contraband cigarettes; that he had given refuge to Sicilian fugitives in Costanza, Germany; and that he knew some of the strategy details of the organisation, that even relate to two murders, are without doubt important elements in the frame of reference.

With the review of Franco Oliveri’s statement, reconstruction of the contributions made by the state witnesses and Oliveri as witness are concluded, allowing for the reconstruction of the frame of reference referring to the time period before March 1992. This probatory material obviously needs to be considered in view of its context, and with the purpose of identifying Palazzolo’s personality and role, and especially his personal connections with high ranking members of “Cosa Nostra”.

While these events largely predate the judgment, at the same time, it must reiterated that they involve evidence that was completely unknown to the judges in 1992 and even to the Supreme Appeal Court that had looked at the matter under the precautionary detention measures (but whose principles this Court has adopted). If these sources were appropriately verified in the light of the state witnesses’ statements, would undoubtedly constitute an imposing probatory picture.

There is no doubt in fact, that in many aspects the contents of the depositions examined converge significantly, considering that these are multiple sources each independent among themselves, but already considered intrinsically and extrinsically reliable through the validation of various judgements handed down as convictions.

This large-scale and convincing convergence would almost certainly have lead to the conviction of Palazzolo for participation in a Mafia organisation called “Cosa Nostra” during the period referred to, were it not for the previous judgment.

In this regard, it should be noted that seven state witnesses (Di Carlo, Anzelmo, Cancemi, Facella, Brusca and Ciulla), all converged in referring to the business relations between Madonia and Palazzolo, and how five of them (Ganci, Di Carlo, Azelmo, Mazzola and Cannella) referred to illegal funds from dealing in diamonds and precious stones.

It is also significant to note and as a number of witnesses reiterated, that these businesses continued after Palazzolo moved to South Africa and continued into more recent times.

Apart from the many levels of convergence, the first event is fully confirmed by the conviction that Palazzolo received – together with a number of dangerous “men of honour” – for the crime of drug trafficking in the so-called Pizza Connection.

This was confirmed further by depositions made by General Stefano Pitino of the Revenue Police, who led the investigations at the time that resulted in Palazzolo’s conviction for the crime, which as was stated before, is still the largest international drug trafficking venture operated by the “Cosa Nostra”.

General Pitino (Commander of the Narcotics Unit within the Revenue Police), made detailed reference to this traffic identifying people involved at various levels, the modus operandi, the channels used for drug trafficking, and finally the significant money laundering that occurred with the main, if not only, accessory being Palazzolo.

General Pitino also specifically described Paul Waridel's role: a Turk resident in Switzerland who acted as intermediary between the Sicilian Mafia and the morphine base suppliers operating in Turkey (over 5.000 kilograms), among them well-known Youssu N'Duru.

The morphine base was then processed into heroin in secret laboratories operating in Sicily (some were discovered and sequestered), and then transported to USA, where it was sold through a network of pizzerias and restaurants managed mostly by Italian -Americans.

During the proceedings, Waridel admitted to some of his responsibilities, and especially his connections with Palazzolo, entrusted with recycling more than 5 million dollars at the time. Waridel also indicated that Palazzolo was the point of reference for the Sicilian "Cosa Nostra" in Switzerland, and that he had been entrusted with the laundering these large sums of money, including those earmarked to pay the supplier N'Duru.

From investigations conducted at the time, there was extensive confirmation of the relations identified and confirmed by Waridel: and specifically what emerged was telephonic contact between Palazzolo and Pasquale Tripodoro (Calabrian Mafia involved in trafficking), and proof of personal contacts between Palazzolo and Pietro Vernengo (one of the main Sicilian drug traffickers, running at least two refineries).

What also emerged was a meeting held at the San Gottardo Hotel on the 22/23 April 1983 between Palazzolo and other Mafia members involved in the business; telephone conversations among them telephone calls with Andrea Mangiaracina (the "man of honour", according to many state witnesses including Sinacori had personal contact with Palazzolo).

In this context, reference has already been made to the documentary proof that emerged to show the friendship and business ties between Palazzolo and Mangiaracina, who came to South Africa at the accused's expense on at least two occasions for business related matters.

There is also reference to a meeting between the accused and Silvio Lipari, son of Pino Lipari – a high ranking member in the Palermo "Cosa Nostra" who was in direct contact with Riina and Provenzano – and as will be seen, identified by Antonino Giuffrè as being in close contact with Palazzolo.

But there are other events in Palazzolo's earlier life that were confirmed by information during proceedings, that (at the time and with the limited probatory material available) did not lead to his conviction, but certainly do demonstrate his involvement.

Specific reference is made to the murder of Agostino Badalamenti, and the connection to Antonio Ventimiglia, where Palazzolo was investigated and then released. There is obviously no intention of putting an event which objectively plays out in Palazzolo's favour (his release) in a negative

light, but only to highlight how the all facts referred to converge and are confirmed by the statements made by state witnesses and Oliveri's testimony, and independently add elements of proof in relation to Palazzolo.

In concluding the review of the state's evidence, the extraordinary convergences are noted in these statements with regard to the context of the relations and contacts that Palazzolo had within the "Cosa Nostra", his involvement in the laundering of dirty money from the trafficking of cigarettes and drugs (including the Pizza Connection), his business ties (especially the trade in precious stones) with undisputed heads of the organisation that continued after his move to South Africa, his accessibility in receiving fugitives abroad, and his continued relations even into more recent times and certainly subsequent to 1992.

Besides the convergence indicated above, these facts were also verified in documentation (the *affidavit* deposed by Venter), in investigations conducted at the time (see deposition of General Pitino), in his conviction for involvement in the Pizza Connection, and in Palazzolo's own statements made to the witness Franco Oliveri.

They also found confirmation in the statements made by the more recent state witness Antonino Giuffrè. As already indicated, since his statements differ from the others in that they refer to events and facts subsequent to March 1992 and even into more recent times, these will be examined at a later stage in this judgment.

This is also so as to show the objective distance between the (though numerous, convergent and confirmed) statements made by the state witnesses, who essentially refer to the time period covered by the judgment, and assist in demarcating the frame of reference spoken about at length, and the totally different statements made by Giuffrè that take on a very different probatory value."

It should be noted then that on the basis of the numerous converging statements made by several state witnesses (certainly made subsequently to the acquittal judgment and therefore certainly never examined by the Court of Rome) – Palazzolo was identified as a "man of honour" of the Cinisi family formally affiliated to the "Cosa Nostra" organisation.

A further significant element deduced from the state witnesses' statements is constituted by the recurring, multiple and important relations that existed between Palazzolo and high-ranking members of the Mafia.

These elements form the basis of the conviction that at the beginning of the eighties, Palazzolo was a "man of honour" formally affiliated to the Mafia association called the "Cosa Nostra", and that he had numerous and significant relationships with high-ranking members of the same organisation.

On the premise of the above, the Court needs to establish whether Palazzolo also continued to belong to the Mafia association in the period subsequent to the 29 March 1992, where the preclusion deriving from the judgment does not apply.

In this regard, the Court shares the direction taken by the Supreme Court of Appeal: *“In order to show the crime of participation in a Mafia association, the associative link between the individual and the organisation is established in the perspective of it being enduring into the future with an undetermined time limit, and it continues until the organisation is dissolved; with voluntary withdrawal being the only significant way to show cancellation of the permanent nature of the crime, as with any other possibility of dismissal of the participant’s role, this must be evaluated case by case in relation to explicit, coherent and unequivocal conduct, and not on the basis of elements of proof with uncertain value, such as age, or other people replacing those holding position, and residence being established elsewhere where one would assume that the “Cosa Nostra” family would not be operational”.* (cfr. Supreme Court of Appeal, Section VI, 21/05/1998. Caruana).

So then in the case in point, the circumstances of the accused having lived permanently for many years in South Africa are not disputed.

However, these circumstances in themselves do not appear to be indicative of Palazzolo’s withdrawal from the Mafia association, taking into account the evidence acquired during the hearing.

This evidence emerges both from the testimony given during the course of the proceedings by various Italian judicial police (for example Grassi, Zampolni and Pitino), as well as the testimony collected during the international rogatory proceedings in South Africa, carried out by the Court on the mutual request of the parties.

During the confused rogatory hearings held in South Africa, various testimonies requested by both sides were heard, and these depositions constitute a valuable and valid collection of probatory material that can be used with regard to this decision.

Specifically, the depositions made by Hans Klink, South African Police Inspector, Peter Viljoen and then, the testimony given subsequently by ex-Inspector Abraham Smith in Italy, constitute significant probatory support within the context of these proceedings.

Both the collection of testimonies resulting from the international rogatory commission (requested and conducted in the presence of both parties), and the documents acquired on the request of the Defence and with the consent of the Prosecution, as well as the

testimony that Smith gave in Italy, all represent elements of proof that are usable in terms of this decision.

Of particular significance are the report signed by Smith (repeated during the hearing), and a series of official documents, such as for example, the attachment to the registration of convictions in the Court for the district of the Cape (document no. 24 in Defence's bundle).

Based on these elements Palazzolo's entry into South Africa can be reconstructed - reference is made to the judgment under contention in this regard.

The Court notes that even though these elements are not directly indicative of the accused's continued participation in the Mafia organisation, they negatively reflect on his personality as someone dedicated to illegal activities (specifically described in the judgment under contention).

This basic continuity does not allow the Court to find for an effective break in the accused's conduct, even though that he has lived in South Africa for many years.

Furthermore, from the credible witnesses Viljoen and Smith and the documentation on file, what also emerges is a depressing picture involving episodes of corruption initiated by Palazzolo to influence the outcome of investigations conducted against him.

Again from the documents on file, it appears extremely plausible that Palazzolo acted quite shamelessly in bribing several public officials and South African police officials who were supposed to be involved in the investigations against him.

The statements made by witnesses are corroborated by a series of proceedings that are shelved or rigged investigations that failed: reference is made to the judgment under contention in this regard.

Furthermore, a specific episode has definitely emerged that should be considered indicative of Palazzolo's continued participation in the criminal "Cosa Nostra" organisation: in 1996 the accused provided hospitality to the fugitives from justice Bonomo and Gelardi.

This not only constitutes conduct that is subsequent to the 1992 judgment, but also constitutes a specific point in the charge formulated by the Prosecution in the charge sheet.

The Defence contested that the accused had abetted the fugitives from justice Bonomo and Gelardi, pointing out that the precautionary warrant of arrest had been issued against them on 29 May 1996, while it could be shown with certainty that they had left South Africa finally on the 21 May 1996 to enter Namibia.

In order to reconstruct this episode, reference will be made to the statements given by state witnesses Giovanni Brusca and Giovanni Mazzola, the deposition by witness Abraham Smith, the service report drawn up by Smith following the search conducted at "Le Terre de Luc", the documentation on file, and especially the statement made by Hans Klink who was manager of Palazzolo's farm at the time, and had been heard during the international rogatory commission.

The statements made by the above state witnesses confirmed that when the episode occurred (June 1996), Bonomo was head of the Partinico Mafia family, and therefore according to the statements made by seven other state witnesses, he belonged to the same family as Palazzolo. Bonomo not only held this position within the "Cosa Nostra" organisation, but for many years had been a "man of honour" formally associated with this Mafia family and well known as such to Palazzolo, with whom he enjoyed excellent personal relations, both as a friend and business associate.

Giuseppe Gelardi, Bonomo's son-in-law, was much younger than him, and was establishing himself within the "Cosa Nostra" organisation through his more influential relation.

He was also a nephew of Nino Madonia, who according to the information reported by almost all the state witnesses, was a friend, business associate and "compare" of Palazzolo (also confided by Palazzolo himself to Oliveri).

After the arrest of Monticciolo ("man of honour" close to Brusca, operating in the San Giuseppe Jato and Partinico districts), both Bonomo and Gelardi feared that Monticciolo would turn state witness (which effectively did happen), and they immediately fled from Partinico and went to South Africa, certain of Palazzolo's hospitality.

Their escape from Italy, followed by the rest of their family was certainly not determined by their desire to have a holiday, but only the fear of being arrested following probable statements that Monticciolo would be making. Bonomo and Gelardi knew that Monticciolo was well aware of their role within "Cosa Nostra" and the crimes they had committed, and so decided to voluntarily evade arrest.

Their expectations were confirmed by the fact that shortly after their escape both men were served with a warrant for precautionary arrest issued on the 29 May 1996 by the Investigating Judge at the Court in Palermo, on the charge of Mafia association.

This was the first order issued by the Attorney General following Monticciolo's statements, and further confirmation of Bonomo and Gelardi's expectations just two months earlier.

Bonomo and Gelardi's entry into South Africa was confirmed by documentation produced on the Defence's application and the Prosecution's consent (no.4 in bundle). This was official information recorded in the border police registers, and confirmed by witnesses Smith and Viljoen.

The entry for Bonomo showed that he had arrived in South Africa for the first time (at Johannesburg airport) on the 18.3.96, and left Johannesburg again on the same day. He returned to Cape Town by air on the 27.3.96 and left again on the 8 May and came back to Cape Town again on 12.5.1996.

His passport was officially presented on these arrivals and departures, since the warrant of precautionary arrest had not yet been issued.

Bonomo is recorded as finally having left South Africa on 21 May 1996 through the Namibian border post (Vioolsdrift), by car in a Mercedes CJ81148, registered and used by Palazzolo.

This last fact was the subject of specific questions put to both Smith and Viljoen, who both confirmed they had conducted checks on the ownership of the car in question.

The same circumstances have significant relevance in demonstrating that both Bonomo and Gelardi were effectively guests of the accused.

From the same border control registers, it was shown that Giuseppe Gelardi followed his father-in-law into and from South Africa on the 18 and 19 March 1996. He also returned to Cape Town by air on the 27 March 1996, and finally left South Africa on the 21.5.96 in Palazzolo's car through the same Namibian border post.

Marianna Bonomo (Gelardi's wife), however appeared to have arrived in South Africa (by air into Johannesburg) on the 31.3.96, and left the country the same way as her father and husband.

Following lengthy investigations and information gathering, Inspector Smith had more or less with Lincoln's backing, planned a search at Palazzolo's farm "La Terre de Luc" in Franschoek near Cape Town, as there were well-grounded suspicions that certain Sicilian fugitives from justice were hiding there.

The procedures and the outcome of this operation can be gathered in Smith's statements, as well as from the Note on file (document no.7 in bundle), which was acquired with the consent of both parties.

The search operation simultaneously involved Palazzolo's farm and the home of a certain Morettino (at 13-15 Quebec Street).

.Inspector Smith personally coordinated the search on 15 June 1995 at 14:00 at Palazzolo's farm "La Terre du Luc", while other officers carried out the search at the Morettino's residence.

The latter search bore no results as the police officers found the doors closed and no one at home. The search at Palazzolo's residence bore very different results, as can be seen from the Note on file, which was fully confirmed by the witness during the hearing:

*"On the 15/06/1996, around 16h00, a police operation was carried out at the "La Terre de Luc" farm, and the other homes indicated under paragraph 9. The undersigned conducted the operation with the support of armed members of the South African Police. During the search, the undersigned questioned Hans, the farm manager, who admitted that three (3) Italians and two (2) children were staying in two different houses behind the farm. He mentioned that there was an elderly short man with a solid build, who had been introduced as Giovanni, an Italian wine producer who was doing some research on bottling and exporting wine to Italy. According to Hans, this Italian man was staying in the house alone. The bedroom was inspected. The built in cupboard was full of hanging clothes, and it seemed clear that someone else was also staying there. I checked the make of the clothes and found that they were of Italian manufacture and design. I checked the bathroom and the bathtub and basins that were dry. The sink in the kitchen was also dry and the house clean. I found a small piece of torn paper near the telephone, with the name "Vito" written on it and the telephone number 0836547731. I seized this paper because the writing seemed to belong to an elderly person. I continued and asked Hans where the other people were sleeping, and he cooperated showing me where. I conducted a similar inspection and found the cupboard was full of men's women and children's clothes. From the nappies that were among the clothes, I understood that there was a small baby with them. At this point I was fully convinced that the fugitives were staying here, even though they seemed to have left the farm in a hurry, without taking any clothes with them. An inspection of the bathroom and kitchen did not show any traces of recent occupation. In the washing machine drum I found a dirty nappy with dry urine".*

On the basis of Smith's report, the result of the search conducted on 15 June 1996 clearly showed that an Italian elderly man called Giovanni, and a couple with a small child still in nappies (exactly like Gelardi's family, who was with his wife Marianna Bonomo and their young daughter) had recently been in Palazzolo's guest houses.

The fact that a large amount of clothing (of Italian make and origin) had been left inside the cupboards, and that a nappy was still in the washing machine, led Smith to believe that the group had left the house in great haste.

The witness suggested (but this remains a supposition, even though well founded in the light of the rogatory commission) that Palazzolo had been warned in time of the ensuing search at his home, and had managed to get his guests out very quickly, so that they would not be surprised while they were still in his home.

Smith believed that the person responsible for this “leak” could have been Antonio D’Amore, an ex-South African Police officer of Italian origin, who had been on the investigating team into Palazzolo, and then became Palazzolo’s great friend and collaborator.

As Hans the farm manager had reported that the Italian group had left for Namibia and then Botswana on holiday, the witness suspected that they had gone through to “Ensuru”, a farm of Palazzolo’s in Namibia.

At the time of the search, the witness Hans had not even been properly identified, so that the Court had to ask for questioning to be done by the rogatory commission to establish his identity. So it was that at the hearing on 1 November 2004 in Cape Town, the witness Hans Klink appeared to testify. He had been an employee of Palazzolo as farm manager responsible for “La Terre de Luc” from the beginning of 1995 until the last quarter of 1996.

Klink reported that an elderly man of Sicilian origin, and a younger couple with a baby had been hosted by Palazzolo for a while (between 10 – 15 days), and that they had occupied two houses in the area next to the main house. Most of the questioning and counter examination of the witness centred around his identification of the period in which they had stayed with Palazzolo, because the Defence’s submission was based on the fact that the alleged hospitality had taken place before the 29 May 1996, that is before the two guests had been formally declared fugitives from justice.

Despite the legitimate and repeated insistence on the Defence’s part during the counter examination, Klink showed that he was completely certain of the period in which Palazzolo had hosted the Sicilians, as this was based on two absolutely undisputable and clear time references in the witness’ memory.

The first of these time references related to the time the guests left in relation to when the police search took place. Due to the obvious time that the police search took place (this was the only time such a thing had happened while he was in Palazzolo’s employ),

it was certainly memorable for the witness. In fact, Klink repeatedly stated with the utmost certainty that the guests had left the farm the day before the police operation took place, and therefore on the 14 June 1996.

The other time reference that remained perfectly clear in the witness' memory had to do with a memorable event in his personal life. The Italian visitors left "La Terre de Luc" two weeks and a day before the birth of his son Peter, (which happened on the 29 June 1996). It appeared therefore that the Sicilians had left Palazzolo's home on the 14 June 1996, and therefore more than two weeks after the warrant for precautionary arrest had been issued in their regard (29 May 1996).

Every effort made by the Defence to make the witness contradict himself, was met in vain with Hans Klink's unyielding confidence, repeating his recollection as being absolutely clear and precise, and not admitting to any possibility of uncertainty in his memory.

Klink's stated that even though the elderly man did not speak a word of English, he had tried to explain to Klink that he was involved in wine production and interested in investing in Palazzolo's farm (make wine silos), and giving his host a wooden bridge as a gift, that could link the farm to an existing island.

He also tried to explain to Klink that "*caramelised sugar could be mixed into red wine*", a statement that horrified the witness who could not make sense of what was being said.

This in effect corroboration (even if at a purely indicative level) in identifying Bonomo as the elderly guest of Palazzolo, since Bonomo not only originated from the Partinico district, (area notorious for the doctoring of its wine), but had actually been charged in the past for this specific practice.

Klink then described Palazzolo's guests in detail, specifying that they were present as personal friends of his and housed there. To dispel any misunderstanding that Palazzolo did not know that they were in the house at the time, Klink added that Palazzolo had spent a few evenings in their company.

On one such occasion in particular, "*Palazzolo and the two men were seated in the kitchen and were speaking about the possibilities of wine and the wine industry, the implications of the wine industry in South Africa... I remember because this would have meant wine tanks being bought.*"

In summary, the following has been deduced from the credible and objective testimony given by Klink:

- Palazzolo's guests were an elderly man, and a younger man accompanied by his wife and very young child, (exactly like Bonomo, Gelardi, his wife and their little daughter).
- The description of the guest's physical features corresponds exactly with those of the fugitives and Marianna Bonomo;
- The elderly man was interested in wine production, exactly like Bonomo who was notorious for the wine estate he managed in Partinico;
- The same man was an expert in doctoring wine by adding caramelised sugar, a renowned practise in Partinico, and for which Bonomo himself had been convicted in the past;
- The people of Sicilian origin were introduced as personal friends of Palazzolo, and had received his cellular telephone number on a scrap of paper (found by Smith in the elderly man's room);
- Palazzolo personally met up with them, and one evening had discussions with them regarding the wine industry in South Africa, planning the installation of storage silos for the product on the "La Terre de Luc" farm;
- The elderly man had considered making a gift to Palazzolo so that he could repay his hospitality, with a small wooden bridge to link up a small island on a lake.

Added to this are Smith's reports (confirmed by Viljoen), regarding the fact that the guests were accompanied to the Namibian border in a Mercedes motor vehicle, registered CJ81148 in Franschoek, where the factory is situated – and registered to the Palazzolo's (alias Robert Von Palace) company "La Terre de Luc".

The witness Klink denied that the Police had shown him photographs of Palazzolo's guests, but the rich details in his deposition lead one to conclude with certainty that Bonomo and Gelardi were Palazzolo's guests for about 10 – 15 days at his farm "La Terre de Luc", and were then accompanied to the border post with Namibia (Vioolsdrift) by motor car, a Mercedes CJ 81148 registered and used by Palazzolo himself.

This assertion was corroborated further by the contents of a telephone call intercepted on the 28 December 2004 between the accused and his sister Maria Rosaria: reference is made on this point to the opinions shared in the judgment under contention.

It has therefore been proven that Palazzolo, indicated by almost all the state witnesses as a "man of honour" in the Partinico family, had hosted the actual head of the Partinico district: this event appears consistent and in line with Mafia thinking, and must be considered indicative that the accused's continued to belong to the Mafia organisation, despite him having lived in South Africa for many years, taking into account also

previous opinions and the principles confirmed by the Judges in the judgment handed down by the Supreme Court of Appeal, Section VI, 21/05/1998, accused Caruana (referred to previously).

At this point, Bonomo and Gelardi' status as fugitives from justice must be established in relation to the Italian government.

The Court shares the view expressed by the previous Court in this regard, where according to Hans Klink's completely credible, objective, coherent and certain deposition, the official date of departure from South Africa of the two as the 21 May 1996, loses all value as definite evidence.

Klink in fact stated with absolute certainty and on the basis of a rock-solid number of temporal references, that the Sicilian guests had left Palazzolo's farm on the 14 June 1996, this being two weeks after they had been formally declared fugitives from justice.

This element of proof from Klink's testimony appears to contradict the documentary proof constituted by the official South African border control registers (according to which Bonomo and Gelardi had left South Africa on 21 May 1996), but Klink's deposition appears more convincing and reliable than this contradictory element, in the light of what was confirmed in unison by both Viljoen and Smith.

They both in fact reported that the border between South Africa and Namibia could easily be crossed at the time, without having to necessarily pass through a border control.

The region referred to extends largely over bush country with no border posts, and is in fact full of places where it is possible to cross easily by car or on foot. Inspector Smith reported having crossed easily on a number of occasions without going through any official border post (obviously for investigations he was conducting): besides the other methods of crossing, he specifically makes reference to crossing a small stretch of water that separates the two countries.

Even light aircraft generally cross the border without any border controls, and can land on make-shift landing strips, like those found at a number of lodges or farms: Palazzolo's farm "Ensuru" in Namibia also had a basic landing strip on the property at the time, where Smith suspected that the Sicilians had been taken.

Therefore the documentary evidence regarding Bonomo and Gelardi's last official departure from South Africa does not hold any diriment value.

On the contrary, it seems plausible that after the precautionary arrest warrant against Bonomo and Gelardi was issued (29 May 1996), they themselves and their host took

extra precautions, obviously avoiding border control points and easily crossing over from South Africa to Namibia using natural entry points, without any controls.

This finds further confirmation in the contents of a telephone call that took place on the 28.12.2004 (mentioned above), where the speakers referred to the possibility of “crossing the river” at the border with Namibia.

It therefore appears certain according to the accurate, precise and credible testimony given by Klink that the two fugitives were still guests of Palazzolo at least up until the 14 June 1996.

At this point the Defence's contentions must be examined, which held that the statements made by the state witnesses Mazzola and Brusca had been misrepresented by the Court.

In fact, Mazzola did not give an especially accurate deposition regarding the circumstances of Provenzano's time as a fugitive from justice.

The above witness also confirmed that he did not know with certainty where Bonomo and Gelardi had taken refuge after Monticciolo's confession, stating that they went either to South America or to South Africa.

It should also be considered that during the hearing Mazzolo referred what he had learnt from another “man of honour” Ciccio Di Piazza who had also fled from Partinico at the time of Monticciolo's confession.

However, the lack of specifics and the inaccuracies found in Mazzola's statement only impact marginally for the purposes of the decision, taking into account the confirmed hospitality provided by Palazzolo to Bonomo and Gelardi.

With regard to the statements made by Giovanni Brusca, the Defence specifically contested the accuracy of the Court's reconstruction Court regarding this state witness' statement, where the First Instance Court had alleged that Bonomo would have assisted Brusca “*acting as go-between with Palazzolo*” (cfr. judgment page 31).

The First Instance Judges effectively showed that according to what had been stated by Giovanni Brusca, Bonomo was the “contact” that could have acted as intermediary during that exact time period with Palazzolo in South Africa.

Giovanni Brusca had confirmed that during 1995 he tried to re-establish contact with the accused Vito Roberto Palazzolo, who was in Africa at that time; the witness also specified that he had not had the time to re-establish contact with Palazzolo because he had had other problems, like the collaboration given by Monticciolo.

Brusca added that at the same time he had tried to contact Bonomo through a person from Terrasini “*so as to try and understand something, because he was a member of the same family*”, specifying that he was also “*unable to get further*” in relation to Bonomo, because there were a series of problems (cfr. page 80 of transcription of hearing dated 5/3/2003).

Brusca referred that he intended re-establishing relations with Palazzolo so as to restart “*the drug trafficking that he knew*” (cfr. page 81 of transcript), adding that he had had definite confirmation from someone in Terrasini (referred to above) and from Giovanni Bonomo (cfr. page 82 of transcript) that Palazzolo was living in South Africa.

Brusca also referred that Bonomo knew Palazzolo because he was a “man of honour” in the Terrasini family, but linked to Partinico, adding that Bonomo himself knew “*a little of the whole story*” regarding Palazzolo, who having links to Partinico.. “*was therefore of the same family*” (cfr. page 90 of transcript).

The statements gathered previously lead one to believe that Bonomo was perfectly aware of the precise location where Palazzolo was passing his time as a fugitive from justice (circumstances that were not common knowledge at the time – as they became later), and that Bonomo himself was well aware of Palazzolo’s history (“*a little of the whole story*” about Palazzolo, according to Brusca’s statement).

On the other hand, it does not appear that Bonomo effectively “*acted as go-between*” between Brusca and Palazzolo, seeing that the latter confirmed that he had not had the time to re-establish contact with Palazzolo due to other problems that arose, like Monticciolo’s confession.

However, the circumstances that Bonomo knew perfectly well where Palazzolo was passing his time as a fugitive from justice appear significant, even more so where these are proven by Bonomo himself, who on receiving warning of the danger created by Monticciolo’s “confession”, decided to flee to South Africa, where he was provided hospitality by Palazzolo himself (as stated previously).

Brusca and Mazzola’s statements confirm that Bonomo’s flight to South Africa presupposed that the above Mafia member was certain that he would find shelter and assistance in South Africa from a man that was close to him and quite influential in the country he was living in, in other words Palazzolo.

Again according to Brusca, it must be considered that contact with Palazzolo was managed through his relations who were still resident in Palermo and Terrasini: this fact found confirmation in the role played by the accused’s sister, who kept in constant

contact with her brother, keeping him updated on Sicilian affairs, as it emerged from intercepted telephone calls (reference is made to the judgment under contention for the content of the above).

No decisive value can be attributed either to the rejection of the proposed application for precautionary measures (special surveillance with the obligation to remain in the Municipality of residence), formulated by the Attorney General in Palermo against Maria Rosaria Palazzolo, sister of the accused, where instead the motivation given by the Court to support the decision it made on 8 February 2007 should be taken into account (cfr. judgment being admitted into the proceedings' file at the hearing on 11/7/2007, with the consent of all parties).

Palazzolo's conduct in providing hospitality in South Africa to Mafia fugitives from justice (like Bonomo and Gelardi) must be considered indicative of the accused's continued participation in the Mafia association called the "Cosa Nostra".

At this point, the Defence's contentions regarding the credibility of the accusatory statements made by the state witness Antonino Giuffrè need to be examined.

The Defence claimed that Giuffrè's statements had to be considered unreliable due to their unjustified progression, remarking that the above state witness had limited himself to referring to circumstances that were absolutely generalised and hypothetical, making them difficult to basically deny.

The Court notes that in evaluating Giuffrè's deposition the First Instance Judges based themselves on the principles identified by the most authoritative case-law of the Supreme Court of Appeal, carrying out a joint evaluation of the deponent's characteristics and intrinsic reliability, essentially looking for extrinsic points of corroboration both in relation to the fact referred to and the subjective position of the witness.

It should be noted that the state evidence from Antonino Giuffrè ("Manuzza"), who was head of the Caccamo district and worked closely with Bernardo Provenzano, only occurred in 2003, thus representing one of the most important collaborations in terms of its importance, significance, and the position previously held by the witness within the "Cosa Nostra" organisation: not only was this probatory element unknown to the Court of Rome, but also to the Supreme Court of Appeal at the time of its judgement on precautionary arrest measures on the 9.1.2004 (referred to a number of times).

This is therefore a totally new element of proof being examined for the first time by the Judicial Authorities in the context of these criminal proceedings.

At the time of his arrest, Antonino Giuffrè headed up the Caccamo district, whose area of influence was infamously widespread, and was also one of the main and closest operatives of the absolute head of the “Cosa Nostra” organisation, Bernardo Provenzano, who at the time was also a fugitive from justice like Giuffrè himself.

Despite the operational difficulties related to their status as fugitives, Giuffrè kept in very close contact with Provenzano, either using the so-called “pizzini” (meaning secret notes, and a term that has come into common usage since Provenzano’s arrest) that the two men exchanged almost on a daily basis through a tightly knit network of supporters, or meeting with each personally, initially on a weekly basis and then almost fortnightly.

Giuffrè had always been close to Provenzano from the time that the latter had not yet become undisputed head of the entire “Cosa Nostra” organisation.

There was a strong sense of friendship and familiarity between the two Mafia members on a personal level and on a managerial level relating to the workings of the Mafia organisation, both because of their closeness in age, and especially due to their common intent and general strategy within “Cosa Nostra” , which persisted until Giuffrè’s arrest (16 April 2002).

This relationship finds proof in the impressive number of “pizzini” (secret notes) that were found and confiscated at the time of Giuffrè’s arrest and after he turned state witness (and thanks to his indications where they could be found). There are hundreds of these secret notes that the two “bosses” exchanged, and that Giuffrè had kept as proof of the decisions that were taken by Provenzano and agreed upon by Giuffrè.

So when reviewing statements made by Giuffrè on what he had learnt directly from Provenzano, the intrinsic depth of the witness and his privileged relationship with Provenzano must be taken into account.

Considered together, these two factors lend a significant measure of credibility to this witness’s statements.

These involve extremely significant secrets exchanged between two high-ranking heads of the “Cosa Nostra” organisation, linked by a deep-seated personal relationship, during the course of high-risk meetings (given that they were both fugitives from justice), or who communicated through the “pizzini”, which relied on an intricate and highly complex network of collaborators that (with the exception of two arrests), the Police were never able to intercept.

This context certainly excludes the possibility that Giuffrè and Provenzano would have exchanged false information (or worse boastful hearsay), since they were both bound by the truth and the slightest untruth could have unleashed negative consequences. There was also no reason why the two should lie to each other (according to Giuffrè this never happened), seeing that they were bound by an old and deep-seated friendship and were traditionally on the same side within the “Cosa Nostra” organisation.

After Giuffrè had reconstructed his relationship with Provenzano, he stated that:

- Provenzano was highly secretive regarding the business that he personally managed for the “Cosa Nostra”;
- Provenzano had certainly spent a great deal of his time in hiding near Bagheria and had made this area his “stronghold”, in the sense that he was personally involved in the affairs in the area, and had invested substantial amounts of personal capital through companies and people that were close to him;
- Besides the “men of honour” in the Bagheria area, (like Antonino Mineo, Michelangelo Aiello, Leonardo Greco, Nino Gargano, Nicolò Eucaliptus and Pietro Lo Jacono), Provenzano had also made investments through Oliviero Tognoli who was officially a businessman in the iron industry, but could in fact be considered as an “*extremely important mover within the Cosa Nostra*”, since he was involved in drug trafficking on a significant scale and complex operations relating to the laundering of dirty money.

It should be noted that Tognoli was one of the people convicted together with Palazzolo, within the context of the “Pizza Connection” trial. Palazzolo was actually convicted in terms of article 444 of the Criminal Procedure Code, on the charge of association aimed at the international trafficking of narcotics together with a number of Sicilian “men of honour” and Oliviero Tognoli. (see judgment on file).

Giuffrè had underlined Tognoli’s importance in the laundering of illegal funds and the drug trade, adding that Palazzolo held a more important role, in that the former “*plays on the outside*”, while Palazzolo “*is a Sicilian, and connected to the Corleone family, and is linked to Provenzano, I don’t know if I’ve managed to explain myself...*”

According to Giuffrè, Provenzano had another personal “fiefdom” besides Bagheria, including the Cinisi area (the same area as Palazzolo), “*the same can be said for Cinisi... that became Provenzano’s private sitting room after the Mafia war started*”.

At this point, Giuffrè specified that he had never met Palazzolo personally, but that he had heard a lot said about him directly from Provenzano, and this in talks that had taken place quite recently before his arrest (occurred in 2002).

From what he learnt from Provenzano, Palazzolo was his “*most important point of reference*” in the Cinisi district, as he had also been one of his preferred points of reference during the eighties regarding certain businesses in Bagheria.

Again according to Giuffrè, Palazzolo was also close to Provenzano because he was a distant relation of Provenzano’s wife, Saveria Palazzolo, who originally came from Cinisi. This last fact was shown to be inaccurate, as a family connection (in the technical-legal sense) could not be proved between the accused and Provenzano’s wife, but it seems probable that the close connection that existed between the accused and Provenzano could have led Giuffrè (and other members of the “Cosa Nostra”) to believe the existence of family ties (all be they removed) between the Appellant and Saveria Palazzolo, originating also from them sharing the same name.

Specifically Giuffrè stated that: “*Vito Palazzolo is someone in the hands of Provenzano himself... He will definitely become the main point of reference from a financial point of view for the Corleone family, especially with regards to Totò Riina, and Bernardo Provenzano*”.

Giuffrè also knew that Palazzolo had “joined up” during the eighties on Provenzano and Riina’s wishes, so that they could extricate him from Badalamenti’s influence (at the time, “boss” in the area and sworn enemy of the Corleone family), and they made him a “man of honour” in a different geographic context to Cinisi and more specifically the Partinico district through Nenè Geraci (head of the Partinico family), referred to by several other state witnesses.

With reference to the feud with Badalamenti, which formed the basis of the second Mafia war at the beginning of the eighties, Giuffrè added that Palazzolo had also played a role in the murder of one of Badalamenti’s relations (perhaps a nephew), who was in Germany. The murder was part of the execution of Badalamenti’s relations and members of the family that had been carried out in Germany on Riina and Provenzano’s orders.

With regard to this specific episode, Giuffrè had learnt first from Ciccio Intile, Pippo Calò and Lorenzo Di Gesù (significant men of honour at the time, close to the Corleone’s), and then from Riina and Provenzano, that Palazzolo had played a logistical role in identifying the victim in Germany, where he had been living at the time.

In this case, it is again worth recalling the multiple counter checks against these statements made by the witness, to be found both in Palazzolo's judicial involvement in the murder investigation into Agostino Badalamenti's murder (Badalamenti's nephew), committed in Germany on Riina and Provenzano's orders, and the depositions of other state witnesses and the testimony given by Franco Oliveri, cellmate and friend of the accused, who shared his confidences while they spent time in prison together.

In a more generalised context, Giuffrè stated that "*Vito Palazzolo's importance increased over time, because while the Corleone family were extending into various businesses ... Vito Palazzolo had a primary role in this*".

With regard to the meaning of the expression: "primary role", the witness specified that "*Palazzolo will have a primary role because he is considered to be someone in Salvatore Riina and Bernardo Provenzano's trust, and as far as the investment of capital and the heroin trade goes, Vito Palazzolo, let's say, that was born.. will centralise these .. financial matters, as well as, I repeat, what had to do with the selling of heroin*".

These statements made by the witness are corroborated in the conviction Palazzolo received for drug trafficking, under the "Pizza Connection" (see judgement on file and deposition made by General Pitino).

The source of this information for Giuffrè was again Provenzano in person, but also other "men of honour" like Leonardo Greco and Nino Gargano who were very close to Palazzolo.

But apart from the information relating to the eighties, Giuffrè also reported on a series of events he had learnt directly from Provenzano, and which related to subsequent years up until his arrest (2002).

This involved facts that occurred in recent years, and therefore subsequent to Palazzolo's move to South Africa, a situation that the witness made spontaneous reference to without being led by questioning: "*in the last while, he was... as far as... in a country, in South Africa, could be..*".

Giuffrè in fact, on answering a question put by the Defence, specified that Palazzolo had first lived and worked in Sicily, had then went to Switzerland and Germany, and after some legal problems, finally moved to South Africa.

During this time, Giuffrè had spoken to Provenzano about Palazzolo's role, who the former considered a "*shrewd person*", and "*one of the most capable people for getting certain transactions done*".

According to Giuffrè's testimony, during the nineties Palazzolo had made proposals to Provenzano about certain businesses that could be established overseas, like the purchase of large tracts of agricultural land in Latin America or the international trade in meat, again from South America (Argentina, in particular).

Contact between Palazzolo and Provenzano was ensured through the help of various intermediaries, among them most certainly Provenzano's brother who operated and lived in Germany, where Palazzolo himself had lived for a long time.

With regard to these businesses, Provenzano had shown reluctance to commit to the meat trade (explaining his reasons to his friend Giuffrè), but the purchase of agricultural holdings in South America, as far as the witness knew, had come to fruition thanks to Palazzolo's involvement.

Palazzolo's proposals to Provenzano were obviously made on the basis of reinvesting capital from the illegal activities of "Cosa Nostra" into seemingly legitimately compliant companies. Besides which, Palazzolo was an expert in international financial transactions, and also had experience in the meat trade, because according to the witness *"I remember well that he had had experience in the area of farming... but his was with special reference to ostrich farming"*.

Basically, Giuffrè does not limit himself to reporting in a general fashion on a possible meat business, but specifies the activity of ostrich farming that Palazzolo was involved in, which finds an accurate counter check in the international rogatory hearing, where it emerged that the accused was also involved in ostrich farming, besides his other business interests.

In reply to a specific question put by the Prosecution, Giuffrè answered that these businesses (the meat trade which did not take off and the purchase of land in South America) had been planned between Palazzolo and Provenzano *"in the second half of the nineties"*.

It must be underlined that according to Giuffrè, the purchase of vast tracts of land in South America had come to fruition, in the sense that Provenzano had purchased the farms thanks to Palazzolo's assistance, who had finalised the sale and registering of these properties under fictitious company to hide the identity of the real owners, allowing for the laundering of substantial amounts of money from illegal sources.

Around 2000, Palazzolo had also proposed the purchase of shares in a German insurance company to Provenzano. Provenzano had accepted this proposal, through his

brother who was in Germany, with the added purpose of finding employment for his eldest son (who was often in the country) in an apparently legitimate business.

There was a meeting held between the German representative of the insurance company and Provenzano's son to plan his role in one of the regional branches of the company.

Provenzano had also run this investment suggestion for illegal capital by Giuffrè, in the sense that he had suggested that Giuffrè might also want to take part in the investment with illegal capital from his district. For this reason, Giuffrè discussed the matter in some detail with Provenzano, so that the type of transaction that Palazzolo had suggested could be explained, but then Giuffrè had decided to refuse the offer for personal reasons.

Giuffrè also specified that Palazzolo's involvement in drug trafficking was not limited to the eighties, but continued well into the nineties.

In fact after Totò Riina was arrested (January 1993), his role increased further, for the very reason that he was still close to Provenzano, and following Riina's arrest, Provenzano had then become the absolute "boss" of Cosa Nostra.

Again after 1993, according to Giuffrè: "*Vito Palazzolo's role had increased, even in the Columbian context, even in the cocaine trafficking, besides his involvement in the heroin story*".

Furthermore, the improvement in relations between Palazzolo and the criminal organisation after Totò Riina's arrest and the ascent of Provenzano to head of the Mafia organisation can also be clearly deduced from the statements made by Giovanni Brusca. With regard to Palazzolo's role as point of reference for Provenzano's business on an international level, Giuffrè added: "*yes, I am talking.. actually talking about international matters, that include America.. Switzerland... England... for others towards other countries like Argentina, Canada, that is we are in a purely international context, that includes the trafficking of drugs.. but not only... a lot of this capital was reinvested..*"

With regard to more recent times, the witness reported that he had learnt from Provenzano that the accused was also dealing in diamonds and precious stones in South Africa, adding that this business was conducted for his own account and probably also on behalf of Provenzano and others, so much so that Provenzano told him that anything that Palazzolo did "*turned to gold*".

In this respect, it must be restated regarding the statements made by other state witnesses, who independently but in converging fashion, all made reference to the trade

in precious stones started by Palazzolo together with other “men of honour” (Geraci and Madonia, for example).

Tullio Cannella’s statements must also be remembered, which correspond to those made by Giuffrè on the specific point of Palazzolo’s interest in diamond mines together with Bernardo Provenzano.

In reply to specific questioning by the Defence, Giuffrè stated that he had no knowledge of the hospitality episode given by Palazzolo to the fugitives from justice, Bonomo and Gelardi. He added though that Provenzano had described Palazzolo as “*someone that is accessible mainly for people who in turn are close to Provenzano and Riina*”.

Giuffrè specified that Bonomo was a “man of honour” in the Partinico family (the same family as Palazzolo), that was very close to Nenè Geraci, and therefore also to Riina and Provenzano.

The statements made by Giuffrè appeared intrinsically reliable and confirmed by corroborative elements.

Firstly, it must be reiterated that the high-ranking role of the witness and his relationship as an old friend and confidant of Provenzano are ample guarantees regarding the truthfulness of his statements.

This in fact relates to collaboration at the highest possible level, and (unique case in the context of state witnesses), allows us insight into the most confidential spheres of Bernardo Provenzano.

Giuffrè’s statements are to be considered sufficiently specific in relation to the factual concrete elements referred to by the state witness, which were summarised above.

Nor do these statements show the progression that was contested by the Appellant, who has not provided any concrete facts to support his theory.

Besides which, Giuffrè’s statements have found corroboration on multiple levels, both in separate court proceedings and in the state evidence from other witnesses heard during the course of these proceedings.

The close direct contact with Riina and especially Provenzano, their wanting Palazzolo to belong to a different district (Partinico) than the one of his origins (Cinisi family), the close contact with Nenè Geraci, his relationship with Bonomo, the alleged involvement in Agostino Badalamenti’s murder, the primary role played in the so-called “Pizza Connection” and the laundering of enormous amounts of money also done abroad, all this information ties in perfectly with the statements (that in turn also converge) made by the state’s evidence.

Furthermore, many aspects of Palazzolo's life – the fact that he lived and operated initially in Sicily, then in Switzerland and Germany and finally in South Africa, his relationship with Oliviero Tognoli, his involvement in the “Pizza Connection” trial and the investigations into Agostino Badalamenti's murder, his arrest, the diamond trade, and ostrich farming, etc – have all found confirmation either in previous judgments on file, and in the rogatory hearings and trial hearings.

Finally, other significant passages in Giuffrè's statement were corroborated directly by telephone and audio surveillance interceptions transcribed within the context of these proceedings.

These deal specifically with verification relating to businesses (considered highly significant) being set up by Palazzolo together with or on behalf of Bernardo Provenzano. In this regard, the significance of this verification should be stressed, since any business done by Provenzano was considered highly confidential, with most of his own “men of honour” excluded from this information.

The first interception is an audio surveillance interception on the 17 November 2001 at 12h38, on the Fiat Punto motor vehicle used by Pietro Landolina, (who was on trial for Mafia association in the area of San Lorenzo- Piana dei Colli). Landolina is also nephew of the historical “boss” of the “Cosa Nostra”, Raffaele Spina, who had been head of the Noce family and had recently passed away.

The intercepted conversation takes place between Landolina and his uncle Raffaele Spina, who due to his age and primary role for many years within the “Cosa Nostra” obviously knew of confidential matters that his nephew was not aware of.

At the beginning of the intercepted conversation the two are in the car in front of a business found in Piazza Noce run by a certain Di Maria (thus identified by the two speakers). Investigations confirmed that this was a small supermarket called “DS Alimentari s.r.l.” run by Natale Di Maria, (a multiple offender) and his father Antonino Di Maria.

The latter is also the brother of Vincenzo Di Maria, (called “u capuni”), a “man of honour” in the Porta Nuova district.

The conversation continued inside the vehicle between Spina and Di Maria, who obviously shows due deference to Spina given his known position in the executive. Di Maria specifically asked Spina for his intervention with the Sgroi family who managed the SISA chain of supermarkets in the Palermo area, so that they would deliver merchandise to him.

Di Maria refers to the Sgroi, (originally from Carini), as the largest owners of supermarkets in the Palermo province, and that Spina would be the only one in position to convince them. (*“only you can decide these things”*).

From the conversation it clearly emerged that:

- The income from the supermarket chains was around 300 billion (lire) and that the Sgroi had takings of about three to four billion lire a day.
- The Sgroi were in partnership with someone called “Giac”, later identified by the judicial police as the Giacalone brothers, sons of Pinuzzu Giacalone who had been a “man of honour” in the San Lorenzo family.
- The Sgroi’s and Giacalones managed about 100 supermarkets in the Palermo province, and a warehouse of 20 000 square meters.

Di Maria’s request was aimed at going into business with the group and increasing his turnover, something that he had not managed to organise through his own brother (who was man of honour), but was hoping to achieve through Spina’s influence.

Spina, in deference of the rank of the speakers and the delicate nature of the request, stated that it was something that needed to be dealt with in person.

Di Maria continued saying that the Sgroi and “Giac” were nobodies compared to those that were above them (*“but they are nothing, compared to those above them, bravo!”*), alluding obviously to hidden partners in a more prominent rank than themselves. He then goes on to say who these people above him were: *“it’s that one with the gold mine, you understand? The African is in this! And maybe even the one they are looking for... the biggest one! Do you understand?”*.

From the conversation which is nervous and elusive in its references, given the speaker’s obvious concern that they could be intercepted, it appears that there are two hidden partners above the Sgrois and Giacalones, who they referred to with nicknames. The one is identified as a certain “African with gold mines”, and the other as someone the police are looking for, (in fact the most wanted man on the police list).

According to the prosecution, and substantiated by the testimony of the police in the person of Vito Calvino, these people can only be identified as Palazzolo who was resident in Africa and owner of mines, and as Provenzano, who at the time was the most wanted Mafia fugitive from justice sought by the Police.

The names of the two hidden partners are not openly given by the two speakers (for obvious reasons of caution given the rank of the people in question), but there are many probatory elements that converge to support the Prosecution’s theory.

In particular, during the course of the conversation specific reference is made to Terrasini, where Sgroi managed a supermarket, being the same town that the accused comes from and where some of his relations still live.

The clear reference to someone with significant ranking in the Mafia (deduced from the caution that they speak about him, and that he is above the other partners), called the “African” that owns mines, seems that it can only refer to Palazzolo.

And in fact, in the context of the current investigations and proceedings, there is no-one else close to the “Cosa Nostra” who lives (and permanently operates) in Africa and owns mines (see Calvino’s deposition).

The fact that Di Maria referred to gold mines instead of diamond mines does not seem sensitive enough to derail the frame of references that unequivocally leads only to Palazzolo, who also has his origins in Terrasini.

Clearer still is the reference made to Provenzano, since at the time of the interception (2001) he was certainly “*the biggest one they are looking for*”. His name topped the most wanted list of Mafia fugitives as the most dangerous and most actively sought fugitive by the Italian and international police.

It has already been pointed out (see Giuffrè’s deposition) how significant Provenzano’s influence was in the Cinisi and Terrasini districts, places that were specifically referred to during the interception in relation to the Sgrois.

Besides which, this geographic reference confirms the identity of Palazzolo in the “African” they speak about, since this last details further restricts the field of Sgroi’s other possible hidden partners.

A critical review of the content of audio surveillance interception assumes significant value in confirming Giuffrè’s statements. This involves an external check that does not constitute independent proof of the fact in itself, but which is appropriate for corroborating the statements made by the witness on a concrete level.

And in fact current case-law consolidated over the years on this point, states that the counter check (can be of any kind) does not pretend to be independent proof, because in that case, it would no longer be a counter check, but actual proof of the fact itself.

In the case in question, the audio surveillance interception only constitutes an element of proof, which all the same seems to fully confirm the fact that Palazzolo and Provenzano were in business together in various sectors, both in Italy and abroad, so much so that these circumstances came to be known by people like Di Maria, whose statements are

in no way contradicted by Raffaele Spina, who certainly had in-depth knowledge of the events relating to the Mafia association.

Nor were these rumours circulating in the public domain, since the circumstances involved in the intercepted conversation related to news restricted to a well defined and identifiable circle of people (like those belonging to the Mafia organisation).

The significance of the second group of interceptions relating to Bernardo Provenzano's son, Angelo, need to be evaluated in a similar manner.

These interceptions were transcribed and admitted to the current proceedings, and can be evaluated in order to verify the statements made by Giuffrè relating to the proposed acquisition of shares in a German insurance company by Palazzolo and Provenzano.

Even though Giuffrè could not clarify the details about what type of operation would be set up, he specified that Provenzano was interested in the venture not only because of the usual purpose of laundering dirty money, but especially because it afforded his son Angelo the opportunity of working in an apparently legitimate business.

Interceptions on Angelo Provenzano's telephone confirm that during the period between September 1998 and June 1999, he had done work for the company "Bayerische" based in Germany. The work involved drawing up life insurance contracts, and according to Angelo Provenzano, these presented excellent earning opportunities.

Specifically, in reviewing one of the conversations on file (23 September 1998 at 9h40), it was noted how Angelo Provenzano while speaking to his mother complained about his financial problems and made reference to a company that would allow him to make a lot of money (*"five hundred million [lire] a month"*).

From checking and verification done by the Police, it emerged that the work in question was in fact the setting up of insurance contracts for "Bayerische" in the province of Palermo. Reference is also made during the conversation to a certain "Roberto", who was involved with Angelo Provenzano in this business.

This situation is not unequivocally significant, in the sense that it does not allow for a definite identification of this "Roberto" with Vito Roberto Palazzolo.

Nonetheless, an examination of the conversation and in the light of the Police's testimony during the hearing, allow one to deduce that Provenzano's son had worked for a German insurance company, and that by his own admission, this work earned him a lot of money (500 million Lire a month), which would certainly seem contrary to the average amount a simple door-to-door insurance salesman would be making.

In the motion for Appeal, the Appellant had requested the partial reopening of the hearing in order to examine the witness Gioacchino Garbo, owner of the Palermo agency of BAYERISCHE Insurance, (at no. 19 Via Michele Miraglia), so that he could testify on any business interests that Vito Roberto Palazzolo might have held in the above insurance company.

The Court notes that the Defence did not insist on this request during the hearing on the 22/5/2007, thus demonstrating that they had implicitly abandoned the request.

The above request had as its subject an element of proof that was not decisive in terms of defining the judgment in terms of article 603 of the Criminal Procedure Code, which was to have excluded that Garbo (in his capacity merely as an area representative of Bayerische) could have known about any business interests that Palazzolo had in the above insurance company.

In summary therefore, the statements made by Giuffrè, which come from someone intrinsically credible, and placed at the highest level in the hierarchy of "Cosa Nostra", in regular contact and friend of Bernardo Provenzano, can be considered to have found a number of external counter checks that corroborate their value and significance.

These verifications are represented both by the content of two groups of interceptions (conducted in different areas and time periods), as well as from other results during the hearings, and confirm the information accurately given by Giuffrè, since this had been learnt directly from Provenzano himself.

These make reference to the internal happenings within "Cosa Nostra" and how these relate to Palazzolo's association, to his friendships with other "men of honour", and his role in conducting illegal businesses with them, which have been verified by a multitude of counter checks through the convergence of a number of the statements made by other state witnesses.

Confirmation on many levels has also been established regarding the information about Palazzolo's life and judicial episodes, his arrest in Switzerland, his move to South Africa, and his role as businessman and financier able to successfully operate on an international level (in Germany, Switzerland, USA, Angola, Namibia and South Africa).

Of particular significance is the fact that all the information that Giuffrè reported on comes directly from Bernardo Provenzano, that is the absolute "boss" of the "Cosa Nostra" (until his arrest), with whom Giuffrè had a deep-seated and long-lasting friendship, and common intent.

The inclusion of this probatory material in the overall frame of reference together with the testimony, documents and statements from other state witnesses allow for Palazzolo's role and especially the current nature of his contribution to the "Cosa Nostra" organisation, to be clearly defined.

At this point the Court needs to examine the Defence's contention declaring that the state witness Giovanni Brusca had stated that due to both judicial problems and disagreements with certain high-ranking members of "Cosa Nostra", "*so much so that he feared for his life*", Palazzolo had physically broken off contact with individuals within the Mafia organisation, without ever re-establishing these again.

The relevant gravamen is found to be unsubstantiated.

The statements made by Brusca need to be taken into consideration, where in reply to a question posed by the Prosecution relating to Palazzolo's relations with the "Cosa Nostra" organisation, he replied as follows: "*For a while there was a standstill. Due to a series of events. While Salvatore Riina was there, he looked after this detail. I know that they had been interrupted for a series of problems, and especially due to this fact of Rotolo and Vito Roberto Palazzolo. But Salvatore Riina was not worried about him, because the problem was only with Antonino Rotolo. Finished... Then with Salvatore Riina arrested these problems went quiet. In 1995 I began going through to Partinico..1993, 1994, 1995, but especially in '95... seeing that I was going through to Partinico, I began to see (...) again, that is to better understand the details of the accusations made by Palazzolo.... to re-establish contact with Vito Roberto Palazzolo. That is to know what possibility there was of restarting what had been on the go in '82, '84*". (cfr. pages 76 and 77 of statements made by Brusca at the hearing on 5/3/2003).

It therefore emerges from Brusca's statements that the problems between Palazzolo and members of the "Cosa Nostra" related specifically to the "boss" Antonino Rotolo, and did not concern Salvatore Riina, even though this had caused "*a standstill*", essentially a cooling off of relations between the heads of the "Cosa Nostra" and Palazzolo.

The situation changed however after Riina's arrest in 1993: the problems mentioned with Palazzolo had quietened down (literally "gone to sleep" according to the words used by Brusca), so much so that Brusca himself (someone close to the heads of the "Cosa Nostra") had tried to re-establish contact with Palazzolo: the above state witness specified that he had not had the time to re-establish contact with Palazzolo because he had had other problems, like the collaboration of Monticciolo.

The relevant subject was examined during the course of Brusca's questioning, when Attorney D'Agostino asked the state witness what the effects had been in the "Cosa Nostra" of the news spread by Antonino Rotolo regarding Palazzolo's alleged collaboration with the judicial authorities.

This question was admitted by the Judge President, even though it had been opposed by the Prosecution, and Brusca replied that: "*As far as I remember there were no consequences. Nor was anything said that there was a project with regard Palazzolo to eliminate him. Completely.*". (cfr. page 118 of transcript).

Brusca definitely excluded that at the time of his contact with Giovanni Bonomo, that there were (illegible.. ) measures in respect of Palazzolo from the Mafia organisation.

At this point the Judge President formulated the following question: "*Excuse me, with regards to the rules in the "Cosa Nostra", that fact that no measures were adopted, does this mean that Vito Roberto Palazzolo can still be considered a "man of honour?"*", and Brusca replied: "*As far as the rules go, yes.*" (cfr. page 120 of transcript).

In the Court's opinion, Brusca's statements do not appear to be incompatible with the permanence of Palazzolo's connection to the association: the accused had had his differences with Antonino Rotolo (member of the Mafia accused by Palazzolo in the well-known Swiss proceedings), but he maintained good relations with other members of the Mafia organisation, in particular with Bernardo Provenzano, who was well aware of the importance that an expert in solving international financial problems, like Palazzolo could offer the Mafia organisation; and with Giovanni Bonomo, head of the Partinico district (Mafia member referred to above).

According to Brusca's statements however, there were no measures to expel Palazzolo from the "Cosa Nostra" during 1995.

On closer examination, the statements made by Brusca end up corroborating those made by Giuffrè, and provide further support to the accusatory position.

The Defence also contested that no significance for the purposes of the decision could be attributed to the contact (certainly mediated) that took place between Palazzolo and Senator Marcello Dell'Utri.

In this regard, the Court notes that Dell'Utri had been convicted by the Court in Palermo on the charge of external complicity in a Mafia association, but the relevant judgment has not become irrevocable (the proceedings are still pending at Appeal level).

The contact in question refers to certain telephone interceptions made in the context of parallel proceedings (reference no. 16424/01 R.G.N.R), and transcribed during the course of the hearings.

Specifically, this refers to four telephone interceptions of four conversations that took place recently (2003) between the accused, his sister Maria Rosaria (called Sara) and other speakers.

During the course of these conversations, Palazzolo and his sister were planning and putting in place a series of initiatives clearly aimed at influencing the current criminal proceedings.

In fact the siblings used a concentrated network of people (lawyers, consultants, ministerial officials, journalists, parliamentarians), with the support of Senator Marcello Dell'Utri (referred to above), to try and influence the outcome of the international rogatory commission, the extradition proceedings against Palazzolo, and the progress (if not the outcome) of the current proceedings, by means of different strategies like parliamentary debates, media campaigns and other obscure manoeuvres unequivocally focused on directing the activities of public officials and even judicial entities in Palazzolo's favour.

In the Court's opinion this plan constitutes completely reprehensible conduct both on an ethical and legal level, since this was not an attempt made by the Defence to support their client (that could still be understandable to a certain extent), but on the contrary involved a deep-seated desire to contaminate the criminal process and a series of related proceedings (like the rogatory hearings and extradition), using illegal means and methods.

In the conversations intercepted, Palazzolo and his sister discussed the need to oppose the proceedings for extradition by the South African government, to influence the workings of the Supreme Court of Appeal so that the relative file for precautionary arrest measures could be assigned to "*competent judges*" who would then "*put a stop*" to the case, as well as initiating a series of initiatives (parliamentary debates, media campaigns, etc.) with the purpose of trying to influence the integrity of the Court and the outcome of these proceedings, both on merit and legitimacy.

These initiatives were to be coordinated in some way by Senator Marcello Dell'Utri, originally from Palermo, and convicted on charges of association in a Mafia organisation. It should also be noted that Palazzolo did not limit himself to asking for help, complaining about being the alleged victim unjustly persecuted for inexplicable reasons by the Italian

criminal procedure system, but in exchange for the assistance that he required, offered his support to business initiatives in Angola that an Italian power group evidently sought to establish in that country.

An alarming and distinctly negative picture emerges from an analysis of this reciprocal relationship between people who have different roles to play, but are brought together by the fact that they represent power groups able to exchange favours.

The Court has already stated that the presumption of innocence (applicable to the judicial position of Dell'Urti as well as the accused) does not allow for hasty and simplistic conclusions to be drawn from these elements of proof, but the fact remains that a tangible relationship existed, which had the potential to attain the goals set by both parties.

What has especially been proven is a disturbing attempt to influence parliamentary activity (through debate on judge's conduct), the media world (through specifically channelled media campaigns), certain administrative proceedings (the rogatory commission and extradition) both in Italy and abroad, and at least three judicial proceedings (besides today's hearing that concluded with the first instance judgment, the hearing on precautionary arrest measures that resulted in the cancellation of precautionary arrest measures against the accused, and the trial which sought the recognition of the so-called *international ne bis in idem* principle, and succeeded in this regard).

Taking into account the methods used, this attempt is a disturbing signal of the intrinsic danger posed by today's accused.

An examination of the contents of the four telephone interceptions referred to above clearly indicate Palazzolo's and his sister's main point of reference as being Daniela Palli.

Palli is Milanese by birth and Kenyan by adoption, a close friend of Riccardo Agusta, and had also been a guest of Palazzolo in South Africa.

Maria Rosaria Palazzolo (called Sara) was tasked by the accused to contact Palli telephonically (whose number was available to Palazzolo himself), and Palli would have acted as go-between with Senator Dell'Urti.

Using this channel, a pro-memoria drawn up by Palazzolo containing a series of "viable" requests from him and his collaborators was to have been passed on to Senator Dell'Urti.

The channel of communication worked perfectly, given that during the course of a conversation on 26.6.2003, Maria Rosaria Palazzolo told her brother that Dell'Utri had called her a short while ago (*"he called me a while ago"*), saying that he had been asked by someone else to do so and was making himself available (*"in whatever I can do.."*). This was also confirmed by Pall during one of her conversations on the 3.12.2003 (*"remember that in July... in June. I asked if Marcello could give Sara Palazzolo a call... and she told me, yes he'd done so.."*).

The subject of the pro-memoria and the contact between Dell'Utri and the Palazzolos apparently related to resolving the judicial problems of today's accused, as can be understood from the complex content of various conversations, and specifically the one on 3.12.2003, where we read: "Man:" *What is the contact counting on as a next step? Is it for business or just for information?* Palli: *"well, hopefully to solve Roberto's problems that are the same as Marcello's... trials, things or I don't know what.."*

For his part, Senator Dell'Utri had taken the Palazzolos *"to heart"*, so much so that he made himself available to take on certain tasks, where in the case of at least one of these, a fee was paid (destined to some unspecified professional consultant of Dell'Utri's), which varied between 5.000 to 20.000 dollars depending on the outcome of the operation (i.e. Palazzolo's acquittal). (*"if he is acquitted.. (inc.) the other fifteen thousand.."*).

Again during the conversation on 26.6.2003 at 22h18, the Palazzolo's openly discussed the requests that needed to be put to Dell'Utri, and the accused made the point to his sister that the former did not have to *"be converted"*, because *"he already was converted"* (*"you don't have to convert him.. He's already converted, no? [laugh]"*). In using this expression Palazzolo presumably intended letting his sister know that Senator Dell'Utri had already been solicited to help and was available to provide this.

During the course of the conversation, reference was made to certain initiatives that Dell'Utri (sometimes through his colleagues), was to have initiated and supported in favour of Palazzolo. These specifically include:

- requesting the intervention of the Ministry responsible in order to obtain a favourable interpretation of the so-called *internacional ne bis in idem* principle with regard to the drug trafficking trial, which was then being heard at the second level of jurisdiction at the local Court of Appeal. (In this regard, it should be noted that the *ne bis in idem* principle would have been recognised in Palazzolo's favour on the basis of the previous Swiss conviction, so that the First Instance conviction would have to have been amended);

- requesting intervention at the Supreme Court of Appeal, in order to validate the application to annul the precautionary arrest measures for the crime of Mafia association, which had already been submitted by Palazzolo's Defence. (Again, in this regard it is noted that the above order of arrest handed down by the Appeal Court was to have been annulled by the Review Court of Palermo on the 9.1.2004 – referred to above);
- requesting intervention of officials "*at government level*" with regard to the South African authorities, so that both Palazzolo and Agusta could be "*left in peace*" (even if necessary, through the intervention of the "*President*" (sic));
- requesting a parliamentary debate in order to draw attention to the persecutory nature of the Attorney General in Palermo's judicial actions with regard to Palazzolo and his family members;
- requesting intervention over the process of assigning the appeal at the Supreme Court of Appeal, so that it would be heard by "*competent judges*" that could "*put a stop to it*" in a legitimate context: for this reason, Palazzolo had asked his sister to make a note of the judge's names ("*write down who the magistrates are, who the prosecutors are, who the presiding judge in the Court of Appeal is, write down everything*"), so that the outcome of the above interventions could be monitored;
- and finally, requesting an intermediary at ministerial level who could monitor the judicial situation against Palazzolo.

For his part, Palazzolo was prepared to "*make a contribution*" to the people close to Dell'Utri involved in wanting to initiate business ventures in the fishing, petroleum, mining and public works' sectors in Angola, where Palazzolo had been appointed financial adviser to the government.

Furthermore, Palazzolo's sister had to clarify with Dell'Utri that her brother did not want to ask for further assistance from any Sicilians, so as to avoid becoming involved as he had been in the past ("*tell him: my brother did not want to ask anybody down in the South, there, so that he can avoid becoming involved like other times...*").

In the opinion of this court, the results emerging from the above telephone interceptions must be evaluated as counter checks to the accusatory motion.

It is worth pointing out that some of the requests formulated by Palazzolo could in themselves be considered to be substantiated (or at least not arbitrary), as for example the one relating to the favourable interpretation of the so-called "*ne bis in idem*" principle with regard to the drug trafficking trial then underway with the Palermo Court of Appeal

(Third Criminal Section): the Court of Appeal effectively would have recognised the international *ne bis in idem* principle in relation to Palazzolo based on the previous Swiss conviction, with the First Instance judgment consequently being amended.

The negative connotations of the accused's conduct persist however, due to the methods adopted.

This evaluation leads to the conclusion that the request formulated by the Appellant to re-open the hearing in terms of article 603 of the Criminal Procedure Code is not decisive for the purposes of defining the procedures. The request was made in order to obtain the documentation indicated on pages 14 and 5 of the charge sheet and more specifically:

- Fax sent by the Legal Department of the Ministry of Foreign affairs to Mrs Sara Palazzolo on 28/05/2002, together with the relative request that had been previously formulated by Mrs Palazzolo herself;
- Fax sent to Mrs Palazzolo from the Federal Office of Justice in Bernes on the 13/06/2002, together with the relative request dated 10/06/2002.

Palazzolo's Defence insisted with regard to this request during the hearing of 22/5/2007, and the Court reserved its right to decide on the merits.

The Court notes in this regard that the above documentation, while being indicative of the official nature of the initiatives to try and verify the status of the proceedings in relation to the recognition of the so-called "*ne bis in idem*", cannot support a different evaluation of Palazzolo's conduct, for the reasons already set out previously.

At this point, the question relating to the legal qualification of the facts must be addressed.

The reasons supporting the conviction that the Court can freely evaluate the entire compendium of probatory elements acquired during the course of the hearing has already been discussed earlier.

A free evaluation of the initial fact constituted by Palazzolo's affiliation during the eighties, together with an evaluation of the specific conduct of the accused before 1992 (involvement in drug and cigarette trafficking, laundering of enormous amounts of funds from this trafficking between Switzerland and Sicily, different business ventures, like the trade in precious stones, established together with and on behalf of authoritative members of "Cosa Nostra"), allow for the subsequent conduct (hospitality given to Bonomo and Gelardi, investments with and on behalf of Bernardo Provenzano and other "men of honour" like Geraci and Mangiaracina), to be included in the context of the basic

continuity in the criminal activities typical of a “man of honour”, relating to the permanent crime which was originally ascribed to him (participation in a Mafia type association).

Furthermore, it appears that Palazzolo had maintained relationships of great trust and secrecy with a number of high ranking members of the “Cosa Nostra” (such as Riina, Provenzano, Madonia, Geraci, Mangiaracina, etc.), and had covered the role of drug trafficker and money launderer of dirty money with great ability, as well as being the connection between the world of international finance and the “Cosa Nostra” Mafia organisation.

The existence of this role is not deduced solely from the state evidence, but also from the results of the investigation into the so-called “Pizza Connection”, that was reported on by various witnesses, including General Pitino.

Specifically, the fact that Palazzolo played the role of major money launderer of the enormous gains originating from the illegal trafficking of drugs and cigarettes run directly by the heads of the “Cosa Nostra” constitutes an extremely significant element for evaluation. This element is confirmed and validated by the outcome of the “Pizza Connection” trial.

Based on these elements then, it can be confirmed that Palazzolo was not only formally affiliated to the “Cosa Nostra”, but also maintained relationships at the highest level with the heads of the Mafia organisation, covering an extremely delicate and valuable role on their behalf.

This very role with the necessary abilities required and the existence of a relationship of trust at the highest level made the accused a valuable and almost irreplaceable asset to the Mafia organisation.

Palazzolo preferred to evade Italian justice, and for this reason lived first in Switzerland and then in South Africa, remaining far from Sicily for many years.

The historic and uncontested fact of the accused’s physical distance for so many years from the area where the “Cosa Nostra” directly operates constitutes a further element for evaluation, which the Court must critically examine.

Besides which, the accused continued to put his undisputed ability as an international financier to good use in South Africa, starting off from a very solid base guaranteed by the illegal proceeds derived from drug trafficking, and operating in an unscrupulous and efficient manner.

It must also be restated that Palazzolo had made his complicated entry into South Africa, carrying with him a significant amount of money from the abovementioned illegal trafficking.

In South Africa, he then continued operating using the methods that were very similar to those typical of the "Cosa Nostra" (on the one hand intimidation methods, and on the other methods directed at creating a financial, political and criminal power base), so as to become one of the major financial operators in the Cape region, and probably in the entire country.

Furthermore, his physical distance from Sicily did not prevent him from remaining in contact with the network mentioned previously, which he continued through his sister and other contacts, including Provenzano's brother, Geraci, and Bonomo (who had confirmed this fact to Brusca, who in 1995 had indicated that he intended contacting Palazzolo to take up business with him again).

Furthermore, what can be confirmed with certainty is that every time the "Cosa Nostra" needed Vito Roberto Palazzolo, they could always count on his total support and complete availability: the fact that he was living far away from Sicily made the occasions that the organisation would need his contribution less frequent, but when the need did in fact arise, Palazzolo was always available and ready to give the support that from time to time was required of him.

Over the course of time, he was definitely asked to provide hospitality to the two fugitives from justice Bonomo and Gelardi, and guarantee Bernardo Provenzano a safe money laundering channel overseas for the organisation's dirty money: in both circumstances Palazzolo made himself readily available, providing the "Cosa Nostra" with whatever the Mafia organisation required from him in that specific context.

In the case of Bonomo and Gelardi's flight from Italy, Palazzolo represented a safe haven, both because of the distance provided by his place of residence, and the cover he enjoyed politically from the establishment in South Africa.

At the time of his flight, Bonomo was the head of the Partinico district, that is to say the exact area that Palazzolo himself was connected to by birth, and in his relations within the context of the "Cosa Nostra".

There was therefore nobody better than Palazzolo that could have offered refuge overseas to Bonomo and Gelardi, both because of the personal relations and common origins they shared, as well as the high level of local protection that Palazzolo enjoyed.

This protection was clearly demonstrated during the course of the proceedings (both from documentation on file and testimony relating to Palazzolo's personal life in South Africa).

Besides which as can be deduced from Oliveri and the state evidence, this was nothing new for Palazzolo, who had already provided hospitality and protection to Sicilian fugitives on the run while he lived in Germany.

Palazzolo was also extremely valuable to "Cosa Nostra" in relation to another form of assistance that he had already ably and reliably provided in the past: his undisputed skill in the international financing sector, his overseas contacts and his innate capabilities had in fact already distinguished him as one of the few people able to launder enormous illegal proceeds on behalf of the "Cosa Nostra".

Even today, taking into account the progress made in technology and the evolution of "Cosa Nostra", there are few people who would be able to carry out this very delicate role on behalf of the Mafia organisation.

This was also the reason why Bernardo Provenzano, who had already appreciated Palazzolo's qualities from the time of the "Pizza Connection", decided to continue using him to launder portions of the organisation's illegal funds.

It essentially meant continuing to use someone whose abilities and dependability had been widely proven during the past, and who held Provenzano in special regard and could be fully counted on.

The experience garnered through judicial proceedings over the past few years has established that the "Cosa Nostra" has a need to make investments abroad (in Eastern Europe and South American countries), so that part of their capital is removed from the inherent and very real risk of sequestration and confiscation rulings handed down during criminal judgments and proceedings relating to preventive measures.

On the basis of these considerations, it appears evident how Vito Roberto Palazzolo, despite the distance, could represent a valuable point of reference for the "Cosa Nostra" Mafia organisation in relation to two areas of intervention, namely assistance to fugitives from justice and the laundering of illegally procured capital.

And even though Palazzolo has lived in South Africa for many years, and has toned down (but never interrupted) his personal and business relations with members of the "Cosa Nostra", every time that he was asked to make a specific contribution, he did so willingly and fully cognisant that he was assisting the above Mafia organisation as a whole.

There is no doubt, in fact that the accused's context of relations with high ranking members of "Cosa Nostra" and his direct knowledge of the internal dynamics within the Mafia organisation, would make him perfectly aware of the nature and purpose of the specific contributions that were asked of him over time.

The First Instance Judges had qualified the facts as external complicity in a Mafia association, while underlining that this definition was due to the effect of being unable to freely evaluate the entire compendium of probatory evidence that emerged during the course of the hearing.

The Court, which previously set out the reasons allowing it to freely evaluate the entire compendium of probatory evidence that emerged during the course of the hearing, does not share the conclusions reached by the First Court in their legal qualification of the facts.

And in actual fact, the considerations set out previously on the fundamental position maintained by Palazzolo give rise to the conviction that the Appellant had been part of the Mafia association, since he remained permanently and intrinsically included in the structural organisation of the Mafia association after having being formally inducted into the Mafia association called the "Cosa Nostra" at the beginning of the eighties.

Besides which, on the subject of Mafia type association, the conduct of participation refers to whoever is in a stable relationship that has penetrated to the core of the organisational structures, so that it implies more than just the *status* of belonging, but rather a dynamic and functional role where the person "takes part" in the concept of the association, remaining at the disposal of the organisation to pursue mutual criminal purposes (cfr. on this point, the principles established in the judgment of the Supreme Court of Appeal, Combined Sections, 12.7.2005, Mannino).

Obviously the Court can only take into consideration the period subsequent to 29.3.1992, where the preclusive effect of the criminal judgment mentioned several times previously, does not apply.

It appears that at that time even though residing permanently in South Africa, Palazzolo certainly was still connected to the association: even with the serious disagreements the accused had with Antonino Rotolo, he maintained good relations with other high-ranking members of the Mafia organisation, and especially with Bernardo Provenzano (who was well aware of the importance that someone like Palazzolo who was an expert in international financial problems could hold for the Mafia organisation) and Giovanni Bonomo (head of the Partinico district).

These circumstances (already illustrated above) can be deduced from the specific and credible statements made by the state witness Giovanni Brusca, who also stated that in 1995 there had been no order to expel Palazzolo from the “Cosa Nostra”.

In the following year, in 1996, Palazzolo provided hospitality to the Mafia fugitives from justice Bonomo (head of the Partinico district) and Gelardi: the continuation of the permanent nature of the crime of participation in a Mafia organisation that Palazzolo was originally charged with, can be deduced with certainty from this event (also dealt with extensively previously).

With regard to the years following, the factual circumstances inferable from the credible statements made by Giuffrè regarding the relations between Palazzolo and Provenzano are significant.

In summary, it has been proven that in the period taken into consideration on the charge sheet, Palazzolo had participated in the Mafia association called the “Cosa Nostra”, playing a significant role, which is also inferable from Provenzano’s trusting relationship in his regard (from 1993 until 2005, when he was arrested, Provenzano was the undisputed head of the Mafia organisation), remaining permanently and intrinsically included in the organisational structure of the Mafia organisation.

## **THE GENERAL EXTENUATING FACTORS, THE SENTENCE AND OTHER PROVISIONS**

The Defence’s contention that general extenuating circumstances should be granted, is also unfounded.

What actually needs to be considered is the significant gravity of the facts, inferable from the protracted time of the criminal conduct, the role covered by Palazzolo within the context of the Mafia association and his privileged relationship with Bernardo Provenzano (from 1993 until 2005 undisputed head of the “Cosa Nostra”).

Furthermore, the accused does not appear immune from previous charges (cfr. Court of Rome judgment dated 28.3.1992), and nor can positive elements be drawn from an evaluation of his conduct during and outside of proceedings (cfr. specifically the results from the telephone interceptions).

In fact the elements illustrated previously lead the Court to a negative assessment of the accused’s personality, not to grant him general extenuating circumstances.

Similarly unfounded are the contentions regarding the sentence imposed.

In fact, the sentence imposed by the Court (9 years imprisonment) appears appropriate to the seriousness of the facts (inferable from the protracted time period of the criminal conduct, the role covered by Palazzolo within the context of the Mafia association and his privileged relationship with Bernardo Provenzano (from 1993 until 2005 undisputed head of the “Cosa Nostra”), and his significant capacity to commit criminal acts, which certainly continued despite his extended absence from Italy.

As a consequence of the Court rejecting the motion presented by Palazzolo, the Appellant is ordered to pay costs in the proceedings.

Further, the Court orders the correction of an error appearing in the judgment being contested, where the accused’s place of birth is indicated as “Palermo” and should read “Terrasini”.

.Given the complexity of the matters dealt with and the workload in the office, the Court sets down ninety days for judgment to be filed, in accordance with article 544, section 3 of the Criminal Procedure Code.

#### **FOR THIS REASON**

Having examined article 605 of the Criminal Procedure Code; having qualified the fact considered by the First Instance Judge as participation in a Mafia type association, originally contested, the Court confirms the judgment handed down on 5 JULY 2006 by the Court of Palermo appealed by the accused Vito Roberto Palazzolo, who is ordered to pay the additional costs of the proceedings.

Having examined article 140 of the Criminal Procedure Code, the Court orders the correction in the contested judgment where the accused’s place of birth is stated as “Palermo” to read “Terrasini”.

Having examined article 544, section 3 of the Criminal Procedure Code, the Court sets down a period of ninety days for motivation to the judgment to be filed.

PALERMO, 11 July 2007.

OUTSIDE CONSULTANT – SIGNED

JUDGE PRESIDENT - SIGNED

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